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ALAMEDA COUNTY

NOV 17 2011

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By Shenest Deputy

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11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF ALAMEDA

13 MARCIE HODGE,

14 Plaintiff,

15 v.

16 ROBERT GAMMON, EAST BAY EXPRESS  
17 STEPHEN BUEL and DOES 1-10

18 Defendants.

Case No.: RG10540126

~~PROPOSED~~ ORDER GRANTING  
SPECIAL MOTION TO STRIKE

Date: <sup>Nov. 16</sup> ~~October 14~~, 2011  
Time: ~~10:01 am~~ 3:00 pm  
Judge: Hon. Marshall Whitley  
Courtroom: 18  
Reservation No: 1185951

Joshua Koltun ATTORNEY

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Defendants Robert Gammon, Stephen Buel and the East Bay Express's Special Motion to Strike the Complaint came on regularly for hearing on ~~October 14~~ <sup>Nov. 16</sup>, 2011, at ~~10:01 a.m.~~ <sup>3:00 pm</sup>, in Department 18 of this Court, the Honorable Marshall Whitley presiding. Joshua Koltun appeared as counsel for defendants and Nicole Hodge-Amey for plaintiff.

Having considered the papers and arguments presented, and good cause appearing, IT IS HEREBY ORDERED that

**1.. Defendants' Motion to Strike is GRANTED, on the following findings and conclusions of law:**

a. The Court can and does take judicial notice of all matters requested in Defendants' Request for Judicial Notice.

b. The Court finds that the Complaint is subject to a special motion to strike under Code of Civil Procedure sec. 425.16.

c. Defendants had the initial burden of showing that the cause of action against them "aris[es] from" any of their acts "in furtherance of [their] right of petition or free speech ... in connection with a public issue or issue of public interest." § 425.16(b)(1). This they have done. The Column concerned a candidate for public office's qualifications and/or motivations, which are an issue of public interest.

d. The burden thus shifted to Plaintiffs to "state and substantiate a legally sufficient claim." *Wilson v. Parker, Covert & Chidester*, 28 Cal.4th 811, 821 (2002).

e. Plaintiffs failed to make such a showing, and therefore the Court Strikes the Complaint. Sec 425.16(c). Specifically, the Court makes the following findings and conclusions of law:

f. Considered in the "totality of the circumstances" of the full context of the Column and the political campaign in which the challenged statements were made, Defendants' challenged statements are all statements of protected opinion under the First Amendment, rather than assertions of "provably false" fact.

g. The challenged statements with regard to the investigation of Plaintiff's credit card use and her colleague's admonition of her are absolutely privileged as fair reports under California Civil Code section 47(d);

1 h. The challenged statements quoting third persons are privileged under the "neutral reportage"  
2 privilege of the First Amendment, which applies since the statements were made in the context of a  
3 political campaign in which Plaintiff, as a candidate for public office, was a public figure.

4 i. Plaintiff has failed to put forth *prima facie* evidence showing that any challenged statement  
5 specifically challenged in the Complaint is false.

6 j. Plaintiff has failed to put forth *prima facie* evidence showing that any challenged statement  
7 specifically challenged in the Complaint was made with actual malice, that is to say knowledge of or  
8 reckless disregard to its falsity.

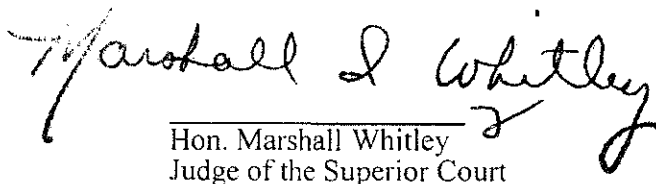
9 k. Plaintiff has failed to establish that she made a timely demand for retraction under Civil  
10 Code section 48a. Thus she is limited to recovering "special damages." Plaintiff has failed to put  
11 forth *prima facie* evidence showing that she suffered such damages as a result of the allegedly  
12 defamatory statements.

13 l. Pursuant to C.C.P. § 425.16(c), Defendants are entitled to recover reasonable attorney fees  
14 and costs; the amount thereof shall be determined upon the filing of a motion for attorney fees and/or  
15 a memorandum of costs;

16 2. The Complaint is hereby DISMISSED WITH PREJUDICE, and judgment shall be entered  
17 in favor of Defendants and against Plaintiff, for reasonable attorney fees in an amount to be  
18 determined in a subsequent proceeding.

19  
20 SO ORDERED

21  
22 Nov 17, 2011

23   
24 Hon. Marshall Whitley  
25 Judge of the Superior Court