

**Mark G. McDougal**, OSB #89086

e-mail: [mcdougal@kafourymcdougal.com](mailto:mcdougal@kafourymcdougal.com)

**Natalie McDougal**, OSB #04250 (admission pending)

e-mail: [nataliemcdougal@comcast.net](mailto:nataliemcdougal@comcast.net)

**Gregory Kafoury**, OSB #74166

e-mail: [kafoury@kafourymcdougal.com](mailto:kafoury@kafourymcdougal.com)

Kafoury & McDougal

320 SW Stark Street #202

Portland OR 97204

ph 503-224-2647; fx 503-224-2673

**Jami Pannell**, OSB #06429 (admission pending)

Animal Law Clinic

Lewis & Clark Law School

10015 SW Terwilliger Blvd.

Portland OR 97219

ph 503-468-6848; fx 503-768-6917

e-mail: [annlejin@lclark.edu](mailto:annlejin@lclark.edu)

**Shauna Curphey**, OSB #06306

NW Constitutional Rights Cntr.

520 SW 6<sup>th</sup> Ave. #1050

Portland OR 97204

ph 503-295-6400; fx 503-295-6415

e-mail: [scurphey@nwerc.org](mailto:scurphey@nwerc.org)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

GREGG SCHUMACHER and LINDA )  
SCHUMACHER, individually and as )

CV No. CV-07-00601-HU

husband and wife, and GREGG )

SCHUMACHER FURS LLC dba )

MEMORANDUM IN SUPPORT OF

SCHUMACHER FURS & OUTERWEAR, )

MOTION TO STRIKE PURSUANT

)

TO ORS 31.150 ET SEQ.

Plaintiffs )

v. )

On behalf of defendants In Defense of

CITY OF PORTLAND, a municipal )

Animals (IDA), Rossell, Durkee and Mieras.

corporation; IN DEFENSE OF ANIMALS, )

a foreign nonprofit corporation; ANIMAL )

)

LIBERATION FRONT, an unincorporated )  
 association; PEOPLE FOR THE ETHICAL )  
 TREATMENT OF ANIMALS, INC., a )  
 foreign nonprofit corporation; MATT )  
 ROSSELL; KEVIN MIERAS aka “Bluejay”;) )  
 CONNIE DURKEE; ALEX LILLI; JOHN )  
 DOES 1-10; and JANE DOES 1-10 )  
 )  
 Defendants. )

By filing this suit, more than 19 months after the initial free speech activities of defendants, the Schumachers seek to silence defendants from expressing their views.

This action is an archetype of a Strategic Lawsuit Against Public Participation (“SLAPP”). In 2001, the Oregon legislature, recognizing the chilling effect that such SLAPP suits can have on constitutionally-protected activity, adopted an anti-SLAPP statute, modeled on California’s anti-SLAPP statute. Oregon’s anti-SLAPP statute provides, in relevant part:

“(1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (3) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice.

“(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of :

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“(c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or

“(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

“(3) A defendant making a special motion to strike under the provisions of this section has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document or conduct described in subsection (2) of the section. If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.”

ORS 31.150. Oregon’s anti-SLAPP statute is applicable in this action. United States ex rel. Newsham v. Lockheed Missiles and Space Co., 190 F.3d 963, 973 (9<sup>th</sup> Cir. 1999) (holding California’s anti-SLAPP statute applicable in diversity action).

Defendants in federal court may avail themselves of the anti-SLAPP statute provisions. Card v. Pipes, No. CV-03-6327-HO, Order at pp. 17-18 (D. Or. Mar. 1, 2004) (Oregon anti-SLAPP motions may be made in diversity cases in federal court, including those removed to federal court from state court); see also Thomas v. Fry’s Electronics, Inc., 400 F.3d 1206, 1206-07 (9<sup>th</sup> Cir. 2005) (California anti-SLAPP motions are available to litigants in federal court).

Additionally, the California anti-SLAPP statute, on which the Oregon statute is based, has been invoked against a variety of claims involving protected speech. Ingels v. Westwood One Broad. Servs., Inc., 28 Cal. Rptr. 3d 933, 940 (Cal. App. 2005) (applying statute to age discrimination claim); Seelig v. Infinity Broad. Corp., 119 Cal. Rptr. 2d 108 (Cal. App. 2002) (applying statute to claims for intentional infliction of emotional distress, slander, and invasion of privacy); Ludwig v. Superior Court, 43 Cal. Rptr. 2d 350 (Cal. App. 1995) (applying statute to claims for interference with contractual relations, interference with prospective economic advantage, and unfair competition).

Under the Oregon statute, the defendants must first show that one or more of the plaintiff's claims arises out of constitutionally protected conduct identified in ORS 31.150(2). That standard is easily met here. The claims of plaintiffs arise out of defendants' oral or written statements in a place open to the public or a public forum in connection with an issue of public interest or in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest. ORS 31.150(2)(c) and (d). There can be little doubt that animal rights are a matter of public interest. See, International Primate Protection League v. Administrators of Tulane Educational Fund, 500 US 72, 111 Sct. 1700 (1991); Cetacean Community v. Bush, 386 F.3d 1169 (9<sup>th</sup> Cir. 2004).

Each of plaintiffs' five state law claims arise out of the defendants' free speech activities. The public nuisance, intentional infliction of emotional distress and interference with business relations claims, and interference with contract, are based upon defendants' statements and activities as "protestors and demonstrators" on public property outside of the fur store. The trespass claim also arises out of defendants' free speech activities and conduct. Plaintiffs allege that certain defendants' entered the fur store "without permission". The store is open to the public - apparently certain defendants who allegedly trespassed were trespassers due to their political beliefs. The anti-SLAPP statute affords protection where the claim "arises out of" the free speech activity. Accordingly, all of plaintiffs' claims against defendants are within the scope of the anti-SLAPP statute.

Under the anti-SLAPP statute, "the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case." ORS 30.142(3). Plaintiffs will not be able to meet that burden in that the defendants IDA, Rossell and Durkee have not engaged in conduct that is actionable. See Affidavit of Matt Rossell, Affidavit of Connie Durkee, Affidavit of Kevin Mieras.

Accordingly, Plaintiffs' claims against IDA, Rossell, Durkee and Meiras should be stricken and defendants should be awarded their reasonable attorney fees and costs under Oregon's anti-SLAPP statute.

DATED: May 11, 2007

By



Mark G. McDougal, OSB #09086  
Natalie McDougal, OSB #04250  
Gregory Kafoury, OSB #74166  
Attorneys for defendants IDA, ROSSELL  
and DURKEE..

By



Jami Pannell, OSB #06429  
Shauna Curphey, OSB #06306  
Attorneys for defendant MIERAS

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing Memorandum in Support of Special Motion to Strike on the following person(s) on the date indicated below, by the following method:

[X] by electronically mailed notice from the court on the date set forth below;

William M. Manlove  
Office of the City Attorney  
1221 SW Fourth Avenue, Suite 430  
Portland, OR 97204  
bmanlove@ci.portland.or.us

Eric Wilson  
Lane Powell  
601 SW 2<sup>nd</sup> Ave., Suite 2100  
Portland, OR 97204  
wilson@lanepowell.com  
Attorney for People for the Ethical  
Treatment of Animals

Herbert Grey  
Attorneys at Law  
4800 SW Griffith Ave., Ste. 320  
Beaverton, OR 97005  
hgrey.law1@verizon.net  
Attorney for Plaintiffs

Jill Odell  
4800 SW Griffith Ave., Ste. 320  
10015 SW Terwilliger Blvd.  
Beaverton, OR 97005  
jilodell@verizon.net  
Attorney for Plaintiffs

Jonathan A. Clark  
960 Liberty Street SE, Suite 250  
Salem, OR 97302  
jonathan@jlaclawoffice.com  
Attorney for Plaintiffs

DATED: May 11, 2007

Natalie McDougal  
Gregory Kafoury, OSB #74166  
Mark G. McDougal, OSB #89086  
Natalie McDougal, OSB #04250 (admission pending)