

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 10/21/2022

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Ryan A Willis

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2022-00027650-CU-DF-CTL** CASE INIT.DATE: 07/12/2022

CASE TITLE: **Ratekin vs San Dieguito Union High School District [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Defamation

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**EVENT TYPE:** Motion Hearing (Civil)

MOVING PARTY: San Dieguito Union High School District

CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other and Supporting Documents,  
09/28/2022

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**APPEARANCES**

Nicholas Christian Ratekin, self represented Plaintiff, present via remote video conference.  
Steven A Tisi, counsel, present for Defendant(s).

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The Court modifies the tentative ruling as follows:

**Ruling on Motion for Non-Resident Undertaking**

*Ratekin v. San Dieguito Union High School District*, Case No. 2022-27650

Motion Hearing: Oct. 21, 2022, 1:30 p.m., Dept. 72

**1. Overview and Procedural Posture.**

This is one of several lawsuits filed by Nicolas Ratekin following his termination from the USD teacher credentialing Master's program. Plaintiff, who represents himself, alleges "defamation of character" in this and several of the other cases. This action was filed just days before Judge Sturgeon found that plaintiff is a vexatious litigant in Case No. 2020-40983.\*

It is undisputed that plaintiff now resides in Brush Prairie, Washington. Accordingly, defendant seeks an order requiring plaintiff to furnish security for costs, in the amount of \$35,000, pursuant to Code of Civil Procedure section 1030. The court first heard about this during an *ex parte* hearing on Sept. 29, 2022. During that hearing, defendant asked the court to impose the security order without further hearing. ROA 11-14. The court elected to grant plaintiff's request for further time to brief the issues.\*\* However,

to date, no timely opposition has been filed. ROA 21.

## 2. Applicable Standards.

**A.** The court is mindful that plaintiff represents himself. However, his status as a party appearing *in propria persona* does not provide a basis for preferential consideration. Self-represented parties are to be treated like any other party, and are entitled to the same – but no greater – consideration than other litigants and attorneys. See *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125. They are exempt from neither the California Rules of Court nor the California Code of Civil Procedure. *Gamet v. Blanchard* (2001) 91 CalApp.4th 1276, 1284.

**B.** Code of Civil Procedure section 1030 provides, in pertinent part:

(a) When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding. For the purposes of this section, "attorney's fees" means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract.

(b) The motion shall be made on the grounds that the plaintiff resides out of the state or is a foreign corporation and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding. The motion shall be accompanied by an affidavit in support of the grounds for the motion and by a memorandum of points and authorities. The affidavit shall set forth the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding.

(c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees.

(d) The plaintiff shall file the undertaking not later than 30 days after service of the court's order requiring it or within a greater time allowed by the court. If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made.

The evident legislative purpose is to protect California defendants from out-of-state plaintiffs with weak claims and no ability to pay a cost judgment. See *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 430. There are relatively few published California cases dealing with section 1030 and its predecessors; since the last relevant amendment, there are only three reported cases really dealing with the statute: *Alshafie*; *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, and *Shannon v. Sims Service Center, Inc.* (1985) 164 Cal.App.3d 907, 909.

*Baltayan* was a personal injury lawsuit brought by a Washington State resident for injuries allegedly suffered in a traffic accident in Los Angeles County. *Baltayan*, 90 Cal.App.4th at 1430. Defendants filed a motion for security under section 1030, and included with the motion the police department report of the accident. The trial court continued the motion in light of a pending arbitration. The arbitration resulted in an award for defendants, from which plaintiff filed a timely request for a trial *de novo*. Defendants renewed their motion to require plaintiff to post security, citing the arbitration award as additional evidence. The trial court granted the motion, and ordered plaintiff to post a \$22,000

undertaking in ten days. *Id.* at 1431. *Though ultimately ruling for plaintiff on the basis that the trial court abused its discretion in dismissing the case after plaintiff was granted in forma pauperis status, the Court of Appeal held that the order to post security was supported by substantial evidence: defendant "direct[ed] the court to the arbitration award, the arbitrator's letter and the police report."* *Id.* at 1432.

*Shannon* was also a personal injury action, which also included an arbitration award for defendant which it put before the court. *Shannon*, 164 Cal.App.3d at 914. As pertinent here, the Court of Appeal held that defendant carried its burden by showing "a reasonable possibility of prevailing by proper reference to the results of the earlier arbitration hearing.... '[R]eference to the arbitration proceedings or arbitration award during any subsequent trial,' which is prohibited by Code of Civil Procedure section 1141.25, does not preclude reference to these proceedings or the award during *pretrial* matters. Recognizing that it is impossible to predict in advance the outcome of a trial by jury, respondent, however, presented the best evidence available to divine the possible outcome of the trial *de novo*, which is all that section 1030, subdivision (a) of the Code of Civil Procedure requires." (*Ibid.*) *Shannon* went on to hold that "[t]he subject of the appellant's ability to furnish an undertaking ... is a point that appellant does not develop except by rhetoric.... There are no facts asserted in the record before us that appellant did or did not have the ability to post an undertaking. We hold that it is appellant's burden to prove inability to furnish an undertaking and he has not done so...." *Id.* at p. 914.

In 2009, the *Alshafie* court held: "Even if the defendant establishes the grounds for an undertaking, the trial court may waive the requirement if the plaintiff establishes indigency. Section 995.240, which "codifie[d] the common law authority of the courts" (Cal. Law Revision Com. com., 18 West's Ann.Code Civ. Proc. (2009 supp.) foll. § 995.240, p. 169), provides, 'The court may, in its discretion, waive a provision for a bond in an action or proceeding and make such orders as may be appropriate as if the bond were given, if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties, whether personal or admitted surety insurers. In exercising its discretion the court shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the provision for the bond is waived.'" *Alshafie*, 171 Cal.App.4th at 429.

**C.** "The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369. Libel is a form of defamation effected in writing. Civ. Code § 44(a).

**D.** The litigation privilege, codified at Civil Code section 47(b), provides that a "publication or broadcast" made as part of a "judicial proceeding" is privileged. The privilege applies to any communication (1) made in judicial or quasi-judicial proceedings (2) by litigants or other participants authorized by law (3) to achieve the objects of the litigation and (4) that have some connection or logical relation to the action. *Trinity Risk Management, LLC v. Simplified Labor Staffing Solutions, Inc.* (2021) 59 Cal.App.5th 995, 1006-07.

### **3. Discussion and Ruling.**

The motion for an order compelling plaintiff to post an undertaking is granted in a reduced amount. As noted above, it is undisputed that plaintiff resides out-of-state. Moreover, defendant has shown a reasonable possibility that it will prevail in this action. See Civ. Code § 47(b); see also *Johnson v. Altamirano* (S.D. Cal. 2019) 418 F.Supp.3d 530, 564 ("Section 1030(b)'s 'reasonable possibility' standard 'is relatively low.'").

However, the court will not require plaintiff to post an undertaking in the full amount requested. Although not addressed in the moving papers, the only basis for defendant to recover attorney fees in this action is by prevailing on its anticipated special motion to strike. See Code Civ. Proc. § 425.16(c)(1); see also *Tract 19051 Homeowners Assn. v. Kemp* (2015) 60 Cal.4th 1135, 1142 ("California generally follows what is commonly referred to as the American Rule, which provides that each party to a lawsuit must ordinarily pay his or her own attorney fees."). Defendant estimates that it will "incur approximately \$5,000 in fees and costs" in connection with bringing such a motion. (Tisi Decl., ¶ 14.) Accordingly, plaintiff must file an undertaking in the amount of \$5,000 by no later than 30 days after service of a copy of this order. Code Civ. Proc. § 1030(d).

The court agrees with defendant (ROA 21) that the vexatious litigant statute might well provide an alternative basis for imposition of an undertaking. However, these grounds were not raised in the moving papers. The notice of motion must state in the first paragraph exactly what relief is sought and why. See Code Civ. Proc. § 1010; see also CRC 3.1110(a). The court cannot grant different relief, or relief on different grounds, than that stated in the notice of motion. *People v. American Surety Ins. Co.* (1999) 75 Cal.App.4th 719, 726; see also *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125.

Upon the request of defense counsel, the matter is stayed until 10 days after the posting of bond date comes and goes and no bond is posted, or 10 days after the bond is posted by plaintiff and defendant is noticed of posting.

**IT IS SO ORDERED.**

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\*The FAC was filed, and the summons was issued, after the vexatious litigant finding.

\*\*Plaintiff did file opposition to the *ex parte* application. ROA 17. After the *ex parte* hearing, plaintiff filed a challenge under CCP section 170.6, but it was untimely, so the court denied it.



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Judge Timothy Taylor