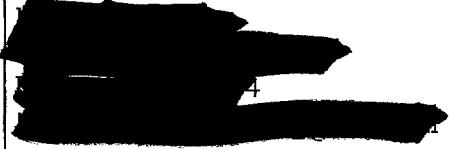


1 ARCHIE GARGA-RICHARDSON, Defendant in Pro Per



SEP 17 2008

John A. Clarke, Executive Officer, Clerk

By [Signature] Deputy
CYNTHIA M. JACOBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DIVISION - STANLEY MOSK COURTHOUSE

9 INTERNET SOLUTIONS CORPORATION,)
10 a Nevada Corporation,)
11 Plaintiff,)

Case No.: BC394102
NOTICE OF MOTION AND SPECIAL MOTION
TO STRIKE THE COMPLAINT PURSUANT
TO CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION
[CCP § 425.16]

12 vs.

13 ARCHIE GARGA-RICHARDSON, an)
14 individual; and DOES 1 through 25, inclusive,)
15 Defendants

DECLARATION OF
ARCHIE GARGA RICHARDSON IN
SUPPORT THEREOF

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

19
20 PLEASE TAKE NOTICE that on this 10th Day of ~~September~~ November, 2008 at 9:00 a.m., or
21 as soon thereafter as the matter may be heard in Department 18, Room 307 of the above-entitled
22 Court, located at 111 North Hill Street, Los Angeles, California 90012, that Mr. Archie Garga-
23 Richardson (hereinafter "Garga-Richardson", or his website "Blog" or "Forum" Defendant) will
24 and does hereby move the court for an order striking the complaint brought by the Plaintiff
25 INTERNET SOLUTIONS CORPORATION ("ISC") a Nevada Corporation, wholly owned and
26

DEFENDANT GARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

1 operated by Ayman A. Difrawi a/k/a Alec Difrawi a/k/a Alex Simon (hereinafter Plaintiff) causes
 2 of action of libel per quod, interference with business relationships, trade libel and Violation of
 3 code 17200 pursuant to California Code of Civil Procedure Civil Procedure 425.16 for the
 4 following reasons:

- 5
- 6 (1) Defendant Mr. Garga-Richardson's constitutional right of free speech is protected
 7 by the State of California Civil Code 425.16(a)(b)(1) and 425.16(e)(2)(3) and the
 8 United States Constitution.
- 9
- 10 (2) ISC cannot establish by evidence admissible at trial a reasonable probability of
 11 prevailing in their claim base on the merits.
- 12

13 The special motion will be based on this Notice, the attached Memorandum of Points and
 14 Authorities and Declarations of ARCHIE GARGA-RICHARDSON with exhibits
 15 thereto, filed with the motion; the Complaint; and any other pleadings, papers, evidence,
 16 and written or oral arguments that either parties may submit.

17

18 **Respectfully Submitted:**

19 This 17th of September 2008

20 

21 ARCHIE GARGA-RICHARDSON
 22 Defendant in Pro Per

23

24

25

26

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This lawsuit is a classic SLAPP: a high profile entity sues someone who exercises his or her First Amendment rights to bring misdeeds of questionable business practices to public light. And like all classic SLAPP actions, this lawsuit is eminently meritless. Each cause of action is based on conduct for which Plaintiffs cannot prove the elements of their causes of action. Such actions are expressly barred by California Code of Civil Procedure Section 426.16, "The anti-SLAPP Statute" (hereinafter section 426.16)

The Plaintiffs (ISC) and its Principal owner Ayman A. El-Difrawi a/k/a Alec Difrawi have been embroiled in debates between their critics for their business practices for years. Numerous complaints have been filed against them with the BETTER BUSINESS BUREAU [Exhibits A 1-7] and similar complaints have been published on the consumer advocate website www.RipoffReport.com [Exhibits A 7-9] among others. Individuals and consumer advocates such as Defendant Mr. Garga-Richardson have been criticizing Mr. Difrawi and Internet Solutions Corporation business practices since 2004.

Rather than improve or change their business practices, the Plaintiffs have now turned to the courts to Silence their Critics.

ISC, who market themselves as an internet marketing company, have received enormous media attention primarily focused on Mr. Ayman A. Difrawi a/k/a Alec Difrawi a/k/a Alex Simon a/k/a Alexandersimon5@aol.com and his many aliases and ever changing fictitious business names, all of which have been highlighted in major media coverage and extensive in online forums and blogs.

DEFENDANT GARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

- 8 -

1
2 Defendant Mr. Garga-Richardson owns and operates a consumer awareness website
3 www.ScamFraudAlert.com (hereinafter "website", "blog", or "forum") for the general public; a
4 website of public interest that reports on fraudulent or misleading job postings. Like numerous
5 other media outlets, Defendant posted "Job Offers by ISC and posted his opinions and commentary
6 about ISC and its Principal owner which have well been documented online.

7
8 In addition to filing this lawsuit, Internet Solutions Corporation and Mr. Difrawi have and
9 continued to threaten their critics with lawsuits and have filed civil actions against Defendants Les
10 Henderson [6:07 cv-185-ORL-22-KRS] and Tabatha Marshall [6:07 cv 1740-ORL-22-KRS] in the
11 US District Court, Middle District of Florida Orlando and a similar lawsuit was filed against
12 Defendant Mr. Garga-Richardson [6:08-cv-00904-ORL-31-GJK] which named both (ISC) and
13 Ayman A. Difrawi a/k/a Alec Difrawi as Plaintiffs. Plaintiff then moved to have case dismissed
14 while the Defendant motion challenging jurisdiction was pending and immediately refilled in this
15 venue without naming Ayman A. Difrawi a/k/a Alec Difrawi as co-Plaintiff. **[Exhibit B]**

16
17 At the time of Plaintiff filings in Florida against the Defendant Garga-Richardson, Plaintiffs
18 were contesting jurisdiction against a lawsuit filed in April 2008 in the US Central District Court of
19 California by Breakdown Services, LTD Case [No 2:08-cv-00615 FMC PLAN] against
20 TooSpoiled.com, one of the many ISC companies or websites. **[Exhibits C-1, 2]**

21
22 Again, Plaintiffs have asserted a meritless claim of defamation, plus ancillary claims related to
23 that of tort, which is plainly based on Defendant's constitutional right to express his opinions and
24 subjective beliefs. Additionally, Plaintiffs have no evidence let alone clear and convincing evidence
25 that Defendant Mr. Garga-Richardson made defamatory statements about ISC with actual malice.
26

DEFENDANT GARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

1 As a result, Plaintiff's action against Defendant falls squarely within the broad interpretation of the
2 Cal.Code Civ. Pro. Statute 425.16 (a)(b)(1) and should be dismissed.

3
4 **II. STATEMENT OF FACTS**

5 **THE anti-SLAPP STATUTE MUST BE INTERPRETED BROADLY SO AS TO**
6 **PROMOTE THE EXERCISE OF INDIVIDUAL'S FIRST AMENDMENT RIGHTS**

7 I. To encourage public participation in debates over issues of public interest, the
8 Legislature in 1992 created a procedure to "allow prompt exposure and dismissal"
9 of civil lawsuits based upon a Defendant's exercise of his or her First Amendment
10 rights Wilcox v. Superior Court, 27 Cal App. 4th 809,815-18 (1994), overruled on
11 other grounds by Uquilon Enters v Consumer Cause, Inc. 29 Cal. 4th 53, 68 h.5.
12 (2002)

13 II. These lawsuits, commonly known as Strategic Lawsuits Against Public
14 Participation (SLAPP), are subject to a special motion to strike in which the
15 merits of the action are brought to the court's attention for early resolution, so as
16 to minimize the disruption to the First Amendment activity caused by prolonged
17 litigation, Code Civil Proc. 425.16 (a)(b)(1).

18 III. The statute incorporates the Legislature express declaration that it is in the public
19 interest to encourage public participation in matters of public significance, and
20 that this participation should not be censored through the abuse of the judicial
21 process.

ARGUMENT

A TWO STEP ANALYSIS IS USED TO DETERMINE WHETHER A CAUSE OF ACTION SHOULD BE STRUCK UNDER THE ANTI-SLAPP STATUTE

Section 425.16 was enacted “to bring about an early test of the merits in actions tending to censor citizen participation in public affairs.” (Vogel v. Felice (2005) 127 Cal.App.4th 1006, 1014 (Vogel).) To that end, the statute furnishes a mechanism for quickly identifying and eliminating suits that seek to censor public participation: a special motion to strike, the anti-SLAPP motion. The California Supreme Court recently described that mechanism as “a summary-judgment like procedure at an early stage of the litigation.” (Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 192 (Varian).) The statute provides: “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 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).)

A special motion to strike triggers a two step process in the trial court. (Varian, supra, 35 Cal.4th at p. 192.) “First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one ‘arising from’ protected activity.” (City of Cotati v. Cashman (2002) 29 Cal.4th 69, 76 (Cotati), quoting § 425.16, subd. (b)(1).)

As relevant here, the statutory definition of protected activity expressly 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...” (§ 425.16, subd. (e)(3).) or “any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest” (§ 425.16, subd. (e)(4)).

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1 “If the court finds such a showing has been made, it then must consider whether the
2 plaintiff has demonstrated a probability of prevailing on the claim.” (Cotati, at p. 76.)

3 In each part of the two-step process, the party with the burden need only make a threshold,
4 prima facie showing. (Cotati, supra, 29 Cal.4th at p. 76.)

5 “In order to establish a probability of prevailing on the claim (§425.16, subd. (b)(2)); though
6 the court does not weigh the credibility or comparative probative strength of competing evidence, it
7 should grant the motion if, as a matter of law, the defendant’s evidence supporting the motion
8 defeats the plaintiff’s attempt to establish evidentiary support for the claim.” (Wilson v. Parker,
9 Covert & Chidester (2002) 28 Cal.4th 811, 821, internal citations and quotation marks omitted.)

11 B. Types of Claims

12 The range of legal actions that might qualify as strategic lawsuits against public participation is
13 broad. As relevant here, defamation is among the “favored causes of action in SLAPP suits...”
14 (Wilcox, supra, 2/ Cal.App.4th at p. 816.)

15 The statute also may apply to a “cause of action ... for unlawful business practices pursuant
16 to Business & Professions Code section 17200” so long as the plaintiff is “seeking damages personal
17 to himself.” (Ingels v. Westwood One Broadcasting Services, Inc. (2005) 129 Cal.App.4th 1050,
18 1067, fn. omitted; see § 425.17, subd. (b) [exempting specified public benefit actions from the
19 operation of § 425.16].)

21 Defamation Law

22 The plaintiff’s causes of action are all centered on the tort of defamation.

23 “Defamation and trade libel both require the intentional publication of a false and
24 unprivileged statement of fact.” (Mann, supra, 120 Cal.App.4th at p. 104.) Even so, courts have
25 recognized defamation and trade libel as two distinct torts. (See Barnes-Hind, Inc. v. Superior Court
26

1 (1986) 181 Cal.App.3d 377, 381 (Barnes-Hind); Polygram Records, Inc. v. Superior Court (1985) 170
2 Cal.App.3d 543, 548-550 (Polygram Records).

3 "Defamation is an invasion of the interest in reputation. The tort involves the intentional
4 publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or
5 which causes special damage." (Smith v. Maldonado (1999) 72 Cal.App.4th 637, 645.)

6 As the California Supreme Court has long recognized, libel includes "almost any language
7 which, upon its face, has a natural tendency to injure a person's reputation." (Forsher v. Bugliosi
8 (1980) 26 Cal.3d 792, 803.) "Libel is recognized as either being per se (on its face), or per quod
9 (literally meaning, 'whereby'), and each requires a different standard of pleading." (Palm Springs
10 Tennis Club v. Rangel (1999) 73 Cal.App.4th 1, 5; see also MacLeod v. Tribune Publishing Co.
11 (1959) 52 Cal.2d 536, 549; Civ. Code, § 45a.)

12 1. Requirement of Falsity

13 "There can be no recovery for defamation without a falsehood." (Seelig v. Infinity
14 Broadcasting Corp. (2002) 97 Cal.App.4th 798, 809) "Thus, to state a defamation claim that survives
15 a First Amendment challenge, plaintiff must present evidence of a statement of fact that is provably
16 false." (Seelig, at p. 809, citing Milkovich v. Lorain Journal Co. (1990) 497 U.S. 1, 20 (Milkovich).)
17 Truth is a complete defense to defamation. (Smith v. Maldonado, supra, 72 Cal.App.4th at p. 646.)
18 "However, the defendant need not justify the literal truth of every word of the allegedly defamatory
19 matter. It is sufficient if the defendant proves true the substance of the charge...." (Id. at pp. 646
20 647.)

21 In this case, Garga-Richardson feels that he can, on the balance of probabilities, substantiate
22 the substance of the allegedly defamatory allegations attributed to him or others should he be
23 required to do so.

24
25
26
DEFENDANT GARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

1 **2. Facts versus Opinions**

2 "It is an essential element of defamation that the publication is of a false statement of fact
3 rather than opinion." (Ringler Associates Inc. v. Maryland Casualty Co. (2000) 80 Cal.App.4th 1165,
4 1181.) "In this context courts apply the Constitution by carefully distinguishing between statements
5 of opinion and fact, treating the one as constitutionally protected and imposing on the other civil
6 liability for its abuse." (Gregory v. McDonnell Douglas Corp. (1976) 17 Cal.3d 596, 601.) Like other
7 forms of opinion, hyperbole and insults are expressions that typically receive constitutional
8 protection. (Seelig v. Infinity Broadcasting Corp., supra, 97 Cal.App.4th at p. 809.)

9 Parody and satire fall within the same constitutionally protected category. (Franklin v.
10 Dynamic Details, Inc. (2004) 116 Cal.App.4th 375, 385 (Franklin).)

11 The determination of whether a statement expresses fact or opinion is a question of law for the
12 court, "unless the statement is susceptible of both an innocent and a libelous meaning, in which
13 case the jury must decide how the statement was understood [citations]." (Franklin, supra, 116
14 Cal.App.4th at p. 385.) Ultimately, "the dispositive question is whether a reasonable fact finder
15 could conclude the published statement declares or implies a provably false assertion of fact."
16 (Ibid.)

17
18 **3. Malice Requirement for Public Figures**

19 In addition to the other elements of the tort, a public figure suing for defamation must show
20 "actual" or "constitutional" malice, defined for these purposes as knowledge of falsity or reckless
21 disregard for the truth. (See New York Times Co. v. Sullivan (1964) 376 U.S. 254, 279-280; Khawar
22 v. Globe Internet, Inc. (1998) 19 Cal.4th 254, 275.)

23 "The characterization of 'public figure' falls into two categories: the all-purpose public
24 figure, and the limited purpose or 'vortex' public figure. The all purpose public figure is one who has
25 achieved such pervasive fame or notoriety that he or she becomes a public figure for all purposes
26

DEFENDANT GARGA RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

1 and contexts. The limited purpose public figure is an individual who voluntarily injects him or
 2 herself or is drawn into a specific public controversy, thereby becoming a public figure on a limited
 3 range of issues.” (Ampex Corp. v. Cagle, 128 Cal.App.4th at p. 1577.)

4 There is a higher standard of proof for public figure defamation plaintiffs, who “must prove
 5 by clear and convincing evidence that the defamatory statement was made with knowledge that it
 6 was false, or with reckless disregard of whether it was false or not.” (Walker v. Kiousis (2001) 93
 7 Cal.App.4th 1432, 1445-1446.) “This heightened standard of proof must be taken into account in
 8 deciding a defendant’s motion to strike a claim for defamation under section 425.16.” (*Id.* at p. 1446;
 9 see also, McGarry v. University of San Diego (2007) 154 Cal.App.4th 97, 113 (McGarry);
 10 Overstock.com, Inc. v. Gradient Analytics, Inc. (2007) 151 Cal.App.4th 688, 700 (Overstock).)

11 12 **Analysis: Plaintiff’s Status as a Limited Purpose Public Figure**

13 “A threshold determination in a defamation action is whether the plaintiff is a ‘public figure.’”
 14 (McGarry, supra, 154 Cal.App.4th at p. 113.)

15 As developed in the case law, there are three “elements” that must be present in order to
 16 characterize a plaintiff as a limited purpose public figure. First, there must be a public
 17 controversy, which means the issue was debated publicly and had foreseeable and substantial
 18 ramifications for non participants. Second, the plaintiff must have undertaken some voluntary
 19 act through which he or she sought to influence resolution of the public issue. In this regard it is
 20 sufficient that the plaintiff attempts to thrust him or herself into the public eye. And finally, the
 21 alleged defamation must be germane to the plaintiff’s participation in the controversy.” (Ampex,
 22 supra, 128 Cal.App.4th at p. 1577, citing Copp v. Paxton (1996) 45 Cal.App.4th 829, 845-846.) I
 23 shall consider each element in turn.

1 **Public Controversy:** “To characterize a plaintiff as a limited purpose public figure, the
2 courts must first find that there was a public controversy.” (Copp v. Paxton, supra, 45 Cal.App.4th
3 at p. 845.) “A public controversy is not simply a matter of interest to the public; it must be a real
4 dispute, the outcome of which affects the general public or some segment of it in an appreciable
5 way.” (Waldbaum v. Fairchild Publications, Inc. (C.A.D.C. 1980) 627 F.2d 1287, 1296.) “To
6 determine whether a controversy indeed existed and, if so, to define its contours, the judge must
7 examine whether persons actually were discussing some specific question.” (Id. at p. 1297, fn.
8 omitted.)

9 This case is factually similar to Ampex, where the court found a public controversy based on
10 “the public dimension of the [internet] exchanges.” (Ampex, supra, 128 Cal.App.4th at p. 1578.)
11 First, the Ampex court noted, “a number of postings on the Yahoo! message board” – a public
12 forum – had criticized the plaintiff and its management, even prior to the specific postings at issue.
13 (Ibid.) Second, the court observed, the content of the challenged postings showed that they were in
14 response to other messages circulating about plaintiff. (Ibid.) “Third, with 59,000 shares outstanding,
15 the causes and consequences of discontinuing Ampex’s multimillion-dollar venture into the Internet
16 television business had foreseeable and substantial ramifications for nonparticipants.” (Ibid.) In sum,
17 the court concluded, “Ampex’s decision and action in discontinuing iNEXTV amounted to a public
18 controversy that elicited concerns about the management of Ampex.” (Ibid.)

19 Here, there was a similar “public dimension” to the challenged postings, as demonstrated by
20 the three factors cited in the Ampex case. (Ampex, supra, 128 Cal.App.4th at p. 1578.) First, in
21 addition to several news items, there have been a number of postings on numerous websites, blogs
22 and forums, dating back several years, which discussed ISC and its alias operations. (Decl. at ¶ 40.)

23 Second, the controversy elicited numerous follow up postings from the general public by
24 way of blog and forum postings. (Ibid.)

1 Third, the alleged defamatory postings were germane to the discussions occurring in the
2 public forum in so far as they related to identity theft, phishing and online job scams.

3 **Voluntary Act:** "Once the court has defined the controversy, it must analyze the plaintiff's
4 role in it. Trivial or tangential participation is not enough." (Waldbaum v. Fairchild Publications,
5 Inc., supra, 627 P.2d at p. 1297.) In making "a determination of public figure status, courts should
6 look for evidence of affirmative actions by which purported 'public figures' have thrust themselves
7 into the forefront of particular public controversies." (Reader's Digest Assn. v. Superior Court,
8 supra, 37 Cal.3d at pp. 254-255.)

9 On this question, too, this case is factually similar to Ampex. As the court stated there:
10 "Although respondents deny inserting themselves into the controversy, they did, by way of press
11 releases and letters posted on their Web site." (Ampex, supra, 128 Cal.App.4th at p. 1578).

12 As with the corporate plaintiff in Ampex, Plaintiffs (ISC) have openly sought to counter these
13 discussions through forum postings and the development of specific websites whose sole
14 purposes are to quell the controversy. (Decl. ¶ 41)

15 **Germane Statements:** "Finally, the alleged defamation must have been germane to the
16 plaintiff's participation in the controversy." (Waldbaum v. Fairchild Publications, Inc., supra, 627
17 P.2d at p. 1298.)

18 Again, as to this third element, this case shares factual similarities with Ampex. There, the
19 court found that the challenged communications "were germane to [plaintiffs] participation in the
20 controversy. These comments were counter to [its] version of events." (Ampex, supra, 128
21 Cal.App.4th at p. 1578.)

22 In this case, Defendant Garga Richardson's generic posting opined that any entity that
23 attempted, by dubious means, to procure the personal identifying information from job applicants
24 where no job existed could potentially be a bunch of scumbag crooks participating in a phishing
25 scam. (Decl. ¶ 10) Thus, like the Internet messages in Ampex, Garga-Richardson's statements were
26

DEFENDANT GARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

1 germane to the public debate over plaintiff's suspicious business activities involving the
2 accumulation of personal data from Internet applicants for non-existent employment opportunities.

3 For the foregoing reasons, plaintiff is a "limited purpose public figure."

4 **4. Analysis: Plaintiff's Insufficient Showing of Malice**

5 As a public figure, plaintiff must demonstrate that Garga Richardson acted with actual malice in
6 making the challenged "pushing" and "scumbag thugs" statements.

7
8 Legal standard: To demonstrate actual malice, plaintiff "must establish a probability that [it]
9 can produce clear and convincing evidence that the allegedly defamatory statements were made with
10 knowledge of their falsity or with reckless disregard of their truth or falsity." (Ampex, supra, 128
11 Cal.App.4th at p. 1578.) "The clear and convincing standard requires that the evidence be such as to
12 command the unhesitating assent of every reasonable mind." (Beilenson v. Superior Court (1996) 44
13 Cal.App.4th 944, 950; McGarry, supra, 154 Cal.App.4th at p. 114.) "The reckless disregard test
14 requires a high degree of awareness of the probable falsity of the defendant's statement." (Ampex, at
15 p. 1579.)

16 "Actual malice under the New York Times standard should not be confused with the
17 concept of malice as an evil intent or a motive arising from spite or ill will." (Masson v. New Yorker
18 Magazine, Inc. (1991) 501 U.S. 496, 510.) This is "a subjective test, under which the defendant's
19 actual belief concerning the truthfulness of the publication is the crucial issue." (Reader's Digest
20 Assn. v. Superior Court, supra, 37 Cal.3d at p. 257.)

21 The key question is whether the defendant actually entertained serious doubts about the truth of
22 his statements. (See Khawar v. Globe Internat., Inc., supra, 19 Cal.4th at p. 275.)

23 "However, we will not infer actual malice solely from evidence of ill will, personal spite or
24 bad motive." (Ampex, supra, 128 Cal.App.4th at p. 1579.) Likewise, a defendant's "failure to
25 conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor
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1 even necessarily raise a triable issue of fact on that controversy.” (Reader’s Digest Assn. v. Superior
 2 Court, supra, 37 Cal.3d at p. 258.) Furthermore, the defendant “does not have to investigate
 3 personally, but may rely on the investigation and conclusions of reputable sources.” (Id. at p. 259.)
 4 “Neither is there a duty to write an objective account.” (Ibid.) “So long as he has no serious doubts
 5 concerning its truth, [the defendant] can present but one side of the story.” (Ibid.)

6 Here, the declaration of Garga Richardson clearly disputes the notion of malice and asserts his
 7 belief that the statements were true. (Decl. ¶ 16) His website is a collection of warnings and
 8 advisories about numerous companies, only a few of which pertain to the Plaintiff or one of its
 9 many unidentifiable aliases. (Decl. ¶¶ 5, 10, 22) Defendant had relied upon valid, reputable
 10 sources as verification of the veracity of his postings. (Decl. 17) Having operated his specialized
 11 website dealing in consumer fraud issues for several years, Defendant has become sensitive to
 12 the hallmarks of apparent deceptive Internet job offerings such as those presented by the
 13 Plaintiffs. (Decl. ¶ 14)

- 14 i) Plaintiffs identify themselves as an “Internet marketing business” (Complaint at ¶ 8) yet operates
 15 under a multitude of aliases that identify them as a job placement firms. (Decl. at ¶ 22). A
 16 reasonable average person would suspiciously note the disparity between the two facts, especially
 17 after receiving an offer of employment from them. Such was the case with posters to Defendant’s
 18 forum and with the defendant himself.

20 B. Trade Libel

21 “Trade libel is the publication of matter disparaging the quality of another’s property, which the
 22 publisher should recognize is likely to cause pecuniary loss to the owner.” (ComputerXpress Inc. v.
 23 Jackson, 93 Cal.App.4th 993 (2001) at p. 1010.) “To prevail in a claim for trade libel, a plaintiff must
 24 demonstrate that the defendant: (1) made a statement that disparages the quality of the plaintiff’s
 25
 26

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1 product; (2) that the offending statement was couched as fact, not opinion; (3) that the statement
2 was false; (4) that the statement was made with malice; and (5) that the statement resulted in
3 monetary loss.” (Optinrealbig.com, LLC v. Ironport Systems, Inc. (N.D.Cal. 2004) 323 F.Supp.2d
4 1037, 1048, citing Guess, supra, 176 Cal.App.3d at p. 479)

6 7 1. Nature of the Tort as Trade Disparagement, Not Injury to Reputation

8 With trade libel, the focus is on statements concerning the plaintiff's property or business. This is in
9 contrast to “common law defamation,” which “relates to the standing and reputation of the
10 businessman as distinct from the quality of his or her goods.” (Barnes-Hind, supra, 181 Cal.App.3d
11 at p. 381; see generally, 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 640, p. 945; id. (2007
12 supp.), p. 73.)

13 In Polygram Records, a case decided in 1985, the court described trade libel as “a confusing
14 concept that has not been subjected to rigorous judicial analysis in California.” (Polygram Records,
15 supra, 170 Cal.App.3d at p. 548, fn. omitted.) In the court's view, this “confusion arises primarily
16 from uncertainty whether ‘trade libel’ should be treated as a species of defamation, or instead
17 constitutes the distinct tort of injurious falsehood....” (Ibid.) After analyzing the question, the court
18 held that “the two torts are distinct; that is, ‘trade libel’ is not true libel and is not actionable as
19 defamation.” (Id. at p. 549.) Other California courts have reached the same conclusion. (See, e.g.,
20 Leonardini, supra, 216 Cal.App.3d at p. 573; Guess, supra, 176 Cal.App.3d at p. 479.) However, as
21 recognized in Polygram Records, “the distinction between personal aspersion and commercial
22 disparagement will sometimes be difficult to draw, because statements may effectuate both harms.”
23 (Polygram Records, at p. 550.)

24 Plaintiff in this case lists only two alleged defamatory statements, neither of which appears to
25 pertain to any of the Plaintiff's services or products being offered to the general public, if indeed any
26

1 such services actually exist, barring the unwanted opportunity of viewing advertisements in exchange
 2 for giving out detailed personal information in the hopes of obtaining employment. (Complaint at ¶¶
 3 12, 13).

4 5 **2. Requirement of False Statement of Fact**

6 “To constitute trade libel, a statement must be false.” (ComputerXpress, supra, 93
 7 Cal.App.4th at p. 1010.) “Since mere opinions cannot by definition be false statements of fact,
 8 opinions will not support a cause of action for trade libel.” (Id. at pp. 1010-1011.)

9 Defendant indicates in his declaration that both disputed statements are merely broad
 10 opinions and not statements of fact directed at the Plaintiff. (Decl. ¶¶ 6, 8, 10, 15, 42)

11 12 **3. Malice Element**

13 As thoroughly analyzed in the Melaleuca case, various reasons support the imposition of a
 14 malice requirement for trade libel claims. (Melaleuca, Inc. v. Clark 66 Cal.App.4th 1344, 1360-1362
 15 (1998). They include policy justifications based on differing societal values placed on reputation
 16 versus commerce, historical common law distinctions, and constitutional precepts. (Ibid.; see 5
 17 Witkin, Summary of Cal. Law, supra, Torts, § 642, p. 948, discussing Melaleuca on this point.)

18 In view of the differences between defamation and trade libel, the better reasoned authority
 19 recognizes malice as a required element of trade libel. Defendant clearly refutes all aspects of
 20 malice in his declaration. (Decl. ¶ 16)

21 22 23 **4. No Special Damages For Non-identified Monetary Loss**

24 Moreover, plaintiff's trade libel claims fail on another ground, the failure to allege and
 25 substantiate special damages. A plaintiff seeking damages for trade libel must “allege special damages
 26

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specifically, by identifying customers or transactions lost as a result of disparagement, in order to state a prima facie case.” (Isuzu Motors Ltd. v. Consumers Union of U.S., Inc., supra, 12 F.Supp.2d at p. 1043; see also, Mann, supra, 120 Cal.App.4th at p. 109.) Plaintiff has not done so here. (Complaint at ¶ 45.)

C: Unfair Competition Law

In addition to its defamation claim, Plaintiffs have also sued under California’s unfair competition law (UCL). (See Bus. & Prof. Code, § 17200 et seq.; id., § 17500 et seq.) “Business and Professions Code section 17200 et seq. prohibits unfair competition, including unlawful, unfair, and fraudulent business acts.” (Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1143, fn. omitted (Korea Supply).)

The Statute’s Reach

“A UCL action is barred only if another law specifically bars the subject UCL action or specifically permits the conduct complained of.” (Paulus v. Bob Lynch Ford, Inc., supra, 139 Cal.App.4th at p. 679) Even so, a UCL claim “is not an all purpose substitute for a tort or contract action.” (Korea Supply, supra, 29 Cal.4th at p. 1150.)

Remedies

“While the scope of conduct covered by the UCL is broad, its remedies are limited.” (Korea Supply, supra, 29 Cal.4th at p. 1144.) “Suits asserting statutory UCL claims are equitable actions.” (Feitelberg v. Credit Suisse First Boston, LLC, supra, 134 Cal.App.4th at p. 1009.) “For that reason, ‘compensatory damages are not available’ in such suits.” (Ibid.)

Derivative Claim, Based on Libel

To the extent that Plaintiff’s cause of action for unfair business practices is premised on its defamation claim, if it fails in that tort then it will fall with this claim. (See Franklin, supra, 116

Cal.App.4th at p. 394; cf., Reader's Digest Assn. v. Superior Court, supra, 37 Cal.3d at p. 265
 ["constitutional protection does not depend on the label given the stated cause of action"].)

As such, Plaintiff cannot conceivably establish a probability of prevailing on its claim for
 unfair business practices.

1. ISC's Action Is Based on Defendant Garga-Richardson's Rights of Free Speech

Section 425.16(c)(3) defines acts in furtherance of free speech or petition as including statements
 that are made (1) in a public forum and (2) accessible to the public. Websites accessible to the
 public are "public forum" for purposes of the anti SLAPP statute. Barrett v. Rosenthal, 40 Cal.
 4th 33, 41 n.4 (2006); Nygaard, Inc v. Uusi Kerttula, 159 Cal App. 4th 1027, 1039 (2008);
Wilbanks v. Wolk, 42 Cal App. 4th 1170 pg (2006).

a. Defendant's Website Is a Public Forum

The California Supreme Court and the Courts of Appeal repeatedly have held that a Web site
 accessible to the public is a public forum for purposes of Section 425.16. Kronemyer v. Internet
 Movie Data Base, Inc., 150 Cal.App.4th 941 (2007); Huntingdon Life Sciences, Inc. v. Stop
 Huntingdon Animal Cruelty USA, Inc., 129 Cal.App.4th 1228, 1247 (2005). As observed by the
 court in Huntingdon Life Sciences, Inc., 129 Cal.App.4th at p. 1247 (citation omitted), "Statements
 on [defendant's] Web site are accessible to anyone who chooses to visit the site, and thus they
 'hardly could be more public.'

ISC alleges that each of Defendant's allegedly defamatory statements appeared on the
 Website. (Complaint, ¶ 11.) Defendant's website meets all the requirements of a public forum. The
 website is accessible free of charge to any member of the public. (Decl., ¶¶ 5, 6). Readers of the
 Website members, visitors and guests may review the opinions and commentary of Defendant as
 well as other members of the public. Id. Members may also post their opinions. Id.

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2
3 **b. Internet Solutions Corporation and their Purported Job Opportunities Are Matters of
4 Public Interest.**

5 A statement or other conduct is "in connection with an issue of public interest . . . if the
6 statement or conduct concerns a topic of widespread public interest and contributes in some
7 manner to a public discussion of the topic." Hall v. Time Warner, Inc., 153 Cal.App.4th 1337, 1347
8 (2007). An event that is of "significant interest to the public and the media" satisfies the public
9 interest requirement for purposes of Section 425.16(e)(3). Seelig v. Infinity Broadcasting Corp., 97
10 Cal.App.4th 798, 807-808 (2002).

11 The public interest requirement of Section 425.16(e)(3) must be construed broadly so as to
12 encourage participation by all segments of our society in vigorous public debate of issues of public
13 interest. Gilbert v. Sykes, 147 Cal.App.4th 13, 23 (2007). Additionally, in deciding whether a matter
14 is one of public interest, courts should "err on the side of free speech." Gallagher v. Connell, 123
15 Cal.App.4th 1260, 1275 (2004),

16 Here, ISC publicly purports, without substantiation, to be an industry leader in providing
17 nationwide job placement opportunities with Fortune 500 companies to the general public.
18 Therefore it is quite clearly a matter of public interest.

19 **c. Questionable Job Opportunities and Identity Theft Concerns Are Matters of
20 Public Interest**

21 Where a statement or activity precipitating the claim involves conduct that could affect a
22 large numbers of people beyond the direct participants, the claim is subject to Section CCP § 415.16
23 Commonwealth Energy Corp v. Investor Data Exchange, 110 Cal.App.4th at 33 (2003). There can
24 be little doubt that the alleged misuse and possession of personal information from online job
25 applicants are matters that have potential impact on a wide segment of society and receive
26 widespread public attention.

1 In this particular case, the activities of ISC has brought about a Washington Post article, a
2 large metropolitan television report, an LA Times article and a multitude of Internet-based
3 discussions. (Decl. ¶¶ 24, 27, 31, 33, 35, 40)

4 Commenting on a matter of public concern is fundamental to the right of free speech.
5 Amette, Jr. v. Sharon S., 119 Cal.App.4th 1146, 1162 (2004).

6
7
8 **B. Plaintiff Internet Solutions Corporation (ISC) Cannot Show a Reasonable
9 Probability of Prevailing on Its Defamation Claim**

10 Once the defendant has met its burden of establishing that the complain falls within the anti-
11 SLAPP statute, the burden shifts to the plaintiff to establish a "reasonable probability" that he
12 will prevail at trial. Section 425.16(b). To establish a "probability" of prevailing, the plaintiff must
13 show (1) a legally sufficient claim; and (2) that the claim is supported by competent, admissible
14 evidence sufficient to sustain a judgment in the plaintiff's favor. Fashion 21 v. Coalition for
15 Humane Immigrant Rights of Los Angeles, 117 Cal.App.4th 1138, 1147 (2004). ISC cannot meet
16 this burden.

17 Internet Solutions Corporation (ISC) defamation claim is based on two categories of
18 statements: (1) Defendant's subjective statements of opinion about ISC; and (2) Defendant's
19 republishing of statements made by others about ISC. (Complaint, ¶¶ 12,13) As demonstrated below,
20 ISC cannot show a reasonable probability of prevailing on its claim because it cannot prove that
21 Defendant's subjective statements of opinion about it were provably false statements or that Cirya
22 Richardson acted with actual malice when he republished the statements of others.
23
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DEFENDANT CARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

1 that ISC participates in phishing, identity theft and perpetration of fraudulent employment scams.
 2 Complaint at ¶ 12. (2) that ISC is operated by thugs and crooks, criminals, scumbags targeting the
 3 unemployed, elderly, students, stay at home moms, retirees and the innocent, luring them into
 4 cashing fraudulent checks. Complaint at ¶ 13.

5
 6 **The Context of Defendant's Statements:** The Website is a consumer awareness forum
 7 created to inform the general public about examples of online consumer fraud. (Decl., ¶ 5). It is title
 8 "Your guide to job search online and websites due diligence" and bears such subheadings as
 9 "Misrepresentation, rip offs, unfulfilled claims, consumer dissatisfactions, Attorney General
 10 ALERT, POLICE ALERTS - TELL US YOUR EXPERIENCE" (Id. ¶ 9.) The style of the Website
 11 is intentionally disdainful to perceived fraudsters and in addition to providing warnings also
 12 expresses the owner's views as reflected by such statements as "Internet Scam/Spam or Fraudulent
 13 Websites - Scam/fraudAlert believe that this is a cancer that is under the radar. If we the public do
 14 not ACT we might just get HIT!" (Id., ¶ 10.)

15 Virtually every forum topic includes Defendant's editorial commentary and his personal
 16 opinion regarding suspect job promoters or scammers in general. Since the generic warning about
 17 the motives and heritage of suspect companies or their operators was listed as a sub-heading on
 18 numerous pages unrelated to the Plaintiff it was clearly not a statement of fact specifically directed at
 19 the Plaintiff or it's principals. (Decl. ¶ 15)

20 Viewing Defendant's statements in this context, it is plain that any statements taken out of
 21 context and alleged to be regarding the Plaintiff were nothing more than expressions of his
 22 subjective opinion. For example, the collective description including "thugs and scumbags" merely
 23 emphasized Defendant's personal distaste for individuals who prey upon the weak or uninformed.
 24
 25
 26

ISC Cannot Demonstrate that Defendant Made Provably False Statements

The tort of defamation involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage. Civ. Code, §§ 45-46; 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 529, p. 782 (citing Civ. Code, §§ 45-46 and cases). To prevail on her defamation claim, ISC has the burden of presenting evidence of a statement of fact that is provably false. See Seelig, 97 Cal.App.4th at 809. Statements that cannot be reasonably interpreted as stating "actual facts" about an individual cannot form the basis of a defamation action. Id. Additionally, expressions of opinion are not actionable. Savage v. Pacific Gas & Elec. Co., 21 Cal.App.4th 434, 445 (1993). Thus, "rhetorical hyperbole," "vigorous epithets," "lustily and imaginative expressions of contempt," and language used "in a loose, figurative sense" have all been accorded constitutional protection. Seelig, 97 Cal.App.4th at 809. Additionally, epithets and subjective disapproval of the "sticks and stones will break my bones" variety are not actionable. Ferlauto v. Hanisher, 74 Cal.App.4th 1394, 1404 (1999).

The critical determination of whether an allegedly defamatory statement constitutes fact or opinion is a question of law for the court. Ferlauto, 74 Cal.App.4th at 1401. In making this determination, California courts apply the totality of the circumstances test. Id.; see also Seelig, 97 Cal.App.4th at 809. Under this test, the court first examines the language of the statement. Next, the context in which the statement was made must be considered. The "contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed." Seelig, 97 Cal.App.4th at 809-810. Under this test, "editorial context is regarded by the courts as a powerful element in construing as opinion what might otherwise be deemed fact." Ferlauto, 74 Cal.App.4th at 1401 (citation omitted).

1
2 Applying this test, the following statements have been found to be not to be actionable:

- 3
- 4 • Statements by radio hosts that plaintiff was a "local loser," "chicken butt," and "big skank," were "unquestionably" statements of the speaker's subjective judgment. Seelig, 97 Cal.App.4th at 810.
 - 5
 - 6 • Statements that the plaintiff was a "creepazoid attorney" and "loser wannabe lawyer" were "classic rhetorical hyperbole which 'cannot reasonably [be] interpreted as stating actual facts.'" Ferlauto, 74 Cal.App.4th at 1404.
 - 7
 - 8 • Metaphoric expressions such as "keep him honest," "booby," and "baying in the ocean breezes," were subjective expressions of negative opinion with no disprovable factual content. Copp v. Paxton, 45 Cal.App.4th 829, 838 (1996).
 - 9
 - 10 • Statements that an attorney used "sleazy tactics" and engaged in a "fishing expedition," and the supposition that the judge had a "dim view of the defense tactics," merely opinion only. James v. San Jose Mercury News, Inc., 17 Cal.App.4th 1, 7 8 (1993).
 - 11
 - 12 • Use of the words "liar" and "thief" by a political foe was constitutionally protected hyperbole. Roscnaur v. Scherer, 88 Cal.App.4th 260, 280 (2001).
 - 13
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19 As such, the disputed statements cannot be reasonably interpreted as stating "actual facts" about ISC specifically. In any event, the defendant is able to reasonably prove true the substance of the charges implied in the disputed statements.

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21
22

23 **The Language of Defendant's Statements:** ISC alleges, without providing evidentiary context or any actual postings by exhibit, that the following two general statements or opinions allegedly made by Defendant Garga-Richardson, or others, on his Blog/forum are defamatory: (1)

24
25
26

1 No reader of the Website could have interpreted the statements to be statements of actual fact.
 2 Indeed, Defendants' statements are of the "sticks and stones will break by bones" variety, and
 3 thus, are not actionable.
 4

5
 6 **2. ISC Cannot Demonstrate, By Clear and Convincing Evidence, that Defendant's
 Statements Were Made With Actual Malice**

7
 8 The owner and operator of ISC Mr. Alec Difrawi is a public figure by the virtue he has
 9 purported to run for public office and have twice pleaded guilty to criminal offense as
 10 mentioned extensively online and in news media in relation to consumer fraud. Also by his past
 11 association with known fraudsters Lou Pearlman who was recently sentenced to prison on fraud
 12 and other charges. This association and their past activities are of public interest. (Decl. ¶¶ 18, 19,
 13 20, 21, 39) [Exhibit D - 1, 2, pg. 12/13]

14 At a minimum, Internet Solutions Corporation (ISC) is also a "limited public figure/entity" by
 15 virtue of having been the subject of several nationwide news reports regarding its mass e
 16 mailings of purportedly non-existent job opportunities, widespread Internet presence with over
 17 3000 websites, numerous lawsuits against them and seemingly retaliatory litigation initiated by
 18 ISC against individuals who expresses his or her rights of free speech or write anything about
 19 Mr. Difrawi's business practices. (Decl. ¶¶ 18, 19, 22, 23, 24, 25, 26, 27, 30, 31, 33, 35). A person will
 20 be considered a "limited purpose" or "vortex" public figure, if he or she voluntarily injects
 21 himself or is drawn into a particular public controversy and thereby becomes a public figure for
 22 a limited range of issues. McGarry v. University of San Diego, 2007 Cal.App.1.FXIS 1350, *25
 23 (July 17, 2007). Here ISC has been drawn into the issues surrounding identity theft and
 24 consumer fraud by virtue of being associated with Mr. Difrawi and by their deceptive business
 25 practices and unrelenting litigious nature. Like "all purpose" public figures, limited public figures
 26

1 must show by "clear and convincing evidence" that the alleged defamatory statement was
2 published with actual malice, meaning with knowledge the republished statements were false or
3 with reckless disregard of their falsity. Ampex Corp. v. Cargile, 128 Cal.App.4th 1569, 1578
4 (2005). The test is "a subjective test, under which the defendant's actual belief concerning the
5 truthfulness of the publication is the crucial issue." This test directs attention to the defendant's
6 attitude toward the truth or falsity of the material published, not the defendant's attitude toward
7 the plaintiff. McGarry, 2007 Cal.App.LEXIS 1350 at *24-26 (emphasis added). The reckless
8 disregard test is not a negligence test measured by whether a reasonably prudent person would
9 have published, or would have investigated before publishing, the defamatory statement.
10 Instead, the evidence must "permit the conclusion that the defendant actually had a 'high degree
11 of awareness of ... probable falsity.' As a result, failure to investigate before publishing, even
12 when a reasonably prudent person would have done so, is not sufficient to establish reckless
13 disregard." *Id.* at *26 (citations omitted). Thus, to support a finding of actual malice, the failure
14 to investigate must fairly be characterized as demonstrating the speaker purposefully avoided the
15 truth or deliberately decided not to acquire knowledge of facts that might confirm the probable
16 falsity of charges. *Id.* at *27-*28.

17 ISC cannot demonstrate by clear and convincing evidence that Defendant Mr. Garga
18 Richardson acted with actual malice since he genuinely believed the reports received about ISC
19 were true and had no reason to believe they were false. His investigations have produced a
20 wealth of information which not only lends credence to Mr. Garga-Richardson's personal
21 opinions but which also establishes the truth of the substance of any factual assertions.

22 The defense evidence "defeats the plaintiff's showing as a matter of law," when it establishes "a
23 defense or the absence of a necessary element." (1 800 Contacts, Inc. v. Steinberg (2003) 107
24 Cal.App.4th 568, 585.)
25
26

DEFENDANT GARGA-RICHARDSON MOTION TO STRIKE COMPLAINT PURSUANT TO CCP § 425.16 -

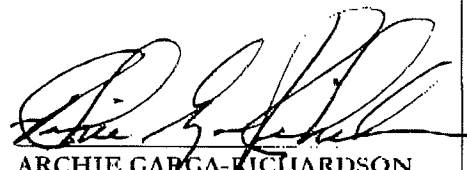
C. Defendant Is Entitled to Recover Attorney Fees and Costs In Connection with this Motion

"Any Defendant who brings a successful motion to strike is entitled to mandatory attorneys fees." Ketchum v. Moses, 24 Cal.4th 1122, 1131 (2001); see also Section 425.16(c) (the "prevailing defendant" on a motion to strike "shall be entitled" to recover his attorneys' fees and costs). If the Court grants Mr. Garga-Richardson's Motion, he will submit a noticed motion for his fees.

IV. CONCLUSION

For all of the foregoing reasons, Defendant Mr. Garga Richardson respectfully requests that the Court grant his Motion in its entirety, strike the Complaint brought by ISC, and award Defendant his attorneys' fees and costs associated with this Motion.

Dated this 17th Day of September 2008



ARCHIE GARGA-RICHARDSON
Defendant in Pro Per

