



TENTATIVE RULING:

Request for Judicial Notice

Moving Party requests the court take judicial notice of the following:

1. First Amended Complaint filed in Amador Case No. 21 CV 12036 pursuant to Evidence Code §§ 452(d).
2. Defendants' Answer filed June 4, 2021, pursuant to Evidence Code §§ 452(d).
3. The January 23, 2019 Memorandum of Understanding between the District and the County pursuant to Evidence Code §§ 452(b)(g)(h). (Defendant's Accompanying Statement of Evidence, Exh. 11.)
4. At all times relevant, Dr. Robert Russell was Superintendent of the Amador County Office of Education pursuant to Evidence Code §§ 452(g)(h).
5. At all times relevant, Dr. Amy Slavensky was Superintendent of the Amador County Unified School District pursuant to Evidence Code §§ 452(g)(h).
6. On April 28, 2020, Plaintiff filed a complaint alleging sexual harassment against Dr. Russell with the County [,]" pursuant to Evidence Code § 451(e). (Defendant's Accompanying Statement of Evidence, Exh. 14.)
7. The common meaning of the term "incestuous" from the Cambridge English Dictionary as "(1) involving incest; and (2) involving only a close or limited group of people, who do not communicate or do business with people outside the group[,]" pursuant to Evidence Code § 451(e) (Defendant's Accompanying Statement of Evidence, Exh. 15.)
8. The common meaning of the term "LOL" from the Cambridge English Dictionary as "Laughing out loud[,]" pursuant to Evidence Code § 451(e). (Defendant's Accompanying Statement of Evidence, Exh. 15.)
9. That COVID-19 safety is an issue of public interest within the meaning of Code of Civil Procedure section 425.16 pursuant to Evidence Code §§ 452(g)(h).

Moving party's requests for judicial notice are GRANTED.

Plaintiff's Dismissal:

"After a plaintiff voluntarily dismisses its complaint while an anti-strategic lawsuit against public participation (SLAPP) motion is pending, a determination of whether the defendant would have prevailed on its motion to strike is an essential prerequisite to an award of attorney fees and costs under the anti-SLAPP statute". (Tourgeman v. Nelson & Kennard (2014) 222 Cal.App.4th 1447.)

"A defendant who is voluntarily dismissed, with or without prejudice, after filing an anti-strategic lawsuit against public participation (SLAPP) motion, is nevertheless entitled to have the merits of such motion heard as a predicate to a determination of the defendant's motion for attorney's fees and costs under the anti-SLAPP statute. (South Sutter, LLC v. LJ Sutter Partners, L.P. (2011) 193 Cal.App.4th 634.)

Defendants are entitled to have the merits of this motion heard to determine whether or not they may proceed with an attorney fee motion.

Code Civ. Proc. §425.16:

Code Civ. Proc. §425.16(b)(1) 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. (Cal. Code Civ. Proc. § 425.16(a))

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)

Protected Speech :

There are four categories of protected speech for an anti-SLAPP motion (Code Civ. Proc. § 425.16(e)):

- (1) Statements made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
- (2) Statements 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) Statements 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.

The court finds that the moving party has met their initial burden to show that the causes of action in Plaintiff's First Amended Complaint arise from an act in furtherance of the moving party's right of petition or free speech.

Thus, the burden shifts to the opposing party to demonstrate a probability of prevailing on the claim. O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC (2019) 42 Cal.App.5th 546, 574 states, “to satisfy the second prong—the probability of prevailing—the plaintiff must demonstrate that the complaint is legally sufficient and supported by a prima facie showing of facts to support a favorable judgment if the evidence submitted by the plaintiff is accepted . The trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant . Although “the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.”” citing *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 962–963. The party defending against an anti- SLAPP motion need only show that the claim has “minimal merit” to survive an anti-SLAPP motion. (Navellier, supra, 29 Cal.4th at pp. 93–94.) The “minimal merit” aspect has been described as “sufficient prima facie showing”... “[S]ection 425.16 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 causes of action as to which the plaintiff is unable to show a probability of prevailing on the merits (§ 425.16, subd. (b)), a provision we have read as ‘requiring the court to determine only if the plaintiff has stated and substantiated a legally sufficient claim’ [citation].” (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 63 “ ‘Put another way, the plaintiff “must demonstrate that the complaint is both 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.” “[Citations.]” (Navellier, supra, 29 Cal.4th at pp. 88–89.) The motion is unopposed.

Defendant's Special Motion to Strike is GRANTED. The court will sign the proposed order.

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.