Case No. S____________

IN THE SUPREME COURT OF CALIFORNIA

TIMOTHY ANDERS,
Petitioner and Defendant,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIV.
Respondent,

MARK KELEGIAN,
Real Party in Interest.

PETITION FOR REVIEW

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after the denial of a
PETITION FOR WRIT OF MANDATE
by the Court of Appeal, Fourth Appellate District, Division One
Case No. DO65418

Petition from Superior Court of San Diego, North County Division
The Honorable Earl H. Maas, III, Judge
760 201 8028
Case No. 37-2013-00034236-CL-BT-NC

Tim Anders
1119 S. Mission Rd. #102
Fallbrook, CA 92028
760 522 6789

ATTORNEY FOR PETITIONER
Tim Anders, in *pro se*

Supreme Court
State of California

CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS

Court of Appeal Case Caption: Anders v. Superior Court

Court of Appeal Case Number: DO65418

Name of Interested Entity or Person	Nature of Interest
1. Mark Kelegian	Plaintiff
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

Printed Name: Tim Anders
Address: 1119 S. Mission Rd. #102 Fallbrook, CA 92028
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State Bar No: *in pro se*
Party Represented: Petitioner Tim Anders

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<u>**PETITION FOR REVIEW**</u>

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to rule 28 of the California Rules of Court, Petitioner, Timothy Anders, in *pro se*, respectfully petitions this court to review the summary denial by the Court of Appeals, Fourth District, Division One of a petition for a Writ of Mandate.

STATEMENT OF THE ISSUE PRESENTED

Does a trial court have the discretion to disregard the <u>***NO discovery rule***</u> of the anti-SLAPP statute, CCP 425.16 (g) and issue an order for discovery ***without a noticed motion*** and ***without good cause*** being shown for an exception to the rule of law?

WHY REVIEW SHOULD BE GRANTED

Retaliatory lawsuits filed against one who exercises his or her free speech rights not only threaten the defendant with financial liability, litigation costs, destruction of a business, loss of a home, and other personal losses, but also seriously impact our government, interstate commerce, and individual rights by significantly chilling public participation in public debate, governmental issues and voluntary calls to action.

These lawsuits, called strategic lawsuits against public participation (SLAPP), are becoming more and more common with the increased access to comments, reviews, calls to action and other statements made online by individuals exercising their 1st Amendment right to free speech.

In the instant case Real Party in Interest, Mark Kelegian, has caused three meritless lawsuits to be filed against the petitioner to punish him for not taking down his public forum website. A decision on the merits of this case will effect every American who has had or will have a SLAPP lawsuit filed against them for expressing their 1st Amendment rights, and indeed, this then would effect every American that has ever posted to or accessed a public forum website, literally millions of people.

This Court should grant review to safeguard the integrity of the no discovery law in California's anti-SLAPP statute (CCP 425.16 (g)).

II. FACTUAL AND PROCEDURAL HISTORY

Defendant 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 Ocean's Eleven Casino complaining about the mistreatment of employees (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 3). The plethora of comments in ANDERS' public forum enraged the Ocean's Eleven Casino's 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 (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 10).

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 fact that employees were in truth being mistreated is evidenced by the sworn declarations of two former employees, Sherry Trudel (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 4) and Randall Vanderiet, (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 5) on file in the second lawsuit against ANDERS, where they declare, under penalty of perjury, about how employees were routinely forced to work for free, off the clock, through fear of the real threat of termination.

The employees, upset about how they were being treated, and to show the barrage of threatening memos they were receiving at the direction of Mark Kelegian, gave ANDERS some copies thereof. (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibits 1 & 2) 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 minority

owners the employees wanted him to tell those owners of their plight in the hope that they could improve their situation.

Shortly thereafter 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 Ocean's Eleven Casino (a partnership), informing him of how Mark Kelegian was treating the employees and to protest the termination of these elderly receptionists (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 3, ANDERS' letter to Walter Lack). 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.

Shortly thereafter ANDERS was called into the office of the Ocean's Eleven Casino, 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. (It said they would be fired on the memo, see Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 2). 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 Plaintiff's attorneys demanding that ANDERS 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 [See *Thomas v. Fry's Electronics* 400F.3d 1206 (2005)] , 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 website can still be accessed by going to: http://pokercommunitynetwork.com/

The Plaintiff, Real Party in Interest, Mark Kelegian, then filed a meritless lawsuit for a restraining order claiming that ANDERS, a gentle children's book author, somehow posed a threat of violence against Kelegian, 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. (See Exhibit A-Motion to Strike-ANDERS' Declaration Exhibit 10)

The second lawsuit is still pending as is this one.

On August 7, 2013 ANDERS and Alpine Publishing, Inc. filed an Anti-SLAPP Motion to Strike in the instant case. (See Exhibit A)

On August 14, 2013, ***without*** a properly noticed hearing, the Court granted leave to conduct discovery related to the anti-SLAPP motion. This would identify the posters. (See Exhibit B, Notice of Ruling) ANDERS objected.

On August 26, 2013 Defendant ANDERS made application to the court to reconsider it's ruling granting discovery (see Exhibit C) showing the court that before an exception to the ***No*** discovery rule, CCP 425.16 (g), can be made ***there must be a noticed motion*** specifying the discovery requested and that good cause must exist in granting the exception. The Court said it would not make a ruling until after a Mandatory Settlement Conference.

The MSC lasted from 10 a.m. to nearly 5 p.m. on September 27, 2013 a deal was proposed that would end ANDERS' year and a half long nightmare without costing him another cent or any more of his time. The deal breaker was that Real Party in Interest, (KELEGIAN) wanted the contact information and identities of the hundreds of employees and customers who posted on ANDERS' public forum website. ANDERS' moral principals and self-respect would not allow him to give that information to them just to save himself from this immoral and reprehensible nightmare.

On October 1, 2013 Real Party in Interest's attorneys sent notices of depositions and request for production of documents. Again the documents requested would identify the posters on ANDERS' public forum website.

On October 8, 2013 ANDERS filed an ex-parte Request for a Ruling on his Application for Reconsideration of the Order Lifting the Discovery Stay (See Exhibit D). The ex-parte hearing was held on October 9, 2013. After reviewing the

ex parte application and opposition thereto (See Exhibit E) and hearing oral argument, the Court denied ANDERS ex parte application. The Court again, without a noticed hearing and good cause being shown, granted Plaintiff leave to conduct discovery including, but not limited to, documents evidencing the identity of persons who made posts on ANDERS' public forum website. (See Notice of Ruling, Exhibit F)

On January 7, 2014 ANDERS deposition was held. Petitioner refused to bring documents that would identify the posters. After an hour and a half of answering questions that had nothing what-so-ever to do with the issues raised in the anti-SLAPP motion Petitioner left.

Plaintiff filed an ex-parte motion to compel and a request for sanctions (See Exhibit G). On January 22, 2014 petitioner filed his opposition to the motion (See Exhibit H) and a hearing date was set for February 7, 2014. At the hearing Plaintiff's motion to compel petitioner's attendance at deposition was granted and petitioner was ordered to pay monetary sanctions to Plaintiff in the amount of $4,335.60. (See Exhibit I).

Subsequently another notice of deposition was sent, again requiring production of documents that would identify the posters (See Exhibit J). The scheduled date was February 13, 2014. This was not a date that was available for Petitioner to attend, none-the-less opposing counsel refused to re-schedule to a time when Petitioner would be in the San Diego area although Petitioner offered several dates that were within 10 days of the date they insisted on. Petitioner also offered to take the deposition on the date requested if they would hold the deposition in Las

Vegas. (Petitioner's primary residence is in Las Vegas, NV). They declined. Petitioner did not attend the deposition leaving himself exposed to another sanctions order.

On February 19, 2014 Petitioner filed a Petition for a Writ of Mandate with the Court of Appeal, Fourth Appellate District, Division One, Case No. DO65418. (See Exhibit K). **Writs of Mandate** are supposed to be available to correct "manifest abuses of discretion" by lower courts. (Code Civ. Proc., § 1085.) This was clearly shown to the Appellate Court along with the fact that irreparable damages would befall the petitioner and are now another burden the petitioner must endure. Even with this showing, on February 20, 2014 the petition was denied. (See attached Exhibit L).

LEGAL DISCUSSON

A. ANDERS WAS DENIED DUE PROCESS

Under the Fourteenth Amendment of the Constitution of the United States of America ANDERS has the right to due process. This was denied him when the trial court abused its' discretion by arbitrarily lifting the discovery stay without regard to the applicable law. The applicable law is this:

CCP 425.16 (g) **All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section.** The stay of discovery shall remain in effect until notice of entry of the order ruling on the

motion. The court, on ***noticed motion*** and for ***good cause*** shown, ***may*** order that ***specified discovery*** be conducted notwithstanding this subdivision. (Emphasis Supplied)

There was ***NO*** noticed motion that stated the reasons for the requested exception. There was ***NO*** noticed motion that indicated the ***specific*** discovery requested. ANDERS was denied the opportunity to research and respond to the motion which, as a matter of law, was requisite prior to a ruling, hence ANDERS was denied his constitutional right of due process. For this reason this Court should review this case and hopefully correct this injustice.

B. THE REQUIREMENTS THAT MUST BE MET

The law is clear as to what is requisite prior to an exception being granted:

> "On the plaintiff's "noticed motion and for good cause shown," the court may order that specified discovery be conducted notwithstanding the mandatory stay provision" [CCP 425.16(g); *Robertson v. Rodriguez* (1995) 36 CA4th 347, 357, 42 CR2d 464].
>
> "Discovery may be conducted upon application to the court on noticed motion," [*Contemporary Services Corp. v. Staff Pro Inc.,* 152 CA4th 1043, 1061, 61 CR3d 434, 459 (2007) (CCP 425.16(g) "requires that requests to conduct limited discovery pending a hearing on a special motion to strike must be in the form of a noticed motion")], if good cause is shown, and such discovery is limited to the issues raised in the special motion to strike. The purpose of this limitation is to further the purposes of the motion, i.e., to minimize the costs and the burdens of unmeritorious litigation directed at free speech rights. [*Slauson Partnership v. Ochoa* 112 CA4th 1005, 1021 5CR3d 668, 680 (2003)

In *Britts v. Superior Court*, 145 Cal.App.4th 1112 52 Cal.Rptr.3d 185 (2006), they specifically address the issue of when the exception is allowed:

> “Once an anti-SLAPP motion is filed, all of these discovery processes are stayed, unless the plaintiff obtains an order permitting specified discovery for good cause shown. (§ 425.16, subd. (g).) Even then, case law has interpreted good cause in this context to ***require a showing that the specified discovery is necessary for the plaintiff to oppose the motion and is tailored to that end.*** (*citations omitted*) (Emphasis supplied)

There was ***never*** the requisite showing by plaintiff as to ***why*** plaintiff needs to know the identities of the employees and customers who posted their comments on ANDERS’ Public Forum Website in order to file an opposition to defendant’s anti-SLAPP motion hence the trial court made a discretionary error.

In the Writ of Mandate decision in *Garment Workers Center v. Superior Court* (2004) 117 CA4th 1156, 1162 12 CR3d 506, 509-10*,* Defendants contended they should not have been required to shoulder the expensive and time-consuming burden of complying with plaintiffs' discovery demands until the trial court first determined whether plaintiffs had a reasonable probability of establishing the other elements of a libel action. The Court of Appeals agreed and concluded that the trial court abused its discretion in permitting that discovery. Also see *Paterno v. Superior Court* (2008) Cal.App.4th 1432 (2008) where the Court of Appeals directed the trial court to vacate its discovery order stating that ***no good cause existed to conduct the discovery requested***.

Likewise Respondent has abused its discretion by permitted plaintiff, though discovery, to get the poster’s information without a noticed motion and good cause being shown as to why this was necessary. This is exactly the abuse that the

legislature wanted to protect SLAPP defendants against when they enacted CCP 425.16 (g).

If they want to know the identities of the posters there needs to be an extremely good reason for it. Other than to punish the posters for exercising their constitutional right of free speech what reason could there be for wanting this information? There is no valid reason for plaintiff to have this discovery and this Court should correct the trial court's error that allowed it.

In *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154 [72 Cal.Rptr.3d 231], the court directed a trial court to quash a subpoena to discover the identity of an anonymous Internet poster. To protect First Amendment expression, *Krinsky* required the discovery proponent to make a prima facie showing the message board statement was libelous. (See Civ. Code, § 44 ["libel" defined as defamation effected in writing].) "Requiring at least that much ensures that the plaintiff is not merely seeking to harass or embarrass the speaker or stifle legitimate criticism." (*Krinsky,* at p. 1171.)

Also in *O'Grady v. Superior Court*, 139 Cal.App.4th 1423 (2006) Apple Computer, Inc. issued subpoenas to identify the source of a leak by one of its employees of a new product. The subpoenas were directed to a website blogger and the blogger's email service provider. The blogger asked the trial court to quash the subpoenas. The trial court denied that request. The blogger appealed. The Court of Appeal overturned the trial court and directed that the subpoenas be quashed. Again this case law supports the notion that there is no good cause as to why petitioner

should be forced to identify the posters on his public forum website especially without a noticed hearing.

It is extremely rare for a court to grant discovery prior to the hearing of an anti-SLAPP motion to strike. Again, in the instant case there was ***NO*** noticed motion that stated the reasons for the requested exception. There was ***NO*** noticed motion that indicated the ***specific*** discovery requested. ***No*** legal president exists to allow an exception to CCP 425.16 (g) without a noticed hearing. ANDERS was denied the opportunity to research and respond to the motion which, as a matter of law, was requisite prior to a ruling. The law is clear: There must be ***good cause*** shown after a ***noticed motion*** for the trial court to justify ***an exception*** to this rule. Respondent abused its discretion by not allowing these requisites to transpire. The Petitioner was just a customer who cared and still cares about the mistreatment of employees. When his legal fees reached 35k he could no longer afford counsel and has been acting as his own attorney for over a year and a half. Petitioner spends 40+ hours a week reading, researching and writing legal briefs just to defend himself from these frivolous lawsuits. This Court needs to send a message that the rule of law that protects Americans from needless and expensive discovery in SLAPP lawsuits must not be ignored.

THIS COURT SHOULD GRANT REVIEW TO SUPPORT FREEDOM OF SPEECH

It is 100% clear from the record that the trial court ordered discovery without a noticed motion. This is abuse of discretion. This error was pointed out to the trial

court in two motions and an opposition filed by the petitioner, all to no avail. Petitioner then filed a Writ of Mandate with the Court of Appeals. Writs of Mandate are supposed to be available to correct "manifest abuses of discretion" by lower courts, (Code Civ. Proc., § 1085.) which has clearly happened in the instant case. The Court of Appeals, for reasons unknown, denied the petition. This has caused petitioner irreparable damages.

Further sanctions will ensue for petitioner's continued refusal to identify the posters on his public forum website. The only thing the hundreds of employees and customers who posted on petitioner's public forum website are guilty of is exercising their right to free speech. Real Party in Interest, Mark Kelegian, has already shown that he will use the legal system to punish posters. He has sued the Petitioner three times already, he has sued another customer whose identity was known, and if he knew the identities of all the posters he, without a doubt, would retaliate against them for the audacity of expressing their opinions in a manner that is guaranteed to them by the 1st Amendment to the Constitution of the Untied States of America.

Should they be punished for this as petitioner has been? These people should be protected by the legal system, yet petitioner is the only one protecting them from Real Party in Interest's retaliation. Respondent has abused its discretion by permitted plaintiff, though discovery, to get the posters information without a noticed motion and good cause being shown as to why this was necessary. This is exactly the abuse that the legislature wanted to protect SLAPP defendants against when they enacted CCP 425.16 (g).

A decision on the merits of this case would literally effect every American who will have a SLAPP lawsuit filed against them for expressing their 1st Amendment rights, and indeed, this in turn would effect every American that has ever posted to or accessed a public forum website, literally millions of people.

CONCLUSION

In America is there Justice for All or only Justice for All who can afford expensive attorneys? Even with the law clearly on his side Petitioner failed at the trial court level, and failed again at the appellate level; does a *pro se* petitioner have a shot at justice when the law clearly dictates that he should? Or does the lack of representation condemn him to failure? For the reasons set forth, petitioner respectfully requests the Court to grant this Petition for Review in order to settle this significant issue of law.

Respectfully submitted,

Dated: February 26, 2014

____

Timothy Anders, Petitioner in *pro se*

VERIFICATION

The allegations in the foregoing Petition for Review are alleged as true under penalty of perjury by the undersigned and are based upon the accompanying copies of official court documents and sworn declarations.

Executed on February 26, 2014, at Fallbrook, California

____

Timothy Anders, Petitioner 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 4,923 words, including footnotes. Executed this 26th day of February, 2014.

____

Tim Anders

DECLARATION OF TIM ANDERS

I declare under penalty of perjury under the laws of the State of California, that I spoke with Tim Johnson, Esq, counsel for Real Party in Interest, Mark Kelegian, and he agreed to accept service of all briefs via e-mail. I spoke with Scott Busskohl of the Court of Appeals and was told that they would accept an e-filed service copy.

Dated: February 26, 2014

____

Tim Anders

PROOF OF SERVICE

I am over the age of 18 years and I am not a party to the within action. I have my business address at: 1119 S. Mission Rd. #102 Fallbrook, CA 92028.

On February 26, 2014, I caused the service of the foregoing document described as:

PETITION FOR REVIEW

Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person[s] at the e-mail addresses listed below.

Timothy L. Johnson, Esq.
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I personally mailed the document to the Superior Court addressed as follows:
The Honorable Earl H. Maas, III, Judge
Superior Court, Dept. N28
325 South Melrose Dr.
Vista, CA 92028
760-201-8028

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed at Fallbrook, California on the 26th day of February, 2014.

____
Manuela Portuanto

Exhibit L

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TIMOTHY ANDERS, Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent;	D065418 (San Diego County Super. Ct. No. 37-2013-00034236-CL-BT-NC)
MARK KELEGIAN, Real Party in Interest.	

THE COURT:

The petition for writ of mandate and request for stay have been read and considered by Justices O'Rourke, Aaron and Irion. The petition is denied.

AARON, Acting P. J.

Copies to: All parties

-------- Original Message --------
Subject: Confirmation Receipt
Date: Wed, 26 Feb 2014 18:37:33 +0000
From:4d1eFile <4d1eFile@jud.ca.gov>
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