

FILED BY FAX

ENDORSED

2015 MAY -5 P 3:06
S. J. [Signature]
David P. [Signature] Dept of the Superior Court
County of Santa Clara, California
By: [Signature] Deputy Clerk

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**

14 **RAYMONDO McDONALD, an individual**
15 **Plaintiff,**
16 **vs.**
17 **and**
18 **Does I through X,**
19 **Defendants.**

CASE NO. 1-15-cv-278108
Action Filed: March 16, 2015
Trial Date: Not set

**NOTICE OF MOTION AND
SPECIAL MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT PURSUANT TO
CODE OF CIVIL PROCEDURE §
425.16; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF; [proposed]
ORDER**

Hearing Date: June 4, 2015
Hearing Time: 9:00 a.m.
Department: 02
Judge: Hon. Patricia M. Lucas

25 **To The Court, All Parties, And Their Counsel:**

26 **PLEASE TAKE NOTICE** that on June 4, 2015, at 9:00 a.m. in Department 02 of the
27 **Santa Clara Superior Court** located at 191 North First Street, San Jose, California 95113,
28

1 | and hereby does move this court for an order striking and
2 | dismissing with prejudice Plaintiff's Complaint on the grounds that it is a "strategic lawsuit
3 | against public participation" or "SLAPP" and that the lawsuit is illegal and the plaintiff cannot
4 | demonstrate a reasonable probability of prevailing on the claim.

5 | Accordingly, the plaintiff's Complaint is barred pursuant to *Code of Civil Procedure* §
6 | 425.16. Furthermore, pursuant to *Code of Civil Procedure* § 425.16(c), the defendant is entitled
7 | to her reasonable attorneys' fees and costs incurred in connection with this action. The precise
8 | sum of such fees will be sought by subsequent motion.

9 | This motion is based upon this notice, the accompanying memorandum of points and
10 | authorities, the documents and records on file herein, and upon such other and further oral and
11 | documentary evidence as may be presented at the hearing on the motion.

12 |
13 | DATED: May 5, 2015

Allred, Maroko & Goldberg

14 |
15 | By: 

Gloria Allred
Attorneys for Defendant,

16 |
17 |
18 |
19 | DATED: May 5, 2015

Carpenter, Zuckerman & Rowley, LLP

20 |
21 | By: 

John C. Carpenter
Attorneys for Defendant.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a lawsuit by a powerful NFL player to bully – and further victimize – a rape
4 victim who had the bravery to report the crime to the local police.

5 In December 2014, the defendant was sexually assaulted at the home of Plaintiff
6 Raymondo McDonald. Mr. McDonald was, at the time, a player for the San Francisco 49ers, a
7 professional football team. The parties do not dispute that Mr. McDonald had sexual relations
8 with the defendant.

9 Shortly after the rape, the plaintiff reported the incident to the San Jose Police
10 Department. Thereafter, Mr. McDonald was released by the San Francisco 49ers.

11 Mr. McDonald then filed this lawsuit against the defendant to punish her for reporting the
12 rape to the police. Mr. McDonald alleges defamation and other torts.

13 California law – in order to encourage scared victims and witnesses to come forward –
14 privileges reports to police. As such, Courts of Appeal have held on at least three occasions that
15 lawsuits arising from reports to police must be struck under California's anti-SLAPP statute.

16 For instance, *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, is directly on point. In
17 that case, the court held that a defamation lawsuit arising from a report to the police of an
18 inappropriate touching must be struck under the anti-SLAPP statute, despite the fact that no
19 charges were ever filed.

20 Likewise, in *Slam v. Kizilbash* (2005) 130 Cal. App. 4th 1563, the court held that a
21 defamation lawsuit arising from child abuse reports to the Palo Alto and the East Palo Alto
22 Police Departments must be struck under the anti-SLAPP statute, despite the fact that law
23 enforcement investigations did not reveal any abuse.

24 Still more, in *Wang v. Hartunian* (2003) 111 Cal.App.4th 744, 749, the Court of Appeal
25 held that a report to the police comes within the litigation privilege of *Civil Code* § 47 and
26 constitutes protected activity under the anti-SLAPP statute.

27 In sum, case authority is clear, causes of action arising from reports to law enforcement
28 come within the protection of the anti-SLAPP statute. Mr. McDonald's lawsuit must be struck.

1 **II. FACTUAL OVERVIEW**

2 **A. McDonald Files This Lawsuit Challenging Defendant's Right**
3 **To Report The Rape To The Police**

4 On March 16, 2015, Plaintiff McDonald filed the instant lawsuit against the defendant.
5 The lawsuit attacks the defendant for reporting to law enforcement that she had been raped by
6 Mr. McDonald.

7 The Complaint alleges as follows:

8 [A]fter leaving [McDonald's] residence on the evening of
9 December 14, 2014, defendant Wolff made accusations to certain
10 officers and detectives of the San Jose Police Department
11 (hereinafter, SJPD) to the effect that she had fallen at Plaintiff's
12 residence and didn't remember anything after that, until waking up
13 naked in bed with [McDonald]. [McDonald] is further informed
14 that defendant Wolff told said officers and detectives that
15 [McDonald] refused to tell her whether they had sexual relations
16 the night before. However, in her account to SJPD, Defendant
17 failed to tell the officers and detectives that she had in fact engaged
18 in several instances of consensual sexual relations with Plaintiff
19 McDonald throughout the day on December 14, 2014....

20 (Complaint at ¶ 12.)

21 Mr. McDonald alleges five causes of action arising out of the defendant's report of the
22 sexual assault to law enforcement:

- 23 1. Defamation/Liber Per Se;
- 24 2. False Light;
- 25 3. Intentional Interference With Contractual Relations;
- 26 4. Intentional Interference With Prospective Economic Relations; and
- 27 5. Negligent Interference With Prospective Economic Relations.

28 **B. McDonald's Complaint Only Attacks The Defendant's Report**
To Law Enforcement, And No One Else

Mr. McDonald's lawsuit only attacks the defendant's reports to the San Jose Police
Department. Notably, the Complaint does not allege that the defendant spoke of the sexual
assault to any person other than law enforcement.

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III. BACKGROUND OF THE ANTI-SLAPP STATUTE

The California Legislature has recognized "a disturbing increase in lawsuits brought primarily to chill the valid exercise of constitutional rights of freedom of speech and petition for the redress of grievances." (*Code of Civil Procedure* § 425.16(a).) These lawsuits were deemed "Strategic Lawsuits Against Public Participation," i.e. "SLAPP lawsuits."

In response, the Legislature enacted a law which subjects lawsuits arising from a person's acts "in furtherance of the person's right of petition or free speech" to a special motion to strike. (*Code of Civil Procedure* § 425.16(b).)

This special motion is commonly called an "anti-SLAPP" motion.

IV. LEGAL STANDARD OF THE ANTI-SLAPP MOTION

The anti-SLAPP motion is a remedy designed to quickly dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. (*See Weil & Brown, Cal. Prac. Guide: Civil Procedure Before Trial (The Rutter Group 2014) pg. 7-69, Section 7:207.*)

It "establishes a procedure where the trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation." (*Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 192.*)

California's anti-SLAPP statute follows a two step process.

**A. The Defendant Has Only A Minimal Burden:
To Show The Cause Of Action Comes Within The Anti-SLAPP Statute**

"First, the court decides whether the defendant has made a threshold showing that the challenged cause of action [or entire complaint] is one arising from protected activity." (*Navellier v. Sletten (2002) 29 Cal.4th 82, 88-89.*) "In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." (*Id.; see also In re Episcopal Church Cases (2009) 45 Cal. 4th 467, 477.*)

The defendant has only a minimal burden:

1 [T]he only thing the defendant needs to establish to invoke the
2 [potential] protection of the SLAPP statute is the challenged
3 lawsuit arose from an act on the part of the defendant in
4 furtherance of [its] right of petition or free speech.

5 (*Equilon Enterprises, LLC, supra*, 29 Cal.4th at 61 (quoting another case; punctuation omitted).)

6 **B. The Burden Then Shifts To The Plaintiff To Prove – With Admissible Evidence –**
7 **That He Will Prevail On The Causes Of Action**

8 If the defendant satisfies the threshold showing that the anti-SLAPP statute applies, then
9 the burden shifts to the plaintiff to establish, with competent evidence, “a probability that [he]
10 will prevail on the claim[s].” (*Code of Civil Procedure* § 425.16(b)(1).)

11 Put another way, the plaintiff must demonstrate that the complaint
12 is both legally sufficient and supported by a sufficient prima facie
13 showing of facts to sustain a favorable judgment if the evidence
14 submitted by the plaintiff is credited.

15 (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal. 4th 811, 821 (quoting another case;
16 punctuation omitted).)

17 The plaintiff can only satisfy this burden by producing admissible evidence:

18 In opposing an anti-SLAPP motion, the plaintiff cannot rely on the
19 allegations of the complaint, but must produce evidence that would
20 be admissible at trial.

21 (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal. App. 4th 204, 212; *see also Roberts,*
22 *supra*, 105 Cal. App. 4th at 617 (to demonstrate a probability of success, the plaintiff must
23 adduce competent admissible evidence).)

24 **C. The Anti-SLAPP Statute Is To Be Construed Broadly**

25 The anti-SLAPP statute expressly provides that it “shall be construed broadly.” (*Code of*
26 *Civil Procedure* § 425.16(a).) This legislative directive is “expressed in unambiguous terms,”
27 and courts “must treat the statutory language as conclusive” as the “broad construction expressly
28 called for [in § 425.16(a)] is desirable from the standpoint of judicial efficiency.” while a narrow
construction “would serve Californians poorly.” (*Briggs v. Eden Council for Hope &*
Opportunity (1999) 19 Cal.4th 1106, 1121-1122.)

1 **D. The Anti-SLAPP Statute Applies To Cases That Are Not Archetypal SLAPP Suits**

2 While the Legislature originally enacted the anti-SLAPP statute to address the “paradigm
3 SLAPP suit” of a defamation lawsuit filed by a large developer against environmental activists
4 (see *Wilcox v. Superior Court* (1994) 27 Cal. App. 4th 809, 815 (disapproved of on other
5 grounds)), the anti-SLAPP statute is not limited to this typical scenario.

6 For instance, in *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37
7 Cal.App.4th 855, 864, the California Supreme Court rejected the assertion that the anti-SLAPP
8 statute was “adopted to deal only with the problems presented by archetypal SLAPP suits....” To
9 the contrary, in *Wilbanks v. Wolk* (2004) 121 Cal. App. 4th 883, 894, the court held that the
10 statute “can and does apply to suits bearing little very little relationship to SLAPP litigation....”

11 Even more recently, in *Hecimovich v. Encinal School Parent Teacher Organization*
12 (2012) 203 Cal.App.4th 450, 473-474, the court reiterated:

13 The anti-SLAPP statute’s definitional focus is not [on] the form of
14 the plaintiff’s cause of action but, rather, the defendant’s activity
15 that gives rise to his or her asserted liability and whether that
16 activity constitutes protected speech or petitioning.

16 **E. The Defendant Need Not Show That The Plaintiff Intended To Chill
17 Nor Did In Fact Chill The Defendant’s Rights**

18 Finally, a defendant need not demonstrate that the plaintiff intended to chill the
19 defendant’s protected rights to rely on the anti-SLAPP statute. (See *Equilon Enterprises v.*
20 *Consumer Cause Inc.*, supra, 29 Cal. 4th 53, 66-67; *Roberts v. Los Angeles County Bar Assn.*
21 (2003) 105 Cal. App. 4th 604, 615.)

22 As one federal court summarized:

23 The defendant need not show that plaintiff’s suit was brought with
24 the intention to chill defendant’s speech; “the plaintiff’s intentions
25 are ultimately beside the point....”

26 (*Bosley Medical Institute, Inc. v. Kremer* (9th Cir. 2005) 403 F.3d 672, 682 quoting *Equilon*
27 *Enterprises v. Consumer Cause Inc.*, supra, 29 Cal. 4th at 67.)

28 Similarly, a defendant need not show that the plaintiff’s conduct actually resulted in a
chilling of the defendant’s constitutionally protected rights to use the anti-SLAPP statute. The

1 California Supreme Court has held:

2 Section 425.16 nowhere states that, in order to prevail on an
3 anti-SLAPP motion, a defendant must demonstrate that the cause
4 of action complained of has had, or will have, the actual effect of
5 chilling the defendant's exercise of speech or petition rights. Nor
6 is there anything in section 425.16's operative sections implying or
7 even suggesting a chilling-effect proof requirement.

8 (*City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 75-76.)

9
10
11 **VI. ARGUMENT**

12 Pursuant to *Code of Civil Procedure* § 425.16, the defendant moves to strike Mr.
13 McDonald's complaint as an improper SLAPP suit.

14 **A. The Defendant Has Met Her Burden:**
15 **The Alleged Conduct Comes Within The Anti-SLAPP Statute**

16 As discussed above, the first step in an anti-SLAPP motion is to determine whether the
17 causes of action asserted by Mr. McDonald arose from protected activity by the defendant.

18 At least three times, California's Courts of Appeal have held that lawsuits attacking
19 reports to law enforcement come within the anti-SLAPP statute.

20 In *Siam v. Kizilbash* (2005) 130 Cal. App. 4th 1563, the plaintiff filed a lawsuit for
21 defamation, among other torts, challenging the defendant reporting the plaintiff to the Palo Alto
22 and the East Palo Alto Police Departments for child abuse. The resulting law enforcement
23 investigations did not reveal any abuse.

24 The Court of Appeal held that the causes of action relevant here came within the anti-
25 SLAPP statute. The court described such statements as being "designed to prompt action by law
26 enforcement," and then explained:

27 Communications that are preparatory to or in anticipation of
28 commencing official proceedings come within the protection of the
anti-SLAPP statute.

(*Siam, supra*, at 1569-70.)

Chabak v. Monroy (2007) 154 Cal.App.4th 1502, is even more directly on point. In that
case, the defendant reported the plaintiff to the police for an inappropriate touching. Notably, no

1 charges were filed against the plaintiff. The plaintiff then sued the defendant for defamation.

2 The Court of Appeal held:

3 [Plaintiff's] cause of action is based on [defendant's] reporting to
4 the Coalinga Police Department that she felt [defendant] touched
her inappropriately....

5 * * *

6 We agree with the conclusion in *Siam*. [Defendant's] statement to
7 the police arise from her right to petition the government and thus
is protected activity.

8 (*Id.* at 1511-1512.)

9 Still more, in *Wang v. Hartunian* (2003) 111 Cal.App.4th 744, 749, the Court of Appeal
10 held that a report to the police comes within the litigation privilege of *Civil Code* § 47 and
11 constitutes protected activity under the anti-SLAPP statute.

12 In sum, case authority is clear, causes of action arising from reports to law enforcement
13 come within the protection of the anti-SLAPP statute.

14 **B. All Plaintiff's Causes of Action Arise From Defendant's Reports To Police**
15 **And Therefore Come Within The Protection Of The Anti-SLAPP Statute**

16 **I. The 1st And 2nd Causes Of Action – For Defamation and False Light –**
17 **Comes Within The Anti-SLAPP Statute**

18 It is indisputable that Mr. McDonald's first two causes of action – for defamation and
19 false light – come within the anti-SLAPP statute.

20 Mr. McDonald is suing the defendant for her statements to the police reporting Mr.
21 McDonald as having raped her.

22 As set forth above, statements to police – even when ultimately not charged – have been
23 held to come within the protection of the anti-SLAPP statute.

24 Again, in *Siam, supra*, 130 Cal. App. 4th at 1563, and *Chabak, supra*, 154 Cal.App.4th at
25 1502, the Courts of Appeal have held that defamation lawsuits arising out of reports to the police
26 come within the anti-SLAPP statute and must be struck.

27 Accordingly, the defendant has met her burden to show that Mr. McDonald's first and
28 second causes of action for come within the anti-SLAPP statute's protections. Defendant's

1 motion should be granted.

2

3 **ii. The 3rd, 4th And 5th Causes Of Action Come Within The Anti-SLAPP Statute**

4 It is similarly indisputable that Mr. McDonald's third, fourth, and fifth cause of action
5 come within the anti-SLAPP statute. These causes of action are for:

- 6 1) Intentional interference with contractual relations;
7 2) Intentional interference with prospective economic advantage; and
8 3) Negligent interference with prospective economic advantage.

9 These three causes of action each allege that the defendant's statements to the police
10 somehow interfered with Mr. McDonald's business relationships.

11 The Courts of Appeal have repeatedly held that these causes of action – when arising
12 from protected activity – are subject to an anti-SLAPP motion.

13 For instance, in *Ludwig v. Superior Court* (1995) 37 Cal. App. 4th 8, 43, an anti-SLAPP
14 motion was granted, dismissing claims for interference with contractual relations and
15 interference with prospective economic advantage, among other torts because the defendant's
16 alleged conduct was protected by the "litigation privilege" of *Civil Code* § 47(b), the same
17 privilege applicable to police reports.

18 Similarly, in *Sipple v. Foundation For Nat. Progress* (1999) 71 Cal. App. 4th 226, an
19 anti-SLAPP motion was granted, dismissing an action for defamation, intentional interference
20 with contract, and intentional interference with prospective economic advantage brought by a
21 prominent political consultant against a magazine publisher and writer, because reporting about
22 domestic abuse allegations involving the plaintiff.

23 Accordingly, the defendant has met her burden to show that Mr. McDonald's third,
24 fourth, and fifth causes of action for come within the anti-SLAPP statute's protections.
25 Defendant's motion should be granted.

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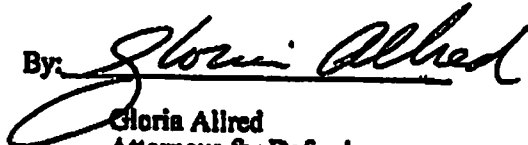
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VII. CONCLUSION

For the foregoing reasons, the defendant's motion should be granted.


DATED: May 5, 2015

Allred, Maroko & Goldberg

By: 
Gloria Allred
Attorneys for Defendant,

DATED: May 5, 2015

Carpenter, Zuckerman & Rowley, LLP

By: 
John C. Carpenter
Attorneys for Defendant,

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

RAYMONDO McDONALD, an individual

Plaintiff,

vs.

Lucas 1 through X,

Defendants.

CASE NO. 1-15-cv-278108

**[proposed] ORDER GRANTING
DEFENDANT'S SPECIAL MOTION
TO STRIKE**

A motion to strike was heard on June 4, 2015. Having reviewed the motion, any opposition, and any reply, and having heard the arguments of counsel, the court hereby **ORDERS** as follows:

The motion is **GRANTED**. The Complaint constitutes an illegal **SLAPP** lawsuit.

Hon. Patricia M. Lucas

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is: 8827 West Olympic Blvd., Beverly
Hills, California 90211.

5 On May 5, 2015, I served the attached document described as **DEFENDANT KEILEY
6 WOLFF'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S
FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE §
7 425.16; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;
[proposed] ORDER** on all interested parties in this action

8 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the
attached mailing list.

9 by placing the original a true copy thereof enclosed in sealed envelopes addressed as
10 follows:

11 Steve M. Defilippis
12 Picone & Defilippis
625 North First Street
San Jose, California 9511
13 Telephone: (408) 292-0441
14 Fax: (408) 287-6550
Email: flpsmd2005@yahoo.com

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102
Email: slapp@jud.ca.gov

15
16 **BY U.S. MAIL**

17 I deposited such envelope in the mail at Los Angeles, California. The envelope was
18 mailed with postage thereon fully prepaid.

19 As follows: I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing. Under that practice it would be deposited with the U.S.
20 postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in
the ordinary course of business. I am aware that on motion of the party served, service is
21 presumed invalid if postal cancellation date or postage meter date is more than one day after date
of deposit for mailing in affidavit.

22 **BY FAX to the Judicial Council, pursuant to CCP § 425.16(j)(1).**

23
24 **EXECUTED on May 5, 2015, at Beverly Hills, California.**

25 **STATE - I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.**

26
27 Robert Mendoza
Type or Print Name

28 

Signature