

**Tentative Rulings for November 16, 2023**  
**Department 503**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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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).) *The above rule also applies to cases listed in this "must appear" section.*

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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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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 503**

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### Tentative Ruling

Re: **John Rutowicz, III v. James Huelskamp**  
Superior Court Case No. 22CECG01900

Hearing Date: November 16, 2023 (Dept. 503)

Motion: Plaintiff's Motion to Compel Response to Form Interrogatories, Set One; and Request for Sanctions

### Tentative Ruling:

To continue to hearing to December 14, 2023, at 3:30 p.m. in Department 503.

**Explanation:**

The defendant refers to a declaration that is listed but cannot be found in the court's files. The defendant is requested to refile the Whelan declaration referenced in the defendant's memorandum of points and authorities by 2:00 p.m. on November 30, 2023..

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

## Tentative Ruling

**Issued By:** jyh **on** 11/14/23  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: ***Luz Alvarado v. El Michoacano Restaurant***  
Superior Court Case No. 23CECG02210

Hearing Date: November 16, 2023 (Dept. 503)

Motion: 1) By Defendants/Cross-Complainants for Limited Discovery;  
2) By Plaintiff/Cross-Defendant to Strike (Anti-SLAPP) the Cross-Complaint

**Tentative Ruling:**

To deny defendants/cross-complainants' motion for limited discovery. To grant plaintiff/cross-defendant's special motion to strike the cross-complaint filed July 19, 2023.

**Explanation:**

**Limited Discovery**

Defendants/Cross-complainants request the court continue the special motion to strike their cross-complaint so that they may conduct limited discovery. They argue that they have propounded discovery on plaintiff/cross-defendant regarding the issues of whether plaintiff/cross-defendant has made defamatory statements outside of her complaint and where plaintiff/cross-defendant lived and worked since 2015.

Code of Civil Procedure section 425.16, subdivision (g) provides that a stay of discovery goes into effect where a special motion to strike pursuant to Code of Civil Procedure section 425.16 is filed. The court may order that specified discovery may be conducted on a noticed motion and for good cause. (*Ibid.*) Good cause is shown where the party requesting the continuance shows the other party possesses evidence needed to establish a prima facie case. (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 593; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868.) The showing is to include the evidence that the party intends to uncover. (*1-800 Contacts, Inc. v. Steinberg, supra*, 107 Cal.App.4th at p. 593.)

First, defendants/cross-complainants' assertion that plaintiff/cross-defendant is in sole possession of evidence of her employment and residence history does not make sense given there is no denial that they were ever her employers. Defendants/cross-complainants should have sufficient records to establish when plaintiff/cross-defendant worked for them. Additionally, it is unclear how a concrete date would have any relevance here where they acknowledge that plaintiff/cross-defendant was employed by defendants/cross-complainants, just for a different time period. While the court understands that defendants/cross-complainants assert that plaintiff/cross-defendant's complaint expands her employment with them, such expansion is not relevant to the special motion to strike.

Second, defendants/cross-complainants seek discovery regarding whether plaintiff/cross-defendant made defamatory statements outside of her complaint. Here, defendants/cross-complainants appear to argue that they are unsure if plaintiff/cross-complainant made such statements, and ask for permission to go on what amounts to a fishing expedition in order to bolster their claim that plaintiff/cross-defendant has made such statements. This is contrary to case law which requires a complainant to “marshal facts sufficient to show the viability of the action *before* filing a SLAPP suit.” (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 16 (emphasis in original).)

The court denies the defendants/cross-complainants' request to seek discovery prior to deciding on the special motion to strike. Defendants/cross-complainants have not demonstrated good cause for such a request.

### **Objections**

For the Declaration of Jose Villa, the court sustains the objections to paragraph 2, on page 2, lines 1-4 and paragraph 10, on page 3, lines 23-25, but overrules the remaining objections to this declaration. For the Declaration of Eusebio Raya, the court sustains the objections to paragraph 5, on page 2, line 26 through page 3, line 2, but overrules the remaining objections to this declaration. The court has not considered the Declaration of Alejandro Farfan for the purposes of this hearing as the information presented is not relevant.

### **Anti-SLAPP**

A SLAPP suit (Strategic Litigation Against Public Participation) is a suit brought “primarily to chill the valid exercise of constitutional rights of freedom of speech and petition for redress of grievances.” (Code Civ. Proc., § 425.16, subd. (a).)

The anti-SLAPP statute permits a defendant whose free speech rights and/or right to petition have been infringed to move the court to strike the SLAPP suit. The anti-SLAPP statute may be invoked to challenge suits based on four different categories of speech:

- (1) statements made before a legislative, executive, judicial, or other official proceeding;
  - (2) statements made in connection with an issue being considered by a legislative, executive, or judicial body;
  - (3) statements made in a public forum or in connection with an issue of public interest; OR
  - (4) any other conduct in furtherance of the exercise of the constitutional right of petition or free speech, in connection with an issue of public interest.
- (Code Civ. Proc., § 425.16, subd. (e).)

Categories (a) and (b) are NOT limited to issues of public interest, while categories (c) and (d) ARE limited to issues of public interest. (*Ibid.*)

The anti-SLAPP is one of the few motions where the burden is on the party opposing the motion. First, the moving party must make a prima facie showing that opposing party's lawsuit arises from “an act in furtherance of a person's right of petition or free

speech under the United States or California Constitutions in connection with a public issue," as defined in subdivision (e). Once the moving party makes such prima facie showing, the burden shifts to the opposing party to establish a "probability" that it will prevail on whatever claims are asserted. (See Code Civ. Proc., § 425.16, subd. (b); *Dixon v. Superior Court* (1994) 30 Cal.App.4th 733, 744.) The complainant must show: (1) a legally sufficient claim (i.e., a claim which, if supported by facts, is sustainable as a matter of law); and (2) that the claim is supported by competent, admissible evidence within the declarant's personal knowledge. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 568.)

### *First Prong*

The moving party only needs to make a prima facie showing that the cause of action arises from constitutionally protected free speech or petition activity. (*Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 458-459.) Both Code of Civil Procedure section 425.16 and Civil Procedure section 47 protect a litigant's right to access the courts without fear of subsequent derivative tort actions. (*Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5.) Thus communication is protected where it is related to judicial proceedings. (*Ibid.*) Here, the plaintiff/cross-defendant initiated judicial proceedings when she filed a complaint.

A claim is only subject to the anti-SLAPP statute if the protected activity forms the basis for the claim. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062.) The act underlying the cause of action must have been in furtherance of the free speech or right of petition. (*Id.* at 1063.) Here, defendants/cross-complainants agree that much of the claims in the cross-complaint are based on the filing of the plaintiff/cross-defendant's complaint. However, defendants/cross-complainants assert that plaintiff/cross-defendant has made allegedly defamatory statements to others outside the civil court system in order to coordinate with these individuals to pursue similar claims. (See Cross-complaint, ¶ 5.) Based on defendants/cross-complainants' own allegations, these alleged statements were made in connection with her litigation efforts. (See Code Civ. Proc., § 425.16, subd. (e)(2).) Thus, plaintiff/cross-defendant has met her burden of showing each cause of action arises from protected activity.

### *Second Prong*

If the moving party can meet the first prong, then the burden shifts to the opposing party to show a probability that he will prevail on the claims based on protected activity asserted against the moving party. (See Code Civ. Proc., 425.16, subd. (b).) The opposing party must produce evidence which would be admissible at trial. (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) The probability of prevailing is established if the opposing party presents evidence which would result in a judgment for the opposing party, if believed by the trier of fact. (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 637.) In considering this issue, the court looks at the pleadings and evidentiary submissions of the parties, without weighing the credibility or strength of competing evidence. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.)

Civil Code section 47, subdivision (b) provides that statements made in legislative, judicial, other official proceedings, or in in initiation or course of proceedings authorized

Each of defendants/cross-complainants' causes of action in the cross-complaint are torts which are absolutely barred by the litigation privilege here. Thus, defendants/cross-complainants cannot show a probability of prevailing on their claims against plaintiff/cross-defendant. Thus, the court grants plaintiff/cross-defendant's special motion to strike the entire cross-complaint.

## Tentative Ruling

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(36)

**Tentative Ruling**

Re: **Moreno v. Preciado, et al.**  
Superior Court Case No. 23CECG00332

Hearing Date: November 16, 2023 (Dept. 503)

Motion: Defendant Jose Preciado's Motion to Compel Plaintiff Wendy Guadalupe Moreno's Responses to Discovery Questions

**Tentative Ruling:**

To deny without prejudice. (Code Civ. Proc., § 1010, Cal. Rules of Court, rule 3.1110(a).)

**Explanation:**

"Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based." (Code Civ. Proc., § 1010.) "A notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order." (Cal. Rules of Court, rule 3.1110(a).)

Here, defendant Jose Preciado has reserved a date and time for hearing for one motion<sup>1</sup> and served a notice of motion providing as follows:

NOTICE IS HEREBY GIVEN that ... defendant JOSE PRECIADO ("defendant"), will, and hereby does, pursuant to CCP Sections 2030.010, et seq. 2031.010 et seq., move for an order to compel responses to discovery requests. The responses to discovery requests sought by defendant are material and relevant to the issues herein, and are reasonably calculated to lead to the discovery of evidence and is related to discoverable, non-privileged matters.

(Ntc. Of Mtn., 1:22-28.)

The notice of motion makes no reference to the particular sets of discovery to which Mr. Preciado seeks a response to. Nor does it state his request for monetary sanctions. This is wholly insufficient to apprise the plaintiff of the nature of the orders being sought.

Additionally, Mr. Preciado's request for relief is particularly ambiguous, as he has reserved a hearing date for only one motion, but the memorandum of points and authorities accompanying the notice of motion indicates that he is seeking an order

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<sup>1</sup> It should also be noted that Mr. Preciado has paid the fee of \$60 for one discovery motion. (Gov. Code, § 70617, subd. (a).)



Moreover, the remedy for a requesting party seeking initial responses to a Request for Admissions is to move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b) ["the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted..."].) Where responses *have been timely served but are deemed deficient* by the requesting party, that party may then move for an order compelling a further response. (Code Civ. Proc., § 2033.290.)

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Issued By:** jyh **on** 11/15/23.  
(Judge's initials) (Date)