FILED
LOS ANGELES SUPERIOR COURT
FEB 13 2008
JOHN A. CLARKE, CLERK
BY DELIA RODRIGUEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERAL MOERLER,

Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 848, et al.,

Defendants.

Case No.: BC378844

[illegible]

RULINGS/ORDERS

Defendant ~~Wholesale Delivery Drivers~~ 6 Demurrer is SUSTAINED, without leave to amend.

I.

INTRODUCTION

Gerald Moerler ("Moerler") commenced action against the International Brotherhood of Teamsters Local 848 ("IBT"), Jim Santangelo ("Santangelo"), and Gordon Ament (collectively

"Defendants") alleging violation of Penal Code §§ 290.4 and 290.46.

Moerler is listed on the Megan's Law website as a registered sex offender. He alleges that he is a member of IBT union and drives long haul trucks for Vons. The individual defendants, members of his union and Vons management, allegedly posted and mailed fliers in the City of Covina for the purpose of harassing Moerler.

Santangelo demurred to the cause of action. He argues that the information was public and its disclosure was for public safety protected by the First Amendment. The demurrer also argues that Moerler has not pled actual damages.

Moerler opposed arguing that Santangelo's conduct was for improper purposes and not protected speech.

II.

DISCUSSION

A. Statutory Basis for Moerler's Action

Penal Code §§ 290.4 and 290.46(l), the portion of California Megan's Law that provides a private right of action, states:

> (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.
>
> (2) Except as authorized under paragraph (1) or any other provision of law, use of any

information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.[1]

Megan's Law provides that information on sex offenders will be available to the public. The information can be misused and the Legislature has outlined when the information cannot be disclosed. "A person is authorized to use information disclosed pursuant to this section only to protect a person at risk." Cal. Penal Code § 290.46(l)(1).

B. "Actual Damages" Argument

Santangelo's argument that actual damages must be pled is not persuasive. Concerning damages, the statute states a violator is "...liable for the actual damages, and any amount that

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[1] Subsections (A)-(H) appear to be targeted at discrimination based on sex offender status. The parties agree that they are not invoked by this action.

may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred and fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000)." Cal. Penal Code § 290.46(4)(A)(2). This section does not seem to require that a plaintiff plead that he has lost his job or suffered some kind of damages outside those normally attributable from the disclosure of personal information. There is a provision for a civil penalty that seems to be recoverable regardless of what damages were suffered.

C. First Amendment Issues

Both the U.S. and California Constitutions protect the right of free speech. U.S. Const., Amdmt. I. ("Congress shall make no law…abridging the freedom of speech."); Calif. Const., Art. 1, §2(a)("A law may not restrain or abridge liberty of speech or press."). The first question that must be addressed is whether California Penal Code § 290.46(l) restricts speech. If it does, the law is subject to strict scrutiny and must be shown to be narrowly tailored to a compelling governmental interest. No published opinion exists, based on the parties' briefs and the Court's own research, that has addressed the constitutionality of disclosure limits in a Megan's Law.

Megan's law limits republication of sex offender information listed on the website. The law specifically

addresses "use" which would include distributing of fliers or broadcasts in the media. Thus, the law restricts speech.

Because the law regulates speech, it must survive strict scrutiny. To survive strict scrutiny, the law must be narrowly tailored to a compelling governmental interest. The government interest behind Penal Code § 290.46(l) is to protect the privacy of sex offenders.

This interest in protecting the privacy of sex offenders is not compelling. Privacy rights rarely outweigh the interests in free speech. In Cox Broadcasting Corp. v. Cohn, the identity of a deceased 17 year old rape victim was released through a television broadcast. (1975) 420 U.S. 469. The victim's father brought a cause of action based on a Georgia criminal statute that made it a misdemeanor to reveal the identity of a rape victim. The U.S. Supreme Court found the law unconstitutional.

The Court held that "[b]y placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media." Id. at 495. The public interest outweighed the right of the victim's privacy. The Court continued "[i]n preserving that form of government the First and Fourteenth Amendments command nothing

less than that the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection." Id. In facts similar to Cox, the Court reaffirmed that a state cannot penalize the accurate name of a rape victim obtained from records open to the public. Florida Star v. B.J.F. (1989) 491 U.S. 524.

Here, like in Cox and Florida Star, the public interest weighs toward disclosure. The information revealed Moerler's conviction of a sex crime which was available in the public record and could have been obtained independently of the Megan's Law website. The public interest of knowing the whereabouts of sex offenders is greater than the public interest in knowing the identity of rape victims. The former serves to protect potential victims and enhance public safety. Thus, the Court finds that a compelling government interest has not been shown for preserving the privacy of a sex offender.

Even assuming that a compelling governmental interest had been shown, the law would have to be narrowly tailored to the compelling governmental interest. The law allows republication "only to protect a person at risk." This phrase is vague and the statute does not further define how to determine if a use is aimed to protect a person at risk. The statute could be limited to communications ~~from~~ to someone known to be in contact with the sex offender or it could be broad enough to include the mailing of fliers, postings on billboards, and radio announcements.

The "only to protect a person at risk" is also overbroad. It requires an inquiry into the motivations of the speaker. Not only must the speaker seek to protect a person at risk, his or her only motivation must be protection. Rarely do people act only out of one motivation. The statute reaches too many forms of speech to be narrowly tailored. Thus, Moerler's complaint is barred by the First Amendment.

III.

CONCLUSION

Based upon the foregoing, Defendant Wholesale Delivery Driver's Demurrer is sustained, without leave to amend.

MOVING PARTY TO GIVE NOTICE TO ALL PARTIES.

NON-COMPLIANCE WITH ANY ORDER HEREIN SHALL EXPOSE THE NON-COMPLIANT PARTY AND/OR COUNSEL TO ANY AND ALL SANCTIONS AUTHORIZED BY LAW. 2/26 Case off calendar

IT IS SO ORDERED.

DATED: February 12, 2008

YVETTE M. PALAZUELOS
JUDGE