No. 90284-4

SUPREME COURT OF THE STATE OF WASHINGTON

No. 69349-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ALASKA STRUCTURES, INC.

Appellant,

v.

CHARLES J. HEDLUND,

Respondent/Petitioner.

HEDLUND'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner Charles J, Hedlund was the Defendant in the trial court and the Respondent in the Court of Appeals.

II. CITATION TO COURT OF APPEALS DECISION

The Division One Court of Appeals issued a published opinion on 4/21/14, attached hereto as Appendix A, overturning the grant of a Motion to Strike under the Anti-SLAPP law RCW 4.24.525 on the basis that the cause of action, although based solely on a posting on an internet jobs forum, was a contract claim and thus not covered by the statute.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in ruling that a lawsuit that sought to penalize speech under a contract breach theory could not fall within the protection of the Anti-SLAPP statute?

2. Whether the Court of Appeals erred when it reviewed isolated sentences of a lengthy website jobs' forum posting rather than the entire post in context in deciding whether or not the post was covered by the Anti-SLAPP statute RCW 4.24.525?

3. Whether the Court of Appeals erred in applying outdated and atypical California cases regarding attempts to steal clients as basis for rejecting Anti-SLAPP law application to this case solely involving speech?

IV. STATEMENT OF THE CASE

Tentmaker Alaska Structures ("AKS") sued a former employee Charles J. Hedlund ("Hedlund") after he posted a lengthy comment on the internet jobs forum page for AKS on the website Indeed.com. Indeed.com

is an online resource for job-seekers, including job postings, salary averages, and a forum where employees and applicants can discuss a company's work environment. Slip Opinion ("Op.") at 2; CP 516. This site is meant to be a resource for job seekers to ask others about a company to aid them in deciding whether or not to work there. **Id.**

On 8/12/11—19 months after Hedlund left AKS—Hedlund posted comments on Indeed.com under the screen name "Can you Smell the B.S.?"claiming that specified posters pretending to be job seekers and interviewees were actually long-time employees of the company perpetrating fraud on the forum participants. CP 513-567, 792-832. Hedlund responded to posts by "Jeff Hooper" (CP 808) and "Jason Richards" (CP 809) who had posted glowing reports of their alleged recent interview experiences at AKS and expressing "love" and admiration for AKS CEO/President Richard Hotes. The "Hooper" and "Richards" posters were responding to other posts by job applicants expressing concerns about the unprofessional and hostile antics of Hotes and others, the presence of surveillance cameras throughout the office and a creepy feeling of being watched and treated like a subject in a psychological experiment. CP 129-156, 289-305, 808-832. Hooper sought to justify the surveillance cameras mentioned in many of the previous posts by claiming: "If you work in military contracting proper security is a must,

and usually a contractual requirement. So I fully understand the need for the security." CP 808. These posts stood out in direct contrast to numerous posts by candidates more than seven pages in length reporting abusive interview tactics and reports of alcohol being poured over an employee while he was working, forcing employees to stand on streets and sing Mary Had a Little Lamb to humiliate themselves, and other abusive and disturbing practices. CP 129-156, 289-305, 808-832. Hedlund, believing the Hooper and Richards posts to be by employees masquerading as job seekers to mislead the public, created a screen name "Can you Smell the B.S.?" and posted a response that began "Wow. Is anyone else struck by the transparency of the previous 2 shill comments? They each reek of employees of Alaska Structures trying to save face for the company and keep people filling into the group interviews ..." CP 810, 516, 793-795. Hedlund accused the two posters of being AKS employees seeking to mislead job applicants. CP 810-811. He addressed line by line some of the comments the two posters had made. His post was broken in to two with the first posting at 4:30 p.m. due to its length and appears as if it was two posts, not simply one continuing response. CP 810-813. The second part of Hedlund's post posted at 4:51 p.m.. CP 812-813. The part two contains the section of the response regarding the "proper security" comment initiated by Hooper. CP 812. Hedlund, Hooper and Richards exchanged

posts where Hedlund accused the posters of being employees and questioned the accuracy of their posts and discussed work place abuses and mistreatment of employees and applicants. CP 813-14, 816, 820-24, 832. Another poster calling himself "Jackson Five" posing as a job seeker began attacking Hedlund and other critical posters and denied being an employee when accused. CP 829. He subsequently admitted he was in fact an employee. CP 19, 829-31, 19 (Hedlund response thanking him for being honest).

Other posters also began questioning whether AKS employees were masquerading as job seekers, and another suggested AKS was a cult. CP 817-18. Another poster posted saying "I want to thank everyone on this forum who posted their experiences and concerns . . the last thing we need are companies ran by egomaniacs like this taking advantage of people for their own sick pleasure!" and suggesting AKS and Hotes be investigated by the State Attorney General. CP 831. Another poster "Jupiter" who had applied for a reception position stated "I sure have enjoyed reading about the wacky interviews, and am sorry for those people who actually worked at that loony bin. **Many, many thanks to those who posted and warned everyone away!**" CP 824 (emphasis added).

On 8/16/11 a poster "AKS is ridiculous" commented on Hedlund's posts that questioned the legitimacy of the Hooper and Richards posts and

complained that AKS had had Hedlund's comments quickly removed. CP 825. The poster stated: "any posts that reveal them to be the tricky conniving dishonest people they really are get removed as quick as can to help perpetuate the idea that this is just disgruntled employees complaining instead of the truth..." CP 825-826. Hooper continued to post disputing that he worked for AKS. CP 826. Hedlund posted again noting the censorship that occurs on the site where AKS can have comments almost immediately taken down as it did his posts and challenging Hooper's claim he was not an AKS employee. CP 828-829.

AKS has now focused this lawsuit on just a few sentences of Hedlund's post taking them out of context. In the portion of the post that responded to the Hooper comment that "proper security is a must" Hedlund stated:

> "Proper security is a must"
>
> I doubt if the military gives a rat's behind if any of our enemies get their hands on any top secret tent designs. "Oh No! Terrorists might have as good billeting accommodations as our troops!"
>
> Furthermore, the security measures at AKS are all consumer-grade off the shelf fare installed by the former CIO, who had no prior security experience. AKS was broken into in 2010 and much of the server and several work stations were stolen, containing vast amounts of company information. They didn't have email for a few weeks. The cheap cameras provided no clues as to the

> identity of the thieves. That is why they now have the high-tech security precaution of human guards.

CP 812. The post was part of the longer post and chain of exchanges between Hedlund and the current employees of AKS masquerading as job seekers seeking to mislead other forum members and discredit the reports of workplace abuses. CP 513-567, 655, 792-832.

Hedlund left AKS in January 2010. CP 513-514, 792. Two months after he left AKS was burglarized, and the burglaries were widely publicized on television news and in news papers. CP 274-438. Public records about the burglaries reveal that the Chief Information Officer (CIO) Dylan Schneider, who had no security experience (CP 436-438), oversaw the installation of a security system in the week **following** the first burglary and before the second burglary, but it was not activated on the night of the second burglary as it was "faulty". CP 334-347. Public records revealed that Schneider secretly installed hidden cameras in the server room that captured pictures of the thieves during the second burglary on 3/7/10. CP 343. The image quality of these secret cameras was described by police in their report as of "good quality" CP 345. Footage from the security cameras showing where the cameras were located and the quality of the footage as well as details of AKS's security systems were made part of the police investigation and public records. CP 274-

438. Division One acknowledged that Hedlund's "comments were based on public information contained in police reports and newspapers." Op. at 2. Further, Hedlund in his declaration has sworn under penalty of perjury that "everything I learned about the burglaries and the subsequent security efforts was learned after I had left my employment with AKS." CP 514. And "Everything I said about the security system and measures also referred to measures taken after the burglaries and were details I had learned after I had left my employment at AKS." CP 515; **see also** CP 797-799, 801, 803-804, 806. AKS did not and cannot refute these statements.

Hedlund posted his comments more than a year and a half after he left AKS reporting on events occurring after he left the company. AKS nonetheless claimed the website post breached a "confidentiality agreement" Hedlund had allegedly signed during his first days on the job as a sales coordinator agreeing not to disclose trade secrets learned while an employee. On 8/18/11, six days after the post, AKS filed a lawsuit against Hedlund as a John Doe. CP 1-3. On 4/16/12, AKS filed an amended complaint naming Hedlund as the Defendant. CP 267-273. It belatedly focused on the security portion of the posts.. See CP 792, 800. It falsely alleged that the posting about the burglaries and security system violated a confidentiality agreement. CP 267-273. AKS knows that

Hedlund had left his employment with AKS several weeks before the burglaries and that any information about the burglaries or succeeding security measures were facts (1) not confidential as they were the subject of public records and (2) learned by Hedlund long after Hedlund had ceased to be an employee and thus could not be covered by a confidentiality agreement.

AKS makes a practice of suing its former employees to silence and intimidate them. A few months before it sued Hedlund, AKS sued its former filmmaker Chris Machowski for posting a portion of a video on Vimeo.com. CP 518-519, 523-551. Just days before it filed its John Doe lawsuit against Hedlund it sued its former CIO Schneider and his wife over comments Schneider posted on Indeed.com criticizing AKS's President and owner Hotes. CP 519-520, 553-567. Schneider and his wife were sued under the guise of a confidentiality agreement for stating that Hotes (a) does not know how to drive from Kirkland to Seattle, (b) enjoys inflicting abuse on his employees, and (c) pushes employees to go to unsafe locations to perform charitable work while the president will go to such places himself due to claimed illnesses." CP 564-565. AKS sued Schneider for disclosing information to his wife and sued his wife for disclosing details she knew of her husband's work place environment. CP 564-566.

In addition to AKS being a large employer in the area and a military contractor, Richard Hotes, President of AKS, is a public figure. He has been written about in Vanity Fair, the Wall Street Journal, an article by actor Sean Penn on a popular blog, to name but a few. CP 718--791. Hotes is a board member of a charity run by Sean Penn and his bio promoting himself and his company are displayed on the site's website. CP 778-780. He promotes his products and services as the best in the world and AKS as the biggest business of its kind in the world. CP 779. Hotes regularly socializes with movie stars, business moguls, politicians and Hollywood elite, and courts positions that place him in the limelight. CP 718-791

After being warned and refusing to dismiss the suit, Hedlund brought an Anti-SLAPP motion which was granted by then King County Superior Court Judge Mary Yu. AKS appealed to Division One Court of Appeals, which reversed finding that breach of contract claims could not be covered by the Anti-SLAPP statute, although noting the likelihood that AKS' contract claim would fail and that Hedlund could likely recover his attorney fees and costs via the contract. Op. at 10.

V. ARGUMENT

Review should be granted pursuant to RAP 13.4(b)(2)-(4). The decision is in conflict with another decision of the Court of Appeals. RAP 13.4(b)(2). The decision addresses a significant question of law under the

Constitution of the State of Washington or of the United States. RAP 13.4(b)(3). The petition further involves an issue of substantial public inters that should be determined by the Supreme Court. RAP 13.4(b)(4).

Division One recognized that the Anti-SLAPP statute RCW 4.24.525 "shall be applied and construed liberally . . . " LAWS of 2010, ch. 118, § 3; Op. at 4. The Act requires a court to engage in a two-step process. First, to determine if the claims fall within the Act, and second, whether the claimant can prove a likelihood of prevailing. Division One has misinterpreted the purpose and reach of the Anti-SLAPP law, finding it to provide "immunity from suit" (Op. at 4) rather than its actual relief, which is merely an early procedural intervention so a court can examine the merits of a claim before a defendant can be bankrupted by defense of meritless lawsuit.

This case was one of several Anti-SLAPP cases heard by Division One on the same day; decisions which contradict and conflict with one another and which ignore the clear language of the Anti-SLAPP Act. The other Anti-SLAPP cases which this Court will review or has been asked to review do not and cannot address the precise wrong and harm at issue in this case, and so this case, too, must be accepted for this Court to clearly instruct the lower Court's on the claims covered by this new and important

law avoiding the need for numerous other cases to come before this Court in the future for correction.

The Act applies to "any claim, however characterized, that is based on" either "any written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern" or "[a]ny lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern..." RCW 4.24.525(2) and (2)(d) and (e).

Hedlund made a written statement on a website jobs' forum, which all parties acknowledge, as they must, was a written statement in a public forum.[1] Op. at 3. Hedlund's post was further "conduct in furtherance of" the exercise of the constitutional right of free speech." Rather than focus, as it should, on whether the statement was on an issue of public concern and whether the "other conduct" was "lawful", Division One instead focused on the label Plaintiff assigned to the claim rather than the actual conduct at issue, thus narrowly construing the Act and ignoring its clear language.

Division One erroneously held that the Act applies only to a claim "based on an **oral** statement or '[a]ny other lawful conduct in furtherance

[1] Web sites accessible to the public ... are 'public forums' for purposes of the anti-SLAPP statute.'" **Nygard, Inc. v. Uusi-Kerttula**, 159 Cal.App.4th 1027, 1039, 72 Cal.Rptr.3d 210 (2008), *citing* **Barrett v. Rosenthal,** 40 Cal.4th 33, 41, fn. 4, 51 Cal.Rptr.3d 55, 146 P.3d 510 (2006). Indeed.com is an open forum and can be accessed by anyone.

of the exercise of the constitutional right of free speech in connection with an issue of public concern . . . " Op. at 4 (emphasis added). It held that the Act could not apply to this case because it involved an allegation of a breach of contract and that "[t]he gravamen of the complaint is not whether there was a violation of Hedlund's free speech rights, but rather, whether the parties' contract was violated." Op. at 1.

Division One stated "AKS argues that the action involves a breach of contract claim and not free speech. We agree. ... the legislature did not grant a party immunity from liability for the consequences of speech that is otherwise unlawful or unprotected." Op. at 5.

Division One was required to first assess whether or not the claim "however characterized" was "based on" any "written statement ... submitted[] in a place open to the public or a public forum in connection with an issue of public concern" or "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern..."

Hedlund was sued for posting a comment on an internet Jobs forum – a written statement in a public forum. AKS alleged this posting violated a confidentiality agreement. The posting is not "unlawful" conduct unless the posting actually breached a confidentiality agreement – something

AKS had not proven (and cannot prove) and which would have required Division One to side step the first prong of the test.

Division One should have focused, as the parties did in their briefing, on whether the posting was on an issue of public concern, and Division One needed to view the entire post in context, and not isolated sentences taken out of context. Division One was provided with numerous cases from Washington and California, which has a similar Anti-SLAPP provision, showing that criticisms and website postings for the purposes of warning away the public from a particular product or business or professional were speech on matters of public concern Division One in another Anti-SLAPP case heard the same day and in an opinion issued the same day used the broader context approach in finding speech to be on a matter of public concern, yet here it looked just to the label of the claim.

In **Spratt v. Toft**, __ P.3d __, 2014 WL 1593133 (4/21/14), Division One found that statements by a former employer privately to a few individuals and in an anonymous letter to others that he had "fired" an employee met the test because the employer was a candidate for public office and was defending himself against the former employee's allegations that he was an unpleasant boss. **Id.** at *2-4. Division One found the statements by the former employer that he had fired the former employee fell within the "public concern" test looking at the context of the

speech because the employer was defending against allegations by the employee in the context of a political campaign. **Id.** at *4. Division One did not focus on the statement, out of context, and determine whether or not the allegation that the employer had fired the employee was itself a matter of public concern.

Here, Division One focused on the label AKS assigned to the claim and did not even get to the speech issue, and it further ignored the context of Hedlund's speech and that his right to free speech was not limited if the contract did not apply to the comments posted. It should have looked at the actual conduct—written speech in a public forum—and then afforded Hedlund the same broad interpretation it afforded in **Spratt** viewing the context and entirety of the speech to decide if the "public concern" test applied.

As California has artfully explained, courts "do not evaluate the first prong of the anti-SLAPP test solely through the lens of the plaintiff's cause of action." **Stewart v. Rolling Stone LLC**, 181 Cal. App. 4th 664, 679, 105 Cal. Rptr. 3d 98 (2010). The "critical consideration" is what the cause of action is "based on." **Navellier v. Sletten**, 29 Cal.4th 82, 88, 124 Cal.Rptr.2d 530, 52 P.3d 703 (Cal. 2009).

> [C]onduct alleged to constitute breach of contract may also come within constitutionally protected speech or petitioning,. The anti-SLAPP statute's definitional focus is not the form of

> the plaintiff's cause of action, but, rather the defendant's activity that gives rise to his or her asserted liability and whether that activity constitutes protected speech or petitioning

Nevellier, 29 Cal.4th at 92 .; **see also Nygard, Inc. v. Uusi-Kerttula**, 159 Cal. App. 4th 1027, 72 Cal.Rptr.3d 210 (Cal. App. Ct. 2008) (alleged breach by employee of confidentiality agreement for facts revealed about workplace and boss); **Hecimovich v. Encinal Sch. Parent Teacher Organization**, 137 Cal.Rptr.3d 455, 473-74, 203 Cal. App. 4th 450, 473-74 (Cal. App. Ct. 2012) (breach of contract and defamation claim) .

Division One was cited to numerous cases focusing on the context of speech and finding speech similar to Hedlund's to be on a matter of public concern under a variety of labels by Plaintiffs.[2] Op. at 7-8. It quoted the

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[2] **See e.g., Gilbert v. Sykes**, 147 Cal. App. 4th 13, 23-24, 53 Cal. Rptr.3d 752 (2007) (holding patient's website describing "nightmare" results from plaintiff plastic surgeon "contribute[d] to the public debate" about plastic surgery and so were statements on a matter of public interest and thus covered by California Anti-SLAPP statute); **Phoenix Trading, Inc. v. Kayser**, No. C10-0920JLR, 2011 WL 3158416 (W.D.Wash. July 25, 2011) (applying Washington Anti-SLAPP statute "public concern" test to statements of competitor about quality of toothbrushes used in New York prisons); **aff'd**, 732 F.3d 936 (9th Cir. 2013); **Terry v. Davis Community Church**, 131 Cal. App. 4th 1534, 1547 (2005) (California Anti-SLAPP statute applied to church's report about plaintiff's conduct with a minor circulated to 100 individuals; holding "whether ... an adult who interacts with minors in a church youth program has engaged in an inappropriate relationship with any of the minors is clearly a matter of public interest."); **Traditional Cat Ass'n, Inc. v. Gilbreath**, 118 Cal. App. 4th 392, 397 (2004) (California Anti-SLAPP statute applied to statements on one cat breeder's website critical of another breeder with court holding statements to be of public interest although website and subject likely only of interest to cat breeding community); **Higher Balance, LLC v. Quantum Future Group, Inc.**, No. 08-233-HA, 37 Media L. Rep. 1181, 2008 WL 5281487 at *4-5 (D. Or. Dec. 18, 2008) (meditation institute sued over anonymous posting in an online forum re: institute's products and criminal charges against co-founder and court applying Oregon Anti-SLAPP statute rejected argument that statements were "of interest only to a limited, definable portion of the public" and found statements to be in connection with an issue of public interest and covered by the statute); **Maekaeff v. Trump Univ., LLC**, 715 F.3d

Ninth Circuit holding that "[u]nder California law, statements wanting consumers of fraudulent or deceptive business practices constitute a topic of widespread public interest, so long as they are provided in the context of information helpful to consumers." Op. at 7; quoting **Maekeff v. Trump University LLC**, 715 F.3d 254, 262 (9th Cir. 2013). Division One nonetheless held that it was "not inclined to extend that same protection to someone who signed a confidential agreement potentially limiting his right to speak on certain issues." Op. at 7. Again, Division One let the

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254, 261-263 (9th Cir. 2013) (finding seminar attendee's statements about seminar provider to be on an issue of public interest and covered by California Anti-SLAPP statute because statements were made to warn consumers about provider's alleged deceptive practices and to warn them not to use seminar provider's services); **Sedgwick Claims Mgmt Servs., Inc. v. Delsman**, No. C 09–1468 SBA, 2009 WL 2157573 at *8 (N.D. Cal. July 17, 2009); **aff'd** 422 Fed.Appx. 651 (9th Cir. 2011) (applying California Anti-SLAPP stature to insured's complaints on his website and in postcards to other potential customer's about insurance claims service provider holding statements to be on a matter of public interest; communications "purpose is to enlighten potential consumers of Sedgwick's allegedly questionable claims practices and to avoid using the company's services"); **GetFugu, Inc. v. Patton Boggs LLP**, 220 Cal.App.4th 141, 151, 162 Cal.Rptr.3d 831 (2013) (California Anti-SLAPP statute applied to statements made about an investment company because there is a public concern in the markets "to help secure futures, pay for homes, and send children to college," which in turn "supports the common interest of all Americans in a growing economy that produces jobs, improves our standard of living, and protects the value of our savings."); **Nygard, Inc.**, 159 Cal. App. 4th at 1042 ; **Wilbanks v. Wolk**, 121 Cal. App. 4th 883, 899 (2004) (holding that California Anti-SLAPP law applied to statements about viatical settlement brokers); **Steaks Unlimited, Inc. v. Deaner**, 623 F.2d 264, 280 (3d Cir. 1980); **see also Carver v. Bonds**, 135 Cal. App. 4th 328, 344 (2005) (applying anti-SLAPP statute to bar claims by podiatrist where newspaper provided warning and "other information to assist patients in choosing doctors"); **New York Studio, Inc. v. Better Business Bureau of Alaska, Or. & Wash.**, 39 Media L. Rep. 2297, 2011 WL 2414452 (W.D.Wash. 6/13/11) (barring claims under Washington's anti-SLAPP statute arising from press release posted to website cautioning consumers about talent agent practices related to children); **AR Pillow Inc. v. Maxwell Payton LLC**, 2012 WL 6024765; 41 Media L. Rep. 1042 (W.D. Wash. 12/4/12). **Paradise Hills Assoc. v. Procel**, 235 Cal. App. 3d 1528, 1544, 1 Cal. Rptr. 2d 514 (1991); **Davis v. Avvo, Inc**, 2012 WL 1067640 at * 3; 40 Media L. Rep. 2372 .

label of the claim control, not the subject matter and context of the speech. Division One was wrong. Speech should be examined in context, as the court did in **Spratt**, when deciding whether the speech is on a matter of public concern. Courts in Washington and elsewhere (see fn. 2, for example) have deemed statements to be on a matter of public concern looking at the broader context and refusing to allow the focus to be on whether precise words taken out of context were of concern to the public. The Division One Court of Appeals, in **Davis v. Cox**, __ P.3d __, 2014 WL 1357260 (Wn. Ct. App. 4/7/14) held that actions related to a proposed boycott of goods at a local Co-op fell within the Anti-SLAPP statute examining the "other lawful conduct" prong broadly as the Act intended and the speech activities in context.. It held that actions related to preparing a material for a court action did not fall within the "petition" clause interpreting the provision narrowly in **Dillon v. Seattle Deposition Reporters**, 316 P.3d 1119 (Wn. App. Ct. 2014), **cert granted.** It rejected application of the Anti-SLAPP Act to a case brought under the Public Record Act injunction provision finding that because a statute authorized the cause of action the Anti-SLAPP law can never apply, ignoring the use to which the records requested were to be used and whether or not the request was an "act in furtherance of" protected activity. **Seattle v. Egan**, 317 P.3d 568 (2014)..

California recently applied its Anti-SLAPP law to posts by a mother on a social networking site that her daughter's ex-boyfriend was a "deadbeat dad", "may be taking steroids", had "picked up street walkers" and homeless people and that people should be "scared of him" finding the statements on a matter of public concern because the boyfriend ran a forensics business and that the comments were akin to consumer comments. **Chaker v. Mateo**, 209 Cal. App. 4th 1138 (2012). California also deemed statements about a volunteer coach removed from coaching a volunteer youth sports team to be on a matter of public concern, although the comments were circulated to just a few parents and dealt with coach's removal for trying to sit out a player for bad behavior, finding the speech was in connection with the broader public issue of the safety of youth sports. **Hecimovich v. Encinal Sch. Parent Teacher Org.**, 203 Cal..App.4th 450, 137 Cal.Rptr.3d 1534 (2012).

In **Doe v. Gangland Productions, Inc.**, 730 F.3d 946 (9th Cir. 2013), the Ninth Circuit overturned a trial court's refusal to apply the California Anti-SLAPP law to a breach of agreement claim by a gang member stemming from filmmakers alleged breach of agreement not to reveal the identity of the gang member in the film. The trial court had held that the gang member's identity was not a matter of public concern and further found that the newsgathering alleged – disclosing the identity

in violation of the agreement, was not lawful conduct and so could not be covered by the Anti-SLAPP law. The Ninth Circuit explained that this combined the first and second prongs of the Act – looking to whether the claim could be shown as part of the determination of whether the conduct was protected. It further found the public concern test had to be examined broadly and in the context of the full film, not focusing on whether the identity disclosure was itself the public concern. **Id.**

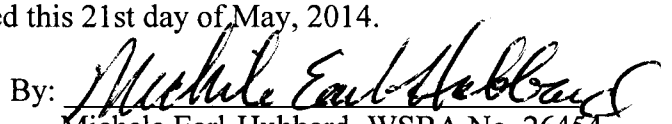
In **Nygard,** California dismissed a breach of confidentiality claim against an employee over statements she made about workplace conditions and her boss finding discussions of workplace conditions generally to be a matter of legitimate public concern. **Nygard, Inc.**, 159 Cal.App.4th at 1042 (emphasis in original). California has described an issue of public concern as "**any issue in which the public is interested**." **Nygard, Inc.**, 159 Cal.App.4th at 1042 (emphasis in original). "Courts have recognized the importance of the public's access to consumer information. ... Members of the public ... clearly have an interest in matters which affect their roles as consumers, and peaceful activities...which inform them about such matters are protected by the First Amendment." **Wilbanks v. Wolk**, 121 Cal.App.4th 883, 899 (2004) (holding California Anti-SLAPP law applied to statements about viatical settlement brokers)

Hedlund posted information about AKS to aid in consumer choice; to assist forum members in deciding where to apply for a job and where to invest their time and energy, and to point out fraud by company officials posing as applicants to post false and misleading information to mislead applicants. The choice of where to invest your career is as important as what brand of toothpaste to buy, what dentist to use or the many other subjects courts have held fell within statements of public concern under Anti-SLAPP laws. Division One here erred in narrowly construing the Act and viewing it through the lens of the Plaintiff's label of its cause of action. Its decision conflicts with its own decisions, deals with an issue of state and federal constitutional law, and erodes this new and important law[3] requiring Supreme Court review to correct the misstatements.

VI. CONCLUSION

The Court should accept review and reverse the decision of the Court of Appeals, reinstate the decision of the trial court, and award Hedlund his fees and costs incurred on appeal..

Respectfully submitted this 21st day of May, 2014.

By: 
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[3] See Bruce E.H. Johnson & Sarah K. Duran, **A View from the First Amendment Trenches: Washington State's New Protections for Public Discourse and Democracy**, 87 Wash. L. Rev. 495, 518 (2012)

VII. CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on May 21, 2014, I delivered a copy of the foregoing Corrected Brief of Respondent by email pursuant to an electronic service agreement among the parties with back up by U.S. Mail to the following:

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Dated this 21st day of May, 2014.

Michele Earl-Hubbard

APPENDIX A

Division One Opinion dated 4/21/14

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CASE #: 69349-2-I
Alaska Structures, Inc., Appellant v. Charles Hedlund, Respondent

King County, Cause No. 11-2-28441-7.SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Reversed and Remanded"

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure
c: The Honorable Mary Yu

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ALASKA STRUCTURES, INC., an Alaska corporation,	)	No. 69349-2-I
Appellant,	)	DIVISION ONE
v.	)	PUBLISHED OPINION
CHARLES J. HEDLUND,	)	
Respondent.	)	FILED: April 21, 2014

GROSSE, J.P.T.[1] — To succeed on a special motion to strike under Washington's anti-SLAPP statute,[2] the moving party must make an initial prima facie showing that the claimant's suit arises from an act in furtherance of his right of petition or free speech in connection with a matter of public concern. If the movant does not meet that threshold, then the anti-SLAPP motion is dismissed. Here, the plaintiff, Alaska Structures, Inc., brought an action against the defendant, Charles Hedlund, for violating a confidentiality agreement. The gravamen of the complaint is not whether there was a violation of Hedlund's free speech rights, but rather, whether the parties' contract was violated. Because this is a private contractual matter, the anti-SLAPP statute does not apply. Accordingly, we reverse the trial court and remand for further proceedings.

FACTS

From February 2007 to January 2010, Charles Hedlund worked as a sales coordinator at Alaska Structures, Inc. (AKS), a supplier of tents to the United States

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[1] Judge C. Kenneth Grosse was a member of the Court of Appeals at the time oral argument was heard on this matter. He is now serving as a judge pro tempore of the court pursuant to RCW 2.06.150.

[2] Washington Act Limiting Strategic Lawsuits Against Public Participation.

military. In August 2011, Hedlund made several postings regarding AKS on an Internet jobsite forum, Indeed.com. Those postings were removed from the web site at AKS's request. Indeed.com is a web site designed to be a resource for job seekers. It includes job postings, salary averages, and a forum where employees and applicants can discuss a company's work environment. The web site is designed to allow job seekers to ask others about a company to aid in making a decision whether or not to work there. Hedlund claimed he made his comments to describe an accurate picture of AKS to prospective employees, and because he suspected that other postings on the web site describing AKS were made by employees masquerading as job seekers. Hedlund characterized the various postings regarding AKS as a debate among the parties posting. AKS has focused on one particular posting as providing the basis for its suit of breach of confidentiality. Hedlund wrote:

> [T]he security measures at AKS are all consumer-grade off the shelf fare installed by the former CIO, who had no prior security experience. . . . The cheap cameras provided no clues as to the identity of the thieves. That is why they now have the high-tech security precaution of human guards.

Hedlund denied having any special knowledge of security measures. While Hedlund was employed there, Dylan Schneider, the chief information officer (CIO) of AKS, installed software and security cameras. AKS knew that Schneider did not have any prior experience in deploying security measures.

Hedlund posted his comment after he had left AKS and after the AKS headquarters had been broken into. His comments were based on public information contained in police reports and newspapers.

Based on this posting, AKS sued Hedlund for breach of a confidentiality agreement. Hedlund argued that he was sued as a result of his postings to a web site, which is a public forum, and moved to dismiss the claim under the anti-SLAPP statute.

The trial court found the anti-SLAPP statute applied and that AKS was unable to demonstrate that its action for violation of the confidentiality agreement had any merit. The court awarded Hedlund requested attorney fees and a $10,000 penalty. AKS appeals.

ANALYSIS

AKS argues that the trial court erred in determining that the contents of Hedlund's posting addressed issues of public concern. AKS further argues that even if this posting were of public concern, Hedlund violated the confidentially agreement he signed with AKS while in its employ.

In 2010, the Washington legislature expanded the protections embodied in RCW 4.24.525. In the preamble, the legislature stated the purpose of the new section:

> (a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;
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> (b) Such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as groundless or unconstitutional but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;
>
> (c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;
>
> (d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and
>
> (e) An expedited judicial review would avoid the potential for abuse in these cases.[3]

[3] LAWS OF 2010, ch. 118, § 1.

The act further provides that it "shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts."[4] The anti-SLAPP statute provides relief to a defendant in the nature of immunity from suit.[5]

Pursuant to the anti-SLAPP act, a party may bring a special motion to strike any claim based on an oral statement or "[a]ny other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition." RCW 4.24.525(2)(e). Here, Hedlund was required to prove by a preponderance of the evidence that AKS's claim is based on a statement made in connection with an issue of public concern. RCW 4.24.525(4)(b).

In deciding an anti-SLAPP motion, a court must follow a two-step process.[6] We review a court's interpretation and application of the anti-SLAPP statue de novo.[7] The first prong of the analysis requires a court to review the parties' pleadings, declarations, and other supporting documents to determine whether the gravamen of the underlying claim is based on protected activity. A defendant filing an anti-SLAPP motion to strike must make an initial prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's right of petition or free speech.[8] If the substance or gravamen of the complaint does not challenge the defendant's acts in furtherance of the

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[4] LAWS OF 2010, ch. 118, § 3; Akrie v. Grant, ___ Wn. App. ___, 315 P.3d 567, 571 (2013).
[5] Henne v. City of Yakima, 177 Wn. App. 583, 594-95, 313 P.3d 1188 (2013).
[6] Dillon v. Seattle Deposition Reporters, LLC, __ Wn. App.__, 316 P.3d 1119, 1132 (2014).
[7] City of Seattle v. Egan, __ Wn. App __, 317 P.3d 568, 569 (2014).
[8] RCW 4.24.525(4)(b); see also Dillon, 316 P.3d at 1133.

right of free speech or petition, the court does not consider whether the complaint alleges a cognizable wrong or whether the plaintiff can prove damages.[9] In other words, Hedlund is required to make a threshold showing that each of AKS's claims is based on protected activity. AKS contends that the trial court erred when it concluded that Hedlund's postings on Indeed.com fell within the protected activity of the anti-SLAPP statute. AKS argues that the action involves a breach of contract claim and not free speech. We agree.

Here, the trial court made the following findings:

> The Court further finds that the speech at issue is a written statement submitted in a public forum in connection with an issue of public concern.
>
> The Court further finds that the matter concerns lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

But, what constitutes public concern must be viewed in the context of this act. Under the act, the legislature is "concerned about lawsuits" that deter participation in matters of public concern.[10] It created the special motion in RCW 4.24.525 to "[s]trike a balance between the rights of persons to file lawsuits . . . and the rights of persons to participate in matters of public concern."[11] But the legislature did not grant a party immunity from liability for the consequences of speech that is otherwise unlawful or unprotected.

Washington's anti-SLAPP statute mirrors California's anti-SLAPP statute. Accordingly, California cases may be considered persuasive authority when interpreting

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[9] Dillon, 316 P.3d at 1139.
[10] LAWS OF 2010, ch. 118, § 1.
[11] LAWS OF 2010, ch. 118 § 1.

RCW 4.24.525.[12] California uses the term "public interest" while Washington uses "public concern." California courts have defined "public interest" as "any issue in which the public is interested."[13] As the district court noted in Stutzman v. Armstrong, "'[t]hose terms are inherently amorphous and thus do not lend themselves to a precise, all encompassing definition.'"[14] We are reminded of Justice Potter Stewart's famous definition of "pornography," "I know it when I see it" and we see no discernible difference in the two terms.[15]

In Cross v. Cooper, the California court noted that its courts adopted a framework of categories for determining whether a statement implicates an issue of public interest and falls within the protection of the anti-SLAPP statute:

> The first category comprises cases where the statement or activity precipitating the underlying cause of action was "a person or entity in the public eye." The second category comprises cases where the statement or activity precipitating the underlying cause of action "involved conduct that could affect large numbers of people beyond the direct participants." And the third category comprises cases where the statement or activity precipitating the claim involved "a topic of widespread, public interest."[16]

It is true that in applying those categories, several California cases have found that consumer information posted on web sites concern issues of public interest. See, e.g.,

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[12] Compare RCW 4.24.525 with Cal. Civ. Proc. Code § 425.16. See City of Longview v. Wallin, 174 Wn. App. 763, 776 n.11, 301 P.3d 45, rev. denied, 178 Wn.2d 1020, 312 P.3d 650 (2013).

[13] Nygard, Inc. v. Uusi-Kerttula, 159 Cal. App. 4th 1027, 1042, 72 Cal. Rptr. 3d 210 (2008).

[14] No. 2:13-CV-00116, 2013 WL 4853333, at *5 (E.D. Cal. 2013) (quoting E Clampus Vitus v. Steiner, 2:12-CV-01381, 2012 WL 6608612 (E.D. Cal. 2012)).

[15] Jacobellis v. State of Ohio, 378 U.S. 184, 197, 84 S. Ct. 1676, 12 L. Ed. 2d 793 (1964) (Stewart, J., concurring).

[16] 197 Cal. App. 4th 357, 373, 127 Cal. Rptr. 3d 903 (2011) (footnotes and citations omitted) (quoting Rivero v. American Fed'n of State, County, and Mun. Emps., AFL-CIO, 105 Cal. App. 4th 913, 924, 130 Cal. Rptr. 2d 81 (2003)).

Gilbert v. Sykes[17] (holding patient's statements about a plastic surgeon were of public interest because the information provided was material to potential consumers "contemplating plastic surgery"); Wong v. Tai Jing[18] (review on Yelp, Inc. criticizing dental services and discussing the use of silver amalgam raised issues of public interest). Similarly, the Ninth Circuit in Makaeff v. Trump University, LLC,[19] held that "[u]nder California law, statements warning consumers of fraudulent or deceptive business practices constitute a topic of widespread public interest, so long as they are provided in the context of information helpful to consumers."

Hedlund argues that these cases support his activity as protected because his postings were meant to alert prospective employees to his opinions and experience with AKS and to alert them to potentially fraudulent postings by employees of AKS posing as new applicants. But consumers of products are in a special class of protection and we are not inclined to extend that same protection to someone who signed a confidentiality agreement potentially limiting his right to speak on certain issues.

Hedlund analogizes his postings to "consumer information" of public concern. He relies on several California cases. For example, in Wilbanks v. Wolk, the defendant, a consumer watchdog, warned people on her web site to "[b]e very careful when dealing" with the plaintiff, a settlement broker, because the plaintiff "provided incompetent advice" and was "unethical."[20] In holding the statements to be protected activity under the anti-SLAPP statute, the Wilbanks court noted that "[m]embers of the public . . . clearly have an interest in matters which affect their roles as consumers, and peaceful

[17] 147 Cal. App. 4th 13, 23, 53 Cal. Rptr. 3d 752 (2007).
[18] 189 Cal. App. 4th 1354, 117 Cal. Rptr. 3d 747 (2010).
[19] 715 F.3d 254, 262 (9th Cir. 2013).
[20] 121 Cal. App. 4th 883, 890-91, 17 Cal. Rptr. 3d 497 (2004).

activities, which inform them about such matters are protected by the First Amendment."[21] The Wilbanks court noted that the statements at issue "were not simply a report of one broker's business practices, of interest only to that broker and to those who had been affected by those practices," but rather were a warning not to use those services and thus were made "[i]n the context of information ostensibly provided to aid consumers choosing among brokers," making the statements an issue of public concern.[22]

But, we believe the situation here to be more akin to World Financial Group, Inc. v. HBW Insurance & Financial Services, Inc.[23] There, the plaintiff sued a competing business and its agents for misappropriating trade secrets and using confidential information to solicit customers and employees.[24] HBW and the former World Financial Group employees filed a special motion to strike under California's statute, claiming their conduct was of public interest because it involved workforce mobility, free competition, and the pursuit of employment.[25] In affirming the trial court's finding that the complaint was not subject to the anti-SLAPP statute, the court rejected the argument that the communications were meant to aid consumers in "the pursuit of lawful employment" and to aid "workforce mobility and free competition."[26] The court rejected the arguments because the communications themselves were not about any broad social topics, or made to inform the public, but "were merely solicitations of a

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[21] 121 Cal. App. 4th at 899 (quoting Paradise Hill Assocs. v. Procel, 235 Cal. App. 3rd 1528, 1544, 1 Cal. Rptr. 514 (1991)).
[22] 121 Cal. App. 4th at 900.
[23] 172 Cal. App. 4th 1561, 92 Cal. Rptr. 3d 227 (2009).
[24] World Fin. Grp., 172 Cal. App. 4th at 1564-66.
[25] World Fin. Grp., 172 Cal. App. 4th at 1566-67.
[26] World Fin. Grp., 172 Cal. App. 4th at 1569.

competitor's employees and customers undertaken for the sole purpose of furthering a business interest."[27] World Financial Group is more closely aligned to the case here.[28]

Furthermore, such a holding is in line with California's more restrictive tests set forth in Weinberg v. Feisel:[29]

> The statute does not provide a definition for "an issue of public interest," and it is doubtful an all-encompassing definition could be provided. However, the statute requires that there be some attributes of the issue which make it one of public, rather than merely private, interest. A few guiding principles may be derived from decisional authorities. First, "public interest" does not equate with mere curiosity. (Time, Inc. v. Firestone, supra, 424 U.S. [448, 454–455,] 96 S.Ct. at pp. 965–966, 47 L.Ed.2d [154, 163 (1976)]; Briscoe v. Reader's Digest Association, Inc., (1971) 4 Cal.3d 529, 537, 93 Cal.Rptr. 866, 483 P.2d 34.)] Second, a matter of public interest should be something of concern to a substantial number of people. (Dun & Bradstreet v. Greenmoss Builders, supra, 472 U.S. [749, 762, 105 S.Ct. 2939, 2947, 86 L.Ed.2d 593, 604 (1985).)] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. (Ibid.; Hutchinson v. Proxmire (1979) 443 U.S. 111, 135, 99 S.Ct. 2675, 2688, 61 L.Ed.2d 411, 431.) Third, there should be some degree of closeness between the challenged statements and the asserted public interest (Connick v. Myers (1983) 461 U.S. 138, 148–149, 103 S.Ct. 1684, 1690–1691, 75 L.Ed.2d 708, 720–721); the assertion of a broad and amorphous public interest is not sufficient (Hutchinson v. Proxmire, supra, 443 U.S. at p. 135, 99 S.Ct. at p. 2688, 61 L.Ed.2d at p. 431). Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort "to gather ammunition for another round of [private] controversy. . . ." (Connick v. Myers, supra, 461 U.S. at p. 148, 103 S.Ct. at p. 1691, 75 L.Ed.2d at p. 721.) Finally, "those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." (Hutchinson v. Proxmire, supra, 443 U.S. at p. 135, 99 S.Ct. at p. 2688, 61 L.Ed.2d at p. 431.)

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[27] World Fin. Grp., 172 Cal. App. 4th at 1572.

[28] World Fin. Grp., is consistent with the United States Supreme Court's decision in Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 105 S. Ct. 2939, 86 L. Ed. 2d 593 (1985). Dun & Bradstreet similarly dealt with a lawsuit regarding commercial activities by a private business about a private business directed to other private businesses: a private agency issuing a credit report to five subscribers about the bankruptcy of another business.

[29] 110 Cal. App. 4th 1122, 1132, 2 Cal. Rptr. 3d 385 (2003), cited with approval in Hilton v. Hallmark Cards, 599 F.3d 894, 906 (9th Cir. 2010)).

We must adhere to the legislature's policy that the purpose of the anti-SLAPP statute is to strike a balance between the right of the person to file a lawsuit and that person's right to a jury trial and the rights of people to participate in "matters of public concern." On these facts that balance leads us to the conclusion that the postings cannot be deemed protected activity. This is particularly true where the complaint alleges Hedlund voluntarily limited his right to speak freely by signing a confidentiality agreement. The issue here is a simple contractual issue—whether or not Hedlund violated a contract he signed with his former employer.

Our ruling is limited to our conclusion that Hedlund does not meet the threshold standard for application of the statute and does not in any way preclude the trial court from determining the sufficiency of the complaint for breach of contract on summary judgment. The issue of whether Hedlund violated the confidentiality agreement may well lend itself to summary judgment dismissal, and Hedlund may be entitled to attorney fees under that contract. However, those issues are not before us and we hold only that the trial court erred in striking AKS's pleadings under the anti-SLAPP statute.

Reversed and remanded.

WE CONCUR:

APPENDIX B

Relevant Statutes & Constitutional Provisions
Relevant to Issues Presented for Review

U.S.C.A. Const. Amend. I

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

West's RCWA Const. Art. 1, § 5

§ 5. Freedom of Speech

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

West's RCWA 4.24.525

4.24.525. Public participation lawsuits--Special motion to strike claim--Damages, costs, attorneys' fees, other relief--Definitions

(1) As used in this section:
(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;
(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;
(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;
(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.
(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;
(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.
(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:
(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or
(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.
(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.
(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.
(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.
(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.
(d) If the court determines that the responding party has established a probability of prevailing on the claim:
(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and
(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.
(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.
(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.
(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.
(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.
(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:
(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;
(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and
(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.
(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:
(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;
(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and
(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.
(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.