Court of Appeal, First District, Division 4, California.
Hal WAGENET, Plaintiff and Respondent,
v.
Steven FORD et al., Defendants and Appellants.
No. A118765.
(Mendocino County Super. Ct. No. SCUK CVG 0698246).

Dec. 23, 2008.

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RUVOLO, P.J.

***1** Can the general manager of a small corporation, who *admittedly* directed the illegal diversion of corporate funds owed to an employee retirement account, and used those funds to pay the corporation's debts and payroll, establish a prima facie case for a malicious prosecution action against a former employee who sued the manager personally for unlawful business practices, but then voluntarily dismissed the manager so as to focus on his wrongful termination cause of action against the corporation? For the reasons explained below, we hold that he cannot. Accordingly, we reverse the trial court's decision in this case denying the former employee's special motion to strike the complaint in the manager's malicious prosecution action.

FACTUAL AND PROCEDURAL BACKGROUND

The facts material to this appeal, as set forth in the evidence submitted to the trial court in connection with the special motion to strike, are largely undisputed. Appellant Steven Ford (Ford) formerly worked for 101 Redwood, Inc. (the Company), a corporation owned by its president, Gordon Wagenet (Gordon [FN1]), the father of respondent Hal Wagenet (Wagenet). Ford worked for the Company for 33 years, with some interruptions, and had a close relationship with Gordon. In 1989, Ford became the production manager of the company. Ford was respected by his coworkers, who believed, as did Ford, that he would own and run the Company together with Wagenet after Gordon retired.[FN2]

FN1. Because Gordon and Hal Wagenet share the same last name, to avoid confusion we will refer to Gordon Wagenet as Gordon, meaning no disrespect.

FN2. Sometime in 2001, Gordon offered to transfer ownership of the Company to Wagenet, Ford, and other members of the management team, but there were conditions attached to that offer, and the transfer never occurred. The Company also offered to sell some of its shares to certain key employees, including Ford, in 2002, but that offer also was not consummated.

Wagenet also worked for the Company, and became its general manager in about 1985. Sometime around 2002, Gordon stopped working for the company full-time in anticipation of his retirement, and turned over the day-to-day management to Wagenet and Ford.

The Company maintained a SIMPLE IRA account (the IRA) for the benefit of its employees. Under the IRA, employees authorized funds to be deducted from their paychecks and contributed to their pension accounts, and the Company agreed to supplement those employee contributions. Starting sometime in 2001, and continuing at least sporadically through the end of December 2003, Wagenet periodically instructed the Company's bookkeeper, Judy Dunbar (Dunbar), to use the funds that the Company should have been contributing to the IRA to cover the Company's payroll (which included Wagenet's own salary) and its debts to its suppliers. As of May 2004, when Dunbar left the Company, the arrearage in the Company's IRA contributions still had not been paid.

In May 2004, Ford and other employees learned about the diversion of pension funds from the IRA, and complained about the matter.[FN3] Three months later, in August 2004, Ford's employment with the Company was terminated. The termination was characterized by the Company as part of a reduction in force involving the layoff of almost the entire production staff. However, almost all of the employees terminated at the same time as Ford were rehired within about three weeks. Ford was not offered the opportunity to return to work for the Company, even though one of his rehired coworkers was asked who else should be hired back, and suggested Ford's name in response.

FN3. Wagenet contends that his only conversation with Ford about the Company's arrearage on payments to the IRA occurred after the decision to terminate Ford's employment. Because Wagenet was not named as a defendant on Ford's wrongful termination cause of action, it is not material to the issues presented by this appeal whether and when Ford complained to Wagenet about the diversion of funds.

***2** Ford retained appellant Jeffrey Daly (Daly) to represent him in connection with the termination of his employment by the Company. On February 10, 2005, Daly wrote a demand letter to the Company, asserting that Ford had been wrongfully discharged. Ford was not satisfied with the responses he received. The dispute had not yet been resolved by September 2005, when the Company went out of business.

On December 22, 2005, Ford sued the Company, Gordon, and Wagenet (the underlying case). Wagenet was named as a defendant only on one cause of action, the fourth, which alleged violations of California's unfair business practices statute, Business and Professions Code sec-

tion 17200 (the UCL).

Before the underlying case was filed, at least some of the funds diverted from the IRA had been repaid by the Company. In a declaration prepared in March 2005, Wagenet averred that "[a]ll required IRA contributions were made and all participants were made whole ... on December 24, 2004."However, the accuracy and reliability of this declaration were cast into doubt by the fact that on February 3, 2005-*after* the December 24, 2004 date given in Wagenet's declaration, and *before* the declaration was executed-Wagenet paid Ford an additional $72.63 in IRA funds that he admitted should have been paid earlier.

In addition, although Ford had received roughly $1,000 from the Company on account of the diverted IRA contributions, his understanding was that the Company should have contributed a total of approximately $3,640 to the IRA on his behalf during the period in which the diversions occurred. Moreover, Ford was never provided with an audited statement showing the amounts due and paid. Understandably, therefore, Ford and Daly were unsure, at the time the complaint in the underlying case was filed, whether the amounts owed to Ford had been paid in full. They planned to determine this through discovery in the underlying case.

The defendants in the underlying case filed a motion for summary judgment or summary adjudication, which was set for hearing on August 18, 2006.[FN4] Two weeks prior to that hearing, on August 4, 2006, Daly filed a dismissal with prejudice of Ford's UCL cause of action, the only cause of action pleaded against Wagenet. The motion for summary judgment was denied as to both the Company and Gordon.

> FN4. By then, Wagenet and his wife had become the sole owners of the Company, which remained a corporation in good standing and continued to own real property, machinery, and inventory. Wagenet was planning to obtain a zoning change that would permit him to develop the real property for mixed uses.

On December 4, 2006, Wagenet filed the action from which the instant appeal arises, which we will refer to as the current lawsuit. In the current lawsuit, Wagenet sued both Ford and Daly for malicious prosecution, averring that they did not have probable cause to sue him individually in the underlying case; that they did so out of malice; and that the dismissal of the UCL cause of action constituted a favorable termination of the underlying case with respect to him personally.

On March 9, 2007, Ford and Daly (appellants) responded to the current lawsuit by filing a special motion to strike Wagenet's malicious prosecution complaint under Code of Civil Procedure section 425.16 (the anti-SLAPP law). The trial court denied the motion and awarded Wagenet his attorney fees. Appellants moved for reconsideration, but on July 9, 2007, the trial court denied that motion as well. This timely appeal ensued.

DISCUSSION

***3** To their credit, counsel on this appeal have focused on the issues genuinely in controversy, and have framed their arguments within the constraints of controlling law where it exists. Ac-

cordingly, we need not elaborate on the case law addressing issues the parties do not dispute, to wit: (1) that a malicious prosecution action is protected activity within the meaning of the anti-SLAPP law (see *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734-735, 741); (2) that in order to successfully defend against a special motion to strike, a plaintiff must make a prima facie case on all the elements of the challenged cause of action (*id.* at p. 741); and (3) that we review de novo an order denying a special motion to strike under the anti-SLAPP law. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

Having accepted all of these points as settled, the parties agree that the only issue this court needs to decide in order to resolve this appeal is whether Wagenet's showing in support of his special motion to strike failed to establish a prima facie case on any of the elements of a malicious prosecution cause of action. These are: "(1) a favorable determination on the merits of the underlying action, (2) which was brought without probable cause, and (3) which was initiated with malice."(*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1056(*Contemporary Services*); see *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 871.) If a malicious prosecution plaintiff fails to establish a prima facie case on *any* of these elements, the defendant's special motion to strike must be granted. (See *Contemporary Services, supra,* 152 Cal.App.4th at p. 1058.)

A. Favorable Termination

Following the order in which the issues are addressed in appellants' opening brief, we begin with the favorable termination element. The threshold issue we must address in regard to that issue is whether it was adequately preserved for appeal.

The record presented to the trial court in support of appellants' special motion to strike in the current lawsuit included a letter from Daly to Wagenet's counsel, dated October 20, 2006 (after the dismissal of Wagenet from the underlying case), which was evidently sent in an attempt to deter Wagenet's counsel from pursuing a malicious prosecution action. The letter noted that "the deletion of a cause of action while the remainder of the case remains pending is not a sufficient basis for the element of favorable termination, [which is] central to a claim of malicious prosecution," citing *Jenkins v. Pope* (1990) 217 Cal.App.3d 1292, 1300. It went on to explain that "[t]he prior action must have terminated in the new plaintiff's favor," citing *Crowley v. Katleman* (1994) 8 Cal.4th 666, 686, averring that "of course" this had not occurred in the underlying case with respect to Wagenet.

Appellants now argue that the inclusion of this letter in the record as an exhibit was sufficient to preserve appellants' right to raise the favorable termination issue on appeal, even though that issue was not mentioned in their moving papers on the special motion to strike. We disagree. In order to preserve an issue when making a motion in the trial court, it is incumbent on counsel at least to mention it in the memorandum of points and authorities. The mention of an issue in an exhibit is not sufficient to assure that it will come to the attention of a busy trial judge-as is exemplified here by the trial judge's explicit conclusion that the issue was undisputed.[FN5]

FN5. Even if the trial judge noticed the issue in the exhibit, he might reasonably have

concluded that appellants had abandoned it after Daly sent the letter, given their failure to raise the issue again in their moving papers.

***4** Appellants' citation of *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645 does not convince us otherwise. In that case, the defendant argued that the plaintiffs had waived their objections to the trial court's general order on summary judgment in asbestos cases because the plaintiffs had not supported their objection with " 'reasoned argument and citations to authority' " in their opposition to the defendant's summary judgment motion. (*Id.* at p. 649.)The plaintiffs did, however, "state in their summary judgment opposition brief that the general order violate[d] Code of Civil Procedure section 437c and due process protections...." (*Ibid.*)Moreover, the plaintiffs' brief "fully stated the nature and specific grounds for the[ir] challenge" to the general order. This court held that "in the trial court, a party's challenge ... is sufficient to preserve [an] issue on appeal if the challenge alerts the court to the alleged error, even without elaboration through argumentation and citation of authority." (*Id.* at p. 650.)

In the present case, however, appellants did not even mention the favorable termination issue in their moving or reply memoranda on the special motion to strike. Moreover, their motion for reconsideration did not challenge the trial court's statement, in the order denying the special motion to strike, that "[i]t is undisputed that the [underlying case] ... was pursued to legal termination in [Wagenet's] favor."(Fn.omitted.) Accordingly, appellants did not "alert[ ] the court to the alleged error" in any way, and our holding in *Boyle v. CertainTeed Corp., supra,* 137 Cal.App.4th at pp. 648-651, is inapplicable.

Nonetheless, whether Wagenet made a prima facie case of favorable termination is a purely legal issue, which we have discretion to address even though it was not adequately raised in the trial court. (See *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, 561; *Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 167.[FN6]) Here, the record establishes that the issue was called to the attention of Wagenet's counsel before the malicious prosecution action was even filed, and Wagenet does not argue on appeal that there was any additional evidence he would have introduced in the trial court if the issue had been presented there. Moreover, Wagenet has argued the issue on the merits in his brief on appeal. Accordingly, we perceive no unfairness in exercising our discretion to address it, and in the interest of resolving this appeal on the merits, we shall proceed to do so.

FN6."As a general rule, failure to raise a point in the trial court constitutes a waiver and appellant is estopped to raise that objection on appeal. An exception to the general rule may be presented, however, where the theory presented for the first time on appeal involves only a legal question determinable from facts which not only are uncontroverted in the record, but which could not be altered by the presentation of additional evidence. [Citation.] And whether the general rule shall be applied is largely a question of the appellate court's discretion. [Citation.]" (*Redevelopment Agency v. City of Berkeley, supra,* 80 Cal.App.3d at p. 167.)

We begin with the premise that for the purpose of establishing the elements of a malicious prosecution, "favorable termination" is something of a term of art under the case law. In order for the termination of a lawsuit to be considered to have been favorable for the purpose of an

ensuing malicious prosecution claim, the termination must have reflected on the merits of the action and the plaintiff's innocence of the misconduct alleged in the lawsuit. (*Lackner v. LaCroix* (1979) 25 Cal.3d 747, 750.) As our Supreme Court has put it, " 'favorable' termination does not occur merely because a party complained against has prevailed in an underlying action. While the fact he has prevailed is an ingredient of a favorable termination, such termination must further reflect on his innocence of the alleged wrongful conduct. If the termination does not relate to the merits-reflecting on neither innocence of nor responsibility for the alleged misconduct-the termination is not favorable in the sense that it would support a subsequent action for malicious prosecution." (*Id.* at p. 751, fn. omitted; see also *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 342; *Contemporary Services, supra,* 152 Cal.App.4th at p. 1056.)

***5** Where the termination was due to a voluntary dismissal, and the allegations of the complaint in the underlying action were not decided on the merits, we review the reasons that the action was dismissed. (*Contemporary Services, supra,* 152 Cal.App.4th at p. 1057; *Oprian v. Goldrich, Kest & Associates* (1990) 220 Cal.App.3d 337, 343.) " ' "A termination [by dismissal] is favorable when it reflects 'the opinion of someone, either the trial court or the prosecuting party, that the action lacked merit or if pursued would result in a decision in favor of the defendant.' " [Citation.] ... [¶] ... The focus is not on the malicious prosecution plaintiff's opinion of his innocence, but on the opinion of the dismissing party.' [Citation.] 'The test is whether or not the termination tends to indicate the innocence of the defendant or simply involves technical, procedural or other reasons that are not inconsistent with the defendant's guilt.' [Citation.]" (*Contemporary Services, supra,* 152 Cal.App.4th at pp. 1056-1057, italics omitted.)

In the present case, the denial of the Company's and Gordon's summary judgment motion makes clear that the underlying case as a whole was not without merit. Moreover, the record reflects that Wagenet has admitted more than once, and under oath, that he personally approved the diversion of the Company's IRA contributions, the conduct on which the UCL cause of action against him was based. Thus, there is nothing in the record tending to show that appellants chose to dismiss the underlying case against Wagenet because they or the trial court had become convinced that he was factually innocent of the misconduct alleged in the underlying action.

Furthermore, there is also nothing in the record to controvert appellants' contention as to their actual reasons for dismissing the case against Wagenet, as explained by Daly in his memorandum in the trial court. First, the only monetary recovery that could be obtained through the UCL cause of action was the restitution of whatever IRA contributions had not yet been repaid-an unknown sum, but not a very large one relative to the recovery sought through Ford's other causes of action. Moreover, as a practical matter, no other relief was available on the UCL cause of action, because by the time it was dismissed, the Company had ceased doing business. Thus, appellants decided to dismiss the UCL cause of action "[i]n the interest of economy and to improve the chances of defeating the [pending] summary judgment motion."

It is clear that a voluntary dismissal filed solely for reasons of litigation tactics, or due to a desire to avoid further litigation costs and legal fees, does not constitute a favorable termination

in the dismissed party's favor for purposes of a subsequent malicious prosecution action. (See *Lackner v. LaCroix, supra,* 25 Cal.3d at pp. 750-751; *Contemporary Services, supra,* 152 Cal.App.4th at pp. 1056-1057; *Oprian v. Goldrich, Kest & Associates, supra,* 220 Cal.App.3d at pp. 343-345.) In the present case, it is uncontroverted that such were the reasons for the dismissal of the underlying case against Wagenet. Moreover, Wagenet's own admissions of wrongdoing establish that the dismissal did not relate to his innocence. Accordingly, we agree with appellants that Wagenet cannot make a prima facie case of favorable termination, and that appellants' special motion to strike should have been granted on that basis.

***6** "Because [Wagenet] failed to make a prima facie showing of facts sufficient to prove the dismissal of the complaint in the underlying [case] constituted a favorable termination on the merits, [he has] failed to show a probability of prevailing on the malicious prosecution claim. We therefore do not need to determine whether [Wagenet] demonstrated a probability of establishing the remaining elements of malicious prosecution."(*Contemporary Services, supra,* 152 Cal.App.4th at p. 1058.) However, because in the present case, unlike in *Contemporary Services, supra,* the favorable termination question was not called to the attention of the trial court, we find it preferable to address on its merits at least the probable cause element of Wagenet's malicious prosecution cause of action, as to which the trial court decided below that Wagenet had presented a prima facie case.

B. Probable Cause

The trial court ruled that Wagenet had made a prima facie case that appellants lacked probable cause for their UCL cause of action as a whole because, due to the repayment of the diverted IRA contributions and the cessation of business by the Company, no relief permissible as a remedy under the UCL remained available to Ford by the time the underlying case was filed. We disagree.

The trial court relied on the fact that Ford had candidly acknowledged in his complaint in the underlying case that he had been made "essentially whole" for the IRA contribution diversion. Nonetheless, the record in the current lawsuit demonstrates that when the complaint in the underlying case was filed, appellants still had reason to be unsure whether Ford had been repaid all of the money due to him on account of Wagenet's diversion of IRA contributions. The amount that might have remained unpaid was small-some $2,000, at most-but it is beyond dispute that Ford was entitled to take discovery in order to determine whether he had been paid all that was due to him, and if not, was entitled to restitution as a remedy under the UCL. Accordingly, it is our view that Ford had probable cause to assert a UCL cause of action based on his legitimate uncertainty as to whether he was entitled to additional restitution.

Wagenet also argued in the trial court, as he does here, that despite his admitted illegal diversion of the Company's IRA contributions, Ford lacked probable cause to name him *as an individual* in the UCL cause of action.[FN7] Wagenet asserts two bases for this proposition: first, that the manager's privilege doctrine gave him a complete defense to the UCL cause of action against him individually, and second, that under *Reynolds v. Bement* (2005) 36 Cal.4th 1075, Wagenet could not be held personally liable for the violation of Labor Code section 227.[FN8]

that formed the principal basis for Ford's UCL cause of action. (See *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178 [any violation of Labor Code by failing to pay wages is unfair business practice under UCL].)

> FN7. On this issue, the trial court also ruled in Wagenet's favor, on the ground that Ford had "cited no authority whereby the court could hold an individual corporate officer, agent or employee personally responsible for the unfair business practices of the corporation."
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> FN8. The relevant portion of Labor Code section 227 provides that "[w]henever an employer has agreed with any employee to make payments to [a retirement] plan for the benefit of the employees, ... it shall be unlawful for such an employer ... to fail to make the payments required by the terms of any such agreement."

***7** We turn first to the manager's privilege doctrine, which one court explained as follows: "The privilege to induce an otherwise apparently tortious breach of contract is extended by law to further certain social interests deemed of sufficient importance to merit protection from liability. Thus, a manager or agent may, with impersonal or disinterested motive, properly endeavor to protect the interests of his principal by counseling the breach of a contract with a third party which he reasonably believes to be harmful to his employer's best interests. [Citation.]" (*Olivet v. Frischling* (1980) 104 Cal.App.3d 831, 840-841, fn. omitted, disapproved on other grounds in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510.) The manager's privilege has repeatedly been held to insulate corporate agents from individual liability in suits arising out of the corporation's assertedly wrongful termination of an employment relationship, or its decision to breach a contract. (See, e.g., *Halvorsen v. Aramark Uniform Services, Inc.* (1998) 65 Cal.App.4th 1383, 1392-1396.)

In *Huynh v. Vu* (2003) 111 Cal.App.4th 1183, Division Two of this court held that "when a manager stood to reap a tangible personal benefit from the principal's breach of contract, so that it is at least reasonably possible that the manager acted out of self-interest rather than in the interest of the principal, the manager should not enjoy the protection of the manager's privilege unless the trier of fact concludes that the manager's *predominant* motive was to benefit the principal. Thus, in a case ... where the manager had a material, albeit indirect, personal financial interest in the transaction, ... the predominant motive test should be applied." (*Id.* at p. 1198, italics added, fn. omitted.)

Here, there are two reasons to support the conclusion that Wagenet had "a material, albeit indirect, personal financial interest" in the diversion of the Company's funds from the IRA. First as mentioned, part of the purpose of the diversion of funds was to cover the Company's payroll, including Wagenet's own salary. Second, and more important, Wagenet was the son of the Company's owner, who had appointed Wagenet to manage the Company upon his retirement. As such, Wagenet stood to become at least a part owner, if not the sole owner, of the Company in due course. Thus, he had a material personal financial interest in the continued viability of the Company. We believe that these facts were sufficient to establish probable cause to name Wagenet individually as a defendant in the UCL cause of action, because there was at least a reasonable argument that Wagenet's predominant motive in diverting the IRA

contributions was to benefit himself, and thus that the manager's privilege did not apply. FN9

> FN9. The existence of a reasonable argument is all that is needed to establish probable cause for the purpose of defeating a malicious prosecution action. Even a "defense summary judgment on the underlying claim does not establish lack of probable cause as a matter of law. ' "Counsel and their clients have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win...." ' [Citations.] Accordingly, there is probable cause if, at the time the claim was filed, 'any reasonable attorney would have thought the claim tenable.'[Citation .]" (*Jarrow Formulas, Inc. v. LaMarche, supra,* 31 Cal.4th at p. 742.)

For similar reasons, we also are not persuaded that *Reynolds v. Bement, supra,* 36 Cal.4th 1075, gave Wagenet a sufficiently defense to the UCL cause of action to negate probable cause to name him as an individual defendant. In *Reynolds v. Bement,* an employee of a corporation asserted that he had not been paid overtime as required by Labor Code sections 510 and 1194. He sued not only the corporation, but also its president and other individuals who were officers, directors, and shareholders of the corporation.

***8** On review of an order sustaining the individual defendants' demurrers, the Supreme Court held that as a matter of law, the individual defendants could not be held for the alleged overtime pay violations. The court reasoned, in keeping with the manager's privilege, that "[u]nder the common law, corporate agents acting within the scope of their agency are not personally liable for the corporate employer's failure to pay its employees' wages. [Citations.]" (*Reynolds v. Bement, supra,* 36 Cal.4th at p. 1087.) It also held that "a simple failure to comply with statutory overtime requirements" did not qualify as tortious conduct under a prior decision, which subjected corporate directors to individual liability, jointly with the corporation, if they " 'personally directed or participated in ... tortious conduct' " by the company. (*Id.* at pp. 1089-1090, quoting *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 504.)

This case involves more than a simple failure to pay statutory overtime. It involves the knowing and intentional diversion of funds payable to the IRA for the employees' benefit. Moreover, in *Reynolds v. Bement, supra,* the Supreme Court noted that the plaintiff had not "alleged that the individual defendants here misappropriated to themselves, as individuals for their individual advantage, the unpaid wages he alleges his former employer owes him."(36 Cal.4th at p. 1090.) For the reasons explained above in connection with Wagenet's assertion of the manager's privilege defense, the situation in the present case is different. Wagenet used the diverted funds to cover payroll, including his own salary, and to maintain the financial viability of a company he expected to own in his own right in the near future. Thus, while Ford did not allege that Wagenet directly pocketed the diverted funds, and indeed the record in this case shows that he did not, this does not mean that Ford did not have probable cause to believe that Wagenet's conduct was tortious, and thus could give rise to individual liability under *Frances T. v. Village Green Owners Assn., supra,* 42 Cal.3d 490.

In short, not only do the facts and history of the underlying case fail to establish that the dismissal of Wagenet constituted a favorable termination, but in addition, Wagenet has not established a prima facie case that appellants lacked probable cause to assert a UCL cause of action

or to name him as an individual defendant therein. With these two elements of Wagenet's case both out of the way, it is plain that appellants' motion to strike should have been granted, and we need not reach the issue whether Wagenet established a prima facie case of the third element, malice.

DISPOSITION

The judgment is reversed, and the case is remanded to the trial court with directions to vacate its order denying appellants' special motion to strike, and to enter a new order granting the motion. Appellants shall recover their costs on appeal.

We concur: REARDON and RIVERA, JJ.

Cal.App. 1 Dist.,2008.
Wagenet v. Ford
Not Reported in Cal.Rptr.3d, 2008 WL 5352108 (Cal.App. 1 Dist.)

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