

**Tentative Rulings for November 18, 2021**  
**Department 503**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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| 18CECG04501 | <i>Diaz v. Sun-Maid Growers of California</i> is continued to Wednesday, December 22, 2021 at 3:30 p.m. in Dept. 503                          |
| 19CECG01332 | <i>California Statewide Communities Development Authority v. Wright</i> is continued to Thursday, December 16, 2021 at 3:30 p.m. in Dept. 503 |
| 21CECG00929 | <i>Croll v. Fresno Valley SNF, LLC</i> is continued to Thursday, January 13, 2022 at 3:30 p.m. in Dept. 503                                   |

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# **Tentative Rulings for Department 503**

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(27)

**Tentative Ruling**

Re: **A. Sameh El Karbawy v. Board of Trustees of California State University, et al.**  
Superior Court Case No. 21CECG02214

Hearing Date: November 18, 2021 (Dept. 503)

Motion: By Plaintiff to Lift Discovery Stay

**Tentative Ruling:**

To grant, in part, as the motion relates to opening discovery into the arguments of a legitimate business purpose asserted by defendant Board of Trustees of California State University in its special motion to strike pursuant to the anti-strategic lawsuit against public participation (SLAPP) statute. (Code Civ. Proc., § 426.16, subd. (g).) To condition relief on limiting the scope of discovery. To deny plaintiff's motion in all other respects.

To continue the hearing to December 16, 2021, at 3:30 p.m., in Department 503, to allow the parties to address the proposed scope of discovery as it relates to the legitimate business purpose argument and the discovery parameters allowed pursuant to the anti-SLAPP statute. Plaintiff's supplemental briefing is due by November 30, 2021. Defendant's supplemental briefing is due by December 7, 2021. Supplemental briefs shall not exceed 10 pages.

**Explanation:**

*Discovery in Anti-SLAPP Proceedings*

All discovery proceedings in an action are stayed upon the filing of a notice of special motion to strike. (Code Civ. Proc., § 426.16, subd. (g); *Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1125.) In addition, "[t]he 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." (Code Civ. Proc., § 426.16, subd. (g).) However, "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." (*Britts v. Superior Court, supra*, 145 Cal.App.4th at p. 1125.) Accordingly, where the defendant has already conceded making the statements attributed to him or where additional discovery would not demonstrate a prima facie case, the request to open discovery is properly denied. (See, e.g., *Tutor-Saliba Corp. v. Herrera* (2006) 136 Cal.App.4th 604, 618; *Sipple v. Foundation For Nat. Progress* (1999) 71 Cal.App.4th 226, 247.)

However, a "court exercising its discretion to grant or deny a motion under [Code of Civil Procedure] section 425.16, subdivision (g) should remain mindful that the anti-SLAPP statute was adopted to end meritless suits targeting protected speech, 'not to abort potentially meritorious claims due to a lack of discovery.'" (*Wilson v. Cable News*

*Network, Inc.* (2019) 7 Cal.5th 871, 891, citations omitted.) Thus, “[w]here a defendant relies on motive evidence in support of an anti-SLAPP motion, a plaintiff’s request for discovery concerning the asserted motive may often present paradigmatic ‘good cause.’” (*Id.* at pp. 891-892, citing Code Civ. Proc., § 426.16, subd. (g).)

Courts generally consider whether the evidence necessary to establish a prima facie case is in the hands of the defendant, whether the necessary information can be obtained from other sources or informal discovery, and “the plaintiff’s need for discovery in the context of the issues raised in the SLAPP motion.” (*The Garment Workers Center v. Superior Court* (2004) 117 Cal.App.4th 1156, 1161.) In essence, issues that can be decided without discovery should be resolved “before permitting what may otherwise turn out to be unnecessary, expensive and burdensome discovery proceedings.” (*Ibid.*)

Plaintiff moves to lift the discovery stay as it relates to (1) defendant’s arguments regarding the Governmental Tort Claims Act, (2) defendant’s arguments regarding the administrative proceedings privilege, and (3) defendant’s arguments related to legitimate business purpose.

#### Government Tort Claims Act

Defendant notes that “a claimant who fails to receive a written notice of the public entity’s action on the claim within a reasonable time after the end of the 45-day period for its consideration, should make inquiry to determine whether, and if so, when, the notice was in fact served.” (*Dowell v. County of Contra Costa* (1985) 173 Cal.App.3d 896, 901.) Plaintiff does not address the principle articulated in *Dowell* and offers no evidence from which it can be determined that he reasonably inquired of his non-receipt of the rejection notices. Furthermore, plaintiff does not address the adequacy of the declaration of Martha Guiditta submitted with defendant’s opposition papers, which provides information relevant to the notices.

Consequently, plaintiff has not met his burden to show that opening discovery into the claim notices is reasonable. Therefore, the motion is denied as it relates to reopening discovery on this issue.

#### Administrative Proceedings Privilege

Plaintiff contends that “there is significant doubt” whether the investigation was ongoing at the time the suspension notices were disseminated. Particularly, plaintiff notes that defendant claims in its anti-SLAPP motion that the investigation concluded in October 2019. Plaintiff thus appears to contend that the “official proceeding” privilege also ceased at that time, and any subsequent suspension notices did not have such protection.

However, where a defendant concedes a fact, opening discovery into that concession is improper. (See *Tutor-Saliba Corp. v. Herrera, supra*, 136 Cal.App.4th at p. 618.) In this case, defendant’s anti-SLAPP motion specifically states that the investigation concluded in October 2019. (See Defendant’s Special Motion to Strike Memo, 10:22.) Furthermore, plaintiff’s reply does not address the adequacy of the declaration of Kirsten Corey submitted with defendant’s opposition papers, which provides information

relevant to the date the investigation concluded. (See Jackson Decl., Ex. 4 [Wilke Fleury report, dated October 25, 2019].)

Consequently, plaintiff has not met his burden to show that opening discovery into the conclusion date of the administrative investigation is reasonable. Therefore, the motion is denied as it relates to this issue.

#### Legitimate Business Purpose

Defendant relies on *Sipple v. Foundation For Nat. Progress*, *supra*, 71 Cal.App.4th 226, which involved the publication of an allegedly defamatory article “spr[ung] from the accurate reporting of court records and reports.” (*Id.* at p. 247.) Under those circumstances, the court reasoned that a request to “test . . . self-serving declarations and elicitation of circumstantial evidence” would not result in the disclosure of information sufficient to state a prima facie case. (*Ibid.*, internal citations omitted.) However, unlike *Sipple*, the alleged wrongdoing here does not arise from “accurate reporting of court records and reports,” but rather from a history of internal practices and actions which defendant maintains is supported by legitimate business purposes.

Similarly, unlike in *Tutor-Saliba Corp. v. Herrera*, *supra*, 136 Cal.App.4th 604, where the defendant “neither denied making the statements attributed to him in the complaint, nor any of the other elements necessary to establish a prima facie claim for defamation against him,” defendant’s claim of a legitimate business purpose in this case requires examination of its treatment of other employees similarly situated to plaintiff. In essence, the extent to which the alleged conduct is supported by legitimate business purposes requires comparison with defendant’s other employment practices, and thus involves evidence likely held by defendant, requiring the court to “liberally exercise its discretion by authorizing reasonable and specified discovery . . . .” (See *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868.) Therefore, plaintiff’s request for discovery on the issue of whether defendant’s actions are supported by legitimate business purposes is reasonable.

However, the legitimate business purpose argument is set forth in an approximate one-page section at the end of defendant’s 34-page memorandum of points and authorities in support of its special motion to strike. Additionally, defendant’s opposition to plaintiff’s motion to lift the discovery stay acknowledges the legitimate business purpose argument separately from the grounds upon which its anti-SLAPP motion is “largely” based. (See Opposition, 10:6-13.) Yet, to defend this secondary point, plaintiff’s anticipated discovery requests consume over a page of his points and authorities. (See Plaintiff’s Memo of P’s & A’s, 11-12.)

In order to mitigate the burden and expense of responding to such discovery requests, plaintiff must refine the anticipated discovery before relief can be granted. The court continues the hearing to allow the parties to submit supplemental briefing on the scope of discovery as it relates to the legitimate business purpose argument and the discovery parameters allowed pursuant to the anti-SLAPP statute.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

