

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: Andrew Flores, Esq. FIRM NAME: Law Offices of Andrew Flores STREET ADDRESS: 427 C Street, Suite 220 CITY: San Diego TELEPHONE NO.: 619.356.1556 E-MAIL ADDRESS: afloreslaw@gmail.com ATTORNEY FOR (name): Amy Sherlock	STATE BAR NO.: 272958 STATE: CA ZIP CODE: 92101 FAX NO.: 619.274.8053	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/30/2023 at 11:49:00 AM Clerk of the Superior Court By Michelle Wolf, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice		
PLAINTIFF/PETITIONER: Amy Sherlock DEFENDANT/RESPONDENT: Gina Austin		
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)		CASE NUMBER: 37-2021-00050889-CU-AT-CTL

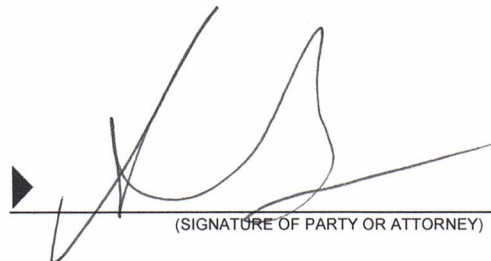
Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Amy Sherlock
 appeals from the following judgment or order in this case, which was entered on (date): 12/2/2022
- Judgment after jury trial
 Judgment after court trial
 Default judgment
 Judgment after an order granting a summary judgment motion
 Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
 Judgment of dismissal after an order sustaining a demurrer
 An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
 An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
 Other (describe and specify code section that authorizes this appeal):
2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

Date: 1/30/2023

Andrew Flores

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - December 01, 2022

EVENT DATE: 12/02/2022

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: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

Defendants Larry Geraci and Rebecca Berry's Special Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Civil Procedure Section 425.16 (Anti-SLAPP Statute) 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 Cotton I litigation and Federal CUP application "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 Defendant has 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

The Court finds that Defendants have met their burden to show that the conduct alleged in the FAC constitutes petitioning and litigation activities protected under CCP §425.16(e). 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.

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

Defendants' Motion to Strike Portions of Plaintiffs' First Amended Complaint and Demurrer to Plaintiffs' First Amended Complaint are denied as moot.

All requests for judicial notice are granted.

The minute order is the order of the Court.

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