

1 DONGXIAO YUE

2 REDACT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF CONTRA COSTA

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DONGXIAO YUE,

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Plaintiff,

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v.

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TRIGMAX SOLUTIONS, LLC,  
YEYECLUB.COM, MUYE LIU, WENBIN  
YANG AND DOES 1-10

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Defendants.

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FILED  
MAR 09 2017

STEPHEN H. NASH CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

By \_\_\_\_\_, Deputy Clerk

A. GRAHAM

CASE NO.: C16-01118

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS TRIGMAX SOLUTIONS,  
LLC AND MUYE LIU'S SPECIAL  
MOTION TO STRIKE PLAINTIFF'S  
CAUSES OF ACTION**

DATE: March 23, 2017

TIME: 9:00 AM

JUDGE: Honorable Steve K. Austin

DEPT: 33

## INTRODUCTION

In a previous lawsuit in Alameda, Defendant Muye Liu's anti-SLAPP motion was **denied on the merits**. The Alameda court denied Liu's anti-SLAPP motion on the ground that "Defendant did not present any competent evidence in support of his motion" and "[Defendant's] memorandum does not comply with the requirements set forth in Rule of Court 3.1113(b) (concise statement of facts and applicable law)". (See court order, Yue Decl. Ex. 7.)

Here, Liu and Trigmax repeat the same failed arguments in the same non-compliant form. Plaintiff again opposes Trigmax and Liu's anti-SLAPP motion, based on his declaration ("Yue Decl."), the Verified Complaint ("VC") and all the papers in this case.

## STATEMENT OF FACTS

Plaintiff is in the business of developing computer software and web services. In 2010, Plaintiff won a two-week copyright jury trial in federal court. (Yue Decl. ¶88)

In June 2012, Plaintiff established a Chinese language social media website called Zhen Zhu Bay ("ZZB") at the web address zhenzhubay.com. Members of ZZB enjoyed topics such as literature, performing arts, history, photography, tourism and science. (Yue Decl. ¶10.)

Trigmax Solutions, LLC ("Trigmax") and Muye Liu ("Liu") owned, operated and administered a competing Chinese language website at Yeyetown.com ("YEYETOWN"), which was later changed to YEYECLUB.COM. (Yue Decl. ¶¶11, 15.)

Soon after the inception of ZZB, Trigmax and Liu employed an unfair and fraudulent scheme to coerce and induce ZZB members to leave ZZB for Yeyetown/Yeyclub. In November 2012, using the ID of "wuseban" on Sinovision.net, Defendants published numerous false and scandalous blog articles about key ZZB bloggers, including Plaintiff and several female bloggers of ZZB. At the same time, using the ID "GUOBA" on ZZB, Defendants enticed these ZZB bloggers to join their site, promising special treatment by Liu,

1 such as providing direct FTP server access to YEYETOWN server. Once these ZZB bloggers  
2 joined Defendants' site, the attacks against them on Sinovision.net stopped, and the blog  
3 articles against them were removed. (Yue Decl. ¶¶12-16.)

4 On June 10, 2015, Plaintiff filed a defamation lawsuit in the Superior Court for the County  
5 of Alameda against Wenbin Yang, for posting defamatory statements about Plaintiff on  
6 Yeyclub and elsewhere (the "Alameda Action"). (Yue Decl. ¶ 17.)

7 Plaintiff then sent an email to Yeyclub, requesting it to preserve the records of Yang and  
8 others who published the libel there. Unexpectedly, Liu, acting on behalf of Yeyclub, reacted  
9 with vicious attacks on Plaintiff. (Yue Decl. ¶¶18-35.)

10 Despite Plaintiff's effort to dissuade Liu from further attacks, Liu deliberately disabled the  
11 IP logging on Yeyclub and started a defamation campaign on Plaintiff. (Yue Decl. ¶¶28-58.)

12 On October 30, 2015, Plaintiff filed a First Amended Complaint ("FAC") in the Alameda  
13 Action, **adding** YEYECLUB and Liu as defendants, alleging additional defamation based on  
14 newly published defamatory statements on YEYECLUB. (Yue Decl. ¶44-45.)

15 On November 30, 2015, Muye Liu filed an anti-SLAPP motion in the Alameda Action.

16 On February 11, 2016, the Court **denied** Muye Liu's anti-SLAPP motion, holding that Liu  
17 **"did not present any competent evidence in support of his motion."** (Yue Decl.¶53; Ex. 7.)

18 The Alameda court also **struck** the FAC because it included events occurred after filing of  
19 the action. (Yue Decl.¶54; Ex. 7.)

## 20 PROCEDURAL BACKGROUND

21 In 2016, Plaintiff discovered the connection between wuseban and GUOBA, upon a  
22 careful analysis of the ZZB records. (Yue Decl. ¶59.) After studying the law on supplemental  
23 pleadings, Plaintiff filed the instant action on June 13, 2016, alleging unfair competition by  
24 Trigmax, Liu and Yeyclub, and defamation by Liu and Yeyclub. (The proper course is to  
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26  
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1 file a new action setting forth the new and different claims. *Flood v. Simpson* (1975) 45 CA3d  
2 644, 647[119 CR 675, 677].)

3 On September 19, 2016, Muye Liu, Trigmax and Yeyeclub were served process.

#### 4 **FACTUAL FALSITY IN LIU'S DECLARATION IN DEFENDANTS' MOTION**

5 The declaration of Liu contains many false statements. Instead of discussing every one of  
6 them, Plaintiff refutes two of Liu's false sworn statements. See, Yue Decl. ¶¶ 83-85.

7  
8 Defendants' motion contains many factual contentions that are **unsupported** by a sworn  
9 declaration. Most of these unsupported factual contentions are false. For instance, in  
10 paragraphs 3 and 31 of Defendants' motion, it is alleged that Plaintiff ridiculed other scientists  
11 "as apes and monkeys" in a poem. This is completely false. (Yue Decl. ¶¶ 80, 86.)

12 The **only** substantive ruling made in the Alameda action was the **denial** of Liu's anti-  
13 SLAPP motion. Defendants' characterization of other unrelated events is largely false.

### 14 **ARGUMENT**

#### 15 **I. LEGAL STANDARD**

16 To rule on an anti-SLAPP motion to strike, the Court must engage in a two-prong  
17 analysis. Where the alleged defamatory statements were not made in an official proceeding,  
18 Defendant must show that the acts about which plaintiff complains were taken "in furtherance  
19 of the [defendant]'s right of petition or free speech under the United States or California  
20 Constitution *in connection with a public issue*," as defined by Cal. Code Civ. P. § 425.16  
21 (emphasis added). If Defendant fails to meet the first prong, the motion must be denied.

22  
23 Only after the first prong is met by defendant, the burden shifts to plaintiff to  
24 demonstrate a probability of prevailing on the claim. (*Vargas v. City of Salinas* (2009) 46 Cal.  
25 4th 1, 14, 19; *Taus v. Loftus* ((2007) 40 Cal 4th 18 683, 703; *Equilon Enterprises, LLC v.*  
26 *Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 67.)

1 For the second prong, the standard for determining the merits of a defendant's special  
2 motion to strike a complaint is similar to that for determining the merits of a defendant's  
3 motion for summary judgment. "Both seek to determine whether a *prima facie* case has been  
4 presented by the plaintiff in opposing the motions." (*Bergman v. Drum* (2005) 129  
5 Cal.App.4th 11, 18 [28 Cal. Rptr. 3d 112].) If a plaintiff sets forth a *prima facie* case in  
6 opposition, the motion must be denied.

## 7 **II. TRIGMAX AND LIU FAIL TO SHOW THAT THEIR STATEMENTS CONCERN** 8 **AN ISSUE OF PUBLIC INTEREST**

9 None of the alleged statements in this case were made in an official proceeding. And  
10 Defendants fail to show that their statements "were made in connection with a public issue."

11 Defendants' anti-SLAPP motion is almost identical to the one Liu filed in the Alameda  
12 action. (Yue Decl. ¶90.) It does not cite any evidence, but is replete with unsupported  
13 allegation that Plaintiff was a public figure. Defendants fail to establish a connection between  
14 the statements alleged in the Complaint and a public issue. Defendants' arguments on why the  
15 causes of actions must be stricken are entirely conclusory. See, Def. Motion pp.14:21-16:17.  
16 Similarly, all Defendants' other arguments and conclusions are not supported by evidence.  
17 Defendants have thus completely failed to show that the alleged statements concerned an  
18 issue of public interest and failed to prove any of their conclusions. Their Anti-SLAPP motion  
19 must be denied as baseless.

21 **Plaintiff first cause of action** is "STATUTORY UNFAIR COMPETITION" (VC ¶¶  
22 46-52.) As alleged in the VC, using a pseudo-name, Defendants posted on SinoVision.net  
23 numerous defamatory and scandalous blogs against key ZZB bloggers. Simultaneously,  
24 Defendants lured the same ZZB members to join their site. Once a ZZB blogger joined their  
25 site, they stop the online attacks against her. Defendants fail to show any of such unfair and  
26 unlawful conduct concerned an issue of public interest. As alleged in the Complaint,  
27

1 Defendants' unfair and unlawful practices included malicious defamation, scandalous verbal  
2 attacks, deception, conspiracy to commit defamation, aiding and abetting defamation, to the  
3 benefit of Defendants and Defendants' business, and to the great detriment of Plaintiff.

4 Furthermore, Defendants' action of disabling IP logging of users to encourage "freespeech"  
5 and others' defamation was not verbal conduct within the reach of an anti-SLAPP motion.

6 **Plaintiff's second cause of action** is Defamation.(VC ¶¶ 53-65.) It listed 11  
7 defamatory statements, which can be separated into three main categories.

8  
9 **1. Defamatory statements about Plaintiff's education background, research in  
physics, and job career as a software developer (Statements No. 9)**

10 These concern personal matters which were of no concern to the general public. Although  
11 the statement was made by DOE 3("freespeech"), Liu stated the same to Plaintiff during a  
12 telephone conference, and Liu did not deny that he was the person behind DOE 3. Statement 9  
13 also resembles closely to the false statements Liu made later online and in his court filings.

14  
15 **2. The defamatory statements about Plaintiff's prior copyright infringement  
lawsuits (Statement 10)**

16  
17 The last of Plaintiff's prior lawsuits ended in April 2011, four years before the alleged  
18 defamation. Neither the public in general nor the Plaintiff was discussing these lawsuits when  
19 Defendants made the defamatory statements. Defendants fail to show that these closed cases  
20 concerned an issue of public interest in 2015 when they wrote about them.

21 **3. The defamatory statements about Plaintiff's character (Statements 1, 2, 3, 11)**

22 Liu's statements such as Plaintiff "dug [Liu] out with human flesh search", "openly  
23 advocating theft of personal privacy", "oppressing others or profiteering by defamation  
24 lawsuit" attacked Plaintiff's character. Liu fails to show he made these statements in  
25 connection with an issue of public interest. Plaintiff sent private email messages to Yeyclub,  
26 requesting preservation of evidence. Liu, on behalf of Yeyclub, published Plaintiff's private  
27

1 emails and made defamatory statements about Plaintiff. (VC ¶¶ 21-30.) "[T]hose charged with  
2 defamation cannot, by their own conduct, create their own defense by making the claimant a  
3 public figure." (*Weinberg v. Feisel* (2003) 110 Cal. App. 4th 1122, 1133; citing *Hutchinson v.*  
4 *Proxmire*, 443 U.S. 111, 135 (1979)). Defendants "cannot turn otherwise private information  
5 into a matter of public interest simply by communicating it to a large number of people." *Id.*

6 In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), Elmer Gertz was an attorney  
7 representing the victim of a 1968 police shooting. Gertz "has long been active in community  
8 and professional affairs. He has served as an officer of local civic groups and of various  
9 professional organizations, and he has published several books and articles on legal subjects."  
10 *Id.* at 352. Respondent's magazine labelled Gertz a "Leninist" and a "Communist-fronter".  
11 Gertz sued respondent for libel. The Supreme Court held that Gertz was not a limited public  
12 figure. Similarly, in *Time, Inc. v. Firestone*, 424 US 448 (1976), a local celebrity was not  
13 considered a public figure.  
14

15 Defendants incorrectly alleged that Plaintiff held himself out as a member of  
16 judicialwatch.org. It was that website that declared that Plaintiff was a member. Plaintiff did  
17 not. (Yue Decl. ¶91.) Measured against *Gertz*, Plaintiff's prior lawsuits years ago and one  
18 time email to judicialwatch.org do not make him a public figure or limited public figure.  
19

20 Since Defendants fail to show that the alleged statements were made in connection with an  
21 issue of public interest, they failed to meet the first-prong of the anti-SLAPP statute, and their  
22 special motion to strike must be denied, as the Alameda court did previously.

### 23 **III. PLAINTIFF HAS ADEQUATELY STATED *PRIMA FACIE* CASES OF UNFAIR** 24 **COMPETITION AND DEFAMATION**

25 Even if a lawsuit arises out of protected activity, a motion to strike may not be granted  
26 if "the plaintiff has established that there is a probability that the plaintiff will prevail on the  
27

1 claim." Cal. Code Civ. P. § 425.16(b)(1). As will be shown, Plaintiff has set forth *prima facie*  
2 claim of unfair competition against Trigma and Liu, and claim of defamation against Liu.

3       Liu did not and does not deny that he was also "LAO CAITOU" (DOE 2) and  
4 "freespeech" (DOE 3) in the Alameda action and the current action. Liu made the same false  
5 statements about Plaintiff. Moreover, Liu openly encouraged DOE 3's defamatory acts and  
6 aided the DOES by disabling IP logging and ensuring them of anonymity. (Yue Decl. ¶¶ 47-  
7 51.) Plaintiff therefore includes the statements made by DOE 2 and DOE 3 below.

8  
9       **1. First Cause of Action – Unfair Competition**

10       The California unfair competition law covers a wide range of unlawful and unfair  
11 conduct that causes injury. Here, the Complaint alleged that Defendants engaged in fraudulent,  
12 unlawful, immoral, deceptive and unfair practices that injured Plaintiff's ZZB for the benefit  
13 of Defendants' YEYECLUB. Specifically, Defendants conducted a defamatory campaign  
14 against Plaintiff and other ZZB bloggers on SINOVISION.NET, while simultaneously  
15 induced the ZZB loggers to join YEYECLUB. Only after the ZZB bloggers left ZZB for  
16 YEYECLUB, Defendants would cease their attacks against them. Defendants' acts severely  
17 damaged ZZB's reputation and user base, while greatly benefit their own social media web  
18 service. Thus, Plaintiff adequately pled a case of unfair competition against Defendants.

19  
20       Liu was the owner and administrator of YEYECLUB. Liu openly encouraged others to  
21 defame Plaintiff on YEYECLUB by fanning hatred against Plaintiff and by making his own  
22 defamatory statements while accusing Plaintiff with "using improper methods to promote the  
23 influence of his website." After receiving Plaintiff's request to preserve evidence, Liu  
24 deliberately destroyed records of DOE 2 and disabled logging of IP addresses on YEYECLUB,  
25 and ensured DOE 3 of his anonymity. With Liu's encouragement and aid, Defendants  
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1 conducted even larger defamation campaign, including a conspiracy to conduct a long term  
2 defamation and intimidation against Plaintiff. (Yue Decl. ¶¶11-43; VC ¶¶30-52.)

3       Liu's conduct involving malicious defamation, conspiracy to commit defamation,  
4 aiding and abetting defamation of Plaintiff, to the benefit of him and his business, and to the  
5 great detriment of Plaintiff and Plaintiff's business, constitutes unlawful, unfair, deceptive,  
6 and/or fraudulent business acts or practices in violation of California Business & Professions  
7 Code § 17200 *et seq.* (Yue Decl. ¶¶10-43; VC ¶¶11-52.) Plaintiff has thus adequately pled a  
8 *prima facie* case of Statutory Unfair Competition against Defendants.  
9

## 10       **2. Second Cause of Action – Defamation**

11       DOE 2's September 19, 2015 blog statement that "after [Plaintiff] getting a Ph.D. in  
12 physics, because his grades were too low, behavior immoral, appearance shabby and dirty, he  
13 couldn't find a job, out of options he then studied for a Masters' degree in computer, because  
14 U.S. IT industry was so much in shortage of people, he found a programming job by chance"  
15 is false. (VC ¶ 33; Yue Decl. ¶38.) Plaintiff had done high quality research work in physics.  
16 Plaintiff obtained a Master's degree in computer science prior to obtaining a Ph.D. Plaintiff  
17 was invited to work in a software company prior to graduation. (Yue Decl. ¶¶ 3-7.) The false  
18 statement is clearly defamatory, as it tends to directly injure Plaintiff in respect to his  
19 profession, trade and business, and constitute defamation per se. Defendant knew that his  
20 statements were false and therefore were made with actual malice because Plaintiff already  
21 stated his background in the Alameda action.  
22

23       DOE 3's September 19, 2015 statement that "[Plaintiff] sued a company for infringing  
24 a program that no one was using ... that company had pity that his children were homeless,  
25 finally gave him some money in settlement..." is false. (VC ¶33; Yue Decl. ¶38.) As stated in  
26 Plaintiff's declaration and the complaints, Plaintiff's software was used by many companies,  
27

1 including the every copyright defendant company Plaintiff sued. (Yue Decl. ¶¶ 87-89.) DOE  
2 3's false statements tend to injure Plaintiff's business by falsely stating that no one was using  
3 Plaintiff's program and injure Plaintiff's reputation by painting Plaintiff as person making  
4 false lawsuits to extort money. Defendant acted with actual malice because he knew his  
5 statements were false. Plaintiff filed the Alameda action in June 2015, the complaint had been  
6 posted on YEYECLUB, it described the copyright lawsuits Plaintiff filed, and every one of  
7 the copyright defendants had used Plaintiff's program. (Yue Decl. ¶89.)

8  
9 DOE 2's statement that "[Plaintiff] let unknowing internet users to express themselves  
10 in his forum, leading to the monitoring and arrest of them by U.S. government special agents,  
11 [Plaintiff acted] in violation of U.S. human rights laws" was obviously false. (VC ¶54; Yue  
12 Decl. ¶20.) This statement is defamatory in falsely implicating serious wrongdoing by Plaintiff.

13 Liu's statement that [Plaintiff's was] "openly advocating theft of personal privacy" was  
14 false. (VC ¶54.) Plaintiff did not advocate any such theft. Liu's statement that Plaintiff "dug  
15 [Liu] out with human flesh search" was also false. (VC ¶54; Yue Decl. ¶¶26-33.) Plaintiff  
16 found that Yeyetown was owned by Trigmax from Yeyetown.com's copyright notice  
17 ("copyright", "Trigmax Solutions, LLC"), and then identified Liu as the Agent for Trigmax  
18 from the California Secretary of State ("SOS") website. Plaintiff did not employ any "human  
19 flesh search" tactics and did not invade Liu's privacy. (Yue Decl. ¶¶26-27.) Liu's statements  
20 falsely accused Plaintiff of using unethical or unlawful methods to obtain his personal  
21 information. Liu knew his statements were false, because he knew his information was  
22 publicly available on official SOS website and Plaintiff stated that the information was from  
23 the SOS.  
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1 Statement 6 in VC ¶54 was false. (Yue Decl. ¶¶ 40, 39.) It is really unfathomable why  
2 Defendants fabricated such false accusations for what Plaintiff did to help another family. No  
3 civilized society should allow Defendant to defame others with impunity.

4 In sum, Plaintiff has set forth a *prima facie* case of defamation.

5 **IV. 47 U.S.C. § 230 DOES NOT PROVIDE IMMUNITY FOR PERSONAL CONDUCT**

6 The Federal Communication Decency Act of 1996, 47 U.S.C. § 230(a), does not shield  
7 the author of the defamatory statement, even if the author is the administrator of the site.  
8 (*Ricci v. Teamsters Union Local 456* (2d Cir.2015) 781 F.3d 25.) Defamatory factual  
9 statements posted on the Internet, even in chat rooms, can garner liability. (*Bently Reserve L.P.*  
10 *v. Papaliolios* (2013) 218 Cal. App.4th 418 [160 Cal.Rptr.3d 423].) Defendants are not sued  
11 purely for their users' actions, but for their own direct involvement and personal conduct.  
12 Their reliance on 47 U.S.C. § 230 is misplaced.

13 **CONCLUSION**

14 Defendants' anti-SLAPP motion is not supported by evidence. They fail to show any of  
15 the offending statements were made in connection with an issue of public interest. They have  
16 thus failed to meet the first-prong of the anti-SLAPP statute. Furthermore, Plaintiff has shown  
17 that he has set forth a *prima facie* case for unfair competition and defamation. Plaintiff asks  
18 the Court to deny Defendants' special motion to strike.  
19  
20  
21

22 Dated: March 9, 2017

23  
24 REDACT

25  
26 By: Dongxiao Yue  
27 PRO PER