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FILED

MAR 18 2009

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

YVONNE WONG,

Plaintiff,

vs.

TAI JING; JIA MA; YELP.COM and DOES 1
through 20, inclusive,

Defendants.

Case No. 1-08-CV-129971

ORDER RE: Defendants' Special Motion
to Strike the Complaint (Code Civ. Proc. §
425.16)

Defendants' Special Motion to Strike Plaintiff's Complaint pursuant to Code of Civil Procedure section 425.16 (the "anti-SLAPP" statute) came on regularly for hearing before the Honorable William J. Elfving on March 17, 2009, at 9:00 a.m. in Department 2. The matter having been submitted, the Court orders as follows:

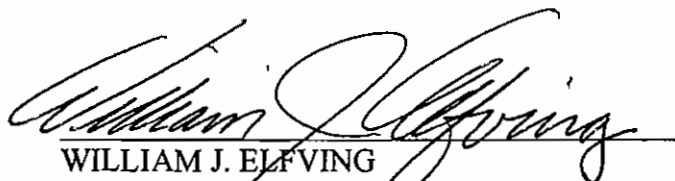
Defendants' Motion is DENIED. "Only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even-minimal merit – is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) Defendants have shown that Plaintiff's claims arise from protected speech because each cause of action is based on their negative online review of her dental services, which constitutes a "writing made in a place open to the public or a public forum in connection with an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(3); Clifford Decl., Exs. A

1 through EE.) The burden shifts to Plaintiff to establish a probability that she will prevail on her
2 claims. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.) This burden is similar to the standard
3 used in determining a motion for summary judgment. (*Slauson Partnership v. Ochoa* (2003) 112
4 Cal.App.4th 1005, 1020.) Plaintiff WONG has shown a probability of success on the merits by
5 stating and substantiating legally sufficient claims for libel, intentional infliction of emotional
6 distress, and negligent infliction of emotional distress. (Eisenga Decl., ¶¶3-4; Wong Decl. ¶¶10-
7 13, 18 and Ex. A.)

8 With respect to Defendant MA, Defendants have attempted to controvert Plaintiff's showing
9 by arguing that JING acted alone, without MA's knowledge or consent. Both Defendants have
10 submitted declarations stating that JING alone wrote and posted the allegedly libelous
11 statements, without MA's knowledge or participation. (Ma Decl., ¶2; Jing Decl., ¶2.) This
12 argument and evidence was submitted for the first time in connection with Defendants' Reply.
13 As stated previously, anti-SLAPP motions are evaluated using summary judgment standards.
14 Summary judgment "may be denied in the discretion of the court, where the only proof of a
15 material fact offered in support of the summary judgment is an affidavit or declaration made by
16 an individual who was the sole witness to that fact; . . ." (Cal. Code Civ. Proc., § 437c, subd.
17 (e).) Here, the only proof of Defendant MA's non-liability is her own declaration and that of her
18 husband. Plaintiff has not had the benefit of normal discovery on this subject and could not
19 reasonably have requested it earlier because the issue of MA's liability was not raised by the
20 moving papers. The Court therefore declines to grant the motion.

21 Plaintiff's Objections to Defendants' Evidence are OVERRULED in their entirety. The
22 Court's rulings on Defendants' Evidentiary Objections are as set forth on the Rulings on
23 Defendants' Evidentiary Objections, filed concurrently herewith.

24 DATED: 3/18/09

25
26 
27 WILLIAM J. ELFVING
28 Judge of the Superior Court

1 Mark Goldowitz, No. 96418
2 Paul Clifford, No. 119015
3 CALIFORNIA ANTI-SLAPP PROJECT
4 2903 Sacramento Street
5 Berkeley, California 94702
6 Phone: (510) 486-9123 x301
7 Fax: (510) 486-9708
8 Email: mg@casp.net

9 Special Counsel for Defendants
10 TAI JING, JIA MA, and YELP! INC.
11 (sued herein as YELP.COM)

FILED

MAR 18 2009

DAVID H. YAMASAKI
Chief Deputy, Santa Clara
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SANTA CLARA
14 UNLIMITED JURISDICTION

15 YVONNE WONG,
16 Plaintiff,

17 vs.

18 TAI JING, JIA MA, YELP.COM, and
19 DOES 1 through 20, inclusive,
20 Defendants.

Case No. 1-08-CV-129971

WJW
(PROPOSED) RULINGS ON DEFENDANTS'
EVIDENTIARY OBJECTIONS TO
DECLARATIONS OF YVONNE WONG,
MICHAEL CHOI, STEFAN WIN-WONG,
BERNARD EISENGA, AND MARC TERBEEK
IN SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' SPECIAL MOTION TO
STRIKE

Complaint Filed: December 11, 2008
Date: March 17, 2009 BY FAX
Time: 9:00 a.m.
Department: 5-2 William T. Effving
Judge: *WJW* Hon. Mary Jo Levinger
*A C.C.P. § 170.6 challenge
has been filed as to Judge
Levinger

FILED BY FAX

CM

(PROPOSED) RULINGS ON DEFENDANTS' EVIDENTIARY OBJECTIONS

The Court hereby rules as follows on defendant's evidentiary objections to the declarations of Yvonne Wong, Michael Choi, Stefan Win-Wong, Bernard Eisenga, and Marc TerBeek:

A. DECLARATION OF YVONNE WONG.

Sustained Overruled

- | | | | |
|----|---|-------------------------------------|-------------------------------------|
| 1. | Objection to paragraph 4, lines 15-16.
<u>Lack of Foundation.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. | Objection to paragraph 5, line 19.
<u>Lack of Foundation.</u>
<u>Irrelevant.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. | Objection to paragraph 5, lines 19-20.
<u>Lack of Foundation.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. | Objection to paragraph 5, lines 20-21.
<u>Lack of Foundation.</u>
<u>Irrelevant.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. | Objection to paragraph 5, lines 21-23:
<u>Irrelevant.</u>
<u>Inadmissible Secondary Evidence.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| | Exhibit 3:
<u>Inadmissible Hearsay.</u>
<u>Irrelevant.</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. | Objection to paragraph 6, lines 24-25.
<u>Lack of Foundation.</u>
Whether N2/O2 is safe: <u>Irrelevant.</u>
Whether there is a controversy regarding the use of
N2/O2: <u>Irrelevant.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. | Objection to paragraph 6, page 2, line 25-page 3, line 5:
<u>Irrelevant.</u>
<u>Inadmissible Secondary Evidence.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| | Exhibit 4:
<u>Inadmissible Hearsay.</u>
<u>Irrelevant.</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. | Objection to paragraph 13, lines 6-7.
<u>Lack of Foundation.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. | Objection to paragraph 15, lines 13-15.
<u>Lack of Foundation.</u>
<u>Irrelevant.</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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- 10. Objection to paragraph 16, lines 20-21.
Lack of Foundation.
- 11. Objection to paragraph 17, page 4, line 22-page 5, line 2.
Lack of Foundation.
Irrelevant.
- 12. Objection to paragraph 18, lines 5-7.
Lack of Foundation.
- 13. Objection to paragraph 19.
Lack of Foundation.
- 14. Objection to paragraph 20, lines 17-22.
Irrelevant.
- 15. Objection to paragraph 21, lines 23-25:
Irrelevant.
Inadmissible Secondary Evidence.
- Exhibit 7:
Inadmissible Hearsay.
Irrelevant.

<u>Sustained</u>	<u>Overruled</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

B. DECLARATION OF MICHAEL CHOI.

- 16. Objection to entire declaration.
Irrelevant.
- 17. Objection to paragraph 2, lines 21-25.
Inadmissible Hearsay.
Irrelevant.

<u>Sustained</u>	<u>Overruled</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

C. DECLARATION OF STEFAN WIN-WONG.

- 18. Objection to entire declaration.
Irrelevant.
- 19. Objection to paragraph 2.
Lack of Foundation.
Inadmissible Hearsay.
Inadmissible Secondary Evidence.
Irrelevant.
- 20. Objection to paragraph 3.
Lack of Foundation.
Inadmissible Hearsay.
Inadmissible Secondary Evidence.
Irrelevant.

<u>Sustained</u>	<u>Overruled</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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		<u>Sustained</u>	<u>Overruled</u>
21.	Objection to paragraph 4. <u>Inadmissible Hearsay.</u> <u>Irrelevant.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22.	Objection to paragraph 5, lines 8-10. <u>Inadmissible Hearsay.</u> <u>Irrelevant.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23.	Objection to paragraph 5, lines 10-13. <u>Lack of Foundation.</u> <u>Inadmissible Hearsay.</u> <u>Inadmissible Secondary Evidence.</u> <u>Irrelevant.</u>	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>
24.	Objection to paragraph 6. <u>Lack of Foundation.</u> <u>Inadmissible Hearsay.</u> <u>Irrelevant.</u>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>
25.	Objection to paragraph 7. <u>Inadmissible Hearsay.</u> <u>Irrelevant.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
26.	Objection to paragraph 8, and attached Exhibit. Statement about Mr. Choi: <u>Inadmissible Hearsay.</u> <u>Lack of Foundation.</u> Entire paragraph and Exhibit: <u>Irrelevant.</u>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

D. DECLARATION OF BERNARD EISENGA.

		<u>Sustained</u>	<u>Overruled</u>
27.	Objection to entire declaration. <u>Lack of Foundation.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
28.	Objection to paragraph 3, lines 1-3. <u>Lack of Foundation.</u> <u>Irrelevant.</u>	<input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
29.	Objection to paragraph 3, lines 3-4. <u>Irrelevant.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
30.	Objection to paragraph 3, lines 4-6. <u>Lack of Foundation.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
31.	Objection to paragraph 4, lines 11-14. <u>Irrelevant.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
32.	Objection to paragraph 5, lines 17-18. <u>Lack of Foundation.</u> <u>Irrelevant.</u>	<input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>

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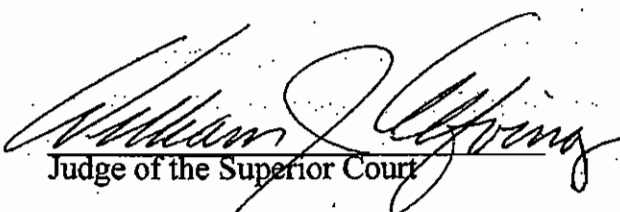
	<u>Sustained</u>	<u>Overruled</u>
33. Objection to paragraph 5, lines 18-24. <u>Lack of Foundation.</u> <u>Irrelevant.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

E. DECLARATION OF MARC TERBEEK.

	<u>Sustained</u>	<u>Overruled</u>
34. Objection to paragraph 7. <u>Lack of Foundation.</u> <u>Inadmissible Hearsay.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
35. Objection to paragraph 7, Exhibit 4. <u>Lack of Authentication.</u> <u>Inadmissible Hearsay.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
36. Objection to paragraph 8, lines 6-8. <u>Lack of Foundation.</u> <u>Inadmissible Hearsay.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
37. Objection to paragraph 9, lines 21-23. <u>Lack of Foundation.</u> <u>Inadmissible Hearsay.</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
38. Objection to paragraph 13. <u>Lack of Foundation.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

IT IS SO ORDERED.

DATED: 3/18, 2009


Judge of the Superior Court

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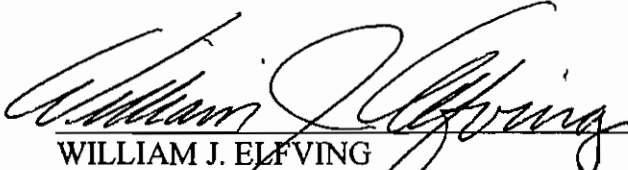
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1 through EE.) The burden shifts to Plaintiff to establish a probability that she will prevail on her
2 claims. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.) This burden is similar to the standard
3 used in determining a motion for summary judgment. (*Slauson Partnership v. Ochoa* (2003) 112
4 Cal.App.4th 1005, 1020.) Plaintiff WONG has shown a probability of success on the merits by
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6 distress, and negligent infliction of emotional distress. (Eisenga Decl., ¶¶3-4; Wong Decl. ¶¶10-
7 13, 18 and Ex. A.)

8 With respect to Defendant MA, Defendants have attempted to controvert Plaintiff's showing
9 by arguing that JING acted alone, without MA's knowledge or consent. Both Defendants have
10 submitted declarations stating that JING alone wrote and posted the allegedly libelous
11 statements, without MA's knowledge or participation. (Ma Decl., ¶2; Jing Decl., ¶2.) This
12 argument and evidence was submitted for the first time in connection with Defendants' Reply.
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14 Summary judgment "may be denied in the discretion of the court, where the only proof of a
15 material fact offered in support of the summary judgment is an affidavit or declaration made by
16 an individual who was the sole witness to that fact; . . ." (Cal. Code Civ. Proc., § 437c, subd.
17 (e).) Here, the only proof of Defendant MA's non-liability is her own declaration and that of her
18 husband. Plaintiff has not had the benefit of normal discovery on this subject and could not
19 reasonably have requested it earlier because the issue of MA's liability was not raised by the
20 moving papers. The Court therefore declines to grant the motion.

21 Plaintiff's Objections to Defendants' Evidence are OVERRULED in their entirety. The
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28 Judge of the Superior Court