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10 InvestorsHub.com, Inc.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
NOV 28 2011
John A. Clarke, Executive Officer/Clerk
By ML Nancy Lee, Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT

14 ANTHONY J. CATALDO, an individual,

15 Plaintiff,

16 v.

17 DOE 1, aka “Manuel,” an individual; DOE 2,
18 aka “Bloodhound99,” and individual; DOE 3,
19 aka “Steelerswheels,” an individual;
20 INVESTORSHUB.COM, INC., a Florida
21 corporation, and DOES 10 through 30,
22 inclusive,

23 Defendants.

Case No. SC 113666

[Assigned to the Hon. Lisa Hart Cole]

~~PROPOSED~~ ORDER GRANTING
DEFENDANT INVESTORSHUB.COM, INC.’S
SPECIAL MOTION TO STRIKE FOURTH
CAUSE OF ACTION FROM COMPLAINT
UNDER C.C.P. § 425.16; EXHIBIT A

Complaint Filed: August 4, 2011
Trial Date: None Set

24 Defendant InvestorsHub.com, Inc.’s (“iHub”) Special Motion to Strike the Complaint filed
25 by Plaintiff Anthony J. Cataldo pursuant to California Code of Civil Procedure section 425.16(c)
26 (“anti-SLAPP Motion”) came on for consideration by the Court. After considering the anti-
27 SLAPP Motion its supporting and opposing papers, as well as argument presented to the Court at
28 the hearing on the anti-SLAPP Motion, the Court ruled as follows:

iHub’s anti-SLAPP Motion was GRANTED with prejudice and without leave to amend.
A true and correct copy of the Court’s tentative decision, later adopted as the Court’s final ruling,

1 is attached as Exhibit A and is incorporated by reference as the order of this Court. Plaintiff's
2 fourth cause of action is stricken from the Complaint and iHub is dismissed from this action with
3 prejudice.

4 *Counsel for defendant InvestorsHub.com, Inc. is to give notice.*

5 IT IS SO ORDERED.

6
7 DATE: NOV 28 2011, 2011

LISA HART COLE

Hon. Lisa Hart Cole
Judge, Los Angeles Superior Court

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10 BOSTWICK & JASSY LLP

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13 By: _____
14 Jean-Paul Jassy

15 Attorneys for Defendant
16 INVESTORYSHUB.COM, INC.

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EXHIBIT A

DEPARTMENT R - LAW AND MOTION RULINGS

Case Number: SC113666 **Hearing Date:** November 01, 2011 **Dept:** R

SC113666
CATALDO v. DOE

Defendant's SLAPP Motion to Strike Plaintiff's 4th c/a for "tortious agreement to conceal identity" is GRANTED. The 4th c/a is based on Defendant's refusal to produce its user information. This qualifies as both a statement and conduct protected under CCP §425.16(e)(2)(statement regarding issue before judicial, etc. proceeding) and (e)(4)(conduct in furtherance of speech in connection with public issue or issue of public interest). Defendant's handling of its users' personal information affects its 250,000 community of users and pertains to the general public issue of Internet privacy.

Plaintiff fails to establish the probability of prevailing on the 4th c/a. There is no legally recognized claim for "tortious contract to conceal." There is also no legally cognizable theory upon which Plaintiff can recover damages based on the facts alleged.

Analysis: Plaintiff's 4th c/a is based on Defendant's refusal to give him the personal information identifying DOES 1-3. Defendant expressed its refusal to do so in an email sent to Plaintiff and Plaintiff's counsel on 6/5/11. See SLAPP Motion, Exhibit C. Defendant's email was sent in response to Plaintiff's counsel's pre-litigation demand for that information in anticipation of naming DOES 1-3 in this complaint. Id. at Exhibit B.

Defendant argues that its refusal to produce the information was a statement in response to Plaintiff's prelitigation demand for information. If a statement "concerns the subject of the dispute and is made in anticipation of litigation contemplated in good faith and under serious consideration," it may be protected under CCP §425.16(e)(2). *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1268 (defendant's letter to customers indicating intent to sue plaintiff for violation of confidentiality agreement qualified as protected prelitigation statement under CCP §425.16(e)(2) even though lawsuit was not filed until four months later). T

The text of Plaintiff's letter indicates litigation is contemplated seriously and in good faith. In fact, the letter was sent to demand information necessary to properly name DOE defendants in this action. Thus, Defendant's response to this letter also qualifies as a statement concerning the dispute in this complaint and was made in anticipation of certain litigation, as evidenced by this lawsuit. Under these circumstances, Defendant's refusal to produce the DOE defendants' information qualifies as protected conduct under CCP §425.16(e)(2).

Defendant also makes a compelling argument that its conduct is protected under CCP §425.16(e)(4), because it was conduct "in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." See § 425.16(e)(4). "Public interest" within the meaning of the anti-SLAPP statute includes "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." *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479. Any issue in which the public takes an interest is of "public interest" (e.g., details of celebrities' lives). It need not be of public importance or significance. See *Nygard, Inc. v. Uusi-Kerttula* (2008) 159 CA4th 1027, 1039, 72 CR3d 210, 218 (former employee's statements to magazine about his work experience for prominent businessman and celebrity were of "public interest"); *Tamkin v. CBS Broadcasting, Inc.* (2011) 193 CA4th 133, CR3d, (2011 WL 693283, *6).

In cases where the issue is not of interest to the public at large, but rather to a limited, but definable portion of the public (a private group, organization or community), the constitutionally-protected activity must occur, at a minimum, "in the context of an ongoing controversy, dispute or discussion ... (thus embodying) the public policy of encouraging participation in matters of public significance." *Du Charme v. International Broth. of Elec. Workers, Local 45* (2003) 110 CA4th 107, 119.

Defendant was exercising its right to speech by expressly refusing to comply and also by remaining silent on the issue of DOE Defendant's personal information. Defendant's conduct was also in connection with a very significant public issue or an issue of public interest in two ways. First, Defendant's conduct impacted subscribers to their website. According to Defendant's evidence, there are 250,000 members of its website. A large community of people would be interested and impacted by Defendant's decision to withhold or turn over the account information of its users in response to a simple demand by a private third party. Second, Internet privacy and the level of privacy afforded by Internet providers like Defendant are general issues of public interest. See e.g. B&PC 22575, et seq. (creating Internet privacy requirements and requiring commercial website operators to post privacy policy).

Defendant demonstrates that Plaintiff's 4th c/a for tortious agreement is based on protected conduct. As such, the burden shifts to Plaintiff to demonstrate a probability that they will prevail on their claims.

Plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. See *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89. "Precisely because the statute (1) permits early intervention in lawsuits alleging unmeritorious causes of action that implicate free speech concerns, and (2) limits opportunity to conduct discovery, the plaintiff's burden of establishing a probability of prevailing is not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law. Only a cause of action that lacks 'even minimal merit' constitutes SLAPP." See *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699.

Plaintiff fails to make any showing regarding his probability of prevailing on the 4th c/a. Plaintiff does not present any argument refuting Defendant's claim that there is no recognized cause of action for "tortious agreement to conceal identity." Plaintiff's 4th c/a fails to articulate any legal theory upon which he can recover.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 12400 Wilshire Blvd., Suite 400, Los Angeles, California, 90025.

On November 4, 2011, I served the following document(s) described as

**[PROPOSED] ORDER GRANTING DEFENDANT INVESTORSHUB.COM, INC.'S
SPECIAL MOTION TO STRIKE FOURTH CAUSE OF ACTION FROM COMPLAINT
UNDER C.C.P. § 425.16**


on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

**Barry K. Rothman
1901 Ave of the Stars, Suite 370
Los Angeles, CA 90067**

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. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 4, 2011.



Marianne Poff