David R. Simon (SBN 145197)
SIMON LAW GROUP
17595 Harvard Avenue, Suite C515
Irvine, CA 92614
Ph. (714) 975-1728

Bryan W. Pease (SBN 239139)
LAW OFFICE OF BRYAN W. PEASE
3170 Fourth Ave., Suite 250
San Diego, CA 92103
Ph. (619) 723-0369

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED POULTRY CONCERNS, a Maryland nonprofit corporation,

Plaintiff,

vs.

CHABAD OF IRVINE, a California corporation; ALTER TENENBAUM, an individual; and DOES 1 through 50,

Defendants.

CASE NO. 8:16-cv-01810-AB (GJSx)
Hon. André Birotte Jr., Ctrm 7B
Mag. Gail J. Standish, Ctrm 23

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Date: January 23, 2017
Time: 10:00 a.m.
Location: Courtroom 7B
350 West First Street, Los Angeles

Table of Contents

Table of Authorities

Cases

Statutes

Law Review

I. INTRODUCTION

Now pending before the Court and being heard concurrently are 1) Defendants' Motion to Dismiss; 2) Defendants' Anti-SLAPP Motion; and 3) Plaintiff's Motion for Preliminary Injunction. Most of the arguments Plaintiff would make in this Reply in Support of Motion for Preliminary Injunction have already been made in Plaintiff's oppositions to Defendants' motions, which Plaintiff incorporates herein by reference. Accordingly, Plaintiff now addresses the few remaining issues raised in Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction.

II. ARGUMENT

A. The Motion is not premature

Defendants claim there is no "urgency" and hence no need for a preliminary injunction. However, Defendants admit they will again seek to accept money in exchange for killing chickens and having them rendered in September of this year. (Opposition at 1:6.) As the case is not likely to have been resolved by then, a preliminary injunction is needed to preserve the status quo. The status quo is for Defendants to comply with the law as they apparently did in 2015 and 2016, and perform the ritual animal killing at a licensed slaughterhouse where the animals can be legally used for food, rather than killing and discarding them in a parking lot in violation of Penal Code section 597(a).

B. The Motion is not late

In addition to arguing there is no urgency, Defendants contradictorily argue Plaintiff waited too long to bring this case. However, there was no "delay caused by waiting on the state case." (Oppo. at 6:1.) Rather, the state court in *Animal Protection* continued the trial date which was previously set for September 2016 to June 2017, over the plaintiff's objection. When UPC saw that the ritual killing was going to take place again in 2016 and the *Animal Protection* case would not be resolved before then, it brought its own action in federal court, using its own experts who found Defendants are violating Penal Code section 597(a), which is not at issue in the state court case. (Boks MPI Decl., ¶ 5; Cheever MPI Decl., ¶ 4; May MPI Decl., ¶ 9; Kelch MPI Decl., ¶ 2; Voulgaris MPI Decl., ¶ 3.)

C. The Court has diversity jurisdiction

La Asociacion de Trabajdores de Lake Forest v. City of Lake Forest (9th Cir. 2010) 624 F.3d 1083, 1008 is inapposite regarding standing because it was based on federal question jurisdiction. This is a diversity case, and Plaintiff must only show standing under California's UCL, which it has under *Animal Legal Defense Fund v. LT Napa Partners* (2015) 234 Cal.App.4th 1270 ("*Napa Partners*"), if the jurisdictional threshold of $75,000 is met.

Contrary to Defendants' assertions, the cost of complying with the injunction is not based solely on lost profit. Rather, the cost of complying with the injunction is what it says: the actual cost of complying with the injunction, which includes both hard costs as well as lost profits. In the present case, Defendants claim they brought in $1,701 in donations and incurred costs of $1,725 at their 2004 Kapparot event. Thus, if the injunction was in place and they could not accept money in exchange for killing and discarding chickens, the cost of complying would have been $3,426. They would have been unable to collect $1,701 in donations, and they would have incurred $1,725 in expenses. Based on Defendants' own figures, therefore, the cost of complying with the injunction will exceed the jurisdictional threshold after 22 years. As Defendants claim this ritual has been performed for thousands of years, and there is no reason to expect Chabad of Irvine will disappear, there is nothing unreasonable about considering the cost of the injunction over such a definite time period.

It is likely the true revenue numbers are much higher, but discovery in the present case has not begun, and Chabad of Irvine is being extremely evasive in the related state court case in which it has had three motions to compel granted against it and still has not stated how much it pays for each chicken, how much it charges each participant, nor even how many chickens it used in 2014 nor any other year. The person most knowledgeable about these topics is scheduled to sit for a deposition in the state court case on January 19 after that plaintiff's latest motion to compel was granted, and thus this information may be available prior to the January 23 hearing in the present case.

The Gothamist reported, "A five week old boiler chicken, which are generally what kaporos centers use, weighs about five pounds on average, and according to the National

Chicken Council, the wholesale price for a live chicken is 53 cents per pound, meaning the average chicken runs about $2.50, plus transportation." (Pease MPI Decl., Ex. A.) Even if each chicken cost Defendants $5, the stated expenses of $1475[1] equates to 295 chickens, which matches with Plaintiff's witnesses' estimation that they saw about 300 chickens and participants in 2014. If each participant was paying the $27 that an agent of Chabad of Irvine told Ronnie Steinau is the *required* amount, this would equal $7,965 in donations or revenue for Defendants. (Verified Complaint, ¶ 26.) That amount plus the expenses of $1475 equal a $9,690 cost of complying with the injunction, which would exceed the jurisdictional threshold in under eight years.

The cost of complying with the injunction must also be added to any recoverable attorneys' fees for purposes of reaching the jurisdictional threshold. The previous *Bait Aaron* case gives an indication of what the amount of fees are that are likely to be incurred. Additionally, prior to filing the present case, Plaintiff's counsel engaged in a substantial amount of legal research that was never compensated by any party and was necessary for bringing the present case. That these billable hours overlapped with *Bait Aaron* does not mean they cannot be recovered in the present action if they were reasonably necessary for bringing the present action. Plaintiff also used the Declaration of Michael McCabe in support of its motion for preliminary injunction, which was an extensive (and expensive) expert declaration prepared during the *Bait Aaron* case.

Defendants improperly rely on the Los Angeles Superior Court trial judge's erroneous ruling dismissing *Bait Aaron* on a number of grounds that are clearly incorrect, and that the Orange County Superior Court did not find persuasive in *Animal Protection*. As previously stated, UPC did not appeal the *Bait Aaron* decision for tactical reasons.

---

[1] Although Defendant Tenenbaum's declaration does not state what the spreadsheet amounts are for, Defendants' Reply in Support of Motion to Dismiss at p. 4:3-5 states that $1,475 was "expenses incurred from the chickens," and $250 was "the cost of hiring the schochet Ely Tenenbaum." The term "schochet" appears to be a Hebrew word for "ritual slaughterer." Thus, the participant expressing atonement does not kill the chicken him- or herself; rather this action is performed by Defendants in exchange for the fee paid.

Defendants rely on *Torres v. City of Montebello* (2015) 183 Cal.Rptr.3d 801, 820 to claim UPC's cost of bringing this action is zero, and thus any legal victory will not transcend UPC's private stake in the matter. However, like most of the cases cited by Defendants, simply reading the cited page shows that is stands for the opposite conclusion.

The *Torres* court quoted the trial court as finding: "Torres is not a petitioner who wished to pursue a lawsuit, found an attorney, and then also found a collateral source of funding for his attorneys' fees." (*Id.* at 406.) "On the contrary, the court found, 'this lawsuit would not have been filed without [a third party's] agreement to pay Torres' attorneys' fees." (*Id.*) However, in the present case, no third party is paying Plaintiff's attorneys' fees, and thus the lawsuit would have been and in fact was brought without any such arrangement.

To the extent Defendants are claiming that plaintiffs whose lawyers represent them on contingency cannot qualify for CCP section 1021.5 fee awards, this is not only incorrect, but a gross misstatement of the law, as courts have held that attorneys in such cases, such as Plaintiff's attorneys in the present case, are entitled to a *fee multiplier* for the contingent representation.

"A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.)

Defendants also claim the public benefit requirement is not met because there is no public interest in whether Defendants follow the law. This is of course the opposite of their anti-SLAPP argument, which is that their private communication in search of atonement for their sins is somehow communication aimed at the public in connection with a matter of public interest.

Regardless, as should be clear from the number of news articles surrounding this issue, including those offered as exhibits by Defendants, there are large numbers of people who are very interested in seeing Defendants' illegal activity stop. Plaintiff submitted 15 declarations in support of its motion for preliminary injunction, including one from the former general manager of Los Angeles Animal Services, three veterinarians, and an animal law expert. There have been

many animal law review journal articles written about the implications of *Lukumi*, including Oleske, James M., Lukumi at Twenty: A Legacy of Uncertainty for Religious Liberty and Animal Welfare Laws (February 12, 2013), 19 Animal L. 295, available at http://aldf.org/wp-content/uploads/ALC/2016/Lukumi_at_Twenty.pdf ("*Oleske*"), and the other journal articles cited therein.

Clearly, if Plaintiff is correct that Defendants are violating Penal Code section 597(a) by killing and discarding hundreds of chickens in a parking lot to be rendered, there is a large public interest in seeing this illegal behavior stop, which is more than a "mere statutory violation." The public right being enforced is the right to live in a society where the laws are enforced equally, and authorities do not turn a blind eye to some largescale violations because of the participants' professed religious beliefs, such that law enforcement officials would stand by and not act under a mistaken belief that they cannot act. Thus, the public interest requirement under CCP section 1021.5 is met.

D. Plaintiff has UCL standing

Defendants argue there can be no diversion of organizational resources when Plaintiff's mission is to end the use of chickens in Kapparot anyway. However, this misses the point that Plaintiff's mission is to end the *legal* use of chickens in Kapparot, including when birds are being used for food, through education and persuasion. This is separate from Defendants' *illegal* acts in killing chickens in a parking lot to be rendered, which Plaintiff should not have to spend time and organizational resources documenting and convincing authorities to take action on, because nobody has a right to commit illegal acts. (Steinau MPI Decl., ¶¶ 2-12; Davis MPI Decl., ¶¶ 5-6.)

Defendants argue "any religious service that accepts donations would be considered a business activity." (Oppo. at p. 22.) However, this is true of any nonprofit organization, religious or otherwise, that engages in commercial activity. If the organization is doing something *illegal*, then the UCL can be used to enjoin the activity. No entity has the right to break the law. Recognizing that Defendants are engaged in "business activity" for UCL purposes does not subject them to any regulations they would not otherwise be subject to.

Rather, it provides a private remedy for violations of any laws that Defendants are *already* required to follow. If there are any laws that Defendants are not subject to by virtue of an exception for religious activity, then such laws could not be a predicate basis for a UCL action.

Defendants argue treating their Kapparot fundraising activities as "business activity" would be like treating any place of worship that accepts donations as a business. This misses the point. Places of worship are not entitled to break the law. Since holding mass or prayer services are not against the law, accepting donations to be seated at one does not trigger the UCL. Only activity that is *already* unlawful triggers the UCL, when carried out in conjunction with business activity.

Defendants reliance on *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136 ("*Mendes*") is similarly misplaced. *Mendes* held Penal Code Section 597t cannot be *directly* enforced by a private party. However, virtually any law can serve as the predicate for an unfair competition action. (*State Farm Fire & Cas. Co. v. Superior Court* (1996) 45 Cal. App. 4th 1093, 1102-1103.) The "unlawful" practices prohibited by Bus. & Prof. Code § 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. It is not necessary that the predicate law provide for private civil enforcement. (*Saunders v. Superior Court* (1994) 27 Cal. App. 4th 832, 838-839; *see Californians for Population Stabilization v. Hewlett-Packard Co*. (1997) 58 Cal. App. 4th 273, 287 (unfair competition cases have cited anti-discrimination laws, antitrust laws, criminal laws, environmental protection laws, fish and game laws, housing laws, labor laws, and vehicle laws). An action based on unlawful business practice may be maintained unless the defendant's conduct is privileged or is immunized by another statute, or unless the underlying statute expressly bars its enforcement under the unfair competition law. (*Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 603-604 (plaintiff could base action on violation of Insurance Code requirement that agents, brokers, and automobile dealers be licensed to transact insurance business).)

An unlawful business act or practice is an act or practice that is both undertaken pursuant to business activity and also forbidden by law. (*Farmers Ins. Exch. v. Superior Court* (1992) 2

Cal. 4th 377, 383.) Any business act or practice that is unlawful, in the sense that it violates a specific statute, may be enjoined under the unfair competition law. (*Comm. on Children's Television, Inc. v. Gen. Foods Corp*. (1983) 35 Cal. 3d 197, 209-210, superseded by statute on other grounds as stated in *Gartin v. S&M NuTec LLC*, 2007 U.S. Dist. LEXIS 38050 (C.D. Cal.); *Consumers Union of United States, Inc. v. Fisher Dev., Inc*. (1989) 208 Cal. App. 3d 1433, 1438-1439.)

"In *Stop Youth Addiction* and *Cel-Tech*, we explained that to bar a UCL action, another statute must absolutely preclude private causes of action or clearly permit the defendant's conduct." *Zhang v. Superior Court* (2013) 57 Cal. 4th 364, 379-380. "UCL remedies are limited in scope, generally extending only to injunctive relief and restitution." (*Id.* at 381.)

Animal Legal Defense Fund v. Great Bull Run (June 6, 2014), Case No. 14-cv001171-MEJ, 2014 WL 2568685, 2014 U.S. Dist. LEXIS 78367, directly addressed the holding of *Mendes* in the context of the UCL (emphasis added):

> Because the *Mendes* court held that the animal cruelty law contained no private right of action, but did not bar civil causes of action that invoke the animal cruelty law, the Court finds Defendants' argument unpersuasive. Further, the UCL provides for **a private right of action against any unlawful business practice, including violations of laws for which there is no direct private action.** *VP Racing Fuels, Inc. v. Gen. Petrol. Corp.*, 673 F. Supp. 2d 1073, 1082 (E.D. Cal. 2009) (citing *Summit Tech., Inc. v. High-Line Med. Instruments, Co*., 933 F. Supp. 918 (C.D. Cal. 1996)) ("[I]t is not necessary that the predicate law provide for private civil enforcement."); *Perea v. Walgreen Co*., 939 F. Supp. 2d 1026, 1040 (C.D. Cal. 2013).
>
> (Emphasis added.)

E. Defendants' actions are clearly illegal

Defendants admit "chickens were rendered," and thus were not used for food (Oppo. At 5:3.) Yet, they have identified no California Penal Code section that allows them to kill animals to be rendered. If anyone killed chickens in a parking lot *without* a religious motivation and sent the chickens to be rendered, this would clearly be illegal under Penal Code section 597(a), which prohibits intentionally and maliciously killing animals. (Boks MPI Decl., ¶ 5; Cheever MPI Decl., ¶ 4; May MPI Decl., ¶ 9; Kelch MPI Decl., ¶ 2; Voulgaris MPI Decl., ¶ 3.) Whether

there is a religious motivation or not, such killing is done maliciously as that term is defined in Cal. Penal Code section 7(4) because it is done with intent to do a wrongful act as established by law, as chickens must be used for food for their killing to be legally justified. (Penal Code section 599c.) Accordingly, Defendants are asking this Court to create an exception to the statute that the Legislature has not seen fit to provide. However, there is no constitutional requirement that Defendants be allowed to kill animals in a parking lot to be rendered.

F. Defendants offer no evidence a preliminary injunction would burden their religious beliefs

As repeatedly recognized by the lower courts, the standard of review under *Church of Lukumi Babalu Aye v. City of Hialeah* (1993) 508 U.S. 520 ("*Lukumi*") and *Employment Div. v. Smith* (1990) 494 U.S. 872 ("*Smith"*) for a neutral law of general applicability is rational basis, not strict scrutiny.

> While the federal courts, for a brief period, applied a standard of review similar to rational basis review to free exercise cases where the challenged law was facially neutral (*see e.g. Employment Div., Dept. of Human Res. of Oregon v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993)), with the passage of the Religious Freedom Restoration Act ("RFRA") (42 U.S.C.A. § 2000bb et seq.) and its replacement, the Religious Land Use and Institutionalized Persons Act ("RLUIPA") (42 U.S.C.A. § 2000cc et seq.), such a test has been superseded. *Holt v. Hobbs*, ___ U.S. ___, 135 S.Ct. 853, 190 L. Ed. 2d 747 (2015)….*City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997)…found the federal RFRA unconstitutional as applied to the states.

(*Moorish Sci. Temple of Am., Inc. v. Thompson* (Ct.App. Apr. 8, 2016, No. 2014-CA 001080-MR) 2016 Ky. App. Unpub. LEXIS 269, at *8-9.)

> In *Smith*, the Supreme Court rejected this compelling state interest test for facially neutral laws of general applicability that only incidentally burden the free exercise of religion. 494 U.S. at 883-85. In *Smith*, the Supreme Court held that the Free Exercise Clause of the First Amendment did not forbid the state of Oregon from either banning sacramental peyote use by Native Americans through its general criminal prohibition of ingestion of the drug or denying unemployment benefits to persons terminated from their jobs for such religiously inspired peyote use. 494 U.S. at 890; *see also Church of Lukumi Babalu Aye, Inc*., 124 L. Ed. 2d 472, 113 S. Ct. 2217, 2226 (1993) ("Our cases establish the

> general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.") (citation omitted). Congress responded to *Smith* by passing RFRA.

(*Francis v. Keane* (S.D.N.Y. 1995) 888 F.Supp. 568, 573.)

As California does not have a state law RFRA equivalent, Penal Code section 597(a) must only withstand rational basis review, and any burden on Defendants' religion is therefore irrelevant. Even were this not the case, Defendants have proffered no evidence whatsoever that a preliminary injunction would actually burden their religious beliefs in any way. In fact, they admit they were able to carry out the Kapparot ritual using chickens at a licensed slaughterhouse where the animals could then be used for food, in compliance with Penal Code section 599c and this Court's temporary restraining order. (Affidavit of Rabbi Alter Tenenbaum in Opposition to Plaintiff's Motion for Preliminary Injunction, Dkt. # 69-3, ¶ 3.)

Defendants argue the expert declaration of Holly Cheever, DVM is not "relevant as Kapparot is not a 'sacrifice.'" (Oppo. At 8:10.) Based on this reasoning, any protection Defendants believe *Lukumi* provides for religious animal sacrifice does not apply to their activities because "Kapparot is not a 'sacrifice.'" Defendants do not submit any evidence regarding the purpose of the Kapparot ritual and whether it is "necessary" to appease a deity as the animal sacrifice was in *Lukumi*.

The Supreme Court in *Lukumi* held, "We conclude, in sum, that each of Hialeah's ordinances pursues the city's governmental interests only against conduct motivated by religious belief." (*Lukumi, supra,* 508 U.S. at 545.) "A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." (*Id.*) However, in the present case, there is no evidence Penal Code section 597(a) only applies to conduct motivated by religion, nor is there any evidence that it even burdens Defendants' religious practice.

"The basis of the Santeria religion is the nurture of a personal relation with the *orishas*, and one of the principal forms of devotion is an animal sacrifice." (*Lukumi, supra,* at 524.) "According to Santeria teaching, the *orishas* are powerful but not immortal. They depend for survival on the sacrifice." (*Id.*) Thus, *Lukumi* struck down four city ordinances that were

explicitly passed with a discriminatory intent, and left the question open whether a law that considers some animal killings "necessary" must also allow for religious exceptions when there is a religious belief that certain killings are "necessary." (*Oleske, supra,* 19 Animal L. 295 at 299 ("In the two decades since *Lukumi* was decided, the scope of the selective-exemption rule has been hotly debated, and there are at least five major unresolved questions about the rule.")

However, in the present case, Defendants do not argue and have not offered any evidence to show that killing chickens for Kapparot is necessary *even in their own view*, and they have certainly not shown that it is necessary to send the animals to be rendered rather than use them for food, as their religion actually dictates the opposite. Thus, even under the most extreme version of the selective-exemption rule advocated for by Defendants, they would not be entitled to an exemption for killing and discarding chickens, because Penal Code section 597(a) prohibits such conduct for *everyone* regardless of secular or religious motivation.

While the Free Exercise Clause would not require an exception to Penal Code section 597(a) even for religious animal *sacrifice* that is allegedly *required* by someone's religious beliefs, the Court does not need to reach this question because Defendants admit their actions are not a "sacrifice" and have offered no evidence that it is "necessary" such that it would justify a judge-made exception to the law against killing animals to be rendered. All the evidence before the Court is that the purpose of the ritual is self-reflection, and that the animals are supposed to be donated as food for the poor, not discarded or "rendered."

G. The only harm to Defendants in issuing a preliminary injunction would be monetary

Defendants also misconstrue Plaintiff's point that the only harm to Defendants if the preliminary injunction issues is monetary. Defendants apparently understand this to mean that if the injunction issues, Defendants would be required to perform the ceremony with coins instead of chickens. (Oppo. at p. 22:15.) However, this is not the case. Defendants would still be free to perform the ceremony with chickens, and they could even still kill the chickens and send them to be rendered, assuming no law enforcement authorities enforce the Penal Code. The only thing Defendants would be enjoined from doing under the proposed preliminary injunction is

accepting money in exchange for engaging in illegal acts. Thus, the only harm is monetary. They would be able to carry out the ceremony in the exact same way, but they would lose money because they would not be recovering the cost of the chickens, nor would they be able to reap any profit. Defendants would also be indemnified with a bond posted by Plaintiff in case it is later determined the preliminary injunction should not have issued.

Thus, there is absolutely no harm in issuing the preliminary injunction. If the Court determines Plaintiff has raised even serious questions going to the merits, it should issue the preliminary injunction to maintain the status quo. Defendants will not be harmed at all, as they will only be prohibited from accepting money in exchange for killing chickens not to be used as food, and Plaintiff can be ordered to post a bond of what Defendants now claim is about a $3,426 cost of complying with the injunction for one year. (Affidavit of Rabbi Alter Tenenbaum, Dkt. # 69-1, ¶ 5.) If it is later determined the preliminary injunction should not have been issued, Defendants can recoup the $3,426 from the bond to be posted by Plaintiff.

H. The anti-SLAPP statute does not protect Defendants

Defendants urge this Court to ignore the highest California appellate court ruling regarding interpretation of the anti-SLAPP statute and instead apply federal constitutional law to a question of California statutory interpretation. However, whether the Free Exercise Clause protects Defendants' behavior and whether California's anti-SLAPP statute does are two separate issues. To invoke California's anti-SLAPP statute, Defendants must show not only that Defendants' actions constitute speech, but that they constitute speech intended for a public audience about an issue of public concern. An individual reciting a private prayer and seeking atonement is not public speech like a wedding ceremony conveying public vows to a community. Even if it was, the act of killing a chicken following the prayer is not *itself* communicative at all, let alone communicative of some public statement.

Defendants also spend no less than six pages of their reply in support of their anti-SLAPP motion arguing that Plaintiff's subjective intent is to chill Defendants' First Amendment Rights. Defendants rely on *Ingels v. Westwood One Broad. Servs., Inc.* (2005) 28 Cal.Rptr.3d 933, 939,

to claim that Plaintiff's subjective intent is somehow relevant. As usual, the case relied on by Defendants holds the opposite of what Defendants claim.

The *Ingels* court held: "We look to the context out of which appellant's claims arose: his attempt to express himself in an open forum carried over the airwaves of public radio…We have no trouble concluding that respondents' activity in providing an open forum by means of a call-in radio talk show fits within the scope of section 425.16, subdivision (e)(4)." (*Id.*) The issue in *Ingels* was whether suing a talk show host under an age discrimination statute for making disparaging remarks on air about someone's age could trigger the anti-SLAPP statute, and the court held that it could, based on the intent to chill free speech, and the cause of action *arising from* the protected activity.

Yet, Defendants claim this case stands for the proposition that when evidence of *subjective* intent to burden free speech right exists, "it guarantees the success on the motion," even if the arising from requirement is not met. (Defendant's Reply in Support of Motion to Strike Complaint at 11:21.) However, this is the opposite of what caselaw actually holds. "That a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such." (*City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 78.) "The anti-SLAPP statute cannot be read to mean that 'any claim asserted in an action which arguably was filed in retaliation for the exercise of speech or petition rights falls under section 425.16, whether or not the claim is based on conduct in exercise of those rights.' [Citations.]") (*Id.* at 77.)

Thus, regardless of UPC's subjective motivation, or anyone associated with UPC such as its third party declarants, the anti-SLAPP statute is not triggered by a cause of action arising from and seeking to enforce Penal Code section 597(a), which prohibits *anyone* from killing chickens in a parking lot and sending them to be rendered.

III. CONCLUSION

Plaintiff has raised serious questions going to the merits of this case and shown that the balance of equities tips sharply in its favor, as the only harm to Defendants would be monetary, and Defendants have offered no evidence that the preliminary injunction would burden their

religious beliefs in any way. Additionally, Defendants admit they were able to comply with their religious beliefs *and* the law in 2016 as a result of this Court's temporary restraining order, which should now be reinstated as a preliminary injunction.

Respectfully submitted,

SIMON LAW GROUP
LAW OFFICE OF BRYAN W. PEASE

Dated: January 9, 2017 By: /s/ Bryan W. Pease

David R. Simon
Bryan W. Pease
Attorneys for Plaintiff
United Poultry Concerns