

Case No. S260736

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

VERA SEROVA,

Plaintiff and Respondent,

v.

SONY MUSIC ENTERTAINMENT, et al.,

Defendants and Appellants.

After a Decision by the Court of Appeal
Second Appellate District, Division Two
Case No.: B280526

On Appeal from the Los Angeles Superior Court
The Honorable Ann I. Jones
Case No.: BC548468

**APPLICATION OF PROPOSED AMICUS CURIAE FIRST
AMENDMENT COALITION FOR LEAVE TO SUBMIT LATE
BRIEF AND FOR EXTENSION OF TIME;
DECLARATION OF DAN LAIDMAN**

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE
OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE
ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to California Rules of Court 8.60, 8.63, and 8.520(f), the First Amendment Coalition (“FAC”) respectfully requests that: (1) this Court grant it leave under Rule 8.520(f)(2) to submit an Amicus Brief past the statutory deadline; and (2) that FAC be given 30 days from the submission of this Application, or until March 10, 2021, to file its Application and Amicus Brief in support of Defendants-Appellants.

Rule 8.520(f)(2) states that amicus briefs must be filed no later than 30 days after the last merits brief is filed, although “[f]or good cause, the Chief Justice may allow later filing.” Good cause exists to allow FAC to submit an amicus brief past the deadline because of the nature and timing of the other amicus briefs that recently have been submitted in this matter. See C.R.C., Rules 8.63(b)(4), (11) (good cause for an extension of time can be based on “[t]he number and complexity of the issues raised” and “[a]ny other factor that constitutes good cause in the context of the case”).

Three amicus briefs have been filed to date, with another one pending; all four support the position of the Plaintiff in this case. Plaintiff’s Amici make a number of broad and potentially quite consequential arguments regarding the scope of California Code of Civil Procedure § 425.16 (the “Anti-SLAPP Statute”), and about where this Court should

draw the line between commercial and non-commercial speech. Plaintiff's Amici urge this Court to issue an expansive opinion interpreting the Anti-SLAPP Statute and defining commercial vs. non-commercial speech in a manner that could have significant implications for many different First Amendment contexts, beyond the particular circumstances of this case.

FAC is a non-profit organization dedicated to protecting freedom of speech, and it regularly has submitted amicus briefs in First Amendment matters in this and other California appellate courts. See Laidman Decl. ¶ 2. It is well-positioned to address the broader First Amendment and Anti-SLAPP issues focused on by Plaintiff's several Amici. As there have not yet been any amicus briefs filed in support of Defendant's position, permitting FAC to submit a brief at this stage would provide this Court with balanced and comprehensive advocacy to assist in its decision. See C.R.C., Rule 8.63(a)(2) (policy behind rule on extensions of time is meant to ensure "complete submissions that assist the courts").

With respect to the timing, the need for an amicus response to the issues raised by Plaintiff's Amici only recently became fully apparent. Under Rule 8.520(f)(2), amicus briefs originally were due in this case by December 13, 2020. While one amicus brief was submitted prior to that date, three other amici filed their briefs past the original deadline, with this Court's permission. The most recent brief, from California's Attorney General, was filed on January 29, 2021. A fourth brief, from the Los

Angeles City Attorney's Office, is due by February 16, 2021. FAC respectfully requests a similar opportunity to submit a late-filed Amicus Brief in this matter in order to address the important, potentially wide-reaching issues raised in this case and the recent amici briefing. An extension of time of 30 days from the filing of this Application is needed to permit its recently-engaged counsel sufficient time to review the multiple merits and amici briefs and prepare FAC's proposed Application and Amicus Brief. See Laidman Decl. ¶ 4; C.R.C., Rule 8.63(b)(7)-(8).

No party would suffer any prejudice from granting FAC this relief. See C.R.C., Rule 8.63(b)(1). FAC's counsel informed the parties of this Application prior to filing, in an email sent February 4, 2021, and Plaintiff's counsel responded that "Ms. Serova nor her counsel oppose your request." Laidman Decl. ¶ 6. Defendants' counsel indicated that neither they nor Defendants oppose FAC's request. Id.

For all of these reasons, FAC respectfully requests that: (1) this Court grant it leave under Rule 8.520(f)(2) to submit an amicus brief past

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the statutory deadline; and (2) that it be given until March 10, 2021, to file its Application and Amicus Brief.

Dated: February 8, 2021

DAVIS WRIGHT TREMAINE LLP
Thomas R. Burke
Rochelle L. Wilcox
Dan Laidman

By: /s/ Thomas R. Burke
Thomas R. Burke

Attorneys for Amicus Curiae
First Amendment Coalition

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DECLARATION OF DAN LAIDMAN

I, Dan Laidman, declare:

1. I am an attorney licensed to practice before the courts of the State of California and before this Court. I am counsel in the law firm of Davis Wright Tremaine LLP (“DWT”), counsel of record for the First Amendment Coalition (“FAC”). I make this declaration in support of FAC’s Motion for Leave to Submit a Late Amicus Brief and For An Extension of Time. The matters stated below are true of my own personal knowledge, except for those matters stated on information and belief, which I am informed and believe to be true.

2. FAC is a non-profit, public interest organization committed to freedom of speech, more open and accountable government, and public participation in civic affairs. Founded in 1988, FAC’s activities include legislative oversight of bills in California affecting access to government and free speech, free legal consultations on First Amendment issues, educational programs, and public advocacy, including extensive litigation and appellate work. FAC’s members are news organizations, law firms, libraries, civic organizations, academics, freelance journalists, bloggers, community activists, and ordinary citizens. The issues presented in this case have broad application to FAC, which has decades of experience litigating the scope and proper interpretation of California Code of Civil Procedure § 425.16 (the “Anti-SLAPP” statute).

3. I have reviewed the docket in this appeal, which indicates that three amici briefs supporting the Plaintiff and Respondent have been filed between December 15, 2020, and January 29, 2021, while a fourth is set to be filed by February 16, 2021. The docket indicates that this Court has

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granted extensions of time and/or relief from default to extend the time for filing three of these amici briefs.

4. DWT was formally retained to represent FAC in connection with this matter on February 2, 2021. Given the timing and the number of amici briefs supporting Plaintiff that have been filed recently, my colleagues and I require an additional 30 days to prepare an amicus brief on behalf of FAC supporting the Defendants in this case.

5. FAC has not previously appeared in this matter, and has not previously requested any extensions of time.

6. On February 4, 2021, I sent an email to counsel for the parties to this appeal to give notice of FAC's intent to file this Application and determine their positions. Counsel for Plaintiff Vera Serova responded, "Ms. Serova nor her counsel oppose your request." Counsel for Defendants John Branca, Sony Music Entertainment, and MJJ Productions, Inc., responded, "Defendants and Defendants' counsel have no objections to your request."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 8, 2021, at Los Angeles, California.

By: /s/ Dan Laidman
Dan Laidman

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PROOF OF SERVICE

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On February 8, 2021, I hereby certify that I electronically filed the foregoing **APPLICATION OF PROPOSED AMICUS CURIAE FIRST AMENDMENT COALITION FOR LEAVE TO SUBMIT LATE BRIEF AND FOR EXTENSION OF TIME; DECLARATION OF DAN LAIDMAN** through the Court’s electronic filing system, TrueFiling (Tf.3).

I certify that participants in the case who are registered TrueFiling users will be served via the electronic filing system pursuant to California Rules of Court, Rule 8.70.

I further certify that case participants were served via United States Postal Service. I directed office personnel to place such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service.

****SEE ATTACHED SERVICE LIST****

Executed on February 8, 2021 at Riverside, California.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Ellen Duncan
Print Name

/s/ Ellen Duncan
Signature

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SERVICE LIST

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