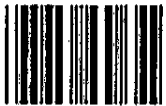


Five Navy Seals, et al v. Associated Press, et al

Doc. 3



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3:05-CV-00555 FIVE NAVY SEALS V. ASSOCIATED PRESS

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RPLY.

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SOUTHERN DISTRICT OF CALIFORNIA
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BY JUN - 6 2005 DEPUTY

6 Attorneys for Plaintiffs
7 FOUR NAVY SEALS AND JANE DOE

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 FOUR NAVY SEALS AND JANE DOE,
12 Plaintiffs,

13 v.

14 ASSOCIATED PRESS, a New York corporation;
15 SETH HETTENA, an individual; and Does 1
through 50, inclusive,

16 Defendants.

Case No. 05 CV 0555 JM (JMA)

**REPLY TO DEFENDANTS'
AUGMENTATION OF RECORD
BY RECENT DOCUMENTS**

Date: May 6, 2005
Time: 11:00 a.m.
Ctrm: 6
Judge: Jeffrey Miller

19
20 Defendants submitted three documents to this Court at the beginning of the June 1, 2005 oral
21 argument on their Motion to Dismiss, two newspaper articles and a copy of *Marty Ingles v.*
22 *Westwood One Broadcasting Services, Inc., et al.*, 2005 Dar. 6169, May 31, 2005, Cal. Ct. App. 2d
23 (May 26, 2005).

24 The newspaper articles have no relevance to the issues before the Court and should be
25 disregarded.

26 The *Ingles* case is a state court case discussing how the anti-SLAPP statute should be applied
27 in state court. It does not change state law and says nothing about such motions filed in federal court.
28 Federal courts apply a standard that comports with the Federal Rules of Civil Procedure, as set forth

1 in *Rogers v. Home Shopping Network, Inc.* 57 F.Supp.2d 973, 982 (C.D. Cal. 1999) (explaining that
2 where an anti-SLAPP motion is filed in federal court based upon alleged legal deficiencies in the
3 complaint, the motion must be decided under the standard applicable to a Rule 12(b)(6) motion). The
4 Ninth Circuit has recognized and approved the distinction between the application of the anti-SLAPP
5 statute between state and federal court. *Verizon Del., Inc. v. Covad Communications, Co.*, 377 F.3d
6 1081, 1091 (9th Cir. 2004) (“granting a defendant’s anti-SLAPP motion to strike a plaintiff’s initial
7 complaint without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P.
8 15(a)’s policy favoring liberal amendment”); *Metabolife Int’l v. Wornick*, 264 F.3d 832, 846 (9th Cir.
9 2001) (citing *Rogers v. Home Shopping Network, Inc.* with approval). Plaintiffs properly stated their
10 causes of action in compliance with the applicable standard. Defendants’ Motion to Dismiss should
11 be denied.

12 Dated: June 8, 2005

MORRISON & FOERSTER LLP

13
14 By:


James W. Huston

15
16 Attorneys for Plaintiffs
17 FOUR NAVY SEALS AND
18 JANE DOE
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6 Attorneys for Plaintiffs
7 FOUR NAVY SEALS AND TWO JANE DOES

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 FOUR NAVY SEALS AND JANE DOE,

Case No. 05 CV 0555 JM (JMA)

12 Plaintiffs,

13 v.

PROOF OF SERVICE

14 ASSOCIATED PRESS, a New York corporation;
15 SETH HETTENA, an individual; and Does 1
through 50, inclusive,

16 Defendants.

17

18 I, the undersigned, declare:

19 I am employed in the City and County of San Diego, California. I am over the age of 18
20 years and not a party to the within action. My business address is 3811 Valley Centre Drive,
21 Suite 500, San Diego, CA 92130.

22 On June 8, 2005, I served the following documents:

23 **REPLY TO DEFENDANTS' AUGMENTATION OF RECORD BY RECENT**
24 **DOCUMENTS**

25 by placing a true copy thereof in a sealed envelope(s), addressed as follows, and serving as
26 indicated below:

27

28

1 Robert G. Steiner, Esq.
Luce Forward
2 600 West Broadway
Suite 2600
3 San Diego, California 92101
Telephone: (619) 236-1414
4 Facsimile: (619) 232-8311

Attorneys for Defendants Associated
Press and Seth Hettena

5 David A. Schultz
Audrey Critchley
6 LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
230 Park Avenue
7 Suite 1160
New York, New York 10169
8 Telephone: (212) 850-6100
Facsimile: (212) 850-6299
9


10 (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by
11 Diversified Legal Services, Inc., P.O. Box 3969, San Diego, California 92163, to receive
documents to be delivered on the same date. A proof of service signed by the authorized courier
12 will be filed with the court upon request.

13 (BY OVERNIGHT DELIVERY) I am readily familiar with the practice of Morrison &
Foerster LLP for collection and processing of correspondence for overnight delivery and know
14 that the document(s) described herein will be deposited in a box or other facility regularly
maintained by United Parcel Services, Inc., for overnight delivery.
15

16 (VIA FACSIMILE) I caused to be delivered to the fax number listed above before 5:00
p.m. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no
17 error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused
the machine to print a transmission record of the transmission, a copy of which be filed with the
18 court upon request.

19 (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for
first-class mail, for collection and mailing at Morrison & Foerster, San Diego, California,
20 following ordinary business practices. I am familiar with the practice of Morrison & Foerster for
collection and processing of correspondence, said practice being that in the ordinary course of
21 business, correspondence is deposited in the United States Postal Service the same day as it is
placed for collection. I am aware that on motion of the party served, service is presumed invalid
22 if postal cancellation date or postage meter date is more than one day after date of deposit for
mailing in affidavit.
23

24 I declare under penalty of perjury under the laws of the United States of America that this
25 declaration was signed on June 8, 2005, at San Diego, California.


26
27 Marisela Hernandez
28