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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 MELISSA BACELAR, an individual; WAGMOR) **CASE NO. 24STCV01638**
12 PETS, a California non-profit corporation;)
13 WYLDER’S HOLISTIC PET CENTER, INC. dba) **MEMORANDUM OF POINTS AND**
14 THE WAGMOR, a Delaware corporation,) **AUTHORITIES**
15)
16 Plaintiffs,)
17 vs.)
18)
19 KIM SILL, aka KIMERBLY DAWN DAWSON,)
20 an individual; SHELTER HOPE PET SHOP,)
21 INC., a California non-profit corporation; MATT)
22 FRIEMDMAN, an individual; FAITH BALLIN,)
23 an individual; and DOES 1-500, inclusive,)
24)
25 Defendants.)
26)
27)
28)

1 **I. INTRODUCTION**

2 Defendant Matt Friedman is a documentary filmmaker. Plaintiff Melissa Bacelar is a scam artist
3 who created the two entity Plaintiffs to defraud the public into believing she is rescuing animals and to
4 support her work, when in fact she is purchasing puppies from puppy mills and other sources to sell at a
5 profit. Plaintiffs have filed this textbook SLAPP suit in a misguided attempt to silence her many critics.

6 The complaint states a single cause of action for defamation against all Defendants.

7 The complaint fails to state who allegedly did what, and instead takes an “everyone did
8 everything” approach.

9 As the entire complaint arises from statements made in a public forum in connection with a
10 matter of public interest, the burden shifts to prove probability of success on the merits.

11 This Court has already found Plaintiffs failed to meet their burden as to other Defendants. Yet,
12 Plaintiffs declined to dismiss Friedman from the lawsuit.

13 Friedman did not make any of the statements the complaint arises from. Accordingly, it will be
14 impossible for Plaintiffs to meet their burden, and the complaint must be stricken as to Friedman as well.

15 **II. ARGUMENT**

16 A cause of action arising from any act in furtherance of the right of petition or free speech under
17 the United States or California Constitution in connection with a public issue, or in connection with an
18 issue under consideration or review by a judicial body, is subject to a special motion to strike, unless the
19 Court determines Plaintiffs have established that there is a probability that Plaintiffs will prevail on the
20 claim. (CCP § 425.16.)

21 In enacting section 425.16, the Legislature noted that there had been a disturbing increase in
22 lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech
23 and petition for the redress of grievances, commonly known as SLAPP suits (“Strategic Lawsuit Against
24 Public Participation.”) (CCP § 425.16 (a).)

25 The purpose of this legislation (the “anti-SLAPP law”) is to encourage continued participation in
26 matters of public significance without this participation being chilled through abuse of the judicial
27 process and to eliminate meritless litigation at an early stage. (*Rusheen v. Cohen* (2006) 37 Cal. 4th
28 1048, 1055-1056; *Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 672; *Bradbury v. Superior Court*

1 (1996) 49 Cal.App.4th 1108, 1111, 1113; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th
2 628, 647 n.3.)

3 Once a prima facie showing has been made that a claim arises from speech or petitioning
4 activity, the burden shifts to the plaintiff or petitioner to prove with competent and admissible evidence
5 that they have a probability of succeeding at trial on the claim. (*Vargas v. City of Salinas* (2009) 46 Cal.
6 4th 1, 14; *Batzel v. Smith* (9th Cir. 2003) 333 F.3d 1018, 1024.)

7 In deciding whether the initial “arising from” requirement is met, a court considers “the
8 pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is
9 based.” (CCP § 425.16 (b); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

10 The California Supreme Court has instructed that the courts, “whenever possible, should
11 interpret the First Amendment and section 425.16 in a manner ‘favorable to the exercise of freedom of
12 speech, not to its curtailment.’” (*Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th
13 1106, 1119, quoting *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170, 1176.)

14 CCP § 425.16 (e) sets forth the four types of acts covered under the statute:

15 (1) any written or oral statement or writing made before a legislative, executive, or
16 judicial proceeding, or any other official proceeding authorized by law; (2) any
17 written or oral statement or writing made in connection with an issue under
18 consideration or review by a legislative, executive, or judicial body, or any other
19 official proceeding authorized by law; (3) any written or oral statement or writing
20 made in a place open to the public or a public forum in connection with an issue of
21 public interest; (4) or any other conduct in furtherance of the exercise of the
22 constitutional right of petition or the constitutional right of free speech in
23 connection with a public issue or an issue of public interest.

24 The California Supreme Court has further held the anti-SLAPP statute must be construed to
25 apply to “distinct claims within pleaded counts,” and thus a plaintiff cannot avoid the anti-SLAPP
26 statute by mixing allegations of unprotected activity with protected activity within a single cause of
27 action in order to avoid the protected claims being stricken. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 392.)
28 “It is arbitrary to hold that the same claim, supported by allegations of protected and unprotected activity
in a single cause of action, escapes review if the plaintiff shows a probability of prevailing on the
allegations that are *not* covered by the anti-SLAPP statute.” (*Id.* at 392-393, emphasis in original.)

1 **A. Consumer protection information is protected and a matter of public interest**

2 The complaint alleges a “campaign to defame Plaintiffs, employing websites located at
3 thetruthaboutwagmorpets.com and <https://shelterhopepetshop.org>, and also Instagram accounts such as
4 @thetruthaboutwagmorpets.com and @shelterhope_petshop.” (Compl., ¶10.)

5 The statements posted about Plaintiffs on these websites and Instagram pages are in the nature of
6 consumer protection information. (Declaration of Attorney Bryan Pease, ¶¶2-6.) This falls squarely
7 under §425.16(e)(3), “any written or oral statement or writing made in a place open to the public or a
8 public forum in connection with an issue of public interest.”

9 “Courts have readily found that the Internet is a public forum. *ComputerXpress, Inc. v. Jackson*,
10 93 Cal. App. 4th 993, 113 Cal. Rptr. 2d 625 (2001). *Hatch v. Superior Court*, 80 Cal. App. 4th 170, 201,
11 94 Cal. Rptr. 2d 453 (2000) noted that Internet communications are ‘classical forum communications.’”
12 (*Johnson v. Ryan* (2015) 186 Wn.App. 562, 574, bold emphasis added.)

13 While not contesting that the Internet is a public forum, Sykes maintains that the
14 Web site does not concern a matter of public interest. He points out that “it is not
15 enough that the statement refer to a subject of widespread public interest; the
16 statement must in some manner itself contribute to the public debate.” (*Wilbanks*,
17 *supra*, 121 Cal.App.4th at p. 898.) Sykes asserts that statements on the Web site do
not contribute to the public debate because they only concern Gilbert's interactions
with *him*. He is wrong.

18 **The public interest requirement of section 425.16, subdivision (e)(3) must be “**
19 **‘construed broadly’ so as to encourage participation by all segments of our**
20 **society in vigorous public debate related to issues of public interest.”** (*Seelig v.*
21 *Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808 [119 Cal. Rptr. 2d 108]
22 (*Seelig*.) The Legislature inserted the “broad construction” provision out of
concern that judicial decisions were construing that element of the statute too
narrowly. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106,
1120 [81 Cal. Rptr. 2d 471, 969 P.2d 564], citing Stats. 1997, ch. 271, § 1.)

23 (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23, bold emphasis added, italics in original.)

24 The Court of Appeal has recognized that “the question whether something is an issue of public
25 interest must be ‘construed broadly.’ [Citations].” (*Chaker v. Mateo* (2012) 209 Cal. App. 4th 1138,
26 1145.) “An ‘issue of public interest’ is ‘any issue in which the public is interested.’ [Citation.] A matter
27 of ‘public interest should be something of concern to a substantial number of people. [Citation.] ...
28 [T]here should be some degree of closeness between the challenged statements and the asserted public

1 interest [citation]’ ‘[T]he focus of the speaker's conduct should be the public interest’
2 [Citation.] Nevertheless, it may encompass activity between private people.’ [Citation.]” (*Ibid*, emphasis
3 and ellipses in original.)

4 The Court of Appeal has further held that information in the “nature of consumer protection
5 information,” such as a “warning” not to use the opposing party’s services, are matters of public interest.
6 (*Id.* at 1146; accord *Grenier v. Taylor* (2015) 234 Cal. App. 4th 471, 483; *Piping Rock Partners, Inc. v.*
7 *David Lerner Assocs.* (N.D. Cal. 2013) 946 F.Supp.2d 957, 969 [statement concerned a matter of public
8 interest because it was “a warning to consumers not to do business with plaintiffs because of their
9 allegedly faulty business practices”]; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1366-1367 [Yelp
10 website post about individual’s experience with dentist was issue of public interest]; *Carver v. Bonds*
11 (2005) 135 Cal.App.4th 328, 343-344 [newspaper article critical of medical practitioner involved an
12 issue of public interest because it contained consumer warning information]; *Wilbanks v. Wolk* (2004)
13 121 Cal. App. 4th 883, 899-900 [warning on website about business practices of viatical settlement
14 “broker was a protected anti-SLAPP activity as “consumer protection information” that could “aid
15 consumers [in] choosing among brokers”]; see also *Bently Reserve LP v. Papaliolios* (2013) 218
16 Cal.App.4th 418, 425 [skipping over first step because “everyone agrees” that Yelp reviews are
17 statutorily protected].)

18 In addition to consumer protection information constituting a matter of public interest generally,
19 treatment of animals by businesses that use them “is an area of widespread public concern and
20 controversy.” (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129
21 Cal. App. 4th 1228, 1246.) Incidentally, *Huntingdon Life Sciences* was also a restraining order case in
22 which the court struck the petition pursuant to CCP §425.16.

23 This Court has also already ruled with respect to Plaintiffs’ complaint:

24 Here, all of the alleged activity — creating websites and web accounts, speaking with other
25 people, and encouraging other people to speak and make posts on the Internet — are all core activities
26 protected by the right of free speech.

27 Furthermore, all of the alleged activity appear to have been undertaken in connection
28 with a public issue:

- the alleged activity involving the use of websites included public discussion of pet stores, policies of pet stores as it relates to dog breeders, policies of pet stores as it relates to vaccination of those pets, and so on;
- the alleged activity involving the contact and coaching of an Instagram influencer (regardless of their age) for the purpose of getting that influencer to make posts that touch on these same issues (even if the contact and coaching also discussed non-public issues, such as stalking and death threats);
- the alleged activity of having that influence post about these same issues (even if those posts also discussed non-public issues, such as stalking and death threats).

(March 28, 2024 Minute Order).

As the complaint arises from protected activity, the burden shifts to Plaintiffs to show a probability of success as to each cause of action or claim within a pleaded count. (*Baral, supra*, 1 Cal.5th 376, 392.)

B. Petitioner cannot show a probability of success

Other than paragraph 7, which identifies Defendant Matt Friedman as an individual living in Los Angeles County, there are no specific allegations against Friedman, other than alleging that “Defendants” as a whole made various statements.

Paragraph 10 alleges: “Defendants engaged in a campaign to defame Plaintiffs, employing websites located at thetruthaboutwagmorpets.com and <https://shelterhopepetshop.org>, and also Instagram accounts such as [@thetruthaboutwagmorpets.com](https://www.instagram.com/thetruthaboutwagmorpets.com) and [@shelterhope_petshop](https://www.instagram.com/shelterhope_petshop).”

However, Defendant Friedman declares under penalty of perjury:

It is untrue that I engaged in a campaign to defame the Plaintiffs.

I am a documentary filmmaker who has conducted interviews with former employees and customers of Wagmor Pets. These interviews include detailed accounts of their experiences with Wagmor Pets and are in the nature of consumer protection information.

I understand that some of these interviews have been posted on the websites thetruthaboutwagmorpets.com and shelterhopepetshop.org, as well as the Instagram accounts [@thetruthaboutwagmorpets](https://www.instagram.com/thetruthaboutwagmorpets) and [@shelterhope_petshop](https://www.instagram.com/shelterhope_petshop). However, I do not own, control, or maintain these websites or Instagram accounts.

(Declaration of Matt Friedman (“Friedman Decl.”), ¶¶3-4.)

1 As Friedman did not defame Plaintiffs and does not own, control, or maintain these websites or
2 accounts, Plaintiffs cannot meet their burden as to these claims against Friedman.

3 Paragraph 11 alleges:

4 In furtherance of that campaign, Defendants contacted a 13-year-old Instagram
5 influencer (the “Minor”) and told him various lies about Plaintiffs. Among other
6 things, Defendants told the Minor that Plaintiffs were stalking him in a white
7 Mercedes, sending abusive emails, and making threats against the Minor.
8 Defendants told the Minor they had researched the matter, and traced all the IP
addresses to Plaintiffs. Those statements were all false, and Defendants knew them
to be false.

9 Paragraph 12 alleges:

10 Defendants then coached the Minor to make posts on Instagram, repeating those
11 lies. As a result, the Minor, who has in excess of 100,000 followers on Instagram,
12 made posts accusing Plaintiffs of stalking him, making death threats and other
13 illegal activities. It is likely that over 10,000 people, and perhaps over 100,000
people, saw what he wrote.

14 Defendant Friedman declares under penalty of perjury:

15 I have never contacted, communicated with, or coached the 13-year-old Instagram
16 influencer referred to in paragraphs 11-18 of the complaint (the “Minor”).
17 Therefore, the claim that I “told him various lies” (including that Plaintiffs were
18 stalking him in a white Mercedes, that Plaintiffs were sending abusive emails, that
Plaintiffs made threats against the Minor, or any other claims) is false.

19 (Friedman Decl., ¶5.)

20 As Friedman never contacted this individual, Plaintiffs cannot meet their burden as to these
21 claims against Friedman either.

22 Paragraph 14 of the complaint alleges:

23 Defendants responded by claiming that they had had no involvement in the
24 misconduct involving the Minor, and implied that their accounts had been hacked.
25 Defendants further implied that it had been Plaintiffs who were guilty of “threats”
and “cyber bullying.”

26 Defendant Friedman declares under penalty of perjury, “I never implied that my accounts had
27 been hacked or suggested that the Plaintiffs were guilty of ‘threats’ and ‘cyber bullying.’” (Friedman
28 Decl., ¶6.)

1 As Friedman never made these statements, Plaintiffs cannot meet their burden as to these claims
2 against Friedman either.

3 There are no specific allegations against Friedman whatsoever, and there are no other allegations
4 against any Defendants.

5 As Plaintiffs cannot show probability of success as to any aspect of their single cause of action
6 for defamation against Friedman, the complaint must be dismissed as a meritless SLAPP suit as to
7 Friedman, just as it has been as to other Defendants.

8 **III. CONCLUSION**

9 For the foregoing reasons, the complaint should be stricken in its entirety as a meritless SLAPP
10 suit as to Defendant Matt Friedman.

11 Dated: May 29, 2024

12 By:



13 Bryan Pease, Esq.
14 Attorney for Defendant Matt Friedman
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