

Superior Court of California County of San Benito



Edgar Nolasco
Court Executive Officer

Tentative Decisions for May 19, 2022

Courtroom #1: Judge J. Omar Rodriguez

CU-20-00193 Salinas v. City of Hollister

Defendant Resendiz

The unopposed Demurrer to Plaintiff's Second Amended Complaint, which was filed by the lone Defendant Resendiz, is sustained without leave to amend.

The First Cause of Action of "Intentional Tort" fails to state facts sufficient to constitute a cause of action and is uncertain as to which intentional tort. (See Cal. Civ. Proc. §430.10(e), (f).) As to the Second Cause of Action, there is no common law cause of action for harassment. (See *Medix Ambulance Serv. Inc. v. Superior Court* (2002) 97 Cal.App.4th 109, 118.) Regarding the Third Cause of Action, there is no private right of action for civilly enforcing Penal Code section 653.2. (See Cal. Penal Code §637.2.)

As for the Fourth Cause of Action: False Light Invasion of Privacy, the words and phrases allegedly used by Defendant Resendiz are non-actionable for purposes of this particular cause of action. False light "based on publicity that placed a plaintiff before the public in a false light that would be highly offensive to a reasonable person and where the defendant knew or acted with reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed." (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1264.) Here, either the words and phrases allegedly used by Defendant met one, but not both of these requirements. For example, being called a lobbyist for developers was alleged to be false, but would not be considered *highly* offensive to a reasonable person. As a result, Plaintiff has failed to state a cause of action for False Light Invasion of Privacy.

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Finally, there is no cognizable cause of action for exemplary damages. (*Orient Handel v. United States Fid & Guar. Co.* (1987) 192 Cal.App.3d 684, 697.)

Defendant's City of Hollister and Velasquez

Defendants City of Hollister and Velazquez's Special Motion to Strike is GRANTED. Defendants are entitled to mandatory attorneys' fees in the amount of \$3,760.00. (Cal. Civ. Proc. §425.16(c)(1).) A defendant that is voluntarily dismissed by the plaintiff, with or without prejudice, after filing a special motion to strike, is entitled to have a judge hear the merits of the motion as a predicate to a determination of the defendant's motion for attorney's fees under California Code of Civil Procedure section 425.16(c). (*South Sutter, LLC v. LJ Sutter Partners, L.P.* (2011) 193 Cal.App.4th 634, 662-664.)

To apply the anti-SLAPP statute, courts engage in a two-step process. The first step is to determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity. The defendant has the initial burden of showing that the acts underlying the plaintiff's suit fall within one or more of the categories of conduct. (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 538.) Specifically, the cause of action is based, in part, on conduct made before a legislative proceeding, which is a listed activity under California Code of Civil Procedure Section 425.16(e)(1). It is not a defense to a special motion to strike for mix-causes of action that combines allegations of activity protected by the statute with allegations of unprotected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381.)

Once the Defendant has met its burden, the burden shifts to the plaintiff to establish that there is a probability that it will prevail on its claim. (Cal. Civ. Proc. §425.16(b)(1).) The Plaintiff's burden of establishing a probability of prevailing is not high. (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 793.) To meet this burden, the plaintiff must show that the complaint is legally sufficient and supported by a prima facie showing, by admissible evidence and competent evidence, of facts that would be sufficient to support a favorable judgment if the evidence submitted by the plaintiff is accepted. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) Here, Plaintiff failed to oppose this motion and failed to produce any admissible evidence of facts to support her cause of action.

Defendant City of Hollister and Velazquez's Motion for Sanctions is DENIED as it does not appear that the Second Amended Complaint was filed for an improper purpose. Additionally, the moving Defendants did not comply with the requirements under California Code of Civil Procedure section 128.7. The notice of the motion shall not be filed with or presented to the court unless, within 21 days after service of the motion and the challenged paper is not withdrawn or corrected. (Cal. Civ. Proc. §128.7(c)(1).) Here, the motion for sanctions was served three days before the motion was filed.

CU-21-00005 Gonzalez v. Resendiz, et al.

Defendant Resendiz

The unopposed Demurrer to Plaintiff's Second Amended Complaint ("SAC"), which was filed by the lone Defendant Resendiz, is sustained as to the First, Fourth, and Fifth Causes of Action without leave to amend.

The First Cause of Action of "Intentional Tort" fails to state facts sufficient to constitute a cause of action and is uncertain as to which intentional tort. (See Cal. Civ. Proc. §430.10(e), (f).)

The demurrer is overruled as to the Second Cause of Action: False Light Invasion of Privacy. False light "based on publicity that placed a plaintiff before the public in a false light that would be highly offensive to a reasonable person and where the defendant knew or acted with reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed." (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1264.) A knowing violation of or reckless disregard for the plaintiff's rights is required if the plaintiff is a public figure. (See *Brown v. Kelly Broadcasting* (1989) 48 Cal.3d 711, 721-722.) Here, the Second Cause of Action incorporates by reference the allegations in the complaint previously set forth. The SAC alleges that Defendant reported to a police officer that he had reported to a police officer and a reporter that Plaintiff had been attacked by plaintiff and used hate speech, which was false and Defendant knew was false. (SAC 6:22-27, 8:13-9:13.)

As to the Third Cause of Action: Libel is overruled for the reasons stated above regarding the Second Cause of Action.

As to the Fourth Cause of Action: Negligence, the demurrer is sustained in that the City of Hollister's Code of Ethics and Values does not establish a private right of action by establishing a legal duty. As a result, the Plaintiff has failed to state facts that would show that a legal duty to use due care exists and that Defendant breached that duty. (See *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

Regarding the Fifth Cause of Action, the demurrer is sustained as there is no private right of action for civilly enforcing Penal Code section 653.2. (See Cal. Penal Code §637.2.)

Defendant's request for judicial notice is granted.

Defendant's City of Hollister and Velasquez

Defendants City of Hollister and Velazquez's Special Motion to Strike is GRANTED. Defendants are entitled to mandatory attorneys' fees in the amount of \$4,230.00. (Cal. Civ. Proc. §425.16(c)(1).) A defendant that is voluntarily dismissed by the plaintiff, with or without prejudice, after filing a special motion to strike, is entitled to have a judge hear the merits of the motion as a predicate to a determination of the defendant's motion for attorney's fees under California Code of Civil Procedure section 425.16(c). (*South Sutter, LLC v. LJ Sutter Partners, L.P.* (2011) 193 Cal.App.4th 634, 662-664.)

To apply the anti-SLAPP statute, courts engage in a two-step process. The first step is to determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity. The defendant has the initial burden of showing that the acts underlying the plaintiff's suit fall within one or more of the categories of conduct. (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 538.) Specifically, the cause of action is based, in part, on conduct made before a legislative proceeding, which is a listed activity under California Code of Civil Procedure Section 425.16(e)(1). (SAC 22:10-24, 31:8-32:2.) It is not a defense to a special motion to strike for mix-causes of action that combines allegations of activity protected by the statute with allegations of unprotected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381.)

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Defendant City of Hollister and Velazquez's Motion for Sanctions is denied as it does not appear that the Second Amended Complaint was filed for an improper purpose. Additionally, the moving Defendants did not comply with the requirements under California Code of Civil Procedure section 128.7. The notice of the motion shall not be filed with or presented to the court unless, within 21 days after service of the motion and the challenged paper is not withdrawn or corrected. (Cal. Civ. Proc. §128.7(c)(1).) Here, the motion for sanctions was served three days before the motion was filed.

CU-22-0041 Petition of Analycia Noel Cordova

The Petition is GRANTED.

CU-22-00051 Petition of Thomas Luis Alvarado

The Petition is GRANTED.

PR-21-00094 Estate of Mark Raymond Klebba

The Court has received an update from Petitioner's counsel. In light of the progress made the matter is continued to August 18, 2022 at 1:30pm.

END OF TENTATIVE RULINGS