

**Judge Benson – Law & Motion – Wednesday, May 10, 2023 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 19CV02574 Najolia, Miriam v. Chavez, Michelle et al.**

*EVENT: Motion to be Relieved as Counsel (Continued from 4/12/23)*

Motion to be relieved as counsel is GRANTED. The Court will sign the proposed order. The order will become effective upon the filing of a notice of order demonstrating Defendant Guiffra has been served with the order.

**2. 20CV02347 Silano, Joel M et al v. FCA US, LLC et al**

*EVENT: Defendant FCA US LLC's Motion for Summary Judgment/Summary Adjudication*

Upon review, it does not appear that the "Appendix of Documentary Evidence" was ever filed with the Court. The motion is continued to May 31, 2023 at 9:00am for Defendant to file same.

**3. 22CV00672 Wells Fargo Bank, N A v. Tanabe, Renee**

*EVENT: Plaintiff's Motion for Summary Judgment or in the Alternative Summary Adjudication (Continued from 4/2/23)*

Plaintiff's Motion for Summary Judgment or in the Alternative Summary Adjudication is Granted in its entirety. Plaintiff has met its initial burden by demonstrating no triable issue of fact exists as to either the Breach of Contract or Common Counts causes of action and the motion is unopposed. The Court will sign the proposed order. The Court trial scheduled for May 22, 2023 and the Trial Readiness Conference scheduled for May 17, 2023 are vacated.

**4-5. 22CV02644 Greene, Robin v. Housing Authority of the County of Butte**

*EVENT: (1) Motion to be Relieved as Counsel (Plaintiff, filed by Michael Cohen)*

*(2) Motion to be Relieved as Counsel (Plaintiff filed by Robert Lynch)*

Both Motions to be Relieved as Counsel (Plaintiff) are GRANTED. The Court will sign the proposed orders. The orders will become effective upon the filing of the proof of service.

**6. 22CV02728 LVNV Funding, LLC v. Navarrette, Mary**

*EVENT: Plaintiff's Motion to Deem Requests For Admissions Admitted*

Plaintiff's Motion to Deem Requests For Admissions Admitted is GRANTED. The Court will sign the proposed order.

**7. 23CV00188 Chico Immediate Care Medical Center, Inc. v. Schmidt, Ava L et al**

*EVENT: Motion for Order Striking Cross-Complaint (under CCP 425.16(e))*

Motion for Order Striking Cross-Complaint (under CCP 425.16(e)) is GRANTED.

A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (*Navellier v. Sletten*, (2002) 29 Cal. 4th 82, 87-88) As to the first prong, the court finds Cross Defendant has satisfied its burden in demonstrating that the press release was protected under the statute.

As to Cross Defendant's contention that the press release falls under the category of a written statement made in connection with and official proceeding authorized by law, the Court agrees. The California Supreme Court has concluded that this phrase applies to proceedings required by statute. (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192,

197) Here, it is clear Health and Safety code section 1280.5 required cross defendant to notify both the Department of Public health as well as those affected by the alleged security breach.

Contrary to Cross Complainant's arguments, there is no reasonable dispute that name, address, and phone number information is covered by section 1280.15. Consequently, because cross defendant was required by law to disclose the security breach, the press release was protected as a statement made in connection with an official proceeding authorized by law. ("Official Proceeding authorized by law" is not limited to proceedings before governmental entities, see *Kibler, supra*, at p. 199)

Additionally, the court finds that the press release is protected as "conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest."

The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, (2003) 106 Cal. App. 4th 1219, 1233)

In *Chaker v. Mateo*, (2012) 209 Cal. App. 4th 1138 the 4th District Court of appeal found consumer information that was intended to serve as a warning to consumers were statements concerning a matter of public interest. Here, in light of the well-known privacy regulations including HIPPA regulations, as well as Constitutional protections, it cannot be reasonably disputed that protection of patient information is a significant public issue. Privacy is clearly a significant on-going public issue.

In *Rand Resources, LLC v. City of Carson*, (2019) 6 Cal. 5th 610 the California Supreme Court recognized (3) sub categories of statements that fall within the category of an issue of public interest: when the statement or conduct concerns a person or entity in the public eye; the second, when it involves conduct that could directly affect a large number of people beyond the direct participants; and the third, when it involves "a topic of widespread, public interest." (*Id* at p.623)

Preliminarily, the Court noted these three sub-categories are non-exclusive. In this case the Court finds the second subcategory applies. Here, the press release concerned 3,780 patients whose private information was compromised. The Court has found no authority providing parameters as to what constitutes a "large number of people" for purposes of the statute. Absence such guidance, the Court returns to the purpose of the statute including the express language that it is to be broadly construed. In light of this standard, the Court finds the number of persons affected by the security breach is a "large number of people" for purposes of the statute.

Therefore, the Court finds the press release was protected speech on the additional grounds it was made in connection with a public issue. Consequently, the burden shifts to cross complainant to demonstrate a probability of prevailing on her defamation claim.

If the challenged action falls within the litigation privilege, the trial court should grant an anti-SLAPP motion to strike. (*Laker v. Board of Trustees of California State University*, (2019) 32

Cal. App. 5th 745, 769) A plaintiff cannot establish a probability of prevailing if the litigation privilege precludes the defendant's liability on the claim. The privilege established by this subdivision often is referred to as an 'absolute' privilege, and it bars all tort causes of action except a claim for malicious prosecution. It is intended to assure utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing. (*Id.*)

As the court has previously explained, the press release was a written statement made in connection with Cross Defendant's obligations pursuant to Health and Safety Code section 1280.15. Consequently, the same written statement is also subject to the litigation privilege of Civil Code section 47. Similarly, the press release was made in the context of both "an official proceeding authorized by law" and "in the initiation or course of any other proceeding authorized by law and reviewable ..." (Civ. Code § 47(b)) As a result, Cross-Defendant cannot establish a probability of prevailing in light of the litigation privilege.

CCP § 425.16(c)(1) provides in part,

... a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs.

...

Cross defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**8. 23CV00423 In re: Ortega Kladko, Mandolin Sarah**

*EVENT: Change of Name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**9. 23CV00698 Cream of the Crop Ag Service, Inc. v. Peterson Pistachio Development Inc.**

*EVENT: OEX as to Barbara Lynn Peterson aka Lynn Peterson*

The Court will swear in the witness.

**10. 18CV01227 PMGI Financial v. Jackson, Clifton**

*EVENT: Opposition to Claim of Exemption – Wage Garnishment*

*Opposition to Claim of Exemption – Enforcement of Judgment*

The Court will conduct a hearing.

**11. 22CV01411 Hawks, Dixianne v. Bidwell Title and Escrow Company**

*EVENT: Motion for Relief From Default for Excusable Mistake/Neglect*

“Motion for Relief From Default for Excusable Mistake/Neglect”, which the Court construes as a motion for relief from dismissal, is GRANTED. Plaintiff is admonished that it is her responsibility to update the Court with her current address. Pursuant to CCP 473 (c)(1)(A) Plaintiff is sanctioned in the amount of \$200.00. A status conference is hereby scheduled for May 24, 2023 at 10:30am. The Court will prepare the form of order.