

# California Court Allows Employer's Defamation Lawsuit to Proceed against Protestors

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An employer's defamation lawsuit against protestors who wrongly accused it of racially motivated firings could proceed, the California Court of Appeal has ruled in an unpublished opinion. *Overhill Farms Inc. v. Lopez*, No. G042984 (Cal. Ct. App. Nov. 15, 2010). Affirming the denial of the protestors' motion to dismiss the employer's complaint, the Court rejected their argument that the accusations were a form of protected expressions of opinion. Instead, the Court found the protestors' statements were factual assertions that the employer could challenge. The Court further ruled that Section 425.16 of the California Civil Code, commonly known as the "anti-SLAPP" law, did not preclude the employer's defamation claim.

SLAPP stands for "strategic lawsuit against public participation." It is a lawsuit that is intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.

## Facts of the Case

In 2009, the United States Internal Revenue Service informed the employer, Overhill Farms, Inc., that 231 of its employees had provided invalid Social Security numbers. Overhill advised the affected employees that their Social Security numbers were invalid according to the IRS, and provided them the opportunity to correct the information to avoid termination of their employment. One employee provided Overhill information showing that his invalid Social Security number was an error. The remaining employees either admitted they had submitted an invalid Social Security number and were not authorized to work in the United States, or ignored Overhill's requests for information. As a result, Overhill terminated their employment.

## Protest and Defamation Suit

Several of Overhill's employees and Nativo Lopez, a "community activist," (collectively, "Lopez") protested the terminations outside of Overhill's plants and at one of Overhill's customers. Lopez issued a press release, carried signs, and distributed flyers, leaflets, and handbills stating that Overhill was racist and had used the incorrect Social Security numbers as a pretext for terminating older, Hispanic workers. Overhill sued Lopez for defamation, among other things, and sought injunctive relief to prohibit future misconduct. Lopez filed an anti-SLAPP motion to strike Overhill's complaint. The trial denied the motion as to the defamation claim, and Lopez appealed.

## Anti-SLAPP

To survive the challenge to its anti-SLAPP law complaint, the appeals court first noted that Overhill must demonstrate a probability of prevailing on its defamation claim. To do so, the Court explained that Overhill must show that Lopez made "a false and unprivileged publication by writing . . . which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." Although general statements charging a person with being racist, unfair, or unjust or engaging in discriminatory conduct "constitute mere name calling," statements of opinion which imply a false assertion of fact are actionable.

Lopez argued that Overhill's claim failed because the protestors did not accuse Overhill of being "racist"; rather, they alleged only that the terminations were "unfair." Rejecting the argument as "disingenuous," the Court found Overhill produced evidence that the protestors carried signs stating Overhill was a "Racist Employer;" distributed leaflets stating Overhill inflicted "racist and discriminatory abuse" on its workforce, flyers stating Overhill was "abusive and racist" and

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“discriminate[d] against Latinos,” and handbills referring to “unjust terminations and discriminatory treatment by Overhill;” and issued a press release that stated, “IMMIGRANT WORKERS PROTEST RACIST FIRINGS BY OVERHILL FARMS.”

Lopez next argued that the protestors' accusations constituted mere name calling and thus were not actionable. The Court disagreed, noting that Lopez did more than make general accusations “in some abstract sense.” The signs and publications accused Overhill specifically of engaging in racist terminations and that it used the social security number discrepancy as a “pretext” to eliminate certain workers. The Court observed, “[I]n almost every instance, defendants' characterization of Overhill as racist [was] supported by a specific reference to its decision to terminate the employment of a large group of Latino immigrant workers.” The Court found that “a claim of racially motivated employment termination is a provably false fact.” Indeed, it stated, “If we were to conclude that an employer's racist motivation for terminating an employee's job were not ‘provable,’ it would come as a great shock to the Fair Employment and Housing Administration [the agency that enforces California civil rights laws regarding discrimination in employment].”

Lopez then argued that Overhill's claim failed because the protestors fully disclosed the facts underlying their opinions. The Court also rejected this argument for the “simple reason” that Lopez's statements did not fully and accurately disclose the facts surrounding the firings. The Court concluded that, although the Social Security number discrepancy itself could not serve as grounds for termination, the employees' “failure or refusal to correct an invalid social security number and supply a proper one, when asked by the employer to do so” was an entirely different matter. Accordingly, it concluded that Overhill provided sufficient evidence showing that Lopez's statements were “materially incomplete and misleading” and allowed the defamation claim to proceed.

### Implications for Employers

This case provides food for thought for employers who may find themselves on the receiving end of labor protests. Although the protestors were largely judgment proof (they were financial insolvent), the employer still could obtain injunctive relief against them. Such relief not only would end the demonstrations and accompanying negative publicity, but also could deter future improper conduct. Employers confronted with such a situation should consult with counsel to consider all possible legal options to resolve it, while limiting damage to employee morale and goodwill.

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