SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 02/14/2022 TIME: 10:30:00 AM DEPT: C26

JUDICIAL OFFICER PRESIDING: Gregory H. Lewis
CLERK: B. Chumpitazi
REPORTER/ERM: Jennifer Tat CSR# 13773
BAILIFF/COURT ATTENDANT: Hillary Jones

CASE NO: **30-2021-01226133-CU-DF-CJC** CASE INIT.DATE: 10/14/2021
CASE TITLE: **Mowlavi vs. Johnson**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Defamation

EVENT ID/DOCUMENT ID: 73695436

EVENT TYPE: Motion - Other
MOVING PARTY: Chalene Johnson, Team Johnson LLC
CAUSAL DOCUMENT/DATE FILED: Motion for SLAPP, 01/04/2022

EVENT ID/DOCUMENT ID: 73699986

EVENT TYPE: Motion for SLAPP
MOVING PARTY: Chalene Johnson, Team Johnson LLC
CAUSAL DOCUMENT/DATE FILED: Motion for SLAPP, 01/04/2022

APPEARANCES
Diana Sanders, from Russ, August & Kabat, present for Plaintiff(s) remotely.
Michelle Hemesath, from Hodes Milman Ikuta, LLP, present for Defendant(s) remotely.

Tentative Ruling posted on the Internet .

The Court hears oral argument and confirms the tentative ruling. The tentative ruling now becomes the final order of the Court as follows:

Defendants Chalene Johnson and Team Johnson LLC's Special Motion to Strike the First Amended Complaint is DENIED. Defendants met the burden to prove that the First Amended Complaint contained protected speech under C.C.P. § 425.16. Plaintiffs have met the burden to demonstrate the probability of success on the merits.

R**equest for Discovery**: C.C.P. § 425.16 (g) permits a party to conduct discovery on a noticed motion upon a showing of good cause. Defendants have not made a noticed motion nor established good cause for discovery. Defendants' Request for Discovery is denied.

Plaintiffs' Objections to Defendants' Evidence: All Overruled. Declaration of Michelle Hemesath, Esq. Nos, 1 to 7; Declaration of Benjamin Ikuta, Esq., Nos. 1 to 5; Declaration of Mary Carr, Nos. 1 to 13; Declaration of Dr. Robert Kachenmeister, Nos. 1 to 29; Declaration of Chalene Johnson, Nos. 1 to 35; Declaration of Jason Vance, Nos. 1 to 11; Declaration of Polly Valencia, Nos. 1 to 9; Declaration of Sahar Nourani, Nos. 1 to 4; Declaration of Beth Belkofer, Nos. 1 to 6; Declaration of T.A., Nos. 1 to 6; Declaration of G.C., Nos. 1 to 5; Declaration of B.C., Nos. 1 to 3; Declaration of A.G., Nos. 1 to 3; Declaration of C.L., Nos. 1 to 8.

Special Motion to Strike: "The anti-SLAPP statute does not insulate defendants from any liability for

claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. . . . If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a 'summary-judgment-like procedure.' . . . The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. . . . '[C]laims with the requisite minimal merit may proceed.'" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385.) (Footnote omitted).

"'As is true with summary judgment motions, the issues in an anti-SLAPP motion are framed by the pleadings.'" (*Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 883.)

"A defendant satisfies the first step of the analysis by demonstrating that the 'conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) [of section 425.16]' and that the plaintiff's claims in fact *arise* from that conduct." (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 620; Emphasis original).

First Step: Protected Activity: "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached." (*Baral v. Schnitt* (2016) *Supra*, 396.)

"A claim arises from protected activity when that activity underlies or forms the basis for the claim. . . . Critically, 'the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech.' . . .'[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.'" (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062–1063; Emphasis added).

Statutory Language: The four areas of protected speech are listed at C.C.P. § 425.16 (e). "As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) **any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest**." (Emphasis added.)

"The inquiry under the catchall provision instead calls for a two-part analysis rooted in the statute's purpose and internal logic. First, we ask what "public issue or [ ] issue of public interest" the speech in question implicates—a question we answer by looking to the content of the speech. (§ 425.16, subd. (e)(4).) Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest. It is at the latter stage that context proves useful." (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149–150.)

Public Interest: For instance, statements concerned a dentist's qualifications and competence to perform his dental services are matters about which the public, including current and future dental

patients, have a vital interest. (*Murray v. Tran* (2020) 55 Cal.App.5th 10, 30.) Defendants challenged Plaintiffs' suitability to practice plastic surgery.

"The Internet is a classic public forum which permits an exchange of views in public about everything from the great issues of war, peace, and economic development to the relative quality of the chicken pot pies served at competing family restaurants in a single small neighborhood." (*Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1146.)

The definition of 'public interest' within the meaning of the anti–SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." (*Bikkina v. Mahadevan* (2015) 241 Cal. App. 4th 70, 82.)

Internet Postings: "'Web sites accessible to the public ... are 'public forums' for purposes of the anti-SLAPP statute.' . . . But not every Web site post involves a public issue. (See § 425.16, subd. (e)(3) [requiring that speech be made in a public forum and in connection with an issue of public interest].) ' [M]ere publication ... on a Web site [ ] should not turn otherwise private information ... into a matter of public interest.'" (*D.C. v. R.R*. (2010) 182 Cal.App.4th 1190, 1226; internal citations omitted).

"[P]ostings on his Facebook page and Instagram account and his comments about [Plaintiff] during a radio broadcast were all made "in a place open to the public or a public forum" within the meaning of section 425.16, subdivision (e) (3). 'Web sites accessible to the public ... are 'public forums' for purposes of the anti-SLAPP statute.'. . . Similarly, statements during a radio interview meet subdivision (e) (3)'s public forum requirement." (*Jackson v. Mayweather* (2017) 10 Cal. App. 5th 1240, 1252.)

"Under California law, statements warning consumers of fraudulent or deceptive business practices constitute a topic of widespread public interest, so long as they are provided in the context of information helpful to consumers." (*Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 262 (9th Cir. 2013).)

Defendants' statements on the Internet including Yelp, Instagram and Podcasts are protected speech concerning matters of public interest. Defendant has satisfied the first prong of the Anti-SLAPP test.

Second Step: Probability of Success: "'If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.'. . . The plaintiff must do so with admissible evidence." (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 112.)

"[P]laintiff need show only a 'minimum level of legal sufficiency and triability.' . . . In the words of other courts, plaintiff need show only a case of 'minimal merit.'" (*Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 989.)

"In considering whether a plaintiff has met those evidentiary burdens, the court must consider the pleadings and the evidence submitted by the parties. However, the court cannot weigh the evidence . . . but instead must simply determine whether the plaintiff's evidence would, if credited, be sufficient to meet the burden of proof." (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 108.)

At this early stage, "the court's responsibility is to accept as true the evidence favorable to the plaintiff ...." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) "[T]he defendant's evidence is considered with a view toward whether it defeats the plaintiff's showing as a matter of law, such as by establishing a defense or the absence of a necessary element." (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 585.)

Plaintiffs have met the burden to demonstrate the probability of success on the merits. Even the issues

are disputed, Plaintiffs have shown sufficient evidence to demonstrate the required minimal merit to satisfy the second prong of the Anti-SLAPP test.

Defamation: Defamation is the "intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645.) "The general rule is that the words constituting an alleged libel must be specifically identified, if not pleaded verbatim, in the complaint." (*Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1612, fn. 5.)

Plaintiffs have submitted sufficient evidence to show that numerous alleged defamatory statement were inaccurate. From August to November 2021, Defendant Johnson posted approximately 100 statements about Plaintiff Dr. Mowlavi. (ROA 32; Declaration of Dr. Mowlavi, page 3, lines 16-17). Defendant Johnson had 749,000 followers on her social media site. (Declaration of Dr. Mowlavi, paragraph 37).

Defendant posted that Dr. Mowlavi's patient did died on the operating table. (Declaration of Dr. Mowlavi, page 4, lines 16-17). Dr. Mowlavi denied that this occurred. . (Declaration of Dr. Mowlavi, paragraph 14).

The anesthesiologist used at Defendant Johnson's surgery did not have two convictions for driving under the influence. (Declaration of Dr. Mowlavi, paragraph 20).

Although there had been various filing on medical malpractice against Dr. Mowlavi, there were no judgments. Liability was disputed. (Declaration of Dr. Mowlavi, paragraph 15).

Dr. Mowlavi did not lose privileges at multiple hospitals. (Declaration of Dr. Mowlavi, paragraph 18). He did voluntarily resign from Mission Hospital.

Dr. Mowlavi denied sexual misconduct with Defendant Johnson or other patients. (Declaration of Dr. Mowlavi, paragraph 22).

Libel Per Se: "A special meaning has been given to the term 'libel per se' in California and some other states. Where the statement is defamatory *on its face,* it is said to be libelous per se, and actionable without proof of special damage." *Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 351. (Emphasis original).

Because much of the alleged defamatory statements attack Plaintiff's competence to conduct plastic surgery, special damages need not be shown. Dr. Mowlavi stated that as a result of Defendants' negative remarks, he has experienced numerous patient cancellations. (Declaration of Dr. Mowlavi, paragraph 38).

Litigation Privilege: "However, the defendant also generally bears the burden of proving its affirmative defenses." *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 676. Defendants failed to meet their burden to establish the litigation.

The key issue is whether Defendant is protected by the litigation privilege. "The litigation privilege of Civil Code section 47 pertains to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. . . .The principal purpose of the litigation privilege is to afford litigants and witnesses the utmost freedom of access to the courts without fear of litigation reprisal. . . ." *Abuemeira v. Stephens* (2016) 246 Cal.App.4th 1291, 1299.

"[T]he litigation privilege should not be extended to 'litigating in the press.' Such an extension would not serve the purposes of the privilege; indeed, it would serve no purpose but to provide immunity to those who would inflict upon our system of justice the damage which litigating in the press generally causes:

poisoning of jury pools and bringing disrepute upon both the judiciary and the bar." *Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1149. Defendants were not involved in litigation with Plaintiffs. Defendants merely made comments in social media.

False Light: "'False light is a species of invasion of privacy, based on publicity that places a plaintiff before the public in a false light that would be highly offensive to a reasonable person, and where the defendant knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.' " (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1264.)

The numerous alleged defamatory statements placed Plaintiffs allegedly in a false light.

Tortious Interference: The core alleged defamatory statements serve a basis for Intentional Infliction of Emotional Distress and Interference with Prospective Economic Advantage. As with defamation, these torts cause emotional distress and economic loss.

Harassment: "[A]nti-SLAPP motions may be filed challenging petitions for injunctive relief brought under section 527.6, because they constitute "causes of action" under the anti-SLAPP law, and there is nothing in section 425.16 which would exempt such petitions from the broad reach of this remedial statute." *(Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 642.) Similarly, the alleged defamatory statements may be viewed as harassment.