

**SUPERIOR COURT OF CALIFORNIA**

**County of San Diego**

**DATE: March 20, 2001**

**DEPT. 62**

**REPORTER A: not reported**

**CSR#**

**PRESENT HON. Kevin A. Enright**

**REPORTER B:**

**CSR#**

**JUDGE**

**CLERK: Carol Marchesano**

**BAILIFF: -----**

**REPORTER'S ADDRESS: P.O. BOX 120128**

**SAN DIEGO, CA 92112-4104**

GIC 759462

**HOLLIS-EDEN PHARMACUETICALS, INC.**  
Plaintiff,

vs.

ANGELAWATCH, BEN\_CASALE, DICKIE 13\_62301,  
DOGMAD2002, GPALCUS (M/CELL BLOCK 5),  
HEPHDIVER,HEPH\_LONG, JARHED2046,  
LEBEAUSOLEIL, NOTTESCURRA, ONXBRAY,  
Defendants.

**RULING ON DEFENDANTS GPALCUS AND DICKIE 13\_62301's SPECIAL MOTION TO STRIKE AND MOTION TO QUASH SUBPOENA**

Having taken defendants gpalcus and dickie13\_62301's special motion to strike and motion to quash subpoena under submission, the court rules as follows:

The motion to strike is **GRANTED**.

CCP § 425 16 (b) (1) states "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 or California Constitution in connection with a public issue shall be subject to a special monon to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." An act in furtherance of a person's right of free speech in connection with a public issue includes "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." (CCP § 425.16(e)(3).) There can be no dispute that Yahoo!'s message boards are public fora. The message board pertaining to plaintiff's company alone has received nearly 17,000 postings. The complaint itself acknowledges messages can be posted and read by millions of people.

Defendants' postings concerned a matter of public interest. Matters of public interest "may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals." (*Church of Scientology v. Wollersheim* 42 Cal. App.4<sup>th</sup> 628, 650. See also *DuPont Merck Pharm Co. v Superior Court* (2000) 78 Cal. App. 4th 562, 576-a "public interest" based on the number of persons allegedly affected and

the seriousness of the medical conditions treated by the plaintiff drug manufacturer.)

The mere fact that Yahoo!'s message board for plaintiff contains over 17,000 postings suggests there is a good deal of public interest in plaintiff's financial viability. Plaintiff has issued a number of press releases, thereby calling attention to itself. (Defts' Exhibit D.) By issuing press releases to the general public the plaintiff itself must believe the public is interested in its activities. In addition, plaintiff is a publicly traded company and is required to make public filings. (Defts' Exhibit C.)

Having established this action arises out of defendants' free speech in connection with a public issue, the focus shifts to whether plaintiff has made a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiff's favor. (*Church of Scientology v. Wollersheim* 42 Cal.App.4<sup>th</sup> 628, 647.) Plaintiff has not made such a showing "In determining whether statements are of a defamatory nature, and therefore actionable, a court is to place itself in the situation of the hearer or reader, and determine the sense or meaning of the language of the complaint for libelous publication according to its natural and popular construction. That is to say, the publication is to be measured not so much by its effect when subjected to the critical analysis of a mind trained in the law, but by the natural and probable effect upon the mind of the average reader." (*Morningstar Inc. v. Superior Court* (1994) 23 Cal.App.4<sup>th</sup> 676, 688 (citations omitted).)

Defendants' comments as set forth in their separate statement cannot be deemed defamatory. It should be apparent that these are comments that might be echoed during a raucous annual shareholders' meeting. Plaintiff selectively focuses on words such as "fraud" and "incompetence" yet minimizes the context of the messages. The comments are clearly extravagant statements or figures of speech not intended to be taken literally. Although prefacing a statement with "in my opinion" or similar words does not protect an otherwise defamatory statement, here phrases such as "that's my personal rant" indicate the comments are not to be taken as fact when viewed in connection with the obviously hyperbolic speech preceding it.

Plaintiff's request for a continuance to conduct discovery is denied. Further discovery will not change the content of the statements at issue, and additional discovery is not needed to determine whether the comments concern an issue of public interest.

For the above reasons, the court orders the complaint be stricken as to defendants gpalcus and dickie13\_62301 and judgment be entered accordingly.

In light of the ruling granting the motion to strike, defendants' motion to quash the subpoena on Yahoo!, Inc. is granted as to defendants gpalcus and dickie13\_62301.

IT IS SO ORDERED.



KEVIN A. ENRIGHT  
Judge of the Superior Court

Dated: March 20, 2001