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STANFORD UNIVERSITY and MAIA YOUNG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SOREN ANDERSEN,

Plaintiff,

vs.

MAIA YOUNG, an individual; STANFORD UNIVERSITY, a business entity unknown; and DOES 1-100, inclusive,

Defendant.

No. C-07-03766 (JW)

STANFORD UNIVERSITY'S AND MAIA YOUNG'S NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO FRCP 12(b)(1) AND (6) AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: November 19, 2007
Time: 9:00 a.m.
Dept.: Courtroom 8
Judge: Hon. James Ware

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Codes

Rules and Regulations

NOTICE OF MOTION AND MOTION

TO SOREN ANDERSEN:

NOTICE IS HEREBY GIVEN THAT on November 19, 2007, at 9:00 a.m., or as soon thereafter as the matter may be heard in the courtroom of the Honorable James Ware (Courtroom 8) of the above-entitled Court, located at 280 South First Street, San Jose, California, Defendants STANFORD UNIVERSITY ("Stanford") and MAIA YOUNG ("Young") will and hereby do move the Court for an order dismissing, without leave to amend, all claims alleged in Plaintiff SOREN ANDERSEN's First Amended Complaint for Defamation and Violation of First Amendment Rights. This motion is made under Federal Rule of Civil Procedure 12(b)(1) and (6) on the grounds that:

1. The Court does not have jurisdiction over Plaintiff's claims because they are barred by the *Rooker-Feldman* doctrine;

2. Plaintiff has not alleged and cannot allege that private defendants Stanford and Young were state actors who may be held liable for alleged violations of Plaintiff's constitutional rights to petition the government for redress of grievances and/or to freedom of association;

3. Plaintiff has not alleged and cannot allege a constitutionally protected "association" as the basis for the claimed violation of his right to freedom of association;

4. Plaintiff's claim that his right to freedom of association was violated is time-barred;

5. California Code of Civil Procedure § 425.16 ("the Anti-SLAPP statute") is constitutional;

6. The Court does not have pendent jurisdiction over Plaintiff's state law claims in the absence of his federal constitutional claims; and

7. Plaintiff's state law defamation claims are barred by collateral estoppel.

This motion will be based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Jason Catz and attachments thereto filed jointly herewith, the defendants' Request for Judicial Notice and attachments

thereto filed jointly herewith, and on all the records and files in this action and all additional matters of which the Court may take judicial notice.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff owes defendants $58,036.30 in fees and costs to reimburse some of the expenses to which he put them in successfully defending themselves against the baseless claims he pursued against them in the California courts. He claimed that statements made in the course of a police investigation and in banning him from Stanford yoga classes because of his harassing conduct towards Defendant Maia Young, a female student-instructor, were defamatory. Plaintiff has not paid any part of the fee award. Instead, he is seeking a "do over". He has filed the same defamation claims in this Court, with a constitutional challenge to the Anti-SLAPP statute and a claim that the constitutional right to freedom of association covers a yoga class taught by Maia Young added to give him an argument that the Court has jurisdiction to review the defamation claims.

Plaintiff's efforts to relitigate claims resolved against him in the California state courts should be rejected. Each cause of action should be dismissed without leave to amend. As discussed below, the Court does not have jurisdiction over Plaintiff's claims because they are barred by the *Rooker-Feldman* doctrine; Plaintiff has not alleged and cannot allege that private defendants Stanford and Young were state actors who may be held liable for alleged violations of Plaintiff's constitutional rights to petition the government for redress of grievances and/or to freedom of association; Plaintiff has not alleged and cannot allege a constitutionally protected "association" as the basis for the claimed violation of his right to freedom of association; Plaintiff's claim that his right to freedom of association was violated is time-barred; California Code of Civil Procedure § 425.16 ("the Anti-SLAPP statute") is constitutional; the Court does not have pendent jurisdiction over Plaintiff's state law claims in the absence of his federal constitutional claims; and Plaintiff's state law defamation claims are barred by collateral estoppel.

II. FACTUAL BACKGROUND.

A detailed factual history of Plaintiff Soren Andersen's interactions with Stanford and Maia Young can be read at *Andersen v. Young*, H029484 and H029742 (Cal. Ct. App. 6th District, filed November 6, 2006) ("Cal. App. Decision") (attached as Exhibit C to the Stanford University's and Maia Young Request for Judicial Notice in Support of Motion to Dismiss First Amended Complaint Pursuant to FRCP 12(b)(1) and (6) ("Request for Judicial Notice") filed herewith), pp. 3-8. In summary, Plaintiff began participating in Stanford Aerobics and Yoga club ("SAY") classes taught by Young, a Stanford Ph.D. student, in the Fall of 2003. Plaintiff pursued a relationship with Young, asserting that she had conveyed an interest in him. Despite Young's requests that Plaintiff stop contacting her, Plaintiff continued to contact Young, attend her classes and make her feel uncomfortable. Cal. App. Decision, pp. 3-4; First Amended Complaint for Defamation and First Amendment Violations ("Amended Federal Complaint"), ¶¶ 13-14.

In May 2004, Young's car was vandalized at her home in Menlo Park, California. Young reported the incident to the Menlo Park Police Department. The investigating officer asked Young if she had any conflict with anyone or thought anyone had behaved oddly toward her. In response, Young described her various contacts with Plaintiff. The officer contacted Plaintiff to talk about the vandalism and his unwanted contacts with Young. The officer recommended that Plaintiff stay away from Young and stop attending her classes. Plaintiff refused, and the officer so informed Young, suggesting that she bring her concerns to the attention of Stanford and the Stanford police to get assistance in banning Plaintiff from her yoga classes. She did so. Cal. App. Decision, p. 4; Amended Federal Complaint, ¶ 15.

Thereafter, Stanford representatives met with Plaintiff about his contacts with Young and banned Plaintiff from the yoga classes and the Stanford facilities where the classes were held. The Stanford representatives informed the Stanford Police and certain Stanford employees (yoga instructors) about the ban. Cal. App. Decision, pp. 5-8; Amended Federal Complaint, ¶¶ 17-19.

III. PROCEDURAL HISTORY.

On July 13, 2004, Plaintiff sued Stanford and Young for defamation in San Mateo County Superior Court, and the case was eventually transferred to the Santa Clara County Superior Court on June 9, 2005 (the "State Court Action"). Amended Federal Complaint, ¶¶ 20, 23. Plaintiff filed his First Amended Complaint For Defamation ("State Complaint") on July 15, 2005, complaining that Young informed police that her car had been vandalized and that the police had contacted him about the incident. State Complaint (Request for Judicial Notice, Ex. A), ¶ 15. He also alleged that Young told Stanford that Plaintiff was a predator and had vandalized her property and that Stanford, in turn, republished those allegations to its employees. *Id.*, at ¶¶ 19-22.

Defendants filed a motion to strike Plaintiff's complaint pursuant to California Code of Civil Procedure § 425.16 ("Anti-SLAPP statute"), arguing that Plaintiff's State Court Action was a strategic lawsuit against public participation (a "SLAPP" suit). Statement of Decision; Order (filed August 31, 2005) ("Anti-SLAPP Order") (Request for Judicial Notice, Ex. B), p. 1. Plaintiff had more than a year to investigate the facts that would support his State Complaint. Amended Federal Complaint, ¶ 20 (noting the State Court Action was filed July 13, 2004—more than a year before the Anti-SLAPP motion). Plaintiff was represented by counsel when his opposition to the Anti-SLAPP motion was filed, and his counsel argued against the motion at the August 30, 2005 hearing. (Plaintiff did not raise any concerns about the constitutionality of the Anti-SLAPP statute or his claimed constitutional right to freedom of association in the yoga class in his opposition papers or at the hearing.) The record refutes Plaintiff's present contention that the State Court Action was decided without considering the merits of his defamation claims. Plaintiff had the opportunity to submit evidence sufficient to establish his prima facie case, but he failed to do so. Anti-SLAPP Order, p. 2.

The Santa Clara County Superior Court granted the Anti-SLAPP motion on August 31, 2005, holding "[t]he alleged statements by Young to Stanford colleagues and administrators and by Stanford administrators to campus police and other personnel are

protected speech because they are statements made in connection with an issue under consideration or review by an official proceeding authorized by law." *Id.*, at p. 2. That court also held that Plaintiff had the burden to establish with admissible evidence the probability that he would prevail on his claim but that he "provided no evidence to show that he can prevail on his causes of action." *Id.*

Defendants filed a motion for the award of attorneys' fees and costs required by Code of Civil Procedure section 425.16(c), which was granted and the order entered on December 22, 2005. Cal. App. Decision, p. 10.

Plaintiff appealed both the Anti-SLAPP Order and the December 22, 2005 fee order. Amended Federal Complaint, ¶¶ 31-35. Plaintiff did not challenge the constitutionality of the Anti-SLAPP statute or claim that defendants violated his right to freedom of association in his appeal papers. On November 6, 2006, the Sixth Appellate District for the California Court of Appeal affirmed the Anti-SLAPP Order and the decision to award attorneys' fees and costs. Cal. App. Decision, pp. 1-2. The Sixth Appellate District remanded the Fee Order for reconsideration of the amount of the award of fees and costs, directing that it should not include any time spent on litigation activities other than the actual Anti-SLAPP motion. *Id.*, at pp. 24-25.

Plaintiff filed a petition for review by the California Supreme Court, which was denied on January 17, 2007. *See* January 17, 2007 Order Denying Petition for Review ("Cal. Supreme Court Order") (Request for Judicial Notice, Ex. D), p. 1. Defendants subsequently filed a motion proposing recalculation of the attorneys' fees and costs to comply with the remand, which was granted on June 22, 2007. Plaintiff was ordered to pay Stanford $58,036.30 in fees and costs. Amended Federal Complaint, ¶ 48; June 22, 2007 Order Granting Motion for Attorneys' Fees Pursuant to CCP 425.16 On Remand (Request for Judicial Notice, Ex. E), pp. 1-2.

Plaintiff apparently thereafter submitted complaints to the State Bar of California about all three defense attorneys and his own counsel and to the California Commission on Judicial Performance (presumably about one or more of the judges who ruled in

defendants' favor). *See* Amended Federal Complaint, ¶¶ 50-53. No action was taken in response to any of them. Amended Federal Complaint, ¶¶ 51, 53.

Plaintiff initiated this action on July 23, 2007 with a complaint alleging four causes of action. The first two causes of action for defamation are lifted nearly word-for-word from the State Complaint. Indeed, of the eleven paragraphs setting forth the defamation causes of action in the initial federal complaint, nine paragraphs are nearly identical to those appearing in the State Complaint and the other two paragraphs contain only modest changes. *Compare* Complaint for Defamation and Violation of First Amendment Rights ("Initial Federal Complaint"), ¶¶ 54-64 *with* State Complaint, ¶¶ 18-28. Similarly, the first seventeen paragraphs of the federal complaint (setting forth the factual allegations) are nearly identical to the first seventeen paragraphs of the State Complaint, with the exception of three slightly revised paragraphs. *Compare* Initial Federal Complaint, ¶¶ 1-17 *with* State Complaint, ¶¶ 1-17. The third cause of action alleged that the decision to strike his State Complaint and award defendants their mandatory attorneys' fees violated his right to petition the government for redress of grievances. Initial Federal Complaint, ¶¶ 65-67. His fourth cause of action also claimed violation of his right to petition the government for redress of grievances. Initial Federal Complaint, ¶ 68.

On August 21, 2007, Plaintiff filed a Notice of Appeal indicating that he intends to appeal the state court's calculation of the attorneys' fees and costs on remand. *See* Amended Federal Complaint, ¶ 56. *That same day*, Plaintiff filed his Amended Federal Complaint, pointing out that he had filed the Notice of Appeal in the State Court Action, among other changes. *Id.* While Plaintiff's factual allegations in the Amended Federal Complaint still recite the same facts presented in the State Complaint, he added allegations that he personally disclosed the details of his conflict with Young to certain members of the SAY staff and the Stanford administration and attached as exhibits some of his communications with Young and other Stanford personnel and the notes he took of Young's classes. Amended Federal Complaint, ¶¶ 18-19 and Exs. 1-6, 8-12. He also added

an alleged violation of his constitutional right to freedom of association to the third cause of action for alleged violation of the First Amendment. Amended Federal Complaint, ¶ 69.

IV. LEGAL ARGUMENT.

A. All of Plaintiff's Claims Are Barred By the *Rooker-Feldman* Doctrine.

Plaintiff alleges that dismissal of the State Court Action was unlawful in that it violated his First Amendment rights to petition for redress of grievances and freedom of association. Amended Federal Complaint, ¶¶ 69-73. He asks this Court to ignore the trial court judgment, to re-hear the defamation claims adjudicated in the State Court Action, and to award him damages in the amount of the attorneys' fees and costs he owes to defendants (but has not paid). Amended Federal Complaint, ¶¶ 57-73 and 14:17-21 (prayer for relief). The Court lacks jurisdiction to hear these claims. They are barred by the *Rooker-Feldman* doctrine.

Federal district courts may only exercise original jurisdiction. They may not exercise appellate jurisdiction over state court decisions. *District of Columbia v. Feldman,* 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *Dubinka v. Judges of the Superior Court*, 23 F. 3d 218, 221 (9th Cir. 1994). The *Rooker-Feldman* doctrine bars the subsequent federal court case if, as here, plaintiff (1) has lost in state court, (2) complains of injuries caused by the state court judgment and (3) asks the district court to review and reject that final state court judgment. *See Henrichs v. Valley View Dev.*, 474 F. 3d 609, 612-13 (9th Cir. 2006). The doctrine bars review even if a plaintiff challenges the state court's action as unconstitutional. *Bianchi v. Rylaarsdam*, 334 F. 3d 895, 901 (9th Cir. 2003) ("*Rooker-Feldman* doctrine is not limited to claims that were actually decided by the state courts, but rather it precludes review of all state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Stated plainly, '*Rooker-Feldman*' bars any suit that seeks to disrupt or 'undo' a prior state-court judgment, regardless of whether the state-court proceeding afforded the federal-court plaintiff a full and fair

opportunity to litigate her claims.").[1] A federal plaintiff does not avoid the *Rooker-Feldman* bar by styling an attack on a state court's ruling as a constitutional or civil rights action. *Branson v. Nott*, 62 F. 3d 287, 291 (9th Cir. 1995); *Worldwide Church of God v. McNair*, 805 F. 2d 888, 891 (9th Cir. 1995); *Allah v. Superior Court*, 871 F. 2d 887, 891 (9th Cir. 1989).

Plaintiff's recent Notice of Appeal of the trial court's *calculation* of attorneys' fees and costs on remand does not change the analysis. The substantive rulings on the Anti-SLAPP motion and defendants' entitlement to mandatory fees and costs are final. "Proceedings end for *Rooker-Feldman* purposes when the state courts finally resolve the issue that the federal court plaintiff seeks to relitigate in a federal forum, even if other issues remain pending at the state level." *Mothershed v. Justices of Supreme Court*, 410 F3d 602, 604 fn. 1 (9th Cir. 2005) (relevant portion of June 6, 2005 opinion amended on July 21, 2005 at 2005 U.S. App. LEXIS 14804 at *1). "[I]f a state court decision is final enough that the Supreme Court *does* have jurisdiction over a direct appeal, then it is final enough that a lower federal court *does not* have jurisdiction over a collateral attack on that decision." *Federacion*, 410 F. 3d 17, 27 (1st Cir. 2005). Plaintiff did not raise the constitutionality of the Anti-SLAPP statute in the State Court Action, so there were no federal issues for him to appeal to the U.S. Supreme Court pursuant to 28 U.S.C. § 1257 jurisdiction. "Final judgments may be reviewed...where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." *See* 28 U.S.C. § 1257. Even if he had raised such a challenge, the state proceedings ended for *Rooker-Feldman* purposes when the California Supreme Court denied review of his appeal of the substantive rulings on the Anti-SLAPP motion and the entitlement to fees and costs. Cal. Supreme Court Order, p. 1. At that point, any constitutional challenges to the Anti-

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[1] This is true even in the instance in which plaintiff, as here, did not assert a constitutional challenge in the state court action, raising it for the first time in the district court. In *Bianchi*, the Ninth Circuit held that the *Rooker-Feldman* doctrine bars attacks on state court judgments even when based on constitutional rights not addressed by the state court. *See Bianchi*, 334 F. 3d at 900-01.

SLAPP statute would have been appealable to the United States Supreme Court under 28 U.S.C. § 1257. The decision to grant the Anti-SLAPP motion and award mandatory fees and costs was conclusively decided at that time. *See Federacion*, 410 F. 3d at 25-26. The only issue left on remand was how *to calculate the amount* of the mandatory attorneys' fees and costs.[2]

This is a classic *Rooker-Feldman* case. The first two causes of action seek to relitigate the two state law defamation claims from the State Court Action. Amended Federal Complaint, ¶¶ 57-68. Indeed, of the twenty-eight paragraphs comprising the State Complaint, twenty-three of them appear almost word-for-word in the Amended Federal Complaint and the other five paragraphs appear with modest revisions. The third and fourth causes of action ask the Court to decide that the Anti-SLAPP statute used to strike his State Complaint is unconstitutional because the State Complaint was adjudicated without deciding the merits of his defamation claims.[3] Amended Federal Complaint, ¶¶ 69-73. He requests damages purportedly caused by the state court's judgment (i.e., the amount of the attorneys' fees awarded in state court, though he has not paid them). *Id.*, at ¶¶ 69-73 and 14:17-21 (prayer for relief). The *Rooker-Feldman* doctrine bars his collateral attack on the state court judgment. If the Court agrees, there is no need to consider the alternative bases for dismissal of each cause of action discussed below.

B. The Third and Fourth Causes of Action Should Be Dismissed.

Plaintiff's third and fourth causes of action allege two constitutional violations. Both the third and fourth causes of action allege that the defendants violated his right to petition for redress of grievances because they used the Anti-SLAPP statute to strike his

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[2] Any argument by Plaintiff that *Rooker-Feldman* requires a final judgment in all respects, including the amount of fees, is unavailing for the reasons discussed above. But it also would fail to get Plaintiff where he wants to go because, even if successful, it should lead to a stay of this action in recognition of the fact that the same issues are already the subject of another action that has been pending since 2004.

[3] To the contrary, a decision on an Anti-SLAPP motion results in a dismissal on the merits. *Varian Medical Systems, Inc. v. Delfino*, 35 Cal. 4th 180, 193 (2005) ("granting a motion to strike under section 425.16 results in the dismissal of a cause of action on the merits.")

State Complaint and obtain an order requiring him to pay attorneys' fees and costs. *See* Amended Federal Complaint, ¶¶ 69-73 (third cause of action alleges "right to petition for redress of grievances…has been violated" while the fourth cause of action is titled "right to petition"). The third cause of action also includes the allegation that Stanford's decision to ban him from the yoga classes and the facilities in which they are held violated his First Amendment right to freedom of association. *See* Amended Federal Complaint, ¶ 69. Plaintiff has not plead a sustainable federal claim based on the violation of his rights to petition or to freedom of association. The third and fourth causes of action must be dismissed without leave to amend.

1. Plaintiff does not and cannot allege the requisite state action.

Redress for violation of a constitutional right requires some type of state action on the part of the defendant. "[A] 'threshold requirement of any constitutional claim is the presence of state action.'" *Duffield v. Robertson Stephens & Co.*, 144 F. 3d 1182, 1200 (9th Cir. 1998)(disapproved on other grounds). Typically, the requisite state action is performed by an official government agency or state officer. The conduct of private parties may be only considered state action if "their actions can be 'fairly attributable' to the state." *Id.* A private party's conduct can constitute state action where "[p]rivate persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents." *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 941 (1982).

Plaintiff alleges that the use of the Anti-SLAPP statute in the State Court Action violated his right to petition. However, he does not and cannot allege that Stanford and Young participated in joint activity with the state in enacting or enforcing the Anti-SLAPP statute. Filing a motion or seeking other remedies available through litigation does not establish the state action necessary to maintain a constitutional claim. "With respect to [private defendant] Wilson, the only possible allegation of state action the court can discern is pursuit of legal remedies through litigation in state court. It is well established that the

pursuit of state-created remedies by a private litigant does not constitute state action." *Wilson v. Hilton*, 2000 U.S. Dist. LEXIS 22685 at *8 (N.D. Cal. 2000). "The mere filing of a lawsuit certainly does not invoke the 'overt, significant assistance of state officials.' To hold otherwise would convert all plaintiffs in civil actions, no matter what the circumstances, into state actors for constitutional purposes. The Court cannot agree with such a sweeping and implausible proposition." *Foley v. Kennedy*, 2004 U.S. Dist. LEXIS 10328 at *14-15 (N.D. Cal. 2004) (citations omitted).

"Merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator with the judge." *Dennis v. Sparks*, 449 U.S. 24, 28 (1980); *See also Lugar*, 457 U.S. at 937 ("without a limit [on who qualifies as a state actor] private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them"). *Tulsa Professional Collection Services*, 485 U.S. 478, 485 (1988) (private use of state sanctioned private remedies or procedures does not rise to the level of state action).

Plaintiff also does not (and cannot) allege that Stanford participated in joint activity with the state in barring him from yoga classes and the facilities in which they take place, allegedly in violation of his right to freedom of association. *See* Amended Federal Complaint, ¶ 69. He concedes that Stanford is a private university. *See* Amended Federal Complaint, ¶ 3. Private universities are not state actors in the absence of joint activity between the university and the state. *See Greenya v. George Washington University*, 512 F. 2d 556, 561 (D.C. App. 1975) (no state action in the absence of any showing of control of the private university's action by the state); *Blouin v. Loyola University*, 506 F. 2d 20, 22 (5th Cir. 1975) (record failed to disclose any nexus between the alleged unconstitutional activity and the purported state or federal government involvement); *Spark v. Catholic University*, 510 F. 2d 1277, 1281-82 (1975) ("it is necessary to show that the Government exercise some form of control over the actions of the private [university]"); *Menard v. Board of Trustees of Loyola University*, 2004 U.S. Dist. LEXIS 4597 at *5 (E.D. La. 2004) ("Courts have consistently found that private universities are not state actors"); *Jones v.*

MacInnes, 1997 U.S. Dist. LEXIS 20688 at *5-6 (E.D. La. 1997) (dismissing student's 42 U.S.C. § 1983 claims against Tulane University, a private university, due to lack of state action). Plaintiff alleges that it was Stanford that banned him from the yoga class and facilities. Amended Federal Complaint, ¶ 19 ("The STANFORD officials nonetheless unreasonably disregarded all information provided by Plaintiff...barring him from being in the same vicinity as YOUNG while on the STANFORD campus, thereby excluding him from access to an entire geographical region of the campus, and barring him from attending any yoga classes at the Club or otherwise having any contact with anyone associated with the Club.") He has not alleged any state action to support his freedom of association claim.

Stanford and Young are not state actors against whom Plaintiff can pursue his constitutional claims simply because they filed a successful Anti-SLAPP motion and/or banned him from their private property. The third and fourth causes of action for alleged violation of his right to petition and his right to freedom of association should be dismissed without leave to amend for failure to meet the state action requirement.

2. The claim for violation of his right to freedom of association also lacks a protected association and is time-barred.

In addition to failing to plead state action, Plaintiff fails to allege a constitutionally protected "association" and, on the face of the complaint, has waited too long to assert such a violation in any event.

The constitutional right to freedom of association protects two distinct types of associations: highly personal relationships protected by the Fourteenth Amendment (e.g., marriage) and those explicitly listed in the first amendment (speaking, worshipping, and petitioning the government). *IDK v. County of Clark*, 836 F. 2d 1185, 1191-92 (9th Cir. 1988) (citing *Roberts v. United States Jaycees*, 468 U.S. 609 (1984)). Plaintiff's allegation that he was denied the opportunity to participate in a yoga class allegedly open to the public does not involve any of these protected associations. This claim in the third cause of action fails on this ground alone.

The statute of limitations for a *Bivens* claim for personal damages resulting from the violation of a constitutional right is one year. *Western Center for Journalism v. Cederquist*, 235 F. 3d 1153, 1156 (9th Cir. 2000). Plaintiff has known that he was banned from the SAY facilities since May 2004. Amended Federal Complaint, ¶¶ 18-20. The time for him to sue on this cause of action passed long ago. This claim in the third cause of action must be dismissed on this ground alone.

3. The Anti-SLAPP statute is constitutional.

The California Supreme Court has held that the Anti-SLAPP law does not unconstitutionally burden the right to petition, which "is not absolute, providing little or no protection for baseless litigation." *Equilon Enterprises, LLC v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 63-64 (2002) (quoting *Church of Scientology v. Wollersheim*, 42 Cal. App. 4th 628, 648 n. 4 (1996)). *Equilon Enterprises* held that the Anti-SLAPP statute is merely a procedural device to winnow out unmeritorious actions; it "subjects to potential dismissal only those causes of action as to which the plaintiff is unable to show a probability of prevailing on the merits," and "provides an efficient means of dispatching, early on in the lawsuit, a plaintiff's meritless claims." *Id.*, 29 Cal. 4th at 63;[4] *see also* earlier opinions to the same effect from courts of appeal: *Lafayette Morehouse v. Chronicle Publishing Co.*, 37 Cal. App. 4th 855, 864-68 (1995) ("[*S*]*ection 425.16* does not bar a plaintiff's complaints that arise from another person's exercise of his or her free speech or petition rights, 'but only provides a mechanism through which such [plaintiff's] complaints can be evaluated at an early stage in the litigation process.'") (superseded on other grounds); *People v. Health Laboratories of North America*, 87 Cal. App. 4th 442, 449 (2001) ("the [Anti-]SLAPP statute does not in essence impinge upon or implicate the fundamental right of free speech").

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[4] The California Supreme Court also upheld the constitutionality of the statute's fee shifting provisions. *See Equilon Enterprises*, 29 Cal. 4th at 63-64 ("[Plaintiff] fails to persuade that such a fee-shifting provision overburdens those who exercise the First Amendment right of petition by filing lawsuits").

In *Bernardo v. Planned Parenthood Federation of America*, the plaintiff argued that the motion to strike violated her First Amendment right to petition the government for redress of grievances. *Bernardo v. Planned Parenthood Federation of America*, 115 Cal. App. 4th 322, 357 (2004) . Relying on *Equilon Enterprises*, the *Bernardo* court held that "the anti-SLAPP statute did not prevent Bernardo from making a meritorious claim; it properly prevented her from continuing to prosecute her meritless SLAPP suit. The application of *section 425.16* in this matter did not violate [plaintiff's] *First Amendment* rights." *Bernardo*, 115 Cal. App. 4th at 358 (emphasis in original).

The Ninth Circuit has affirmed federal district court orders granting special motions to strike complaints under the Anti-SLAPP statute without discerning any constitutional problem in the statute. *See Vess v. Ciba-Geigy Corp.*, 317 F. 3d. 1097, 1110 (9th Cir. 2003); *United States ex rel. Newsham v. Lockheed Missiles and Space Co.*, 190 F. 3d 963, 971 (9th Cir. 1999).

As a matter of law, the third and fourth causes of action should be dismissed without leave to amend because the Anti-SLAPP statute is constitutional.

C. The First and Second Causes of Action Should Be Dismissed

1. The Court lacks jurisdiction over the state law claims.

In federal question cases, a valid federal claim must be pleaded before a federal court can exercise pendent jurisdiction. *Hunter v. United Van Lines*, 746 F. 2d 635, 649 (9th Cir. 1984) ("it makes no sense to speak of pendent (supplemental) jurisdiction until after a court has independently acquired jurisdiction over a federal cause of action"). Where a plaintiff's federal claims are all dismissed for lack of subject matter jurisdiction, the court has no discretion to retain supplemental jurisdiction over the plaintiff's state law claims. *Scott v. Pasadena Unified School Dist.*, 306 F. 3d 646, 664 (9th Cir. 2002) (because federal claims were dismissed for lack of constitutional standing, the court could not retain jurisdiction).

For the reasons stated above, Plaintiff's federal constitutional claims should be dismissed without leave to amend. Without those federal claims, the Court does not have

subject matter jurisdiction over Plaintiff's state law defamation claims.[5] The Court must dismiss his state law claims. *Hodge v. Mountain States Telephone and Telegraph Co.*, 555 F. 2d 254, 261 (9th Cir. 1977) ("When a district court dismisses all federal claims prior to trial, it should not retain jurisdiction over pendent state claims").

2. Plaintiff's state law defamation claims are barred by collateral estoppel.

On August 21, 2007, Plaintiff filed an appeal of the Santa Clara County Superior Court's order calculating the award for attorneys' fees and costs on remand. Amended Federal Complaint, ¶ 56. Though that appeal will not prevent the state court's substantive decision to strike his state law defamation claims from eventually having res judicata effect, his appeal delays the inevitable claim preclusion of the State Court Action, as he no doubt knows. However, even if claim preclusion has not yet attached, Plaintiff is still barred from pursuing the defamation claims by issue preclusion.

The Anti-SLAPP statute applies to state law claims in federal court. *Vess*, 317 F. 3d at 1109 ("Motions to strike a state law claim under California's Anti-SLAPP statute may be brought in federal court"). Plaintiff's defamation causes of action must be dismissed because the California courts have already dismissed those claims on the merits pursuant to the Anti-SLAPP statute, ruling that Plaintiff's state law defamation claims constitute a SLAPP suit against the defendants and that Plaintiff's evidence did not show that he could prevail on his claims. Anti-SLAPP Order, p. 2.

Collateral estoppel applies where (1) the issues in both proceedings are identical; (2) the issue in the prior proceeding was actually litigated and actually decided; (3) the decision in the former proceeding is final; and (4) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990). Plaintiff sued Stanford and Young in the State

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[5] Plaintiff makes a passing parenthetical reference to "(Diversity Jurisdiction)" in his complaint (Amended Federal Complaint, at 2:03), but he does not supply any basis for it. To the contrary, he alleges that he "at all relevant times, was a resident of the County of Santa Clara, California." *Id.* ¶ 1.

Court Action for defamation and defamation per se, and Stanford and Young obtained a final decision on the merits in the State Court Action. *Varian Medical Systems, Inc. v. Delfino*, 35 Cal. 4th 180, 193 (2005) ("granting a motion to strike under section 425.16 results in the dismissal of a cause of action on the merits"). The defamation issues alleged in the Amended Federal Complaint are the exact same issues alleged in the State Complaint against the same two defendants and decided by the Santa Clara County Superior Court and affirmed on appeal. *Compare* Amended Federal Complaint, ¶¶ 1-17, 57-68 *with* State Complaint, ¶¶ 1-17, 18-28; Cal. App. Decision, pp. 12-17, 24-25.

Stanford and Young moved to strike the complaint pursuant to California Code of Civil Procedure § 425.16, and the Santa Clara County Superior Court decided that "[t]he alleged statements by Young to the police are protected speech because they are statements made before an official proceeding authorized by law. The alleged statements by Young to Stanford colleagues and administrators and by Stanford administrators to campus police and other personnel are protected speech because they are statements made in connection with an issue under consideration or review by an official proceeding authorized by law." Anti-SLAPP Order, p. 2 (citations omitted). The court also decided that Plaintiff "failed to meet his burden. Plaintiff has provided no evidence to show that he can prevail on his causes of action." *Id.* The Santa Clara County Superior Court's decision on these issues was affirmed on appeal. Cal. App. Decision, pp. 12-17, 24-25. The California Supreme Court denied Plaintiff's petition for review on January 17, 2007. Cal. Supreme Court Order, p. 1. For purposes of collateral estoppel, Plaintiff's defamation issues have been conclusively decided in defendants' favor.

Plaintiff's recent appeal of the calculation of attorneys' fees and costs does not prevent the state court's decision from having collateral estoppel effect. "The rules of res judicata are applicable only when a final judgment is rendered. However, for purposes of *issue preclusion* (as distinguished from merger and bar), 'final judgment' includes any prior adjudication of an issue in another action that is determined to be *sufficiently firm to be accorded conclusive effect*...the judgment must ordinarily be a firm and stable one, the 'last

word' *of the rendering court*—a 'final judgment.'" *Sandoval v. Superior Court*, 140 Cal. App. 3d 932, 936 (1983) (quoting Restatement 2d Judgments § 13) (emphasis in original). "[T]o hold invariably that that kind of carry-over is not to be permitted until a final judgment in the strict sense has been reached in the first action can involve a hardship—either needless duplication of effort and expense in the second action to decide the same issue." *Id.* "[T]hat the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal, are factors supporting that the decision is final for purposes of preclusion." *Id.* All of these factors are present in this case. The two causes of action for defamation must be dismissed as barred by collateral estoppel.

V. CONCLUSION.

Plaintiff's efforts to relitigate claims resolved against him in the California state courts should be rejected. Each cause of action should be dismissed without leave to amend.

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