Litigation Due Diligence Analysis

Yorgason v. Lamphear

Case No. Case No. 22LBCV00356

By

JT

October 24, 2022

Table of Contents

[1. SUMMARY 8](#_Toc53565473)

[2. PARTIES/SIGNIFICANT FIGURES 8](#_Toc53565474)

[3. STATEMENT OF FACTS / EVIDENTIARY SUPPORT 11](#_Toc53565475)

[4. ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT 13](#_Toc53565476)

[5. ADDITIONAL DOCUMENTS NEEDED FROM CLIENT 14](#_Toc53565477)

[6. THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST 15](#_Toc53565478)

[radio\_client\_plaintiff\_defendant == "Plaintiff/Petitioner" 7. POTENTIAL CAUSES OF ACTION AND THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_cross\_claims == "Yes" 8. POTENTIAL CROSS-CLAIMS AND THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_cross\_claims == "No" 9. POTENTIAL AFFIRMATIVE DEFENSES### 17](#_Toc53565479)

[9.1. Breach of Contract 17](#_Toc53565480)

[9.2. Implied Covenant of Good Faith and Fair Dealing 19](#_Toc53565481)

[9.3. Negligence 21](#_Toc53565482)

[9.4. Breach of Fiduciary Duty 22](#_Toc53565483)

[9.5. Nuisance 24](#_Toc53565484)

[9.6. Trespass 27](#_Toc53565485)

[9.7. Interference with Prospective Business Advantage 30](#_Toc53565486)

[9.8. Interference with Contract 31](#_Toc53565487)

[9.9. Intentional Misrepresentation (Fraud) 33](#_Toc53565488)

[9.10. Negligent Misrepresentation 37](#_Toc53565489)

[9.11. Intentional Infliction of Emotional Distress (“IIED”) 38](#_Toc53565490)

[9.12. Declaratory Relief 40](#_Toc53565491)

[9.13. Assault 42](#_Toc53565492)

[9.14. Battery 43](#_Toc53565493)

[9.15. Defamation 45](#_Toc53565494)

[9.16. Civil Stalking 47](#_Toc53565495)

[9.17. Violation of Statute (Dog Bite) 49](#_Toc53565496)

[9.18. False Imprisonment 50](#_Toc53565497)

[9.19. Invasion of Privacy 52](#_Toc53565498)

[9.20. Express Indemnity 54](#_Toc53565499)

[9.21. Equitable Indemnity 55](#_Toc53565500)

[9.22. Failure to Permit Inspection of Records 57](#_Toc53565501)

[9.23. Quiet Title 58](#_Toc53565502)

[9.24. Slander of Title 60](#_Toc53565503)

[9.25. Cancellation of Instrument 61](#_Toc53565504)

[9.26. Reformation of Instrument 62](#_Toc53565505)

[9.27. Partition 63](#_Toc53565506)

[9.28. Conversion 64](#_Toc53565507)

[9.29. Trespass to Chattels 66](#_Toc53565508)

[9.30. Open Book Account 68](#_Toc53565509)

[9.31. Money Had and Received 69](#_Toc53565510)

[9.32. Account Stated 70](#_Toc53565511)

[9.33. Goods and Services Rendered 71](#_Toc53565512)

[9.34. Unjust Enrichment 72](#_Toc53565513)

[9.35. Rescission 73](#_Toc53565514)

[9.36. Financial Elder Abuse (Welf. & Inst. Code, § 15610.30) 75](#_Toc53565515)

[9.37. Negligent Hiring 76](#_Toc53565516)

[9.38. Negligent Supervision 78](#_Toc53565517)

[9.39. Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.) 81](#_Toc53565518)

[9.40. Receipt of Stolen Property (Penal Code § 496) 84](#_Toc53565519)

[9.41. Misrepresentation in Connection with Sale of Security (Corp. Code, § 25401) 85](#_Toc53565520)

[9.42. Recovery Against Contractor’s Bond 87](#_Toc53565521)

[9.43. Breach of Independent Wholesale Representatives Act (Civ. Code, § 1738.10 et seq) 88](#_Toc53565522)

[9.44. Violation of California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) 91](#_Toc53565523)

[9.45. Malicious Prosecution 93](#_Toc53565524)

[9.46. Abuse of Process 95](#_Toc53565525)

[9.47. Insurance Bad Faith 97](#_Toc53565526)

[9.48. Medical Malpractice 99](#_Toc53565527)

[9.49. Legal Malpractice 100](#_Toc53565528)

[9.50. Actual Fraud 104](#_Toc53565529)

[9.51. 105](#_Toc53565530)

[radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_cross\_claims == "Yes" 106](#_Toc53565531)

[10. POTENTIAL AFFIRMATIVE DEFENSES 106](#_Toc53565532)

[10.1. BJR 106](#_Toc53565533)

[10.2. Statute of Limitations 108](#_Toc53565534)

[10.3. Equitable Estoppel 113](#_Toc53565535)

[10.4. Unclean Hands 113](#_Toc53565536)

[10.5. Laches 113](#_Toc53565537)

[10.6. Negligence (Comparative Fault) 114](#_Toc53565538)

[10.7. Apportionment 114](#_Toc53565539)

[10.8. Negligence (Sudden Emergency) 115](#_Toc53565540)

[10.9. Assumption of Risk 115](#_Toc53565541)

[10.10. Contract (Force Majeure) 116](#_Toc53565542)

[10.11. Contract (Duress) 116](#_Toc53565543)

[10.12. Contract (Fraud) 117](#_Toc53565544)

[10.13. Contract (Frustration of Purpose) 118](#_Toc53565545)

[10.14. Contract (Lack of Consideration) 118](#_Toc53565546)

[10.15. Contract (Failure of Consideration) 119](#_Toc53565547)

[10.16. Contract (Illegality) 119](#_Toc53565548)

[10.17. Contract (Impossibility) 120](#_Toc53565549)

[10.18. Contract (Impracticability) 120](#_Toc53565550)

[10.19. Contract (Mistake of Law) 121](#_Toc53565551)

[10.20. Contract (Mistake of Fact) 121](#_Toc53565552)

[10.21. Contract (Novation) 122](#_Toc53565553)

[10.22. Contract (Statute of Frauds) 122](#_Toc53565554)

[10.23. Contract (Unconscionability) 123](#_Toc53565555)

[10.24. Contract (Undue Influence) 124](#_Toc53565556)

[10.25. Contract (Accord and Satisfaction) 124](#_Toc53565557)

[10.26. Waiver 125](#_Toc53565558)

[10.27. Failure to Mitigate 125](#_Toc53565559)

[10.28. Lack of Damages 126](#_Toc53565560)

[10.29. Failure to State a Claim 126](#_Toc53565561)

[10.30. Intervening/Superseding Cause 127](#_Toc53565562)

[10.31. Justification 127](#_Toc53565563)

[10.32. Ratification 128](#_Toc53565564)

[10.33. Litigation Privilege (Civ. Code, § 47) 128](#_Toc53565565)

[10.34. Consent 129](#_Toc53565566)

[10.35. Necessity 129](#_Toc53565567)

[10.36. Private Necessity 130](#_Toc53565568)

[10.37. Equitable Easement 130](#_Toc53565569)

[11. STRATEGIC CONSIDERATIONS 131](#_Toc53565570)

[11.1. Statute of Limitations 131](#_Toc53565571)

[11.2. Jurisdiction 132](#_Toc53565572)

[11.2.1. Arbitration 132](#_Toc53565573)

[11.2.2. Personal Jurisdiction 132](#_Toc53565574)

[11.2.3. Subject Matter Jurisdiction 132](#_Toc53565575)

[11.3. Standing 132](#_Toc53565576)

[11.4. Anti-SLAPP Analysis 134](#_Toc53565577)

[11.5. Pre-Filing Requirements 142](#_Toc53565578)

[11.6. Attorneys’ Fees and Costs 144](#_Toc53565579)

[12. FINAL THOUGHTS/ISSUES/CONCERNS/COMMENTS 145](#_Toc53565580)

# SUMMARY

Vulnerable elder adult Suzanne Yorgason alleges that Defendant Ken Allen Lamphear used fraud and false promises to induce her to sign away her home of 40 years at 1502 East Florida Avenue in Long Beach, CA for substantially less than it was worth, by way of a grant deed that fails to satisfy the requirements of California law for conveyance of real property. She brings claims for Elder Financial Abuse in a Real Estate Sale Contract pursuant to Cal. Probate Code § 859, Intentional Infliction of Emotional Distress, Actual Fraud, Constructive Fraud, False Promise, Rescission of a Grant Deed, and a Declaratory Judgment that the grant deed violates the Statute of Frauds.

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# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Lee Peterson as guardian ad litem for Suzanne Yorgason (“Client”)DELETE THIS NOTE: If we represent more than one individual/entity, then list all our Clients here—one on each line. Then, make sure to alter the defined “Client” to say: **“(collectively, ‘Client’”)**. The point is to keep “Client” *singular* no matter how many people/entities we represent. If there’s a need to refer to different Clients in the “Statement of Facts/Evidentiary Support” section below, you can put a shortcut (“\*\*\*”) after each individual Client, but still collectively define all of them as “Client.” |  N/A |
| Ken Allen Lamphear | Defendant |
| Vivian Shaw Lamphear | Defendant’s wife and co-trustee of the Lamphear living trust |
| Steve Polzin | Plaintiff’s former renter |

The table above may be amended from time to time to reflect revisions to Client’s narrative and/or new information that may become available in the future.

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# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| \* | This section should contain a comprehensive and objective statement of the relevant facts of the case, as well as any relevant dates. When possible, cite to evidence already in our possession that support the facts referenced. | \* |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.Client loaned debtor $875,000, secured by a deed of trust (Orange Country Recorder No. 2019234563) (“Deed of Trust”). | Client Timeline |
| 6/10/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.Client notified debtor of breach. | Email from Client to debtor |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
| \* | \*\* | \*\* |
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| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |

This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client’s litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

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# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional information or clarification. This section of the LADD may, however, be amended from time to time as new information/questions arise.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

None at the moment. This section of the LADD, however, may be amended from time to time if Client locates additional documents.

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# THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

Client believes that one or more third parties has possession, custody, control, and/or knowledge of the following documents/information.

|  |  |  |
| --- | --- | --- |
| **Document/Information** | **Significance of the Document/Information** | **Identity of Third Party in Possession of the Documents**[[1]](#footnote-1) |
| Minutes from the Board meeting dated 3/5/20 where Client objected to the action taken by the Board. | These minutes, which are supposed to be available to directors, will show that the Board acted arbitrarily and capriciously, and that Client objected to the action being taken. Client was then wrongfully locked out of management of the company. | ABC Corp.’s Attorney |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |

The table above may be amended from time to time as new information comes to light.

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# POTENTIAL CAUSES OF ACTION ANDTHE STRENGTHS/WEAKNESSES OF EACH

## Intentional Infliction of Emotional Distress (“IIED”)

Elements—IIED

— The elements of IIED are: (i) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress in another person; (ii) the plaintiff’s suffering severe or extreme emotional distress; and (iii) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct. (*Davidson v. City of Westminister* [sic] (1982) 32 Cal.3d 197, 209; *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) The “conduct must be intended to inflict injury or engaged in with the realization that injury will result.” (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.)

— The conduct must be directed specifically at the plaintiff or plaintiffs, not to persons in general., or the conduct occurred in the presence of plaintiff and the defendant was aware of plaintiff. (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.) The requirement that the defendant’s conduct be directed primarily at the plaintiff is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury. (*Id. at* 904.)

— This cause of action should only be used in extreme situations due to the high bar required for proof. Successful cases involve actions such as sexual harassment, mishandling of a corpse (*Christensen v. Superior Court* (1991) 54 Cal.3d 868), intentional dumping of toxic waste (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965), and threats of physical harm to a person’s family or pet (i.e., beating a dog with a baseball bat). (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1950.)

— IIED is only appropriate in cases where the actions of another are so extreme as to be beyond all bounds of decency. This cause of action is not available for “…mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051, citing Rest.2d Torts, § 46, com. d.)

— There is no such cause of action as *negligent infliction of emotional* distress. Courts have repeatedly held that the negligent causing of emotional distress is not an independent tort, but instead is part of the tort of negligence. The traditional elements of duty, breach of duty, causation, and damages, therefore, apply. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072.)

Remedies—

— Compensatory (money) damages are available (*Fletcher v. Western Nat’l Life Ins. Co.* (1970) 10 Cal.App.3d 376), as are punitive damages. (Civ. Code, § 3294.)

Applicable Statute of Limitations—

— The statute of limitations for IIED is two years. (Code Civ. Proc., § 335.1.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *IIED*. If one or more provisions of of a relevant contract is relevant, you should cite to such provision(s) here. *No need to quote or provide a snip from any other document.* Referring to the page/section/paragraph of the contract is sufficient.

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Declaratory Relief

Elements—Declaratory Relief

— The essential elements of a declaratory relief cause of action are: (i) an actual controversy between the parties’ contractual or property rights; (ii) involving continuing acts/omissions or future consequences; (iii) that have sufficiently ripened to permit judicial intervention and resolution; and (iv) that have not yet blossomed into an actual cause of action. (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366–69.)

— In an action for declaratory relief, an “actual controversy” is one that “admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts; the judgment must decree, not suggest, what the parties may or may not do.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110.)

Remedies—

— The remedy for a declaratory relief cause of action is a judicial declaration specifying the rights and obligations of the parties. (Code Civ. Proc., § 1060.)

Applicable Statute of Limitations—

— The statute of limitations governing a request for declaratory relief is the one applicable to an ordinary legal or equitable action based on the same claim. (*Mangini v. Aerojet–General Corp.* (1991) 230 Cal.App.3d 1125, 1155.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *declaratory relief*. If one or more provisions of a contract is relevant, you should cite to such provision(s) here. *No need to quote or provide a snip from any other document.* Referring to the page/section/paragraph of the contract is sufficient.

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Rescission

Elements—Rescission

— A contract may be rescinded by a party to the contract if (i) consent to the contract was mistakenly given or obtained through duress, menace, fraud, or undue influence; (ii) the contract’s consideration fails through the fault of the party as to whom he or she rescinds; (iii) the contract’s consideration becomes void; (iv) the contract’s consideration materially fails before it is rendered; (v) the contract is unlawful and the parties aren’t equally at fault; or (vi) performance of the contract will prejudice public interest. (Civ. Code, § 1689(b).)

Remedies—

— Rescission seeks to restore the parties to their status before the contract was entered into. (*Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1147.)

Applicable Statute of Limitations

— The statute of limitations for rescission tracks the statute for breach of contract. Consequently, if the claim is based on a written instrument, the deadline is four years (Code Civ. Proc, § 337), and if the claim is based on an oral instrument, the deadline is two years (Code Civ. Proc., § 339).

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *rescission.*

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Financial Elder Abuse (Welf. & Inst. Code, § 15610.30)

Elements—Financial Elder Abuse

— To prevail on a claim for financial elder abuse, plaintiff must prove that defendant: (i) took, secreted, appropriated, obtained, or retained an elder or dependent adult’s real or personal property for a wrongful use, with the intent to defraud, or both; (ii) assisted in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use, with the intent to defraud, or both; or (iii) took, took, secreted, appropriated, obtained, or retained an elder or dependent adult’s real or personal property by undue influence. (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 174; Welf. & Inst. Code, § 15610.30(a).)

• “Elder” means a CA resident who is 65 or older. (Welf. & Inst. Code, § 15610.27.)

• “Dependent adult” means a CA resident between the ages of 17 and 64 who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. (Welf. & Inst. Code, § 15610.23.)

Remedies—

— In addition to compensatory (money) damages, as well as any damages provided by law, plaintiff is entitled to his or he reasonable attorneys’ fees and costs. (Welf. & Inst. Code, § 15657.5(a).)

— If defendant acted recklessly, oppressively, fraudulently, or maliciously, the “effect of death” limitations under Code of Civil Procedure section 377.34 don’t apply. (Welf. & Inst. Code, § 15657.5(b).)

— Plaintiff may also be entitled to punitive damages. (Welf. & Inst. Code, § 15657.5(c).)

Applicable Statute of Limitations

— An action for financial elder abuse must be brought within four years of when plaintiff knew or should have known of the facts constituting the financial abuse. (Welf. & Inst. Code, § 15657.7.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *financial elder abuse*.

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Actual Fraud

Elements—Actual Fraud

— Provide the elements AND statutory/case law of this cause of action.

— If you want, add snippets from other cases (see the examples above for ideas). Make sure to maintain the proper formatting and margins established in this document.

— If you have more than one cause of action to add, then cut and paste this one FIRST (before replacing the green highlights) as many times as there are causes of action to add. That way, you’ll be sure to keep everything consistent and standardized.

Remedies—

— What are the available remedies.

Applicable Statute of Limitations—

— What is the statute of limitations for this claim?

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *actual fraud*. If one or more provisions of a contract is relevant, you should cite to such provision(s) here. *No need to quote or provide a snip from any other document.* Referring to the page/section/paragraph of the contract is sufficient.

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

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# STRATEGIC CONSIDERATIONS

## Statute of Limitations

To the extent that Client wants to allege all of the suggested causes of action discussed above, the claims must be filed on or before **January 1, 2022** (the *earliest* of the applicable statutes of limitations given the desired claims).

## Jurisdiction

### Arbitration

None of the documents reviewed require Client to submit the current dispute to binding arbitration. Client may, therefore, *choose* whether to agree to arbitration. Whether that is a good idea or not depends upon a variety of factors that Client and the Firm can discuss at a later time.

### Personal Jurisdiction

It is likely that given the facts and parties relevant to this dispute, the superior court in Los Angeles County may exercise personal jurisdiction over the parties.

### Subject Matter Jurisdiction

Subject matter jurisdiction is a requirement for suits filed in federal court. There are no federal court issues of subject matter jurisdiction in connection with this dispute.

## Standing

Based upon the information/evidence that Client has provided thus far, Client has standing to pursue every cause of action described above against each of the intended defendants (excluding DOES, of course).

## Anti-SLAPP Analysis

Anti-SLAPP Overview—

— Strategic Lawsuits Against Public Participation (“SLAPP”) are lawsuits designed to hinder or prevent parties (typically the defendant) from engaging in constitutionally protected activities (e.g., petitioning or free speech). For example, development companies have used SLAPP suits to harass environmental groups standing in the way of large development/construction projects. These companies would file lawsuits against the environmentalists for the express purpose of tying up the smaller (and not as well-funded) environmental groups’ financial resources, effectively preventing them from having their “day in court.” In response, the Legislature passed the anti-SLAPP statute, which was codified in Code of Civil Procedure section 425.16. This statute allows the defending party to file a special motion to strike (called an anti-SLAPP motion) to have the court determine whether the lawsuit can proceed or should instead be thrown out as a meritless attack on the defendant’s acts made in furtherance of his or her right “to petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).)

— The granting of an anti-SLAPP motion can have *severe* consequences, not the least of which is the dismissal of the at-issue claim(s)—or even the entire complaint—depending on the circumstances. In addition, a defendant who prevails on an anti-SLAPP motion *must* be awarded his or her attorneys’ fees and costs, which, given the complexity of anti-SLAPP motions, is typically quite significant. (Code Civ. Proc., § 425.16(c)(1).)

Anti-SLAPP Test—

— The courts use a two-prong test to determine if a claim is protected under the anti-SLAPP statute. First, the defendant must prove that the at-issue claim arises from a constitutionally protected activity. (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456; Code Civ. Proc., § 425.16(b)(1).) If the defendant satisfies his or her burden, the burden shifts to the plaintiff to show that there is a probability that he or she will prevail on the merits of the at-issue claim. (*Ibid*.; *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16(b)(1).)

— With regard to the first prong, there are four categories that the anti-SLAPP statute is intended to protect:

• Any statement (written or oral) or document generated in connection with (or as part of):

→ Any official proceedings authorized by law—e.g., legislative, executive, or judicial proceedings. (Code Civ. Proc., § 425.16(e)(1).)

→ Any issue under consideration or review by a legislative, executive, or judicial body. (Code Civ. Proc., § 425.16(e)(2).)

• Any statement (written or oral) or document made in a place open to the public (or in a public forum) and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(3).)

• Any other conduct made in furtherance of the exercise of a constitutional right of petition or free speech and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(4).)

Application/Analysis/Conclusion—

— Based upon the applicable facts and claims, an anti-SLAPP motion is unlikely because none of the conduct complained of arises from constitutionally protected activities.

## Pre-Filing Requirements

The facts of this case do not trigger any pre-filing requirements.

## Attorneys’ Fees and Costs

If this dispute is adjudicated, the prevailing party will be entitled to attorneys’ fees and costs under Probate Code section 859.

If new information comes to light that affects Client’s right to attorneys’ fees and costs, Client will be notified.

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# FINALTHOUGHTS/ISSUES/CONCERNS/COMMENTS

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Any third party listed here should also be listed in the “Parties/Significant Figures” section above. [↑](#footnote-ref-1)