

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 09-05371 CW

CHEVRON CORPORATION,  
Plaintiff,

v.

CRISTÓBAL BONIFAZ and THE LAW OFFICES  
OF CRISTÓBAL BONIFAZ,  
Defendants.

ORDER GRANTING IN  
PART DEFENDANTS'  
ANTI-SLAPP MOTION  
TO STRIKE,  
GRANTING IN PART  
CHEVRON'S REQUEST  
FOR A CONTINUANCE  
AND GRANTING  
CHEVRON'S MOTION  
FOR LEAVE TO FILE  
ADDITIONAL  
BRIEFING  
(Docket Nos. 25  
and 44)

Plaintiff Chevron Corporation brings this action for malicious prosecution against Defendants Cristóbal Bonifaz and The Law Offices of Cristóbal Bonifaz. Defendants move to strike Chevron's complaint under California Code of Civil Procedure section 425.16, commonly known as California's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute. Chevron asks the Court to continue its decision on the motion and to allow discovery pursuant to Federal Rule of Civil Procedure 56(f). In the alternative, Chevron opposes Defendants' Motion. Chevron also filed an administrative motion for leave to file a response to

1 Defendants' evidentiary objections and a reply in support of its  
2 request for a continuance of Defendants' motion to strike. The  
3 motions were taken under submission on the papers. Having  
4 considered the papers submitted by the parties, the Court GRANTS in  
5 part Defendants' anti-SLAPP Motion to Strike, GRANTS in part  
6 Chevron's request for a continuance to conduct discovery and GRANTS  
7 Chevron's motion for leave to file its additional brief. The Court  
8 defers its decision on Defendants' motion as it pertains to  
9 striking Chevron's action to the extent it is based on Defendants'  
10 continued prosecution of claims by Luisa Maribel Jame Gonzales;  
11 Chevron may conduct discovery on whether Defendants knew of Ms.  
12 Jame's admission that she did not have cancer.

#### 13 BACKGROUND

14 Chevron is a Delaware corporation with a principal place of  
15 business in San Ramon, California. Its malicious prosecution  
16 action arises from Gonzales v. Texaco Inc., No. 06-02820 WHA (N.D.  
17 Cal.). Defendants Bonifaz and his law firm (hereinafter  
18 collectively, Bonifaz), citizens of Massachusetts, represented the  
19 Gonzales plaintiffs.

20 Like several other actions filed in the United States and in  
21 Ecuador, Gonzales involved claims arising from oil exploration and  
22 production operations in the Oriente region of Ecuador. Litigation  
23 against Chevron and/or its subsidiaries over these activities has  
24 spanned several years. In addition to the Gonzales case, Bonifaz  
25 was involved in another action against Chevron, filed in 2003 in  
26 Lago Agrio, Ecuador by forty-eight Ecuadorians. He had been  
27 discharged as counsel by the plaintiffs in that suit.

1 In preparation for Gonzales, in January, 2006, Bonifaz engaged  
2 Gerardo Peña Matheus, an Ecuadorian attorney, to identify potential  
3 plaintiffs. Rector Decl., Ex. H.<sup>1</sup> Bonifaz asked Mr. Peña to find  
4 "[t]hree or four people who have resided close to the lakes of  
5 petroleum left by Texaco and who have discovered in the last four  
6 years that they have some form of cancer." Rector Decl., Ex. H at  
7 3. He also asked for a letter from a "Dr. Ribadeneira or from any  
8 medic who has examined these persons that says that in his opinion  
9 there is at least a 51% probability that the cancer was caused by  
10 the fact that these people have been exposed to petroleum  
11 contamination in the Amazon." Rector Decl., Ex. H at 3.

12 On April 25, 2006, Bonifaz and other attorneys initiated the  
13 Gonzales action on behalf of nine Ecuadorians, bringing claims  
14 against Chevron and two of its subsidiaries, Texaco and Texaco  
15 Petroleum Company (TexPet). Defs.' Request for Judicial Notice  
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17 <sup>1</sup> Chevron asks the Court to take judicial notice of Exhibits  
18 A-C, K-L, P, R and V of the Declaration of Thomas Rector, all of  
19 which contain court orders from the Gonzales action. A federal  
20 court may take judicial notice of facts that are "capable of  
21 accurate and ready determination by resort to sources whose  
22 accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).  
23 This includes taking "notice of proceedings in other courts, both  
24 within and without the federal judicial system, if those  
25 proceedings have a direct relation to matters at issue." United  
26 States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.,  
27 971 F.2d 244, 248 (9th Cir. 1992). The Court GRANTS Chevron's  
28 request and takes notice of the actions taken by the Gonzales  
court. However, the Court does not take notice of the truth of the  
findings of fact contained in these orders. United States v. Sine,  
493 F.3d 1021, 1036 (9th Cir. 2007) (stating that "the introduction  
of discrete judicial factfindings and analysis underlying the  
judgment to prove the truth of those findings and that analysis  
constitutes the use of hearsay"); see also Herrick v. Garvey, 298  
F.3d 1184, 1191-92 (10th Cir. 2002); United States v. Jones, 29  
F.3d 1549, 1554 (11th Cir. 1994); Nipper v. Snipes, 7 F.3d 415, 417  
(4th Cir. 1993).

1 (RJN),<sup>2</sup> Ex. 1. Luisa Maribel Jame Gonzales, Vilma Jacqueline  
2 Moreno Chuquiom, Luz Maria Armas Cadenas and Maria Ignacia Cano  
3 Zambrano<sup>3</sup> averred that they had cancer caused by pollution from  
4 Texaco and TexPet's activities in the region. Their spouses, Nixon  
5 Rodriguez, Tobias Alberto Canache, Jose Bonilla and Arturo Alava,  
6 each brought claims based on their alleged fear of cancer and  
7 emotional injury caused by their respective wives' cancer. Gloria  
8 Carmina Vera Chamba asserted claims based on her son's alleged  
9 leukemia. In the operative complaint, the plaintiffs sought  
10 recovery for negligence, intentional or reckless infliction of  
11 emotional distress and battery. Defs.' RJN, Ex. 9 ¶¶ 81-100.

12 The Gonzales plaintiffs did not prevail. The court either  
13 dismissed with prejudice, by motion or pursuant to stipulation, or  
14 granted summary judgment for the oil companies on the claims  
15 brought by each of the plaintiffs. On January 31, 2007, the court  
16 dismissed Ms. Moreno's and Mr. Canache's claims with prejudice  
17 because they failed to cooperate during discovery. Defs.' RJN, Ex.  
18 13, at 2. On August 3, 2007, the court dismissed the claims of Ms.

19 \_\_\_\_\_  
20 <sup>2</sup> Defendants ask the Court to take judicial notice of forty-  
21 two exhibits, which consist of documents filed in the Gonzales  
22 action. Chevron objects to Defendants' request for notice of  
23 Exhibits 2-7, 9, 11, 12, 14-16, 18, 19, 23, 24, 27-32, 35 and 41,  
24 to the extent that they are offered for anything beyond the fact  
that they were proffered in Gonzales. The Court GRANTS Defendants'  
request for judicial notice. However, as with Chevron's request,  
the Court does not take notice of these documents for any hearsay  
purpose.

25 <sup>3</sup> The parties use different spellings and conventions with  
26 regard to the Gonzales plaintiffs' names. For the purposes of  
27 clarity and consistency, the Court adopts the spelling provided in  
the Second Amended Complaint filed in Gonzales, Defs.' RJN, Ex. 9  
¶¶ 8-16, and the conventions used by Defendants in this action.

1 Vera, Ms. Jame and Mr. Rodriguez with prejudice, concluding that  
2 terminating sanctions were appropriate because they had engaged in  
3 deliberately deceptive practices. Rector Decl., Ex. B. In  
4 addition, the court held that summary judgment was proper because  
5 there was no triable issue of fact as to these plaintiffs' claims.  
6 Id. In connection with this dismissal, the court, on its own  
7 motion, imposed Rule 11 sanctions on Bonifaz and his co-counsel.  
8 Rector Decl., Ex. A. On August 27, 2007, pursuant to Federal Rule  
9 of Civil Procedure 41(a), the parties jointly stipulated to the  
10 dismissal with prejudice of Mr. Bonilla's and Mr. Alava's claims.  
11 Defs.' RJN, Exs. 25-26. Finally, on November 15, 2007, the court  
12 entered summary judgment against Ms. Armas and Ms. Cano, holding  
13 that the relevant statute of limitations had run on their claims.  
14 Rector Decl., Ex. V; Defs.' RJN, Ex. 36.

15 In the current complaint, Chevron alleges that Gonzales was  
16 part of an extortion scheme by Bonifaz and others. It pleads that,  
17 after the plaintiffs in the Lago Agrio litigation discharged him as  
18 their lawyer, Bonifaz initiated the Gonzales suit "as a threat to  
19 the money and political power" that those plaintiffs would gain  
20 from that litigation. Compl. ¶ 43.

21 Chevron brings its action for malicious prosecution, pleading  
22 that it prevailed on the merits in Gonzales, that Bonifaz did not  
23 have probable cause to bring or to continue to prosecute the action  
24 and that he harbored malice against Chevron. It seeks various  
25 types of relief, including special damages in the amount of \$4  
26 million.

## LEGAL STANDARD

California's anti-SLAPP statute provides,

A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

Cal. Civ. Proc. Code § 425.16(b)(1). California anti-SLAPP motions to strike are available to litigants proceeding in federal court.

Thomas v. Fry's Elecs., Inc., 400 F.3d 1206, 1206 (9th Cir. 2005).

Courts analyze these motions in two steps. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity."

Equilon Enter. v. Consumer Cause, Inc., 29 Cal. 4th 53, 67 (2002).

Second, the court "determines whether the plaintiff has demonstrated a probability of prevailing on the claim." Id.

"At [the] second step of the anti-SLAPP inquiry, the required probability that [a party] will prevail need not be high." Hilton v. Hallmark Cards, 599 F.3d 894, 908 (9th Cir. 2010). The "statute does not bar a plaintiff from litigating an action that arises out of the defendant's free speech or petitioning; it subjects to potential dismissal only those actions in which the plaintiff cannot state and substantiate a legally sufficient claim." Id. at 908 (quoting Navellier v. Sletten, 29 Cal. 4th 82, 93 (2002)) (quotation marks omitted). An anti-SLAPP motion to strike premised on legal arguments is similar to a motion under Rule 12(b)(6), whereas one based on a lack of evidence is similar to a summary

1 judgment motion. Rogers v. Home Shopping Network, 57 F. Supp. 2d  
2 973, 981 (C.D. Cal. 1999).

3 A federal court may not apply provisions of the anti-SLAPP  
4 statute if doing "so would result in a 'direct collision' with a  
5 Federal Rule of Civil Procedure." Metabolife Int'l, Inc. v.  
6 Wornick, 264 F.3d 832, 845 (9th Cir. 2001). For instance,  
7 subsections (f) and (g) of section 425.16 do not operate in federal  
8 court. Id. at 846. These subsections "'create a default rule that  
9 allows the defendant served with a complaint to immediately put the  
10 plaintiff to his or her proof before the plaintiff can conduct  
11 discovery.'" Id. (quoting Rogers, 57 F. Supp. 2d at 980). This  
12 rule directly collides with Federal Rule of Civil Procedure 56(f),  
13 which requires "discovery 'where the nonmoving party has not had  
14 the opportunity to discover information that is essential to its  
15 opposition.'" Metabolife, 264 F.3d at 846 (quoting Anderson v.  
16 Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)). Accordingly, on an  
17 anti-SLAPP motion to strike, federal courts must apply Rule 56(f)  
18 to determine whether a party is entitled to conduct discovery.

19 DISCUSSION

20 Because it arises from a defendant's constitutional right to  
21 petition, "every claim of malicious prosecution is a cause of  
22 action arising from protected activity because every such claim  
23 necessarily depends upon written and oral statements in a prior  
24 judicial proceeding." Daniels v. Robbins, 182 Cal. App. 4th 204,  
25 215 (2010) (citing Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th  
26 728, 734-35 (2003)). Chevron does not dispute that its suit arises  
27 from protected activity. Accordingly, Bonifaz satisfies the first  
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1 step of the anti-SLAPP inquiry and shifts the burden to Chevron to  
2 demonstrate that it can "state and substantiate" its malicious  
3 prosecution action. Hilton, 599 F.3d at 908.

4 I. Probability of Success on the Merits

5 A claim for malicious prosecution requires a plaintiff to  
6 prove that a defendant's earlier litigation:

7 (1) was commenced by or at the direction of the defendant  
8 and was pursued to a legal termination in [the  
9 plaintiff's] favor; (2) was brought without probable  
10 cause; and (3) was initiated with malice.

11 Estate of Tucker ex rel. Tucker v. Interscope Records, Inc., 515  
12 F.3d 1019, 1030 (9th Cir. 2008) (quoting Zamos v. Stroud, 32 Cal.  
13 4th 958, 965 (2004)) (emphasis in original). A defendant can also  
14 be liable for "continuing to prosecute a lawsuit discovered to lack  
15 probable cause." Zamos, 32 Cal. 4th at 973.

16 Malicious prosecution actions are disfavored because of their  
17 "potential to impose an undue 'chilling effect' on the ordinary  
18 citizen's willingness to . . . bring a civil dispute to court."  
19 Sheldon Appel Co. v. Albert & Oliker, 47 Cal. 3d 863, 872 (1989).  
20 To deter excessive and frivolous lawsuits, the "preferable approach  
21 is 'the adoption of measures facilitating the speedy resolution of  
22 the initial lawsuit and authorizing the imposition of sanctions for  
23 frivolous or delaying conduct within that first action itself.'" Wilson v. Parker, Covert & Chidester, 28 Cal. 4th 811, 817 (2002)  
24 (quoting Sheldon Appel, 47 Cal. 3d at 872).

25 A. Termination of Gonzales Claims in Favor of Chevron

26 A "favorable termination does not occur merely because a party  
27 complained against has prevailed in an underlying action." Casa

1 Herrera, Inc. v. Beydoun, 32 Cal. 4th 336, 342 (2004) (quoting  
2 Lackner v. LaCroix, 25 Cal. 3d 747, 751 (1979)) (internal quotation  
3 marks omitted). To be considered favorable for the purposes of a  
4 malicious prosecution suit, "the termination must reflect the  
5 merits of the action and the plaintiff's innocence of the  
6 misconduct alleged in the lawsuit." Casa Herrera, 32 Cal. 4th at  
7 342 (quoting Pender v. Radin, 23 Cal. App. 4th 1807, 1814 (1994))  
8 (internal quotation marks omitted). For example, a court's  
9 decision to grant "summary judgment because there was insufficient  
10 evidence to establish a triable issue of fact" constitutes a  
11 favorable termination. Casa Herrera, 32 Cal. 4th at 342 (citing  
12 Sierra Club Found. v. Graham, 72 Cal. App. 4th 1135, 1149-50  
13 (1999)). However, a "technical or procedural termination," such as  
14 a dismissal on statute of limitations grounds, "is not favorable  
15 for purposes of a malicious prosecution claim." Casa Herrera, 32  
16 Cal. 4th at 342 (citation and internal quotation marks omitted).

17 As noted above, the Gonzales court dismissed the claims by Ms.  
18 Vera, Ms. Jame and Mr. Rodriguez with prejudice, concluding that  
19 terminating sanctions and the entry of summary judgment against  
20 these plaintiffs were appropriate. Rector Decl., Ex. B at 5.  
21 Chevron asserts, and Bonifaz does not dispute, that this satisfies  
22 the favorable decision requirement.

23 The parties contest, however, the relevance and impact of the  
24 dismissal of the other plaintiffs' claims. As explained below, the  
25 dismissal of these claims does not satisfy the favorable  
26 termination requirement and, accordingly, the Court strikes  
27 Chevron's malicious prosecution action to the extent that it relies  
28

1 on these claims.

2 1. Dismissal of Claims by Arturo Alava

3 Chevron asserts that the dismissal of Mr. Alava's claims,  
4 which occurred pursuant to the parties' joint stipulation,  
5 constitutes a favorable termination on the merits.

6 "In most cases, a voluntary unilateral dismissal is  
7 considered a termination in favor of the defendant in the  
8 underlying action; the same is true of a dismissal for failure to  
9 prosecute.'" Fuentes v. Berry, 38 Cal. App. 4th 1800, 1808 (1995)  
10 (quoting Villa v. Cole, 4 Cal. App. 4th 1327, 1335 (1992)); see  
11 also Sycamore Ridge Apartments, LLC v. Naumann, 157 Cal. App. 4th  
12 1385, 1400 (2007) (citing Weaver v. Superior Court, 95 Cal. App. 3d  
13 166, 185 (1979)). This rule "arises from the natural assumption  
14 that one does not simply abandon a meritorious action once  
15 instituted.'" Sycamore Ridge, 157 Cal. App. 4th at 1400 (quoting  
16 Lackner, 25 Cal. 3d at 750-51).

17 However, resolution of claims that "leaves some doubt as to  
18 the defendant's innocence or liability is not a favorable  
19 termination . . . ." Villa v. Cole, 4 Cal. App. 4th 1327, 1335  
20 (1992). For this reason, a "dismissal resulting from negotiation,  
21 settlement, or consent is generally not deemed a favorable  
22 termination of the proceedings." Minasian v. Sapse, 80 Cal. App.  
23 3d 823, 827 n.4 (1978) (citing Webb v. Youmans, 248 Cal. App. 2d  
24 851, 853 (1967)). "In such a case the dismissal reflects  
25 ambiguously on the merits of the action as it results from the  
26 joint action of the parties, thus leaving open the question of  
27 defendant's guilt or innocence." Minasian, 80 Cal. App. 4th at 827

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1 n.4 (citation omitted).

2 Although voluntary, the dismissal of Mr. Alava's claims was  
3 not a unilateral act. Chevron and Mr. Alava jointly stipulated to  
4 dismiss his claims, pursuant to Federal Rule of Civil Procedure  
5 41(a). Chevron provides no authority to support its position that  
6 a dismissal pursuant to a joint stipulation constitutes a favorable  
7 termination on the merits.<sup>4</sup> Chevron could have declined to  
8 stipulate and required Mr. Alava to seek a court order to dismiss  
9 his claims. See Fed. R. Civ. P. 41(a)(2). Because Chevron's  
10 participation clouds the issue of its innocence, the dismissal of  
11 Mr. Alava's claims does not constitute a favorable termination on  
12 the merits.

13 Accordingly, the Court strikes Chevron's malicious prosecution  
14 action to the extent that it rests on Mr. Alava's claims.

15 2. Dismissal of Claims by the Remaining Gonzales  
16 Plaintiffs

17 Chevron does not assert that the dismissal of the claims by  
18 Ms. Moreno, Mr. Canache, Ms. Armas, Mr. Bonilla and Ms. Cano  
19 satisfies the favorable termination requirement. Therefore,  
20 Chevron cannot maintain its malicious prosecution action based on  
21 these plaintiffs' claims. Accordingly, the Court strikes Chevron's  
22 action to the extent that it rests on these claims.

23 B. Probable Cause

24 "The probable cause inquiry is objective, asking whether a  
25 reasonable person would have thought that the claim was legally

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26 <sup>4</sup> Notably, Chevron does not assert that the dismissal of Mr.  
27 Bonilla's claims, which also occurred pursuant to joint  
28 stipulation, constituted a favorable termination.

1 tenable 'without regard to her mental state.'" Estate of Tucker,  
2 515 F.3d at 1031 (editing marks omitted). This is a lenient  
3 standard; only "those actions that any reasonable attorney would  
4 agree are totally and completely without merit may form the basis  
5 for a malicious prosecution suit." Wilson, 28 Cal. 4th at 817  
6 (citation and internal quotation and editing marks omitted).

7 The "existence or nonexistence of probable cause is a legal  
8 question to be resolved by the court in the malicious prosecution  
9 case; litigants are thus protected against the danger that a lay  
10 jury would mistake a merely unsuccessful claim for a legally  
11 untenable one." Id. (citing Sheldon Appel, 47 Cal. 3d at 874-77).

12 1. Sanctions Order in Gonzales

13 Chevron contends that the order sanctioning Bonifaz and his  
14 associates for the handling of the claims by Ms. Vera, Ms. Jame and  
15 Mr. Rodriguez constitutes prima facie evidence of the lack of  
16 probable cause.

17 Citing Mattel, Inc. v. Luce, Forward Hamilton & Scripps, 99  
18 Cal. App. 4th 1179 (2002), Chevron argues that the findings of the  
19 court in the Gonzales case in support of its sanctions order are  
20 competent evidence that Bonifaz lacked probable cause to bring  
21 suit. In Mattel, the state court provided, "The findings made in  
22 connection with the rule 11 sanctions, the appropriate subject of  
23 judicial notice requested of the trial court, are evidence that the  
24 underlying action was filed without probable cause." Id. at 1191  
25 (citing Cal. Evid. Code § 451(a)). Other state courts, however,  
26 have reached contrary conclusions, holding that such findings are  
27 not admissible. See, e.g., Fowler v. Howell, 42 Cal. App. 4th

1 1746, 1749 (1996) (stating "a court may not take judicial notice of  
2 the truth of a factual finding made in another action") (emphasis  
3 in original); Sosinsky v. Grant, 6 Cal. App. 4th 1548, 1563 (1992)  
4 (holding "judicial notice could not properly be taken of the truth  
5 of the factual findings of the trial judge" in a prior case).  
6 Further, the holding in Mattel does not comport with the Federal  
7 Rules of Evidence. In federal court, findings of fact by another  
8 tribunal constitute hearsay if offered for the truth of the matter  
9 asserted. Sine, 493 F.3d at 1036. Chevron offers no hearsay  
10 exception or controlling authority to establish that these findings  
11 are admissible for their truth. The sanctions order constitutes  
12 competent evidence that Bonifaz was sanctioned, but the underlying  
13 findings made in support thereof are hearsay and not admissible for  
14 their truth.

15 This leaves the question of whether Rule 11 sanctions, on  
16 their own, suffice as evidence that Bonifaz lacked probable cause  
17 at the time he brought Gonzales. They do not. The imposition of  
18 sanctions demonstrates that Bonifaz and his colleagues made  
19 improper representations to the court. See Fed. R. Civ. P. 11(b)-  
20 (c). However, the sanctions do not speak to his knowledge when he  
21 initiated Gonzales. Nor do they show that, based on this  
22 knowledge, the plaintiffs' claims were legally untenable.  
23 Certainly, the levy of sanctions suggests deficient conduct by  
24 Bonifaz. However, Chevron stretches the meaning of the sanctions  
25 too far. It does not necessarily follow that Bonifaz lacked  
26 probable cause to initiate the suit. See Chromatic Comm'n Enters.,  
27 Inc. v. Business Guides, Inc., 1993 WL 311503, at \*7 (N.D. Cal.)

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1 (concluding that defendants in malicious prosecution action had  
2 probable cause, despite the imposition of Rule 11 sanctions in the  
3 underlying suit).

4 Accordingly, the sanctions order does not suffice as prima  
5 facie evidence that Bonifaz lacked probable cause when he brought  
6 suit.

7 2. Failure To Obtain Consent To File Suit

8 To show Bonifaz lacked probable cause, Chevron cites findings  
9 made by the Gonzales court that Bonifaz failed to obtain proper  
10 consent from Ms. Jame, Mr. Rodriguez and Ms. Vera to bring a  
11 lawsuit in the United States on their behalf. As noted above, the  
12 Gonzales court's findings are inadmissible hearsay in this action.  
13 Chevron offers no other evidence or authority to show that these  
14 plaintiffs did not give consent or that, based on the forms  
15 submitted, any reasonable attorney would have concluded that  
16 bringing suit would be legally untenable.

17 3. Claims by Luisa Maribel Jame Gonzales

18 Chevron asserts that Bonifaz lacked probable cause to initiate  
19 and to continue to prosecute a lawsuit on behalf of Ms. Jame. It  
20 argues that Ms. Jame's intake form contained limited information  
21 and did not provide Bonifaz with probable cause to bring suit. On  
22 the form, Ms. Jame indicated that she had breast cancer and that  
23 she believed it was the result of contamination caused by Texaco "1  
24 year ago." Rector Decl., Ex. I at 1. Concerning how she knew that  
25 she had cancer caused by contamination, Ms. Jame stated, "Because  
26 everybody said that [the] result of the contamination is going to  
27 kill us, we live because we work." Rector Decl., Ex. I at 1. She

1 also acknowledged that there was publicity about cancer being  
2 caused by petroleum contamination. Rector Decl., Ex. I at 1.  
3 Chevron points out that Ms. Jame did not refer to any doctor's  
4 evaluation or medical record to support her claim that she had  
5 cancer. Thus, Chevron asserts, the form did not give Bonifaz  
6 probable cause to bring suit on her behalf.

7 California courts have stated that, "when evaluating a  
8 client's case and making an initial assessment of tenability, the  
9 attorney is entitled to rely on information provided by the  
10 client." Morrison v. Rudolph, 103 Cal. App. 4th 506, 512-13  
11 (2002), disapproved of on other grounds by Zamos, 32 Cal. 4th at  
12 973; accord Estate of Tucker, 515 F.3d at 1036. It is reasonable  
13 for an attorney to rely upon this information, "'unless the  
14 client's representations are known to be false.'" Morrison, 103  
15 Cal. App. 4th at 513 (quoting Mallen & Smith, Legal Malpractice  
16 § 6.19 (5th ed. 2000)).

17 The statements on Ms. Jame's intake form do not show  
18 affirmatively that Bonifaz knew her claims were false. It was  
19 reasonable for Bonifaz to rely on Ms. Jame's representation that  
20 she had cancer. Also, Ms. Jame lived in an area, contaminated by  
21 petroleum pollution, where Texaco and TexPet undertook oil  
22 exploration and production activities; thus, it was not  
23 unreasonable for Bonifaz to assume a connection between the  
24 companies' actions and Ms. Jame's reported cancer. Although it  
25 appears that Bonifaz had a minimal basis for probable cause,  
26 Chevron has not made a prima facie showing that Ms. Jame's claims  
27 were totally and wholly without merit. In suggesting that the  
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1 information was sparse and that Ms. Jame may have been improperly  
 2 motivated by publicity, Chevron implicitly argues that Bonifaz  
 3 lacked probable cause because he should have known that her claims  
 4 may have been false. However, such an argument espouses a  
 5 negligence standard for malicious prosecution, which the California  
 6 Supreme Court has rejected. Sheldon Appel, 47 Cal. 3d at 883.  
 7 Chevron also appears to suggest that Bonifaz was remiss in not  
 8 fully investigating Ms. Jame’s claims. This argument is unavailing  
 9 because, as Chevron acknowledges, “the reasonableness of his  
 10 investigation, or lack thereof, is not relevant to the objective  
 11 determination of probable cause . . . .” Opp’n at 24; see also  
 12 Sheldon Appel, 47 Cal. 3d at 883. Chevron provides no argument or  
 13 authority to show that any reasonable attorney would have  
 14 concluded, at the onset, that Ms. Jame’s claims were legally  
 15 untenable.

16 Even if Bonifaz had probable cause when he filed the lawsuit,  
 17 Chevron asserts, he lacked probable cause to continue prosecuting  
 18 Ms. Jame’s claims after she admitted to Othni Lathram and Dennis  
 19 Patanzis, who were other attorneys for the plaintiffs, that she did  
 20 not have breast cancer. Even though Ms. Jame had never  
 21 communicated this directly to Bonifaz, Chevron argues that a jury  
 22 could infer that he knew this information because his co-counsel  
 23 had been told. Bonifaz acknowledges that Ms. Jame admitted to  
 24 these attorneys that she did not have cancer, but nevertheless  
 25 asserts that this is immaterial as to his knowledge and the  
 26 existence of probable cause.

27 This admission by Ms. Jame to the other attorneys demonstrates  
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1 that Chevron’s action could have some merit. If Bonifaz knew that  
 2 Ms. Jame did not actually have cancer, he would have lacked  
 3 probable cause to continue Ms. Jame’s suit. Bonifaz states that he  
 4 never met or spoke with any of the Gonzales plaintiffs. Bonifaz  
 5 Decl., ¶ 6. Instead, it appears that he delegated investigatory  
 6 duties to other attorneys. Bonifaz does not deny that he was told  
 7 of Ms. Jame’s revelation. Nor does he provide evidence that his  
 8 associates withheld such information from him. His substantial  
 9 role in the litigation and the significance of Ms. Jame’s admission  
 10 warrant affording Chevron the opportunity to conduct discovery on  
 11 whether Bonifaz knew of Ms. Jame’s statement to Lathram and  
 12 Patanzis. Because such discovery is necessary for Chevron to mount  
 13 its opposition, the Court defers its ruling on Bonifaz’s motion to  
 14 the extent that it seeks to strike Chevron’s claim that his  
 15 continued prosecution of Ms. Jame’s claims was malicious.

16 Bonifaz cites Estate of Tucker, which provides that “a party’s  
 17 malfeasance in initiating a lawsuit is not imputable to counsel.  
 18 Nor are claims related to continuing such a lawsuit interchangeable  
 19 for parties and attorneys.” 515 F.3d at 1032 (citation omitted).  
 20 This case is inapposite. Wrongdoing by Ms. Jame or co-counsel will  
 21 not be imputed to Bonifaz.

22 Chevron does not make out a prima facie case that Bonifaz  
 23 lacked probable cause to bring suit on behalf of Ms. Jame. The  
 24 Court therefore strikes Chevron’s action to the extent that it  
 25 rests on Bonifaz filing Ms. Jame’s claims. However, discovery is  
 26 required as to whether Bonifaz lacked probable cause to continue  
 27 prosecuting her claims. The Court accordingly defers deciding  
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1 whether to strike Chevron’s action insofar as it rests on this  
2 issue.

3 4. Claims by Nixon Rodriguez

4 Chevron contends that Bonifaz lacked probable cause to bring  
5 suit on behalf of Mr. Rodriguez, Ms. Jame’s spouse. It asserts  
6 that Mr. Rodriguez did not submit an intake form indicating that he  
7 suffered from any physical or emotional harm. Chevron also  
8 maintains, without proffering evidence, that he did not tell  
9 Bonifaz, Mr. Peña or any of Mr. Peña’s assistants that he had  
10 suffered such harm.

11 As noted above, Chevron has not established a prima facie case  
12 that Bonifaz lacked probable cause to bring the claims by Ms. Jame.  
13 With regard to Mr. Rodriguez, Chevron likewise fails to proffer  
14 evidence to demonstrate that his claims were wholly without merit.  
15 Because it does not satisfy its burden, the Court strikes Chevron’s  
16 malicious prosecution claim to the extent that it rests on Mr.  
17 Rodriguez’s claims.

18 5. Claims by Gloria Carmina Vera Chamba

19 Chevron also maintains that Bonifaz lacked probable cause to  
20 bring and to continue to prosecute Ms. Vera’s claims. As noted  
21 above, Ms. Vera asserted claims on behalf of her son. The Second  
22 Amended Complaint alleged, “In October 2002, Jane Gloria Chamba’s  
23 son, who was seven years old, was diagnosed with leukemia.” Defs.’  
24 RJN, Ex. 9 ¶ 12.

25 Chevron argues that the information Bonifaz had prior to  
26 filing suit did not support probable cause. On her intake form,  
27 Ms. Vera stated that she first suspected that her son had cancer on  
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1 October 23, 2002, Rector Decl., Ex. I at 7, but she did not list  
2 the date when the cancer was diagnosed. Ms. Vera does not state  
3 anywhere on the form that her son had leukemia.<sup>5</sup> However, Bonifaz  
4 states that, on March 10, 2006, one month before the lawsuit was  
5 filed, he met with Mr. Peña and Eduardo Gallo, another Ecuadorian  
6 attorney, who explained that Ms. Vera's son had leukemia. Bonifaz  
7 Decl. ¶ 9.<sup>6</sup> He asserts that Ms. Vera's intake form and his pre-  
8 filing conversation with Mr. Peña and Mr. Gallo provided probable  
9 cause.

10 The intake form contained limited information and Bonifaz  
11 apparently relied on information from Mr. Peña and Mr. Gallo that  
12 proved unsubstantiated. However, on this motion, Chevron bears the  
13 burden to proffer evidence that, if credited, would demonstrate a  
14 lack of probable cause. Nothing proffered by Chevron establishes a  
15 prima facie showing that Bonifaz knew, at the time the lawsuit was  
16 filed, that Ms. Vera's claims were false.

17 Chevron also asserts that Bonifaz lacked probable cause to  
18 continue prosecuting Ms. Vera's case after "obtaining conclusive  
19 evidence that her claim was baseless." Opp'n at 28. Chevron  
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21 <sup>5</sup> Unlike the forms of the other plaintiffs, that of Ms. Vera  
22 did not have a field for the type of cancer alleged.

23 <sup>6</sup> Chevron objects to Bonifaz's declaration in its entirety,  
24 asserting that it is inadmissible hearsay. The Court overrules  
25 this objection because Bonifaz makes his statements in a sworn  
26 declaration and, as a party, can be called to testify at trial.  
27 Thus, his statements in his declaration are not hearsay. Also, the  
28 Court overrules Chevron's hearsay objection to Bonifaz's statement  
that Mr. Peña and Mr. Gallo explained to him that Ms. Vera's son  
had leukemia. This is not received to prove that Ms. Vera's son  
had the disease, but instead to show Bonifaz's knowledge, belief  
and state of mind.

1 refers to the medical records of Ms. Vera's son, proffered in the  
 2 Gonzales case, which did not reflect a diagnosis of leukemia.<sup>7</sup>  
 3 Although these records are not before the Court, the lack of  
 4 information in the records would not suggest that Bonifaz knew that  
 5 Ms. Vera's representations were false. There is no competent  
 6 evidence that to support a prima facie case that Bonifaz lacked  
 7 probable cause to continue prosecuting Ms. Vera's claims.

8 Accordingly, the Court strikes Chevron's malicious prosecution  
 9 action to the extent that it rests on Ms. Vera's claims.

10 C. Malice

11 In a malicious prosecution action, malice refers to "the  
 12 subjective intent or purpose with which the defendant acted in  
 13 initiating the prior action.'" Estate of Tucker, 515 F.3d at 1030  
 14 (quoting Sheldon Appel, 47 Cal. 3d at 874). Malice "is not limited  
 15 to actual hostility or ill will toward the plaintiff." Sierra Club  
 16 Found., 72 Cal. App. 4th at 1157. It is also "present when  
 17 proceedings are instituted primarily for an improper purpose." Id.  
 18 Suits demonstrating an improper purpose include those in which:

19 (1) the person initiating them does not believe that his  
 20 claim may be held valid; (2) the proceedings are begun  
 21 primarily because of hostility or ill will; (3) the  
 22 proceedings are initiated solely for the purpose of  
 23 depriving the person against whom they are initiated of a  
 24 beneficial use of his property; (4) the proceedings are  
 25 initiated for the purpose of forcing a settlement which  
 26 has no relation to the merits of the claim.

27 Estate of Tucker, 515 F.3d at 1030 (quoting Sierra Club Found., 72

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28 <sup>7</sup> Chevron also cites statements made in the Gonzales court's  
 29 sanctions order. As explained above, Chevron cannot rely on that  
 30 court's findings and analysis for the truth of the matters  
 31 asserted.

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1 Cal. App. 4th at 1157). If a "trial court determines that the  
2 prior action was not objectively tenable, the extent of a defendant  
3 attorney's investigation and research may be relevant to the  
4 further question of whether or not the attorney acted with  
5 malice.'" Sycamore Ridge, 157 Cal. App. 4th at 1407 (quoting  
6 Sheldon Appel, 47 Cal. 3d at 883). "Malice is usually a question  
7 of fact for the jury to determine." Estate of Tucker, 515 F.3d at  
8 1030 (citation omitted).

9 As noted above, Chevron may be able to show that Bonifaz  
10 lacked probable cause to maintain Ms. Jame's suit after she  
11 admitted to his associates that she did not have breast cancer.  
12 After this admission, it would have been apparent that her claims  
13 were not valid. If Bonifaz knew of her admission and did not  
14 dismiss her claims, malice on his part could be inferred. Drummond  
15 v. Desmarais, 176 Cal. App. 4th 439, 452 (2009) ("A lack of  
16 probable cause will therefore support an inference of malice.")  
17 (citing Soukup v. Law Offices of Herbert Hafif, 39 Cal. 4th 260,  
18 292 (2006)).

19 II. Discovery Pursuant to Rule 56(f)

20 Rule 56(f) of the Federal Rules of Civil Procedure provides  
21 that the court may deny or continue a motion for summary judgment  
22 "[i]f a party opposing the motion shows by affidavit that, for  
23 specified reasons, it cannot present facts essential to justify its  
24 opposition." The requesting party must show (1) it has set forth  
25 in affidavit form the specific facts it hopes to elicit from  
26 further discovery, (2) the facts sought exist and (3) the sought-  
27 after facts are essential to oppose summary judgment. Family Home

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1 & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822,  
2 827 (9th Cir. 2008). Federal courts apply the Rule 56(f) analysis  
3 when considering whether to grant additional discovery on an anti-  
4 SLAPP motion to strike. Metabolife, 264 F.3d at 845-47.

5 Chevron maintains that, because it requires discovery to mount  
6 its opposition, the Court should defer its decision on this motion.  
7 This argument is only relevant as to discovery concerning probable  
8 cause to bring or to continue the prosecution of the claims by Mr.  
9 Rodriguez, Ms. Jame and Ms. Vera. As stated above, Chevron cannot  
10 establish that the claims of the other Gonzales plaintiffs were  
11 favorably terminated on the merits; no discovery on this issue  
12 could change this determination.

13 Concerning Mr. Rodriguez, Chevron does not identify any  
14 specific facts that would buttress its argument that Bonifaz lacked  
15 probable cause to bring his claims. Accordingly, Chevron has not  
16 met its burden to show that discovery is necessary with respect to  
17 Mr. Rodriguez.

18 Likewise, Chevron fails to identify specific facts it requires  
19 to support its argument that Bonifaz lacked probable cause to bring  
20 Ms. Jame's claims. However, as explained above, discovery on the  
21 discrete, narrow issue of what Bonifaz knew of Ms. Jame's statement  
22 to Lathram and Patanzis could provide support for Chevron's claim  
23 that he lacked probable cause to continue his prosecution of her  
24 claims. Thus, under Rule 56(f), the Court affords Chevron the  
25 opportunity to conduct discovery on this matter.

26 With regard to Ms. Vera, Chevron asserts that, for this  
27 motion, Bonifaz asserts for the first time that Mr. Peña and Mr.

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1 Gallo communicated to him that Ms. Vera’s son had leukemia. As  
 2 stated above, Bonifaz cited this communication to assert that he  
 3 had probable cause to bring suit on behalf of Ms. Vera. Chevron,  
 4 however, does not cite evidence that contradicts Bonifaz’s  
 5 assertion. Nor does Chevron identify specific facts that it hopes  
 6 to uncover during discovery that would show that Bonifaz lacked  
 7 probable cause to bring Ms. Vera’s claims. Instead, Chevron  
 8 broadly asserts that there is a dispute as to material facts  
 9 concerning the discussions at the March 10, 2006 meeting, referring  
 10 to the date on which Bonifaz claims he learned about Ms. Vera and  
 11 her son. See Bonifaz Decl. ¶ 9. Stating that there is a dispute  
 12 of fact, however, is not equivalent to citing specific facts that  
 13 can be uncovered through discovery. Accordingly, Chevron does not  
 14 meet its burden to be allowed discovery concerning Ms. Vera.

15 Chevron is entitled to pursue discovery as to whether Bonifaz  
 16 knew of Ms. Jame’s statement to his associates. Thus, the Court  
 17 defers its ruling on Bonifaz’s motion to the extent that it rests  
 18 on Chevron’s claim concerning the continued prosecution of Ms.  
 19 Jame’s claims. However, Chevron fails to identify specific facts  
 20 it requires to oppose Bonifaz’s motion as to Mr. Rodriguez and Ms.  
 21 Vera. Discovery concerning the claims of these Gonzales plaintiffs  
 22 is not necessary.

CONCLUSION

23  
 24 For the foregoing reasons, the Court GRANTS in part  
 25 Defendants’ anti-SLAPP Motion to Strike (Docket No. 25), GRANTS in  
 26 part Chevron’s motion for a continuance and to conduct discovery  
 27 and GRANTS Chevron’s administrative motion for leave to file

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1 additional briefing (Docket No. 44). The Court defers ruling on  
2 Defendants' motion to the extent that it is directed at Chevron's  
3 malicious prosecution action based on Bonifaz's continued  
4 prosecution of claims by Ms. Jame after her admission that she did  
5 not have breast cancer. In all other respects, the Court strikes  
6 Chevron's malicious prosecution action and denies Chevron's request  
7 to conduct to discovery.

8 The Court grants Chevron sixty days to conduct discovery on  
9 whether Bonifaz knew that Ms. Jame admitted to his co-counsel that  
10 she did not have cancer. Chevron may file a supplemental  
11 opposition brief, addressing this limited issue, of no more than  
12 ten pages in length, by July 15, 2010. Defendants' supplemental  
13 reply, of equal length, shall be due July 22, 2010.

14 The case management conference scheduled for June 29, 2010 at  
15 2:00 p.m. is continued to August 10, 2010 at 2:00 p.m.

16 IT IS SO ORDERED.

17  
18 Dated: May 12, 2010



CLAUDIA WILKEN  
United States District Judge

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