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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CIDER RIOT, LLC; and ABRAM GOLDMAN-ARMSTRONG,)	Case No. 19CV20231
)	
Plaintiffs,)	PLAINTIFFS’ MOTION FOR LIMITED DISCOVERY PURSUANT TO ORS 31.152(2)
)	
v.)	Expedited Hearing Requested
)	
PATRIOT PRAYER USA, LLC; JOSEPH “JOEY” GIBSON; IAN KRAMER; and JOHN DOES 1-25,)	Anti-SLAPP motions currently set for hearing on September 20, 2019
)	
Defendants.)	Hon. Andrew M. Lavin, motions judge
)	
)	
)	

CONFERRAL STATEMENT

Counsel for the parties have conferred concerning this motion. Defendants oppose the motion. However, the parties agree that briefing on the anti-SLAPP motion should be held in abeyance pending the outcome of this motion. In the event the Court denies Plaintiffs’ discovery motion, Plaintiffs agree that they will respond to the anti-SLAPP motion within two court days. If the Court grants the discovery motion, then the Court will set new deadlines for the anti-SLAPP briefing.

MOTION FOR LIMITED DISCOVERY (ORS 31.152(2))

The Multnomah County District Attorney has indicted defendant Joey Gibson for riot, in violation of ORS 166.015, based on his role in the May 1, 2019 violence at plaintiffs’

1 establishment. (Ex. 1 at 1.)¹ As evidenced by the indictment, law enforcement and a grand jury
2 have determined “that there is a substantial objective basis for believing that more likely than not
3 an offense has been committed and a person to be arrested [in this case, Gibson] has committed
4 it.” ORS 131.005(11) (defining “probable cause”).

5 In direct contradiction of law enforcement, whom Patriot Prayer otherwise purports to
6 respect and support, Gibson claims that the charges against him are “a shame” because they are
7 “political” and not based on anything he did on May 1. (Ex. 2.) Likewise, Gibson asserts in his
8 anti-SLAPP motion that he was not involved in the coordination or planning of the violence at
9 Cider Riot on May 1, 2019.

10 Assuming solely for purposes of this discovery motion that Gibson and Patriot Prayer have
11 satisfied their burden of showing that the anti-SLAPP statute applies,² the Court should find that
12 there is good cause to grant plaintiffs leave to conduct limited discovery pursuant to ORS
13 31.152(2). The Court should grant the motion because plaintiffs bear the burden of adducing
14 admissible evidence that Gibson was involved in the May 1, 2019 violence; plaintiffs need the
15 opportunity to present admissible evidence of Gibson’s and Patriot Prayers’ role in the May 1,
16 2019 violence—evidence in the hands of defendants and other entities, such as Facebook,
17 YouTube and public entities; and the discovery plaintiffs seek is limited to this discrete issue.

18 This motion is, and will be, based on this motion, the following memorandum, the
19 declaration of Clifford S. Davidson and exhibits thereto, the Court’s file, matters subject to judicial
20 notice, and any evidence or argument presented at the hearing on this motion.

21 **MEMORANDUM**

22 Although the filing of an anti-SLAPP motion stays discovery, the Court may order

23 ¹ The Court (Bushong, J.) has sealed the indictment because there is an ongoing investigation. (*See*
24 Ex. 1 at 2-3.) What is public is that the charge is for riot in violation of ORS 166.015 (*see* Ex. 1 at
25 1), and that Gibson acknowledges having been charged. (*See* Ex. 2.)

26 ² He has not. The conduct in which he engaged on May 1, 2019 is illegal as a matter of law and
therefore not protected by the anti-SLAPP statute. *See Deep Photonics Corp. v. LaChapelle*, 282
Or App 533, 545 (2016).

1 specified discovery for good cause:

2 “All discovery in the proceeding shall be stayed upon the filing of a
3 special motion to strike under ORS 31.150. The stay of discovery
4 shall remain in effect until entry of the judgment. The court, on
5 motion and for good cause shown, may order that specified
6 discovery be conducted notwithstanding the stay imposed by this
7 subsection.”

8 (ORS 31.152(2) [emphasis added].)

9 No appellate-level Oregon courts have addressed the “good cause” requirement, so this
10 Court may look to California authorities interpreting that state’s identical provision. *See* Cal. C.
11 Civ. P. § 425.16(g) (“The court, on noticed motion and for good cause shown, may order that
12 specified discovery be conducted notwithstanding this subdivision.”)³ According to those
13 authorities, a plaintiff demonstrates “good cause” for discovery when the plaintiff shows “that a
14 defendant or witness possesses evidence needed by plaintiff to establish a prima facie case.” *I-800*
15 *Contacts, Inc. v. Steinberg*, 107 Cal App 4th 568, 593 (Cal Ct App 2003), *rev. denied* July 9, 2003.
16 “The showing should include some explanation of what additional facts plaintiff expects to
17 uncover.” *Id.* (internal quotations and citations omitted); *see Sipple v. Foundation for Nat.*
18 *Progress*, 71 Cal App 4th 226, 247 (Cal Ct App 1999), *rev. denied* July 28, 1999 (so holding, two
19 years prior to enactment of Oregon anti-SLAPP statute).

20 Through document discovery from, and depositions of, Gibson, other defendants, and of
21 adherents of Patriot Prayer, as well as documents subpoenaed from non-parties Facebook, 4chan,
22 8chan, Twitter, YouTube, Telegram, Discord, Portland Police Bureau, Multnomah County,
23 members of the Proud Boys, and defendants’ phone carriers, plaintiffs anticipate gathering *prima*

24 _____
25 ³ Where the relevant wording of the Oregon and California anti-SLAPP laws are identical, Oregon
26 looks to California decisions, dated prior to Oregon’s 2001 enactment of its statute, for controlling
interpretation, and to post-2001 cases “only for their persuasive value.” *Handy v. Lane Cnty.*, 360
Or 605, 619 (2006).

1 *facie* evidence that defendants, or any of them, coordinated or participated in the violent acts
2 perpetrated on May 11, 2019. It is beyond question that those violent acts occurred.

3 Furthermore, publicly-available information suggests that discovery would lead to
4 evidence concerning Gibson’s involvement in the violent events of May 11, 2019. Publicly-
5 available text messages, which the Portland Police Bureau sent and received specifically because
6 of Gibson’s role in coordinating past demonstrations that have become violent, demonstrate a
7 pattern and practice of his control over the activities and movements of Patriot Prayer. (*See*
8 Davidson Decl. ¶ 4).⁴ The State’s indictment indicates that there is probable cause to believe that
9 Gibson coordinated or participated in the violent acts affecting plaintiffs on May 1, 2019. (Ex. 1.)

10 And, at least two YouTube videos indicate that individuals who committed violence against
11 patrons of Cider Riot coordinated with Gibson. The videos are available at
12 <https://youtu.be/WTXAYSizKps> (“Video 1”), <https://youtu.be/Qbs-fog4Q1M> (“Video 2”),
13 <https://youtu.be/awN9J88j4mA> (“Video 3”), and <https://youtu.be/HzId89utLys> (“Video 4”). In
14 Video 2, at 25:53 through approximately 26:50, the group discusses going to Cider Riot. An
15 individual on the video states that Gibson told him that Gibson is going to Cider Riot and agrees
16 that backup is necessary.

17 Video 3 is replete with relevant examples of Gibson’s involvement with the violent acts at
18 Cider Riot:

- 19 • At 4:00, the group discusses when Gibson (“Joey”) is coming and asking who has
20 been texting with him.
- 21 • At 6:40, someone says “Tell Joey and them to hurry the fuck up. I hope they got
22 like 10 big dudes with them.”
- 23 • At 12:27, someone says “Joey’s coming.”
- 24 • At 16:15, someone asks where “Joey” said to meet.

25
26 ⁴ The text messages are voluminous and therefore not included with this motion. If the Court
desires that the messages be filed, the plaintiffs are happy to do so.

1 for said discovery to be conducted, and set a briefing schedule for the remaining anti-SLAPP
2 briefing.

3 Dated this 21st day of August, 2019.

4 SUSSMAN SHANK LLP

5

6 By s/ Clifford S. Davidson
Clifford S. Davidson, OSB No. 125378
cdavidson@sussmanshank.com

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8 Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I certify that on August 21, 2019, I caused to be served, **by U.S. Mail and email**, a full and correct copy of the foregoing **PLAINTIFFS’ MOTION FOR LIMITED DISCOVERY PURSUANT TO ORS 31.152(2)** to the interested parties of record, addressed as follows:

James L Buchal
Murphy & Buchal LLP
3425 SE Yamhill
Portland, OR 97214
jbuchal@mblp.com

Dated: August 21, 2019

s/ Clifford S. Davidson
Clifford S. Davidson, OSB No. 125378

(03248068)