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14 **SUPERIOR COURT OF CALIFORNIA**
15 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

16 SAREEN INCORPORATED d/b/a MEL-O-DEE
17 ICE CREAM, a California corporation

18 Plaintiff,

19 v.

20 CAROLINA VEGA, an individual; LISETTE MAR-
21 TINEZ GUTIERREZ, an individual, and DOES 1
22 through 100, inclusive,

23 Defendants.

Case No. 30-2018-00997742-CU-DF-CJC

**Notice of Entry of Order on Defendants' Special
Motion to Strike Pursuant to Civil Code of Proce-
dure § 425.16**

Date: September 28, 2018
Time: 9:30 a.m.
Department: C16
Reservation No. 72848250

Assigned to the Hon. James J. Di Cesare

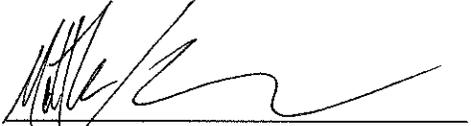
Complaint Filed: June 7, 2018

1 To the Court, all parties, and their attorneys of record: please take notice that on September 28, 2018 at
2 9:30 a.m. in Department C16 of the above-entitled Court, located at 700 Civic Center Drive West, Santa Ana,
3 California, the Honorable James Di Cesare presiding, the Court heard Defendants Carolina Vega and Lisette
4 Martinez Gutierrez's Special Motion to Strike pursuant to California Code of Civil Procedure § 425.16. Nich-
5 olas Meyers appeared for Plaintiff Sareen Incorporated, doing business as Mel-O-Dee Ice Cream, and Mat-
6 thew Strugar and Rachel Steinback appeared for Defendants Lisette Martinez Gutierrez and Carolina Vega.

7 After considering the papers filed by the parties and argument at the hearing, the Court granted Defend-
8 ants' Special Motion to Strike, adopting its tentative ruling which is attached hereto as Exhibit A, and ordered
9 Defendants to give notice.

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Dated: October 1, 2018



Matthew Strugar
Rachel Steinback
Attorneys for Defendants

SAREEN
INCORPORATED
VS. VEGA

2018-00997742

1.MOTION FOR SLAPP

Defendants Carolina Vega and Lisette Martinez Gutierrez's ("Defendants" together) Special Motion to Strike Pursuant to C.C.P. 425.16, is Granted.

To determine if the Complaint is subject to a special motion to strike, Plaintiff's claim must 1) arise out of defendants' protected speech or petitioning; and 2) lack even minimal merit. *Navellier v. Sletten* (2002) 29 C4th 82, 88-89; *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 C4th 728, 733.

"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 Constitution or the 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." C.C.P. § 425.16(b)(1).

An "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: . . . (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 free speech in connection with a public issue or an issue of public interest." C.C.P. § 425.16.

"[P]ublic interest' within the meaning of the anti-SLAPP statute has been broadly defined to include. . . '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.'" [Citations omitted] "[I]n cases where the issue is not of interest to the public at large, but rather to a limited, but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance." *Colyear v. Rolling Hills Cmty. Assn. of Rancho Palos Verdes*, 9 Cal. App. 5th 119, 131 (Ct. App. 2017) ("Colyear"), as modified on denial of reh'g (Mar. 23, 2017), review denied (June 14, 2017).

A "public forum" for purposes of the anti-SLAPP statute includes websites accessible to the public. *Nygaard, Inc. v. Uusi-Kerttula* (2008) 159 Cal. App. 4th 1027, 1039.

In the matter before the Court, the Defendants published video and statements about non-party Sarin. Defendants allege that statements made were made regarding issues of "public interest," namely the "intense public debate about the over-policing of people of color

carrying out normal life activities” and/or “xenophobia and marginalization of Latinos in our community.” Motion, 4:16-5:2; Gutierrez Decl., Ex. C. Plaintiff SAREEN INCORPORATED d/b/a MEL-O-DEE ICE CREAM (“Plaintiff”) contends that the statements were made about an individual involved in a private dispute, which Plaintiff contends is not an area of public interest. Opposition, 4:20-9:3. However, in looking at the issues as framed by both sides, the Court notes that both involve areas of public interest.

Defendants’ argument, erroneous or not, involves the issues of xenophobia, immigration, jobs, and over-policing of people of color/Latinos, which are issues of public interest. When looking at the disagreement between Sarin and the vendor, that happened in a crowded public park on Memorial Day and which was apparently active enough to draw the attention of at least several people, through the lens of a business disagreement as Plaintiff suggests, issues of public interest also present themselves. Those issues of public interest include, but are not limited to, 1) business and food permits required by the County; 2) the right to sell foodstuffs within County public parks; 3) the County’s allocating “exclusive licensing” to one individual/entity versus multiple entities; 4) business competition; and 5) potential health and safety issues pertaining to food sales. Although the comments posted by the Defendants in this matter appear to be along the vein of what Defendants are alleging, even if they were to be viewed in the light Plaintiff suggests, they are still issues of public interest. Therefore, the subject matter of this suit, regardless of which light it is view under, arise out of defendants’ protected speech.

As the first step of C.C.P. § 425.16 has been met, it then falls upon Plaintiff to show there is a probability that it will succeed on its causes of action. Here, Plaintiff will be unable to do so.

The sole plaintiff in this matter is SAREEN INCORPORATED d/b/a MEL-O-DEE ICE CREAM. None of the statements made by either of the Defendants refer to Plaintiff in any way or form. Sarin Decl, Exs. 1 & 2. Additionally, neither of the videos refer to Plaintiff in any way or form. Finally, Defendants attest that they were wholly unaware of Plaintiff prior to this lawsuit, and were also unaware that Sarin was a “representative” of Plaintiff. Vega ¶¶ 14-15; Gutierrez ¶¶ 17-18. Although statements made by other individuals whom are not parties to this lawsuit refer to Plaintiff, again, there where no statements made by either Defendant about Plaintiff. As such, Plaintiff is not a real party in interest to this lawsuit.

The case cited by Plaintiff to support its standing in this matter actually proves the opposite.

In *Palm Springs*, “[a] tennis club [PSTC] brought a libel action against two individuals arising from their published statements in campaign

literature concerning the club's president and chairman of the board." *Id.* The Court of Appeal affirmed the district court's ruling dismissing the lawsuit due to PSTC not being a real party in interest, holding, "that the ostensibly defamatory statements could not be reasonably interpreted as having been made against the corporate plaintiff under any theory of libel. Words written about a corporate officer give no right of action to the corporation unless spoken or written in direct relation to the trade or business of the corporation." *Id.*

The defendant (Rangel) in *Palm Springs* published as part of a campaign flyer for an election concerning PTSC's board members, documents that were alleged to be published minutes from a PSTC board meeting wherein it was stated of Mr. Low, the President of PSTC:

"Low attempts to assault Mrs. Rangel. He repeatedly raises his voice and insults Dr. Gan, the only female Board Member." *Id.*, at 4.

Although PSTC supplied the true minutes of the meeting showing none of the above was actually a part of the minutes, thereby proving the falsity of the statement, the Court still ruled against PSTC stating that, "If no reasonable reader of a publication could impute to a statement therein a meaning which tended to harm the reputation of the plaintiff in any of the respects enumerated in Civil Code section 45, then there is no libel at all." *Id.*, at 5. "[I]f language written about a corporate officer cannot be interpreted as saying anything about the way that officer performs his or her duties and responsibilities as an officer of the corporation, so as to have a natural tendency to affect the corporation disadvantageously in its business, the corporation has no right of action. Stated another way, words written about a corporate officer give no right of action to the corporation unless spoken or written in direct relation to the trade or business of the corporation." *Id.*, at 6.

Further, "the specific statements complained of do not implicate any relationship between PSTC and Low at the time the bad acts were allegedly committed. Given their context, we cannot envision how any reasonable reader could ascribe from these statements any direct relationship to PSTC's trade or business." *Id.* Finally, "[h]aving determined that the average reader could not understand these allegedly libelous statements to have been made in direct relation to the trade [] or business of PSTC on their face, we conclude that plaintiff has not pled a case of libel per se and must agree with the trial court that under the circumstances, PSTC cannot do so." *Id.*, at 6-7.

As in *Palm Springs*, in reviewing the posted statements that were made by Defendants in the present matter, the average reader would not understand the statements were made in direct relation to the trade or business of the Plaintiff in the present matter. Therefore, Plaintiff is not a real party in interest in this suit.

Plaintiff's individual causes of action also fail.

1) Libel

"Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." Civ. Code § 45.

As noted *supra*, none of Defendants' statements were actually made about Plaintiff and Plaintiff therefore lacks standing to bring the cause of action of Libel.

2) Trade Libel

"Trade libel is the publication of matter disparaging the quality of another's property, which the publisher should recognize is likely to cause pecuniary loss to the owner. [Citation.] The tort encompasses 'all false statements concerning the quality of services or product of a business which are intended to cause that business financial harm and in fact do so.' [Citation.] [¶] To constitute trade libel, a statement must be false." *City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 376.

Again, as noted, the statements posted by the Defendants were about Sarin only, and state nothing about Plaintiff or the quality of its services or products. Plaintiff's cause of action for Trade Libel would therefore fail.

3) False Light

For false light to "be actionable, the false light in which the *plaintiff is placed* must be highly offensive to a reasonable person. Although it is not necessary that the plaintiff be defamed, publicity placing one in a highly offensive false light will in most cases be defamatory as well." [Emphasis added.] *Fellows v. National Enquirer* (1986) 42 Cal.3d 234, 238-239.

The statements posted by the Defendants were about Sarin only, not about Plaintiff. Plaintiff was only later identified by other individuals who sought out, or happened to know, additional information about Sarin and Plaintiff. Defendants themselves did not put Plaintiff in a false light as they shown no light upon Plaintiff at all. Plaintiff also has no standing to sue for alleged defamatory statements made about a non-party.

Plaintiff's cause of action for False Light would also fail.

4) Intentional Interference With Prospective Economic Advantage

"The five elements for intentional interference with prospective economic advantage are: (1) [a]n economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." *Youst v. Longo* (1987) 43 Cal.3d 64, 71, fn. 6.

Plaintiff will also not be able to prove its cause of action for Intentional Interference With Prospective Economic Advantage ("IIPEA"). As to the second element, Defendants both contend that they were not aware of Plaintiff at the time they posted their comments, had never seen Sarin previously, and were not aware of any relationship between Sarin and Plaintiff. Vega ¶¶ 14-15; Gutierrez ¶¶ 17-18. There is also no indication that Defendants were aware of any economic relationship Plaintiff had with any other individuals. As to the third element, nothing in the statements posted by Defendants identifies Plaintiff, so none of the statements or acts by Defendants could even be construed as designed to disrupt Plaintiff's business. As Plaintiff will be unable to establish two of the elements of IIPEA, their cause of action for IIPEA will fail.

Defendants Motion to Strike the Complaint pursuant to the anti-SLAPP is therefore be Granted.

Defendants to give notice.

1 **Proof of Service**

2 I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a
3 party to the within action. My business address is 3435 Wilshire Blvd., Suite 2910, Los Angeles, CA 90010.

4 On October 1, 2018, I served the within document(s) described as:

5 **Notice of Entry of Order on Defendants' Special Motion to Strike Pursuant to Civil Code of
6 Procedure § 425.16**

7 on the interested parties in this action as stated below:

8 Nicholas Myers
9 Ivan Cisneros
10 Clifford White
11 The Myers Law Group
12 4 Executive Circle, Suite 100
13 Irvine, CA 92614

14 by United States mail. I enclosed the documents in a sealed envelope of package addressed to the
15 persons listed above. I placed the envelope for collection and mailing, following our ordinary business prac-
16 tices. I am readily familiar with this business's practice for collection and processing correspondence for
17 mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the or-
18 dinary course of business with the United States Postal Service, in a seal envelope with postage fully prepaid.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
20 and correct.

21 Executed on October 1, 2018 at Los Angeles, California.

22 Matthew Strugar
23 (print name)

24 
25 (Signature)