

Superior Court of California, County of San Joaquin

MINUTE ORDER

Date: 11/29/2021 12:00 AM

Case Number: STK-CV-LD-2021-0006097

Cecilia Mendez et al. vs Angel Ann Flores

Event Type: Ruling on Submitted Matter

Department: 10C

Appearances: Presiding Judge: Jayne Lee. Neither party appears. Removed from Call. Also attending: escurini Court Clerk.

The court, having taken the matter under submission on 11/19/2022 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Two Matters were on for 11/19/21: 1) Defendant's Special Motion to Strike Plaintiff's Complaint and 2) Defendant's Request for Attorneys Fees. This Ruling is for both matters.

DEFENDANT'S SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT:

Plaintiffs Cecilia Mendez, Alicia Rico and Raymond Zulueta Jr's ("Plaintiffs") filed a Complaint on July 8, 2021. Defendant Angelann Flores ("Flores" or "Defendant") filed her Answer on August 10, 2021. Defendant filed a special motion to strike (anti-SLAPP) to Plaintiffs' Complaint on September 20, 2021. The anti-SLAPP motion was set for November 19, 2021. On September 22, 2021, Plaintiffs filed a request for dismissal of the entire case, which was entered the same day. On October 13, 2021, Defendant filed a motion for Attorneys Fees and Costs, which was set for November 19, 2021, the same day as the anti-SLAPP Motion. On November 10, 2021, Plaintiffs filed their Opposition to the anti SLAPP Motion. On November 19, 2021, the anti-SLAPP Motion came on for hearing. This Court deemed Plaintiff's Opposition to the anti-SLAPP Motion to be an Opposition to the Attorneys Fees Motion. On November 24, 2021, Defendant filed an Ex Parte Motion to Amend the Complaint to include the full name of Alicia Rico, Alicia Rico Ballesteros. This Court granted the Ex Parte Motion.

DEFENDANT'S MOTION FOR ATTORNEYS FEES AND COSTS:

If a Plaintiff voluntarily dismisses the action after Defendants file an anti-SLAPP motion, the court loses jurisdiction to rule on the motion. (Law Offices of Andrew L. Ellis v Yang (2009) 178 Cal.App.4th 869, 878-879.) Nevertheless, CCP § 425.16 gives this Court limited jurisdiction to decide whether to award attorneys fees and costs to Defendant. (Id. at 879.)

The "prevailing defendant" on the anti-SLAPP motion "shall be entitled" to recover attorney fees and costs. (CCP § 425.16(c)(1).) This fee-shifting provision is "intended to discourage such strategic lawsuits against public participation by imposing the litigation costs on the party seeking to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1131 (cleaned up).)

Courts differ on the proper standard for determining whether a plaintiff's voluntary dismissal renders the defendant the "prevailing party" for the purposes of CCP section 425.16(c). On the one hand, courts have held that when a plaintiff voluntarily dismisses an action the defendant is the prevailing party. (See Coltrain v. Shewalter (1998) 66 Cal.App.4th 94, 100, 107.) However, "a court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objections, whether by judgment, settlement, or otherwise." (Santisas v. Goodin (1998) 17 Cal.4th 599, 622.)

Because the defendant's goal is to "make the plaintiff go away with its tail between its legs," the defendant will ordinarily be the prevailing party. As such, following a voluntary dismissal, a presumption arises that the defendant was the prevailing party. (Coltrain, supra, 66 Cal.App.4th at 107.)

On the other hand, other courts have held that to award fees, the court must adjudicate the merits of the special motion to strike as if the complaint had not been dismissed and find the party seeking fees would have been the prevailing party on the motion. (Tourgeman v. Nelson & Kennard (2014) 222 Cal.App.4th 1447, 1456-1457; Pfeiffer Venice Properties v. Bernard (2002) 101 Cal.App.4th 211, 217 ["because a defendant who has been sued in violation of his or her free speech rights is entitled to an award of attorney fees, the trial court must, upon defendant's motion for a fee award, rule on the merits of the fees, the trial court must, upon defendant's motion for a fee award, rule on the merits of the SLAPP motion even if the matter has been dismissed prior to the hearing on that motion"]; Liu v. Moore (1999) 69 Cal.App.4th 745, 752.)

This Court declines to following the reasoning in Coltrain. As a number of treatises have found, this approach is flawed because it shifts the initial burden of proof on the anti-SLAPP motion from defendant to plaintiff. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (TRG 2021) 7:1123.3.) Additionally, the question of who prevailed should not be determinative because even if plaintiff achieved its objective through settlement or other means, the SLAPP suit may have chilled the valid exercise of defendant's free speech or petition rights. (Id.) Instead, this Court finds that the better course is to following the reasoning in Tourgeman v. Nelson & Kennard (2014) 222 Cal.App.4th 1447, 1456-1457, Pfeiffer Venice Properties v. Bernard (2002) 101 Cal.App.4th 211, 217, and Liu v. Moore (1999) 69 Cal.App.4th 745, 752, which requires this Court to adjudicate the merits of the special motion to strike as if the complaint had not been dismissed and find the party seeking fees would have been the prevailing party on the motion.

Under the terms of CCP section 425.16(c), the critical issue is the merits of the Defendant's anti-SLAPP motion. Persons who threaten the exercise of another's constitutional rights to speak freely and petition for the redress of grievances should be adjudicated to have done so, and not be permitted to avoid the consequences of their actions by dismissal of the anti-SLAPP motion when a defendant challenges it. An adjudication in favor of the defendant on the merits of the anti-SLAPP motion provides both financial relief and a vindication of society's constitutional interests. If a judicial determination of the merits of the motion were not first required, a plaintiff's voluntary dismissal of the action could have the effect of 1) depriving a true SLAPP defendant of statutorily authorized fees, or 2) entitling a defendant to that relief in a non-SLAPP action that was dismissed by the plaintiff for entirely legitimate reasons. In both situations the statute's remedial purposes would be frustrated. (Liu, supra, 69 Cal.App.4th 752.)

This Court chooses to follow the better practice, and will adjudicate the merits of the special motion to strike as if the complaint had not been dismissed.

I. MERITS OF DEFENDANT'S SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT:

Plaintiff's 13 evidentiary objections are OVERRULED.

A. BACKGROUND:

Plaintiffs Cecilia Mendez, Alicia Rico and Raymond Zulueta Jr and Defendant Angelann Flores are all elected members of the Stockton Unified School District ("SUSD").

In their Complaint, Plaintiffs plead five (5) causes of action: (1) Defamation Per Se: Libel/Slander (Cal. Civil code §§ 44, 45, 45(a), 46); (2) Intrusion (Invasion of Privacy); (3) Public Disclosure of Private Facts (Invasion of Privacy); (4) False Light (Invasion of Privacy); (5) Intentional Infliction of Emotional Distress. Defendant sought to strike the entire complaint on the basis that it violates the state's anti-SLAPP statute (CCP §425.16). Plaintiff filed a timely opposition, deeming Plaintiff's Opposition to the anti-SLAPP Motion to be an Opposition to the Attorneys Fees Motion.

B. THE STANDARD:

" 'A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so.' " (Martin v. Inland Empire Utilities Agency (2011) 198 Cal.App.4th 611, 621; citation omitted.) "The anti-SLAPP statute, [CCP §]425.16, allows a court to strike any cause of action that arises from the defendant's exercise of his or her constitutionally protected rights of free speech or petition for redress of grievances." (Flatley v. Mauro (2006) 39 Cal.4th 299, 311–312; citation omitted.)

"Section 425.16 posits ... a two-step process for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. ... If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." "Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 278–279; citations omitted.)

C. DISCUSSION:

1. The First Prong:

As stated, the first prong requires the defendant to show that the plaintiff's cause of action is one arising from protected activity. (See Navellier v. Sletten (2002) 29 Cal.4th 82, 88.) This first prong requires the defendant to establish two things: (1) that the defendant's alleged act or conduct is a protected activity under CCP §425.16, and (2) if it is, that the cause of action arises from the protected activity. (Ibid.; see also Laker v. Board of Trustees of California State University (2019) 32 Cal.App.5th 745, 762-763.)

"In making its determination, [even on the first prong,] the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (CCP §425.16(b)(2); see also City of Cotati v. Cashman (2002) 29 Cal.4th 69, 79; and Stewart v. Rolling Stone LLC (2010) 181 Cal.App.4th 664, 679.)

2. Protected Activity.

CCP §425.16 "expressly 'defines the types of claims that are subject to the anti-SLAPP procedures,' i.e., causes of action arising from any act of protected speech or petitioning as these terms are defined in subdivision (e)(1)-(4) of the statute." (City of Cotati, supra, 29 Cal.4th at 75-76; citation omitted.)

Specifically, CCP §425.16(e) provides that: "an act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (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 or 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, or (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 §425.16(e).)

Defendant asserts that her statements fall within the scope of protected activity as defined by CCP §425.16(e)(1), (2), (3) and (4).

3. Conduct under CCP §425.16(e)(1) and CCP §425.16(e)(2):

Defendant argues that her activities are protected under CCP §425.16(e)(1) and CCP §425.16(e)(2). This Court agrees.

First, CCP § 425.16(e)(1) provides that an “act in furtherance of a person’s right of petition or free speech ... in connection with a public issue” includes “any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.” Second, CCP §425.16(e)(2) provides that an “act in furtherance of a person’s right of petition or free speech ... in connection with a public issue” includes communications “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.” (See also *City of Costa Mesa v. D’Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 372-373.)

Here, almost all the allegations sought to be stricken concern Defendant’s comments during SUSD school board meetings, which constitutes a protected proceeding.

“Ms. FLORES, sitting Board Trustee of Stockton Unified School has engaged in behavior toward MS. MENDEZ and fellow colleagues that has been consistent with discrimination, invasion of privacy and fellow trustees who do not share the ideological based actions that Ms. FLORES and her supporters hold dearly.” (Comp. at ¶ 6.)

“In December of 2020 SUSD Board of Education started the newest term and s. FLORES and former Trustee Ms. CANDELARIA VARGAS worked in concert for over 4 months in hopes of unduly influence the board of education to support their non-profit allies and connected business while attacking any trustees that did not align to their understanding. Ms. FLORES is the main aggressor and has to be prompted to stay on topic and task during every meeting. Additionally, Ms. FLORES has been censured by the board numerous times but has stated that cease and desist letters, censures and other legal actions will not be respected by herself.” (Comp. at ¶7.)

“Ms. FLORES represents a person who is willfully attempting to bully, harass and unduly influence the decision making of colleagues who help to make fiduciary decisions for a \$2,000,000,000 in revenue every 3-year fiscal organization.” (Comp. at ¶ 8.)

“Ms. FLORES makes the accusation that I am the business partner of former Stockton Mayor Mr. ANTHONY SILVA which is untrue.” (Comp. at ¶ 9 (Plaintiff Cecilia Mendez); (Comp. at ¶ 25 (Plaintiff Alicia Rico); Comp. at ¶ 41 (Plaintiff Raymond C. Zulueta Jr.).)

“Ms. FLORES accuses the former Stockton Mayor Mr. ANTHONY SILVA of being a pedophile and that I am part of a corrupt group that he controls.” (Comp. at ¶ 10 (Plaintiff Cecilia Mendez); Comp. at ¶ 26 (Plaintiff Alicia Rico); Comp. at ¶ 42 (Plaintiff Raymond C. Zulueta Jr.).)

"Ms. FLORES makes the accusation that a majority of the Board of Education has sold out union members and the community. This is a false accusation of fraud." (Comp. at ¶ 11 (Plaintiff Cecilia Mendez); Comp. at ¶ 27 (Plaintiff Alicia Rico).)

"Ms. FLORES published a video on Facebook purporting to give information on school district business and during that video read a letter aloud that states, 'Cecilia Mendez cannot read or write,' then smiled though she is aware that Ms. MENDEZ a Trilingual reader and writer." (Comp. at ¶ 12 (Plaintiff Cecilia Mendez).)

"Ms. FLORES accused Ms. MENDEZ of paying supporters for votes. This is a crime in California." (Comp. at ¶ 13 (Plaintiff Cecilia Mendez).)

"Ms. FLORES has not limited her attacks to board members. She has attacked directly; the CSEA 821 union and Union President Mr. RANDY ST. NICHOLAS, accusing him of invent her to dinner and a ride on his motorcycle. She is attacking CSEA 821 because she views them as my supporters." (Comp. at ¶ 14 (Plaintiff Cecilia Mendez); Comp. at ¶ 29 (Plaintiff Alicia Rico))

"Ms. FLORES regularly uses a Spanish accent to address the board as a way to mock Ms. MENDEZ. She often forgets to use the accent because it is not natural. Former Trustee Ms. CANDELARIA VARGAS often joined her in this veiled discriminatory behavior." (Comp. at ¶ 15 (Plaintiff Cecilia Mendez); Comp. at ¶ 30 (Plaintiff Alicia Rico).)

"Ms. FLORES attacks Ms. MENDEZ directly in meetings blaming her and others of hiring based on nepotism and discriminatory actions." (Comp. at ¶ 16, Comp. at ¶ 31 (Plaintiff Alicia Rico).)

"Ms. FLORES interrupts the business of the board intentionally and prevents the management of meetings and observation of Robert's Rules of Order." (Comp. at ¶ 17.)

"Ms. FLORES knowingly repeats the false allegations in public meetings and on social media despite factual information being presented that disproves her accusations. Her express interest is in misinforming the public." (Comp at ¶ 18.)

"Ms. FLORES attacks have come with accusations of corruption and incidents that have taken place during SUSD Board Meetings, on social media and in public. The accusations that have been repeatedly lobbied are untrue and Ms. FLORES is aware of the falsehoods that she is misrepresenting as facts. These actions have affected me personally, professionally and directly caused loss of income, severe stress and Ms. FLORES is in violation against her Oath as Trustee of Stockton Unified School District." (Comp. at ¶ 39.)

"Prior to joining the Board of Education, Mr. ZULUETA had not met Ms. FLORES and he never had any interaction with her. Upon joining the board after defeating the sitting incumbent in December 2021, Mr. ZULUETA noticed that he was not treated the same way as his other colleagues and he has been subjected to continuous harassment. This caused Mr. ZULUETA to report the behaviors of our district to the EEOC and a charge of discrimination was issued on 3/3/21." (Comp. at ¶ 40.)

"Ms. FLORES accused Mr. ZULUETA of giving the authority for a sexual assault offender to enter schools and work with students before he was a board member." (Comp. at ¶ 43 (Plaintiff Raymond C. Zulueta Jr.).)

"Mr. ZULUETA's primary business before joining the board was in education programming. Ms. FLORES and partners on the board actively denied Mr. ZULUETA's ability to contract for services with Stockton Unified School District. In 2019 Mr. ZULUETA had a contract for services approved by the School Site Council at a SUSD school that was not allowed to be brought before the board in good faith as the agreement stipulates." (Comp. at ¶ 45.)

"Mr. ZULUETA's false disclosure that her campaign manager was allowed access to students in SUSD by Mr. ZULUETA, is debilitating for an education business. The young man is a sexual assault violator whose record was recently expunged with the support of Mr. FLORES." (Comp. at ¶ 50.)

Even Plaintiffs have stated that "[t]he defamatory statements which are alleged in the Complaint and again, herein, were made in person by Defendant ANGEL ANN FLORES to me, in front of others. The statements were made by Defendant ANGEL ANN FLORES either before, during or after meeting of meetings of the Board Trustee of Stockton Unified School District." (Rico Decl. at ¶ 3; Zulueta Jr. Decl. at ¶ 3; Mendez Decl. at ¶ 3.)

Statements presented before a governmental body in legislative proceedings are protected under CCP § 425.16(e)(1). (See *Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 594.) Courts have held that even defamatory statements allegedly uttered during administrative proceeding were protected because they were connected with official proceedings. (Brigs, supra, 19 Cal.App.4th at 1122-1123.) Here, a number of Defendant's statements were allegedly uttered during board meetings, constituting legislative proceedings, therefore they are protected because they were connected with official proceedings.

The anti-SLAPP statute also protects communications "made in connection with an issue under consideration or review by a legislative, executive, or judicial body or any other issue under consideration or review by a legislative, executive, or judicial body, or any other proceeding authorized by law. (CCP § 425.16(e)(2); *City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 372-373.)

A bright line test applies. All petition related statements or conduct made "in connection with an issue under consideration" by a government body are protected, whether or not the statements involve a public issue. (*Vergos v. McNeal* (2007) 146 Cal.App.4th 1387 1395.) "[A]ll that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1116.)

The scope of the protection is broad. Statements and conduct outside the legislative proceedings are granted the same protection for statements and conduct made during an official proceeding if they are sufficiently related to matters under consideration by the official body. (See *Maranatha Corrections, LLC v. Department of Corrections & Rehab.* (2008) 158 Cal.App.4th 1075, 1085.)

This Court finds that Defendant's actions are protected conduct under CCP §§ 425.16(e)(1) and 425.16(e)(2).

4. Conduct under CCP §425.16(e)(3):

The anti-SLAPP motion also protects statements and writings "made in a place open to the public or a public forum in connection with an issue of "public interest."

In addition to subd. (e)(1) and (e)(2), Defendant has also shown that the publications are protected conduct under subd. (e)(3) because the statements were made "in a place open to the public or a public

forum;" i.e., school board meetings, online, and social media, and such statements were made "in connection with an issue of public interest," as discussed below. (See *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4 ["Web sites accessible to the public... are 'public forums' for purposes of the anti-SLAPP statute."]; *Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 199 [social media platforms, such as Facebook, are "public forums" for purposes of the anti-SLAPP statute.])

5. Conduct under CCP §425.16(e)(4):

Finally, an "act in furtherance of a person's right of petition or free speech ... in connection with a public issue" includes "any ... 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 §425.16(e)(4).)

CCP §425.16 "does not define 'an issue of public interest.'" (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736.) "Nevertheless, the statute requires the issue to include attributes that make it one of public, rather than merely private, interest." (*Ibid.*) Even so, "protection under section 425.16 for statements in connection with a public issue or an issue of public interest is not dependent on those statements having been made in a public forum." (*Ibid.*) "Rather, subdivision (e)(4) applies to private communications concerning issues of public interest." (*Ibid.*; citation omitted.)

California courts have explained: "[P]ublic interest" is not mere curiosity. [T]he matter should be something of concern to a substantial number of people. [A] matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [T]here should be a degree of closeness between the challenged statements and the asserted public interest. The assertion of a broad and amorphous public interest is not sufficient. [T]he focus of the speaker's conduct should be the public interest, not a private controversy. ... [P]rivate information is not turned into a matter of public interest simply by its communication to a large number of people." (*Hailstone, supra*, 169 Cal.App.4th at 736.)

In cases "where it was determined that a public issue existed, 'the subject statements either concerned a person or entity in the public eye, conduct that could directly affect a large number of people beyond the direct participants or a topic of widespread, public interest.'" (*Hailstone, supra*, 169 Cal.App.4th at 736-737; citations omitted.) Indeed, the term "public interest" has been broadly construed to include private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. (*Id.* at 737; citation omitted.)

For example, in *Hicks v. Richard* (2019) 39 Cal.App.4th 1167, 1176-1177, the Court of Appeal found that statements in a letter from concerned parents to authorities about the conduct of a private school's principal that led to his removal were protected by the anti-SLAPP statute because they implicated issues of public interest, including "providing school children with an appropriate education and protecting them and school employees from abuse, bullying, and harassment" and "contributed to the public debate, or furthered the discourse, on these issues." In *Damon v. Ocean Hills Journalism Club* (2000), Defendant made allegedly defamatory statements about the manager of a homeowners association governing 3,000 individuals in 1,633 homes at a board of directors meeting and in a newsletter. The manager's defamation suit was subject to an anti-SLAPP motion, "because each of the ... statements concerning the manner in which a large residential community would be governed, they concerned issues of public interest."

Similarly, in *Terry v. Davis Comm. Church* (205) 131 Cal.All.4th 1534, 1547, Plaintiffs, who were church youth leaders sued church and its pastor for libel and related causes of action based on Pastor's statements that Plaintiffs had "an inappropriate sexual relationship with a minor." An anti-SLAPP motion would lie because the statements involved issues of "public interest," the societal interest in protecting a

substantial number of children from predators. Likewise in *Hecimovich v. Encinal School Parent Teacher Organization* (2012_ 203 Cal.App.4th 450, 467, action by dismissed volunteer coach of youth sports team against parent-teacher organization was within the statute, because the safety of children in sports was an issue of public interest. Finally, in *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 378, the disclosure to prospective buyers that a registered sex offender lived in the neighborhood involved an issue of "public interest."

Here, Defendant argues that her comments concerned the "crucial interest issue of the impartiality and competency of elected public officials." (Def. MPA at p. 9.) This Court agrees. Defendant has met her initial burden of showing that her conduct in making the alleged statements was protected conduct under CCP §425.16(e)(4).

6. "Arises Under":

Again, the first prong not only requires the defendant to establish that the alleged conduct was a protected activity under CCP §425.16, but the defendant must also show that the plaintiff's "cause of action is one arising from [the] protected activity." (Soukup, supra, 39 Cal.4th at 278-279.) Here, there is no dispute Plaintiff's claims are based on Defendant's protected activities, i.e., making the statements about Stockton Unified School District Board Trustees and school issues.

B. Second Prong.

Having made a prima facie showing that Plaintiffs' claims arise from protected activity, Defendant has shifted the burden to Plaintiffs to demonstrate a probability of prevailing on their claims. (Soukup, supra, 39 Cal.4th at 260, 278.)

In the second step of the anti-SLAPP analysis, "the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. ... The plaintiff must demonstrate this probability of success with admissible evidence. "The plaintiff may not rely solely on [the] complaint, even if verified; instead, [her] proof must be made upon competent admissible evidence." (Laker, supra, 32 Cal.App.5th at 768; citations omitted.)

Plaintiffs' burden is similar to that of a party opposing a motion for summary judgment. They have to demonstrate their claims are both legally sufficient and supported by evidence that, if credited, would be sufficient to sustain a favorable judgment. (Summit Bank v. Rogers (2012) 206 Cal.App.4th 669, 695.)

1. First Cause of Action – Defamation.

The elements of a defamation claims are: 1) a publication that is 2) false, 3) defamatory, 4) unprivileged, and 5) has a natural tendency to injure or cause special damages. (Wong v. Jing (2011) 189 Cal.App.4th 1354, 1369.) The parties dispute whether Plaintiffs are public figures, public figures for a limited purpose or private figures. This distinction is important because if Plaintiffs are public figures or public figures for a limited purpose, Plaintiffs have the burden of proving both that the challenged statements are false and that Defendant acted with "actual malice," that is, with knowledge that the statements were false or with reckless disregard of whether they were false or not. (Christian Research Institute v. Alnor) (2007) 148 Cal.App.4th 71, 81. This Court finds that Plaintiffs are "limited purpose" public figures, as they voluntarily injected themselves into or was drawn into a public controversy regarding the Stockton Unified School District governance issues. (Reader's Digest Assn v. Sup. Ct. (1984) 37 Cal.3d 244, 253.) Accordingly, Plaintiffs must show that the challenged statements are false, and that Defendant acted with "actual malice." (Alnor, supra, 148 Cal.App4th at 81.)

Defendants make basically two arguments: that Plaintiffs failed to show that Defendant's statements were false or that Defendant acted with actual malice in making those statements. Where the communications involve a matter of public concern, Plaintiffs bear the burden of pleading and proving falsity. (*Philadelphia Newspapers v. Hepps* (1986) 475 U.S. 767, 776-779.) This Court has already determined that Defendant's comments involve a matter of public concern. (See above discussion.)

i. Falsity of Defendant's Statements:

Plaintiffs argue that the following groups of statements by the Defendant are defamatory: 1) that Plaintiffs are friends or business partners with former SUSD Trustee and former Stockton mayor Anthony Silva, who is accused of being a pedophile and part of a corrupt group (Comp. at ¶¶ 9, 10, 25, 26, 41, 42); 2) that a majority of the Board of Education has sold out union members and the community (Comp. at ¶¶ 11, 27, 44); 3) that Cecilia Mendez cannot read or write (Comp. at ¶ 12); 4) that Plaintiffs sanction hiring based on corrupt practices (Comp. ¶¶ 16,31); and 5) that Plaintiff Zulueta authorized a sexual assault offender to enter schools and work with students (Comp. ¶¶ 43, 50).

First, Defendant argues that her statements that Plaintiffs are friends or business partners with former SUSD Trustee and former Stockton mayor Anthony Silva, who is accused of being a pedophile and part of a corrupt group are opinion. Second, Defendant also denies making statements in public that a majority of the Board of Education has sold out union members and the community. (Flores Decl. at ¶ 11.) Third, Defendant also denies saying that Plaintiff Mendez cannot read or write, and argues that she was just reading a community member's public comment to that effect, and stopped as soon as she had realized what the community member had written. (Flores Decl. at ¶ 13.) Fourth, Defendant argues that her statements about Plaintiffs sanctioning corrupt hiring and corrupt conduct are opinion. Finally, Defendant denies saying that Plaintiff Zulueta gave authority for a sexual assault offender to enter schools and work with students before he was a board member. (Flores Decl. at ¶ 14.)

Plaintiffs offer their declarations to show that the Defendant's statements were false. In support of their opposition, Plaintiffs' evidence consists only of their own declarations, which is permissible. (CCP §425.16(b)(2).) Plaintiffs essentially repeat the allegations in the Complaint in their Declarations. Mere assertions that a statement is "false, even in sworn declarations, do not satisfy a Plaintiff's burden to demonstrate falsity. (*Vogel v. Felice* (2005) 127 Cal.App.4th 1006, 2014.) The "simply negation of the challenged statement fails to fairly meet its substance." (*Id.* at p. 1024.) More specifically, to make a prima facie showing of the falsity of Defendant's statements, Plaintiffs were required to do more than they did.

The parties dispute whether Defendant's statements against Plaintiffs were fact or opinion. "The critical determination of whether an allegedly defamatory statement constitutes fact or opinion is a question of law for the court." (*Campanelli v. Regents of University of California* (1996) 44 Cal.App.4th 572, 578.) "To determine whether a statement is actionable fact or nonactionable opinion, courts use a totality of the circumstances test of whether the statement in question communicated or implies a probably false statement of fact." (*Wong v. Tai Jin* (2010) 189 Cal.App.4th 1354, 1369.)

On balance, the Court finds that Defendant's statements were not of facts, but of opinion. Defendant's statements were made in a "setting in which the audience may anticipate efforts . . . to persuade . . . by use of epithets, fiery rhetoric or hyperbole." (*Okun v. Sup. Court* (1981) 29 Cal.3d 442, 459.) Defendant's allegation "was not a factual assertion of crime but rather an expression of opinion." (*Ibid.*) The same applies to Defendant's other statements. Plaintiffs have not met their burden.

Plaintiffs have failed to offer any evidence regarding actual malice.

In the end, Plaintiffs showing fails to make a prima facie case of falsity regarding Defendant's statements. Additionally, Plaintiffs have failed to carry their burden of establishing that the Defendant acted with actual malice. Therefore, Plaintiffs have failed to carry their burden of substantiating a valid cause of action for defamation.

2. Second, Third, and Fourth Causes of Action – Intrusion (Invasion of Privacy), Public Disclosure of Private Facts (Invasion of Privacy), False Light (Invasion of Privacy):

Here, Defendant asserts Plaintiffs cannot show a likelihood of establishing the merits of these privacy claims. Defendant argues that Plaintiffs are elected public officials, and therefore public officials. Almost any truthful commentary on public officials or public affairs will be privileged. (Briscoe v. Reader's Digest Association, Inc. (1971) 4 Cal.3d 529, 535 Fn. 5.)

This Court agrees. Plaintiffs have offered no facts to establish otherwise. Therefore, Plaintiffs have failed to carry their burden of substantiating valid second, third and fourth causes of action.

3. Fifth Cause of Action – Intentional Infliction of Emotional Distress:

Defendant also argues that Plaintiffs cannot establish an essential element of intentional infliction of emotion distress: that Defendant's conduct was outrageous or that Defendant acted with reckless disregard of the probability that plaintiff would suffer emotional distress. (CACI No. 1600.) Plaintiffs have offered no facts to establish this element.

Therefore, Plaintiffs have failed to carry their burden of substantiating a valid fifth cause of action.

This Court finds that Defendant has established the merits of her anti-SLAPP motion, and therefore considers Defendant to be the prevailing party under the anti-SLAPP statute. This Court now considers what amount of attorneys fees is reasonable

C. Amount of Attorney's Fees.

Defendant asks for a total of \$24,187.50 in attorneys fees, consisting of 53.47 hours at \$450.00 an hour.

1. The Applicable Standard:

A trial court has broad discretion in determining a reasonable amount of attorney fees. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095.) "[T]he fee setting inquiry in California ordinarily begins with the lodestar, i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." (Id.; see also 569 East Cty Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 432 (in setting fees under CCP § 425.16, court apply the lodestar approach))

However, it is not enough to state that counsel expended a certain number of hours in representing the client. Rather, the court is required to make a two-prong inquiry into the reasonableness of the fees. First, the motion must affirmatively demonstrate that the hours spent were reasonable and necessary. (Gorman v. Tassajara Development Corp. (2009) 178 Cal.App.4th 44, 98.) In the context of anti-SLAPP

motions, only the fees and costs incurred in the motion to strike, not the entire litigation, are recoverable. (Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995) 39 Cal.App.4th 1379, 1383.) Second, the reasonable hourly rate is that prevailing in the community for similar work. (Margolin v. Regional Planning Com. (1982) 134 Cal.App.3d 999, 1004–1005; Shaffer v. Superior Court (1995) 33 Cal.App.4th 993, 1002.)

The lodestar figure may then be adjusted, based on consideration of factors specific to the case and to fix the fee at the fair market value for the legal services provided. This approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.

The crucial issues here are the reasonable hourly rate, and the reasonably expended hours. This Court addresses both these issues below.

2. The Reasonable Hourly Rate:

It is completely within the court's discretion to adjust the award based upon the nature of the litigation, the difficulty of the issues, the amount involved, and the skill required. (Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc. (2014) 226 C.A.4th 26, 71.) The value of legal services performed in a case is a matter in which the trial court has its own expertise. The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096.)

Counsel Clarence Chan asks for rates of \$450.00 an hour. "[T]he reasonable hourly rate is that prevailing in the community for similar work. The relevant community is that where the court is located." (Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc. (2014) 226 C.A.4th 26, 71.) The relevant county is San Joaquin County. This Court has conducted its own independent review of the billing records submitted. Based on that review, the Court's own 16 years of experience performing civil work, and almost 15 years reviewing attorneys fees at the court, the Court concludes that the prevailing market rates in the San Joaquin County community for an anti-SLAPP motion is \$400.00 an hour.

Thus, the Court exercises its discretion and reduces the attorney rates to 400/hour. (See Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132 ("The trial judge is the best judge of the value of professional services rendered in his court.")) In calculating reasonable fees, the Court uses the rates of \$400 for the attorney work performed. This is the going rate in San Joaquin County for experienced counsel in anti-SLAPP motions.

3. Reasonably Expended Hours:

In calculating the lodestar, the court must determine whether the tasks performed by an attorney were necessary and whether the amount of time billed for each task was reasonable. (Baxter v. Bock (2016) 247 Cal.App.4th 775, 793.) The moving party has the burden of proof on these issues. (Ibid.)

It is completely within the court's discretion to adjust the award based upon the nature of the litigation, the difficulty of the issues, the amount involved, and the skill required. (Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc. (2014) 226 C.A.4th 26, 71.) The value of legal services performed in a case is a matter in which the trial court has its own expertise. The trial court may make its own determination of

the value of the services contrary to, or without the necessity for, expert testimony. The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096.)

Counsel Clarence Chan asks for a total of 53.47 hours for the anti-SLAPP motion. While this Court does not question the amount of time recorded by Mr. Chan, this Court finds that to prepare the anti-SLAPP motion, counsel needed to study in considerable detail all of the allegations in the Complaint. Much of that work would be required even without a motion, and Plaintiff should not bear the burden of that task. This Court will, after considering that aspect, reduce the hours by 4.45 hours. Accordingly, this Court will award fees for 49.02 hours (53.47 - 4.45).

4. Total Lodestar Calculation:

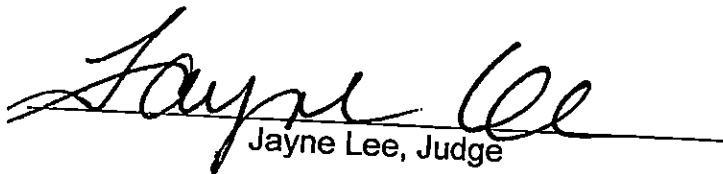
Based upon this Court's own 16 years of experience performing civil work, and almost 15 years reviewing attorneys fees at the court, the Court concludes that Defendant is entitled to award of \$13,370.00 in attorneys fees under CCP § 425.16 computed as follows: \$400/hour x 49.02 hours = \$19608.00

V. CONCLUSION:

Defendant Angel Ann Flores' Motion for Award of Mandatory Attorney's Fees under CCP § 425.16 is GRANTED. The amount of \$19,608.0 is awarded to Defendant Angel Ann Flores against Plaintiffs Cecilia Mendez, Alicia Rico Ballesteros, and Raymond C. Zulueta Jr.

Pursuant to California Rules of Court, Rule 3.1312 (a) and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

IT IS ORDERED:


Jayne Lee, Judge