THE ANTI-SLAPP MOTION-SCHNEIDER NATIONAL, INC., V. WALTER L. ELLIS

SCHNEIDER files Frivolous, Malicious, lawsuits that does not state a cause of action.

Filed primarily to scare, intimidate, and threaten Defendant Walter L. Ellis into not freely exercising his First and Fourteenth Amendment rights, i. e., publicizing his events on his websites detailing what happened.

WALTER L. ELLIS
23485 Village Walk Pl., #218F
Murrieta, CA., 92562

In Propia Persona.
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO.
SCHNEIDER NATIONAL, INC., a Wisconsin Corporation; SCHNEIDER CARRIERS, INC., a Nevada corporation; JEFF AMES, an individual,

Plaintiffs,
v.
WALTER L. ELLIS, and DOES 1-10, inclusive,

Defendants. Case No.: CIVDS 906308

NOTICE OF SPECIAL MOTION TO STRIKE COMPLAINT OF PLAINTIFFS, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, AND DECLARATION OF WALTER L. ELLIS.

Motion Date: Dec. 9, 2009.
Time: 8:30 a. m.
Dept.: S32.
Discovery Cut-Off: None.
Motion Cut-Off: None.
Trial Date: None.

TO THE PLAINTIFFS NAMED ABOVE, AND TO CHRISTOPHER S. MAILE, NORMAN L. PEARL, AND DAVID S. BINDER, THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on December 9, 2009, at 8:30 a. m., or as soon thereafter as the matter may be heard, in Department S32 of the above-entitled Court, located at 303 W. 3rd St., San Bernardino, California, Defendant Walter L. Ellis will specially move to strike and dismiss the original Complaint filed by Plaintiffs and request sanctions from Plaintiffs and their attorneys on the bases that the Complaint is:

a. Frivolous.
b. Malicious.
c. Does not state a cause of action.
d. Filed primarily to scare, intimidate, and threaten Defendant into not freely exercising his First and Fourteenth Amendment rights, i. e., publicizing his events on his websites detailing what happened to Defendant when Plaintiffs caused his personal injuries by assaulting and battering Defendant, and falsely imprisoned him, WHICH ARE IN FACT TRUE, and not “scurrilous” or false, so as to play corporate denial games.
e. Does not state a valid claim of defamation brought by a publicly-traded corporation.
f. Lacks specific allegations against Defendant for defamation, unlawful use of trademark, and illegal taping of conversations.
g. Filed solely to prevent Defendant for suing for discrimination, assault, and unfair competition, and to diminish Defendant’s recovery in his related worker’s compensation case.

This Special Motion will be based on this Notice of Motion, the Declaration of Walter L. Ellis, the Memorandum of Points and Authorities attached hereto, the frivolous Complaint on file herein, the lack of proof presented by Plaintiffs, the other records and papers on file herein, and on any other oral and documentary evidence that may be presented at the hearing of the Special Motion.

Dated this 20th day of October, 2009

By:
WALTER L. ELLIS
23485 Village Walk Pl., #218F
Murrieta, CA., 92562

In Propia Persona.

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MEMORANDUM OF POINTS AND AUTHORITIES.

I. INTRODUCTION.

This is the story of where Defendant came back to the terminal to work on his logs at the terminal. When Defendant was told by Jeff Ames and Luke Simendinger to come to a room to discuss the logs, and then Defendant was kept in the room. When Defendant attempted to leave the Fontana terminal, Brandon Trahulchavee BRUTALLY ATTACKED DEFENDANT FROM BEHIND, PULLED DEFENDANT'S RIGHT ARM, AND INJURED DEFENDANTS NO. 9 RIB, HIS RIGHT KNEE, AND CAUSED OTHER INJURIES TO DEFENDANT.

On top of this CORPORATE FASCISM, Plaintiffs do not want Defendant to publicize the events on his websites, and filed this Action for damages, punitive damages, and injunctive relief, thereby depriving Defendant of his freedoms of speech, the press, and to petition to redress their grievances by filing this frivolous and malicious lawsuit. The lawsuit is improper, without merit, and filed to further harass this Defendant. Because it arises from this Defendant's exercise of his First Amendment right of speech and press (by publishing the events on his websites), this lawsuit is subject to a special motion to strike under Code of Civil Procedure section 425.16 , which should be granted for the reasons set forth below. This Defendant will ask that this Court not only dismiss this suit, but also grant all attorneys fees and costs incurred in this action.

II. THIS SPECIAL MOTION TO STRIKE IS AUTHORIZED BY SECTION 425.16.

Recognizing the potential chilling effect of lawsuits brought primarily for the purpose of curbing the valid exercise of the constitutional rights of petition or freedom of speech , the California Legislature last year added section 425.16 to the Code of Civil Procedure. Effective January 1, 1993, the section specifies that an action arising from a defendant's exercise of the constitutional right to petition the government shall be subject to a motion to strike unless the plaintiff can show a "probability" of success on the merits.

Furthermore, California's Legislature has left no doubt about the proper interpretation of the anti-SLAPP statute, Section 425.16. In a bill explicitly intended to overrule the Court of Appeal's decision in three earlier cases, the Legislature amended the statute in 1997 to clarify that it "shall be construed broadly." (Section 425.16(a), as amended by Stats. 1997, c. 277.) The Legislature has made this Court's job easy. This Court need only follow the plain language of the statute and the unmistakable legislative intent clarifying that it be construed broadly, a clarification that under settled principles is applicable to this case.

III. THIS MOTION SHOULD BE GRANTED BECAUSE PLAINTIFFS CANNOT DEMONSTRATE A PROBABILITY THAT THEY WILL PREVAIL ON THEIR CLAIMS.

As demonstrated below, Plaintiffs cannot meet its burden of establishing a probability that it will prevail on the merits of his claims, as required by section 425.16(b). Therefore, this special motion to strike should be granted.

IV. DEFENDANT'S ISSUES AS POSTED ON HIS WEBSITES, DEAL WITH TRUCK DRIVER AND HIGHWAY SAFETY, MATTERS OF PUBLIC INTEREST.

As previously noted, section 425.16, subdivision (e) defines the types of acts covered by the SLAPP law, and includes four illustrative sub-parts. Specifically, section 425.16(e)(3) and (e)(4) provide that acts falling within the statute's protection include: "(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; (4) or 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."

As also noted, the statute expressly mandates that it is to be construed broadly. Indeed, even before that mandate, what constitutes a matter of public interest has been broadly construed in the SLAPP context. Illustrative is the statement by the Court of Appeal in Church of Scientology v. Wollersheim (1996) 42

Cal.App.4th 628, 650-651:

“Although matters of public interest include legislative and governmental activities, they may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals. Examples are product liability suits, real estate or investment scams, etc. The record reflects the fact that the Church [of Scientology] is a matter of public interest, as evidenced by media coverage and the extent of the Church's membership and assetsSimilarly, Damon v. Ocean Hills Journalism Club, (1999) 85 Cal.App.4th 468, 479, held that:

"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 government entity."

(Also see Sipple v. Foundation for National Progress (1999) 71 Cal.App.4th 226, 238-240 [statements that a nationally-known political consultant had physically and verbally abused his former wives determined to be a matter of public interest]; cf. Nicosia v. Rooy (N.D.Cal.1999) 72 F.Supp.2d 1093, 1110 [critical statements about biographer of Jack Kerouac deemed to involve a matter of public interest].)

Most recently, in M.G. v. Time Warner, Inc. (2001) 89 Cal.App.4th 623, 628-629, the Court of Appeal held that section 425.16 applied to a photograph of a Little League team published in Sports Illustrated and then shown on an HBO television show, which photograph was used to illustrate stories about adult coaches who sexually molest youths playing team sports. The Court held that the photograph concerned a broad public issue, noting: "Although plaintiffs try to characterize the 'public issue' involved as being limited to the narrow question of the identity of the molestation victims, that definition is too restrictive. The broad topic of the article and the program was not whether a particular child was molested but rather the general topic of child molestation in youth sports, an issue which, like domestic violence, is significant and of public interest." (89 Cal.App.4th at 629.)

Applying the language and rationale of the foregoing authorities here, the publications upon which Plaintiffs' defamation claims rest concern an issue of public interest.

The issue which Plaintiffs and their critics address -- the report that Defendant was brutally attacked, falsely imprisoned, and Schneider violating Federal transportation laws -- concerns a highly controversial matter which is of significant public importance and interest, affecting the health of millions of people and involving billions of dollars. Moreover, by maintaining their numerous websites and publishing widely about these issues, plaintiffs themselves must believe that the public is interested in their criticisms of their business practices. Finally, the substantial publicity received by these plaintiffs is more evidence that the issue is a matter of public interest.

V. DEFENDANT'S POSTINGS ARE PROTECTED BY THE FEDERAL COMMUNICATIONS DECENCY ACT.

The Complaint alleges that Defendant wrote false and "scurrilous" statements his websites, mostly published to "Blogger"-style Blogs (derivative of the term "web log"). Plaintiffs' lawsuit has not specifically pleaded why the postings were false and "scurrilous"

47 U.S.C. §230 is part of the Communications Decency Act enacted by Congress in 1996 ("the Act"), and includes provisions creating immunity for certain communications on the Internet. As pertinent here, 47 U.S.C. §230(c)(1) provides that: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." And Section 230(e)(3) provides in relevant part: "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

These protections for covered communications were enacted "to promote the continued development of the Internet and other interactive computer services and other interactive media," and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer

services, unfettered by Federal or State regulation." (47 U.S.C. 230(b)(1),(2).) "[B]y its plain language, § 230[(c)(1)] creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." (Zeran v. American Online (4th Cir.1997) 129 F.3d 327, 330, cited with approval in Kathleen R. v. City of Livermore (2001) 87 Cal.App.4 th 684, 692.) Thus, § 230(c)(1) provides immunity to users, as well as providers, of interactive computer services.

Plaintiffs would contend that to apply Section 230 would be contrary to one of the purposes of the Community Decency Act, specifically to ensure vigorous enforcement of federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer. This argument would be without merit, because §§ 230(c)(1) and (e)(3) merely provide for immunity from civil liability, and the Act expressly provides that it has no effect on federal criminal statutes. (47 USC §230(e)(1).)

In sum and in short, no plaintiff has any claim against Defendant. Plaintiffs can show no statement of fact, false or otherwise. But assuming arguendo Plaintiffs could point to a statement that would support a libel claim, their claims would fail because they are public figures.

VI. PLAINTIFFS ARE A PUBLICLY-TRADED CORPORATION, NOT PRIVATE PERSONS, AND MUST PLEAD AND PROVE “ACTUAL MALICE”.

“…you asked for it!” (Esai Morales, La Bamba.)

Plaintiffs love to subjugate minorities, as well as sticking it to their workers by putting them needlessly in debt. Plaintiffs love to make asses and goons out of themselves. They cannot be in “high esteem” by the public, and then turn around and allege they are private persons. They cannot have their cake and eat it too. Sipple v. Foundation for National Progress (Cal. 2 App. Dist. 1999) 71 Cal.App.4th 226, 83 Cal.Rptr.2d 677, states that:

“In order to prevail on a libel action, public figures must prove, by clear and convincing evidence, that the libelous statement was made with actual malice -- with knowledge that it was false or with reckless disregard for the truth. (Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 253.) There are two types of public figures: ‘The first is the “all purpose” public figure who has “achieve[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts.” The second category is that of the “limited purpose” or “vortex” public figure, an individual who “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.”’ (Ibid.) Thus, one who undertakes a voluntary act through which he seeks to influence the resolution of the public issues involved is a public figure. (Id., at pp. 254-255.) The limited purpose public figure ‘loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to his role in a public controversy.’ (Id., at pp. 253-254.)

“The record shows that appellant is a nationally known political strategist, that he has been profiled, quoted, interviewed, and has used the media for his professional advantage many times, and that he represents national leaders. His campaign strategy includes the topics of violence against women, crime, health care, illegal immigration, and the death penalty. Indeed, the record shows that he is one of the experts to whom the media turns for comment, and that he has publicly commented on the strengths and weaknesses of political candidates. We are not convinced by appellant's argument that ‘because he is told what campaign themes to develop, it would be the height of unfairness to conclude that he is a public figure.’ He also minimizes the notoriety he has achieved through exposure in the media, claiming that the press has only sought his observations concerning the relative political impact of particular issues. The fact that the media seeks his observations on the political climate, political issues, and national figures, and that he has sought out media attention as exemplified by the press conference he called after he left the Dole campaign does not lend credibility to his claim of anonymity. We conclude that appellant is a public figure. (Maheu v. CBS, Inc. (1988) 201 Cal.App.3d 662, 675 [individuals closely associated with public figures, functioning as alter ego and personal representative to the world, are themselves public figures]; Rudnick v. McMillan, supra, 25 Cal.App.4th 1183, 1190 [person can become limited public figure by discussing matter with the press or by being quoted by the press]; Live Oak Publishing Co. v. Cohagan (1991) 234 Cal.App.3d 1277, 1290 [managers of publishing company are public figures because they are intimately involved in public political debate in their community and the community has a legitimate and substantial interest in their conduct regarding the operation of the newspaper].)

“Regardless of whether he is an all purpose public figure, or a limited purpose public figure, appellant has failed to show by clear and convincing evidence that the article was published with malice. Appellant simply failed to show that respondents entertained serious doubts as to the truth of the publication. (Reader's Digest Assn. v. Superior Court, supra, 37 Cal.3d 244, 256.) He points to his declaration as evidence that respondents recklessly disregarded the truth or falsity of the statements about him. In his declaration, he states that Blow ignored the following in his article: that the abuse allegations by Regina and Deborah never came up until the custody hearing; ‘the fact that [appellant] spent close to $300,000.00 and voluntarily exposed [himself] to a proceeding where [he] knew that these kinds of false assertions are frequently made;’ ‘the fact that the reliability of the photograph of Regina's bruises was seriously questioned at the custody hearing;’ that the judge and guardian ad litem concluded that Evan's best interests would be served by placement with appellant; that an expert testified Regina and Deborah' s behavior was not consistent with abused spouses; that appellant was aiding a competitor to Deborah's brother in his race for attorney general; and that Regina had sent a letter to Senator Dole threatening to expose appellant's spousal abuse.“

In Sipple, plaintiff, an advertising executive whose clients included former Governor Pete Wilson of California, former Governor Jim Edgar of Illinois, then-Governor George W. Bush of Texas, former Senator Bob Dole, Senator Orrin Hatch and the late-Senator John Chaffee; sued the Mother Jones magazine for libel after that magazine published a revealing article on plaintiff’s controversial family law case. Here, in the instant case Plaintiffs are a publicly-traded corporation. No matter what good and bad they done, they are a public, and opportunistic figure. To some people, they are a danger to society. Plaintiffs did the acts against Defendant by themselves. It is the Plaintiffs who ruined their own reputation, not the Defendant. This Complaint has to be dismissed.

VII. PLAINTIFF CANNOT ESTABLISH A CLAIM OF “ACTUAL MALICE”, PURSUANT TO THE NEW YORK TIMES CASE.

Plaintiffs are a publicly-traded corporation. Defendant has hosted his own websites and blogs. The Complaint is very unclear as to who said or done what. There is no proof that there was an effort by this

Defendant to damage Plaintiffs as though they were kings of the world or something.

To prove defamation of a publicly known person, like Plaintiffs, Plaintiffs must plead and prove “actual malice”. Matson v. Dvorak (1995) 40 Cal.App.4th 539, explains that:

“The general rule for defamation is that only one ‘who takes a responsible part in the publication is liable for the defamation.’ (Osmond v. EWAP (1984) 153 Cal.App.3d 842, 852, 200 Cal.Rptr. 674 [italics in original]; Jones v. Calder (1982) 138 Cal.App.3d 128, 134, 187 Cal.Rptr. 825.) For example, the business manager of a foreign newspaper was not liable where there was no evidence that he had control over the editorial staff and it was undisputed that he had no knowledge of the preparation or content of the subject articles until after publication (Sakuma v. Zellerbach Paper Co. (1938) 25 Cal.App.2d 309, 321-322, 77 P.2d 313); and the distributor of allegedly libelous materials cannot be held liable unless it is shown that he either knew of its libelous content or knew of facts which imposed a duty to investigate. (Osmond v. EWAP, supra, at p. 855, 77 P.2d 313.)”

Here, there is no way the Complaint states who actually said or did what on Defendant’s websites or who did any other damage to Plaintiffs in the Complaint. There must be an exactitude of who wrote, said, or did what; otherwise, the Plaintiffs as we have here, are improperly grasping at straws.

There is no proof, nor is there anything specifically pled, on the issue that this Defendant made any of the defamatory statements or other conduct. Beilenson v. Superior Court (1996) 44 Cal.App.4th 944, 52 Cal.Rptr.2d 357, also explains that:

“’[T]he constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.’ (Buckley v. Valeo (1976) 424 U.S. 1, 15 [46 L.Ed.2d 659, 685].) ‘Thus, those engaged in political debate are entitled not only to speak responsibly but to “... speak foolishly and without moderation.” (Baumgartner v. United States (1944) 322 U.S. 665, 674 [88 L.Ed. 1525, 1531].)’ (Desert Sun Publishing Co. v. Superior Court (1979) 97 Cal.App.3d 49, 52, 158 Cal.Rptr.

519.)

"...

“We next determine whether Sybert established the probability of his success. Because the existence of the libel action potentially impairs the right of free speech, we will independently decide whether Sybert made a sufficient showing of the probability of success of his lawsuit. (Bose Corp. v. Consumers Union of U.S., Inc. (1984) 466 U.S. 485, 499-511 [80 L.Ed.2d 502, 515-523]; Berry v. City of Santa Barbara (1995) 40 Cal.App.4th 75, 1082, 47 Cal.Rptr.2d 661.)

“As a public figure, Sybert had the burden of showing, by clear and convincing evidence, that the objectionable statements had been made with actual malice. (Elec.Code, § 20501; Harte-Hanks Communications, Inc. v. Connaughton (1989) 491 U.S. 657, 659 [105 L.Ed.2d 562, 571]; Evans v. Unkow, supra, 38 Cal.App.4th at p. 1496, 45 Cal.Rptr.2d 624.) Malice may be established by showing that petitioners had recklessly disregarded the truth. (St. Amant v. Thompson (1968) 390 U.S. 727, 732 [20 L.Ed.2d 262, 267].)

“The clear and convincing standard requires that the evidence be such as to command the unhesitating assent of every reasonable mind. (In re David C. (1984) 152 Cal.App.3d 1189, 1208, 200 Cal.Rptr. 115.) Actual malice cannot be implied and must be proven by direct evidence. (Time v. Hill (1967) 385 U.S. 374 [17 L.Ed.2d 456]; Sanborn v. Chronicle Pub. Co. (1976) 18 Cal.3d 406, 413, 134 Cal.Rptr. 402, 556 P.2d 764.)

“As mentioned, our Constitution affords protection to statements made during the course of debate on political issues. (Brown v. Hartlage (1982) 456 U.S. 45, 61 [71 L.Ed.2d 732, 746]; Patriot Co. v. Roy (1971) 401 U.S. 265, 271-272 [28 L.Ed.2d 35, 41].) In the words of Justice Hugo Black, ‘... it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions.’ (Bridges v. California (1941) 314 U.S. 252, 270-271 [86 L.Ed. 192, 207].) Under the notions of the First Amendment, ‘[h]owever pernicious an opinion may seem, we depend for its correction not on

the conscience of judges and juries but on the competition of other ideas.' (Gertz v. Welch (1974) 418 U.S. 323, 339-340 [41 L.Ed.2d 789].)

"In Bose Corp. v. Consumers Union of U.S., Inc., supra, 466 U.S. 485 [80 L.Ed.2d 502], the actionable statements consisted of a writer's unbridled and inaccurate description of a sound system. The Supreme Court noted that the 'language chosen was "one of a number of possible rational interpretations" of an event "that bristled with ambiguities" and descriptive challenges for the writer.' (Id., at p. 512 [80 L.Ed.2d at p. 525].) Nonetheless, because it was protected speech, plaintiff was required to 'demonstrate with clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of the statement.' (Id., at p. 511,0067 fn. 30 [80 L.Ed.2d at p. 524].)

"The Supreme Court found the writer's description of the speaker system to be inaccurate but, nonetheless, was deserving of the protection of the First Amendment. ' "[E]rroneous statement is inevitable in free debate, and ... must be protected if the freedoms of expression are to have the 'breathing space' that they 'need ... to survive.' " [New York Times Co. v. Sullivan, supra, 376 U.S. at pp.0069 271-272 (11 L.Ed.2d at p. 701).]' (Bose Corp. v. Consumers Union of U.S. Inc., supra, 466 U.S. at p. 513 [80 L.Ed.2d at p. 525].)

"…

"In any election, public calumny of candidates is all too common. 'Once an individual decides to enter the political wars, he subjects himself to this kind of treatment.... [D]eeply ingrained in our political history is a tradition of free-wheeling, irresponsible, bare knuckled, Pier 6, political brawls.' (Desert Sun Publishing Co. v. Superior Court, supra, 97 Cal.App.3d at p. 54, 158 Cal.Rptr. 519.) To endure the animadversion, brickbats and skullduggery of a given campaign, a politician must be possessed with the skin of a rhinoceros. (Hein v. Lacy (Kan.1980) 228 Kan. 249, 263 [616 P.2d 277, 286].) Harry Truman cautioned would-be solons with sage advice about the heat in the kitchen."

Here, there is nothing in the Complaint that pleads that Defendant actually committed “actual malice” as to Plaintiffs. What we have is conjecture, guesses, hyperbole, distortion, invective, tirades, speculation, and guilt by association. Furthermore, speech made on websites, which relates to the political issues involving Schneider is protected under the First Amendment. Macias v. Hartwell (1997) 55 Cal.App.4th 669, 64 Cal.Rptr.2d 222, explains that:

“Where, as here, a candidate speaks out on issues relevant to the office or the qualifications of an opponent, the speech activity is protected by the First Amendment. (Beilenson v. Superior Court, supra, 44 Cal.App.4th 944, 949-950.) ‘The right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech. “Public discussion about the qualifications of those who hold or wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment.” [Citations.] Accordingly, the campaign mailer at issue was plainly published in furtherance of the author's “’right. . . of free speech under the United States or California Constitution in connection with a public issue,’" and thus brings an action arising from its publication within the purview of section 425.16. [Citation.]’ (Matson v. Dvorak, supra, 40 Cal.App.4th at p. 548.)”

All statements made on the Defendant’s websites are free speech all protected by the First Amendment. The entire Complaint should not be heard by this Court, because it seeks review of all undefined statements. Propriety of any political statement is a political question, not a judicial one.

VIII. THIS MOTION SHOULD BE GRANTED BECAUSE PLAINTIFFS DO NOT AND CANNOT MAKE A PRIMA FACIE CASE AGAINST THIS DEFENDANT FOR THE ALLEGATIONS OF THE COMPLAINT, AND THEREFORE, CANNOT DEMONSTRATE A PROBABILITY THAT THEY WILL PREVAIL ON THEIR CLAIMS.

Since this a First Amendment case involving the Plaintiffs, a publicly-traded corporation, it is the Plaintiffs that not only has the burden of specifically pleading the allegations of the Complaint, but also, the

Plaintiffs must produce competent evidence that he would probably succeed on the merits of the action. Beilenson v. Superior Court (1996) 44 Cal.App.4th 944, also explains that:

“Even if the statements are deemed to be untruthful and not statements of opinion, Sybert was required to establish by clear and convincing evidence that Beilenson was aware of the probable falsity of the statements and willfully directed the publication of the libel. (Garrison v. Louisiana (1964) 379 U.S. 64, 79 [13 L.Ed.2d 125].) Sybert charges that had Beilenson contacted the FPPC he would have discovered that Sybert was in compliance with the law. ‘Failure to investigate does not in itself establish bad faith.’ (St. Amant v. Thompson, supra, 390 U.S. 727, 733 [20 L.Ed.2d 262, 268]; Evans v. Unkow, supra, 38 Cal.App.4th at pp. 1498-1499, 45 Cal.Rptr.2d 624.) The record here lacks evidence upon which a reasonable fact finder could find that Beilenson acted with the requisite malice.

“Sybert's declaration from a former commissioner of the FPPC was on information and belief. ‘An averment on information and belief is inadmissible at trial, and thus cannot be used to show a probability of prevailing on the claim.’ (Evans v. Unkow, supra, 38 Cal.App.4th at pp. 1497-1498, 45 Cal.Rptr.2d 624.)

“Sybert also fails to make such a showing on the question of Beilenson's failure to obtain the consent of Ms. McClain-Hill. Sybert tendered a copy of a letter from her in which she stated she did not recall authorizing the use of her name to attack Sybert. She denied knowledge of the statements or that she had authorized them. The letter is not a verified declaration under penalty of perjury. Moreover it is contradicted by a sworn declaration from Rick Taylor, a Beilenson campaign worker. Taylor states that Ms. McClain-Hill had approved of the statements that were attributed to her in the mailer. There was no showing by Sybert that Beilenson or any of his staff had actual malice--i.e., knowledge that her statements were false or unauthorized. Beilenson reasonably relied upon Taylor's representation that he had obtained her authorization. (Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 258, 208 Cal.Rptr. 137, 690 P.2d 610.)

“Section 425.16 requires that Sybert demonstrate he would ‘probably’ prevail in his lawsuit. (Wilcox v.

Superior Court, supra, 27 Cal.App.4th at p. 824, 33 Cal.Rptr.2d 446.) Moreover, under the precept of New York Times and its progeny, Sybert was required to show a likelihood that he could produce clear and convincing evidence of Beilenson's purported malice. (Robertson v. Rodriguez, supra, 36 Cal.App.4th at pp. 359-360, 42 Cal.Rptr.2d 464.) We conclude that, in view of Beilenson's defenses under the Constitution, Sybert did not establish the probability that he would prevail in this lawsuit. The motion to dismiss should have been granted.

Here, the statements relating to misconduct of Plaintiffs are not actionable. Furthermore, Plaintiffs cannot plead and prove that this Defendant defamed by the “clear and convincing evidence” standard. When the Plaintiffs filed this frivolous lawsuit, no more would he could rely on the standard used by the Hon. Jerome Sheindlin, the Hon. Judith Sheindlin , the Hon. Mills Lane, the Hon. Roy Mathis, and the Hon. Joseph Brown, in their cases-the preponderance of the evidence standard. Furthermore, Plaintiffs are required to present prima facie evidence that they would prevail on the merits. That means Plaintiffs cannot rely anymore on “information and belief” as he relies on their vague Complaint. Evidence that is admissible at trial is the only evidence required for this hearing as well as the life of this lawsuit. Evans v. Unkow (1995) 38 Cal.App.4th 1490, 45 Cal.Rptr.2d 624, explains that:

“The problem with this averment is that information and belief, within the context of a special motion to strike a SLAPP suit, is inadequate to show ‘a probability that the plaintiff will prevail on the claim.’ (Code Civ.Proc., § 425.16, subd. (b).) An assessment of the probability of prevailing on the claim looks to trial, and the evidence that will be presented at that time. (See Wilcox v. Superior Court, supra, 27 Cal.App.4th at p. 824, 33 Cal.Rptr.2d 446 [must be prima facie showing of facts which ‘if accepted by the trier of fact’ would negate constitutional defenses].) Such evidence must be admissible. (Id. at p. 830, 33 Cal.Rptr.2d 446.) As the court in Wilcox explained, the plaintiff's burden of establishing ‘facts to sustain a favorable decision if the evidence submitted ... is credited’ (Hung v. Wang (1992) 8 Cal.App.4th 908, 931, 11 Cal.Rptr.2d 113) implies a requirement of admissibility, because ‘otherwise there would be nothing for the trier of fact to credit.’ (Wilcox v. Superior Court, supra, 27 Cal.App.4th at p. 830, 33 Cal.Rptr.2d 446.) At trial, ‘the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter.’ (Evid.Code, § 702, subd. (a).) An averment on information and belief is inadmissible at trial, and thus cannot show a probability of prevailing on the claim.

“This conclusion is validated by College Hospital, Inc. v. Superior Court, supra, 8 Cal.4th at page 720, 34 Cal.Rptr.2d 898, 882 P.2d 894, where the Supreme Court held that an affidavit in support of a motion to amend a complaint to state a punitive damages claim against a health care provider under Code of Civil Procedure section 425.13 (see ante, fn. 1) must ‘set forth competent admissible evidence within the personal knowledge of the declarant.’ If an averment on information and belief is inadequate under Code of Civil Procedure section 425.13, it must likewise be inadequate under section 425.16, for the two statutes are substantially similar. (See College Hospital, Inc. v. Superior Court, supra, 8 Cal.4th at p. 719, 34 Cal.Rptr.2d 898, 882 P.2d 894; Castro v. Higaki (1994) 31 Cal.App.4th 350, 358, fn. 8, 37 Cal.Rptr.2d 84.)

“Affidavits on information and belief are permitted ‘where the facts to be established are incapable of positive averment’ (City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74, 87, 260 Cal.Rptr. 520, 776 P.2d 222), but that is not the case here. If the adversarial relationship between Evans and Scherzer was, as Evans averred on information and belief, ‘common knowledge’ in the community and public media, then Evans could have shown this by submitting declarations to that effect by members of the community and evidence of specific news media exposure of that relationship (e.g., newspaper articles). He did not do so.

“Thus, while there was evidence of hostility between Evans and Scherzer, Evans failed to establish, through competent admissible evidence within the personal knowledge of him or anyone else, that the defendants knew of such hostility. There was no prima facie showing of constitutional malice consisting of obvious reasons for the defendants to doubt Scherzer's veracity.”

The Complaint pleads nothing that is substantive. Again, what we have is conjecture, guesses, hyperbole, distortion, invective, tirades, speculation, and guilt by association. What we also have here is what motivates Plaintiffs to file suit-money, malice, and scaring people into not exercising their constitutional rights. Robertson v. Rodriguez (1995) 36 Cal.App.4th 347, 42 Cal.Rptr.2d 464, also explains that:

“Robertson does not dispute he is a public figure or that he is required to show actual malice. However,

he avers that with knowledge of the terms of the civil compromise, Rodriguez could not have printed in good faith the language in the mailer that Robertson was fined for running an illegal business out of his home.

“In approaching the issue of whether Robertson demonstrated the existence of a prima facie case for libel, we bear in mind the higher clear and convincing standard of proof. (See Looney v. Superior Court, supra, 16 Cal.App.4th at pp. 538-539.)

“We further recognize that section 425.16, by requiring scrutiny of the supporting and opposing affidavits stating the facts upon which the liability or defense is based, calls upon the plaintiff to meet the defendant's constitutional defenses, such as lack of actual malice. (§ 425.16, subd. (b); Wilcox v. Superior Court, supra, 27 Cal.App.4th at p. 824; New York Times Co., supra, 376 U.S. at pp. 279-280; 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 534, p. 622.) [Footnote omitted.] This burden is ‘met in the same manner the plaintiff meets the burden of demonstrating the merits of its causes of action: by showing the defendant's purported constitutional defenses are not applicable to the case as a matter of law or by a prima facie showing of facts which, if accepted by the trier of fact, would negate such defenses.’ (Wilcox, supra, at p. 824.)

“Turning to the record, Rodriguez's declaration stated he became aware the City had brought a criminal prosecution against Robertson for running a business out of his home in Cudahy in violation of City zoning laws. He asked Joseph, the city manager and city clerk, about the prosecution. Joseph advised Rodriguez that Robertson had paid the City $1,000 and had agreed to move his business outside the City. Joseph also gave Rodriguez a copy of the $1,000 cashier's check from Robertson to the City as well as a copy of the compromise agreement. Given Joseph's statements to Rodriguez, which are uncontroverted, Robertson failed to make a prima facie showing Rodriguez accused him of running an illegal home business with actual malice. As indicated, actual malice denotes either knowledge the publication was false or a reckless disregard of whether it was false. (New York Times Co. v. Sullivan, supra, 376 U.S. at pp. 279- 280.) In view of what Rodriguez learned from Joseph regarding the matter, the mere fact the compromise agreement contained a boilerplate denial of wrongdoing, did not show Rodriguez acted with actual malice in accusing Robertson of running an illegal home business.”

In Robertson, Plaintiff and Cudahy City Councilman John O. Robertson was accused in a 1992 recall campaign of operating an illegal business. Robertson accused his fellow Councilmen of defaming him during the recall campaign, but he lost his libel suit, based on his lack of prima facie evidence. Here, the Plaintiffs either have paranoia, or an expensive appetite for lots of money and machisimo.

IX. DEFENDANT'S USE OF THE "SCHNEIDER" TRADEMARK WAS ALSO PROTECTED BY THE FIRST AMENDMENT.

Plaintiffs claim that when Defendant posted a copy of one of Schneider's letters, Plaintiffs elevated the letter as a dilution and defamatory use of Schneider's trademark. This is nothing more than a restatement of Plaintiffs' defamation cause of action. Defendant posted the letter under the fair use doctrine. Defendant was not going to build a warehouse terminal and call it "Schneider". The trademark cause of action is nothing but derivative of the defamation cause of action.

The case of Bosley Medical Institute, Inc., v. Kremer, 05 C.D.O.S. 2849 (9th Cir. 2005), states that:

"As a matter of First Amendment law, commercial speech may be regulated in ways that would be impermissible if the same regulation were applied to noncommercial expressions. Florida Bar v. Went For It, Inc., 515 U.S. 618, 623 (1995). 'The First Amendment may offer little protection for a competitor who labels its commercial good with a confusingly similar mark, but trademark rights do not entitle the owner to quash an unauthorized use of the mark by another who is communicating ideas or expressing points of view.' Mattel, 296 F.3d at 900 (internal quotation marks and citations omitted).

Here, Defendant was posting Schneider's letters to publicize Plaintiffs' misconduct. He was not starting Schneider II. Clearly, Defendant was not engaging in commercial speech.

X. DEFENDANT'S TAPE-RECORDED CONVERSATIONS WERE SUBJECT TO BEING ABSOLUTELY PRIVILIEGED.

The case of Ribas v. Clark (1985) 38 Cal.3d 355, 364-365, 212 Cal.Rptr. 143, 696 P.2d 637, explains that:

More difficult is the question whether plaintiff's recovery for the asserted violation of this state's criminal eavesdropping laws should also be thwarted by the section 47 privilege. Penal Code section 637.2 provides that '[a]ny person who has been injured by a violation of' the Privacy Act may bring an action for $3,000 or three times his actual damages, whichever is greater. It appears no case has ever considered the applicability of Civil Code section 47 to statutory causes of action. However, the purpose of the judicial proceedings privilege seems no less relevant to such claims. Underlying the privilege is the vital public policy of affording free access to the courts and facilitating the crucial functions of the finder of fact. (Kachig v. Boothe, supra, 22 Cal.App.3d 626, 641.) 'The resulting lack of any really effective civil remedy against perjurers is simply part of the price that is paid for witnesses who are free from intimidation by the possibility of civil liability for what they say.' (Prosser, Law of Torts (4th ed. 1971) p. 778.) This policy is equally compelling in the context of common law and statutory claims for invasion of privacy; there is no valid basis for distinguishing between the two. Certainly, nothing indicates that in enacting Penal Code section 637.2 the Legislature intended to immunize causes of action under that statute from the traditional privileges applicable to various forms of oral evidence."

Here, Defendant was using his recorded conversations for litigation purposes, and that he also obtained permission from Plaintiff Ames, and Plaintiffs knew about it. Furthermore, Ames' privacy wasn't invaded. Plaintiff Ames conversations didn't relate to his personal life, but centered around Defendant's work with Plaintiffs. Nothing was done to get Plaintiff Ames' personal life on tape to be disseminated or otherwise.

XI. PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED WITHOUT LEAVE TO AMEND.

“And this is the writing that was written, MENE, MENE, TEKEL, UPHARSIN.

“This is the interpretation of the thing: MENE; God hath numbered thy kingdom, and finished it.

“TEKEL; Thou art weighed in the balances, and art found wanting.

“UPHARSIN; Thy kingdom is divided, and given to the Medes and Persians.” (Daniel 5:25-28)

The handwriting is obviously on the wall when all the Causes of Action for libel, defamation, unlawful use of trademark, and unlawful tape recording utterly fail, because the Plaintiffs attacked this Defendant by BRUTE FORCE, and this frivolous lawsuit. What’s next? Subjecting Defendant and wife holding a tin cup begging for money on Baseline and Waterman in San Bernardino? This case goes to the heart of the political process. This is an illegal and unconstitutional censorship against Plaintiffs freedom of speech. The way the Complaint was drafted shows that there is no way Plaintiffs can introduce prima facie evidence proving that they do not have the probability to succeed. Plaintiffs have the probability to lose, and lose big.

XII. SANCTIONS ARE WARRANTED AS TO MAKE A HUGE PUBLIC EXAMPLE OF THE PLAINTIFFS WHO CANNOT HANDLE LOSING.

“If you can’t stand the heat, get out of the kitchen”-President Harry S. Truman.

“Give ‘em hell, Harry”, or is this the scene where Bedford Falls, New York, becomes Pottersville? This case would have not started if the Plaintiffs did not ASSAULT AND FALSELY IMPRISON Defendant in the first place. This is like waking up one day and you see the case of Brown v. Board of Education

overturned. This is not a novel complaint, but a Complaint that was filed with very actual malice, filed in retaliation of Defendant championing the rights of truck drivers, and absolutely filed with no legal or factual basis whatsoever. Since they love money, power, and corporate greed, Alan Gecko-style, instead of God and the Constitution, these Gestapo-style Plaintiffs must pay to play through their uppity noses. This Defendant has paid so far in defending himself to preserve the Constitution, like soldiers who liberated Buchenwald, Dachau, and Iwo Jima, and the people who fought for the rights of the people in Topeka, Philadelphia (Mississippi), Selma, Atlanta, Montgomery, Birmingham, Memphis, etc.

"Let freedom ring. And when this happens, and when we allow freedom ring—when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children—black men and white men, Jews and Gentiles, Protestants and Catholics—will be able to join hands and sing in the words of the old Negro spiritual: 'Free at last! Free at last! Thank God Almighty, we are free at last!'" Rev. Martin Luther King, "I Have a Dream", March on Washington for Jobs and Freedom, August 28, 1963.

In addition, since Plaintiffs filed suit to intimidate this Defendant, this Defendant request that in addition to costs, that the costs be doubled. The Plaintiffs are a detriment to society, and they are filing abusive lawsuits to get America to move closer to the Soviet Union, Nazi Germany, or the Old South. This Complaint should never be filed.

XIII. CONCLUSION.

This Defendant requests that this lawsuit be dismissed without leave to amend, and that the Plaintiffs pay double costs payable to this Defendant herein.

Dated this 20th day of October, 2009

By:
WALTER L. ELLIS
23485 Village Walk Pl., #218F
Murrieta, CA., 92562

In Propia Persona.

DECLARATION OF WALTER L. ELLIS.

I, Walter L. Ellis, declare that:

1. I am the Defendant in the above-entitled action. If I am called as a witness, which would be unnecessary in this Action, I will competently and truthfully testify under oath.

2. On January 12, 2009, I posted an article on http://www.truckerscomplaint.com/, my website regarding SCHNEIDER'S DOT and other violations.

3. On January 13, 2009, I was advised by my dispatcher Jeff Ames that I couldn't be dispatched until missing logs were submitted. Upon preparing these logs as other drivers are allowed to do so in the lunch room, I was approached by Jeff and Luke Simendinger, Operation Manager and asked to meet with them in their office. After it was agreed that it would be permissible for me to continue taping the meeting I agreed to go to the administration area as asked. Luke had indicated that I was in violation regarding my logs, and my statement was that mine wasn't as bad as many of the other drivers who were correcting their logs at the facility and were doing so in the lunch room this date. Luke stated I was also in violation of company policy for soliciting other drivers with propaganda I was accused of handing out to other drivers. (Recordings are available see: http://www.justiceforblacks.blogspot.com/)

4. Luke and Jeff led me to a room asked me to be seated, closed the door as they left the room. I later became concerned and decided to leave the room. Upon opening the door I was confronted by Brandon Trahulchavee who stated I must go back into the room. I asked if I was being arrested, and if so why was I being detained. When I attempted to go out the front door, Brandon grabbed the door handle with his left hand, while pulling me back inside while my right foot was outside the door. Brandon pulled my right arm with such force causing my rib to be broken. I also received injury to my right knee. Copies of my medical reports detailing my injuries are attached as Exhibit “A”.

5. After being injured and then fired by SCHNEIDER, I immediately called Fontana Police Department. After calling several times to report the crimes, and waiting over three hours at the truck stop across from SCHNEIDER I decided to go to the Fontana PD. After waiting at the PD for one and a half hours I gave my report to Officer LOSCH. I asked Officer LOSCH to take a complaint on False Imprisonment and Assault and Battery. I also offered the officer the tape recorder, which he refused.

I have attempted to have Fontana PD to take a supplementary report regarding the Assault and False Imprisonment. After a back and forth conversation(s) by phone with Officer LOSCH and the Watch Commander it appeared that their main interest was more a concern with me taping their conversation illegally, than the crimes committed by SCHNEIDER. Upon asking Officer LOSCH to include false imprisonment charges he stated there was no grounds for false imprisonment because they had the right to hold me until I was officially fired. Officer LOSCH stated also that they had stated they were holding me because they were afraid that if they had not fired me before I left the building they were fearful that I might fake an injury in order to file a worker’s compensation claim. (See above recordings). Officer LOSCH and the Watch Commander state they are not going to report my complaint to the DA’s office of false imprisonment due to SCHNEIDER’s statements. I was also told on January 26, 2009 by Officer LOSCH that he had been advised by Brandon that he had not touched me as I had accused. Officer LOSCH stated he was unable to find any witness to the crime. Officer LOSCH went on to say that I had made a statement on January 13, 2009, that there was no witness. I disagreed with my making such a statement and asked Officer LOSCH and the Watch Commander to review the tape of the interview of my complaint. Officer LOSCH also stated that he wasn’t going to take any further complaints, and if I wished

to add any other information the DA's office have many investigators to take my complaints. I later contacted a Ms. GUILLE at 909- 355-5935 at the San Bernardino County DA's office who stated Officer LOSCH was incorrect in making such a statement and any supplement report must be made by the Fontana PD.

Based on Officer Frank LOSCH's handling of this complaint I ask that a discrimination charge be placed in his records, and request that I be issued all the appropriate documents to file my complaint against this officer and the Fontana PD.

6. Since the Spring of 2009, Plaintiffs filed and served this Action against me. They are clearly afraid of being exposed. The reason why they filed this suit is because not only they wanted to diminish my worker's compensation claim, but they wanted to prevent me from filing my own suit for:

a. Discrimination under Title VII of the Civil Rights Act of 1964.
b. Discrimination under the Fair Employment and Housing Act.
c. 42 U.S.C., §1981.
d. Discrimination under the Americans with Disabilities Act.
e. Emotional Distress.
f. Assault.
g. Failure to pay wages.
h. Civil Conspiracy.
i. Unfair Competition.

7. As for Unfair Competition, I also used my websites to detail violations of Federal Transportation laws and regulations by Schneider.

8. In order to present my arguments on my websites against the trucking companies, like Schneider's and their wrongful acts, to include termination my friends and I intend to get subpoenas, for the list of witnesses and affidavits. These additional witnesses would be giving information regarding log book violations created by Schneider. My friends and I need them to make a statement saying that Schneider

systematically asks the drivers to violate the 14 hour duty service regulation. These violations are created by servicing the truck, doing paperwork, fueling, short circuiting pre-trips and trip planning required by Schneider and other requirements that are required by DOT before logging on duty. These violations include falsifying breaks when in fact you are on duty assisting in unloading freight. Trips are planned based on 50 miles per hour time frames from point A to point B whether mountainous road conditions and unknown factors are not accounted for. These violations are known by Schneider. Standby pay is promised in writing by Schneider and paid to some drivers and not to others. Drivers are encouraged to sleep in their trucks at the terminal without pay to be available for loads .Drivers that do not sleep at the terminals are denied loads and revenue. The yard has unsanitary conditions that create health hazards for the drivers. California doesn't allow trucks to idle more than 5 minutes for purposes of heat and air conditioning in the cab, although Schneider's supervisors ignore this particular violation. Schneider pays some drivers and do not pay other drivers for cleaning dirty trucks that prior drivers have left filthy and the cleaning is made to be done while on duty but not logged as required by DOT. Each driver should be paid back pay and other penalties for these past and present violations.

9. Some days, I feel like Meryl Streep in "Silkwood", but yet these Federal laws and regulations should not be happening in the first place, and that we also need the right to unionize and the right to universal health care.

10. This Action is filed primarily to scare, intimidate, and threaten me into not freely exercising our First and Fourteenth Amendment rights, i. e.:

a. Publishing on my websites.

b. Speaking out against companies, like Schneider, who treat minorities like dirt, and gut them, and spit them out after they are through using their workers.

11. There is no charging allegations in the Action that alleges what I have said that is defamatory, or on

what date(s) did I supposedly defame Schneider.

12. To this date, I have incurred the following expenses so far in defending myself to preserve my pocket, my liberties, and the Constitution (and I request that these costs be doubled), like soldiers who liberated Buchenwald, Dachau, and Iwo Jima, and the people who fought for the rights of the people in Topeka, Philadelphia (Mississippi), Selma, Atlanta, Montgomery, Birmingham, Memphis, etc. These include the:

a. First appearance Fee:

b. Motion fees for Special Motion to Strike.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 20, 2009, at Murrietta, California.

_____

WALTER L. ELLIS,

Declarant.

PROOF OF SERVICE.

I, Ella M. Ellis, am a resident of the County of Riverside, State of California. I am over the age of 18 years, and I am not a party to this action. My address is 23485 Village Walk Pl., #218F, Murrieta, CA., 92562.

On October 20, 2009, I served the foregoing copies of NOTICE OF SPECIAL MOTION TO STRIKE COMPLAINT OF PLAINTIFFS, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, AND DECLARATION OF WALTER L. ELLIS on the interested parties in this action by placing the following true copies, enclosed in a sealed envelope addressed as follows:

CHRISTOPHER S. MAILE
NORMAN L. PEARL
DAVID S. BINDER
THARPE & HOWELL
15250 VENTURA BL., 9TH FLOOR
SHERMAN OAKS, CA., 91403-3221

On the above date, I personally mailed copies to the addressees at the United States Post Office at Murrieta, California.

Under the penalty of perjury, I declare that the foregoing is true and correct, and that this declaration was executed on October 20, 2009, at Murrieta, California.