

Plaintiff's motion to conduct specified discovery under Code of Civil Procedure Section 425.16(g) is denied. Section 425.16(g) stays all discovery in an action upon the filing of a special motion to strike (anti-SLAPP). The Court, for good cause shown, may order that "specified discovery" be conducted notwithstanding the general prohibition. Plaintiff seeks to demonstrate that such good cause exists. However, Plaintiff's papers fail to make that showing.

Because Plaintiff seeks discovery in support of its effort to obtain a preliminary injunction, to qualify for the "good cause shown" exception, the discovery Plaintiff wants to conduct must be necessary to support that effort. *Paterno v. Superior Court of Orange County (Ampersand Publishing)* (2008) 163 Cal.App.4th 1342, 1348-1349 (denying discovery on actual malice in a defamation claim on the basis that the plaintiff had not made a showing that the rest of the elements of the claim were present as well). Indeed, as the Court of Appeal noted in *Garment Workers Center*, the Court abuses its discretion when permitting discovery into matters "before determining whether there [is] a reasonable probability the court [will] ever reach that issue." *Garment Workers Center v. Superior Court of Los Angeles County (Fashion 21)* (2004) 117 Cal.App.4th 1156, 1162. (Whether discovery is necessary for Plaintiff to oppose Defendants' anti-SLAPP motion, as Plaintiff argues, is not an issue that is properly before Dept. 86. If Plaintiff wants leave to conduct discovery necessary for that purpose -- or any purpose other than to obtain a preliminary injunction -- it must apply for that relief in the trial court where the lawsuit, including the anti-SLAPP motion, is pending.)

Plaintiff does not persuade the Court that the discovery it seeks is necessary to obtain the preliminary injunction. That is because it appears unlikely that the Court is going to grant the preliminary injunction. The injunction Plaintiff seeks would prevent Defendants from *disseminating* the videotapes. First, this proposed injunction would constitute a prior restraint on the Defendants' rights under the First Amendment and the parallel protections under the California Constitution. US Const. Amend. I; Cal. Const. Art. 1, § 2. Therefore, it is unlikely that the preliminary injunction will ultimately be granted. *Wilson v. Superior Court of Los Angeles County (Watson)* (1975) 13 Cal.3d 652, 658; *Elrod v. Burns* (1976) 427 U.S. 347, 373 ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); see also *San Diego Unified Port District v. U.S. Citizens Patrol* (1998) 63 Cal.App.4th 964, 970 (noting that California's free-speech protections are "more protective, definitive and inclusive of rights to expression of speech than their federal counterparts."). This general prohibition on prior restraints even applies to speech whose publication is false, defamatory, violative of privacy rights or otherwise tortious. *Gilbert v. National Enquirer, Inc.* (1996) 43 Cal.App.4th 1135, 1148; *Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1168.

Second, even if Plaintiff's evidence demonstrates that the videotapes were obtained in violation of Penal Code Section 632, Section 632 does not prohibit the disclosure of information gathered in violation of its terms. *Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App. 4th 156, 167. For that reason, the Court is unlikely to enjoin the dissemination of the tapes. Nor does Penal Code Section 637.2 help Plaintiffs. That section permits a person injured by a violation of Penal Code Section 632 "to bring an action to enjoin and restrain" such violation. It does not permit an action to prevent the *dissemination* of the unlawfully obtained recording.

Accordingly, even if Plaintiff may demonstrate a probability – even an overwhelming probability – that it will prevail on the merits of its claims under Penal Code Section 632, it will not be entitled to injunctive relief. As a result there is no good cause to permit discovery under CCP §

425.16(g), as it has not been demonstrated that there is “a reasonable probability the court [will] ever reach [the] issue[s]” of the probability of prevailing on the merits of the Plaintiff s causes of action or the imminent nature of the harm to be enjoined. *Garment Workers Center*, 117 Cal.App.4th at 1162.