

DEPARTMENT 56 LAW AND MOTION RULINGS

DEPARTMENT 56 JUDGE HOLLY J. FUJIE, LAW AND MOTION RULINGS. The court makes every effort to post tentative rulings by 5.00 pm of the court day before the hearing. The tentative ruling will not become the final ruling until the hearing [see CRC 3.1308(a)(2)], and are also available in the courtroom on the day of the hearing [see CRC 3.1308(b)]. If the parties wish to submit on the tentative ruling and avoid a court appearance, all counsel must agree and choose which counsel will give notice. That counsel must 1) call Dept 56 by 8:30 a.m. on the day of the hearing (213/633-0656) and state that all parties will submit on the tentative ruling, and 2) serve notice of the ruling on all parties. If any party declines to submit on the tentative ruling, then no telephone call is necessary and all parties should appear at the hearing in person or by Court Call. Court reporters are not provided, and parties who want a record of motions and other proceedings must hire a privately retained certified court reporter.

Case Number: 22STCV19770 **Hearing Date:** August 19, 2022 **Dept:** 56

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

LETICIA VASQUEZ,

Plaintiff,

vs.

CASE NO.: 22STCV19770

[TENTATIVE] ORDER RE: ANTI-SLAPP MOTION

CENTRAL BASIN MUNICIPAL WATER
DISTRICT, *et al.*,

Date: August 19, 2022

Time: 8:30 a.m.

Defendants.

Dept. 56

MOVING PARTY: Defendants Central Basin Municipal Water District (the “District” or “Central Basin”) and Alex Rojas (“Rojas”) (collectively, “Moving Defendants”)

RESPONDING PARTY: Plaintiff

The Court has considered the moving, opposition and reply papers.

BACKGROUND

This action arises out of a dispute between Plaintiff, who is an elected public official who serves on the District’s Governing Board (the “Board”) and the District, its general manager, Rojas, and its general counsel, Defendant Robert Baker (“Baker”).

Plaintiff’s complaint (the “Complaint”) alleges violations of the Tom Bane Civil Rights Act (the “Bane Act”). The Complaint alleges that Defendants violated the Bane Act by preventing Plaintiff from exercising her right to freedom of speech under the United States Constitution and the California Constitution. (*See, e.g.*, Complaint ¶¶ 2:26-3:1.)

Moving Defendants filed a special motion to strike the Complaint pursuant to California *Code of Civil Procedure* (“CCP”) section 426.16 (the “Motion”) on the grounds that the facts underlying the basis for liability alleged in the Complaint arise out of their rights of petition and free speech.

DISCUSSION

A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (CCP § 425.16, subd. (b)(1).)

The court must engage in a two-step analysis under when evaluating anti-SLAPP motions. (*Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, 714.) First, the court must decide whether the moving party has met the initial burden of making a prima facie showing that the plaintiff’s cause of action arises from the moving party’s constitutional right of petition or free speech in connection with a public issue. (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 622.) Under CCP section 425.16, subdivision (e), acts in furtherance of a defendant’s furtherance include:

1. Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
2. Any written or oral statement in writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
3. Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest;
4. Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest. (CCP § 425.15, subd. (e)(1)-(4).)

Once it has been determined that the anti-SLAPP statute applies, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the merits of the action. (*Navarro v. IHOP Properties, Inc.* (2005)

134 Cal.App.4th 834, 843.) If the plaintiff does so, the motion to strike under the anti-SLAPP statute must be denied. (*Id.*) Anti-SLAPP motions must be supported (and opposed) by declarations stating facts upon which the liability or defense is based. (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)

First Prong

To satisfy the first prong of the analysis on an anti-SLAPP motion, a moving defendant must identify the activity each challenged claim rests on and demonstrate that that activity is protected by the anti-SLAPP statute. (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.) A claim may be struck only if the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060.) To determine whether a claim arises from protected activity, courts must consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability. (*Id.* at 1063.) Courts must then evaluate whether the defendant has shown any of these actions fall within one or more of the four categories of acts enumerated in CCP section 425.16(e). (*Wilson, supra*, 7 Cal.5th at 884.) Where a cause of action is based on allegations of both protected and unprotected activity, CCP section 425.16 may be used to strike discrete allegations of protected activity within a cause of action, without striking the entire cause of action. (*1550 Laurel Owner's Assn., Inc. v. Appellate Division of Superior Court* (2018) 28 Cal.App.5th 1146, 1156.)

1. Allegations of Protected Activity

Moving Defendants identify 18 categories of allegations in the Complaint^[1] which they contend arise out of protected activity (the “Disputed Claims”):

1. Denied Free Speech during public comment portion of Board meetings (Complaint ¶¶ 15-16);
2. Denied Right as Board member to place items on agenda (Complaint ¶¶ 17-18);
3. Denied free speech by illegal manipulation of the consent agenda (Complaint ¶¶ 19-20);
4. Illegal deactivation of Plaintiff’s official Central Basin email account (Complaint ¶¶ 21-22);

5. Illegally denied compensation without statutory 2/3 vote (Complaint ¶ 23);
6. Illegal censure (Complaint ¶ 24);
7. Frivolous injunction lawsuit against Plaintiff to prevent her free speech (Complaint ¶¶ 25-26);
8. Refusal to disclose the identity of a buyer of Central Basin's headquarters building (Complaint ¶ 27);
9. Threatening and harassing cease and desist emails (Complaint ¶ 28);
10. Illegal withholding of documents and information (Complaint ¶ 29);
11. General manager refuses to provide requested documents and refuses to meet with Plaintiff to discuss Central Basin business affairs (Complaint ¶¶ 30-32);
12. Rojas raising his voice and yelling at Plaintiff and scolding Plaintiff during public meetings (Complaint ¶ 33);
13. Director Robert Apodaca's assault and battery and intimidation to stop free speech (Complaint ¶ 34);
14. Denial of right to participate in the evaluation of the general manager (Complaint ¶ 35.);
15. General counsel Baker falsely claiming that Plaintiff had to appear at a deposition. (Complaint ¶ 36);
16. Rojas's threats and intimidation about overdue discovery responses (Complaint ¶¶ 37-39);
17. Concealing five lawsuits against Central Basin from Plaintiff (Complaint ¶¶ 40-41); and
18. Illegal give away of parts of Central Basin service area (Complaint ¶¶ 42-43). (*See* Motion 5:1-7:13.)

Plaintiff's opposition (the "Opposition") summarily asserts that Moving Defendants failed to satisfy their burden to show that the identified allegations of the Complaint concern protected activity because Moving Defendants did not provide evidence that identifies the protected activity and situates it within the enumerated categories of the anti-SLAPP statute.^[2] While the Court agrees that Moving Defendants have not provided evidence in support of the Motion, Plaintiff's argument is not fully persuasive. If a pleading itself shows that a claim arises from protected conduct, a moving party may rely on the plaintiff's allegations alone in making the showing necessary under the first prong without submitting supporting evidence. (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 936.) Therefore, the Court may evaluate the allegations of the Complaint to determine whether the challenged claims arise from Moving Defendants' protected conduct.

The Court finds:

As to Disputed Claim number 1, the allegations are based in part upon conduct whose nature is not fully disclosed in the Complaint (being prevented from speaking while on the dais and denied to speak as a member of the public) and speech undertaken during a proceeding authorized by law (by talking over Plaintiff, for example). (See Complaint ¶¶ 15-16.)

As to Disputed Claim number 2, as alleged, it is not wholly clear whether the claims in this portion of the Complaint fall into any protected categories because it is not clear what statements (if any) were made, when they were made, or where they were made. As Moving Defendants have not provided evidence to show how these claims arise from protected activity, the Court is unable to evaluate their arguments; therefore, Moving Defendants have not satisfied their burden to show that these allegations fall within the ambit of the anti-SLAPP statute. (See *Turnbull v. Lucerne Valley Unified School District* (2018) 24 Cal.App.5th 522, 534-35; *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1286.)

Moving Defendants have likewise failed to demonstrate that the claims in Disputed Claim numbers 3-5, 8, 10, 11, 13, 14, 17, and 18 constitute protected conduct specified by the anti-SLAPP statute. The Court therefore DENIES the Motion as to these claims in addition to the claims in Disputed Claims number 1 to the extent that they concern conduct other than statements made during an official proceeding.

The Court finds that the allegations in Disputed Claim 1 concerning statements made in an official proceeding and the allegations in Disputed Claims numbers 6, 7, 9, 12, 15, and 16 fall within the statutory scheme of the anti-SLAPP statute. Disputed Claims numbers 6 and 12 concern protected speech in an official proceeding and Disputed Claims numbers 7, 9, 15, and 16 concern communications made in connection with a judicial proceeding.

2. *Relationship of Protected Activity to Plaintiff's Cause of Action*

Plaintiff argues that even if protected, the allegations targeted by the Motion do not arise from such activity.

For a cause of action to “arise from” protected activity, the defendant’s act underlying the plaintiff’s cause of action must itself have been an act in furtherance of the right of petition or free speech. (City of Cotati v. Cashman; (2002) 29 Cal.4th 69, 78.) If conduct that supplies a necessary element of a claim is protected, the defendant's burden at the first step of the anti-SLAPP analysis has been carried. (Wilson v. Cable News Network, Inc. (2019) 7 Cal.5th 871, 888.)

The Bane Act allows an individual to sue for damages if a person or persons interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state. (Civ. Code § 52.1, subs. (a), (b).)

The claims that the Court has identified as protected activities are acts which form the bases of liability for the alleged interference with Plaintiff’s right to freedom of free speech by threat, intimidation, or coercion. While the Complaint alleges that Moving

Defendants’ acts were motivated by an intent to retaliate against Plaintiff for expressing dissenting views (see, e.g., Complaint ¶ 11), the protected acts themselves constitute the alleged free speech violations which form the basis for Plaintiff’s Bane Act claim. As such, these portions of the Complaint arise from Moving Defendants’ protected activity and are properly challenged by an anti-SLAPP motion. (See Wilson, supra, 7 Cal.5th at 888.)

Second Prong

If the defendant meets the initial burden on an anti-SLAPP motion, the plaintiff then has the burden of demonstrating a probability of prevailing on the claim. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 741.) The plaintiff satisfies this burden by demonstrating that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. (*Id.*)

In the second prong of the analysis, the court employs a summary judgment-like procedure, accepting as true the evidence favorable to the plaintiff and evaluating the defendant's evidence only to determine whether the defendant has defeated the plaintiff's evidence as a matter of law. (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 444.) In other words, the court does not assess credibility, and the plaintiff is not required to meet the preponderance of the evidence standard. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) The court accepts as true the evidence favorable to the plaintiff, who need only establish that his or her claim has "minimal merit" to avoid being stricken as a SLAPP. (*Id.*) The plaintiff is required to present facts which would, if proved at trial, support a judgment in the plaintiff's favor. (CCP § 425.16, subd. (b); *Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.App.4th 141, 150-51.)

1. *Legal Sufficiency of Plaintiff's Allegations*

Moving Defendants do not challenge the evidence submitted in Plaintiff's Opposition; rather, they contend that the allegations concerning their protected activity are legally insufficient to state a claim under the Bane Act.

The Bane Act authorizes an individual to bring an action against another person who, whether or not acting under color of law, interferes or attempts to interfere, "by threat, intimidation, or coercion," with the individual's exercise or enjoyment of rights secured by state or federal law. (Civ. Code § 52.1, subs. (b)-(c).) To state a claim under the Bane Act, a plaintiff must show: (1) the defendant's intentional interference or attempted interference with a state or federal constitutional or legal right; and (2) that the defendant's interference or attempted interference was by threats, intimidation or coercion. (*Allen v. City of Sacramento*

(2015) 234 Cal.App.4th 41, 67.) Speech alone is not sufficient to support an action for a Bane Act violation except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat. (Civ. Code § 52.1, subd. (k).)

Liability under the Bane Act requires an attempted or completed act of interference with a legal right, accompanied by a form of coercion. (*City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 408 (“*Ballard*”); see also *Venegas v. County of Los Angeles* (2004) 32 Cal 4th 820, 843 (the Bane Act “provides remedies for ‘certain misconduct that interferes with’ federal or state laws, if accompanied by threats, intimidation, or coercion”).)

Ballard is instructive. In *Ballard*, the cross-complainant, a property owner, alleged that the city violated his procedural and substantive due process rights and rights of equal protection under the United States and California Constitutions when it asserted that the building he owned was a high-rise with an inadequate sprinkler system and then by recording an order to abate and filing a lawsuit, and contended that these allegations were sufficient to form the basis for a cause of action under the Bane Act. (*Ballard, supra*, 136 Cal.App.4th at 405.) In assessing the sufficiency of the cross-complainant’s Bane Act allegations, the *Ballard* court found that that the cross-complainant failed to allege, and the record did not establish, any conduct that rose to the level of a threat of violence or coercion. (*Id.* at 408.)

Here, as in *Ballard*, the alleged civil rights violations include the filing of a lawsuit. The Complaint alleges that Moving Defendants filed a lawsuit in order “to prevent and interfere with [Plaintiff’s] right to free speech and to prevent her from informing the public and others in the Central Basin service area about the illegal meter charge and the contaminants in the water. The lawsuit also had the effect of intimidating and coercing plaintiff and interfering with and threatening her for her exercise of free speech under the California Water Code, United States and California constitutions within the meaning of the Bane Act. The lawsuit did in

fact frighten, intimidate and coerce plaintiff.” (Complaint ¶ 25.) The allegations concerning the remaining protected conduct, which consists solely of speech, in addition to the evidence offered in the Opposition, do not allege or demonstrate that any of Moving Defendants’ alleged free speech violations included violence or a threat of violence or coercion.^[3] The Court therefore finds that Plaintiff’s claims which arise from Moving Defendants’ protected activity are not legally sufficient to form a basis of liability under the Bane Act. The Court therefore GRANTS the Motion in part as to the allegations specified in this order.

Moving party is ordered to give notice of this ruling.

In consideration of the current COVID-19 pandemic situation, the Court **strongly** encourages that appearances on all proceedings, including this one, be made by LACourtConnect if the parties do not submit on the tentative. **If you instead intend to make an appearance in person at Court on this matter, you must send an email by 2 p.m. on the last Court day before the scheduled date of the hearing to SMC_DEPT56@lacourt.org stating your intention to appear in person.** The Court will then inform you by close of business that day of the time your hearing will be held. The time set for the hearing may be at any time during that scheduled hearing day, or it may be necessary to schedule the hearing for another date if the Court is unable to accommodate all personal appearances set on that date. This rule is necessary to ensure that adequate precautions can be taken for proper social distancing.

Parties who intend to submit on this tentative must send an email to the Court at SMC_DEPT56@lacourt.org as directed by the instructions provided on the court website at www.lacourt.org. If the department does not receive an email and there are no appearances at the hearing, the motion will be placed off calendar.

Dated this 19th day of August 2022

Hon. Holly J. Fujie

Judge of the Superior Court

[1] The characterizations of the allegations provided in the Motion correspond with descriptive headings included in the Complaint.

[2] Moving Defendants submitted evidence in the form of a link to a video posted on YouTube related to the thirteenth category of challenged activity identified in the Motion. (*See* Declaration of Derrick S. Lowe (“Lowe Motion”) ¶ 2.) The video that Moving Defendants linked to has been removed from YouTube.

[3] The Court is not persuaded by the caselaw cited in the Opposition, most of which is not binding on this Court and which largely address how to analyze the threats, intimidation, or coercion required in the context of Bane Act claims based on unlawful seizures. (*See* Opposition 11:13-14:15.)
