

1 **NOTICE OF MOTION**

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3 To all parties and their attorneys of record:

4 You are hereby notified that at a date and time to be determined, in
5 Dept. 1010 of the above-entitled court, plaintiff Trixie Argon will move the
6 Court for a motion to compel defendant MegaCorp to produce financial records
7 she previously requested.

8 This motion is made on the ground that Ms. Argon served MegaCorp with
9 a valid notice to produce financial records at trial. Cal. Civ. Proc. Code § 1987(c),
10 Cal. Civ. Code § 3295(c). MegaCorp served objections and refused to comply.

11 Ms. Argon’s notice to produce seeks information directly relevant to
12 her trial for punitive damages against MegaCorp. Therefore, the documents
13 are material to Ms. Argon’s case and there is good cause to order them to be
14 produced. Cal. Civ. Proc. Code § 1987(c).

15 The motion will be based on this notice, on the attached points and
16 authorities, on the papers and records on file, and — if there is a hearing on this
17 motion — on the evidence presented at the hearing.

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19 November 19, 2010

EAGLEFEATHER LAW OFFICES

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21 By: 

22 Cadmium Q. Eaglefeather

23 Attorney for Plaintiff

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To: Cadmium Q. Eaglefeather
From: Trixie Argon
Date: 10 September 2010
Re: Cause of action for malicious prosecution

Malicious prosecution has three elements that must be pleaded and proved:

- 1) the defendant commenced a judicial proceeding against the plaintiff;
- 2) the original proceeding was “initiated with malice” and “without probable cause”; and
- 3) the proceeding was “pursued to a legal termination in [the plaintiff’s] favor.”

Bertero v. National General Corp., 13 Cal. 3d 43, 50 (1974).

1. Commencement of judicial proceeding

Any civil proceeding where the plaintiff seeks affirmative relief may be the basis of a malicious-prosecution claim. The original plaintiff does not need to personally sign the complaint. If the plaintiff is “actively instrumental” or the “proximate and efficient cause” of the action, the plaintiff may be liable. *Jacques Interiors v. Petrak*, 188 Cal. App. 3d 1363, 1372 (1987).

2. Initiated without probable cause and with malice

The malicious-prosecution plaintiff must establish both malice and lack of probable cause by the defendant in the underlying action.

In a malicious-prosecution action against an attorney in a civil suit, the standard for probable cause is whether a reasonable attorney would have thought the underlying claim was tenable at the time the original complaint was filed. *Sheldon Appel Co. v. Albert & Olike*, 47 Cal. 3d 863, 885–86 (1989). An attorney may be liable for continuing to prosecute a claim after they discover the

THE LAW OFFICES OF
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February 15, 2010

George Falkenburg
Falkenburg, Fester, and Funk LLP
1252 W. 83rd Street
Bakersfield, CA 90909

Re: Nicholson v. Amygdala Inc., Case No. B718590125-2

Dear Mr. Falkenburg:

In response to your recent request, I've enclosed a DVD of photographs I took during the inspection of the Amygdala facility on October 30, 2009.

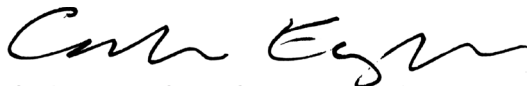
I apologize for the delay, but I was recently hospitalized for a concussion sustained while rollerblading. Rest assured that I am on the mend. If you have any questions about this DVD, please let me know.

Separately: you recently served a set of **953 interrogatories** on my client. These interrogatories were *not* accompanied by the declaration of necessity that's required when serving more than 35 requests. See Cal. Civ. Proc. Code § 2030.050.

I must, therefore, ask you to withdraw these interrogatories. While you are welcome to serve them again with the necessary declaration, my client is not obligated to respond to procedurally defective discovery requests. Furthermore, if you don't withdraw these interrogatories within six days, I will file a motion for protective order and seek sanctions against you and your client.

By the way, it was great seeing you and Thelma over the holidays. I think we still have your cheesecake platter. Let's talk soon about our plans for Maui in the spring.

Sincerely,



CADMIUM Q. EAGLEFEATHER

CQE / bqe
Enclosure

TRIXIE B. ARGON

5419 HOLLYWOOD BLVD. STE. C731 LOS ANGELES CA 90027

(323) 555-1435 TRIXIEARGON@GMAIL.COM

Education

UCLA School of Law 2007 – 10

- Cumulative GPA: 3.98
- Academic interests: real-estate financing, criminal procedure, corporations
- California Bar Exam results pending

Harvard University 2002 – 06

- B.A. *summa cum laude*, economics
- Extensive coursework in astrophysics, statistics
- Van Damme Scholarship

Legal experience

Falkenburg, Fester, & Funk LLP 2008 – now

Law clerk

- Handled various litigation matters in state and federal court
- An unlawful-detainer action
- A demurrer to a breach-of-contract lawsuit in state court
- Oppositions to motions to dismiss in federal court (Fed. R. Civ. P. 12(b), 12(e), 9(b))
- Development of evidence for Internet trademark-infringement actions

Other work experience

Proximate Cause 2006 – 07

Assistant to the director

- Helped devise fundraising campaigns for this innovative nonprofit
- Handled lunch orders and general errands

Hot Topic 2003 – 05

Retail-sales associate

- Top in-store sales associate in seven out of eight quarters
- Inventory management
- Training and recruiting