

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FILED

LOS ANGELES SUPERIOR COURT

MAY 26 2011

JOHN A. CUNNINGHAM, CLERK

N. DiGiambattista
BY N. DIGIAMBATISTA, DEPUTY

CLAUDIA VAZQUEZ)
Plaintiff)

vs)

JENNIFER LOPEZ, ET AL)
Defendants)

CASE NO. BC451452

**COURT'S RULING ON DEMURRER, SLAPP MOTION TO STRIKE AND
ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION TAKEN UNDER
SUBMISSION ON MAY 20, 2011**

Plaintiff seeks to enjoin Defendant from taking any actions that (1) interfere with Plaintiff's right to exercise her First Amendment rights as guaranteed under the United States and California Constitutions; and (2) interfere with Plaintiff's right to work in her trade, profession or occupation, including developing, marketing, publicizing, and/or selling the rights to the film that is at issue in the present action.

In addition, Defendant has filed a demurrer to the First Amended Complaint and a separate Special Motion to Strike the First Amended Complaint. The Court conducted a hearing on these motions and allowed supplemental briefs limited solely to the issue of service of the operative pleading to be filed.¹

After reading and considering the parties' moving papers, oppositions, replies and supporting declarations and exhibits, and the supplemental briefs, the Court realized that it had no need for further argument. Accordingly, the Court vacated the previously set hearing date and took the matter under submission.

As set forth below, the Court renders the following decision:

¹ To the extent that additional arguments were set forth in those pleadings, they will not be considered. This case was briefed fully and completely on everything other than the date on which service was effectuated. Oral requests for briefing on other issues following the initial hearing in this case were denied. Nothing more by way of written argument is required for this Court to render a decision in this matter.

Statement of the Case

In December of 2004, Ojani Noa, the ex-husband of Defendant Jennifer Lopez, sued Lopez for employment claims arising from his work at her restaurant. The parties signed a settlement agreement in 2005 under which Noa agreed, *inter alia*, to certain confidentiality provisions (the "2005 Agreement").

In 2007, Lopez sued Noa for allegedly breaching the 2005 Agreement and obtained a judgment and permanent injunction against Noa enjoining him from disclosing certain confidential and other information (the "2007 Judgment and Injunction"). (Defendant RJN, Exh. 20). The 2007 lawsuit is case number BC 350374 ("Lopez I"). The 2007 Judgment and Injunction also contained, as part of the permanent injunction, restrictions applicable to all third parties who are aware of it.

Plaintiff Claudia Vazquez entered into a production agreement on June 28, 2009 with Noa and writer Ed Meyer to produce a comedic film portraying Noa's life from Cuban immigrant to husband of Lopez and beyond. (FAC ¶ 7). Plaintiff worked on the film which was funded in part by Telemundo. (April 7, 2011 Vazquez Decl., Exh. C).

Lopez sued Noa and Meyer in 2009 for breach of contract, damages and injunctive relief relating to the film. Lopez obtained a preliminary injunction against Noa and Meyer enjoining them from disclosing certain confidential and other information (the "2009 Injunction"). (Defendant RJN, Exh. 54). The 2009 lawsuit is case number BC 425565 ("Lopez II"). The preliminary injunction also contains, as part of the preliminary injunction, a number of restrictions applicable to third parties who are aware of the order.

In October of 2009, Lopez sent a letter to Vasquez charging her with a violation of the 2007 Judgment and Injunction and ordering Vasquez to cease production on the film. (April 7, 2011 Vazquez Decl., Exh. A)

Procedural History

Vasquez filed a complaint on December 20, 2010, which was amended on December 30, 2010 ("FAC"). On January 7, 2011, plaintiff filed an *ex parte* application for a temporary restraining order in Department 86. This application was denied but the court set a hearing to show cause re preliminary injunction February 2, 2011. Vasquez filed her motion for a preliminary injunction on January 10, 2011. Lopez filed her opposition on January 24, 2011.² Vasquez filed her reply on January 27, 2011.³

² In addition to her opposition to Vasquez's motion for a preliminary injunction, Lopez filed copies of Los Angeles County Superior Court records, judicially confirmed arbitration awards and other documents of which she seeks the Court to take judicial notice. With the exception of (1) Exhibit C: the January 29, 2007 written tentative decision; and (2) Exhibit G: the April 20, 2007 JAMS Arbitration Award, the Court grants Defendant's request to take judicial notice as to the existence of such documents but not as to the truth of the statements asserted therein. Evidence Code sections 452(D) and 453. *See also, Duggal v. G.E. Capital Communications Services, Inc.*, 81 Cal. App. 4th 81 (2000) ("we may take judicial notice of the records of a California court"). As to Exhibits C and G, the Court sustains Plaintiff's objection and shall not take judicial notice of these documents.

On February 10, 2011, the instant case was related to Lopez I and assigned for all purposes to Department 39, Judge Michael C. Solner. As a result, the show cause hearing re preliminary injunction was ordered off calendar in Department 86 on February 14, 2011. On March 1, 2011, due to a timely peremptory challenge against Judge Solner filed by Vasquez, the case was reassigned to Department 86.

Lopez filed an anti-SLAPP special motion to strike⁴ on March 14, 2011 and a demurrer on February 17, 2011⁵ with a notice of errata filed on April 1, 2011. On March 23, 2011, the Court set a hearing date for Defendant's anti-SLAPP motion, Plaintiff's show cause hearing, and Defendant's demurrer on May 2, 2011.

Plaintiff filed oppositions to Defendant's anti-SLAPP motion⁶ and demurrer on April 8, 2011. Defendant filed replies on April 21, 2011 to both oppositions.⁷

Defendant also filed numerous evidentiary objections to Plaintiff's declarations of Claudia Vazquez and Chris Armenta and to Plaintiff's FAC. All of Defendant's objections are overruled with respect to the FAC. With respect to the Vazquez declarations and the Armenta declaration, the Court has ruled in the separate order on each of Defendant's objections.

³ Along with her reply, Vasquez also objects to several paragraphs in the declaration of John H. Lavelly, Jr. The Court's ruling on these objections is stated separately.

⁴ In addition to her Special Motion to Strike, Defendant filed seven volumes of Los Angeles County Superior Court records, judicially confirmed arbitration awards and other documents of which she seeks the Court to take judicial notice. With the exception of (1) Exhibits 30-44: arbitration documents regarding Lopez I; (2) Exhibit 70: email; and (3) Exhibits 75-77: website case summaries, the Court grants Defendant's request as to the existence of such documents but not as to the truth of the statements asserted therein pursuant to Evidence Code sections 452(D) and 453 and overrules Plaintiff's objections thereto. *See also, Duggal v. G.E. Capital Communications Services, Inc.*, 81 Cal. App. 4th 81 (2000) ("we may take judicial notice of the records of a California court").

⁵ In addition to her Demurrer, Defendant filed copies of Los Angeles County Superior Court records, judicially confirmed arbitration awards and other documents of which she seeks the Court to take judicial notice. With the exception of (1) Exhibit 3: the January 29, 2007 written tentative decision; and (2) Exhibit 7: the April 20, 2007 JAMS Arbitration Award, the Court grants Defendant's request as to the existence of such documents but not as to the truth of the statements asserted therein pursuant to Evidence Code sections 452(D) and 453 and overrules Plaintiff's objections thereto. *See also, Duggal v. G.E. Capital Communications Services, Inc.*, 81 Cal. App. 4th 81 (2000) ("we may take judicial notice of the records of a California court").

⁶ In addition to her opposition, Plaintiff filed copies of Los Angeles County Superior Court records of which she seeks the Court to take judicial notice. The Court grants Plaintiff's request as to the existence of such documents but not as to the truth of the statements asserted therein pursuant to Evidence Code sections 452(D) and 453.

Plaintiff also objects to several paragraphs in the declaration of John H. Lavelly, Jr. The Court's ruling on these objections is stated separately.

⁷ Defendant also filed numerous evidentiary objections to Plaintiff's request for judicial notice, declarations of Claudia Vazquez and Credence Sol. However, the majority of these objections cite provisions in either the FAC or the *ex parte* application. As neither the FAC nor the *ex parte* application is evidence, all of

Analysis

1. Defendant's Anti-SLAPP Special Motion to Strike

Defendant moves the Court for an anti-Strategic Lawsuits Against Public Participation ("anti-SLAPP") special motion to strike the FAC.

Anti-SLAPP special motions may be brought under Code of Civil Procedure section 425.16(b)(1), which provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that the plaintiff will prevail on the claim." The term "act in furtherance of a person's right of petition or free speech" includes "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." Code Civ. Pro. § 425.16(e).

a. Does the FAC Arise from Defendant's Actions in Furtherance of Her Right of Petition under the United States and California Constitutions?

The defendant bringing the special motion to strike bears the initial burden of showing that the challenged causes of action arise from an act or acts in furtherance of the defendant's right of petition or free speech. Zamos v. Stroud, 32 Cal. 4th 958, 965 (2004). When determining whether the defendant has met his or her initial burden of demonstrating that the challenged causes of action arise from protected conduct, courts necessarily look to the allegations in the operative complaint. Brill Media Co., LLC v. TCW Group, Inc., 132 Cal. App. 4th 324, 329 (2005); *see also*, Code Civ. Pro. § 425.16(b)(2). Courts may also examine affidavits and admissible evidence, including matters of which judicial notice may be taken, in making this assessment. Id.

Each of Plaintiff's claims is based on her seeking relief from Defendant's enforcing the provisions contained in the 2005 Agreement as implemented, in part, by the 2007 Judgment and Injunction, which contains terms directed at any third person, including Plaintiff. "It is beyond question that the initiation and prosecution of the prior suit[s]" involved "written or oral statement[s] or writing[s] made before a ... judicial proceeding" (Code Civ. Proc. § 425.16,(e)(1)) and thus were "act[s] ... in furtherance of the [Defendant's] right of petition under the federal and state Constitutions" (Code Civ. Pro. § 425.16(b)(1)), which is a protected activity under the anti-SLAPP statute. Paiva v. Nichols, 168 Cal. App. 4th 1007, 1017 (2008); *see also*, Briggs v. Eden Council for Hope & Opportunity, (1999) 19 Cal. 4th 1106, 1121 (1999)(noting that intent of Legislature in

Defendant's objections are overruled with respect thereto. With respect to the Vazquez declarations and the Sol declaration, the Court has ruled in the separate order on each of Defendant's objections.

enacting anti-SLAPP statute was “to protect all direct petitioning of governmental bodies (including ... courts ...)”).

Plaintiff’s arguments with regard to Lopez being able to establish a prima facie case under the first prong of the anti-SLAPP analysis have no merit. Plaintiff’s contention that she is the party aggrieved and the person whose First Amendment rights have been violated does not change the character of the action filed by her. If, as here, Vasquez’s causes of action are based on an act or acts taken by Lopez in furtherance of her rights of petition or free speech, then the burden of showing that the suit arises from conduct described in CCP section 425.16 has been met. City of Cotati v. Cashman, 29 Cal. 4th 69, 76–79 (2002).

As Lopez has met her burden of establishing a prima facie showing that Plaintiff’s complaint arises from Defendant’s constitutionally protected free speech and petition activity, the burden shifts to Vasquez to establish as a matter of law that no such protection exists. See Governor Gray Davis Committee v. American Taxpayer Alliance, 102 Cal. App. 4th 449, 456 (2002); Zamos v. Stroud, *supra*, 32 Cal. 4th at 965. To meet that burden, plaintiff must establish a “probability” that she will prevail on the claims that she has asserted against Lopez.

b. Has Plaintiff Shown a Probability of Prevailing on the Merits?

To establish a “probability” of prevailing on the merits, a plaintiff must demonstrate that the complaint is both (i) legally sufficient, and (ii) supported by a *prima facie* showing of facts sufficient to support a favorable judgment if the evidence submitted by the plaintiff is credited. Navellier v. Sletten, 29 Cal. 4th 82, 89 (2002); Soukup v. Law Offices of Herbert Hafif, 39 Cal. 4th 260, 291 (2006). The “probability of prevailing” standard is tested by the same standard governing a motion for summary judgment. Taus v. Loftus, 40 Cal. 4th 683, 714 (2007).

With respect to the showing of sufficient facts, the plaintiff cannot rely on its pleadings, even if verified, but instead must provide competent admissible evidence. Paiva v. Nichols, 168 Cal. App. 4th 1007, 1017 (2008); Roberts v. Los Angeles County Bar Ass’n, 105 Cal. App. 4th 604, 613-614 (2003). The Court accepts as true all evidence that is favorable to the plaintiff. Overstock.com, Inc. v. Gradient Analytics, Inc., 151 Cal. App. 4th 688, 699-700 (2007). The Court does not weigh credibility or comparative strength of the evidence but instead considers the defendant’s evidence only to determine if it defeats the plaintiff’s showing as a matter of law. Soukup, *supra*, 39 Cal. 4th at 291. If there are gaps in plaintiff’s evidence, they may be filled by the defendant’s evidence. Salma v. Capon, 161 Cal. App. 4th 1275, 1289 (2008).

i. Litigation Privilege Does Not Preclude this Action

If any privilege or defense to a claim has been raised by the defendant, the plaintiff must present evidence to overcome such privilege or defense. Flatley v. Mauro, 39 Cal. 4th 299, 323 (2006)(stating that the Civil Code section 47(b) litigation privilege presents a

substantive defense plaintiff must overcome to demonstrate probability of success on the merits). As discussed below, plaintiff has done so here.⁸

First, the Court rejects Lopez's argument that all of Plaintiff's claims arise from conduct that is protected under Civil Code section 47, the litigation privilege. "The litigation privilege in section 47 applies to 'any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of litigation; and (4) that have some connection or logical relation to the action.'" Rohde v. Wolf, 154 Cal. App. 4th 28, 37 (2007).

Defendant mischaracterizes the bulk of Plaintiff's claims by stating, "Vazquez claims that by obtaining the 2007 Judgment & [sic] Injunction and 2009 Injunction, Lopez interfered with Vazquez's existing and prospective economic relationships and with her trade, profession and business." (Special Motion p.9). A review of Plaintiff's FAC, however, reveals that Vasquez alleges nothing of the sort.

Plaintiff's claims can be placed into two broad categories: (1) Plaintiff's seeking declaratory and injunctive relief based on Defendant's alleged *wrongful enforcement* of the 2005 Agreement and the related 2007 Judgment and Injunction against Plaintiff; and (2) Plaintiff's seeking damages for Defendant's alleged interference with Plaintiff's prospective economic advantage and contractual relations.

The first category of Plaintiff's claims are not based on communications made *during* judicial proceedings but instead are based on the enforcement against a non-party of an agreement and of a final judgment/permanent injunction that expressly includes third parties and that was issued by a court.

In arguing that the wrongful enforcements are subject to the litigation privilege, Defendant relies on Rohde, *supra*. However, Defendant's reliance on that authority is misplaced. In Rohde, the sister-plaintiff and her brother were involved in a dispute concerning the distribution of their deceased father's assets. 154 Cal. App. 4th 28. The sister-plaintiff sued her brother's attorney for defamation in connection with the attorney's voice mail message which accused a listing agent for the relevant real property

⁸ Without a separate discussion, the Court rejects other arguments asserted by Lopez based on her misreading of the Plaintiff's FAC. For example, Lopez argues that Code of Civil Procedure section 663a is the only procedure by which Plaintiff can set aside a judgment and therefore the Court should strike Plaintiff's FAC because Plaintiff seeks to set aside the 2007 Judgment and Injunction. In addition, Defendant also argues that Code of Civil Procedure section 473(b), which allows a court to relieve a party from a judgment, dismissal, order or other legal proceeding taken against him or her through mistake, bars the FAC because Plaintiff fails to allege the 2007 Judgment and Injunction is void. Lopez's arguments, however, fail completely as the FAC does not, in fact, seek to set aside or void the 2007 Judgment and Injunction.

Equally without merit is Defendant's argument that the Court should strike Plaintiff's FAC because the causes of action are barred under the doctrine of *collateral estoppel*. Plaintiff was not a named party in either Lopez I or Lopez II. Moreover, the issues being litigated, *i.e.*, whether the 2005 Agreement and the 2007 Judgment and Injunction apply to Plaintiff, were not the subjects addressed in either Lopez I or Lopez II. Therefore, Plaintiff's claims are not barred by *collateral estoppel*.

asset of conspiring with the sister-plaintiff to defraud the brother and threatened to take “appropriate action” as a result. *Id.*, at 36. The attorney filed a motion to strike the sister-plaintiff’s complaint under the anti-SLAPP statute and the trial court denied the motion. The attorney appealed. The Court of Appeal held that the messages were covered by the anti-SLAPP statute and the litigation privilege in Civil Code section 47(b) and that the lawyer’s anti-SLAPP motion should have been granted. *Id.*, at 37.

Specifically, the Court of Appeal stated:

“Defendant’s voicemail messages to [the listing agent] were statements made in connection with an asset that was the subject of the dispute in which both plaintiff and defendant threatened litigation. In short, the spectre of litigation loomed over all communications between the parties at that time. Thus, the messages concerning the subject of the dispute and threatening appropriate action in that context had to be in anticipation of litigation contemplated in good faith and under serious consideration.” *Id.*, at 36-37 (internal citations omitted).

Rohde does not stand for the proposition that the defendant’s enforcement of a permanent injunction contained in a final judgment resolving issues arising under the 2005 Agreement is privileged under Civil Code section 47(b).⁹

Thus the Court finds that Plaintiff has met her burden of showing a probability of prevailing on the merits regarding the first category of Plaintiff’s claims because such claims are not based on information subject to the litigation privilege.

The second category of Plaintiff’s claims appears to relate to the impact of the 2009 Letter on Plaintiff’s business relationships. Defendant claims the 2009 Letter was a communication made in connection with litigation and, as such, is protected by the litigation privilege. (Special Motion p. 9).

The litigation privilege not only applies to communications made in judicial or quasi-judicial proceedings, but also to “statements made prior to the filing of a lawsuit.” Rohde v. Wolf, 154 Cal. App. 4th at 37; Civ. Code § 47(a). However, in this context, the privilege is not absolute but limited by the requirement that such communications must

⁹ Remarkably, Defendant fails to cite any of the California cases that consider post-judgment communications to be subject to the Civil Code section 47 litigation privilege. Although the litigation privilege “may extend to steps taken ... afterwards,” post-judgment cases are generally not helpful to Defendant’s argument. See, Rusheen v. Cohen, 37 Cal. 4th 1048 (2006). These cases are typically limited to cases involving the alleged wrongful collection actions of a defendant against a plaintiff (who may or may not have been involved in the underlying litigation) in the context of abuse of process claims brought by the plaintiff. See, e.g., O’Keefe v. Kompa, 84 Cal. App. 4th 130 (2000)(finding that levying on a bank account and filing an abstract judgment were efforts to secure payment of attorneys’ fees judgment and were thus an extension of the underlying case’s judicial process and were subject to section 47); Merlet v. Rizzo, 64 Cal. App. 4th 53 (1998)(finding that improperly applying for a writ of sale, moving to reconsider the order denying the writ and filing an appeal from the reconsideration order were taken in furtherance of a judgment and were subject to section 47); and Brown v. Kennard, 94 Cal. App. 4th 40 (2001), *rehearing denied* (2002)(finding that improperly applying for a writ of execution was a communication subject to section 47).

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be “made in connection with proposed litigation that is contemplated in good faith and under serious consideration.” Id. (internal quotations omitted).

Defendant argues that the 2009 Letter is protected under section 47 because it is a communication by Defendant’s attorney in connection with Lopez I and Lopez II. (Special Motion p. 9). As noted above, the 2007 Judgment and Injunction was the result of Lopez I. The 2009 Letter was issued more than two years *after* the 2007 Judgment and Injunction. (April 7, 2011 Vazquez Decl., Exh. A). Lopez II was brought by Defendant in November of 2009 shortly after the 2009 Letter was sent to Plaintiff. Plaintiff was not named a defendant in Lopez II.

With respect to Lopez I, the case was resolved prior to Defendant’s sending Plaintiff the 2009 Letter. As a result, the absolute litigation privilege is inapplicable to the 2009 Letter because it was not made *during* judicial proceedings. *See, e.g., Laffer v. Levinson*, 34 Cal. App. 4th 117, (1995), *rehearing denied* (finding that conversations about a potential settlement agreement at the heart of the instant case that occurred between a cross-defendant and another cross-defendant’s attorney in a prior case were not subject to the absolute litigation privilege in the instant case because the prior case had been settled, instead analyzing such conversations as communications prior to and in anticipation of the instant case).

Nor can Lopez argue that the 2009 Letter was a communication made *prior* to the filing of Lopez II made in good faith while litigation against Plaintiff was being seriously considered. Although Defendant relies on Feldman v. 1100 Park Lane Associates, 160 Cal. App. 4th 1467 (2008) in support of this argument, that case clearly does not apply to the facts presented here. Feldman involved an unlawful detainer action where the landlord filed an anti-SLAPP motion regarding the cross-complaints filed in a suit brought against the renters. Here, Defendant failed to bring any action against Plaintiff. Rather, she sued two other persons. Lopez fails to provide any evidence that litigation against Plaintiff was being seriously considered at the time that Vasquez received the 2009 letter.

Plaintiff has met her burden of showing a probability of prevailing on the merits regarding the 2009 Letter because the 2009 Letter is not a communication made prior to litigation being seriously considered against Plaintiff subject to the section 47 privilege.

ii. Plaintiff Has Shown a Probability of Prevailing on Claims for Declaratory Relief under Code of Civil Procedure Section 1060.

Code of Civil Procedure section 1060 states in relevant part, “[a]ny person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action ... in the superior court for a declaration of his or her rights and duties ... [t]he declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.”

A legally sufficient claim for declaratory relief must show the following: (1) a proper subject for declaratory relief (Code Civ. Pro. § 1060), and (2) an actual controversy involving justiciable questions relating to the rights and obligations of a party (Tiburon v. Northwestern Pac. R. Co., 4 Cal. App. 3d 160, 170 (1970)).

Plaintiff's first claim for declaratory relief is one of contract interpretation. Contract interpretation is a proper subject for declaratory relief. Pacific States Corp. v. Pan-Amer. Bank, 213 Cal. 58 (1931). Where an individual is purported to have obligations under a contract, even if he or she is not a party, such individual has standing to seek declaratory relief. *See, e.g., Reiner v. Danial*, 211 Cal. App. 3d 682 (1989). Although Plaintiff alleges a number of issues to be interpreted, all hinge on the underlying allegation that Defendant has asserted that Plaintiff has obligations under the 2005 Agreement and the 2007 Judgment and Injunction relating thereto despite the fact that Plaintiff was not a party to either. Plaintiff believes that she has no such obligations resulting in an actual controversy between the parties. Therefore Plaintiff has alleged a legally sufficient claim. Additionally, Plaintiff provides facts sufficient to support a favorable judgment regarding such claim as required by Navellier, supra. While Lopez has threatened to enforce the 2007 Judgment and Injunction against Plaintiff, her authority for the claimed breach rests on the 2005 Agreement and the resulting 2007 Judgment and Injunction.

Plaintiff's second claim for declaratory relief is one of applicability of the 2007 Judgment and Injunction. A non-party may seek declaratory relief regarding the application of an injunction. *See, People ex rel. Reisig v. Broderick Boys*, 149 Cal. App. 4th 1506, 1516 (2007). Plaintiff alleges that Defendant seeks to enforce the 2007 Judgment and Injunction against Plaintiff despite Plaintiff's not being a party to it. Plaintiff believes that the 2007 Judgment and Injunction are inapplicable to Plaintiff resulting in an actual controversy between the parties. Additionally, Plaintiff alleges that Defendant's interpretation of the 2007 Judgment and Injunction prohibit Plaintiff from creating a film while Plaintiff believes the 2007 Judgment and Injunction only apply to written materials. Therefore Plaintiff has alleged a legally sufficient claim.

As evidence, Plaintiff provides a copy of the 2009 Letter in which Defendant accuses Plaintiff of creating a film in violation of the 2007 Judgment and Injunction. (April 7, 2011 Vazquez Decl., Exh. A). The Court takes judicial notice of the 2007 Judgment and Injunction under Evidence Code section 452(d) and notes that the language therein is broad and purports to apply to "all others having knowledge or notice of this Injunction." (Defendant's RJN, Exh. 20). Based on the foregoing, there is sufficient factual evidence of an actual controversy between the parties and Plaintiff has met her burden of showing a probability of prevailing on the merits of this claim.

Plaintiff's third claim for declaratory relief is that the 2005 Agreement is invalid to the extent the 2005 Agreement purports to limit Plaintiff's trade, profession or business; and the 2005 Agreement constitutes an unlawful restraint on trade, both under Business and

Professions Code section 16600.¹⁰ As for Plaintiff's first claim for declaratory relief, her third claim hinges upon the underlying allegation that Defendant has proclaimed Plaintiff has obligations under the 2005 Agreement despite Plaintiff's not being a party to it. As noted above, Plaintiff has provided sufficient factual evidence of an actual controversy to meet her burden of showing a probability of prevailing on the merits of this claim as well.

In Plaintiff's fourth claim for declaratory relief, she alleges that she is legally entitled to produce the film at issue and is not enjoined, directly or indirectly, by the 2005 Agreement or the 2007 Judgment and Injunction. Plaintiff alleges that the 2005 Agreement and the 2007 Judgment and Injunction do not prevent her from producing the film because the film does not violate Defendant's right to privacy and does not constitute a misappropriation of Defendant's likeness. Plaintiff also seeks injunctive relief to keep Defendant from enforcing the 2005 Agreement and the 2007 Judgment and Injunction to block her ability to produce such a film.

Although the production of a film is not on the horizon, there has been sufficient interest in the preliminary development of such a project to support the conclusion that there is an actual controversy with known parameters and is, therefore, ripe for declaratory relief. PG & E Corp. v. Public Utilities Comm'n, 118 Cal. App. 4th 1174, 1218 (2004).

iii. Plaintiff Has Shown a Probability of Prevailing on a Claim of Intentional Interference with Prospective Economic Advantage.

For a claim of intentional interference with prospective economic advantage to be legally sufficient, Plaintiff must allege, "(1) an economic relationship between [Plaintiff] and some third party, with the probability of future economic benefit to [Plaintiff]; (2) [Defendant's] knowledge of the relationship; (3) intentional acts on the part of [Defendant] designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to [Plaintiff] proximately caused by the acts of [Defendant]." Youst v. Longo, 43 Cal. 3d 64, 71 fn. 6 (1987).

Plaintiff alleges that (1) she had a valid and existing economic relationship with Telemundo; (2) Defendant was aware of the economic relationship between Plaintiff and Telemundo; (3) Defendant intentionally disrupted this relationship by sending the 2009 Letter; (4) subsequent to sending the letter, the relationship was disrupted; and (5) as a result of this disruption, Plaintiff suffered actual damages in that the film is now unmarketable. Plaintiff has alleged each of the requirements for a legally sufficient claim of intentional interference with prospective economic advantage.

To comply with Navellier, *supra*, Plaintiff must also produce facts sufficient to show a *prima facie* case. As evidence of her existing economic relationship with Telemundo, Plaintiff produced a contract showing that Telemundo obtained the rights of "first negotiation" and "last refusal" to purchase the material developed by Plaintiff and

¹⁰ Business and Professions Code section 16600 states, "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

pursuant to which Plaintiff pitched the film at issue. (April 7, 2011 Vazquez Decl., ¶ 3, Exh. C). Plaintiff is also entitled to a reasonable inference, particularly given the early stage of the litigation, that Defendant knew of the project and Plaintiff's involvement with Telemundo. The timing and contents of the 2009 Letter support a reasonable inference that Lopez had been made aware of the project and wanted to ensure that it did not proceed. There would have been no need to send a threatening letter to a relatively obscure actress and fledgling producer had Lopez not been aware of the project and wanted to stop it. Finally, it is undisputed that at the present time Telemundo has declined to go forward with the film, with resultant financial loss to Plaintiff.

Based on the foregoing, Plaintiff has provided sufficient facts to show a *prima facie* case of intentional interference with prospective economic advantage and thus has met her burden of showing a probability of prevailing on the merits of this claim.

iv. Plaintiff Has Shown a Probability of Prevailing on a Claim of Intentional Interference with Contractual Relations.

For a claim of intentional interference with contractual relations to be legally sufficient, Plaintiff must allege (1) a valid contract between Plaintiff and some third party; (2) Defendant's knowledge of the contract; (3) intentional acts on the part of Defendant designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) economic harm to Plaintiff. Pac. Gas & Elec. Co. v. Bear Stearns & Co., 50 Cal. 3d 118 (1990).

As set forth above, the facts adduced and the reasonable inferences that can be drawn from this evidence supports Plaintiff's claim of intentional interference with contractual relations. Accordingly, Plaintiff has met her burden of showing a probability of prevailing on the merits of this claim.

v. Plaintiff Has Shown a Probability of Prevailing on a Claim of Unfair Competition Under Business & Professions Code Section 17200 et seq.

To state a legally sufficient claim for unfair competition pursuant to Business and Professions Code section 17200, a "plaintiff must establish that the practice [at issue] is ... unlawful (*i.e.*, is forbidden by law), unfair (*i.e.*, harm to victim outweighs any benefit) or fraudulent (*i.e.*, is likely to deceive members of the public). Because the law is stated in the disjunctive, it contemplates three distinct categories of unfair competition and a plaintiff must plead the specific rubric under which the proscribed conduct falls." Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC, 634 F. Supp. 2d 1009, 1022 (2007) (internal citations omitted).

A plaintiff bringing a claim based on the unlawful prong of California's unfair competition statute must identify the particular section of the statute that was allegedly violated, and must describe with reasonable particularity the facts supporting the violation. Sonoma Foods, Inc., *supra*, 634 F. Supp. 2d at 1022.

Under section 16600, “most contracts by which anyone is restrained from engaging in a lawful profession” are void and courts are barred from “specifically enforcing, by way of injunctive relief, a contractual clause” that constitutes such an unlawful restraint.

Retirement Group v. Galante, 176 Cal. App. 4th 1226, 1238 (2009), *rehearing denied*, *review denied*.

Plaintiff alleges that the 2005 Agreement and the 2007 Judgment and Injunction are unlawful in that both violate Business and Professions Code section 16600. Plaintiff also alleges that both the 2005 Agreement and the 2007 Judgment and Injunction prevent Plaintiff from producing, marketing, or distributing the film or any ancillary properties or merchandise and interfering with Plaintiff’s production contract with her production partners and with Telemundo. (FAC p.13). Plaintiff has, therefore, stated a legally sufficient claim in that she alleges a violation of a specific statutory provision and describes with reasonable particularity the facts supporting such a violation.

And, the Court finds that Plaintiff has provided sufficient competent evidence supporting her claim, as required under Navellier, *supra*. With respect to the 2005 Agreement, the purpose and effect of contractual restraints on third-parties may be illegal if they impair unreasonably the ability of third parties to engage in commerce and trade. As implemented by the 2007 Judgment and Permanent Injunction, the underlying 2005 Agreement has operated to restrain a Vasquez, who received no consideration in return for those restrictions and who was not a party to that agreement.

With respect to the 2007 Judgment and Injunction, Plaintiff provides a copy of the 2009 Letter in which Defendant accuses Plaintiff of creating a film in violation of the 2007 Judgment and Injunction and demands that Plaintiff cease development on the film. (April 7, 2011 Vasquez Decl., Exh. A). Additionally, the language in the 2007 Judgment and Injunction is broad and purports to apply to “all others having knowledge or notice of this Injunction.” (Defendant’s RJN, Exh. 20). Both are sufficient factual evidence that the 2007 Judgment and Permanent Injunction potentially violate Business and Professions Code section 16600.

Based on the foregoing, the Court finds that Plaintiff has met her burden of showing a probability of success regarding her claim of unlawful business practices with respect to the 2005 Agreement and the 2007 Judgment and Injunction.

“When a plaintiff who claims to have suffered injury from a direct competitor’s ‘unfair’ act or practice invokes section 17200, the word ‘unfair’ in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.” Gregory v. Albertson’s, Inc., 104 Cal. App. 4th 845, 853 (2002)(*citing Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163 (1999)). Where a plaintiff claims to have suffered from an entity other than a direct competitor, a claim of an unfair act or practice may be predicated on public policy that is “tethered” to specific constitutional, statutory or regulatory provisions. Gregory, 104 Cal. App. 4th at 854.

Plaintiff alleges that Defendant's actions were unfair in that Defendant used the "void and anti-competitive" 2005 Agreement to threaten Plaintiff's ability to produce, market and distribute the film and any ancillary properties or merchandise. These allegations state a sufficient claim. Where, as here, the Defendant's power enables her to obtain an unreasonable restraint on the ability of non-parties to enter the marketplace and to compete for ideas and financing even against persons who were not parties to that agreement, the law may render that restraint invalid.¹¹

c. Conclusion

Based on the foregoing, Defendant's special motion to strike is denied.

2. Plaintiff's Motion for Preliminary Injunction

Plaintiff seeks to enjoin Defendant from taking any actions that (a) interfere with Plaintiff's right to exercise her First Amendment rights as guaranteed under the United States and California Constitutions; and (b) interfere with Plaintiff's right to work in her trade, profession or occupation, including developing, marketing, publicizing, and/or selling the rights to the film that is at issue in the present action.

In determining whether to issue a preliminary injunction, the trial court is to consider the likelihood that the plaintiff will prevail on the merits at trial and to weigh the interim harm to the plaintiff if the injunction is denied against the harm to the defendant if the injunction is granted. King v. Meese, 43 Cal. 3d 1217, 1226 (1987).

a. Plaintiff is Likely to Succeed on the Merits at Trial.

Plaintiff argues that she will succeed on the merits at trial for two reasons. First, she argues that both the 2007 Judgment and Injunction and the 2009 Preliminary Injunction (the "Injunctions") unconstitutionally restrict her freedom of expression. Second, Plaintiff argues that the application of the Injunctions to her constitutes an impermissible restraint on her right to practice her trade, business and profession.

Plaintiff argues that the Injunctions unconstitutionally restrict Plaintiff's freedom of expression under both the U.S. and California Constitutions because the Injunctions are impermissible prior restraints.

"An injunction that forbids a citizen from speaking in advance of the time and communication is to occur is known as a 'prior restraint.'" Evanx v. Evans, 162 Cal. App. 4th 1157, 1166 (2008)(internal citations omitted). "Prior restraints are highly

¹¹ As a *prima facie* case under the anti-competitive prong of section 17200 has been stated, there is no need to evaluate whether a separately actionable fraud has been pled and proved.

disfavored and presumptively violate the First Amendment.”¹² *Id.*, at 1167 (internal citations omitted).

Both the 2007 Permanent Injunction and the 2009 Preliminary Injunction contain provisions that purport to apply the Injunctions to anyone “having knowledge or notice” of their contents. (Defendant’s RJN, Exhs. 20, 54). And, both injunctions contain language limiting the speech of all persons with knowledge or notice. The 2007 Judgment and Injunction prohibits those with knowledge or notice from “criticizing, denigrating, casting in a negative light or otherwise disparaging or causing disparagement to Jennifer Lopez.” (*Id.*, Exh. 20). The 2009 Preliminary Injunction prohibits those with knowledge or notice from “selling, renting, licensing, exhibiting, disclosing, distributing, disseminating, publishing, broadcasting or otherwise” any media that “includes [Defendant’s] actual image and/or voice and which contains private or intimate details about [Defendant] or about Noa’s relationship with [Defendant]” (*Id.*, Exh. 54) or depicts “[Defendant] by any performer or actress, whether expressly by name or otherwise identifiable as depicting [Defendant], and which contains private or intimate details about [Defendant] or Noa’s relationship with [Defendant].” (*Id.*, Exh. 54).

The language in these injunctions clearly creates a prior restraint limiting the speech of any individual with knowledge of the order – regardless of whether they have agreed to such limitation.

Defendant fails to present any arguments or evidence against Plaintiff’s assertion that the Injunctions are impermissible prior restraints.¹³

Instead, Lopez’s defense primarily consists of restating the same arguments made in support of her special motion to strike. As each of those arguments has been considered and found meritless, the Court declines to consider them again in opposition to this motion. Defendant’s one new argument in opposition argues that this Court cannot “dissolve or modify an injunction issued by another department or judge.” (Defendant’s Opposition to Preliminary Injunction p.7). Defendant cites New Tech Developments v. Bank of Nova Scotia, 191 Cal. App. 3d 1065, 1069 (1987), as authority. That argument, however, is without merit.

New Tech Developments involved an action by the purchaser of goods against its bank relating to a letter of credit issued by the bank to provide for the payment on the goods. After accepting receipt of the goods, the purchaser had determined that the goods were unsatisfactory and that the vendor was going out of business. The purchaser sought and was granted a preliminary injunction by a judge *pro tempore* to prohibit the bank from

¹² Although Vasquez argues that the Injunctions are also prior restraints as applied to Noa, Noa is not a party to the instant case. See Evans, *supra*, 162 Cal. App. 4th at 1162 (stating that appellant could not represent her mother and appellant’s mother was not a party to the appeal thus the court only considered the issues as they related to appellant). Therefore, the Court will consider these issues only with respect to Plaintiff.

¹³ In fact, during oral argument, defense counsel proposed that this entire matter could be resolved if Vasquez would simply submit her project to Ms. Lopez for prior approval.

making payments on the letter of credit. Later, the bank moved to dissolve the preliminary injunction, and its motion was heard by a regular judge. The Court of Appeal affirmed the dissolution of the preliminary injunction holding that the regular judge had jurisdiction to hear the motion to dissolve the injunction, even though the original motion was made before a different judge, since the judge *pro tempore* was not available to preside over the dissolution hearing. The Court of Appeal also held that the trial court did not abuse its discretion in dissolving the preliminary injunction, since the initial issuance was contrary to Uniform Commercial Code section 5114 (2)(b).

Although New Tech Developments recites the general rule that “once a matter has been assigned to one department of the superior court for hearing and determination, and there has been no final disposition, it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so assigned,” such rule is inapplicable here as it was in New Tech Developments. 191 Cal. App. 3d 1065 at 1069.

The application for a temporary restraining order and a preliminary injunction was initially assigned to this department as provided by the Superior Court rules. Before the hearing on the preliminary injunction could be heard, Judge Solner attempted to relate the underlying complaint and to have the preliminary injunction motion in the new case heard in his Department. That effort was unavailing, however, and the motion for preliminary injunction was returned to this Department for hearing. This is not an instance in which another department is interfering with the exercise of the power of the department to which the proceeding has been so assigned. New Tech Developments has no relevance to this matter.

Based on the foregoing, the Court finds that Plaintiff is likely to succeed on the merits of her claim that the 2007 Permanent Injunction and the 2009 Preliminary Injunction, as applied to her, constitute an unconstitutional restriction on her freedom of expression.¹⁴

b. The Balance of the Equities Weighs in Favor of Plaintiff.

Plaintiff argues she has and is suffering harm in that she has had difficulty in obtaining work as a result of Defendant’s attempts at enforcing the Injunctions against her. Plaintiff argues that Defendant, on the other hand, will suffer no harm if Plaintiff’s preliminary injunction is granted.

Defendant puts forth no arguments contradicting those of Plaintiff and, in fact, fails to address this element of the preliminary injunction test altogether. As a result, the Court finds that the balance of the equities weighs in favor of Plaintiff.

¹⁴ As this is enough to satisfy the first element of the test for a preliminary injunction, the Court need not address Plaintiff’s second argument that the application of the Injunctions to her constitutes an impermissible restraint on her right to practice her trade, business and profession.

c. Conclusion.

Based on the foregoing, Plaintiff's motion for a preliminary injunction is granted but only with respect to the language within the Injunctions that specifically states that such Injunctions apply to any person other than the named parties in each action and his agents, attorneys and all persons or entities acting in concert with him and/or on his behalf.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. *See* Code Civ. Pro. §529(a); City of South San Francisco v. Cypress Lawn Cemetery Ass'n, 11 Cal. App. 4th 916, 920 (1992).

Pursuant to Code of Civil Procedure section 529, an undertaking in the amount of \$50,000.00 must be posted on or before June 30, 2011.

3. Defendant's Demurrer

As all of Defendant's numerous arguments in her demurrer mimic those made in her special motion to strike and thus have already been considered and rejected, the demurrer is overruled.

Conclusion

Plaintiff's counsel is ordered to prepare and serve the Order and lodge it with the Court within ten days of the date of this order. The Court will hold the proposed order for ten additional days in order to allow Defendant to file objections.