Case No:

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

_____

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 WRIT OF MANDATE AND;
MEMORANDUM OF POINTS AND AUTHORITIES
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

REQUEST FOR IMMEDIATE STAY
From pending Writ of Execution,
depositions and production of
documents

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

ATTORNEY FOR PETITIONER
Tim ANDERS, in *pro se*

State of California
Court of Appeal
Fourth Appellate District

CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS

Court of Appeal Case Caption: ANDERS v. Superior Court

Court of Appeal Case Number:

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
Telephone: (760) 522-6789
State Bar No: *in pro se*
Party Represented: Petitioner Tim Anders

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PETITION FOR WRIT OF MANDATE

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT:

Petitioner, Timothy Anders, in *pro se*, respectfully petitions this court to issue a writ of mandate commanding that respondent Superior Court County of San Diego, North County Division:

(1) To set aside its rulings of October 9, 2013 where it allowed Real Party in Interest, Mark Kelegian, (Plaintiff) to depose ANDERS and produce documents that would identify the posters on his public forum website.

(2) To set aside its rulings of February 7, 2014 where it granted Real Party in Interest, Mark Kelegian, (Plaintiff)'s motion to compel Petitioner's attendance at deposition and ordered petitioner to pay monetary sanctions to Plaintiff in the amount of $4,335.60 for leaving the January 7, 2014 deposition where Petitioner refused to deliver documents that would identify the posters on his public forum website.

(3) To not allow discovery until Petitioner's anti-SLAPP Motion to Strike has been decided.

Until a determination on the merits of this writ petition the Petitioner also seeks from this Court an **IMMEDIATE STAY** of all proceedings in the trial court. The issuing of a Writ of Execution will soon happen, this will cause Petitioner irreparable damages if this Court does not take action on the merits to correct the errors of the trial court. Depositions have been scheduled for February 20, 2014. Petitioner was unable to request a stay in the trial court due to the court's calendar.

I. INTRODUCTION

The purpose of this lawsuit is simple: to punish Petitioner ANDERS for refusing to take down his public forum website and to punish the employees and customers who posted their comments thereon. Real Party in Interest, Mark Kelegian (Plaintiff) would have the Court believe that the reason for the complaint is to get the domain name markkelegian.com, delivered to the plaintiff. The Court needs to be aware that ANDERS has offered to give the domain name, for *free*, to plaintiff, five separate times, once prior to the filing of the instant lawsuit, and three times prior to hiring his attorney and once through his attorney. All but the last one was ignored and that one was rejected. Mr. Kelegian has made it clear he will not settle this case without first getting the names and contact information of all who posted on ANDERS' public forum website.

While plaintiff's Causes of Action are cast in the nature of Cyber Squatting, the conduct about which plaintiff complains arises out of activities protected by the First and Fourteenth Amendments of the United States Constitution, to wit, his public forum website and the posts thereon. As a result, this type of lawsuit implicates California's anti-SLAPP statute. The proof of what gave *rise* to the complaint is offered by *Plaintiff's own words* in its Opposition to the Motion to Quash at P. 1, ¶ 24 through P. 2 line 2 (See Exhibit K). which says:

"ANDERS and his publishing company, Alpine Publishing, Inc., have made it their mission to destroy the reputation of Ocean's Eleven and its managing partner, Plaintiff Mark Kelegian, in San Diego. Defendants started their campaign against Ocean's Eleven and Mr. Kelegian by creating a website titled oceans11.info. That website offered ANDERS' account of his eviction from Ocean's Eleven and asked Ocean's Eleven employees and customers to post their comments. Thereafter Defendants created other websites that were carbon copies of oceans11.info, including markkelegian.com."

The SLAPP Plaintiff's intent is not to win the litigation, only to intimidate and harass critics into silence by tying up their resources in costly and time consuming litigation. Discovery is a form of this harassment, that is why the legislature put this into the anti-SLAPP law:

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)

It is extremely rare for a trial court to allow discovery once an anti-SLAPP motion has been filed. In order to allow such a rare exception 'good cause' must be shown in a noticed motion (See *Britts v. Superior Court*, 145 Cal.App.4th 1112 52 Cal.Rptr.3d 185 (2006). The trial court here abused its discretion by allowing discovery in direct contradiction to this law. There was ***NO*** noticed motion that specified the discovery requested nor was 'Good Cause' shown as to why this discovery was necessary to oppose the anti-SLAPP motion to strike. There was no motion what-so-ever in this regard. The trial court erred in arbitrarily ordering discovery that would identify the posters on petitioner's public forum website.

In *Britts v. Superior Court, supra,* they specifically address this issue:

> "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.*** (*Tutor-Saliba Corp. v. Herrera, supra,* 136 Cal.App.4th at p. 617, 39 Cal.Rptr.3d 21; *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 359, 37 Cal.Rptr.3d 480; *Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 922, 20 Cal.Rptr.3d 385; *1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 593, 132 Cal.Rptr.2d 789; *Mattel, Inc. v. Luce,*

Forward, Hamilton & Scripps, supra, 99 Cal.App.4th at pp. 1189-1190, 121 Cal.Rptr.2d 794; *Slauson Partnership v. Ochoa, supra,* 112 Cal.App.4th at p. 1021, 5 Cal.Rptr.3d 668.) (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. Other than to retaliate against the posters 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 there is no reason. No good cause exists for plaintiff to have that information. For justice to be served this Court must correct the trial court's error.

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 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 herein, 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. (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 a cent. The deal breaker was that Real Party in Interest, (KELEGIAN) wanted the contact information and identities of the employees and customers who posted on ANDERS' public forum website. ANDERS would not give that information to them just to save himself.

On October 1, 2013 Real Party in Interest's attorneys sent notices of depositions and request for production of documents. 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 an 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 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)

The next day, on October 10, 2013 in order to protect the posters' identities ANDERS filed a petition for Writ of Mandate and request for a stay. The stay was granted. Shortly thereafter the petition was summarily denied without addressing the merits.

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.

III. IRREPARABLE DAMAGES

On January 7, 2014 Petitioner went to a deposition, unrepresented by counsel, that, according to law, was not supposed to happen. All discovery, including that deposition, should have been stayed until after the hearing on the anti-SLAPP special motion to strike, according to the applicable law, CCP 425.16 (g). At the deposition petitioner refused to give documents that would identify the employees and customers of Ocean's Eleven Casino who posted on his public forum website and after an hour and a half of answering questions that had nothing to do with the motion to strike, left the deposition. Plaintiff then filed a motion to compel and Petitioner was then ordered to pay monetary sanctions to Plaintiff in the amount of $4,335.60.

Unless this court grants a stay and adjudicates this petition on its' merits, petitioner will suffer immediate, unjustified and irreparable damages. If this court does not act immediately Plaintiff's counsel has stated in an email that sanctions and monetary judgments are the same and that if these sanctions are not paid immediately they will get a writ of execution and go after petitioner's assets. Petitioner currently makes his living by playing small buy-in poker tournaments on weekends. Plaintiff has indicated that he will go to every casino at which Petitioner plays and file a writ with them so any winnings that

would normally be awarded to the Petitioner would go to the Plaintiff. This would be devastating to Petitioner as he would no longer be able to pay for life's essentials, like food and shelter.

In addition if Petitioner were to give up the identities of the employees and customers (erroneously ordered by the court) who posted on his public forum website they too will suffer. Plaintiff has already sued another customer who tried to help the employees. If identified, employees lives would be made so miserable they would have to quit. Plaintiff knows that he legally can't fire the employees but what he has done in the past is to make it so miserable for them to work there that they quit. Things like erratically changing their hours to graveyard shift, then swing shift, then making them work on their normal day off, basically creating a hostile work environment until they quit. Plaintiff has said in open court that he would ban any customer who posted on Petitioner's public forum website. That would be the least he would do. Imagine him suing (and he has shown that he would) to punish each of the posters for expressing their opinions on ANDERS' public forum website. 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 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.

The Petitioner was just a customer who cared 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. He has had no time to write and publish any new books. Last year he had no time to go on

his normal book tours, no TV interviews, no radio interviews, no book signings, all because of having to spend all of his time in defense of these meritless lawsuits. As a result his book sales were the worst they had ever been in fifteen years. Consequently last year Petitioner made less than 1k from the sales of his books. It would be unjust to expose the customers who posted on ANDERS' Public Forum website to this same sort of harassment. Plaintiff should not be allowed to use the legal system to punish people for exercising their 1st amendment rights.

Petitioner has no other remedy available to him other than this extraordinary Writ. The Writ of Execution will soon be available to Plaintiff and that would mean the Petitioner would lose his only source of income. Petitioner cannot wait for a conventional appeal taken after entry of judgment. Petitioner cannot even wait for a ruling on his motion to strike. This Court has the power, indeed the obligation, to correct the trial court's error so these devastating and irreparable damages don't occur against the Petitioner whose only offence was sticking up for 1st amendment rights. The damages the Petitioner will suffer, if this court does not act and make a ruling on the merits, will not be able to be corrected in some future appeal, hunger and homelessness are not appealable. The trial court's order is both clearly erroneous as a matter of law and substantially prejudices Petitioner's case.

IV. SUMMARY

At issue here is this: do trial courts have the right to ignore the law (CCP 425.16) that was designed to protect American's First Amendment rights? They do ***NOT***. A decision on the merits of this case would effect every American that has ever posted to or accessed a public forum website, literally millions of people.

Respondent Superior Court abused its' discretion in ordering the discovery stay be lifted without a properly noticed hearing to ascertain what specifically was sought and whether good cause existed to warrant an exception to the NO discovery rule CCP 425.16 (g).

Extraordinary writ is an appropriate remedy in challenging Respondent Superior Court's ruling to allow the identities of the posters to be know to KELEGIAN. The attached Memorandum of Points and Authorities and Exhibits support this request for extraordinary relief and are incorporated by reference as if set forth in *haec verba*.

In addition to the irreparable damages the Petitioner will suffer, there is a real danger, should the Real Party in Interest acquire the identities of the posters, that retaliation would ensue. Kelegian had already stated that he would ban any customer that posted in the public forum. Therefore good cause exists for a stay of all proceedings in the trial court until completion of these writ proceedings.

WHEREFORE, petitioner prays that:

(1) A writ of mandate be issued commanding Respondent Superior Court to annul and vacate its order granting discovery;

(2) To set aside Respondent's order granting sanctions;

(3) This Court order an IMMEDIATE STAY of all proceedings until the completion of these writ proceedings.

(4) Petitioner be granted such other and further relief as this Court deems appropriate.

Respectfully submitted,

Dated: February 19, 2014 _____

Timothy ANDERS, Petitioner in *pro se*

VERIFICATION

The allegations in the foregoing Petition for Writ of Mandate and Request for Immediate Stay 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 19, 2014, at Fallbrook, California

_____

Timothy Anders, Petitioner in *pro se*

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE PETITION FOR WRIT OF MANDATE

ARGUMENT

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 Court arbitrarily lifted 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.

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 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 plaintiffs, 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).

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 plaintiffs to have this discovery and clearly no reason for this Court to allow 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.)

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. 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. Unless this Court corrects this error the petitioner will suffer irreparable damages that will not be able to be corrected on appeal.

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CONCLUSION

For the reasons set forth, the ruling of respondent superior court, allowing discovery of the identities of posters exercising their right to free speech, along with the order for sanctions against the Petitioner for not complying, should be reversed, and respondent should be ordered not to allow discovery until after the anti-SLAPP motion has been heard.

Respectfully submitted,

Dated: February 19, 2014

_____

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 5,902 words, including footnotes. Executed this 19th 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 the Petition for Writ of Mandate via e-mail.

Dated: February 19, 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 October 10, 2013, I caused the service of the foregoing document described as:

PETITION FOR WRIT OF MANDATE

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.
Tim.Johnson@ogletreedeakins.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
4370 La Jolla Village Dr., Ste. 990
San Diego, CA 92122
858-652-3105

Herbert Papenfuss
hfuss@sbcglobal.net
3604 Azure Circle
Carlsbad, CA 92008
760-458-9601

I personally delivered the document to the Superior Court and delivered it to N28
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 19th day of February, 2014.

_____
Manuela Portuanto