

**[Exempt From Filing Fee
Government Code § 6103]**

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7 GEORGE DOTSON, ELOY MORALES, and
RALPH FRANKLIN
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 WANDA M. BROWN, an individual,

12 Plaintiff,

13 v.

14 CITY OF INGLEWOOD, MAYOR JAMES
15 T. BUTTS, JR., an individual; ALEX
PADILLA, an individual; GEORGE
16 DOTSON, an individual; ELOY MORALES,
an individual; and RALPH FRANKLIN, an
17 individual; and DOES 1-20 Inclusive,

18 Defendants.
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CASE NO. 21STCV30604

**DEFENDANTS' NOTICE OF MOTION
AND SPECIAL MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT PURSUANT TO CODE OF
CIV. PROC. § 425.16**

[Filed Concurrently with Declarations Colin H. Rolfs, Mayor James T. Butts, Jr., Artie Fields; Request for Judicial Notice; and [Proposed] Orders]

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Date: December 9, 2021
Time: 1:30 p.m.
Dept.: 29

Assigned for All Purposes to:
Hon. Serena R. Murillo, Dept. 29

Action Filed: August 18, 2021
Trial Date: None Set

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 9, 2021 at 1:30 p.m., before the Honorable
3 Serena R. Murillo in Department 29 of the above-entitled Court, located at 111 N. Hill Street,
4 Los Angeles, California 90012, Defendants City of Inglewood, Mayor James T. Butts, Jr.,
5 Alex Padilla, George Dotson, Eloy Morales, and Ralph Franklin (collectively, “Defendants”) will
6 and hereby do move this Court to strike the First Amended Complaint (“FAC”) filed by Plaintiff
7 Wanda M. Brown (“Plaintiff”). This Motion is made pursuant to Code of Civil Procedure
8 section 425.16.

9 Section 425.16—known as the “anti-SLAPP” statute—is a means to quickly dispose of
10 causes of action arising from a defendant’s exercise of its constitutional rights to freedom of
11 speech and to petition for redress of grievances. Each of the three causes of action in Plaintiff’s
12 operative FAC arises from Defendants’ exercise of protected speech—including Defendants’
13 protected statements and votes made during City Council meetings—and Plaintiff cannot show a
14 probability of prevailing on her claims.

15 Plaintiff’s three causes of action are: (1) whistleblower retaliation (Labor Code
16 section 1102.5(b) & (c)); (2) intentional infliction of emotional distress (“IIED”); and
17 (3) defamation. These claims were filed in disregard of clearly applicable statutory immunities
18 and suffer from other fatal defects.

19 First Cause of Action: Mayor Butts and the Council Members are immune from Plaintiff’s
20 whistleblower retaliation claim pursuant to Government Code sections 820.2 and 821. Further, as
21 a matter of law, Plaintiff is not an “employee” entitled to bring a claim under Labor Code
22 section 1102.5. Even if Plaintiff were an employee, Plaintiff does not identify any protected
23 activity that she engaged in; and this claim cannot lie against Mayor Butts and the Council
24 Members, because there is no individual liability under section 1102.5.

25 Second Cause of Action: Mayor Butts and the Council Members are also immune from
26 Plaintiff’s IIED claim pursuant to Government Code sections 820.2 and 821. And to the extent
27 this claim is based on alleged defamatory statements by Mayor Butts, those statements are
28 privileged as a matter of law under Civil Code section 47. Inglewood, moreover, is shielded from

1 liability by Government Code sections 815 and 815.2. Plaintiff also has not and cannot identify
2 any “outrageous” conduct by any Defendant, as she is required to do. Additionally, Plaintiff’s
3 claim is barred by the exclusive remedy provisions of workers’ compensation.

4 Third Cause of Action: Plaintiff’s defamation claim is barred by the legislative and
5 executive privileges of Civil Code section 47. Mayor Butts’ alleged defamatory statements are
6 also protected by the First Amendment as a matter of law. Inglewood, moreover, is again shielded
7 from liability by Government Code sections 815 and 815.2. And even if Plaintiff could show that
8 Mayor Butts made any defamatory, unprivileged statements, Plaintiff cannot satisfy the exacting
9 “actual malice” standard required by established First Amendment jurisprudence.

10 Each of Plaintiff’s claims should be dismissed. Pursuant to Section 425.16(c)(1),
11 Defendants also seek to recover the attorneys’ fees and costs incurred in connection with this
12 Motion.

13 Defendants’ Special Motion to Strike is based on this Notice of Motion and Motion, the
14 accompanying Memorandum of Points and Authorities, the Declarations of Mayor James T. Butts,
15 Jr., Artie Fields, and Colin Rolfs and the exhibits attached thereto, the Request for Judicial Notice,
16 and all other papers and pleadings on file or that may be filed, any oral argument of counsel, and
17 on such other evidence as may be presented at the time of hearing.

18
19 DATED: November 12, 2021

Respectfully submitted,

20 MILLER BARONDESS, LLP

21
22
23 By:



24 MIRA HASHMALL
25 Attorneys for Defendants CITY OF
26 INGLEWOOD, MAYOR JAMES T. BUTTS,
27 JR., ALEX PADILLA, GEORGE DOTSON,
28 ELOY MORALES, and RALPH FRANKLIN

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1 **I. INTRODUCTION**

2 This action is an improper attempt by the elected Treasurer of the City of Inglewood—
3 Plaintiff Wanda Brown—to turn her political dispute with the City Council into civil employment
4 and tort claims. Plaintiff’s First Amended Complaint (“FAC”) asserts claims against Defendants
5 Inglewood, Mayor James T. Butts, Jr. (“Mayor Butts”), and Council Members Alex Padilla,
6 George Dotson, Eloy Morales, and Ralph Franklin (the “Council Members”) arising directly from
7 their statements and votes at City Council meetings. Each of these claims should be stricken
8 pursuant to California’s anti-SLAPP statute, Code of Civil Procedure section 425.16.

9 Plaintiff is the long-time Treasurer of Inglewood. Nearing her retirement, she requested
10 that Mayor Butts grant her lifetime health benefits. Mayor Butts was restricted by law from
11 granting Plaintiff these benefits, and so he declined her request. Incensed, Plaintiff began
12 derogating Mayor Butts at City Council meetings and criticizing his and city staff members’ fiscal
13 management. As Plaintiff’s behavior became more disruptive and bizarre, Mayor Butts and the
14 City Council removed her from the dais at Council meetings and voted to reassign some of her
15 Council-delegated responsibilities back to other departments. This lawsuit followed.

16 The FAC alleges that Defendants unlawfully retaliated against her by reassigning her
17 duties and limiting her authority and that Mayor Butts defamed her at a City Council meeting.
18 Plaintiff asserts three causes of action: (1) whistleblower retaliation (Labor Code section 1102.5(b)
19 & (c)); (2) intentional infliction of emotional distress; and (3) defamation.

20 California’s anti-SLAPP statute authorizes a special motion to strike claims arising from
21 protected speech. Statements and votes made in a “legislative . . . proceeding” or “in connection
22 with an issue under consideration or review by a legislative. . . body” constitute protected speech.
23 Cal. Civ. Proc. Code § 425.16(e)(1)-(2). Because all of Plaintiff’s claims arise from protected
24 speech, the first prong of the anti-SLAPP inquiry is satisfied.

25 Under the second prong, Plaintiff can only proceed if she meets her burden of proving—by
26 competent and admissible evidence—a probability that she will prevail on her claims. Plaintiff
27 cannot meet this burden as a matter of law. Mayor Butts and the Council Members are immune
28 from liability under Government Code section 820.2 for voting to limit the authority of the

1 Treasurer. This decision is a discretionary policy judgment entrusted to Defendants as elected
2 officials and not subject to second-guessing by civil action. Mayor Butts' statements at
3 City Council meetings are also privileged under Civil Code section 47. Plaintiffs' three claims
4 suffer from other fatal legal defects that make them untenable. Among other things, Plaintiff is
5 not an "employee" who can bring a retaliation claim under section 1102.5. She is an elected
6 official. She cannot use a lawsuit to obtain benefits not available to her as Treasurer.

7 This case is nothing more than a brazen attempt by an elected official to interfere with
8 Inglewood's legislative process and use civil litigation as a tool to substitute her policy judgments
9 for those of the elected City Council of Inglewood. Defendants are being sued for protected
10 conduct, and Plaintiff has no likelihood of success on her claims. Plaintiff's claims should be
11 stricken under the anti-SLAPP statute, and Defendants should be awarded their fees and costs.

12 **II. FACTS**

13 **A. The City of Inglewood And Its Elected Officers**

14 Inglewood is a charter city governed by its City Council and Mayor. The Council is
15 Inglewood's legislative body. (Request for Judicial Notice ("RJN") Ex. 3 ("Charter") art. V, § 1.)
16 All powers of Inglewood are "vested in and exercised by the council." (*Id.* art. VI, § 10.) The
17 Council consists of the Mayor and four Council Members. (*Id.*)

18 The Council holds weekly meetings, which are open to the public. (RJN Ex. 4 ("Muni.
19 Code") art. 8, §§ 2-254, 2-255.) The Council has the authority to "establish rules and regulations
20 for the conduct of its proceedings." (Charter art. VI, § 4.) The Mayor is "responsible for
21 maintaining the order and decorum of meetings." (Muni. Code art. 8, § 2-263.1.)

22 The elected officers of Inglewood are the Mayor, Council Members, Clerk, and Treasurer.
23 (Charter art. IV, §§ 1, 3-8.) Inglewood's four other officers—e.g., the Police Chief—are
24 appointed by the Council. (*Id.* §§ 1, 8.) The Council has the authority to fix the compensation of
25 any of Inglewood's officers, other than the Mayor and Council Members. (*Id.* § 2.)

26 **B. Plaintiff Begins To Disrupt City Council Meetings After Her Request For** 27 **Lifetime Health Benefits Is Denied**

28 Plaintiff has served as the Treasurer of Inglewood for 34 years. For many years, Plaintiff

1 praised Mayor Butts and the Council’s fiscal management. (Mayor Butts Decl. ¶ 2.) However,
2 nearing retirement, Plaintiff requested that Mayor Butts grant her lifetime health benefits. (*Id.*)
3 Mayor Butts was restricted by law from providing her these benefits, and so he declined her
4 request. (*Id.*) Afterwards, Plaintiff’s conduct towards Mayor Butts changed dramatically.

5 Mayor Butts had allowed Plaintiff to sit at the dais during Council meetings and provide
6 short reports. Starting in 2020, Plaintiff began making long, disruptive speeches that demeaned
7 Mayor Butts and city staff. On February 11, 2020, for example, Plaintiff used her time to argue
8 that the Mayor had no role in bringing a new NFL stadium to Inglewood—“If Donald McDuck
9 was mayor or Gwendolyn the duck was mayor, that [stadium] was going to be built here.” (RJN
10 Ex. 5 at 9:19-21.) After Plaintiff exceeded her time and was asked to yield, Plaintiff said to Mayor
11 Butts, “You’re disgusting.” (*Id.* Ex. 5 at 13:20.) Plaintiff’s conduct only deteriorated further.

12 **C. The City Council Creates A New Investment Committee**

13 On March 10, 2020, the City Council unanimously adopted a resolution to establish a new
14 Investment Committee. (RJN Ex. 6 at 6:25-7:15.) The resolution was recommended by staff
15 because the prior “Investment Committee ha[d] not convened in some time and ha[d] not provided
16 the level of fiduciary oversight and strategy recommendations which are required.” (RJN Ex. 14.)
17 The new Investment Committee consists of the Treasurer, Mayor, City Manager, Chief Financial
18 Officer/Finance Director, and one Council Member. (*Id.*)

19 Plaintiff was furious about the new committee (even though she is included as a member).
20 At the May 19, 2020 City Council meeting, Plaintiff argued that an investment committee “is not
21 required” and that she had chaired the prior committee. (RJN Ex. 7 at 18:8-12.) During the next
22 meeting, on May 26, 2020, Plaintiff referred to the committee as “the mayor’s attempt to overtake
23 the investment function.” (RJN Ex. 8 at 12:12-13.)

24 Plaintiff also claimed at the May 26, 2020 meeting that there had been a “gross
25 misappropriation of public funds.” (*Id.*) She complained that “tax dollars have been utilized to
26 pay the medical expenses of former Councilmember Jose Fernandez.” (*Id.*) While Plaintiff
27 claimed this was “illegal,” she seemed more concerned that she had not received the same benefit:

28 “Again, this has been allowed by the city manager Artie Fields with this gross gross

1 misappropriation of public funds, and I have talked to him about this item. *And*
2 *when I when I brought it up regarding the Treasurer not having the benefit*, he said
3 ‘oh, you’re not entitled to it because, you’re not a department head and you’re not
an executive, but the council members are.’” (*Id.* (emphasis added).)

4 At the June 9, 2020 City Council meeting, Plaintiff again addressed the new Investment
5 Committee, which she described as: “the resolution that -- by City Manager Artie Fields to
6 disband the Treasurer’s oversight committee and instead install the mayor’s committee -- installed
7 in his city manager and his city attorney.” (RJN Ex. 9 at 54:1-5.) Plaintiff then demeaned City
8 Manager Artie Fields, claiming he “has no knowledge of the function of an investment oversight
9 committee and has allowed himself to be manipulated and used by his boss mayor Butts.” (*Id.*)

10 **D. The Treasurer Is Removed From The Dais At City Council Meetings**

11 The Treasurer is not a member of the City Council and has no standing to sit on the dais
12 during meetings. A prior mayor decided to allow the Treasurer on the dais. (Mayor Butts Decl.
13 ¶ 3.) Given Plaintiff’s disorderly conduct, Mayor Butts revoked her privilege of sitting on the
14 dais. (*Id.*) The Treasurer continued to address the Council from the audience, using her time to
15 attack Mayor Butts and malign city staff.

16 On August 18, 2020, for example, Plaintiff claimed that “the reason why [certain]
17 receivables were not collected is the kind of people that Mayor Butts put in very key position
18 [sic].” (RJN Ex. 10 at 8:1-4.) Plaintiff then attacked city staff members by name before launching
19 various frivolous charges at Mayor Butts:

20 “[Y]ou’re a disgrace. You are without a doubt the most corrupt mayor the city has
21 ever experienced, and you are just a total embarrassment....” (RJN Ex. 10 at 9:14-16.)

22 Later in the meeting, Plaintiff renewed her personal attacks against the Mayor, claiming he
23 had “lied” about the reason she was removed from the dais. (RJN Ex. 10 at 20:17-21:14.)
24 Council Members Dotson, Padilla, Franklin, and Morales responded to Plaintiff, defending city
25 staff and noting that previous mayors had also chosen not to have Plaintiff on the dais. (RJN
26 Ex. 10 at 25:23-26:18, 28:17-29:8, 29:20-30:22.)

27 Mayor Butts then explained why Plaintiff’s responsibilities needed to be reevaluated:

28 “For as long as I’ve been on the council you’ve praised what the council and the
mayor have done. And then about five months ago, when you demanded -- insisted

1 that I give you lifetime medical, and I told you that wasn't legal But what you
2 have done is you have lied to the public, lied to the public about financial matters and
3 it's come to a point where we need to re-evaluate those additional duties that you've
4 been given and put them back in the finance department." (*Id.* at 33:7-22.)

4 **E. The City Council Reassigns The Treasurer's Responsibilities**

5 On September 15, 2020, the Council unanimously adopted Ordinance 20-16, "Assignment
6 of City Duties," and also adopted revised Investment Policies for Inglewood. (RJN Ex. 11 at 13:7-
7 16.) Ordinance 20-16 transferred the responsibilities of General Auditor from the Treasurer to the
8 City Clerk (where they had been transferred from previously). (RJN Ex. 1.) The revised
9 Investment Policies reassigned to the Finance Director the responsibility for investing all city
10 funds, except an amount no greater than \$50,000 to be managed by the Treasurer. (RJN Ex. 13.)

11 Mayor Butts explained why he was voting to reassign the Treasurer's responsibilities:

12 "[T]he treasurer's been in disagreement with some major things that we have done to
13 improve the financial position of the city.... It's really important that we have the
14 people who are making investment decisions for the city in line with the city and ...
15 that's the reason I'm going to vote for this measure." (RJN Ex. 11 at 16:15-18:9.)

16 The next month, on October 27, 2020, the Council unanimously adopted its Salary
17 Ordinance for fiscal year 2020-2021. (RJN Ex. 12 at 11:5-22.) The ordinance adjusted the
18 salaries of a number of positions, including the Treasurer. (*Id.*) Consistent with her reduced
19 responsibilities, the Treasurer's salary was reduced back to \$1,404 a month (the level previously
20 established for the Treasurer position by the Council). (*Id.* Ex. 2.)¹

20 **F. The FAC**

21 Plaintiff filed this action on August 18, 2021. The FAC was filed on August 23, 2021.
22 Plaintiff alleges she reported "important concerns she had about the financial health of the City of
23 Inglewood." (FAC ¶ 34.) These concerns allegedly included "an improper overpayment of
24 \$77,418.26 to a City contractor . . . , the City's declining cash balance, the City's increasing deficit
25 spending and the growing negative unrestricted fund balance of \$475,000,000 and the need to curb
26 the overspending, and, concerns about the lack of qualifications of the City's Chief Financial

27 ¹ The Inglewood Charter itself does not provide for any salary for the Treasurer. (RJN Ex. 3 Art.
28 XXV.)

1 Officer.” (*Id.* ¶ 35.)

2 The FAC further alleges the “Mayor and his Council then set about to silence and punish
3 Ms. Brown by systematically reducing her job duties and ability to function as Treasurer.” (*Id.*
4 ¶ 37.) Plaintiff contends this retaliation consisted of:

5 “(1) issuing an Order that the Treasurer not be given access to the City’s financial
6 records; (2) reducing her salary by 83% from \$8,355 per month to just over \$1,404 per
7 month; (3) taking away Plaintiff’s seat at the City Council meetings; (4) stripping
8 Plaintiff of nearly all her long-held duties as City Treasurer, including effectively
9 removing Plaintiff from the City’s Investment Committee and reducing her once
multi-million dollar investment authority to just over \$50,000; (5) locking Plaintiff
and her Staff out of City Hall and their offices; and, (6) deactivating Plaintiff’s office
computer.” (*Id.* ¶ 18; *see also id.* ¶ 37.)²

10 The FAC also alleges that Mayor Butts provided a “defamatory pretextual reason for
11 taking away her duties” by stating at the September 15, 2020 Council meeting that “because
12 Ms. Brown does not know the procedure for handling bad debts, he had no choice but to reduce
13 her duties and her salary.” (*Id.* ¶ 39.)

14 The FAC asserts claims for: (1) violation of Labor Code section 1102.5(b) & (c);
15 (2) intentional infliction of emotional distress (“IIED”); and (3) defamation. (*Id.* ¶¶ 43-56.)

16 **III. LEGAL STANDARD**

17 The anti-SLAPP statute provides that “[a] cause of action against a person arising from any
18 act of that person in furtherance of the person’s right of petition or free speech . . . in connection
19 with a public issue shall be subject to a special motion to strike, unless the court determines that
20 the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”
21 Cal. Civ. Proc. Code § 425.16(b)(1).

22 The anti-SLAPP analysis has two prongs. *First*, a defendant must make a *prima facie*
23 showing that the claims “aris[e] from” protected activity, namely, “any act of that person in
24 furtherance of the person’s right of petition or free speech under the United States Constitution or
25 the California Constitution.” Cal. Civ. Proc. Code § 425.16(b)(1). “[A] court must generally

26 _____
27 ² Defendants did not lock Plaintiff out of her office. Per City policy, her proximity badge was
28 deactivated because she did not provide a negative COVID-19 test confirmation. (Declaration of
Artie Fields ¶ 2.) Her badge was reactivated once she provided a negative test confirmation. (*Id.*)

1 presume the validity of the claimed constitutional right in the first step of the anti-SLAPP
2 analysis” *Chavez v. Mendoza*, 94 Cal. App. 4th 1083, 1089 (2001).

3 *Second*, if the claims arise from protected activity, the burden shifts to the plaintiff to
4 show, by “competent, admissible evidence,” a probability of prevailing. *Roberts v. L.A. Cty. Bar*
5 *Ass’n*, 105 Cal. App. 4th 604, 613-14 (2003) (plaintiff cannot simply rely on its pleadings). The
6 plaintiff must also present competent, admissible evidence to overcome all of the defendant’s
7 asserted privileges and defenses. *See Comstock v. Aber*, 212 Cal. App. 4th 931, 953 (2012)
8 (affirming grant of anti-SLAPP where conduct was privileged under Civil Code section 47(c)). If,
9 “as a matter of law, the . . . evidence supporting the motion defeats the . . . attempt to establish
10 evidentiary support for the claim,” the anti-SLAPP motion must be granted, the claim must be
11 dismissed, and the defendant must be awarded attorneys’ fees and costs. *Wilson v. Parker, Covert*
12 *& Chidester*, 28 Cal. 4th 811, 821 (2002); Cal. Civ. Proc. Code § 425.16(c)(1).

13 **IV. THE MOTION SHOULD BE GRANTED**

14 **A. Prong One: Plaintiff’s Claims Arise From Protected Activity**

15 Section 425.16(e) protects “any written or oral statement or writing made before a
16 legislative. . . proceeding” or “in connection with an issue under consideration or review by a
17 legislative. . . body.” Cal. Civ. Proc. Code § 425.16(e)(1)-(2). Thus, “governmental speech and
18 legislative action at City Council meetings” are protected by the anti-SLAPP statute. *Holbrook v.*
19 *City of Santa Monica*, 144 Cal. App. 4th 1242, 1247 (2006). “[V]otes taken after a public
20 hearing” are also protected, and “elected officials may assert the protection of section 425.16 when
21 sued over how they voted.” *City of Montebello v. Vasquez*, 1 Cal. 5th 409, 427 (2016).

22 **1. Plaintiff’s Labor Code Claim Arises from Protected Conduct**

23 In support of her claim for whistleblower retaliation (Labor Code § 1102.5), Plaintiff
24 alleges Defendants retaliated against her by reassigning her responsibilities, reducing her salary,
25 and eliminating her seat at Council meetings. (FAC ¶ 46.)

26 These alleged acts of retaliation constitute protected activities under section 425.16(e)(1)-
27 (2). Mayor Butts and the Council Members’ reassignment of Plaintiff’s duties and reduction of
28 her salary were carried out by their votes at City Council meetings. (*See supra* § II.E.) Council

1 members' votes constitute protected activity because they are "cast in furtherance of their rights of
2 advocacy and communication with their constituents." *City of Montebello*, 1 Cal. 5th at 423.

3 Mayor Butts' removal of Plaintiff from the dais was also directly related to his and the
4 Council Members' rights of advocacy in conducting meetings. Plaintiff's position on the dais was
5 an endorsement of her speech, and her removal was symbolic. *See Hunter v. CBS Broad. Inc.*, 221
6 Cal. App. 4th 1510, 1526-27 (2013) (news organization's choice of on-air reporter was protected).
7 This claim is thus subject to the anti-SLAPP statute. *See Hansen v. Cal. Dep't of Corr. & Rehab.*,
8 171 Cal. App. 4th 1537, 1546 (2008) (section 1102.5 claim subject to anti-SLAPP).

9 **2. Plaintiff's IIED Claim Arises from Protected Conduct**

10 The FAC does not specify any particular acts to support Plaintiff's Second Cause of Action
11 for IIED. Rather, the FAC alleges that "[t]he conduct of Defendants described herein was
12 outrageous, and was intended to and did inflict severe emotional distress upon Plaintiff"
13 (FAC ¶ 49.) Thus, this claim rests on the same conduct as Plaintiff's other claims and is subject to
14 the anti-SLAPP statute for the same reasons set forth above and in the next section.

15 **3. Plaintiff's Defamation Claim Arises from Protected Conduct**

16 Plaintiff's Third Cause of Action is for defamation—a quintessential case for application
17 of the anti-SLAPP statute. *See Thomas v. Quintero*, 126 Cal. App. 4th 635, 657 (2005)
18 (defamation is one of "the weapons of choice in SLAPP suits"). Here, the FAC alleges that Mayor
19 Butts made defamatory statements that Plaintiff "was incompetent to do her City Treasurer job."
20 (FAC ¶ 54.) The FAC admits these statements were made at a Council meeting. (*Id.* ¶ 39.)

21 Because Plaintiff's defamation claim arises from statements made before the City Council,
22 the claim is subject to the anti-SLAPP statute under Section 425.16(e)(1)-(2). *See Cal. Civ. Proc.*
23 *Code* § 425.16(e)(1)-(2) (statements in "a legislative . . . proceeding" or "in connection with an
24 issue under consideration or review by a legislative . . . body" are protected); *Holbrook*, 144 Cal.
25 App. 4th at 1247 (statements at city council meeting are protected activity).

26 **B. Prong Two: Plaintiff Cannot Establish A Probability Of Prevailing**

27 Because Plaintiff's claims arise out of protected activity, she must "establish[] that there is
28 a probability that [she] will prevail on [her] claim[s]." *Cal. Civ. Proc. Code* § 425.16(b)(1).

1 Plaintiff must produce evidence to support her claims, and she must overcome Defendants'
2 privileges or defenses. *See Comstock*, 212 Cal. App. 4th at 953; *Flatley v. Mauro*, 39 Cal. 4th
3 299, 323 (2006).

4 **1. Plaintiff's Labor Code Claim Is Fatally Flawed**

5 Plaintiff's claim for violation of Labor Code section 1102.5 fails on multiple grounds.

6 **(a) Mayor Butts and the Council Members are protected by**
7 **discretionary act immunity**

8 California law has "long provided that a governmental official has personal immunity from
9 lawsuits challenging his or her discretionary acts within the scope of authority." *Caldwell v.*
10 *Montoya*, 10 Cal. 4th 972, 979 (1995). This immunity is "absolute" and protects officials
11 "notwithstanding malice or other sinister motive." *Id.* Government Code section 820.2 provides:

12 Except as otherwise provided by statute, a public employee is not liable for an injury
13 resulting from his act or omission where the act or omission was the result of the
14 exercise of the discretion vested in him, whether or not such discretion be abused.

15 *See also Caldwell*, 10 Cal. 4th at 980 (section 820.2 restates pre-existing California law).

16 In *Caldwell*, a school board's decision to terminate a school superintendent was a
17 discretionary decision immune from civil actions "that seek to hold individual board members
18 liable for the motives behind their votes." 10 Cal. 4th at 983. As such, the plaintiff's claims for
19 discrimination and retaliation were barred by section 820.2. *Id.* at 975-76.

20 California law also expressly shields government officials from liability for their
21 legislative enactments: "[a] public employee is not liable for an injury caused by his adoption of or
22 failure to adopt an enactment or by his failure to enforce an enactment." Cal. Gov't Code § 821.

23 These statutory immunities shield Mayor Butts and the Council Members from any
24 liability for their alleged retaliation against Plaintiff. Mayor Butts and the Council Members had
25 discretionary authority to reassign the Treasurer's responsibilities and reduce her Council-
26 authorized salary. The City Council is the "governing body" of Inglewood; and "all powers in
27 [Inglewood's] charter granted to and vested in said city of Inglewood, shall be vested in and
28 exercised by the council." (Charter art. VI, § 10.) This includes the power to "fix the salaries and
compensation of all officers of the city, excepting only the mayor and councilmen." (*Id.* art. IV,

1 § 2.) Moreover, Plaintiff’s reassignment and salary reduction were carried out by valid
2 enactments of the City Council, resulting in immunity under section 821.

3 Mayor Butts’ decision to exclude the Treasurer from the dais at Council meetings is also a
4 discretionary act. The Council has the express authority to “establish rules and regulations for the
5 conduct of its proceedings.” (Charter art. VI, § 4.) And Mayor Butts is responsible for
6 “maintaining the order and decorum of meetings.” (Muni. Code art. 8, § 2-263.1.) Mayor Butts
7 and the Council Members are immune to Plaintiff’s claim for violation of section 1102.5.

8 (b) **Plaintiff is an elected official, not an employee**

9 Plaintiff’s claim also fails because Labor Code section 1102.5 does not apply to her as an
10 elected official. The protections of section 1102.5 are limited to “an employee.” Cal. Lab. Code
11 § 1102.5 (“An employer . . . shall not retaliate against an *employee* . . .” (emphasis added)).

12 An “employee” for purposes of section 1102.5 is defined as “any individual employed by”
13 a California government. Cal. Lab. Code § 1106. The Treasurer is not employed by Inglewood.
14 She is an elected official that cannot be hired or fired by the City. *See Sarsfield v. County of San*
15 *Benito*, 2010 WL 1929619, at *7 (N.D. Cal. May 12, 2010) (elected official is not an employee);
16 *Rabkin v. Dean*, 856 F. Supp. 543, 549 (N.D. Cal. 1994) (“As an elected official, Plaintiff does not
17 have an ‘employer.’”). Indeed, in a recent interview, Plaintiff admitted, “*I’m not an employee. . . .*
18 *I was elected . . .*” (Declaration of Colin Rolfs, Ex. A (emphasis added).)

19 (c) **Plaintiff cannot prove the elements of her claim**

20 To establish a retaliation claim under Labor Code section 1102.5, Plaintiff must “show
21 that: (1) [s]he engaged in protected activity; (2) h[er] employer thereafter subjected h[er] to an
22 adverse employment action; and (3) a causal link between the two.” *Fitzgerald v. El Dorado*
23 *County*, 94 F. Supp. 3d 1155, 1172 (E.D. Cal. 2015) (citing *Mokler v. County of Orange*, 157 Cal.
24 App. 4th 121, 138 (2007)). Plaintiff cannot satisfy these elements.

25 To show she engaged in protected activity under section 1102.5(b), Plaintiff must have had
26 “reasonable cause to believe” she was disclosing “a violation of [a] state or federal statute, or a
27 violation of or noncompliance with a local, state, or federal rule or regulation.” Cal. Lab. Code
28 § 1102.5(b). To have a reasonably based suspicion of illegal activity, the employee must be able

1 to “point to . . . some statute, rule or regulation which may have been violated by the conduct [s]he
2 disclosed.” *Fitzgerald*, 94 F. Supp. 3d at 1172.

3 To show she engaged in protected activity under section 1102.5(c), Plaintiff must have
4 “refus[ed] to participate in an activity that would result in a violation of [a] state or federal statute,
5 or a violation of or noncompliance with a local, state, or federal rule or regulation.” Cal. Lab.
6 Code § 1102.5(c). This “requires a showing that the activity in question *actually would* result in a
7 violation or noncompliance with a statute, rule, or regulation.” *Nejadian v. County of Los*
8 *Angeles*, 40 Cal. App. 5th 703, 719 (2019).

9 Here, Plaintiff alleges she disclosed: (1) “an improper overpayment of \$77,418.26 to a City
10 contractor”; and (2) that Defendants “improperly failed to accurately report to the public the true
11 financial health of the City.” (FAC ¶¶ 35, 45.) However, Plaintiff has not identified any law or
12 regulation that may have been violated. Instead, Plaintiff merely alleges purportedly “improper”
13 or “unusual” transactions. Nor has Plaintiff identified any activity she refused to participate in that
14 actually would have violated any law or regulation. As a result, her claim is untenable.

15 Lastly, even assuming *arguendo* Plaintiff had a viable Labor Code claim, Plaintiff could
16 only assert her claim against Inglewood (not the individual defendants). *See Bales v. County of El*
17 *Dorado*, 2018 WL 4558235, at *3 (E.D. Cal. Sept. 20, 2018) (“[S]ection 1102.5 does not impose
18 individual liability.”).³

19 **2. Plaintiff’s IIED Claim Is Untenable**

20 Plaintiff’s IIED claim is based on both Defendants’ alleged retaliatory actions and
21 Mayor Butts’ alleged defamatory statements. (FAC ¶ 49.) However, as set forth above,
22 Mayor Butts and the Council Members are immune from liability for their alleged retaliatory acts.
23 And as set forth in the next section, Mayor Butts’ alleged defamatory statements are privileged.
24 This claim is thus barred as a matter of law as to Mayor Butts and the Council Members.

25 _____
26 ³ The FAC alleges Defendants locked Plaintiff and her staff out of their offices and deactivated her
27 computer. (FAC ¶¶ 18, 37.) But as matter of law, these alleged actions do not constitute adverse
28 employment actions. *See Malais v. Los Angeles City Fire Dep’t*, 150 Cal. App. 4th 350, 357
(2007) (“Minor or relatively trivial adverse actions . . . are not actionable . . .”).

1 Inglewood itself is also immune. Government Code section 815 provides that, “[e]xcept as
2 otherwise provided by statute,” “[a] public entity is not liable for an injury, whether such injury
3 arises out of an act or omission of the public entity or a public employee or any other person.”
4 This section “abolishes common law tort liability for public entities.” *Miklosy v. Regents of Univ.*
5 *of Cal.*, 44 Cal. 4th 876, 899 (2008). There is no statutory authorization for Plaintiff to assert any
6 tort claims against Inglewood here. To the contrary, Government Code section 815.2 provides
7 that where, as here, “the employee is immune from liability,” the public entity cannot be held
8 liable for the act or omission of the employee. Cal. Gov’t Code § 815.2(b).

9 Plaintiff’s claim also fails on the substance. “[A] cause of action for intentional infliction
10 of emotional distress arises when a defendant ‘intentionally or recklessly causes “severe emotional
11 distress” to another by “extreme and outrageous conduct.”’” *Unterberger v. Red Bull N. Am., Inc.*,
12 162 Cal. App. 4th 414, 423 (2008). “To be ‘outrageous,’ conduct ‘must be so extreme as to
13 exceed all bounds of that usually tolerated in a civilized community.’” *Id.* Nothing alleged in the
14 FAC comes close to “outrageous conduct.” *See Yurick v. Superior Court*, 209 Cal. App. 3d 1116,
15 1129 (1989) (supervisor repeatedly saying plaintiff was senile and a liar not outrageous).

16 Lastly, it is well-established that claims for IIED are “subsumed under the exclusive
17 remedy provisions of workers’ compensation.” *Miklosy*, 44 Cal. 4th at 902 (citation omitted). In
18 contrast with the definition of “employee” for purposes of section 1102.5, the definition of
19 “employee” for purposes of workers’ compensation includes “[a]ll elected . . . paid public
20 officers.” Cal. Lab. Code § 3351(b). Where, as here, purportedly wrongful conduct occurred at
21 the worksite in the normal course, “workers’ compensation is plaintiffs’ exclusive remedy for any
22 injury that may have resulted.” *Miklosy*, 44 Cal. 4th at 902. Plaintiff’s IIED claim is thus barred.

23 **3. Plaintiff’s Defamation Claim Fails**

24 Plaintiff’s Third Cause of Action for defamation is asserted only against Mayor Butts and
25 Inglewood. Plaintiff alleges Mayor Butts defamed her by stating at the “September 15, 2020 City
26 Council meeting . . . that because Ms. Brown does not know the procedure for handling bad debts,
27 he had no choice but to reduce her duties and her salary.” (FAC ¶ 39.)

1 (a) **The claim is barred by the legislative privilege**

2 Civil Code section 47(b) provides that a publication in a “legislative proceeding” is
3 privileged. This privilege provides “[a]bsolute immunity . . . to statements made before a
4 legislative body . . . when it is shown that the statement which is alleged to be defamatory bears
5 some connection to the work of the legislative body.” *Scott v. McDonnell Douglas Corp.*, 37 Cal.
6 App. 3d 277, 285 (1974); *Cayley v. Nunn*, 190 Cal. App. 3d 300, 304 (1987) (statements in
7 “conversations while defendants were marshalling evidence and preparing for their presentation at
8 the city council meeting” are privileged); *Royer v. Steinberg*, 90 Cal. App. 3d 490, 503 (1979)
9 (“slanderous utterances by members of a city council at a regular meeting” are privileged).

10 Mayor Butts’ statements about Plaintiff are absolutely privileged under section 47(b). She
11 admits his statements were made at a City Council meeting. (FAC ¶ 39.) Those statements
12 related to matters under consideration by the City Council—i.e., the City’s financial health and the
13 Council’s decision to reassign the Treasurer’s duties. Plaintiff’s defamation claim based on the
14 Mayor’s statements is barred. *See Scott*, 37 Cal. App. 3d at 285-86 (allegedly defamatory
15 statements related to retention of employee in letter read at city council meeting were privileged).

16 (b) **The claim is barred by the executive privilege**

17 Civil Code section 47(a) provides that a publication “[i]n the proper discharge of an
18 official duty” is privileged. This privilege “protects any statement by a public official, so long as
19 it is made (a) while exercising policy-making functions, and (b) within the scope of his official
20 duties.” *Royer*, 90 Cal. App. 3d at 501. This section also shields Mayor Butts’ statements.
21 Mayor Butts’ statements were made in the scope of his official duties as a member of the Council.

22 (c) **Inglewood is immune from the defamation claim**

23 As with the IIED claim, Inglewood is immune from liability for Plaintiff’s claim for
24 defamation. *See* Cal. Gov’t Code § 815; *Miklosy*, 44 Cal. 4th at 899 (section 815 abolishes
25 common law tort liability for public entities). Because Mayor Butts is immune from liability per
26 Civil Code section 47, Inglewood cannot be held liable for his alleged defamation. *See* Cal. Gov’t
27 Code § 815.2(b) (where employee is immune, public entity not liable).

28

1 (d) **Plaintiff cannot establish the elements of her claim**

2 A claim for defamation requires the plaintiff to prove the defendant “intentionally
3 communicated to a third person, either orally or in writing, a false, unprivileged statement about
4 him that had a natural tendency to injure him or that caused him special damage.” *Reed v.*
5 *Gallagher*, 248 Cal. App. 4th 841, 855 (2016). The First Amendment also requires that the
6 plaintiff “present evidence of a statement of *fact* that is ‘*provably false*.’” *Id.* (emphasis added).

7 “Under the First Amendment there is no such thing as a false idea. However pernicious an
8 opinion may seem, we depend for its correction not on the conscience of judges and juries but on
9 the competition of other ideas.” *Nygaard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1048
10 (2008). “Thus, ‘rhetorical hyperbole,’ ‘vigorous epithet[s],’ ‘lusty and imaginative expression[s]
11 of ... contempt,’ and language used ‘in a loose, figurative sense’ have all been accorded
12 constitutional protection.” *Id.* (alterations in original).

13 To ascertain whether a statement is provably false, courts consider the “totality of the
14 circumstances.” *Reed*, 248 Cal. App. 4th at 856. This determination is normally a question of law
15 for the court. *Nygaard*, 159 Cal. App. 4th at 1049. Courts look to both the “language of the
16 statement” and its context, including “the nature and full content of the communication and to the
17 knowledge and understanding of the audience to whom the publication was directed.” *Reed*, 248
18 Cal. App. 4th at 856. Political disputes in particular are a “context in which the audience would
19 naturally anticipate the use of rhetorical hyperbole.” *Id.* at 859.

20 Plaintiff alleges Mayor Butts stated at the September 15, 2020 meeting that “Ms. Brown
21 does not know the procedure for handling bad debts.” (FAC ¶ 39.) Here is what he actually said:

22 “[T]he treasurer’s been in disagreement with some major things that we have done to
23 improve the financial position of the city. One was a debt swap for a hundred million
24 dollars to pay off our unfunded liability. That debt swap for that payment saved us \$8
25 million this coming year \$8 million. . . . She quoted a gentleman named Moorlach who
26 has nothing to do with the city of Inglewood as saying that was a bad move. That
27 savings of 8 million will go a long ways next year to making up for, you know, what
28 we lost in -- due to COVID impacts on the city this year. So that also hurts the city’s
status . . . when someone is misguided like that.

Now, another thing that the treasurer said is that we were in the worst financial shape
that she’s known of. And I’m going to read a paragraph from Moody’s Investor
Service comment from January 21st as far back as 2016. And at that time in 2016 we

1 had 29 million, almost 30 million in reserves, and this was their statement. ‘Finances.
2 The financial position of the city is robust and is a notable strength when compared to
3 its A-1 rating’ Our last general fund reserves balance was . . . \$57,370,000. . . .
4 It’s really important that we have the people who are making investment decisions for
the city in line with the city and . . . that’s the reason I’m going to vote for this
measure.” (RJN Ex. 11 at 16:15-18:9.)

5 Mayor Butts’ reference to Plaintiff as “misguided” is precisely the type of protected
6 opinion the First Amendment shields from liability. *Reed*, 248 Cal. App. 4th at 856-58 (reference
7 to defendant as “unscrupulous” in campaign advertisement was protected opinion). Mayor Butts
8 laid out the factual reasons for his disagreement with Plaintiff’s assessment of the financial state of
9 Inglewood. “[W]hen a speaker outlines the factual basis for his conclusion, his statement is
10 protected by the First Amendment.” *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995).

11 Lastly, even if Plaintiff could establish that Mayor Butts made a provably false statement
12 (which she cannot), Plaintiff’s defamation claim still fails. Public officials may not prevail in an
13 action for defamation “relating to their official conduct absent proof that the statement was made
14 with ‘actual malice.’” *Reader’s Digest Ass’n v. Superior Court*, 37 Cal. 3d 244, 252-53 (1984).
15 This requires proof “by clear and convincing evidence” that the statement at issue was made “with
16 knowledge that it was false or with reckless disregard of whether it was false or not.” *Id.* at 256.

17 As the elected Treasurer, Plaintiff is a public official. *Ghafur v. Bernstein*, 131 Cal. App.
18 4th 1230, 1238 (2005) (school board member was public official). Mayor Butts’ comments at the
19 September 15 meeting were related to Plaintiff’s role as Treasurer. Plaintiff is thus subject to the
20 exacting “actual malice” standard. Plaintiff cannot come close to meeting her burden.

21 Mayor Butts’ statements reflected his assessment of whether Plaintiff was “in line” with the City
22 in her position as Treasurer. *See Reader’s Digest*, 37 Cal. 3d at 258 (finding no actual malice
23 where “[t]here is no direct evidence that [defendants] believed the questioned passages in the
24 article were false, or even entertained serious doubts respecting their truth”).

25 **V. CONCLUSION**

26 For the foregoing reasons, Defendants respectfully request that the Court strike Plaintiff’s
27 FAC and each claim of the FAC and award Defendants their attorneys’ fees and costs.

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DATED: November 12, 2021

Respectfully submitted,

MILLER BARONDESS, LLP

By: 

MIRA HASHMALL

Attorneys for Defendants CITY OF
INGLEWOOD, MAYOR JAMES T. BUTTS,
JR., ALEX PADILLA, GEORGE DOTSON,
ELOY MORALES, and RALPH FRANKLIN



Make a Reservation

WANDA M BROWN vs CITY OF INGLEWOOD, et al.

Case Number: 21STCV30604 Case Type: Civil Unlimited Category: Other Personal Injury/Property Damage/Wrongful Death

Date Filed: 2021-08-18 Location: Spring Street Courthouse - Department 29

Reservation

Case Name: WANDA M BROWN vs CITY OF INGLEWOOD, et al.	Case Number: 21STCV30604
Type: Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion)	Status: RESERVED
Filing Party: City of Inglewood (Defendant)	Location: Spring Street Courthouse - Department 29
Date/Time: 12/09/2021 1:30 PM	Number of Motions: 1
Reservation ID: 315126018448	Confirmation Code: CR-VXGQZRZRZ3FFWO7U8

Fees

Description	Fee	Qty	Amount
Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: GOVT_EXEMPT
Account Number: n/a	Authorization: n/a

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