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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSE R. ENJAIAN,

Plaintiff,

v.

ALM MEDIA PROPERTIES, LLC, et al.,

Defendants.

No. C 14-3872 PJH

**ORDER GRANTING MOTION TO
STRIKE**

Defendants' motion to strike came on for hearing before this court on December 3, 2014. Plaintiff Jesse Enjaian ("plaintiff") appeared in pro per. Defendants ALM Media Properties, LLC, Beth Frerking, and Karen Sloan ("defendants") appeared through their counsel, Deborah Adler. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendants' motion as follows.

Plaintiff's suit arises entirely out of a news article published by the National Law Journal entitled "Law School Alum, Accused of Stalking, Loses Suit Against U. Michigan," and a Twitter message, published by the article's author, linking to the story with the text "Judge tosses lawsuit brought by Michigan Law alum accused of stalking former classmate." Based on that news story and that message, plaintiff filed this suit against defendants ALM Media Properties (publisher of the National Law Journal), Beth Frerking (editor-in-chief of the National Law Journal), and Karen Sloan (reporter for the National Law Journal), asserting one cause of action for defamation. The gravamen of plaintiff's suit is that, by using the word "accused," defendants falsely stated that plaintiff had been formally charged with the crime of stalking. Defendants have moved to strike the operative first

1 amended complaint (“FAC”) under California’s anti-SLAPP statute.

2 The anti-SLAPP statute prohibits the filing of legal actions based on the defendant’s
3 lawful pursuit of a right to petition, or a right to free speech, where such speech or
4 petitioning activity is in connection with a public issue. It may be applied in federal court in
5 diversity actions and to actions with pendent state law claims. Globetrotter Software, Inc.
6 v. Elan Computer Group, Inc., 63 F.Supp. 2d 1127, 1130 (N.D. Cal. 1999).

7 The anti-SLAPP statute authorizes a special motion to strike certain pleadings in a
8 cause of action based on any act of the defendant in furtherance of his or her right of
9 petition or free speech, under the federal or state constitutions, in connection with a public
10 issue, as defined by the statute. Cal. Code. Civ. P. § 425.16. Once the defendant has
11 made out a prima facie case, the burden shifts to the plaintiff to demonstrate a probability
12 of prevailing on the challenged claims for those claims to survive dismissal. Id. §
13 425.16(b). To meet this burden, the plaintiff must demonstrate that the complaint is legally
14 sufficient and supported by a prima facie showing of facts to sustain a favorable judgment if
15 the evidence submitted by the plaintiff is credited. Wilcox v. Superior Court, 27 Cal. App.
16 4th 809, 823-25 (1994).

17 The anti-SLAPP statute authorizes a motion to strike meritless lawsuits filed to chill
18 the defendant’s exercise of First Amendment rights. Subdivision (b)(1) of the statute
19 provides:

20 A cause of action against a person arising from any act of that person in
21 furtherance of the person’s right of petition or free speech under the United
22 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
23 plaintiff has established that there is a probability that the plaintiff will prevail
on the claim.

24 Cal. Civ. P. Code § 425.16(b)(1).

25 The statute requires the court to engage in a two-step process in ruling on an anti-
26 SLAPP motion. “First, the court decides whether the defendant has made a threshold
27 showing that the challenged cause of action is one arising from protected activity. . . . If the
28 court finds such a showing has been made, it then determines whether the plaintiff has

1 demonstrated a probability of prevailing on the claim.” Equilon Enterprises v. Consumer
2 Cause, Inc., 29 Cal. 4th 53, 67 (2000); see also Vess v. Ciba-Geigy Corp. USA, 317 F.3d
3 1097, 1110 (9th Cir. 2003).

4 Plaintiff does not dispute that the first prong of the anti-SLAPP analysis is met, and
5 that his suit does arise out of protected activity. However, he does argue that he has
6 demonstrated a probability of prevailing on his defamation claim.

7 Defamation requires the intentional publication of a statement of fact which is false,
8 unprivileged, and has a natural tendency to injure or which causes special damage. See
9 Price v. Stossel, 620 F.3d 992, 998 (9th Cir. 2010; see also Taus v. Loftus, 40 Cal. 4th 683,
10 720 (2007)).

11 Plaintiff alleges that defendants’ use of the term “accused” was false, because he
12 was never formally charged with a crime. The court disagrees that the word “accused”
13 carries the connotation of a formal criminal charge. Webster’s dictionary definition (cited by
14 plaintiff in the FAC) defines “accuse” as “to blame (someone) for something wrong or
15 illegal” or “to say that someone is guilty of a fault or crime.” While the term “accuse” may
16 also be used in the context of a formal indictment, the court disagrees that a reasonable
17 reader would interpret “accuse” to mean “formally charge.” See also Conroy v. Spitzer, 70
18 Cal.App.4th 1446, 1453 (1999) (rejecting argument that the word “guilty” implied criminal
19 guilt). In fact, the court notes that plaintiff’s own complaint uses the term “accusation” to
20 refer to something less than a criminal charge. See FAC, ¶ 20 (prayer for relief asking that
21 defendants be required to publish an apology “for the wrongful accusation and publish a
22 ‘tweet’ apologizing for the wrongful accusation.”) (emphasis added).

23 While plaintiff’s complaint alleges that the term “accused” was the only false
24 statement in the article, plaintiff argued at the hearing that the phrase “[h]e claimed officers
25 kept the items for 446 days but never charged him with a crime” was false, because it
26 implies that there is a dispute as to whether plaintiff was ever charged with a crime. The
27 court disagrees, as the challenged statement merely reports the substance of plaintiff’s own
28 claim, and does not state or imply anything about its truth or falsity.

