

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Friday, February 14, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

19-CVC-11303 CROCKER, CAMERON VS. BLAKE, MICHAEL

MOTION TO STRIKE

TENTATIVE RULING:

On the court's own motion Defendant's Special Motion to Strike is continued to February 28, 2020 at 10:00 a.m. in Department 2.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

19-CVC-11315 CAVANA, JOE VS. INGRAM, KAREN

MOTION TO STRIKE

Defendant's Special Motion to Strike Complaint

Pursuant to Code of Civil Procedure Section 425.13 is GRANTED.

The court rules on Defendant's evidentiary objections as follows:

Objection No. 1 - The entire declaration of Plaintiff's counsel and attached Exhibit 'A' on the grounds that 1) Counsel's testimony is not admissible evidence, 2) Lacks foundation and calls for speculation, 3) Calls for a legal and /or factual conclusion, 4) Exhibit A is irrelevant.¹

Objection sustained.

Objection No. 2, Terri Cavana declaration ¶ 6 – Hearsay. Objection sustained.

Objection No. 3, Terri Cavana declaration ¶ 6 – Hearsay. Lack of foundation for authentication of Exhibit A (Facebook post). Objection sustained.

Objection No. 4, Terri Cavana declaration ¶ 6 – Hearsay. Lack of foundation for authentication of Exhibit A (Facebook post), Exhibit A speaks for itself. Lacks foundation and calls for speculation. Argumentative. Objection sustained.

Objection No. 5, Terri Cavana declaration ¶ 7 – Hearsay. Exhibit A speaks for itself. Lacks foundation and calls for speculation. Irrelevant. Argumentative. Objection sustained.

Objection No. 6, Terri Cavana declaration ¶ 7 –Lacks foundation and calls for speculation. Irrelevant. Argumentative. Objection sustained.

Objection No. 7, Terri Cavana declaration ¶ 7 –Lacks foundation and calls for speculation. Irrelevant. Argumentative. Objection sustained.

Objection No. 8, Terri Cavana declaration ¶ 8 –Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 9, Terri Cavana declaration ¶ 8 –Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 10, Terri Cavana declaration ¶ 9 –Hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 11, Terri Cavana declaration ¶ 9 –Hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

¹ Exhibit 'A' to Declaration of Plaintiffs' Counsel is a discovery propounded by Plaintiffs to Defendant on November 19, 2019. Discovery was stayed pursuant to CCP § 425.16 when this motion was filed on November 14, 2019.

Objection No. 12, Terri Cavana declaration ¶ 11 –Hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 13, Terri Cavana declaration ¶ 11 –Hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 14, Terri Cavana declaration ¶ 12 –Hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 15, Terri Cavana declaration ¶ 12 –Vague. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 16, Joe Cavana declaration ¶ 4 – Layered hearsay. Lacks foundation and calls for speculation. Irrelevant. Assumes facts not in evidence. Objection sustained.

Objection No. 17, Joe Cavana declaration ¶ 4 – Layered hearsay. Lacks foundation and calls for speculation. Irrelevant. Assumes facts not in evidence. Objection sustained.

Objection No. 18, Joe Cavana declaration ¶ 6 – Layered hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 19, Joe Cavana declaration ¶ 7 – Hearsay. Lacks foundation and calls for speculation. Irrelevant. Argumentative. Objection sustained.

Objection No. 20, Joe Cavana declaration ¶ 7 – Hearsay. Lacks foundation and calls for speculation. Vague and ambiguous. Argumentative. Objection sustained.

Objection No. 21, Joe Cavana declaration ¶ 9 – Hearsay. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 22, Joe Cavana declaration ¶ 10 – Vague and ambiguous. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 23, Joe Cavana declaration ¶ 10 – Vague and ambiguous. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 24, Joe Cavana declaration ¶ 11 – Vague and ambiguous. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 25, Joe Cavana declaration ¶ 11 – Vague and ambiguous. Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 26, Joe Cavana declaration ¶ 11 – Vague and ambiguous. Lacks foundation and calls for speculation. Irrelevant. Argumentative. Objection sustained.

Objection No. 27, Chelsea Cavana declaration ¶ 3 – Hearsay. Lack of foundation for authentication of Exhibit A (Facebook post), Exhibit A speaks for itself. Lacks foundation and calls for speculation. Argumentative. Objection sustained.

Objection No. 28, Chelsea Cavana declaration ¶ 5.c. –Lacks foundation and calls for speculation. Irrelevant. Objection sustained.

Objection No. 29, Chelsea Cavana declaration ¶ 5.c. – Hearsay. Lack of foundation for authentication of Exhibit A (Facebook post), Exhibit A speaks for itself. Lacks foundation and calls for speculation. Argumentative. Objection sustained.

Objection No. 30, Chelsea Cavana declaration ¶ 5.c. – Hearsay. Lack of foundation for authentication of Exhibit A (Facebook post), Exhibit A speaks for itself. Lacks foundation and calls for speculation. Irrelevant. Assumes facts. Objection sustained.

CCP §425.16 provides in relevant part: “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 or 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.” This section is to be construed *broadly*. CCP §425.16 § 425.16(a). (Emphasis added)

The court's determination of an anti-SLAPP motion is a two-step process. First, the court determines if the party moving to strike a cause of action has met its initial burden to show that the cause of action arises from an act in furtherance of the moving party's right of petition or free speech. Second, if the court determines that showing has been made, the court determines whether the opposing party has demonstrated a probability of prevailing on the claim. *Navelier v. Sletten* (2002) 29 Cal.4th 82, 88.

Facebook Post

The moving party alleges the unopposed evidence demonstrates the subject matter of the alleged Facebook post concerns a matter of public interest pursuant to 425.16(e)(3). The post was made in a public forum (Facebook) and the subject of the post, CAVANAS restaurant, is a local business, which Plaintiffs' are known to own and run. (Terri Cavana Decl., ¶ 13).

“It cannot be disputed that Facebook’s website and the Facebook pages at issue are ‘public forums,’ as they are accessible to anyone who consents to Facebook’s Terms.” This, of course, is consistent with the law establishing that “[w]eb sites accessible to the public ... are ‘public forums’ for purposes of the anti-SLAPP statute.” *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41.

“Like the SLAPP statute itself, the question whether something is an issue of public interest must be “‘construed broadly.’ ” (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23, see *Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, 716) An “‘issue of public interest’” is “‘any issue in which the public is interested.’ ” (*Rivera*, at p. 716, quoting *Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042) A matter of “ ‘public interest should be something of concern to a substantial number of people. [Citation.] ... [T]here should be some degree of closeness between the challenged statements and the asserted public interest [citation]’ [T]he focus of the speaker’s conduct should be the public interest” [Citation.] Nevertheless, it may encompass activity between private people.’ *Rivera*, supra, 187 Cal.App.4th at p. 716.

The Facebook post meets this standard, which is to be construed broadly. The contents of the post were in reference to a local business (CAVANAS) in Sutter Creek and that the owners’ daughter at that business would not honor a gift card because it had 1) been signed by ANNA, who no longer worked there and 2) CAVANAS had changed from paper gift cards. Many of the comments by the posters below the original post include reference to California Law regarding gift cards, the Better Business Bureau and other comments about the customer service practices of businesses. (Terri Cavana Decl., Exh A)

“We look for ‘the *principal thrust* or *gravamen* of the plaintiff’s cause of action.’ (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188) We ‘do not evaluate the first prong of the anti-SLAPP test solely through the lens of a plaintiff’s cause of action.’ (*Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 679) The ‘critical consideration’ is what the cause of action is ‘based on.’ (*Navellier, supra*, 29 Cal.4th at p. 89)” (*Hecimovich, supra*, 203 Cal.App.4th at pp. 464–465, 137)

The underlying cause(s) of action are based on INGRAM’s alleged false statements about CAVANAS honoring gift certificates, which can be broadly construed as a matter of public interest.

“Consumer information, however, at least when it affects a large number of persons, also generally is viewed as information concerning a matter of public interest. *Paradise Hills Associates v. Procel* (1991) 235 Cal.App.3d 1528, although not itself a [section 425.16](#) case, noted that the First Amendment protected a consumer’s statements about the quality of a seller’s products and service and her unhappiness with them, finding, in part, that the statements concerned a matter of public interest. “Courts have recognized the importance of the public’s access to consumer information. ‘The growth of “consumerism” in the United States is a matter of common knowledge. Members of the public have recognized their roles as consumers and through concerted activities, both private and public, have attempted to improve their ... positions vis-à-vis the supplies [sic] and manufacturers of consumer goods. They clearly have an interest in matters which affect their roles as consumers, and peaceful activities, such as plaintiffs’, which inform them about such matters are protected by the First Amendment.’ [Citation.]” (*Id.* at p. 1544; and see *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.*, supra, 110 Cal.App.4th 26, 34, citing *Paradise Hills Associates v. Procel*, supra, 235 Cal.App.3d 1528, on this point in connection with a special motion to strike brought under [section 425.16](#).)

Overtime & Breaks

INGRAM is also alleged to have made oral statements to others that Plaintiffs’ “do not pay our employees overtime or give them work breaks as required by law”. (Compl. ¶ 15) Neither the underlying Complaint nor the opposition provides

any context or detail of these oral statements, however, assuming INGRAM did make such statements to others, though none are referenced verbatim.

19-CVH-11155 STIMPSON, JESSICA VS. TOZI, SABRINA

Without having more information, such statements, broadly construed, appear to fall under CCP §§ 425.16(e)(3) and 425.16(e)(4) . The statements appear to be in connection with or pertain to the constitutional right of free speech in connection with a public issue or an issue of public interest.

The moving party’s argument that abuses of the overtime and meal and rest break law specifically in reference to tipped restaurant employees is a matter of public interest and publication is persuasive. Overtime and meal periods are addressed at length on the State of California, Department of Industrial Relations websites and other sites, topical to the restaurant industry. (Fowler Decl. ¶¶ 12, 14)

The moving party has met its burden to show that all three causes of action in the Complaint arose out of protected activity.

Prevailing on the Merits

Because the moving party met its initial burden to show that all three causes of action in the complaint arose out of protected activity, the burden shifts to show a probability of prevailing. *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 819-20; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 67; *Navelier v. Sletten* (2002) 29 Cal. 4th 82, 88.

To meet this burden, Plaintiffs must demonstrate its Complaint is legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. The burden on Plaintiffs is similar to the standard used in determining motions for nonsuit, directed verdict, or summary judgment. Plaintiffs need only establish that his or her claim has “minimal merit” to avoid being stricken pursuant to section 425.16. Plaintiffs must meet this burden with competent and admissible evidence. *Chabak v.*

Monroy (2007) 154 Cal. App. 4th 1502, 1512-13; *Salma v. Capon* (2008) 161 Cal. App. 4th 1275, 1289.

Plaintiffs fail to meet their burden with competent and admissible evidence and simply do not address the burden at all in their opposition, focusing only on the first prong of the analysis. Plaintiff lays no foundation for admissibility of the Facebook post and the parties generally agree that Chelsea Cavana would not accept the gift card from Lana Smalling, at the time it was presented, due to ANNA’s signature being on it. Further, Plaintiffs offer only inadmissible evidence of the wage and hour allegations, including layered hearsay.

The moving party’s Special Motion to Strike Complaint Pursuant to Code of Civil Procedure Section 425.13 is GRANTED.

The moving party is ordered to prepare a judgment and dismissal conforming to the court’s order within 10 days of the hearing date.

Unless a hearing is requested, this ruling is effective immediately.

CIVIL MISCELLANEOUS MOTION - DEFENDANTS

TENTATIVE RULING:

No tentative ruling is issued.

Parties are order to appear and produce evidence for the court to consider at the time of the hearing.
