

DO63269

**IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT**

OCEAN'S ELEVEN CASINO,

Plaintiff and Respondent,

vs.

TIM ANDERS,

Defendant and Appellant.

After an Order By the San Diego North County Superior Court
Hon. Jacqueline M. Stern
Case No. 37-2012-
00055763-CU-DF-NC

APPELLANTS' OPENING BRIEF

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State of California
Court of Appeal
Fourth Appellate District

CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS

Court of Appeal Case Caption: Ocean's Eleven Casino v. Anders

Court of Appeal Case Number: DO63269

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with Entity or Person Information if necessary.

Please check here if applicable:

There are no interested-entities or parties to list in this Certificate per California Rules of Court, Rule 8.208.

Signature of Attorney/Party Submitting Form

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INTRODUCTION

Appellant Tim 'Dr. Hope' Anders (Anders) is a sixty-five year old children's book author and business man. He is also a part time poker professional. This case arises from Anders' refusal to take down a public forum he created where he complained about being banned for writing a letter, which he posted on his public forum website, to an owner of the Respondent complaining about the mistreatment of employees. The plethora of comments in Anders' public forum enraged the Respondent, and its managing partner, Mark Kelegian, to the point of filing three meritless lawsuits against Anders. The first one was dismissed with prejudice and the other two are pending.

Anders had been a customer of Ocean's Eleven Casino, owned by Ocean's Eleven Casino, a partnership (Respondent) ever since it opened and was and still is good friends with its founder, Dan Dreger. After Dan Dreger retired, the management of the casino was handed over to Bob Moyer, another part owner and long time friend of Anders. When Bob Moyer retired the management of the casino was handed over to Mark Kelegian, an attorney, whose father, Haig Kelegian, owned the second largest portion of Oceans 11 Casino, Inc., the largest partner of the respondent, exceeded only by Walter Lack, who owned the largest portion of the respondent, again through their company Oceans 11 Casino, Inc.

When Mark Kelegian took over the management of Ocean's Eleven Casino he embarked on an omnipotent reign of terror towards the employees. He would insult them, make them work off the clock without pay, and looked for reasons to

terminate elderly long time employees and replace them with new less expensive younger ones.

The employees, upset about how they were being treated, and to show the barrage of threatening memos they were receiving from Mark Kelegian, gave Anders some copies thereof. The memos ordered employees not to do things like talk to the security guards while on break, then threatened that they would be fired for their first offence should they do so. Another memo threatened that if they shared any of these memos with customers or vendors, they would be fired for the first offence. Knowing that Anders was good friends with several of the owners the employees wanted him to tell those owners of their plight in the hope that they could improve their situation.

One weekend Anders went to Ocean's Eleven Casino and discovered that all of the long time receptionists had been terminated. Having been friends with these elderly women for over a decade Anders took it upon himself to write a letter to Walter Lack, the majority interest holder in Oceans 11 Casino, Inc, which held the majority interest in the Respondent, informing him of how Mark Kelegian was treating the employees and to protest the termination of these elderly receptionists. Anders let it be known to his employee friends, customers and the owners with whom he was friends, that he had written such a letter.

Another customer and vendor of Respondent, Todd Chaney, also upset about the firing of the receptionists, contacted Anders and told him that he was gathering information to give to Bob Carter, an owner of the Respondent through

his company North County Gaming, Inc., in the hope that he could get those elderly ladies their jobs back. He requested that Anders give him a copy of the letter he had written to Walter Lack to show Bob Carter at their meeting. Anders complied and gave Chaney a copy of the letter.

Shortly thereafter Anders was called into the office of the Respondent, shown a copy of his letter and was asked if he had written the letter. Anders responded in the affirmative. He was then shown copies of memos and asked if he had seen them before. He responded in the affirmative. When asked who had shown them to him Anders refused to answer knowing that if he were to tell the names of the employees who had given him the memos that they would be fired. The next day Anders, a fifteen year loyal customer, was banned from Ocean's Eleven Casino.

Upset about being banned from his favorite poker home, but even more upset about how the new management was treating the employees, Anders built a public forum website where customers, employees and the public in general could anonymously post their opinions, experiences or comment on others, without fear of reprisal. In a matter of days Anders received a letter from Respondent demanding that Appellant stop using its' logo and take down the public forum within 72 hours or it would sue Anders for, *inter alia*, slander *per se*, trademark infringement and defamation. Even though Anders felt that he had every right to show the logo of the public casino of which he was protesting, he, none-the-less

removed the logo from the public forum within 24 hours. Believing in free speech, however, he left the public forum website open and accessible to the public.

The managing partner of the Respondent, Mark Kelegian, then filed a meritless lawsuit for a restraining order claiming that Appellant, a gentle children's book author, somehow posed a threat of violence against himself, his wife and his children. Clearly this was done as a strategy to harass and cost Anders money for not taking down his public forum. This frivolous lawsuit against Anders, case No 37-2012-00055509-CU-HR-NC, was dismissed on August 10, 2012 with prejudice.

The instant lawsuit, equally meritless, claims Anders is guilty of Trade Disparagement; Intentional Interference with Economic Relationships; Violation of the Anti-Cybersquatting Consumer Protection Act; Conversion; Misappropriation of Trade Secrets (the memos); Trespass and then requests a Preliminary and Permanent Injunction enjoining Anders from publishing comments on his website that show Respondent in a bad light.

Appellant properly filed a special motion to strike the Complaint as a meritless SLAPP (Strategic Lawsuit Against Protected Participation) pursuant to Code of Civil Procedure (Subsequent statutory section references herein are to this Code, unless otherwise indicated.) section 425.16. At the hearing on the Motion to Strike the trial court found that Anders' posting of his complaint along with his letter complaining of the mistreatment of Ocean's Eleven Casino's employees and

the subsequent plethora of public comments was not a matter of public interest and therefore denied the motion.

This was an error. This action should have been dismissed as the SLAPP that it is.

STATEMENT OF APPEALABILITY

An order denying a special motion to strike brought pursuant to section 425.16 is an appealable order pursuant to sections 904.1, subdivision (a)(13), and 425.16, subdivision (j).

STATEMENT OF THE CASE

A. Factual Background

1. Respondent Ocean's Eleven Casino

Respondent Ocean's Eleven Casino is a partnership owned by Oceans 11 Casino, Inc. and North County Gaming, Inc. (CT 2:2-4.) They maintain a 22,000 square foot public gaming casino located at 121 N. Brooks St, Oceanside, CA 92054 that is open to the public 24 hours a day, 7 days a week.

2. Appellant Tim Anders and his DBA Alpine

Publishing

Appellant Tim 'Dr. Hope' Anders is a children's book author who writes under the pseudonym 'Dr. Hope, J.A.P.D' (The JAPD stands for Just A Pretend Doctor) [See Appellant's Motion to Augment the Record (AR 48:25-27.)] Anders is also a part time poker professional and had been a well liked customer of Ocean's Eleven Casino ever since it opened. To this day he is still good friends with many employees and with Dan Dreger, the founder, and Bob Moyer, who both used to run the casino and both still have a minority ownership interest in Respondent. (AR 49:1-5.) Alpine Publishing is Anders' DBA (CT 227.)(AR 48:28.) and was the whois.com registered owner of oceans11.info (CT 225.) one of the domain names through which the public forum could be accessed.

In mid 2012 employees complained to Anders about how they were being treated by the new management (AR 49:12-15.) and gave him copies of memos (AR 52:8-10.) (AR 67,69.) threatening termination for talking to the security guard or even sharing memos with customers (AR 67, 69.). Their hope was that he would show them to some of the owners with whom he had been long time friends, in the hope that things would improve. Shortly thereafter all the elderly receptionists, who Anders had been friends

with for over ten years were fired and replaced with younger people. (AR 49:16-19.)

In an effort to help these elderly receptionists Anders wrote a letter complaining about the situation to Walter Lack, the majority interest holder in Oceans 11 Casino, Inc. (AR 4-6.). A week or so later Anders was called into the office at Ocean's Eleven Casino and was shown the aforementioned letter and memos that had been given to employees (AR 50:20-23.). After refusing to divulge the names of the employees who had given him copies of the memos he was banned from Ocean's Eleven Casino. (AR 50:25-27.)

Feeling bad about how he had been treated, but worse for the treatment of the employees, Appellant built a website where employees, customers and the interested public could post their thoughts and feelings anonymously about what was going on at Ocean's Eleven Casino without fear of reprisal. On or about July 11, 2012 Anders bought the domain name oceans11.info (CT 225.) and registered it to his DBA, Alpine Publishing (CT 227.). This domain name was one way Anders' public forum website could be accessed. (The actual website is located at: <http://www.pokercommunitynetwork.com/> but can no longer be accessed through the domain oceans11.info do to a restraining order issued by Judge Stern.) His thought was that he would get these posts and send them to

Walter Lack so he could see what was going on with his investment with the hope of improving the way customers and employees were treated.

Appellant's post about how he had been banned for writing a letter complaining about the mistreatment of employees (AR 10-11.) and posting the letter he had written to Walter Lack (AR 4, 5, 6.) in this public forum was met with a plethora of comments from the interested public (AR 11-44.). Other customers and the interested public posted their opinions and discussions ensued. Many employees and former employees posted about how they had been mistreated. The fact that employee's were in truth being mistreated is evidenced in this case by the sworn declarations of two former employees, Sherry Trudel (AR 57-61.) and Randall Vanderiet, (AR 63-65.) on file in this case where they declare, under penalty of perjury, about how employees were routinely forced to work for free, off the clock, (AR 59:7-8.) (AR 64:7-9.) through fear of the real threat of termination.

It is clear that Respondent and its' attorneys will do anything, including lying to this court, (CR 216:8-25.) to stop the public airing of its' dirty laundry. Once the site was put up Anders got a letter from Ocean's Eleven Casino's attorney demanding that the site be taken down. Believing in the right to free speech and the public's right to know what was going on in their local casino Anders left the site up.

After refusing to take down his public forum, Anders was immediately sued for a restraining order falsely accusing him that he somehow held a threat to the safety of Mark Kelegian, the managing partner of Ocean's Eleven Casino, and his family. This action was brought by the same attorneys as the instant case. Anders is a gentle children's book author with no history of violence in his sixty-five years on this planet. His books teach children to help one another. Anders believes that the sole purpose this was done was to harass him and cost him money for not taking down his public forum. Unable to show even a shred of credible evidence, Mark Kelegian's case, prosecuted by Ocean's Eleven Casino's expensive lawyers, was dismissed with prejudice. (AR 55.)

Anders and Alpine now face an unparalleled assault on their constitutionally protected free speech rights by Respondent, for acts arising out of free speech, on a public issue, in a public forum. In addition to the standard harassment tactic of a SLAPP plaintiff to seek punitive damages, Respondent also asked the trial Court to enter an unconstitutional order to enjoin speech (Eighth Cause of Action). (CT 14.)

Clearly the issues raised in the complaint *arise* from a dissatisfied customer's public discussion on the internet, related to the manner in which he, as a customer was treated (being banned), how other customers were

treated and how long time employees were terminated and then replaced.

(CT 28.)

B. Procedural History.

1. Respondent's Complaint.

Respondent filed its' Complaint on July 30, 2012, alleging eight causes of action against Todd Chaney, an individual; Chaney Electric, a fictitious business name of Todd Chaney; Tim Anders, an individual and Alpine Publishing, a fictitious business name of Tim Anders. The causes of action were: Trade Disparagement; Intentional Interference with Economic Relationships; Violation of the Anti-Cybersquatting Consumer Protection Act; Conversion; Misappropriation of Trade Secrets (the memos); Trespass and then requests a Preliminary and Permanent Injunction.(CT 1-16.).

2. Appellants Filed a Special Motion to Strike the Complaint as a Meritless SLAPP.

On September 13, 2012, appellants filed a special motion to strike respondent's Complaint as a meritless SLAPP pursuant to section 425.16. Appellants showed that respondent's claims are subject to subdivision (e)(3) of the anti-SLAPP statute because they arise from a customer's post that was published in a public forum and addressed issues of public

interest.

Each cause of action in the complaint was taken up *in seriatim* and shown to be meritless. (CT 28-45)

3. Respondent Opposes Appellants' Special Motion to Strike

On November 15, 2012 Respondent filed its' opposition to Appellants' motion to strike. (CT 51-60.) They argued that this was not about free speech but about theft. Anders purported involvement in this 'theft' was entirely based on hearsay and allegations based on information and belief and was objected to by Appellant (CT 80-90). There was absolutely no support for their claims of theft by any admissible evidence.

This was a classic example of attempting to mask a SLAPP suit by alleging extreme misconduct, and weaving protected activity into the allegations of misconduct with *no facts alleged in support*.

Respondent then claims that because the issue is about the termination of four elderly employees that this is not a matter of public interest as employee disputes are generally not a matter of public interest especially when they concern a small number of employees. (CT 53:11-13.) They sidestep the truth. The truth is that the complaint *arises* from a dissatisfied customer (Anders) who complained online, in a public forum, that he had been mistreated by the new management (banned) (AR 10-11.) for complaining to the owners (his letter to Walter Lack)

(AR 4-6.) about the despicable actions of the new management (Mark Kelegian). He posted his complaint about management and the letter online and asked for customers, employees and the general public to comment. (AR 11.) And indeed there was a plethora of comments. (AR 11-44.)

In their opposition Respondent cites two comments from the website to support their claim of Trade Disparagement:

“Oceans 11 needs colorful characters like Tim. It’s an outrage he banned simply for writing a letter expressing his view. Time to start playing at the Indian card rooms.” (See Defendant’s NOL Ex.3. p. 29)

“Wow, since hearing rumor of this unjust banning of a VIP Patron I have not been back to that casino. We need to do something about this manager who feels he can just ban such a well liked person as Tim Anders...” (CT 59:3-8.)

Rather than support their claim of Trade Disparagement (which fails under 47 U.S.C. 230. Section(c)(1)) this, instead, clearly shows two of the many interested fellow customers expressing their views, anonymously, about Anders’ post on an issue that customers and the general public have shown an interest in and have a right to know about. Respondent wants to stifle this free and open discourse through its’ lawsuits. Protection against this sort of trampling on our first amendment rights is the very reason the anti-SLAPP law was put into place.

4. Appellants’ Reply to Respondent’s Opposition

On November 20, 2012 Appellants filed their reply to respondent’s opposition. (CT 70-79.) It states that in general, the opposition is replete with inflammatory allegations. What is also notable is the claim that the Anti-SLAPP

Statute does not apply. The opposition then goes on to say that if it does apply, they are prepared to offer “proof” of their allegations at some undisclosed point in the future. The time to have provided any proof was in their opposition, CCP § 425.16 (b) (1) Subdivision (b)(2) provides. The failure to educe admissible evidence is fatal to their opposition.

The only proffer of evidence by plaintiff were the declarations of two individuals, Steve Gallagher, (AR 73-75.) and Mark Kelegian, (AR 76-80.) that were objected to in Defendant’s Objections to Evidence, filed and served concurrently with the Reply. (CT 80-90.) The essence of the objections flows from the fact that all that was offered was the opinions of these two men. Appellant showed that the Respondent had failed to produce a single item of admissible evidence to support a single claim. Opinions, or Information and Belief are not sufficient to withstand the Anti-SLAPP Motion.

Irrespective of how the Respondent attempted to spin the facts of this matter, the issues raised in the complaint *arise* from a dissatisfied customer’s public discussion on the internet, related to the manner in which he, a customer, was treated (AR 10-11) and how long time employees are terminated and then replaced. However, the opposition attempted to shift the focus of this matter away from the very first cause of action in this SLAPP suit, Trade Disparagement. The complaint at Page 6, ¶ 24 (CT 6:16-17) alleges “Anders is responsible as a publisher and distributor of the defamatory comments about Ocean’s Eleven . . .” Appellant showed that as a publisher he is immune under 47 U.S.C. section 230 of

the Communications Decency Act (CDA)

Each cause of action in the complaint was again taken up *in seriatim* and shown to be meritless.

5. The Trial Court Rules that Appellants' Post and Subsequent Discussions are Not a Matter of Public Interest and Denies the Motion to Strike.

On August 30, 2012, a hearing was held on Appellants' Special Motion to Strike. The Trial Court stated: "Defendants' Special Motion to Strike Complaint pursuant to CCP 425.16 is denied as Defendants have not met their burden of showing that Plaintiff's lawsuit "arises from" Defendants' exercise of free speech or petition rights as defined in CCP Section 425.16(e)."

The Trial Court finds that Anders' posts are not a matter of public interest stating: "The letter and other website postings on *oceans11.info* do not impact a broad segment of society or affect a community in a manner similar to that of a governmental entity." There were no findings as to the likelihood of Respondent prevailing on its' claims. The motion was denied. (CT 103-104)

6. Civil Case Management Hearing

On December 14, 2012 a Civil Case Management Hearing was

held at which Appellant, now representing himself, was told that he could not represent his DBA, Alpine Publishing. (CT 106) The Court would not accept the substitution of attorney and left M. David Meagher, Esq. as attorney of record for Anders' DBA, Alpine Publishing. The Court ordered an Order to Show Cause as to why the Court should not Strike Alpine Publishing's answer for not being represented by counsel. The hearing was scheduled for January 18, 2013. (CT 106)

7. Notice of Appeal and Notice of Automatic Stay

On January 10, 2013 Appellant filed and served a Notice of Appeal with the court. (CT 172.) Concurrently therewith Appellant filed and served a Notice of Automatic Stay with Points and Authorities showing that all further trial court proceedings in the instant case were stayed pending the outcome of the appeal, citing the California Supreme Court case: *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 (CT 163-164.)

8. Ex-parte Motion for a Temporary Restraining Order

Another trial court proceeding was held on January 15, 2013. (CT 176.) The Court held an ex-parte hearing and issued a Temporary Restraining Order against Tim Anders and, without jurisdiction to do so,

against *Alpine Publishing, Inc.* (a Nevada corporation that was not a party and had never been served or appeared) from using oceans11.info to access Anders' public forum. (CT 178-179)

9. Appellant files a Request for Judicial Notice

On January 17, 2013 the day before the scheduled OSC hearing Appellant filed a Request for Judicial Notice (CT 180-183) showing the Court that he had the right to represent his DBA and the Court had no jurisdiction over Alpine Publishing, Inc. and reiterated that all proceedings, including the instant one, were stayed. The Court continued the matter to some future date with no notice given to Appellant. (CT 186)

10. Appellant files an Application for Reconsideration

On January 24, 2013 Appellant filed an Application for Reconsideration of the issuance of the TRO; Points and Authorities. (CT 193-208) The TRO moving papers that Appellant was not privy to until *after* the hearing, showed that Respondent's only Trademark was for Ocean's Eleven Casino. (CT 160) Appellant showed that they had no mark on oceans11, therefore they no right to Appellant's domain name,

oceans11.info and therefore had no right to request the Court to restrain the use of that domain. Appellant then proffered evidence showing that a multitude of oceans11 domain names existed and were in use by other entities, *inter alia*, oceans11.net was registered to Warner Bros. Entertainment Inc. (CT 201.); oceans11.org was registered to Veraprise Inc. (CT 202.); oceanseleven.com was originally registered to Oceans Eleven Resorts, Inc. (CT 203); Appellant showed that if you Google the name Ocean's Eleven you will get over three million websites that will pop up. Only one of which was Respondent's oceans11.com. Other than oceans11.com, the Respondent has no right, title or interest in any of those websites including oceans11.info. Appellant also pointed out in its moving papers that all actions were stayed and therefore her ruling was void *ab initio*. The Court has not yet ruled on this application.

11. The Court Strikes Alpine Publishing's Answer

Not wanting to be at the disadvantage of not knowing when the next hearing was Appellant searched the docket on a daily basis. Appellant discovered that another Ex-parte hearing was scheduled for January 29, 2013. Assuming that this hearing would be the OSC about the striking of his DBA's answer Appellant filed a Request for Judicial

Notice. (CT 215-231.) He showed the court how Respondent's attorney, Spencer Skeen, had lied under oath in a declaration. (CT 216: 7-17.) The fabrication was irrelevant to the issues before the court and was done just to demean Anders. Appellant attached documents proving that Mr. Skeen's statement was a blatant lie. (CT 223)

Mr. Skeen's statement that oceans11.info was a 'stolen URL' was also shown to be false. Respondent has a mark only on Ocean's Eleven Casino, (CT 160.) not on the ubiquitous oceans11. (CT 216:18-24)

Appellant then showed the court the 'Whois' registration for oceans11.info which showed that Ander's DBA, Alpine Publishing was the registrant at 1119 S. Mission Rd., #102, Fallbrook, CA 92028, (CT 225.) the exact same name and address that appears on Anders' Fictitious Business Statement. (CT 227.)

Appellant then showed the court the Entity details from the Nevada Secretary of State for Alpine Publishing, Inc. (CT 228.) which clearly shows all of its' addresses to be in Las Vegas, NV and that it was not the registered owner of oceans11.info. There should have been no confusion between Anders' DBA, Alpine Publishing, owner of the domain, oceans11.info, and the Nevada corporation, Alpine Publishing, Inc., at this point.

Appellant pointed out that the substitution of attorney from M.

David Meagher, Esq which stated ‘Attorney for Tim Anders, DBA, Alpine Publishing.’ (CT 231) Appellant pointed out that it had been Respondent’s intent to sue his DBA from the inception of the case and pointed to #10 on the docket where Respondent stated: “Plaintiff has been unable to serve the complaint on defendant Alpine Publishing, a fictitious business name of Tim Anders.” (CT 17.) (CT 216:9-12.) It should also be pointed out that the heading of every document on file in this case says: “Alpine Publishing, a fictitious business name of Tim Anders.”

To support his contention that Alpine Publishing’s answer should not be struck for not having an attorney representing his DBA, Appellant pointed out in his points and authorities that he had every legal right to represent his DBA. (CT 219:2-28.) He also showed the court why it had no jurisdiction over the Nevada corporation, Alpine Publishing, Inc. (CT 220: 2-8) And once again pointed out that all actions in this case were stayed. (CT 220:14-18.)

The January 29th hearing was taken off calendar. Without notice of the new hearing date, the OSC was held on February 1, 2013. The Court struck Alpine Publishing’s Answer. Not having notice of when the hearing was Appellant did not attend.

STANDARD OF REVIEW.

“Whether section 425.16 applies and whether the plaintiff has shown a probability of prevailing are legal questions which we review independently on appeal.” (*Beach v. Harco National Insurance Company* (2003) 110 Cal.App.4th 82, 90, quoting *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807.)

Although a trial court’s ruling on the admissibility of evidence is generally reviewed only for abuse of discretion, “to the extent the trial court’s decision depends on the proper construction of [statutes], the issue is a question of law, which we review de novo.” (*Zhou v. Unisource Worldwide, Inc.* (2007) 157 Cal.App.4th 1471, 1476.)

ARGUMENT:

I. THE TRIAL COURT IMPROPERLY DENIED APPELLANTS’ SPECIAL MOTION TO STRIKE.

A. The California Anti-SLAPP Law Was Enacted to Protect the Fundamental Constitutional Rights of Petition and Speech and Is to Be Construed Broadly.

In 1992, in response to the “disturbing increase” in meritless lawsuits brought “to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances,” the Legislature

overwhelmingly enacted section 425.16, California's anti-SLAPP law. (Stats. 1992, ch. 726, § 2.) In 1997, the Legislature unanimously amended the statute to expressly state that it "shall be construed broadly." (Stats. 1997, ch. 271, § 1; amending § 425.16(a).) Subdivision (a) of section 425.16 provides:

The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and this participation should not be chilled through abuse of the judicial process. *To this end, this section shall be construed broadly.*

(Emphasis added.)

In 1999, the California Supreme Court underscored this requirement of broad construction, directing that courts, "whenever possible, should interpret the First Amendment and section 425.16 in a manner 'favorable to the exercise of freedom of speech, not to its curtailment.'" (*Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1119, quoting *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170, 1176.)

1. Section 425.16 Sets Forth a Two-Step Analysis.

Section 425.16 sets forth a two-step process for evaluating a special motion to strike. First, the defendant must make a prima facie showing that the plaintiff's cause of action arises from an act of the defendant in

furtherance of the right of petition and/or the right of free speech in connection with a public issue. (§ 425.16, subd. (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (“*Navellier I*”); *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 894.) Once the defendant makes this showing, the burden shifts to the plaintiff to establish a probability of prevailing on their claims, by establishing that “the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment.” (*Wilson v. Parker, Covert & Chidester* (2003) 28 Cal.4th 811, 821 [citations and internal punctuation omitted].) If the plaintiff does not meet this burden, the anti-SLAPP motion must be granted. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.)

2. The Scope of Acts Covered by Section 425.16.

Subdivision (e) of the anti-SLAPP statute provides four illustrations of the types of acts covered by the statute:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public

issue or an issue of public interest.

B. Respondent’s Claims Are Subject to Subdivision (e)(3) of the Anti-SLAPP Law, Because They Arise from Statements Made in a Public Forum in Connection with Issues of Public Interest.

Appellants demonstrated that Respondent’s claims are subject to subdivision (e)(3), because they arise from statements made in a public forum (the internet is a public forum), regarding issues of public interest (informing customers and employees of how Respondent was treating customers and employees). (AR 10-11.) Additionally, consumer protection information generally has been held to involve an issue of public interest. (*Wilbanks v. Wolk, supra*, 121 Cal.App.4th at pp. 898-900; *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23-24.) Anders’ Post exposing to the poker playing community how he had been mistreated and the ensuing comments, the subject of this lawsuit, are clearly a “writing made in a place open to the public or a public forum in connection with . . . an issue of public interest. . . .” (§ 425.16, subd. (e) (3).)

1. The Posts were Made in a Public Forum.

Respondent does not argue that the internet is not a public forum, therefore they have conceded this element. Internet message boards and discussion groups are public fora. (*ComputerXpress v. Jackson* (2001) 93 Cal.App.4th 993, 1006-07; *Wilbanks v. Wolk, supra*, 121 Cal.App.4th at pp.

895-97.)

2. “Issue of Public Interest” Is to Be Construed Broadly, and the Post and Subsequent Comments Involved Issues of Public Interest.

Subdivision (e)(3)’s requirement that the challenged activity be “‘in connection with an issue of public interest’ . . . is to be ‘construed broadly’ so as to encourage participation by all segments of our society in vigorous public debate related to issues of public interest.” (*Seelig v. Infinity Broadcasting Corp.*, *supra*, 97 Cal.App.4th at p. 808.) An “issue of public interest” means “*any issue in which the public is interested*. In other words, the issue need not be ‘significant’ to be protected by the anti-SLAPP statute – it is enough that it is one in which the public takes an interest.” (*Nygård v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042.) (Emphasis added)

Here, the complaint *arises* from a dissatisfied customer (Anders) who complained online, in a public forum, that he had been mistreated by the new management (banned) for complaining to the owners (his letter to Walter Lack) about the despicable actions of the new management (Mark Kelegian). (AR 10-11.) Anders posted his complaint about management and the letter online and asked for customers, employees and the general public to comment. (AR 11.) His intent was to inform the millions of poker playing casino customers to be aware of how Ocean’s Eleven Casino’s new management was mistreating customers and employees in the hope that this

dialogue would improve the treatment of customers and employees.

“Courts have recognized the importance of the public’s access to consumer information” such as this, since “[m]embers of the public. . . . clearly have an interest in matters which affect their roles as consumers, and peaceful activities . . . which inform them about such matters are protected by the First Amendment.” (*Wilbanks v. Wolk, supra*, 121 Cal.App.4th at p. 899 [internal punctuation and citation omitted].) The plethora of comments made on Anders’ Public Forum website were made in connection with the issue of how customers and employees are treated at a local casino. This underscores the fact that this was an issue of interest to the poker playing public.

Statements of no greater public significance than those at issue here have been held to be protected as an issue of public interest under section 425.16. (*Seelig v. Infinity Broadcasting Corporation, supra*, 97 Cal.App.4th at pp. 807-08 [radio “shock jock” commentary about plaintiff’s decision to appear on *Who Wants to Marry a Multimillionaire?* television show was made in connection with an issue of public interest and is protected under (e)(3)]; *Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050, 1062-64 [interchange on radio call-in talk show regarding whether caller was too old to participate in the show

involves a matter of public interest and is protected under (e)(3) and (e)(4)]; *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1366 (2010) [Consumer criticized online at Yelp.com about the dental services provided to his son is protected under (e)(3)] *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1420 [statement that someone had entered the tenants' locked garage and turned the dial of their water heater off is protected under (e)(4) as conduct that "arguably involved public issues of nuisance and safety," even though it directly affected only two tenants]; *Nygård v. Uusi-Kerttula, supra*, 159 Cal.App.4th at p. 1042 [defendant's statements about his work experience with a prominent Finnish businessman is protected under (e)(3)]; see also *Dora v. Frontline Video* (1993) 15 Cal.App.4th 536, 540-44 [documentary about Malibu surfers of the 1950s involved a matter of public interest (not a § 425.16 case)].) *Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, 716 [An "'issue of public interest'" is "'any issue in which the public is interested.'" (*Rivera*, at p. 716, quoting *Nygård, Inc. v. Uusi-Kerttula supra* (2008) 159 Cal.App.4th 1027, 1042)] *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 467 [concerned the well-being of young children in an afterschool sports program] *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138 [The statements posted to the "Ripoff Report" Web site about Chaker's character and business practices plainly fall within the rubric of consumer information

involved a matter of public interest and is protected under (e)(3)]

Thus the comment Anders made about the business practices of the Respondent on Anders' Public Forum website, and all of the subsequent comments, are clearly protected under subdivision (e)(3). Consumer reviews are matters of public interest because they provide important information to the public at large.

C. Respondent Did Not Show a Probability of Prevailing on Any of Its' Claims.

As noted above, once appellants established that respondent's causes of action are subject to the anti-SLAPP law, as Appellant did, the burden shifted to Respondent to establish by admissible evidence a probability of prevailing on its' claims. Respondent has no admissible evidence to back up its' claims. The only offer of 'evidence' is the opinions of two men and assertions based on 'information and belief' which are inadmissible and were objected to on that basis. (CT 80-90)

To show a likelihood of success, "[t]he plaintiff's showing of facts must consist of evidence that would be admissible at trial." (*Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1346 [63 Cal.Rptr.3d 798].) The plaintiff may not rely on the allegations in the complaint or assertions in a declaration based on information and belief. (*Evans v. Unkown* (1995) 38 Cal.App.4th 1490, 1496-1498 [45 Cal.Rptr.2d 624]; *Nagel v. Twin Laboratories, Inc.* (2003) 109 Cal.App.4th 39, 45 [134 Cal.Rptr.2d 420].)

Respondent did not meet their burden, and appellants' special motion to strike should have been granted.

1. Respondent's Claims and Its' Burden of Proof.

The causes of action are: Trade Disparagement; Intentional Interference with Economic Relationships; Violation of the Anti-Cybersquatting Consumer Protection Act; Conversion; Misappropriation of Trade Secrets (the memos); Trespass and then requests a Preliminary and Permanent Injunction. (CT 1-16.)

All lawsuits which excite the Anti-SLAPP Statute *Arise* from allegations of misconduct on the part of the defendant. The mere allegation of misconduct is not sufficient to defeat the Anti-SLAPP Motion. Often Plaintiffs, such as this Respondent, claim the Defendant committed criminal misconduct, or must demonstrate their "act" was a "valid" exercise of the First Amendment. In response our High Court said:

"[T]he only thing the defendant needs to establish to invoke the [potential] protection of the SLAPP statute is that the challenged lawsuit arose from an act on the part of the defendant in furtherance of her right of petition or free speech." *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66. (Emphasis Added)

At issue before this Court is whether this matter enjoys First Amendment Protection. Nothing more. To oppose this Motion, Respondent needed to establish a “probability of prevailing on the merits” by offering Admissible evidence that, if credited, would entitle Respondent to judgment as a matter of law on each and every cause of action. This means the Respondent must adduce *admissible evidence* that, if credited would defeat all affirmative defenses raised in the pleadings, *Wilcox v. Superior Court (Peters)*, 27 Cal.App.4th 809, at 823-824.

Respondent did not establish a probability of prevailing on any of its’ causes of action against the Appellant. Since the eighth “cause” is a remedy entirely derivative of the first seven, it also fails. “An injunction is a remedy, not a cause of action.” *Roberts v Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 618.

These causes of action are all typical SLAPP tactic claims. They allege intentional torts, and using the intimidation tactic of seeking punitive damages, while being devoid of any admissible evidence in support.

a. Respondent Failed to Show a Probability of Prevailing on its’ Claim for Trade Disparagement

Although this is the First Cause of Action in the Complaint, Respondent relegates it to one of the last issues addressed in its opposition.

The opposition posits the notion that the “trade disparagement” is in some manner secondary to the unsubstantiated claims of theft. The complaint at (CT 6:8-20.) alleges that Mr. Anders published his letter to Mr. Lack, containing false and defamatory statements. It goes on to state that in some manner that Mr. Anders “is responsible as a publisher and distributor of the defamatory comments about Ocean’s Eleven . . .” This allegation must fail.

First, Respondent fails to identify the precise language and where it is located in the letter, or the web-page that contains the purported false statements. Second, the only “evidence” offered in support of this claim are two statements attributable to individuals who posted on the web-site. The truth is all these statements do is support the fact that consumers have an interest in the matters being discussed in Anders’ public forum and do not support their claim of Trade Disparagement at all. See 47 U.S.C. 230. Section(c)(1) provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by others.

Our Supreme Court has addressed this issue in *Barrett v. Rosenthal*, 40 Cal. 4th 33 (2006). Web sites accessible to the public, like the “newsgroups” where **Rosenthal** posted Bolen’s statement, are “public forums” for purposes of the anti-SLAPP statute. The Supreme Court stated: “We conclude that section 230 prohibits “distributor” liability for Internet publications. We further hold that section 230(c)(1) immunizes individual

“users” of interactive computer services, and that no practical or principled distinction can be drawn between active and passive user.”

The declarations of Kelegian (AR 76-80.) and Gallagher (AR 73-75.) do not satisfy the Proof Requirements of *Wilcox Supra*. These declarations merely offer the conclusion that the statements made in Anders web-site are false and disparaging citing a few opinion statements attributed to Mr. Anders.

The Respondent offers the aforementioned two examples of the alleged false and disparaging statements at (CT 59:3-8.). These statements are not attributable to Mr. Anders, but made by third parties. These comments as submitted by third parties means that Mr. Anders enjoys the absolute privilege afforded to web-site hosts under the Communications Decency Act of 1996 (CDA) (47 U.S.C. § 230). By the plain language of § 230, there is a federal preemption immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." (*Zeran v. American Online* (4th Cir.1997) 129 F.3d 327, 330, cited with approval in *Kathleen R. v. City of Livermore* (2001) 87 Cal.App.4th 684, 692.) § 230(c)(1) provides immunity to users, as well as providers, of interactive computer services. Therefore this cause of action fails.

b. Respondent Failed to Show a Probability of Prevailing on its' Claim for Intentional Interference with Economic Relationships

“The tort of intentional or negligent interference with prospective economic advantage imposes liability for improper methods of disrupting or diverting the business relationship of another ... ” *Settimo Associates v. Environ Systems, Inc.* (1993) 14 Cal.App.4th 842, 845.

The plaintiff has failed to educe a single piece of evidence that shows any improper act in this matter. The declarations offered by Respondent merely rely on “boiler plate” allegations and legal conclusions in a sweeping allegation alleging that consumer protesting may cost them money. There is no showing of any interference with any economic relationships. Consumer protests against perceived treatment by a business underlies the right to speak out on such practices. Absent this right the Better Business Bureau could not report any criticism of a business. See *Paradise Hills Assocs. v. Procel*, 235 Cal. App. 3d 1528

c. Respondent Failed to Show a Probability of Prevailing on its' Claim for Trademark Infringement

In *Lamparello, v. Falwell; Jerry Falwell Ministries*, 420 F.3d 309 (2005), the court reviewed 15 U.S.C. § 1125(a)(1)(A), the statutory basis

for a Trademark Infringement claim. The court found that both infringement and false designation of origin have five elements. To prevail under either cause of action, the trademark holder *must prove*: (1) that it possesses a mark; (2) that the [opposing party] used the mark; (3) that the [opposing party's] use of the mark occurred "in commerce"; (4) that the [opposing party] used the mark "in connection with the sale, offering for sale, distribution, or advertising" of goods or services; and (5) that the [opposing party] used the mark in a manner likely to confuse consumers.

There is no evidence offered to show:

- 1) That Respondent possesses the mark. It merely claims to;
- 2) That Mr. Anders used the actual mark;
- 3) That Mr. Anders used the mark for any commercial purpose; or,
- 4) That Mr. Anders use of the alleged mark was confusing.

In its two most significant recent amendments to the Lanham Act, the Federal Trademark Dilution Act of 1995 ("FTDA") and the Anticybersquatting Consumer Protection Act of 1999 ("ACPA"), Congress left little doubt that it did not intend for trademark laws to impinge the First Amendment rights of critics and commentators. The dilution statute applies to only a "commercial use in commerce of a mark," 15 U.S.C. § 1125(c)(1), and explicitly states that the "[n]oncommercial use of a mark" is not actionable. *Id.* § 1125(c)(4).

Here, there is no commercial use, there are no allegations that Mr. Anders is attempting to use the site for advertising, or stealing business. In fact, like *Lamparello*, this web-site is designed to provide a public forum to criticize. Further the appearance of the websites are not confusingly similar. In *Lamparello* it stated:

“Looking at the first three factors, the court stated that while Falwell’s mark is distinctive and the domain name of Lamparello's website bears a close resemblance to Falwell's, Lamparello's site does not look anything like Falwell's... Lamparello only intended his site to be a forum of criticism. Finally, the two sites provide opposing ideas such that no one who entered one site would be misled into believing it was authorized by the other.”

Pictures of Ander’s public forum website were lodged with the court. (AR 10-44) One just has to look to see it is a non commercial site that looks *nothing* like Respondent’s website at oceans11.com.

d. Respondent Failed to Show a Probability of Prevailing on its’ Claim for Violation of the Anti-Cyber Squatting Act

The complaint alleges “cybersquatting.” However, the Opposition, at pg. 5 line 24 (CT 55:24), offers no admissible evidence, only the promise it can show cyber-squatting. Respondent makes the claim that Appellant “uses Ocean’s Eleven’s registered mark in the domain name oceans11.info.” (CT 55:25-26.) Blatantly untrue. Their mark is for Ocean’s Eleven Casino, not oceans11. (CT 160) If they owned the mark oceans11 they would be suing

Warner Bros. Entertainment for owning and using the domain oceans11.net (CT 201.)

Cyber-Squatting required a showing that the defendant is using the name for some form of commercial use. No such use has been shown by admissible evidence. www.oceans11.info is a place for consumers to vent their dissatisfaction, there is no cyber-squatting. *See TMI Inc. v. Maxwell* 368 F.3d 433 (5th Cir. 2004), defendant's operation of a non-commercial gripe site at a domain which varied from plaintiff's mark solely by the subtraction of the letter "s" did not violate either the Federal or Texas State Dilution Acts, nor did it run afoul of the Anticybersquatting Consumer Protection Act ("ACPA"). The Court determined that defendant's actions were motivated by the defendant's desire to inform the public about his dispute with plaintiff and the services it offered him.

e. Respondent Failed to Show a Probability of Prevailing on its' Claim for Conversion

The complaint alleged defendant Chaney admitted to stealing memoranda and other confidential information, adding "on information and belief" Mr. Anders played a role in this act. Denied in NOL 4, ¶¶ 49, 49 and 53. (AR 52:15-16.) (AR 53:4-8.) There is no declaration by Mr. Chaney to support the complaint allegation that he worked in concert with Mr. Anders. There is no admissible evidence to show that Respondent can meet

the elements that must be demonstrated to state such a claim. Chief among these elements is the inability of the rightful owner “to use its property.” *de Vries v. Brumback* (1960) 53 Cal. 2d 643, 647. There is no allegation of plaintiff being denied use of these forms. This lack of an allegation of denied use is fatal to the claim.

Also the declarations of Kelegian (AR 76-80.) and Gallagher (AR 73-75.) are *not* based upon first hand knowledge that Mr. Anders played a role in this alleged act. Denied in NOL 4, ¶¶ 49, 49 and 53. (AR 52:15-16.) (AR 53:4-8.) The declarations merely claim that Mr. Anders had copies of memos. These declarations do not satisfy the elements needed to show conversion and were objected to for their lack of admissibility (CT 80-90.)

f. Respondent Failed to Show a Probability of Prevailing on its’ Claim for Misappropriation of Trade Secrets

Civ.C. § 3426 (d), defines "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Neither of these apply.

As with the other causes of action, the Opposition at pg. 6 line 5,

claims “plaintiff can show it will prevail.” (CT 56:5.) It then relies upon a Declaration of the manager of the casino, but fails to proffer a single document which supports any proof the opinions offered claiming the documents are confidential. There is no offer of policies and procedures describing that memos to employees are trade secret; there is no employee handbook offered that demonstrates that each employee is advised of these “secrets;” and, Respondent’s failure to produce these documents in this matter, and show where these documents were marked “Confidential/Trade Secret” the proof requirements of the Anti-SLAPP Statute cannot be satisfied. One just has to look at these memos to see the absurdity of their claim. (AR 67,69.) Respondent states these two memos in question somehow would give a competitor some kind of economic advantage over them yet the memos, given to Anders by employees of the Respondent, were not challenged by the Respondent as being a ‘Trade Secret’ at the failed restraining order hearing and were entered into evidence and are now part of the public domain. Once again there is no substance to their claim.

g. Respondent Failed to Show a Probability of Prevailing on its’ Claim for Trespass

The declarations of Kelegian and Gallagher allege the intentional tort of trespass, stating that “agents” of Anders have been sent into the Casino without consent “to distribute flyers regarding Anders’ website.” Denied in

NOL 4, ¶ 50 (AR 52:17-18.). Once again, the Respondent is without a scintilla of evidence to support its' claim. It merely relies on the speculation of the two declarants.

It is relevant to note that even if the Respondent could have submitted any admissible evidence on this point, the allegation states the flyers promote the website. It is the website itself that has given rise to this suit. Thus, the promotion of the web-site is an act taken in furtherance of the Right of Free Speech and is protected under the Anti-SLAPP statute.

The statutory phrase "cause of action . . . arising from" means simply that the Appellant's act underlying the Respondent 's cause of action must itself have been an act in furtherance of the right of petition or free speech. (See *ComputerXpress, Inc. v. Jackson, supra* (2001 4th Dist.), 93 Cal.App.4th 993 at p. 1001.)

h. Respondent Failed to Show a Probability of Prevailing on its' Claim for Injunctive Relief

Here, Plaintiff seeks to enjoin freedom of speech. This is a quintessential SLAPP Cause of Action. A review of the Eighth Cause of Action and its associated Prayer for Relief shows Plaintiff is asking the Court to enjoin the Appellants from "spreading false information, lies and rumors about Ocean's Eleven, its management and/or employees." (CT 15:24-26.)

This request is unconstitutional on its face. Our state Constitution prohibits prior restraints on speech: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Cal. Const., art. I, § 2, subd. (a); see *Dailey v. Superior Court* (1896) 112 Cal. 94, 100.) This provision is "[a] protective provision more definitive and inclusive than the First Amendment." (*Wilson v. Superior Court* (1975) 13 Cal.3d 652 , 658.) Our Supreme Court has stated that the "publication of information about a person, 'without regard to truth, falsity, or defamatory character of that information,' [is] not subject to prior restraint." *Wilson* at p. 659.

In *Rosicrucion Fellowship v. The Rosicrucion Fellowship Non-Sectarian Church* 39 Cal. 2d 121 (1952) the State Supreme Court ruled that Injunction is not a relief where first amendment free speech is at issue. This is true even when the speech is expected to be of the type that is not constitutionally protected. (See *Near v. Minnesota* (1931) 283 U.S. 697, 704-705 [rejecting restraint on publication of any periodical containing malicious, scandalous and defamatory matter])

However, in its opposition, the Respondent now attempts to remodel the allegations of the complaint to avoid the attempt to suppress speech. It does so by now completely abandoning the language of "spreading false

information, lies and rumors about Ocean's Eleven, its management and/or employees.”

This attempt seeks to incorporate protected, and potentially unprotected speech. However, “a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and non-protected activity under the label of one ‘cause of action.’” (*Fox Searchlight Pictures v. Paladino* (2001 2nd Dist.) 89 Cal.App.4th 294, 308.) Indeed, **“where a cause of action alleges both protected and unprotected activity, the cause of action will be subject to section 425.16... (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2004 1st Dist.) 133 Cal.App.4th 658, 672.).** (Emphasis added.)

CONCLUSION

By the showing made in its Motion and above, Appellant has satisfied his burden to demonstrate this matter is subject to a Special Motion to Strike as a SLAPP under C.C.P. § 425.16(e)(3) and (e)(4).

In this matter, for Respondent to have prevailed, it needed to establish by *admissible evidence* that: Anders' post, the letter and website

are not constitutionally protected free speech. This requires admissible evidence, which negates all affirmative defenses. Our Supreme Court recognized that "[e]rroneous statement is inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive." [Citation.]" (*Reader's Digest Assn. v. Superior Court, supra* , 37 Cal.3d at p. 261, quoting from *New York Times Co. v. Sullivan*, 376 U.S. 254.)

The parade of allegations, unsubstantiated by a single item of admissible evidence, shows that this matter is one which falls squarely within the contours of the SLAPP statute. As a matter of law the trial Court should have made a finding that this matter was a SLAPP as defined by C.C.P. § 425.16, and that Respondent did not meet its' burden of proof.

Respondent's Complaint against Anders clearly arises from Anders' post complaining about how he, a customer, was treated by the new management (being banned), his posting of his letter to Walter Lack complaining of the mistreatment of employees, and the plethora of ensuing comments on his public forum website, all of which are clearly protected by the anti-SLAPP law. Because the Respondent failed to establish the probability of prevailing with admissible evidence, this Court should reverse the trial court's

order denying Appellant's special motion to strike and direct the court to grant said motion.

In addition, this Court should award Appellants their reasonable fees and costs, including their fees and costs on appeal. (§ 425.16, subd. (c); *Church of Scientology v. Wollersheim*, 42 Cal.App.4th at pp. 659-660.)

Dated: June 28, 2013

Respectfully submitted,

Tim Anders, in *Pro Se*

WORD COUNT CERTIFICATION

I, Tim Anders, hereby certify, pursuant to California Rules of Court, Rule 8.204(c)(1), that the word count of my computer program for this consolidated brief indicates that it contains 10,676 words, including footnotes. Executed this 28th day of June, 2013.

Tim Anders

PROOF OF SERVICE

The undersigned hereby states under the penalty of perjury under the laws of the State of California:

I am over the age of eighteen and not a party to the within cause; and my business address is:
1119 S. Mission Rd. #102 Fallbrook, CA 92028

On this day, I addressed envelopes to:

Spencer Skeen
Law Office of Ogletree, Deakins,
Nash, Smoak, & Stewart, P.C.
4630 La Jolla Village Dr, Suite
San Diego, CA 92122
(Attorneys for
Plaintiff/Respondent)

Appeals Unit
Superior Court of California, County
of San Diego
325 S. Melrose
Vista, CA 92101

and I placed in said envelopes a copy of the following document:

APPELLANTS' OPENING BRIEF

and I deposited said envelopes in the U.S. Mail, postage fully prepaid, all on this day.

Dated: June 28, 2013

Manuela Portuanto