

David Abrams v. Regents of the University of California, 19STCP03648

~~Tentative~~ decision on motion to strike:  
granted in part

**FILED**  
Superior Court of California  
County of Los Angeles  
JAN 07 2020  
By Sherril K. Carter, Executive Officer/Clerk  
Jennifer De Luna, Deput

Respondent Regents of the University of California (“University”) moves to strike portions of the Petition of Petitioner David Abrams (“Abrams”).

The court has read and considered the moving papers, oppositions, and reply, and renders the following tentative decision.

**A. Statement of the Case**

Petitioner/Plaintiff Abrams, acting *pro se*,<sup>1</sup> filed this lawsuit on August 22, 2019, asserting a cause of action for violation of the California Constitution and the California Public Records Act (“CPRA”) and seeking the remedies of declaratory and injunctive relief. The Petition/Complaint alleges in pertinent part as follows.

In 2018, news came out that University would be hosting a conference for Students for Justice in Palestine (“SJP”), a group known to have supported, hosted, or otherwise associated with terrorists. University has received grants from the USAID program and must certify to the Department of State that it does not provide material support to anyone associated with terrorism.

On November 5, 2018, Abrams sent a letter to University advising that its hosting of the SJP conference may jeopardize its eligibility for USAID grants. University advised Abrams that it was in compliance with such requirements because it had checked all 65 conference presenters to make sure they were not on the Treasury Department blocked person list and a couple other sources.

Abrams subsequently served a freedom of information request on the University seeking, *inter alia*, documents disclosing the names of the persons who spoke at the SJP conference. University refused to supply this information, citing a fear of “harassment” and “endangerment” and “internet blacklists” on web sites such as canarymission.org.

University’s asserted public interest in nondisclosure is outweighed by the constitutional right to the information. California Constitution, Art. I (“Art. I”), §3(b)(1). Furthermore, the public has an interest in these specific documents because it has a right to investigate whether University is adequately meeting its legal and contractual obligations to refrain from supporting terrorists. Further, the public has a right to the open debate promised by University through learning the identities of persons presenting at conferences on University grounds. These public interests are not clearly outweighed by the University’s speculation about harassment and blacklisting.

**B. Applicable Law**

Any party, within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part thereof. CCP §435(b)(1). CCP section 436 permits the court to strike out any irrelevant, false, or improper matter, as well as any part of any pleading not in conformity with an order of the court. Irrelevant matters are defined as those allegations that

<sup>1</sup> Abrams is an attorney licensed to practice in New York, but not in California. Pet. ¶3.

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are not essential to the statement of a claim or that are neither pertinent nor supported by an otherwise sufficient claim. CCP §431.10(b).

The notice of motion to strike shall be given within the time allowed to plead, and if a demurrer is interposed, concurrently therewith, and shall be noticed for hearing and heard at the same time as the demurrer. CRC 3.1322(b). The notice of motion to strike a portion of a pleading shall quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count or defense. CRC 3.1322(a).

The grounds for a motion to strike shall appear on the face of the challenged pleading or form any matter of which the court is required to take judicial notice. CCP §437(a). Matter to be judicially noticed shall be specified in the notice of motion. CCP §437(b). When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend. Perlman v. Municipal Court, (1979) 99 Cal. App. 3d 568, 575.

### **C. Statement of Facts**

In November of 2018, University hosted and subsidized a conference put on by SJP. Pet. ¶1. University's Chancellor publicly defended the decision to host the SJP Conference, citing open debate. Pet. ¶11, Ex. 3.

On November 5, 2018, Abrams sent a letter to University advising that its hosting of the SJP conference may be jeopardizing its eligibility for USAID grants, which requires regular certification that University does not provide material support to anyone associated with terrorism. Pet. ¶¶ 4-5. University responded that it was in compliance with such requirements because it had checked all 65 conference presenters to make sure they were not on the Treasury Department blocked person list, and a couple other sources. Pet. ¶6, Ex. 1.

Abrams subsequently served a Freedom of Information Act request seeking the identities of speakers at the conference, which University declined, citing concerns about endangerment and blacklisting of such individuals on a website known as Canary Mission. Pet. ¶¶ 10, 13, Ex. 4.

### **D. Analysis**

University moves to strike portions of the Petition/Complaint as irrelevant. University also moves to strike Abram's request for attorney's fees. Abrams opposes.<sup>2</sup>

#### **1. Request for Attorney's Fees**

University moves to strike the Petition/Complaint's request for attorney's fees on the grounds Abrams is appearing *pro se* and cannot recover attorneys' fees. Mot. at 5-6, Reply at 3-4.

University relies on Trope v. Katz, ("Trope") (1995) 11 Cal.4th 274, in which the California Supreme Court discussed whether a self-represented attorney could recover attorney fees under Civil Code section 1717, the provision governing contractual attorney fees. Mot. at 6. Trope involved a law firm that represented itself and prevailed in a breach-of-contract lawsuit against its former client. Id. at 278. The law firm moved for attorney fees, citing a provision in

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<sup>2</sup> The Petition refers only to a FOIA request. Abrams does not explain how a California state court can enforce a FOIA request or how he, an apparent New York resident, has standing to make claims under the California Constitution and CPRA.

the retainer agreement. *Id.* at 277-78. The court affirmed the denial of the attorney fees motion, holding that usual and ordinary meaning of the words “attorney's fees,” both in legal and in general usage, is the consideration that a litigant actually pays or becomes liable to pay in exchange for legal representation, and that an attorney litigating in *propria persona* pays no such compensation. *Id.* at 280.

University also cites *Musaelian v. Adams*, (“Musaelian”) (2009) 45 Cal.4th 512, in which the California Supreme Court held that attorneys’ fees should not be awarded to a self-represented attorney as a sanction under Code of Civil Procedure section 128.7, which allows for sanctions for frivolous lawsuits and tactics. *Id.* at 519-20. The Supreme Court also noted that where it had upheld attorney’s fees awards, the attorney fees were “incurred” in the sense that there was an attorney-client relationship, the attorney performed services on behalf of the client, and the attorney's right to fees grew out of the attorney-client relationship, whereas a party litigating his or her own case could not recover fees. *Id.* at 520.

University argues that as it is undisputed that Abrams is self-represented, he is not entitled to collect attorneys’ fees pursuant to the precedent set in *Trope* and *Musaelian*. Mot. at 5-6, Reply at 3-4.

Abrams notes that *Trope* allows for limited circumstances where a *pro se* attorney may recover attorney fees and asserts that he is entitled to recover fees because he has already consulted with a California attorney and may expend actual consideration for attorney services in the future. Opp. at 3. Abrams argues that the University’s motion is premature because he will only apply for attorney’s fees if (1) he prevails; (2) he actually expends monies on legal representation; and (3) any other statutory requirements are met. Opp. at 3.

Abrams is incorrect because University’s motion addresses the existing Petition. As University correctly notes (Reply at 3), the fact that Abrams has consulted with a California attorney and may expend monies for attorney services in the future is insufficient to entitle Abrams to recover fees in this case. Attorney’s fees must actually be incurred in the CPRA lawsuit for entitlement to recovery under Government code section 6259.

The University’s motion is not premature because the Petition fails to provide any basis on which Abrams would be entitled to attorney’s fees should he prevail. If he substitutes in an attorney to prosecute the case, Abrams can always seek leave to amend the Petition. The motion to strike is granted with respect to the Petition’s request for attorney’s fees.

## **2. Irrelevant Allegations**

University moves to strike portions of the Petition on the grounds that Abrams’ allegations are irrelevant and do not relate to the CPRA request at issue. Mot. at 7-8.

### **a. Allegations Regarding Canary Mission**

University moves to strike the Petition’s reference to Canary Mission and its allegations that no individual has been harmed as a result of publication of their name on the Canary Mission website. Mot. at 8-9, 11; Reply at 4-5.

Abrams asserts that these allegations are relevant because University explicitly identified canarymission.org as an example when it rejected Abrams’ request due to concerns of harassment and blacklisting. Opp. at 3. Abrams argues that the allegations relate to University’s burden of proving that there is a strong public interest in not disclosing the requested records. Opp. at 4.

The court agrees with Abrams. When University cited canarymission.org as an example of an instance where SJP members have been targeted in the past, it made canarymission.org relevant. Pet. ¶13, Ex. 4. While University did not reject Abrams' request specifically because of canarymission.org and used it only as an example (Reply at 4), Abrams is entitled to rebut that example and his assertions about the website are relevant.

The motion is denied as to the paragraphs and lines set forth in items 3, 11-13 of University's notice of motion.

**b. Allegations Regarding SJP's Connections to Terrorism**

University moves to strike portions of the Petition alleging that SJP has associated with terrorists in the past. Mot. at 8-10. University argues that these allegations are irrelevant to whether the public interest exception balancing test applies to Abrams' CPRA request and would require extensive investigation by University unrelated to the Petition's cause of action to address. Mot. at 8.

As Abrams persuasively argues, SJPs alleged past association with terrorists is relevant to the question of whether there is a strong public interest in learning the names of persons who spoke at the SJP conference. Opp. at 5.

University's motion is denied as to the paragraphs and lines set forth in items 2, 5, and 6 of the University's notice of motion.

**c. Allegations Regarding University and USAID**

University moves to strike portions of the Petition relating to its obligations for USAID Certification. Mot. at 9-10; Reply at 5-6. University argues that its obligations do not inform whether the public has an interest in the SJP presenters' identities and is irrelevant to Abrams' CPRA request. Mot. at 9-10; Reply at 5-6.

The court disagrees. University's USAID obligations require that it must take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to an individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts. Abrams expressly warned University that its conference may jeopardize its eligibility for USAID grants. Pet. ¶5. While disclosure of the SJP presenters' names will not inform whether University complied with this requirement, the allegation is part of the parties' relationship, which is always relevant.

The motion is denied as to the paragraphs and lines set forth in items 7-10 of the University's notice of motion.

**d. Allegations Regarding Abrams' Activities**

University moves to strike the portion of the Petition relating to Abrams' intent and litigious history. Mot. at 9; Reply at 6. University asserts that Abrams' intent is not germane to the court's analysis and his alleged prior acts are irrelevant to the Petition's cause of action. Abrams claims that he is an important part of the public and argues that his activities are relevant to the compelling public interest in identifying institutions that are providing support to terrorism. Opp. at 4.

As University correctly notes (Reply at 6), private interests and activities are distinct from the public interest at large. See Los Angeles Unified School District v. Superior Court, (2014),

228 Cal.App.4th 222, 248. Abrams' alleged intent and prior acts are private interests and activities, not public ones, and are not relevant to whether disclosure of the SJP presenters' names is in the public interest.

The motion is granted as to the paragraph and line set forth in item 4 of the University's notice of motion.

**4. Conclusion**

The University's motion to strike is granted for the specified irrelevant portions of the Petition and denied for the rest.

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