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California Court Vacates Congresswoman's Anti-SLAPP Win Against Political Foe

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A California court revived a defamation claim against U.S. Rep. Maxine Waters in May, holding that her 2020 GOP opponent provided sufficient evidence that she acted with actual malice in making allegedly false statements about his military record. [Collins v. Waters, et al.](#), No. B312937 (Cal. App. 2023).

The unanimous ruling, which vacated Waters' anti-SLAPP victory and award of attorneys' fees in the trial court, turned on the posting of an "official-looking document" by Plaintiff Joe Collins III that stated his discharge from the U.S. Navy was "under honorable conditions." Despite Waters' contention that she had several reasons to disbelieve the form Collins published—including the fact that a 2018 federal court order stated Collins had been *dishonorably* discharged—the court concluded that a jury could conclude that Waters intentionally avoided learning the truth about her political opponent and thus made multiple allegedly false statements about him reckless disregard for the truth.

Background

In 2017, the Navy learned that Collins had started a campaign to run for president in 2020, launched a related website, and had been engaging in other partisan political activity. The Navy ordered him to cease that activity and, presumably when he declined, it discharged him. In response, Collins filed a *pro se* action against the Navy, seeking to force it to update his "discharge to honorable" and revise the reasons for his separation. In dismissing Collins' complaint in 2018, a U.S. district court in San Diego described the case as arising from Collins' "dishonorable discharge from the Navy." In May 2021, the court *sua sponte* revised that phrasing to drop the "dishonorable" language, explaining that it was "an inaccurate descriptor regarding [Collins'] discharge."

The court concluded that a jury could conclude that Waters intentionally avoided learning the truth about her political opponent.

After his discharge from the Navy, Collins revised his political ambition. Rather than seek the presidency in 2020, he challenged Waters' re-election bid. Anticipating that Waters would say he had been dishonorably discharged from the Navy, Collins posted a form on his campaign website that stated he had, in fact, been discharged "under honorable conditions" but for "misconduct (serious offense)."

Shortly after Collins' post, Waters and her campaign ran multiple print and radio ads claiming Collins had been dishonorably discharged from service. He sued in late September 2020, sending his complaint—and a screenshot of the form as he posted it—to Waters a week later, demanded she retract the accusations. Nonetheless, Waters and her campaign continued with their characterizations of his departure from the Navy.

Waters' Anti-SLAPP Motion & Trial Court Ruling

In response to Collins suit, Waters filed a special motion to strike the complaint under California's anti-SLAPP statute. She asserted in a declaration that she sincerely believed that Collins had been dishonorably discharged, regardless of his denial and the form she sent her campaign. Among other reasons for that belief, Waters explained that she knew about the district court order dismissing Collins' federal suit against the Navy and its characterization of Collins' discharge as "dishonorable." Waters also said she knew Collins had filed another lawsuit over child-support obligations in which he sought damages of \$100 million, claimed his birth certificate was worth \$100 billion, and alleged he had a family trust with assets of more than \$700 billion; as such, Waters had reason to doubt Collins' penchant for telling the truth.

Opposing the motion, and conceding the anti-SLAPP statute applied, Collins argued his case had the minimal merit needed to defeat the motion because Waters' acted with reckless disregard for the truth. He claimed, among other things, that the form he published and provided to Waters refuted her accusations, which she nonetheless continued to make, and that a member of Congress like Waters could easily have confirmed the nature of a service member's discharge.

The Superior Court granted Waters' anti-SLAPP motion, ruling that Collins failed to meet his burden to prove with clear and convincing evidence that Waters acted with actual malice. Instead, the court credited Waters' declaration as establishing a subjective and sincere belief that the form Collins posted to his website was not legitimate and that he had been dishonorably discharged from the Navy. The court—ruling a month before the federal court revised its order in the suit against the Navy—also noted that Waters' knowledge of the details of that suit and the wild claims in Collins' child-support suit reasonably gave her reason to question Collins' integrity and veracity. It thus rejected Collins' argument that Waters' failure to conduct a thorough and objective investigation into his discharge status was sufficient to constitute actual malice, granted Waters special motion to strike the complaint, and awarded Waters' motion attorneys' fees.

Ruling on Appeal

The Court of Appeal reversed. First, it emphasized that under the anti-SLAPP analysis, courts "do not weigh evidence or resolve conflicting factual claims" and must credit a plaintiff's evidence. To survive an anti-SLAPP motion, the court explained, a plaintiff needs to demonstrate only that their claim has "minimal merit" once the plaintiff's evidence is credited.

Second, the court underscored that Collins' publication of the purported discharge form was "facially valid proof" that he was *not* dishonorably discharged. Indeed, assuming as it had to do that the form was "authentic, it would prove Waters's accusation was totally false." The court acknowledged that Waters claimed to genuinely believe Collins was too disreputable for her to believe the form was legitimate. But the dispute over his credibility must be left for a jury, it reasoned. And even if Collins *were* a fabulist, and regardless of "Collins's foibles" and the language in the district court order in the Navy case, if the form was valid and Collins was not dishonorably discharged, Waters' statements about his discharge would be false and a jury could reasonably conclude that she purposefully avoided learning the truth so she could continue to attack his record during the campaign.

In other words, the court reasoned, the discharge form purporting that Collins was discharged under honorable conditions put Waters on notice that further accusations to the contrary would be at "considerable risk" of being disproved. Nonetheless, the court noted, Waters declined to investigate despite that risk, and "[w]hen you face powerful documentary evidence your accusation is false, when checking is easy, and when you skip the checking but keep accusing, a jury could conclude you have crossed the line" into the realm of reckless disregard for the truth.

The court concluded: "Reasonable minds could agree that people *purposefully* ignorant about the truth can have a high degree of awareness of probably falsity of a claim they deliberately avoid checking." Because Collins provided evidence sufficient to support a finding at this stage of the case that Waters intentionally avoided learning the truth so she could continue to accuse him of a dishonorable discharge, the court vacated her anti-SLAPP victory and award of attorneys' fees.

Waters has filed a petition for rehearing.

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Plaintiff-Appellant Joe Collins III is represented by Donna C. Bullock of Law Offices of Donna Bullock. Gary S. Lincenberg and Thomas V. Reichert of Bird Marella P.C. represent Defendant-Respondent Maxine Waters and Citizens for Waters.

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