



City of Salinas

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CLERK SUPREME COURT

VIA FEDERAL EXPRESS

Chief Justice Tani Cantil-Sakauye and Associate Justices
SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amicus Curiae Letter in Support of Pending Request for Publication of
Kapler v. City of Alameda, et al
Cal. Supreme Ct. Docket No. S205682
(First District Court of Appeal Case No. A133001)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of the League of California Cities ("League"), we respectfully request that the Court consider this amicus curiae letter in support of the pending request for publication of *Kapler v. City of Alameda* (S205682; 1st Dist., Case No. A133001) filed by the City of Alameda on September 25, 2012¹

I. League of California Cities' Interest

The League is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians.

The League is advised by its Legal Advocacy Committee, which comprises 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance, and has authorized the submission of this amicus curiae letter in support of the pending request for publication.

The City of Salinas is intimately familiar with the special motion to strike proceedings at issue in the subject case under Code of Civil Procedure section 425.16 (the anti-SLAPP statute), having litigated a case concerning that statute all the way to California Supreme Court, and most recently the United States Supreme Court. *Vargas v. City of Salinas* (2009) 46 Cal.4th 1 ("Vargas I"); *Vargas v. City of Salinas* (2011) 200 Cal.App.4th 1331, rehearing denied (Dec. 12, 2011), review denied (Feb. 29, 2012) ("Vargas II"). On October 9, 2012, the United States Supreme Court denied certiorari in *Vargas II*. (*Vargas v. City of Salinas*, 2012 WL 2028449, Case No. 11-1459.) I served as counsel of record on most of that case, along with my co-counsel Joel Franklin.

¹ The request of defendants/appellants (City of Alameda, et al.) for publication was denied by the Court of Appeal on or about September 28, 2012. Pursuant to rule 8.1120(b) of the California Rules of Court, the decision of the Court of Appeal regarding publication was forwarded to the Supreme Court for final review and action, and is currently pending.

The City of Salinas, like other government entities, is mindful of the need to avoid protracted litigation and taxing the limited resources of the courts and the taxpayers. In the appropriate case, one lacking in the most minimal, *prima facie* merit, use of the anti-SLAPP statute is an important tool to dispose of cases early and efficiently. In our experience, the tool is used sparingly. Publication of the *Kapler v. City of Alameda* case will assist all parties in knowing the contours of the anti-SLAPP law.

II. The Opinion Meets the Standards for Publication.

The opinion in *Kapler v. City of Alameda* meets the standards for publication set forth in California Rules of Court, rule 8.1105(c)(2), (4), (6), and (7)² because it applies the anti-SLAPP statute in a novel employment law context commonly presented in local cities and other government entities, advances a construction of the anti-SLAPP statute by providing clear guidance to litigants and the trial courts in an evolving area of employment law, and involves a legal issue of continuing public interest.

A. The Opinion Applies and Clarifies the Application of the anti-SLAPP Statute in the Context of Employment Litigation against a Government Entity.

Kapler v. City of Alameda applies “an existing rule of law” – the two-prong anti-SLAPP analysis -- to a set of facts significantly different from those stated in published opinions, in the employment law context (Rule 8.1105(c)(2).) The analysis in *Kapler* reaches both the City’s investigation into an incident of alleged employee misconduct and the parallel media scrutiny where the First Amendment is implicated. The opinion also “advances a construction” of the anti-SLAPP statute by providing guidance to litigants and the trial courts in this evolving area of law. (Rule 8.1105(c)(4).)

The opinion carefully analyzes whether the first prong of *Vargas I* applies and correctly grants protection of the anti-SLAPP scheme to government entities. (Slip Opinion at pp. 6-12.) Importantly, the decision also determines, on the court’s independent review, that the second prong of the anti-SLAPP formula, probability of success, cannot be satisfied on the majority of plaintiff’s claims from a review of the entire record. (Slip Opinion at pp. 13-19.) This is a significant exercise of appellate authority as the trial court did not engage in any second prong analysis. The opinion is instructive to public employees and trial judges on how to apply the second prong of the anti-SLAPP formula in litigation against a government entity where claims for wrongful termination, constructive discharge and the like are raised, including a well-reasoned discussion of governmental immunities. (See Slip Opinion at pp. 16-18.) Government entities all too frequently must defend claims in administrative and civil litigation settings arising from employee misconduct and disciplinary action. The analysis and application of the anti-SLAPP statute in this context is lucid, comprehensive and illuminating.

B. The opinion involves a legal issue of continuing public interest in that it confirms how the anti-SLAPP statute may apply to the government’s activities in the employment law arena.

The court’s authoritative discussion of how the government’s activities are protected in the employment litigation arena is also novel and “involves a legal issue of continuing public interest.” (Rule 8.1105(c) (6); Slip Opinion at pp. 6-13.) The opinion gives guidance to the public and courts on the practical application of *Vargas I* in the employment law area, especially

² Unless otherwise stated, all citations to the “rules” are to the California Rules of Court.

in cases where alleged employee misconduct is investigated by the media, and where information is disclosed to the public through media channels. The opinion guides both parties and lower courts through the analytical minefield of governmental and media investigation of public employee potential misconduct, a thorny area of law involving constitutional analysis and interpretation of state statutes. (Rule 8.1105(c)(4); *see* Slip Opinion at pp. 9-12.)

C. The opinion also makes a significant contribution to the legal literature in its review and analysis of employment actions under the anti-SLAPP statute.

The decision also makes a significant contribution to the legal literature on how employment suits against government entities should be reviewed and resolved under anti-SLAPP principles. (Rule 8.1105(c)(7).) The legislative purpose of the statutory scheme is to provide early termination of cases where the defendant's actions are protected by the Constitution and the statute and where the plaintiff cannot muster a *prima facie* showing on the merits to his or her cause of action(s), even if the claims are credited as plaintiff alleges. (*Vargas I.*) Because there are a significant number of employment-related actions against government entities, especially where the government and, at times, the media is investigating the alleged employee misconduct, the *Kapler* decision offers a reasoned, instructive and important analysis of how these cases are to be resolved in the trial courts under the anti-SLAPP scheme.

III. Conclusion

The *Kapler v. City of Alameda* decision meets several of the standards for publication set forth in the California Rules of Court, rule 8.1105, subdivision (c). On behalf of the League, we therefore respectfully support the city's request for publication of the *Kapler* opinion.

Sincerely,



Vanessa W. Vallarta
City Attorney

cc: Counsel of Record
Proof of Service attached

PROOF OF SERVICE

I, Alicia Chaidez, declare as follows: I am employed in the County of Monterey, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 200 Lincoln Avenue, Salinas, California 93901. On October 16, 2012, I served a copy of the:

Amicus Curiae Letter dated October 16, 2012 to Chief Justice Tani Cantil-Sakauye and Associate Justices, Supreme Court of California in Support of Pending Request for Publication of *Kapler v. City of Alameda, et al*

on the interested parties to the said action by MAIL, in accordance with Code of Civil Procedures §1013a(3), by placing a true copy of the above-referenced document(s) enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Salinas, California, addressed as shown below.

Attorney for Plaintiff/Respondent:

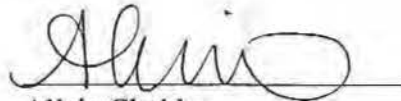
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Attorney for Defendant/Appellant:

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Oakland, California 94612

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 16, 2012, at Salinas, California.



Alicia Chaidez
Legal Secretary