

1 Dorothy M. Gibbons-White, SBN 214763  
2 Dorothy M. Gibbons-White, Esq. A Professional Law Corporation  
3 1902A Lincoln Blvd. No. 504  
4 Santa Monica CA 90405  
5 310-699-9389  
6 dorothy@dmgesq.com

7 Matthew Strugar, SBN 232951  
8 Law Office of Matthew Strugar  
9 3435 Wilshire Blvd, Suite 2910  
10 Los Angeles, CA 90010  
11 323-696-229  
12 matthew@matthewstrugar.com

13 Attorneys for Respondent William Gude

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

16 FRANCOISE KOSTER,

17 Petitioner,

18 vs.

19 WILLIAM GUDE,

20 Respondent.

Case No. 24STRO01356

Hon. Richard Bloom

**Notice of Ruling on Respondent William Gude's  
Special Motion to Strike under the anti-SLAPP  
Statute**

1 Please take notice that this matter came on for hearing on June 25, 2024, on Respondent William  
2 Gude's Special Motion to Strike under the anti-SLAPP statute. Leah Saffian appeared for Petitioner  
3 Francoise Koster. Matthew Strugar and Dorothy Gibbons White appeared for Respondent William  
4 Gude. After hearing argument, the Court adopted its tentative ruling, attached here, as its final ruling and  
5 GRANTED Gude's Special Motion to Strike under the anti-SLAPP statute.

6  
7 Dated: June 25, 2024

/s/ Matthew Strugar  
Matthew Strugar  
Attorney for William Gude

# Exhibit A

Tentative ruling on Special Motion to Strike (Koster vs. Gude 24STRO01356)

## **The Court Grants Respondent's Special Motion to Strike**

### **Evidentiary record**

Declarations must be supported by statements under penalty of perjury. Documentary evidence (i.e., exhibits) must be supported by foundation, typically found in declarations. The proper place for argument is in points and authorities, not declarations. *In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30, fn. 3.

In the opposition brief (and importantly, not in a declaration signed under penalty of perjury), Petitioner includes "background facts" not found elsewhere in any declaration and at least 29 exhibits that Petitioner has not made any attempt to authenticate. (Pages 1-8 of Petitioner's opposition brief). The opposition brief references at least 32 exhibits, and yet Petitioner's declaration only refers to three of them (10, 11, 12 – but does not authenticate these three). A document must be authenticated by declarations or other evidence establishing that the document is what it purports to be. Ev.C. §§ 250, 1401(a). The Court cannot consider any of the "background facts" in the opposition brief that are not also located in a declaration under penalty of perjury. Similarly, the Court cannot consider any of the "exhibits" that Petitioner has not properly authenticated. Thus, even if Petitioner properly served the opposition to Respondent, it is tremendously flawed and offers little to no evidentiary value.

Moreover, these Exhibits are not attached to the opposition. As far as Petitioner's having served five unauthenticated Exhibits on 6/18/24, they are untimely, and the Court should not consider them. All papers opposing a motion must be filed and served at least nine court days before the hearing. CCP § 1005(b). Nine court days before the 6/25/24 hearing is 6/11/24. The Court also notes that Petitioner had a courier drop off a "thumb" drive in Department 25 on or about June 20, 2024. This submission is improper and is not timely. It is further noted that this Court does not have the technical ability to utilize "thumb" drives.

### **The SLAPP Statute and Law**

[A]nti-SLAPP motions may be filed challenging petitions for injunctive relief brought under [Code Civ. Proc.] section 527.6, because they constitute 'causes of action' under the anti-SLAPP law, and there is nothing in section 425.16 which would exempt such petitions from the broad reach of this remedial statute." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 642.)

The Legislature enacted Code Civ. Proc. section 425.16 to "combat lawsuits designed to chill the exercise of free speech and petition rights." (*Park v. Board of Trustees*, 2 Cal.5th 1057, 1060.) To that end, the anti-SLAPP statute provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the

plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).) Acts in furtherance of the right of free speech include any conduct “in furtherance of the exercise of ... the constitutional right of free speech in connection with a public issue or an issue of public interest.” (Id., subd. (e)(4).)

When considering whether a claim should be struck, the court needs to undertake a two-prong analysis. First, the court must decide whether the defendant has made a prima facie showing that the acts of which the plaintiff complains were taken in furtherance of the defendant’s rights of petition or free speech. If the defendant carries that burden, the burden shifts to the plaintiff to show a probability of prevailing on the claim. The plaintiff can carry his burden by making a prima facie showing of facts that would, if proved, support a judgment in his favor. The court’s consideration of the defendant’s evidence is limited to determining whether it defeats the plaintiff’s showing as a matter of law. The trial court does not weigh the evidence or make credibility determinations. (Midland Pacific Building Corp. v. King (2007) 157 Cal.App.4th 264, 271.)

### **First prong: Do the causes of action arise from protected activities?**

Here, Respondent has made the threshold showing that the asserted cause of action involves protected activity. Respondent asserts he was exercising his First Amendment rights by protesting Petitioner’s alleged support of the Church of Scientology. The Court of Appeal in our district has already determined that the Church of Scientology is a matter of public interest. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 654. In addition, Respondent and others claim that Petitioner supports Danny Masterson, a convicted rapist and member of the Church, who was alleged to have perpetrated one of his sexual assaults via P’s restaurant by drugging a drink served to the victim at the restaurant. Petitioner wrote a letter to the Court in support of Masterson after his conviction and before his sentencing. Also, part of the protest is the allegation that Petitioner supports Scientology, which Petitioner denies. This, too, is likely a public issue, as Masterson was a defendant in a highly publicized criminal trial, and the protests at issue have also gained media attention. While it is not required that a protest receives media attention for anti-SLAPP protection, such media attention “can be an indicator that such conduct was undertaken ‘in connection with’ a public issue” – useful for analysis for the second step of the analysis. *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133; *Geiser v. Kuhns* (2022) 13 Cal.5th 1238, at 1255.

Thus, Respondent has met the first prong.

### **Second Prong: Can Petitioner demonstrate a reasonable probability of prevailing on the merits.**

The burden accordingly shifts to Petitioner to demonstrate a probability of success. For a claim to be struck under the anti-SLAPP statute, it is not enough that it be related to the defendant’s protected activity. It must arise from such activity. (Code Civ. Proc., § 425.16, subd. (b)(1).) A claim arises from protected activity when that activity underlies or forms the basis for the claim. In turn, an activity underlies or forms the basis of the claim only where the speech or petitioning activity itself is the wrong complained of, and not just

evidence of liability or a step leading to some different act for which liability is asserted. Accordingly, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability. (Park v Board of Trustees, 2 Cal.5th 1057)

It is noted that Respondent, in his Reply brief, states that Petitioner did not serve the opposition on him and the Court has already observed that late and/or unauthenticated exhibits cannot be considered. Accordingly, there is no evidence that Petitioner can rely on to demonstrate a reasonable probability of success.

Even if the Court were to consider Petitioner's opposition declaration, Petitioner has not averred to any facts that would support a conclusion that Respondent directed unlawful violence at her. Petitioner has not competently alleged that Respondent assaulted, battered, or stalked her. Among the specific allegations Petitioner has made are that the protesters standing outside the restaurant on the street have said that patrons and staff "supports rape and rapists" and that patrons "must check their drinks because Danny Masterson's victims were drugged" in her restaurant; "we are going to shut you down," and "we are going to get you." Of those utterances, "we are going to shut you down" or "we are going to get you" are the only statements that *could* support the claim that the protesters issued a credible threat of violence. Yet, in this instance, that interpretation is too narrow -- in the larger context of the protest, the inference can be reasonably drawn that the demonstrators are protesting Petitioner's support of Masterson / alleged support of the Church of Scientology -- and that they were trying to hold Petitioner accountable for that practice.

Ultimately, Petitioner submitted a Petition devoid of facts and Petitioner never amended this Petition. Petitioner filed an opposition but apparently never served it to Respondent. **But, even if the Court were to consider the opposition declaration, there is insufficient admissible evidence to demonstrate a reasonable degree of probability of prevailing on the merits.** P attempts to bring in "facts" found exclusively in the opposition brief and unauthenticated exhibits, but this is inadmissible. The only factual support in Petitioner's opposition is Petitioner's 6/11/24 declaration, which does not allege facts sufficient to support a finding that Gude directed unlawful violence, a credible threat of violence, or a knowing and willful course of conduct at her.