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6 Attorneys for Defendants
7 LARRY GERACI and REBECCA BERRY

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

10 AMY SHERLOCK, an individual and on behalf of
11 her minor children, T.S. and S.S., ANDREW
FLORES, an individual,

12 Plaintiffs,

13 vs.

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

24 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/05/2022 at 10:05:00 AM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

Case No. 37-2021-00050889-CU-AT-CTL

Judge: Hon. James A. Mangione
Dept: C-75

**NOTICE OF RULING RE: DEFENDANTS
LARRY GERACI AND REBECCA
BERRY'S DEMURRER TO PLAINTIFFS'
FIRST AMENDED COMPLAINT;
MOTION TO STRIKE AND SPECIAL
MOTION TO STRIKE (ANTI-SLAPP)**

[IMAGED FILE]

Action Filed: December 3, 2021
Trial Date: Not Yet Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on December 2, 2022, after hearing the arguments of
3 counsel, the Honorable James A. Mangione confirmed the December 2, 2022 tentative ruling as the
4 final ruling of the Court, granting Defendants Larry Geraci and Rebecca Berry’s Special Motion to
5 Strike Plaintiff’s First Amended Complaint pursuant to Civil Procedure Section 425.16 (Anti-SLAPP)
6 and denying as moot said Defendants’ Motion to Strike Portions of Plaintiffs’ First Amended Complaint
7 and Demurrer to Plaintiffs’ First Amended Complaint. A true and correct copy of the confirmed
8 tentative ruling is attached hereto as Exhibit “A” and is incorporated by reference hereto.
9

10 Dated: December 5, 2022

FERRIS & BRITTON

A Professional Corporation

11
12 By: 

13 Michael R. Weinstein

14 Scott H. Toothacre

15 Attorney for Defendants

LARRY GERACI and REBECCA BERRY
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EXHIBIT A

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.