

1 George R. Najjar, Esq. (SBN 163923)
THE NAJJAR LAW FIRM
2 1901 First Avenue, First Floor
San Diego, CA 92101
3 Tel.: (619) 233-3445
Fax.: (619) 233-3446
4 Email: gnajjar1@san.rr.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/05/2022 at 09:30:00 PM
Clerk of the Superior Court
By E- Filing, Deputy Clerk

5 Attorney for Defendant Abhay Schweitzer, individually and doing business as TECHNE
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

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

12 Plaintiffs,)

13 v.)

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

25 Defendants.)
26)
27)
28)

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

NOTICE OF RULING GRANTING
SPECIAL MOTION TO STRIKE
FIRST AMENDED COMPLAINT
BY DEFENDANT ABHAY SCHWEITZER,
INDIVIDUALLY AND DOING BUSINESS
AS TECHNE

IMAGED FILE

UNLIMITED CIVIL CASE

Complaint Filed: 12/3/2021

Date: December 2, 2022
Time: 9:00 A.M.
Dept.: C-75
Judge: Honorable James A Mangione

1 NOTICE IS HEREBY GIVEN that on Friday, December 2, 2022, at 9:00 a.m., in Department
2 C-75 of the Superior Court of California, County of San Diego, Central Division, located at the Hall
3 of Justice, 330 West Broadway, San Diego, California 92101, the Court, the Honorable James A.
4 Mangione, presiding, after hearing the arguments of counsel, confirmed the December 2, 2022,
5 tentative ruling as the final ruling of the Court granting the special motion by Defendant ABHAY
6 SCHWEITZER, individually and doing business as TECHNE, pursuant to Civil Procedure section
7 425.16 (Anti-SLAPP), to strike the First Amended Complaint filed against him by Plaintiffs Amy
8 Sherlock, an individual and on behalf of her minor children, T.S. and S.S., and Andrew Flores, an
9 individual.

10 A true and correct copy of the confirmed tentative ruling is attached hereto as Exhibit "A" and
11 incorporated herein by this reference.

12 Respectfully submitted,

13 THE NAJJAR LAW FIRM

14
15 Dated: December 5, 2022

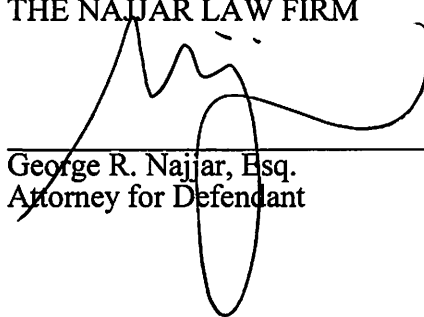
16 
17 _____
18 George R. Najjar, Esq.
19 Attorney for Defendant
20
21
22
23
24
25
26
27
28

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: Demurrer / Motion to Strike
CAUSAL DOCUMENT/DATE FILED:

Defendant Abhay Schweitzer, individually and doing business as Techne's Special Motion to Strike 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.) Defendant bears the initial burden of establishing a prima facie showing that the Plaintiffs' cause of action arises from the Defendant's petition activity. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) Here, Defendant alleges 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 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

Defendant has 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, Defendant's 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 Defendant seeks to recover attorney's fees, it must be filed as a separate motion.

The minute order is the order of the Court.

Defendant is directed to provide notice on all parties within five (5) court days.