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13 **GINA M. AUSTIN and AUSTIN LEGAL GROUP**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/12/2022 at 11:16:00 AM
Clerk of the Superior Court
By Jimmy Siharath, Deputy Clerk

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

16 AMY SHERLOCK, an individual and on
17 behalf of her minor children, T.S. and S.S.,
18 ANDREW FLORES, an individual,

19 Plaintiffs,

20 v.

21 GINA M. AUSTIN, an individual; AUSTIN
22 LEGAL GROUP, a professional corporation,
23 LARRY GERACI, an individual, REBECCA
24 BERRY, an individual; JESSICA
25 MCELFRESH, an individual; SALAM
26 RAZUKI, an individual; NINUS MALAN,
27 an individual; FINCH, THORTON, AND
28 BARID, a limited liability partnership;
ABHAY SCHWEITZER, an individual and
dba TECHNE; JAMES (AKA JIM)
BARTELL, an individual; NATALIE
TRANG-MY NGUYEN, an individual,
AARON MAGAGNA, an individual;
BRADFORD HARCOURT, an individual;
SHAWN MILLER, an individual; LOGAN
STELLMACHER, an individual;
EULENTIAS DUANE ALEXANDER, an
individual; STEPHEN LAKE, an individual,
ALLIED SPECTRUM, INC. a California
corporation, PRODIGIOUS
COLLECTIVES, LLC, a limited liability
company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

**NOTICE OF RULING RE: DEFENDANTS
GINA M. AUSTIN and AUSTIN LEGAL
GROUP'S SPECIAL MOTION TO
STRIKE PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 12, 2022, after hearing the arguments of counsel, the Honorable James A. Mangione confirmed the August 11, 2022 tentative ruling granting Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP’s Special Motion to Strike Plaintiffs’ First Amended Complaint pursuant to Code of Civil Procedure section 425.16.

A true and correct copy of the confirmed tentative ruling is attached hereto as **Exhibit “A”** and is incorporated by reference hereto.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: August 12, 2022

By: 

Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
Matthew C. Smith, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and
AUSTIN LEGAL GROUP**

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PROOF OF SERVICE
Amy Sherlock, et al. v. Gina M. Austin, et al.
San Diego Superior Court Case No. 37-2011-00051643-CU-PO-NC

I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of San Diego, California, and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

On **August 12, 2022**, I caused to be served the following documents:

- **NOTICE OF RULING RE: DEFENDANTS GINA M. AUSTIN and AUSTIN LEGAL GROUP’S MOTION TO STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT**

BY MAIL: By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:

- BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))**
- BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**
- BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))**

BY ELECTRONIC DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251): Based on an agreement between the parties to accept service by e-mail or electronic transmission, I caused such document(s) to be electronically served to those parties listed below from e-mail address lzamora@pettitkohn.com. The file transmission was reported as complete and a copy of the Service Receipt will be maintained with the original document(s) in our office.

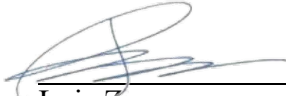
<p>Andrew Flores, Esq. Law Office of Andrew Flores 427 C Street, Suite 220 San Diego, CA 92101 Tel: (619) 356-1556 Fax: (619) 274-8053 Email: Andrew@FloresLegal.Pro Plaintiff in <i>Propria Persona</i> and Attorney for Plaintiffs Amy Sherlock, Minors T.S. and S.S.</p>	<p>James D. Crosby, Esq. Attorney at Law 550 West C Street, Suite 620 San Diego, CA 92101 Tel: (619) 450-4149 Email: crosby@crosbyattorney.com Attorney for Defendants LARRY GERACI and REBECCA BERRY</p>
<p>Scott H. Toothacre, Esq. Michael R. Weinstein, Esq. FERRIS & BRITTON 501 West Broadway, Suite 1450 San Diego, CA 92101 Tel: (619) 233-3131 Email: stoothacre@ferrisbritton.com mweirstein@ferrisbritton.com dbarker@ferrisbritton.com Attorney for Defendants LARRY GERACI and REBECCA BERRY</p>	<p>Steven W. Blake, Esq. Andrew E. Hall, Esq. BLAKE LAW FIRM 533 2nd Street, Suite 250 Encinitas, CA 92024 Tel: (858) 232-1290 Email: steve@blakelawca.com andrew@blakelawca.com eservice@blakelawca.com Attorney for Defendant STEPHEN LAKE</p>

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Natalie T. Nguyen, Esq. NGUYEN LAW CORPORATION 2260 Avenida de la Playa La Jolla, CA 92037 Tel: (858) 757-8577 Email: natalie@nguyenlawcorp.com Defendant NATALIE TRANG-MY NGUYEN <i>PRO SE</i>	
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I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 12, 2022**, at San Diego, California.



Luis Zamora

Exhibit A

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - August 11, 2022

EVENT DATE: 08/12/2022

EVENT TIME: 09:00:00 AM

DEPT.: C-75

JUDICIAL OFFICER: James A Mangione

CASE NO.: 37-2021-00050889-CU-AT-CTL

CASE TITLE: SHERLOCK VS AUSTIN [EFILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Antitrust/Trade Regulation

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

CAUSAL DOCUMENT/DATE FILED:

Defendants Gina Austin and Austin Legal Group's Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 is granted.

Pursuant to CCP § 425.16, the court must first determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity, i.e., the act underlying petitioner's cause of action fits one of the categories delineated in CCP §425.16(e). (CCP §425.16 (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) Defendants bear the initial burden of establishing a prima facie showing that the Plaintiffs' cause of action *arises* from the Defendants' petition activity. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) Here, Defendants allege that the conduct complained of by Plaintiffs falls within CCP § 425.16(e)(1), which protects "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law."

If the court finds that Defendants have satisfied the first prong, it must then determine whether the opposing party has demonstrated a probability of prevailing on the claim. (*Ibid.*) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.) "[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 735.)

First Prong

Defendants have shown that the activities alleged in the FAC constitute petitioning "before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" under CCP §425.16(e)(1). Furthermore, Defendants' actions are not illegal as a matter of law. (See *Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1478 (illegality exception applies "only in 'rare cases in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law.'").) Therefore, the first prong is satisfied.

Second prong

Plaintiffs have not submitted any evidence, affidavits, declarations, or requests for judicial notice in support of this motion. Therefore, they cannot show a probability of prevailing on the merits with "competent, admissible evidence." (*Hailstone*, 169 Cal.App.4th at 735.) The second prong of the analysis is not met.

The Court denies Plaintiffs' request to amend the FAC. (See *Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 676 ("There is no such thing as granting an anti-SLAPP motion with leave to amend."))

If Defendants seek to recover attorney's fees, it must be filed as a separate motion.

The minute order is the order of the Court.

Defendants are directed to serve notice on all parties within five (5) court days.