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FILED
Superior Court of California
County of Los Angeles
AUG 30 2016
Sherri R. Carter, Executive Officer/Clerk
By P. Horton Deputy
P. Horton

REC'D
AUG 09 2016
FILING WINDOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GILBERT J. ARENAS, JR., an individual, Plaintiff, vs. LAURA GOVAN, an individual; and DOES 1 through 25, Defendants.	LASC Case No.: BC596980 Assigned to Hon. William Fahey, Dept. 69 **~~[PROPOSED~~] ORDER GRANTING PLAINTIFF GILBERT ARENAS' MOTION FOR AN ORDER AWARDING FEES AND COSTS AGAINST DEFENDANT LAURA GOVAN AND HER COUNSEL, MICHAEL HEICKLEN, PURSUANT TO CCP § 425.16 AND CCP § 128.5** Date: August 8, 2016 Time: 9:30 a.m. Dept.: 69 Complaint Filed: October 6, 2015 Trial Date: September 26, 2016

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On August 8, 2016, Plaintiff Gilbert J. Arenas, Jr.'s ("Plaintiff") Motion for an Order of Fees and Costs Against Defendant Laura Govan ("Defendant") and her counsel, Michael Heicklen ("Mr. Heicklen"), pursuant to California Code of Civil Procedure ("CCP") § 425.16 and § 128.5 (the "Fee Motion") came on for hearing in Department 69 of the above-entitled Court at 9:30 a.m.

Michael Murphy, from the firm David M. Bass & Associates, Inc., appeared on behalf of Plaintiff. Mr. Heicklen appeared on behalf of himself and expressly not on behalf of his former client, Defendant. Defendant did not appear, nor did she file an Opposition to the Motion.

The Court, having considered the Motion and all documents submitted in support of the Motion, as well as Mr. Heicklen's Opposition filed thereto, finds that Defendant's underlying Motion to Strike under Anti-SLAPP was (1) frivolous, (2) filed with the sole purpose of delay, and (3) filed in bad faith. These are findings that, under CCP § 425.16(c)(2) and CCP § 128.5, are sufficient grounds upon which to order fees and costs against Defendant, and her counsel, Mr. Heicklen, jointly and severally. The following findings of fact identify the "conduct or circumstances justifying" this Order, pursuant to CCP § 128.5(c).

1. A Complaint for Defamation was filed by Plaintiff against Defendant on October 6, 2015. The Complaint was served on October 7, 2015. The deadline to file a Motion to Strike under the Anti-SLAPP Statute, CCP § 425.16(f), was Monday, December 7, 2015. As previously explained by this Court in its May 27, 2015 Order (the "May 27, 2016 Order"), this deadline is designed "to avoid tactical manipulation of the stays that attend anti-SLAPP proceedings." *Olsen v. Harbison*, 134 Cal. App. 4th 278, 287 (2005).

2. This Court found in its May 27, 2016 Order that Defendant was initially represented by Mr. Heicklen during part of the period in which the Anti-SLAPP Motion was required to be filed. This Court also concluded in the May 27, 2016 Order that Defendant and Mr. Heicklen made the strategic decision to pursue strategies other than an Anti-SLAPP Motion before expiration of the deadline to

file an Anti-SLAPP Motion. Defendant failed to file an Anti-SLAPP Motion in the 60-day time period required by CCP § 425.16(f).

3. Mr. Heicklen ceased to represent Defendant sometime after October 29, 2015.

4. Defendant refused to participate in discovery in this action, ignored all discovery deadlines, and failed to oppose four discovery Motions set for hearing on February 29, 2016.

5. On February 29, 2016, this Court entered various Orders including (1) an Order Deeming Admitted the First Set of Requests for Admissions Served on Laura Govan, and (2) three other Orders that Defendant comply with discovery by March 14, 2016. Defendant failed to comply with the three February 29, 2016 Orders compelling compliance with discovery by March 14, 2016.

6. As previously noted by this Court in its May 27, 2016 Order, on April 8, 2016, Mr. Heicklen filed a Notice of Limited Appearance for the purpose of filing a Anti-SLAPP Motion on Defendant's behalf. On that same date, April 8, 2016, a Motion to Strike the Complaint under the Anti-SLAPP Statute ("Anti-SLAPP Motion") was filed by Mr. Heicklen, on behalf of Ms. Govan.

7. As this Court concluded in its May 27, 2016 Order, the Anti-SLAPP Motion was filed 183 days after service of the Complaint, and 123 days after the expiration of the deadline to file such a Motion, as required by CCP § 425.16(f).

8. The April 8, 2016 Anti-SLAPP Motion combined a request for leave to file a late Anti-SLAPP Motion with the substantive Anti-SLAPP Motion itself.

9. As this Court held in its May 27, 2016 Order, "it would be contrary to public policy to permit someone to defame another, impede discovery, and then belatedly hire a lawyer to file a very late anti-SLAPP Motion." Despite this public policy, Defendant's request for leave to file a late Anti-SLAPP Motion sought to be rewarded for her failure to participate in discovery, by arguing frivolously and in bad faith that since discovery still had to be completed, the late anti-SLAPP Motion should be entertained.

10. Defendant's request for leave to file a late Anti-SLAPP Motion was also based on frivolous and bad faith legal arguments to justify a late filing of an Anti-SLAPP Motion, including, the mis-citation of the legal standard on which a Court should consider a request to file a late Anti-SLAPP Motion. During the briefing on this Motion for Fees, Defendant's (now former) counsel, Mr. Heicklen, refused to admit that the legal standard he cited was incorrect.

11. Also at issue in the May 27, 2016 Order, was a separate Motion of Plaintiff for Terminating Sanctions against Defendant, based on her knowing violation of this Court's February 29, 2016 Orders.

12. As this Court found in its May 27, 2016 Order, even though Mr. Heicklen had no standing to participate in the Terminating Sanctions Motion, on May 5, 2016, Mr. Heicklen filed, on Ms. Govan's behalf, a "Courtesy Notice" in the Terminating Sanctions Motion, arguing that the Terminating Sanctions Motion was "void" because of the late Anti-SLAPP Motion and that Defendant was not obligated to oppose. This Court concluded in the May 27, 2016 Order that, in addition to having no standing, this argument was meritless, given that the Anti-SLAPP Motion had not been filed in compliance with the Anti-SLAPP statute, thus Defendant did not obtain the benefit of an Anti-SLAPP stay. This Court finds that the Courtesy Notice establishes that the sole purpose of Defendant in filing the late Anti-SLAPP Motion was to delay this proceeding, and to delay pursuit of sanctions for Defendant's violation of the February 29, 2016 discovery Orders.

13. This Court correctly concluded in its May 27, 2016 Order that Defendant's Anti-SLAPP Motion was a misuse of the Anti-SLAPP Statute.

14. No reasonable lawyer would have filed the Anti-SLAPP Motion given the existence of Admissions deemed admitted on February 29, 2016, because those Admissions establish liability on defamation. Because Plaintiff was guaranteed

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to prevail on prong two of the Anti-SLAPP Motion, no reasonable Defendant would have pursued this strategy.

15. The Anti-SLAPP Motion and Defendant's Reply brief in the Anti-SLAPP proceeding contained other frivolous and bad faith legal arguments on which this Order is also based. For example, the Anti-SLAPP Reply misrepresented the holding of *Wilcox v. Birtwhistle*, 21 Cal. 4th 973 (1999), for the knowingly false legal proposition that this Court is prohibited from considering judicial admissions for the purpose of denying an Anti-SLAPP Motion. That is not the holding of *Wilcox*. Mr. Heicklen continued to rely on his misrepresentation of *Wilcox* in his opposition to the Fee Motion.

16. The Anti-SLAPP Motion and Anti-SLAPP Reply of Ms. Govan contained other frivolous and bad faith factual arguments on which this Order is also based. For example, Defendant failed to provide any admissible evidence that the statements at issue in the Complaint were a "public issue" and made as part of her "public participation."

17. Plaintiff spent $37,145.70 in fees and costs opposing the Anti-SLAPP Motion, a total reasonable amount that Mr. Heicklen failed to dispute in his Opposition to this Motion, and that Defendant also failed to dispute or rebut. Defendant failed to file any Opposition to the Fee Motion.

Based upon these findings of fact, this Court HEREBY ORDERS that:

(1) Plaintiff's Motion is GRANTED.

(2) Mr. Heicklen and Ms. Govan are jointly and severally liable for the fees and costs ordered herein, pursuant to CCP § 425.16 and CCP § 128.5, and are ORDERED to deliver a check in the amount of $37,145.70 to Mr. Arenas' counsel at the address on file in this case, made payable to "David M. Bass & Associates, Inc. Attorney Client Trust Account," within 10 days of entry of this Order.

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(3) If the fees and costs ordered in this Motion are not paid within the 10 days required, (1) the $37,145.70 shall be included in the memorandum of costs entered as part of the Judgment against Plaintiff, and (2) judgment may be entered against Mr. Heicklen for the amount of $37,145.70, minus any amount he and/or Defendant may have paid prior to that date.

IT IS SO ORDERED:

Dated: 8/30, 2016

Judge of the Superior Court

William F. Fahey

PROOF OF SERVICE
[*C.C.P.*, §§1013(a) and 2015.5]

STATE OF CALIFORNIA) Case No. BC596980
)
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 200, Los Angeles, California 90067.

On August 9, 2016, I served the foregoing document described **[PROPOSED] ORDER GRANTING PLAINTIFF GILBERT ARENAS' MOTION FOR AN ORDER AWARDING FEES AND COSTS AGAINST DEFENDANT LAURA GOVAN AND HER COUNSEL, MICHAEL HEICKLEN, PURSUANT TO CCP § 425.16 AND CCP § 128.5** on all interested parties in this action by placing the original/true copies thereof enclosed in (a) sealed envelope(s) addressed as stated below:

Ms. Laura Govan
2760 Country Ridge Road
Calabasas, CA 91302

Ms. Laura Govan
10711 Melvin Avenue
Chatsworth, CA, 91326

Ms. Laura Govan
c/o Boulevard Management, Inc.
21731 Ventura Blvd., Suite 300
Woodland Hills, CA 91364

Michael Heicklen, Esq.
The Heicklen Law Group
7935 Alabama Avenue
Canoga Park, CA 91304

☐ **BY MAIL** I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with 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.

☒ **BY (EMAIL)** I caused the above-referenced document(s) to be electronically transmitted to the below-named attorneys/parties by email.

Michael Heicklen, Esq. (HEICKLENLAW@GMAIL.COM)

☒ **BY (OVERNIGHT COURIER)** I deposited such envelope in the receptacle for **Federal Express** and requested that it be delivered to the above-named attorneys/parties by way of priority next day delivery.

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

Executed on August 9, 2016, at Los Angeles, California.

Cynthia Everhart