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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
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8 RICHARD ROE, RICHARD ROE, II and  
9 DON A. NELSON,

10 Plaintiffs,

11 v.

12 JOHN DOE, MARK CUBAN, DALLAS  
13 BASKETBALL, LTD and DOES 1 through  
14 10,

Defendants.  
\_\_\_\_\_ /

No. C 09-0682 PJH

**ORDER GRANTING PLAINTIFF'S  
REQUEST TO CONDUCT DISCOVERY  
AND VACATING HEARING DATE**

15 On February 23, 2009, defendants Mark Cuban ("Cuban") and Dallas Basketball,  
16 Ltd.'s (collectively "defendants") filed a special motion to strike the complaint pursuant to  
17 California's Anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") statute,  
18 Cal.Code Civ. Proc. § 425.16. The matter was set for hearing on April 22, 2009. On April  
19 15, 2009, plaintiff Don Nelson ("Nelson") filed his own motion to strike and also requested  
20 leave of court to conduct discovery on the issue of actual malice should the court determine  
21 that he is required to demonstrate actual malice, citing Metabolife Intern., Inc. v. Wornick,  
22 264 F.3d 832 (9th Cir. 2001).

23 Having reviewed all the papers filed on these two motions, the court elects to allow  
24 Nelson to conduct limited discovery on the issue of actual malice. The court also grants  
25 defendants leave to conduct discovery on this issue, if they so desire.

26 Accordingly, the court hereby VACATES the April 22, 2009 hearing date. The  
27 parties shall complete this limited discovery by May 22, 2009. Nelson shall file a  
28 supplemental opposition to defendant's motion to strike, not to exceed five (5) pages no  
later than June 3, 2009, setting forth any new evidence regarding the issue of actual

1 malice. Or, if Nelson chooses not to supplement his opposition brief, he shall so advise the  
2 court. Defendants shall file a supplemental reply, not to exceed five (5) pages, no later  
3 than June 12, 2009. The court will thereafter advise the parties of a new date and time for  
4 hearing, should one be determined to be necessary. No extensions of these deadlines will  
5 be granted.

6 **IT IS SO ORDERED.**

7 Dated: April 20, 2009

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PHYLLIS J. HAMILTON  
United States District Judge

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