

LINK TO DOCS. # 7, 17, 18 & 25
 UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	CV 11-6904 PSG (FFMx)	Date	December 13, 2011
Title	Mordechai Orian, et al. v. Federation International des Droits de L'Homme, et al.		

Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy K. Hernandez
 Deputy Clerk

Not Present
 Court Reporter

n/a
 Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings: (In Chambers) Order DISMISSING Case, DEEMING Defendants to be Prevailing Parties, and Retaining Jurisdiction to Determine Attorney Fees and Costs

Before the Court is Plaintiffs Mordechai Orian and Global Horizons, Inc.'s ("Global Horizons") (collectively as "Plaintiffs") notice of voluntary dismissal, Defendant Kav LaOved's motion to dismiss and motion to strike, and Defendant Federation International des Droits de L'Homme's motion to dismiss and to strike. *See* Dkt. #7, 17, 18, 25. The Court finds the matters appropriate for decision without oral argument. *See* Fed R. Civ. P. 78; L.R. 7-15. After considering the moving and opposing papers, the Court DISMISSES the case pursuant to Plaintiff's notice of voluntary dismissal, DEEMS Defendants the prevailing parties on their motions to strike, and retains jurisdiction to determine attorney fees and costs.

I. Background

Plaintiffs bring this action against defendants Euro-Mediterranean Human Rights Network, Sidiki Kaba, Abdelaziz Bennani, Federation International des Droits de L'Homme's ("FIDH"), and Kav LaOved ("Kav") (FIDH and Kav as "Defendants"). Dkt. #1. Plaintiff Global Horizons is a contractor for labor from foreign countries. *Compl.* ¶ 2. Plaintiff Orian is the President and Chief Strategic Officer of Global Horizons. *Id.* ¶ 1. The entity defendants are human rights organizations and the individual defendants are employees of those organizations. *Id.* ¶¶ 3-6.

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Plaintiffs allege FIDH published a defamatory statement about Plaintiffs. *Id.* ¶ 10. The statement was "originally authored" by Kav, and it related to Plaintiffs hiring of 19 Chinese workers to work in Israel in 1996. *Id.* ¶¶ 10, 11. The statement reported that after several months of unpaid labor by the Chinese workers, Orian "sent ten armed guards to surprise the workers in their sleep, beat them and drive them to the airport, where they were forcibly deported." *Id.* ¶ 10.

Defendants first published the statement in 2005, but then agreed to a settlement whereby Plaintiffs' names would be altered so that the statement would not appear in the results of internet searches of Plaintiffs' names. *Id.* ¶¶ 10-17. In 2010, following Orian's arrest on criminal charges in Hawaii, FIDH republished the defamatory material without any alteration of Plaintiffs' names. *Id.* ¶ 19. Defendants republished the material "at the behest of unnamed conspirators in the United States for the express, malicious purpose of harming ORIAN because the US Attorney used the defamatory material in its submissions to the District Court in Hawaii upon which the Court based its decision to keep ORIAN in pretrial detention." *Id.* ¶ 19. Based on this republication, Plaintiffs assert causes of action for libel per se and tortious interference with business relationships. *Id.* ¶¶ 25-29, 33-35.

On September 28, 2011, Kav brought a motion to strike the Complaint under California Code of Civil Procedure § 425.16 or, in the alternative, to dismiss the Complaint under Federal Rule of Civil Procedure 12(b). *See* Dkt. #7. On October 17, 2011, FIDH brought a motion to strike and a motion to dismiss on the same grounds as Kav. *See* Dkt. #17, 18. Plaintiffs did not file an opposition to any of the motions to strike or dismiss. On October 31, 2011, Plaintiffs filed a notice of dismissal to dismiss this action without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i). *See* Dkt. #25. Kav thereafter filed a response opposing Plaintiffs' unilateral dismissal of this action. *See* Dkt. #26.

II. Discussion

California Code of Civil Procedure § 425.16 provides for a special motion to strike a "strategic lawsuit against public participation" ("SLAPP"). Such a motion, commonly called an "anti-SLAPP motion," provides courts with a remedy to dismiss at an early stage nonmeritorious litigation that challenges various kinds of protected speech. *See Kashian v. Harriman*, 98 Cal. App. 4th 892, 905, 120 Cal. Rptr. 2d 576 (2002); Cal. Civ. Proc. § 425.16(b)(1). The

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anti-SLAPP statute is given full effect in federal court. *See United States v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 973 (9th Cir. 1999).

In ruling on an anti-SLAPP motion to strike, the court engages in a two-step process. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." *Equilon Enters. v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67, 124 Cal. Rptr. 2d 507 (2002). "The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue," as defined in California Code of Civil Procedure § 425.16 (b)(1). *Id.* (internal quotations omitted). "If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." *Id.* In making these determinations, the court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." *Id.* (internal quotations omitted). If the defendant prevails on an anti-SLAPP motion to strike, then the defendant is entitled to recover attorney fees and costs. *See* Cal. Civ. Proc. § 425.16(c).

Defendants have met their threshold showing that the challenged actions arise from protected activity. Defendants' allegedly defamatory statement published on the internet was a statement made in writing "in a place open to the public or a public forum in connection with an issue of public interest." Cal. Civ. Proc. 425.16(e)(3). The Ninth Circuit has instructed courts to "construe . . . 'issue of public interest' . . . broadly" to include a "topic of widespread, public interest" or a "person or entity in the public eye." *Hilton v. Hallmark Cards*, 599 F.3d 894, 906 (9th Cir. 2010). Although Defendants have offered other evidence as well, the media coverage alone demonstrates that statements regarding human trafficking and human rights abuses by Orian and Global Horizon are a "topic of widespread, public interest." *See, e.g., Feds Charge 6 in Forced Labor of 400 Thai Workers, Largest Human-Trafficking Case in U.S. History*, The Huffington Post, Sept. 2, 2010, available at http://www.huffingtonpost.com/2010/09/02/us-human-trafficking-thai-forced-labor_n_704290.html (describing a federal indictment against Global Horizons, Orian, and others for human trafficking); *Bound for America*, Mother Jones, May/June 2010, available at <http://motherjones.com/politics/2010/05/immigration-law-indentured-servitude> (describing Global Horizons and Orian's record of abuses of foreign workers).

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After a defendant makes a threshold showing, a plaintiff must demonstrate a probability of prevailing on the merits of the claims. *Equilon Enters.*, 29 Cal. 4th at 67. Because Plaintiffs filed no opposition to the motions to strike, Plaintiffs have failed to meet their burden to demonstrate a probability of success on the merits of their claims. Therefore, Defendants would have prevailed on their anti-SLAPP motions.

However, before the Court could issue a ruling on the anti-SLAPP motions, Plaintiffs filed a notice of voluntary dismissal of this action. *See* Dkt. #25. Plaintiffs had the right to voluntarily dismiss the action, because no defendant had filed an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i) (plaintiff may dismiss an action without a court order by filing a notice of dismissal before an opposing party serves either an answer or a motion for summary judgment).

As a general matter, a court loses jurisdiction over a matter once a notice of voluntary dismissal is filed. *See Duke Energy Trading & Mktg., LLC v. Davis*, 267 F.3d 1042, 1049 (9th Cir. 2001) ("Once the notice of dismissal has been filed, the district court loses jurisdiction over the dismissed claims and may not address the merits of such claims or issue further orders pertaining to them."). However, a court may retain jurisdiction to consider collateral issues such as statutory sanctions and attorney fees. *See Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987) (holding a Rule 41(a)(1) voluntary dismissal did not deprive the district court of jurisdiction to consider Rule 11 sanctions); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) ("It is well established that a federal court may consider collateral issues after an action is no longer pending.").

The California Court of Appeal has held that a plaintiff may not escape the mandatory attorney fees and costs due to a defendant by voluntarily dismissing a suit after an anti-SLAPP motion has been filed. *See Coltrain v. Shewalter*, 66 Cal. App. 4th 94, 107, 77 Cal. Rptr. 2d 600 (1998). "Otherwise, SLAPP plaintiffs could achieve most of their objective with little risk - by filing a SLAPP suit, forcing the defendant to incur the effort and expense of preparing a special motion to strike, then dismissing the action with prejudice." *Id.* at 106.

As in California state court, a plaintiff in federal court also should not be able to escape the sanctions of the anti-SLAPP statute by filing a notice of voluntary dismissal after an anti-SLAPP motion has been filed. *See Fleming v. Coverstone*, No. 08cv355 WQH (NLS), 2009 WL 764940, at *6 (S.D. Cal. March 18, 2009) (holding plaintiff must pay attorney fees under

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anti-SLAPP where plaintiff amended complaint to remove a cause of action subject to a pending anti-SLAPP motion). The violation of anti-SLAPP is complete when plaintiff files the complaint, and a voluntary dismissal does not expunge the violation. *See Cooter & Gell*, 496 U.S. at 395 (holding a Rule 11 violation is complete when the offending paper is filed, and a voluntary dismissal does not expunge the Rule 11 violation). Thus, the Court retains jurisdiction to decide the identity of the prevailing party on the anti-SLAPP motions under California Code of Civil Procedure § 425.16(c). *See Bolivar v. Pocklington*, 975 F.2d 28, 31 (1st Cir. 1992) (district court retains jurisdiction to determine and sanction an "unreasonabl[e]" and "vexatious[" multiplication of proceedings under 28 U.S.C. § 1927).

A plaintiff who voluntarily dismisses may attempt to avoid the mandatory attorney fees and costs of the anti-SLAPP statute by demonstrating that "it actually dismissed because it had substantially achieved its goals through a settlement or other means, because the defendant was insolvent, or for other reasons unrelated to the probability of success on the merits." *See Coltrain*, 66 Cal. App. 4th at 107. Plaintiffs have made no attempt to demonstrate that they dismissed for reasons unrelated to the merits of Defendants' anti-SLAPP motions. In addition, the Court has already found Defendants would have prevailed on the merits of their anti-SLAPP motions. The Court, therefore, DEEMS Defendants to be the prevailing parties on the anti-SLAPP motions and Plaintiffs must pay Defendants' attorney fees and costs associated with the motions to strike.

III. Conclusion

Pursuant to Plaintiffs' notice of voluntary dismissal, the case is DISMISSED without prejudice. The Court DEEMS Defendants to be the prevailing parties on the anti-SLAPP motions to strike. Defendants may file a motion to fix attorney fees and costs associated with the motions to strike by **January 6, 2012**. The Court retains jurisdiction to resolve the matter of attorney fees and costs.