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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
12

13 HOPSCOTCH ADOPTIONS, INC.,
14 et al.,

15 Plaintiffs,

16 vs.

17 VANESSA KACHADURIAN,

18 Defendant.
19 _____/

CASE NO. CV F 09-2101 LJO MJS

**ORDER ON DEFENDANT'S SPECIAL
MOTION TO STRIKE**
(Doc. 89.)

19 **BACKGROUND**

20 Pro se defendant Vanessa Kachadurian ("Ms. Kachadurian") seeks to dismiss plaintiffs
21 Hopscotch Adoption, Inc. ("Hopscotch") and Robin Sizemore's ("Ms. Sizemore's") computer fraud,
22 defamation and related claims as barred under California's Strategic Lawsuit Against Public
23 Participation statute, California Code of Civil Procedure section 425.16 ("section 425.16"). Hopscotch
24 and Ms. Sizemore (collectively "plaintiffs") respond that Ms. Kachadurian's section 425.16 special
25 motion to strike is untimely, constitutes a premature summary judgment motion, and lacks factual basis.
26 This Court considered Ms. Kachadurian's section 425.16 special motion to strike on the record without
27 a hearing, pursuant to Local Rule 230(g). For the reasons discussed below, this Court DENIES Ms.
28 Kachadurian's section 425.16 special motion to strike.

1 **BACKGROUND**

2 **The Parties**

3 Hopscotch is a non-profit corporation and an accredited adoption agency which provides
4 international adoption services for children in Armenia, Bulgaria, Georgia, Ghana, and the Ukraine. Ms.
5 Sizemore co-founded Hopscotch in 2006 and serves as its Executive Director. Ms. Sizemore had been
6 a contract worker for Carolina Adoption Services, Inc. ("CAS") for 11 years prior to founding
7 Hopscotch. Since 2002, Ms. Sizemore has placed 80 Armenian children with American families to
8 exceed placements by all other U.S. agencies.

9 Ms. Kachadurian is a Fresno resident who, according to plaintiffs, has sought unsuccessfully
10 since at least 2004 "to adopt a child through various international adoption agencies" and "waged an
11 ongoing cybersmear campaign against such agencies since at least 2005." Ms. Kachadurian has been
12 neither a Hopscotch client nor an applicant with plaintiffs or an entity affiliated with Ms. Sizemore.
13 Plaintiffs note that Ms. Kachadurian is of Armenian ancestry and disapproves of adoption of Armenian
14 children by non-Armenians.

15 **Ms. Kachadurian's Alleged Statements**

16 On December 2, 2009, plaintiffs filed their verified complaint ("complaint") to curtail Ms.
17 Kachadurian's "unlawful statements about plaintiffs." The complaint alleges that since 2006, Mr.
18 Kachadurian "repeatedly contacted current and prospective Hopscotch clients, via blog postings and
19 direct email contact, and provided false and misleading information" about plaintiffs, including that:

- 20 1. Plaintiffs "engage in illegal practices";
21 2. Ms. Sizemore "was fired from her previous job with CAS";
22 3. Her firing "was due to her engaging in such illegal or unethical practices"; and
23 4. Ms. Sizemore's "conduct is somehow connected with the arrest of Hopscotch's in-
24 country facilitator in the Georgian republic."

25 The complaint claims that Ms. Kachadurian's conduct has caused: (1) families seeking foreign
26 adoptions to "terminate their contracts with Hopscotch" and "to withdraw adoption applications

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1 previously submitted to Hopscotch”¹; and (2) “some hesitation among potential adoptive parents in doing
2 business with Hopscotch.” The complaint accuses Ms. Kachadurian of “[s]ingling out Plaintiffs for
3 abuse because of Ms. Sizemore’s ethnicity and religion.”

4 **Plaintiffs’ Claims**

5 The complaint alleges:

- 6 1. A first claim under the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. §§ 1030,
7 et seq., that on July 9, 2009, Ms. Kachadurian improperly accessed the *Armenian Weekly*
8 blog to make a posting as a Hopscotch contractor that Hopscotch has sold “many babies
9 out of Armenia” and that they “mostly adopt out sickly children from Armenia for a mere
10 \$26,600”;
- 11 2. A (second) defamation claim that Ms. Kachadurian made false and defamatory
12 statements in that:
 - 13 a. “At no time has Hopscotch or Sizemore engaged in any illegal or unethical
14 conduct with respect to the conduct of international adoptions”;
 - 15 b. Ms. Sizemore “left CAS of her own will and accord and was not fired”; and
 - 16 c. Although the arrest of Hopscotch’s Georgia facilitator was “politically
17 motivated,” “no formal charges were ever made and the allegations were
18 dismissed by the United States embassy in Georgia which has continued to renew
19 her multi-entry visa every year since then”;
- 20 3. A (third) negligent misrepresentation claim that Ms. Kachadurian has “failed to use
21 reasonable care to determine the truth or falsity of statements” regarding plaintiffs;
- 22 4. A (fourth) false light claim that “[b]y repeatedly mentioning the arrest of Hopscotch’s
23 Georgian facilitator in blog postings and emails,” Ms. Kachadurian “clearly understood
24 or acted in reckless disregard of the fact that such a pairing would paint Plaintiffs in a
25 false light in a manner that would be highly prejudicial to Plaintiffs”;
- 26 5. A (fifth) tortious interference with contractual relations claim that Ms. Kachadurian

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28 ¹ The complaint defines such withdrawn adoption applications as “Hopscotch Opportunities.”

“purposefully contacted the Hopscotch Clients intending to causes [sic] such parties to breach, reduce and/or terminate their relationship with Hopscotch”; and

6. A (sixth) negligent interference with prospective advantage claim that Ms. Kachadurian “knew of the relationships between Hopscotch and the Hopscotch Opportunities and engaged in unlawful conduct intending to disrupt these relationships.”²

The complaint seeks damages and injunctive relief to prevent “[p]osting further defamatory statements” and “further annoyance or harassment.”

DISCUSSION

California’s Anti-SLAPP Statute

Ms. Kachadurian proceeds with a section 425.16 special motion to strike in that plaintiffs “can provide no statement that was not true that Defendant made to the public, that was published, was evil in nature and that caused Plaintiff any loss.”

As California’s anti-SLAPP statute, section 425.16 authorizes a “special motion to strike” litigation designed to chill free speech:

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

An act in furtherance of a person’s right of petition or free speech includes “any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest” or “any other 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.” Cal. Code Civ. Proc., § 425.16(e)(3) and (4).

Section 425.16 is to be construed liberally. Cal. Code Civ. Proc., § 425.16(a); *Kectchum v. Moses*, 24 Cal.4th 1122, 1130, 104 Cal.Rptr.2d 337 (2001).

Section 425.16's Application In Federal Courts

The Ninth Circuit Court of Appeals has determined that section 425.16 applies in federal courts

² Hopscotch only pursues the tortious interference with contractual relations and negligent interference with prospective advantage claims.

1 in the absence of “direct collision” between California’s statutory scheme and F.R.Civ.P. 8, 12 and 56.
2 *United States ex rel. Newsham v. Lockheed Missiles & Space Company, Inc.*, 190 F.3d 963, 972 (9th Cir.
3 1999). The “Anti-SLAPP statute and the Federal Rules do, in some respects, serve similar purposes,
4 namely the expeditious weeding out of meritless claims before trial . . . [T]here is no indication that
5 Rules 8, 12, and 56 were intended to ‘occupy the field’ with respect to pretrial procedures aimed at
6 weeding out meritless claims.” *Newsham*, 190 F.3d at 972. “Although Rules 12 and 56 allow a litigant
7 to test the opponent’s claims before trial, California’s ‘special motion to strike’ adds an additional,
8 unique weapon to the arsenal, a weapon whose sting is enhanced by a[n] entitlement to fees and costs.”
9 *Newsham*, 190 F.3d at 973.

10 “Special procedural rules apply where an anti-SLAPP motion is brought in federal court.”
11 *Bulletin Displays, LLC v. Regency Outdoor Advertising, Inc.*, 448 F.Supp.2d 1172, 1180 (C.D. Cal.
12 2006). A section 425.16 special motion to strike may be based on a defect in a complaint, including
13 legal deficiencies addressable on a motion to dismiss under F.R.Civ.P. 12(b)(6), or a failure to support
14 a stated claim with evidence, analogous to a F.R.Civ.P. 56 summary judgment motion. *Condit v.*
15 *National Enquirer, Inc.*, 248 F.Supp.2d 945, 952 (E.D. Cal. 2002). As a fellow district court has
16 explained:

17 § 425.16 applies in federal court. However, it cannot be used in a manner that conflicts
18 with the Federal Rules. This results in the following outcome: If a defendant makes a
19 special motion to strike based on alleged deficiencies in the plaintiff’s complaint, the
20 motion must be treated in the same manner as a motion under Rule 12(b)(6) except that
21 the attorney’s fee provision of § 425.16(c) applies. If a defendant makes a special motion
to strike based on the plaintiff’s alleged failure of proof, the motion must be treated in the
same manner as a motion under Rule 56 except that again the attorney’s fees provision
of § 425.16(c) applies.

22 *Rogers v. Home Shopping Network, Inc.*, 57 F.Supp.2d 973, 983 (C.D. Cal.1999).

23 Nonetheless, a section 425.16 special motion to strike does not apply to federal claims in federal
24 court. “While the anti-SLAPP statute furthers ‘important, substantive state interests,’ . . . California has
25 no interest in dictating rules of procedure or substance applicable to federal claims brought in federal
26 court.” *Bulletin Displays*, 448 F.Supp.2d at 1182 (finding section 425.16 “inapplicable” to RICO and
27 Clayton Act claims); *Hilton v. Hallmark Cards*, 599 F.3d 894, 901 (9th Cir. 2010) (“the anti-SLAPP
28 statute does not apply to federal law causes of action”).

1 Ms. Kachadurian's section 425.16 special motion to strike is inapplicable to the complaint's
2 CFAA claim. As such, this Court turns to whether plaintiffs' California tort claims are subject Ms.
3 Kachadurian's section 425.16 special motion to strike.

4 **Untimeliness Of Motion**

5 Plaintiffs initially attack Ms. Kachadurian's section 425.16 special motion to strike as untimely
6 under section 425.16(f) which provides: "The special motion may be filed within 60 days of the service
7 of the complaint or, in the court's discretion, at any later time upon terms it deems proper."

8 "The statute expressly provides that a late anti-SLAPP motion shall not be filed unless the court
9 affirmatively exercises discretion to permit it to be filed." *Olsen v. Harbison*, 134 Cal.App.4th 278, 286,
10 35 Cal.Rptr.3d 909, 916 (2005). The California Court of Appeal has further explained that "a plaintiff
11 opposing a late anti-SLAPP motion need not demonstrate prejudice":

12 There are two potential purposes of the 60-day limitation. One is to require
13 presentation and resolution of the anti-SLAPP claim at the outset of the litigation before
14 the parties have undertaken the expenses of litigation that begin to accrue after the
15 pleading stage of the lawsuit. The other is to avoid tactical manipulation of the stays that
attend anti-SLAPP proceedings. The "prejudice" to the opponent pertinent to these
purposes is that which attends having to suffer such expenses or be subjected to such a
stay.

16 *Olsen*, 134 Cal.App.4th at 287, 35 Cal.Rptr.3d at 916.

17 Despite Ms. Kachadurian's claims and vagaries, this Court has concluded that Ms. Kachadurian
18 was served with the complaint effectively in January 2010. She delayed a year, until January 11, 2011,
19 to file untimely her section 425.16 special motion to strike. This Court agrees with plaintiffs that Ms.
20 Kachadurian pursues her section 425.16 special motion to strike only "to facilitate delay." Ms.
21 Kachadurian's motion is untimely to warrant its dismissal. This Court admonishes Ms. Kachadurian
22 that although she proceeds pro se, this Court will not tolerate delay tactics and gamesmanship, such as
23 her clearly untimely section 425.16 special motion strike.

24 **Procedural Status**

25 Plaintiffs challenge Ms. Kachadurian's special motion to strike as a premature attempt at
26 summary judgment.

27 Ms. Kachadurian contends that plaintiffs "cannot establish that there is a probability" that
28 plaintiffs will prevail on their claims in the absence of "admissible evidence of anything other than

1 questionable petitioning activity.” Ms. Kachadurian notes that plaintiffs “have never identified
2 Defendant Kachadurian as the poster of the anonymous postings” and “fail to show a financial loss.”
3 Ms. Kachadurian appears to claim that section 425.16 shields “anonymous message board posters” who
4 criticize public corporations on matters such as “questionable lawsuits brought by the corporation for
5 alleged defamatory statements.”

6 If a defendant makes an anti-SLAPP motion based on the plaintiff's failure to submit evidence
7 to substantiate its claims, the motion is treated as a motion for summary judgment, and discovery “must
8 be ‘developed sufficiently to permit summary judgment under Rule 56.’” *In re Bah*, 321 B.R. 41, 45,
9 n. 6 (9th Cir.BAP2005) (citing *Rogers v. Home Shopping Network*, 57 F.Supp.2d 973, 982 (C.D.
10 Cal.1999)).

11 Plaintiffs are correct that Ms. Kachadurian challenges plaintiffs’ evidence, not proper pleading
12 of plaintiffs’ claims. Her motion is a premature attempt to reach the results of summary judgment,
13 especially given that discovery dates have not been set and plaintiffs’ discovery and access to
14 information has been limited at best. In essence, Ms. Kachadurian seeks to compel plaintiffs to defend
15 their claims without a chance to marshal supporting evidence. Plaintiffs are correct that Ms.
16 Kachadurian misuses section 425.16 as a sword “to force Plaintiffs to prove their case.” This Court will
17 not compel plaintiffs to prove their claims without the benefit of discovery.

18 **CONCLUSION AND ORDER**

19 Ms. Kachadurian’s section 425.16 special motion to strike lacks merit and is consistent with her
20 attempts to delay this action and obstruct plaintiffs’ pursuit of their claims. This Court will not tolerate
21 such conduct and ADMONISHES Ms. Kachadurian to devote her efforts to defend the claims, to obey
22 the Federal Rules of Civil Procedure, this Court’s Local Rules, and other applicable authorities, and to
23 abide by standards expected of litigants in federal court. This Court FURTHER ADMONISHES Ms.
24 Kachadurian that this order will serve as a predicate to impose on her sanctions for her improper conduct
25 and such sanctions include monetary and/or other available sanctions to limit her defense of plaintiffs’
26 claims.

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1 For the reasons discussed above, this Court:

- 2 1. DENIES Ms. Kachadurian's section 425.16 special motion to strike;³
3 2. ORDERS Ms. Kachadurian, no later than February 18, 2011, to file and serve an answer
4 to plaintiffs' complaint; and
5 3. ORDERS Ms. Kachadurian to file no further motions to dismiss plaintiffs' complaint.
6 This Court will strike further motions to dismiss as unreasonable and vexatious
7 multiplication of these proceedings.

8 IT IS SO ORDERED.

9 **Dated: February 8, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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³ This Court's decision is firm. This Court will not entertain a reconsideration or similar motion without legal prerequisites firmly established.