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SEP 22 2008
CLERK OF SUPERIOR COURT
SAN FRANCISCO COUNTY
BY: WESLEY RAMIREZ

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN FRANCISCO
13 UNLIMITED JURISDICTION

14 JOSEPH C. STYGER,
15 Plaintiff,
16 vs.
17 DEBORAH J. JOHNSON, and DOES
18 1 through 10, inclusive,
19 Defendants.

20 Case No. CGC-08-477322

21 DEFENDANT'S MEMORANDUM OF POINTS
22 AND AUTHORITIES IN SUPPORT OF HER
23 SPECIAL MOTION TO STRIKE THE
24 COMPLAINT AS A MERITLESS SLAPP
25 (C.C.P. § 425.16)

26 Complaint Filed: July 10, 2008
27 Date: September 22, 2008
28 Time: 9:30 a.m.
Department: 302*
Judge: Hon. Patrick J. Mahoney*

[Filed in conjunction with peremptory challenge,
notice of motion, declarations of Deborah J.
Johnson, Jeremy Stoppelman, and Paul Clifford,
and proof of service of moving papers]

*With this motion, defendant is also filing a
peremptory challenge to Judge Mahoney,
pursuant to C.C.P. § 170.6

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1 **INTRODUCTION.**

2 Plaintiff has sued defendant Deborah Johnson based on a single post to the Yelp.com
3 website, a consumer information forum, regarding her experience as a patient of plaintiff, a
4 dentist. The post is protected by the California anti-SLAPP (Strategic Lawsuit Against Public
5 Participation) law because it contains statements made in a public forum regarding an issue of
6 public interest. This lawsuit has no merit, because plaintiff’s claim is barred by the statute of
7 limitations. Therefore, defendant’s anti-SLAPP motion must be granted.
8

9 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

10 **A. Plaintiff Joseph C. Styger.**

11 Plaintiff Joseph C. Styger (plaintiff or Styger) is a dentist practicing in San Francisco.
12 (Complaint, ¶ 4.) He maintains a website titled “smiles by dr. joseph c. styger, d.d.s.” (Clifford
13 Decl., ¶ 2, Exhibit A.) Plaintiff boasts on his website that he is the best dentist in the entire Bay
14 Area: “We focus on meeting your dental needs and desires with a level of quality care and
15 customer service that’s unsurpassed by any other dental practice in the San Francisco area.”
16 (*Id.*) Among the services that plaintiff promotes on his website is the application of porcelain
17 veneers, the procedure performed on defendant Johnson. (Clifford Decl., ¶ 3, Exhibit B;
18 Johnson Decl., ¶ 5.) Plaintiff also has a Google “Sponsored Link” (*i.e.*, a paid advertisement)
19 that appears when various websites are accessed or certain Google searches are performed.
20 (Clifford Decl., ¶ 4, Exhibit C.)

21 **B. Defendant Deborah Johnson.**

22 Defendant Deborah Johnson (defendant or Johnson) is a native Californian who grew up
23 in the East Bay. She has a 24 year old son and lives in San Francisco with her husband, Craig.
24 They run a small business which supplies various types of controls and meters to a wide variety
25 of businesses. (Johnson Decl., ¶ 2.) Although Johnson’s teeth had been straightened as a teen,
26 they became discolored later on, and her once beautiful smile, although straight, was stained.
27 She was inspired by the television show “Extreme Makeover” to explore whitening her teeth so
28 that she would once again have a sparkling smile. (Johnson Decl., ¶ 4.)

1 **C. Johnson Has Problems with Plaintiff’s Services.**

2 Upon plaintiff’s recommendation of the procedure, Johnson retained plaintiff to apply
3 porcelain veneers (porcelain covers which are placed over existing teeth) to her teeth in order to
4 cover up discoloration and other defects. (Johnson Decl., ¶ 4.) When plaintiff put the veneers in
5 place, Johnson was very dissatisfied with the results. There were gaps that revealed Johnson’s
6 discolored natural teeth beneath the veneers. Covering up the discolored teeth was Johnson’s
7 main motivation in having the veneers applied. Her teeth were also sensitive, which they were
8 not before the veneers were placed. She attempted to make a follow-up appointment with
9 plaintiff to discuss her concerns, but she was refused an appointment unless she paid plaintiff’s
10 full bill for the unsatisfactory work. Beyond the poor aesthetic results of the procedure,
11 plaintiff’s unwillingness to address patient concerns, as well as his inadequate explanation of
12 both the procedure itself and the total costs involved, contributed to Johnson’s dissatisfaction
13 with the level of service she was provided. (Johnson Decl., ¶¶ 5, 7.) Johnson consulted other
14 dentists, who told her that the veneers had been applied improperly and that plaintiff should
15 repair his defective work. (Johnson Decl., ¶ 8.)

16 **D. The Internet Is an Important Source for Consumer Information.**

17 According to the Pew Internet & American Life Project of the Graduate School of Library
18 and Information Science at the University of Illinois at Urbana-Champaign:

19 As more Americans use the internet for entertainment, for building personal relationships,
20 and as a tool for conducting business, online rating systems have become a significant
21 element of internet use. The Pew Internet & American Life Project has found that 26% of
22 adult internet users in the U.S., more than 33 million people, have rated a product,
23 service, or person using an online rating system. These systems, also referred to as
24 ‘reputation systems,’ are online applications that allow users to express their opinions and
25 read opinions posted by other participants. . . . At its best, the use of reputation systems
26 builds community, adds knowledge to groups, and elevates accountability of the
27 institutions and people who are being rated. Online reputation systems can enable people
28 in making decisions about which users to trust, or compare their opinions to others’.

(Clifford Decl., ¶ 27, Exhibit Z, pages 1-2.) The Pew Project has also found that “as more and
more Americans come online, so too do more Americans rely on the internet for important health
information. . . . [A] December 2005 survey found that one in five (20%) online Americans said
the internet has greatly improved the way they get information about health care.” (Clifford

1 Decl., ¶ 28, Exhibit AA, page 1.) The Pew Project has also reported that “The internet is a go-to
2 source. In general, more people turn to the internet (at home, work, libraries and other places)
3 than any other source of information and support, including experts and family members.”
4 (Clifford Decl., ¶ 29, Exhibit BB, page 2 [iii].) The Project further reported that 46% of
5 Americans who dealt with health problems used the Internet to find information or assistance.
6 (Clifford Decl., ¶ 29, Exhibit BB, page 8 [15].)

7 **E. The Yelp.com Website – a Consumer Information Forum.**

8 The Yelp.com website describes itself as “the fun easy way to find, review and talk about
9 what’s great (and not so great) in your world. You already know that asking friends is the best
10 way to find restaurants, dentists, [etc.]. . . . Yelp makes it easy by collecting and organizing your
11 friends’ recommendations in one convenient place.” (Clifford Decl., ¶ 5, Exhibit D.) Yelp.com
12 users can search for information by using Yelp.com’s search function, browsing by topic, or
13 soliciting information by posting inquiries to the website’s message boards. (Stoppelman Decl.,
14 ¶ 6.) Yelp.com users can post a review of any of the listed businesses. (Stoppelman Decl., ¶¶ 4-
15 5; Clifford Decl., ¶ 6, Exhibit E.) They can also view another user’s profile and read his or her
16 reviews (as well as detailed statistics about his or her reviews, such as the number of positive or
17 negative reviews written) in order to gauge the credibility and similarity of the tastes of the other
18 user. (Stoppelman Decl., ¶ 7.)

19 “Yelp was born out of a belief that the best source for information about a local
20 community is from the community members themselves, and that, prior to Yelp.com, it was all
21 but impossible to broadly tap into the knowledge of the local community.” (Stoppelman Decl., ¶
22 8.) Fortune magazine has reported:

23 Employing the same user-generated content model that powers YouTube or Craigslist,
24 Yelp can reach into a city’s every nook to reveal hidden car washes, dentists, plumbers –
25 the sorts of unsexy but necessary services that make up our daily lives. When we
26 discover something wonderful (or horrible), we love to tell our friends about it. We also
27 turn to people we trust when we need a good recommendation. Yelp is enabling those
28 conversations to happen on a massive scale.

(Clifford Decl., ¶ 7, Exhibit F.)

One of Yelp’s founders, and its CEO, states, “It is my belief that a consumer is better

1 served by being exposed to the experiences of millions of other consumers rather than relying on
2 more traditional sources of consumer information, such as a telephone directory. As such,
3 Yelp.com serves as a consumer information website that helps consumers make more informed
4 choices about the businesses they patronize.” (Stoppelman Decl., ¶ 8.) The user-generated
5 reviews on Yelp.com, as opposed to reviews undertaken only periodically by paid professionals
6 (such as those that appear in traditional print media), provide a wealth of consumer information
7 that would not otherwise be readily available to the public. Additionally, the fact that businesses
8 have no way of knowing which of their customers will end up writing a Yelp review may
9 motivate business owners to provide a superior level of service across the board. This plays a
10 particularly important role for consumer protection where health and personal care services are
11 concerned. Since professional reviews of dentist offices and the like do not exist, customer
12 reviews are the primary means consumers have of informing themselves about what to expect
13 when selecting a new service provider. To this end, Yelp.com also features a forum where
14 people can ask for recommendations regarding good service providers, including dentists.
15 Plaintiff is one of the dentists who had been recommended by a Yelp poster. (Clifford Decl., ¶
16 10, Exhibit I.)

17 The Yelp.com website indicates that it covers at least 21 major cities in the United States,
18 including San Francisco. (Clifford Decl., ¶ 6, Exhibit E.) According to the San Francisco
19 Chronicle, “Founded in 2004 in San Francisco, Yelp . . . now reaches 11.5 million people a
20 month. More than 3 million reviews appear on the site.” (Clifford Decl., ¶ 8, Exhibit G.)
21 According to the New York Times, Yelp has become “one of the richest repositories of local
22 reviews on the Web.” (Clifford Decl., ¶ 9, Exhibit H, p. 2.) Since the Chronicle and New York
23 Times articles were published, Yelp.com use has continued to grow. Now, almost 13 million
24 people visit Yelp.com every month and almost 3.5 million reviews have been posted by its users.
25 (Stoppelman Decl., ¶ 9.)

26 **F. Defendant’s Post.**

27 On April 13, 2007, Johnson posted the message for which she has been sued on the
28 Yelp.com website (the Post). The Post contains a description of her experience with plaintiff,

1 stating, inter alia, that plaintiff applied her veneers without explaining other alternatives
2 available to her or the veneer application procedure, that her veneers did not fully cover her
3 discolored teeth, and that plaintiff had refused to fix the defects. (Johnson Decl., ¶ 9, Exhibit A.)
4 The Yelp.com website has a function that allows businesses to contact the posters who have
5 reviewed them, unless the poster requests that that function be blocked. (Clifford Decl., ¶ 5,
6 Exhibit D.) Johnson did not block that function as to her review, yet plaintiff never contacted
7 her before filing this lawsuit. (Johnson Decl., ¶ 10.)

8 **G. The Complaint.**

9 Plaintiff filed his Complaint on July 10, 2008, alleging a single cause of action for libel,
10 based upon the Post in a Yelp forum. (Complaint, ¶ 6.)

11
12 **II. PLAINTIFF'S CLAIM IS COVERED BY THE ANTI-SLAPP LAW.**

13 **A. The California Anti-SLAPP Law Was Enacted to Protect the Fundamental**
14 **Constitutional Rights of Petition and Speech and Is to Be Construed Broadly.**

15 SLAPPs have been defined as “civil lawsuits . . . aimed at preventing citizens from
16 exercising their political rights or punishing those who have done so.” (*Monterey Plaza Hotel v.*
17 *Hotel Employees & Restaurant Employees Local 483* (1999) 69 Cal.App.4th 1057, 1063.) In
18 1992, in response to the “disturbing increase” in meritless lawsuits brought “to chill the valid
19 exercise of the constitutional rights of freedom of speech and petition for the redress of
20 grievances,” the Legislature overwhelmingly enacted Code of Civil Procedure section 425.16,¹
21 California’s anti-SLAPP law. (Stats. 1992, ch. 726, § 2.) In 1997, the Legislature unanimously
22 amended the statute to expressly state that it “shall be construed broadly.” (Stats. 1997, ch. 271,
23 § 1; amending § 425.16(a).) Subdivision (a) of section 425.16 provides:

24 The Legislature finds and declares that there has been a disturbing increase in lawsuits
25 brought primarily to chill the valid exercise of the constitutional rights of freedom of
26 speech. The Legislature finds and declares that it is in the public interest to encourage
continued participation in matters of public significance, and this participation should not
be chilled through abuse of the judicial process. *To this end, this section shall be*
construed broadly.

27
28 ¹ Statutory section references herein are to this Code, unless otherwise indicated.

1 (Emphasis added.)

2 In 1999, the California Supreme Court underscored this requirement of broad
3 construction, directing that courts, “whenever possible, should interpret the First Amendment
4 and section 425.16 in a manner ‘favorable to the exercise of freedom of speech, not to its
5 curtailment.’” (*Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1119,
6 quoting *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1170, 1176.)

7 **1. Section 425.16 Sets Forth a Two-Step Analysis.**

8 Section 425.16 sets forth a two-step process for evaluating a special motion to strike.
9 First, the defendant must make a prima facie showing that the plaintiff’s cause of action arises
10 from an act of the defendant in furtherance of the right of petition and/or the right of free speech
11 in connection with a public issue. (§ 425.16, subd. (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th
12 82, 88; *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 894.) Once the defendant makes this
13 showing, the burden shifts to the plaintiff to establish a probability of prevailing on his claims,
14 by establishing that “the complaint is both legally sufficient and supported by a sufficient prima
15 facie showing of facts to sustain a favorable judgment.” (*Wilson v. Parker, Covert & Chidester*
16 (2003) 28 Cal.4th 811, 821 [citations and internal punctuation omitted].) If the plaintiff does not
17 meet this burden, the defendant’s motion must be granted. (*Varian Medical Systems, Inc. v.*
18 *Delfino* (2005) 35 Cal.4th 180, 192.)

19 **2. The Scope of Acts Covered by Section 425.16.**

20 Subdivision (e) of the anti-SLAPP statute provides four illustrations of the types of acts
21 covered by the statute:

22 (1) any written or oral statement or writing made before a legislative, executive, or
23 judicial proceeding, or any other official proceeding authorized by law; (2) any written or
24 oral statement or writing made in connection with an issue under consideration or review
25 by a legislative, executive, or judicial body, or any other official proceeding authorized by
26 law; (3) any written or oral statement or writing made in a place open to the public or a
27 public forum in connection with an issue of public interest; (4) or any other conduct in
28 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.

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1 **B. Plaintiff's Claim Is Subject to Subdivisions (e)(3) of the Anti-SLAPP Law,**
2 **Because It Arises from Statements Made in a Public Forum Regarding An**
3 **Issue of Public Interest.**

4 The Post, the subject of this lawsuit, is clearly a “writing made in a place open to the
5 public or a public forum in connection with . . . an issue of public interest. . . .”
6 (§ 425.16, subd. (e)(3).) Thus, plaintiff’s Complaint is subject to the anti-SLAPP law, pursuant
7 to subdivision (e)(3). Subdivision (e)(3)’s requirement that the defendant’s challenged activity
8 be “‘in connection with an issue of public interest’ . . . is to be ‘construed broadly’ so as to
9 encourage participation by all segments of our society in vigorous public debate related to issues
10 of public interest.” (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808.)

11 The Complaint alleges that “Defendants published a review of plaintiff’s work as a
12 dentist on a website known as Yelp.com . . .” (Complaint, 2:13-14.) Internet message boards
13 and discussion groups are public fora. (*ComputerXpress v. Jackson* (2001) 93 Cal.App.4th 993,
14 1006-07; *Wilbanks v. Wolk, supra*, 121 Cal.App.4th at pp. 895-97.)

15 Here, defendant’s statements regarding plaintiff’s dental services and the quality thereof,
16 in a forum on Yelp.com, involve an issue of public interest – the quality of dental care. This
17 constitutes consumer protection information that is protected by subdivision (e)(3). (See
18 *Wilbanks v. Wolk, supra*, 121 Cal.App.4th at pp. 898-900 [“[The] statements were a warning not
19 to use plaintiffs’ services. In the context of information ostensibly provided to aid consumers
20 choosing among brokers, the statements, therefore, were directly connected to an issue of public
21 concern,” even though the brokers’ business practices “do not affect a large number of people . .
22 .”].)

23 According to the National Women’s Health Information Center of the U.S. Department of
24 Health and Human Services, “Lacking healthy teeth and gums has an effect on how we look, but
25 it also affects the health of our bodies. . . . Having missing teeth can affect your mental health
26 since it can lead to feeling badly about yourself. . . .” (Clifford Decl., ¶ 11, Exhibit J, page 1.)
27 In its “Healthy People 2010” report, the Centers for Disease Control states:

28 Oral health is an essential and integral component of health throughout life. No one can
be truly healthy unless he or she is free from the burden of oral and craniofacial diseases
and conditions. Millions of people in the United States experience dental caries,

1 periodontal diseases, and cleft lip and cleft palate, resulting in needless pain and
2 suffering; difficulty in speaking, chewing and swallowing; increased costs of care; loss of
3 self-esteem; decreased economic productivity through lost work and school days; and, in
4 extreme cases, death. . . . [¶] Poor oral health and untreated oral diseases can have a
5 significant impact on quality of life.

6 (Clifford Decl., ¶ 12, Exhibit K, page 1 [2 of 38] [footnotes omitted].)

7 A recent Google search for the term “oral health” returned over 4 million results. A
8 similar Google search for the term “cosmetic dentistry” also returned more than 4 million results.
9 For contrast, a Google search for the term “United States Constitution” returned fewer than 3
10 million results. (Clifford Decl., ¶ 13, Exhibit L.)

11 A study originally published in the Journal of the American Dental Association,
12 summarized by the U.S. government’s National Health Information Center, found that “Patients
13 also view eyes and teeth as the most important aspects of facial attractiveness . . .” (Clifford
14 Decl., ¶ 14, Exhibit M.) The report also found that “. . . patients did not usually rank their pearly
15 whites as being the best that they could be. . . . They were least satisfied with the color of their
16 teeth, which they generally described as being too dark.” (*Id.*) On its website, in the section
17 relating to Oral Health Topics, the American Dental Association states that “Even the most
18 subtle change in your smile can make a dramatic difference in the way you look and feel about
19 yourself.” (Clifford Decl., ¶ 15, Exhibit N.) Veneers are one of the methods to improve the
20 appearance of teeth discussed in this section. (*Id.*)

21 The National Institutes of Health provides a broad range of online sources for people to
22 research cosmetic dentistry, including links to numerous studies and journal articles, the
23 Columbia University Medical Center, the Academy of General Dentistry, the Association of Oral
24 and Maxillofacial Surgeons, the American Academy of Periodontology, the American Dental
25 Association, the National Library of Medicine (operated by the NIH), the American Academy of
26 Pediatric Dentistry, and various other NIH websites. (Clifford Decl., ¶ 16, Exhibit O.) There are
27 also non-government websites that provide similar resources, such as
28 aboutcosmeticdentistry.com [“Your source for positive discussions, information and support –
for a beautiful smile”], which offer news regarding advances in cosmetic dentistry, personal
testimonials of people who have had cosmetic dental work performed, resources for information

1 regarding cosmetic dentistry, information on how to verify a dentist's credentials, as well as
2 message boards for consumers to exchange information and opinions regarding cosmetic
3 dentistry. (Clifford Decl., ¶ 17, Exhibit P.) Improving one's physical appearance (including
4 one's smile) is also a frequent topic on television. (Johnson Decl., ¶ 4.)

5 The Centers for Disease Control states that there are approximately 500 million visits to
6 dentists in the United States on an annual basis. (Clifford Decl., ¶ 18, Exhibit Q, page 4.)
7 According to the United States Census Bureau, there were over 118,000 dental establishments in
8 the United States in 2002, bringing in revenues of \$71.1 billion. (Clifford Decl., ¶ 19, Exhibit
9 R.) Also according to the Census Bureau, in 2007, the dental profession brought in revenues of
10 \$87 billion. (Clifford Decl., ¶ 20, Exhibit S.) In 1995, there were 26,000 licensed dentists in the
11 State of California, according to the State Employment Development Department. (Clifford
12 Decl., ¶ 21, Exhibit T.)

13 The California Legislature has expressed its intent that health professionals, including
14 dentists, should be supervised and regulated by the State to protect the public. "Protection of the
15 public shall be the highest priority for the Dental Board of California in exercising its licensing,
16 regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with
17 other interests sought to be promoted, the protection of the public shall be paramount."
18 (Business and Professions Code § 1601.2.) The State regulatory boards, including the Dental
19 Board, have been

20 established for the purpose of ensuring that those private businesses and professions
21 deemed to engage in activities which have the potential impact upon the public health,
22 safety and welfare are adequately regulated in order to protect the people of California.
23 [¶] To this end, they establish minimum qualifications and levels of competency and
24 license persons desiring to engage in the occupations they regulate upon determining that
such persons possess the requisite skills and qualifications necessary to provide safe and
effective services to the public. . . . They provide a means for redress of grievances by
investigating allegations of unprofessional conduct, incompetence, fraudulent action, or
unlawful activity brought to their attention by members of the public. . . .

25 (Business and Professions Code, § 101.6.) Thus, the Legislature has made clear that the quality
26 of care provided by dentists is of serious concern to Californians.

27 The American Dental Association's top tip for finding a dentist is to "Ask family, friends
28 or co-workers for recommendations." (Clifford Decl., ¶ 22, Exhibit U, page 2.) The Academy

1 of General Dentistry also advises people to “ask for recommendations. Family, friends,
2 neighbors or co-workers can be excellent sources, and can refer you to a dentist they feel
3 comfortable visiting.” (Clifford Decl., ¶ 23, Exhibit V.) WebMD gives the same advice.
4 (Clifford Decl., ¶ 24, Exhibit W.) In this regard, Yelp indicates that there are 1556 forum
5 listings on its site for dentists in San Francisco alone. (Clifford Decl., ¶ 25, Exhibit X.) Plaintiff
6 is one of the dentists listed on the Yelp website and there are seven reviews of him, including the
7 one posted by Johnson. (Clifford Decl., ¶ 26, Exhibit Y.)

8 Thus, it is clear that dental care, including the quality thereof and patients’ informed
9 access to it, is an issue of widespread public interest. Because of the psychological effects
10 related to bad teeth, this includes methods to improve teeth’s appearance by cosmetic dentistry.
11 Certainly, Johnson’s Post about her experience with a doctor who boasts of being the best dentist
12 in the entire Bay Area, in a discussion about the quality of his services, is a statement in
13 connection with an issue of public interest.

14 Statements of no greater public significance have been held to be covered by section
15 425.16. (*Seelig v. Infinity Broadcasting Corporation, supra*, 97 Cal.App.4th at pp. 807-8 [radio
16 “shock jock” commentary about plaintiff’s decision to appear on *Who Wants to Marry a*
17 *Multimillionaire?* television show was made in connection with an issue of public interest and is
18 covered under § 425.16]; *Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129
19 Cal.App.4th 1050, 1062-64 [interchange on radio call-in talk show regarding whether caller was
20 too old to participate in the show involves a matter of public interest and is covered by §
21 425.16]; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1420, 406 [statement that
22 someone had entered the tenants’ locked garage and turned the dial of their water heater off was
23 protected under section 425.16 as conduct that “arguably involved public issues of nuisance and
24 safety,” even though it directly affected only two tenants]; see also *Dora v. Frontline Video*
25 (1993) 15 Cal.App.4th 536, 540-44 [documentary about Malibu surfers of the 1950’s involved a
26 matter of public interest (not a § 425.16 case)].) Therefore, defendant’s statements are covered
27 under subdivision (e)(3) of the anti-SLAPP law.

1 **III. PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON HIS**
2 **CLAIM BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS.**

3 Since defendant has shown that plaintiff's Complaint arises from defendant's speech
4 activity protected under section 425.16, the burden shifts to plaintiff to establish a probability of
5 prevailing on his claim against her, by establishing that "the complaint is both legally sufficient
6 and supported by a sufficient prima facie showing of facts to sustain a favorable judgment."
7 (*Wilson v. Parker, Covert & Chidester, supra*, 28 Cal.4th at p. 821.) Plaintiff must meet this
8 burden with "competent, admissible evidence." (*Ludwig v. Superior Court* (1995) 37
9 Cal.App.4th 8, 15-16, 21 fn.16, 25.)

10 Plaintiff's Complaint contains a single cause of action for libel. However, it is clearly
11 without merit. Pursuant to Section 340, subdivision (c), an action for libel must be brought
12 within one year of the publication of the defamatory statement. (*McGuinness v. Motor Trend*
13 *Magazine* (1982) 129 Cal.App.3d 59, 61.) Here, the Post at issue was published on April 13,
14 2007. (Johnson Decl., ¶ 9, Exhibit A.) The Complaint in this action was filed on July 10, 2008,
15 more than one year after the allegedly libelous statement was published. Thus, plaintiff's claim
16 is barred by the statute of limitations. Because plaintiff will not be able to meet his burden,
17 Johnson's special motion to strike must be granted.

18 **CONCLUSION.**

19 Deborah Johnson's Post constitutes speech that is protected under the anti-SLAPP law.
20 Further, plaintiff cannot establish a probability of prevailing on his libel claim because it is
21 barred by the statute of limitations. Therefore, Johnson's anti-SLAPP motion must be granted
22 and the Complaint must be dismissed with prejudice. Defendant also requests that the Court find
23 that she is entitled to an award of attorneys' fees and costs pursuant to section 425.16,
24 subdivision (c), in an amount to be established by subsequent motion.

25 DATED: August 22, 2008

26 
27 MARK GOLDOWITZ
28 CALIFORNIA ANTI-SLAPP PROJECT
Special Counsel for Defendant
DEBORAH J. JOHNSON