

SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MORDECHAI TENDLER,
Plaintiff,

JOHN DOE,

Defendant.

Case No. 1-06-CV-064307

ORDER RE: SPECIAL MOTION TO STRIKE

The special motion to strike of the owners of internet web addresses www.jewishsurvivors.blogspot.com, www.jewishwhitleblower.blogspot.com, and www.NewHempsteadNews.blogspot.com, sued herein as defendant John Doe, came on for hearing before the Honorable Neal A. Cabrinha on October 12, 2006 at 9:00 A.M. in Department 10. The matter having been submitted, the Court now rules as follows:

On August 2, 2006, after defendants first filed a special motion to strike, plaintiff voluntarily dismissed this action. A plaintiff may not avoid liability for attorney fees and costs by voluntarily dismissing an action while a special motion to strike is pending. [See ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc. (2006) 138 Cal.App.4th 1307, 1323.] Although defendants

filed the special motion to strike before plaintiff voluntarily dismissed the action, the original hearing was improperly taken off calendar through no fault of defendants. Defendants have demonstrated that they would have prevailed on the merits of the motion but for the voluntary dismissal. Accordingly, defendants are awarded their attorney fees and costs pursuant to CCP § 425.16(c). This ruling does not affect the voluntary dismissal.

October 1, 2006

NEAL A. CABRINHA

JUDGE OF THE SUPERIOR COURT