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Superior Court of California
County of Los Angeles
Department 31

FILED
Superior Court of California
County of Los Angeles

FEB 23 2018

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Lorena Albino

CLAUDIO PALMIERI, et al.,

Plaintiff,

v.

MARGARET OSBORN, et al.,

Defendant(s).

Case No.: BC681889

Hearing Date: February 23, 2018

~~IN RE~~ ORDER RE:

DEFENDANTS MARGARET OSBORN
AKA ALICE GLASS, AND JUPITER
KEYES' SPECIAL MOTION TO STRIKE
PLAINTIFF'S COMPLAINT; AND, IN THE
ALTERNATIVE, MOTION TO STRIKE
CERTAIN CAUSES OF ACTION

Defendants Margaret Osborn aka Alice Glass, and Jupiter Keyes' unopposed Special Motion to Strike Plaintiff's Complaint; and, in the Alternative, Motion to Strike Certain Causes of Action is GRANTED, in part. The motion is GRANTED as to Defendant Margaret Osborn and the Complaint is stricken in its entirety pursuant to CCP § 425.16. The motion is DENIED in its entirety as to Defendant Jupiter Keyes.

Defendant Osborn is to recover fees and costs pursuant to CCP § 425.16(c).

As a preliminary matter, Defendants' memorandum of points is 19 pages in length, which exceeds the 15-page limit imposed by California Rules of Court Rule 3.1113(d). However, the additional improper pages are not necessary to the court's resolution of the motion and the court

1 did not read the extra pages. Moving parties are admonished to follow all procedural
2 requirements (and limitations) to the letter in the future.

3 Plaintiff's exhibits lack tabs in violation of California Rules of Court Rule 3.1110(f). It is
4 always important to follow procedural rules, especially those promulgated in part to make it
5 easier for judicial officers to read and absorb copious amounts of information in a short period of
6 time. CRC 3.1110(f) is one such rule. It requires that each exhibit be separated by a tab
7 extending below the bottom of the page bearing the exhibit designation. It also requires an index
8 to exhibits be provided. Plaintiff failed to follow this rule. With approximately 400 cases on the
9 court's docket, the importance of following these rules to the letter cannot be overemphasized,
10 not to mention that if a party wishes the court to review evidence it submits, the party should
11 follow the applicable procedural rules.

12 Coincidentally, plaintiff's law firm has another motion hearing in a different case
13 (Yegiazaryan v. Mercury Insurance Company (BC646385)) scheduled to be heard at the same
14 time as the instant motion. It too lacks exhibit tabs. While two does not constitute a pattern, it is
15 sufficient for this court to firmly believe that monetary sanctions are appropriate given that
16 plaintiff's counsel manifests that it has little to no regard for applicable procedural rules. (Based
17 on the substance of the motion in the Yegiazaryan case and events surrounding the instant
18 motion, the court has begun to wonder what, if anything, this law firm does to ensure that
19 deadlines are met and pleadings meet applicable procedural requirements). As a result, the court
20 believes that monetary sanctions are appropriate. At the hearing, the court will calendar an OSC
21 re why sanctions in the amount of \$500.00 should not be imposed for counsels' failure to comply
22 with applicable procedural rules.
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25 All of defendant's evidentiary objections are sustained.

1 The motion is DENIED as to Defendant Jupiter Keyes. The instant motion was filed on
2 December 19, 2017. Defendant Jupiter Keyes was dismissed from this action on December 14,
3 2017, before the motion was filed. Therefore, to the extent the motion sought to strike the
4 conspiracy claim against Defendant Keyes, the motion is moot. Additionally, because the
5 dismissal occurred prior to the filing of the motion, Defendant Keyes is not entitled to attorneys'
6 fees under CCP § 425.16. (*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 379 (“Here,
7 however, plaintiffs voluntarily dismissed their action pursuant to section 581 before defendants
8 filed an anti-SLAPP motion. Defendants maintain they may still recover their attorney fees and
9 costs. We conclude to the contrary.”).)

10 ***Acts in Furtherance of Free Speech***

11 Pursuant to CCP § 425.16, a party may move to strike a cause of action that arises from
12 any act of that person in furtherance of the person's right of petition or free speech under the
13 United States Constitution or the California Constitution in connection with a public issue.
14 Moving parties have the initial burden to demonstrate that a cause of action is subject to a special
15 motion to strike. (*Martinez v. Metabolife Inter. Ins.* (2003) 113 Cal.App.4th 181, 186; *Fox*
16 *Searchlight Pictures Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 304.) Specifically, courts
17 decide whether moving parties have made a prima facie showing that the attacked claims arise
18 from a protected activity, including defendants' right of petition or free speech. (*See e.g. Healy*
19 *v. Tuscany Hills Landscape & Recreation Corp.*, (2006) 137 Cal.App.4th 1, 5; *Soukup v. Law*
20 *Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278; CCP §425.16(e).)

21 Moving parties can satisfy their burden by showing (1) statements made before
22 legislative, executive or judicial proceedings, or made in connection with matters being
23 considered in such proceedings, or (2) statements made in a public forum, or other conduct in
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1 furtherance of the exercise of the constitutional rights of petition or free speech, in connection
2 with issues of public interest. (CCP §425.16(e); *Equilon Ent., LLC v. Consumer Cause, Inc.*
3 (2002) 29 Cal.4th 53, 66.)

4 “[A] moving defendant's burden to show a cause of action arising from is not met simply
5 by showing that the *label* of the lawsuit appears to involve the rights of free speech or petition;
6 he or she must demonstrate that the *substance* of the plaintiff's cause of action was an act in
7 furtherance of the right of petition or free speech.” (*Jespersen v. Zubiate-Beauchamp* (2003) 114
8 Cal.App.4th 624, 630.) “The critical consideration is whether the cause of action is based on the
9 defendant's protected free speech or petitioning activity.” (*Feldman v. 1100 Park Lane*
10 *Associates* (2008) 160 Cal.App.4th 1467, 1478.) “The Supreme Court has explained the phrase
11 ‘arising from’ in section 425.16 should not be construed as meaning ‘in response to.’ The
12 statutory phrase cause of action arising from means simply that the defendant's act underlying
13 the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or
14 free speech. (*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 195.)

15
16 The court reviews “the parties' pleadings, declarations, and other supporting documents at
17 this stage of the analysis only to determine what conduct is actually being challenged, not to
18 determine whether the conduct is actionable.” (*Castleman v. Sagaser* (2013) 216 Cal.App.4th
19 481, 491.) The “evaluation turns on two subsidiary questions: (1) What conduct does the
20 challenged cause of action arise from; and (2) is that conduct protected activity under the anti-
21 SLAPP statute.” (*Mission Beverage Company v. Pabst Brewing Company, LLC* (2017) 15
22 Cal.App.5th 686.) “A cause of action arises from protected activity when the cause of action
23 itself is based on protected activity. Whether a cause of action is itself based on protected
24 activity turns on whether its principal thrust or gravamen is protected activity—that is, whether
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1 the core injury-producing conduct warranting relief under that cause of action is protected
2 activity.” (*Ibid.*)

3 Every claim asserted by Plaintiffs in this action arises from Defendants’ publication of
4 the October 24, 2017 statement on the internet. (Compl. ¶¶ 26-27, 33, 43, 53, 58, 63, 66.) It is
5 well-established that the internet is a public forum. “[T]he Internet can hardly be considered a
6 ‘scarce’ expressive commodity. It provides relatively unlimited, low-cost capacity for
7 communication of all kinds. . . . This dynamic, multifaceted category of communication includes
8 not only traditional print and news services, but also audio, video, and still images, as well as
9 interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can
10 become a town crier with a voice that resonates farther than it could from any soapbox. Through
11 the use of Web pages, mail exploders, and newsgroups, the same individual can become a
12 pamphleteer. As the District Court found, “the content on the Internet is as diverse as human
13 thought.” We agree with its conclusion that our cases provide no basis for qualifying the level of
14 First Amendment scrutiny that should be applied to this medium.” (*Reno v. American Civil*
15 *Liberties Union* (1997) 521 U.S. 844, 870 (internal citation omitted). See also *Barrett v.*
16 *Rosenthal* (2006) 40 Cal.4th 33, 41 n.4 (“Web sites accessible to the public, like the
17 ‘newsgroups’ where Rosenthal posted Bolen’s statement, are “public forums” for purposes of the
18 anti-SLAPP statute.”); *Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 481 (“Statements made on
19 a Web site are made in a public forum.”).)

21 Moreover, it is clear that the statement was made regarding an issue of public interest
22 within the meaning of Section 425.16(e). “[T]he California cases establish that generally, “[a]
23 public issue is implicated if the subject of the statement or activity underlying the claim (1) was a
24 person or entity in the public eye; (2) could affect large numbers of people beyond the direct
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1 participants; or (3) involved a topic of widespread, public interest.” (*D.C. v. R.R.* (2010) 182
2 Cal.App.4th 1190, 1226.) Plaintiff Palmieri and the band Crystal Castles are popular and
3 accomplished musicians in the public eye (Greco Decl. ¶¶ 5-11), and it well established that in
4 2017, when the publication was made, the public had a pervasive interest in reports of
5 entertainers who allegedly committed sexual misconduct. (Greco Decl. ¶¶ 9-11.) Therefore, the
6 entirety of the Complaint falls within the protections of CCP § 425.16. (See *Jackson v.*
7 *Mayweather* (2017) 10 Cal.App.5th 1240, 1254 (“Mayweather’s postings and comments
8 concerning his relationship with Jackson, as well as Jackson’s pregnancy, its termination and her
9 cosmetic surgery, were ‘celebrity gossip’ properly considered, under established case law, as
10 statements in connection with an issue of public interest.”); *M.G. v. Time Warner, Inc.* (2001) 89
11 Cal.App.4th 623, 629 (“The broad topic of the article and the program was not whether a
12 particular child was molested but rather the general topic of child molestation in youth sports, an
13 issue which, like domestic violence, is significant and of public interest.”).)

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15 ***Probability of Prevailing on the Merits***

16 Therefore, the burden shifts to Plaintiffs. If moving parties successfully have shifted the
17 burden, then opposing parties must demonstrate a probability of prevailing on the merits of the
18 complaint. (*Equilon Ent., LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67;
19 §425.16(b)(1).) “The plaintiff must demonstrate that the complaint is both legally sufficient and
20 supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the
21 evidence submitted by the plaintiff is credited.” (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.)
22 “This burden is somewhat akin to that required to resist a nonsuit or to move for summary
23 judgment.” (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 584 (internal citation
24 omitted).)

1 “[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the
2 plaintiff must adduce competent, admissible evidence.” (*Hailstone v. Martinez* (2008) 169
3 Cal.App.4th 728, 735. See *Hecimovich v. Encinal School Parent Teacher Organization* (2012)
4 203 Cal.App.4th 450, 474 (same); *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659,
5 673 (same); *Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 109 (same).)

6 As argued by Defendant in Reply, none of Plaintiffs’ exhibits are admissible and
7 therefore Plaintiffs have failed to meet their burden. Plaintiffs purport to admit Exhibits A
8 through L via the declaration of their counsel, Shane Bernard, who merely attests that the
9 exhibits are each a “true and correct copy.” Thus, the evidence is inadmissible as a matter of
10 law. (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 244
11 (“Plaintiff’s opposition papers included a copy of this letter, but without proper authentication.
12 Plaintiff’s declaration did not mention the letter. Plaintiff’s attorney merely submitted his own
13 declaration that the attached copy was ‘a true and correct copy of Letter of April 17, 1999.’ This
14 is not proper authentication.”).) This is especially problematic given that most of the exhibits are
15 electronic communications which can be easily manipulated, thus, necessitating adequate
16 foundation as to authenticity and accuracy.

17 Similarly, in addition to being impermissibly conclusory in many respects, (*Dwight R. v.*
18 *Christy B.* (2013) 212 Cal.App.4th 697, 714 (“we disregard declarations lacking in foundation or
19 personal knowledge, or that are argumentative, speculative, impermissible opinion, hearsay, or
20 conclusory”), Plaintiff Palmieri’s declaration is not signed under penalty of perjury and is
21 therefore entirely inadmissible. (CCP § 2015.5; *Baron v. Mare* (1975) 47 Cal.App.3d 304, 308
22 (“The formalities required of an affidavit or declaration are lacking in respondent’s declaration.
23 (Code Civ.Proc. s 2015.5.) It should not have been considered by the trial court.”); *Bombardier*
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1 *Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591, 604
2 (“Out-of-state declarations that do not state they were made under penalty of perjury under the
3 laws of the State of California are not deemed sufficiently reliable to be admitted into
4 evidence.”) (internal citation omitted); *Kulshrestha v. First Union Commercial Corp.* (2004) 33
5 Cal.4th 601, 612 (“[t]he courts have made clear that a declaration is defective under section
6 2015.5 absent an express facial link to California or its perjury laws.”); *ViaView, Inc. v. Retzlaff*
7 (2016) 1 Cal.App.5th 198, 217 (“McGibney's declaration in opposition to the motion to quash
8 was not signed under penalty of perjury under the laws of the State of California as required by
9 section 2015.5. It therefore had no evidentiary value and we shall not consider it in our review of
10 the jurisdictional issue.”.) Plaintiffs have failed to provide any admissible evidence in support
11 of their Opposition.

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13 The court notes that plaintiffs were given not one but two opportunities to get this right.
14 Plaintiffs filed their initial opposition on January 18, 2018 without supporting evidence. On
15 January 19, 2018, the court permitted Plaintiffs to file an amended or supplemental opposition by
16 January 22, 2018. Plaintiffs filed their amended Opposition on January 23, 2018 and once again
17 failed to support their Opposition with admissible evidence.

18 The motion to strike is GRANTED as to Defendant Margaret Osborn and the Complaint
19 is stricken in its entirety pursuant to CCP § 425.16.

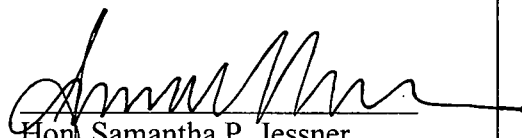
20 ***Attorneys' Fees***

21 Having prevailed on the special motion to strike, defendant is entitled to mandatory,
22 reasonable attorney fees and costs. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141 -1142;
23 CCP § 425.16(c).) Parties may seek attorney fees and costs in connection with a special motion
24 to strike (1) in the moving papers, (2) in a subsequently filed motion, or (3) as part of a cost
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1 memorandum. (*Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 992.) Defendant has not
2 submitted any information regarding attorneys' fees and have chosen to pursue fees at a later
3 time.

4 Moving party is ordered to give notice.

5 DATED: February 23, 2018



Hon. Samantha P. Jessner
Los Angeles Superior Court

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