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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class
consisting of herself and all others
similarly situated,

Plaintiffs,

v.

COACH, INC., a Maryland corporation,
and COACH SERVICES, INC., a
Maryland corporation,

Defendants.

CASE NO. C11-0214 RSM

ORDER DENYING PLAINTIFF’S
SPECIAL MOTION TO STRIKE
AND FOR SANCTIONS

I. INTRODUCTION

This matter comes before the Court on Special Motion to Strike and for Sanctions (Dkt. #9) brought by Plaintiff Gina Kim (“Plaintiff”). Plaintiff argues that Defendants Coach, Inc. and Coach Services, Inc. (“Defendants”) violated the provisions of Washington’s anti-SLAPP statute, RCW 4.24.525, by filing counterclaims for defamation against Plaintiff. The anti-SLAPP statute protects a party from “Strategic Lawsuits Against Public Participation,” which are

1 typically seen as groundless lawsuits that are meant to frustrate public participation, including
2 participation in a judicial proceeding. Defendants contend that while they did not violate the
3 anti-SLAPP statute, Plaintiff’s Special Motion to Strike and for Sanctions is mooted because
4 Defendants eliminated the challenged counterclaims from their Amended Answer. Dkt. #21.
5 Plaintiff responds that her Motion is not mooted because a party may still be entitled to collect
6 sanctions under the anti-SLAPP statute, despite the elimination of the challenged claims.

7 **II. BACKGROUND**

8 The underlying lawsuit involves a putative class action arising from a dispute over
9 Plaintiff’s sale of what Defendants believe were counterfeit-Coach products on websites such as
10 eBay. Plaintiff has alleged claims for violation of the Washington Consumer Protection Act,
11 misrepresentation of trademark infringement, defamation, and tortious interference with business
12 expectancy. Plaintiff’s attorneys appeared on King 5 and are alleged to have stated that Coach
13 “did nothing to investigate their threats against [Plaintiff].” As a result, Defendants subsequently
14 counterclaimed for defamation; however, these counterclaims have been removed from
15 Defendants’ Amended Answer (Dkt. #21). In response to Defendants’ counterclaims for
16 defamation, Plaintiff has brought this Special Motion to Strike and for Sanctions pursuant to
17 Washington’s anti-SLAPP statute.

18 **III. DISCUSSION**

19 At issue is whether an anti-SLAPP special motion to strike is mooted by the elimination
20 of the challenged claims by amendment as a matter of right. Defendants, who brought the
21 counterclaims now at issue, contend that amendment of a complaint or counterclaim defeats an
22 anti-SLAPP motion to strike. Defendants rely on *Verizon Del., Inc. v. Covad Comm. Co.*, which
23 found that “granting a defendant's anti-SLAPP motion to strike a plaintiff's initial complaint
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1 without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P. 15(a)'s
2 policy favoring liberal amendment.” 377 F.3d 1081, 1091 (9th Cir. 2004). As such, the *Verizon*
3 court denied the anti-SLAPP motion to strike. *Id.* In further support of its argument, Defendants
4 point to *Arata v. City of Seattle*, which states that “[t]he Ninth Circuit has determined... that
5 where a federal litigant has requested leave to amend his complaint, Rule 15(a)'s policy favoring
6 liberal amendment is not overcome simply because an anti-SLAPP motion is pending.”
7 No. C10-1551, 2011 WL 248200, at *2 (W.D. Wash. Jan. 25, 2011) (citing *Verizon*, 377 F.3d at
8 1091).

9 Plaintiff relies on the Ninth Circuit decision of *Northon v. Rule* in arguing that an anti-
10 SLAPP motion to strike is not mooted because anti-SLAPP provisions protect substantive rather
11 than procedural rights. No. C07-35319, 2011 WL 135720 (9th Cir. Jan. 18, 2011). As such,
12 according to Plaintiff, an anti-SLAPP motion to strike cannot be preempted by a conflict with
13 Rule 15(a). However, Plaintiff’s interpretation of *Northon* is misguided. *Northon* does not stand
14 for the proposition that an anti-SLAPP motion to strike cannot be mooted because anti-SLAPP
15 provisions confer substantive rights. *Id.* *Northon* did not address a situation where the claims
16 challenged in the anti-SLAPP motion were already withdrawn, and *Northon* did not speak to the
17 issue of an anti-SLAPP motion to strike with relation to claims withdrawn under Rule 15(a). *Id.*

18 In discussing the Oregon anti-SLAPP statute, which is similar to both California’s and
19 Washington’s, the *Northon* court explained that “we [previously] held that a special motion to
20 strike and the attorneys’ fees provision in California’s anti-SLAPP statute, which allows a
21 prevailing defendant on a motion to strike to recover attorneys’ fees and costs, protect
22 substantive rights and apply in federal court.” *Northon* 2011 WL 135720 at *1 (citing *United*
23 *States ex. rel Newsham v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 972-73 (9th Cir.
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1 1999)). However, in that previous holding, the Ninth Circuit focused its inquiry as to whether
2 the California anti-SLAPP statute directly interfered with the operation of several federal
3 procedural rules. Similarly, in the case at hand, there is no reason to conclude that the
4 Washington anti-SLAPP statute directly conflicts with Rule 15(a). A litigant's substantive right
5 to collect attorney's fees is unaltered by and can co-exist with Rule 15(a). There is no question
6 raised as to the applicability of the remedies created by the anti-SLAPP statute in federal courts.
7 Where the challenged claims remain in a complaint, the anti-SLAPP statute remains available as
8 a means of seeking dismissal and sanctions.

9 Plaintiff's Motion is therefore mooted by Defendants' withdrawal of the challenged
10 claims, and the Court need not reach the issue of whether the claims violated the anti-SLAPP
11 statute.

12 13 **IV. CONCLUSION**

14 Having reviewed the relevant pleadings, the declarations attached thereto, and the
15 remainder of the record, the Court hereby finds and ORDERS:

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17 (1) Plaintiff's Special Motion to Strike and for Sanctions (Dkt. #9) is DENIED.

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19 Dated April 11, 2011.

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22 **RICARDO S. MARTINEZ**
23 **UNITED STATES DISTRICT JUDGE**