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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

CITY OF SAUSALITO, Petitioner and Plaintiff, v. GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT, Respondent and Defendant. GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT, Real Party in Interest.	Case No. MSN17-0098 **PETITIONER'S OPPOSITION TO SPECIAL MOTION TO STRIKE SLAPP SUIT** [CCP § 425.16] Judge: Hon. Barry P. Goode Dept: 17 Date: April 20, 2017 Time: 8:30 a.m. Action Filed: September 13, 2016 CEQA Case

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I. INTRODUCTION

This is a jurisdictional dispute between two public entities arising from the Golden Gate Bridge Highway & Transportation District's (District) proposal to greatly expand the size of its exiting ferry terminal (Project) located in the City of Sausalito (City) on lands held by the City as trustee for the public trust. The District in this dispute acts as Project proponent, "lead agency" under California's Environmental Quality (CEQA), and lessee under a lease agreement with the City governing the ferry terminal (Lease). The City is a "responsible agency" under CEQA, lessor under the Lease and trustee under the public trust. The District is required under the Lease to obtain the City's prior written consent for any "major alterations," "improvements" or "additions" to the ferry terminal.

On September 2, 2016, weeks before the District was to come before the City Council for its consent determination regarding the Project, and in direct response to the City's notice to the District that the City had retained an environmental consulting firm to assess whether supplemental environmental review for the Project was required under CEQA, the District, by letter from District General Manager Denis Mulligan, abruptly withdrew its request for the City's consent to the Project and repudiated the City's legal authority under state law and the Lease to regulate the size or operation of the Project. As a result, the City was required to file this lawsuit to enforce its rights under the Lease and compel the District to comply with CEQA and the Public Trust Doctrine.

The District's motion to strike the City's CEQA and Public Trust Doctrine causes of action (Motion) contends that the City's lawsuit (Complaint) merely challenges General Manager Mulligan's protected "opinion" expressed in his September 2, 2016 letter. However, that contention is plainly false. As a result, the Motion is fundamentally flawed for three reasons. First, the District cannot satisfy its burden of demonstrating that the Complaint arises from protected activity. To the contrary, the September 2 letter constituted District "action," rather than speech or petition, as the District unwittingly admits in its Request for Judicial Notice of this letter in support of its accompanying demurrer. Moreover, the Motion also admits that the District's action was not taken in furtherance of speech, but instead to expedite development of the

Project without "further delay." That unlawful action, which is the basis for this Complaint, is not protected activity under well settled law. Second, contrary to the District's contentions, the City's claims under CEQA and the Public Trust Doctrine, seeking declaratory and injunctive relief in response to the District's repudiation of the City's rights under these state laws are expressly authorized and ripe for adjudication under the holding in *California Tahoe Regional Planning Agency v. Day and Night Electric, Inc. of Nevada* (1985) 163 Cal. App. 3d 898, 902-904 (*CTRPA*), as well as numerous other legal authorities discussed herein. Third, the Complaint is not subject to the SLAPP statute under the public interest and public prosecutor exceptions, respectively. More than merely lacking merit, the Motion is frivolous and a waste of public resources because it is self-defeating; replete with internal inconsistencies, fatal admissions, misstatements of fact and glaring omissions of controlling law. The Court therefore should deny the Motion and award the City its attorneys' fees and costs it incurred in opposing it.

II. FACTUAL BACKGROUND

The City holds certain tide and submerged lands in trust for the public, pursuant to grants from the State of California under uncodified statutes of 1953 and 1957. (*Zack's, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1178; Declaration of Adam Politzer, ¶ 3, Ex. A.) Subject to this public trust, the City as lessor and the District as lessee executed the Lease on December 1, 1995, pursuant to which the District provides ferry service between the City and San Francisco. (*Id.*, Ex. B.) Under Section 5.4 of the Lease, the District must obtain the City's consent regarding major alterations, improvements or additions to the ferry terminal. (*Id.*, § 5.4.)

On December 14, 2012, the District in its dual capacity as lead agency under CEQA and Project sponsor adopted a Mitigated Negative Declaration ("MND") and approved the Project. The MND explains that the Project would increase "over water coverage" of the existing terminal by seventy-one percent, from 8,000 square feet to 13,650 square feet. (Declaration of Arthur Friedman, Ex. A, p. 1-12.) The MND further states that the Project would include both temporary and permanent structures that would require an amendment of the Lease. (*Id.*, p. 1-9.)

On January 29, 2014, the District submitted a permit application for the Project to the San Francisco Bay Conservation and Development Commission (BCDC). The City objected to the

District's permit application during the December 4, 2014 BCDC hearing because the District had failed to obtain the City's consent for the Project as required under the Lease. Following that hearing, legal counsel for the District and the City Attorney submitted letters to BCDC in response to its request for "clarity" stating the parties' respective conflicting positions regarding the District's obligation under the Lease to obtain the City's consent for the Project. (Friedman Decl., Exs. B-D.) The District nonetheless agreed to submit the Project for the City's review.

On March 24, 2015, the District submitted to the City revised plans for the Project. (Politzer Decl., ¶ 5.) Following joint public hearings before the City's Planning Commission (PC) and Historic Landmarks Board (HLB), the PC/HLB recommended that the City Council deny consent for the Project. (*Id.*, ¶ 6.) On May 5, 2015, the City Council denied consent for the Project on multiple grounds, including concerns regarding the remaining adequacy of the Project's CEQA review. (*Id.*, Ex. C [Resolution of Denial].)

On March 2, 2016, the District submitted to the City further revised plans for the Project. (Politzer Decl., ¶ 8.) The City in response retained several consultants at its expense to fully evaluate the District's revised proposal. The City retained the engineering firm, COWI North America (COWI), to peer review the District's plans. (*Id.*, ¶ 10.) COWI concluded the proposed Project is not "optimized" (*i.e.*, it is larger than required), and the District's passenger loading calculations contained fundamental inconsistencies. (*Id.*, Ex. H, pp. 6-7, 9.) The City also retained a planning and design firm, Environmental Vision, who concluded from its peer review that several of the District's visual simulations for the Project were inaccurate, by as much as 25%. (*Id.*, Ex. D, p. 2.) Finally, the City retained LSA Associates to analyze whether supplemental environmental review was required. (*Id.*, ¶ 12.)

On August 18, 2016, the District submitted supplemental plans to the City, further modifying the Project, and requested that the City make its consent decision within 45-days. (*Id.*, Ex. E, p. 1.) This proposal still would substantially increase the size of the existing ferry terminal, nearly tripling the width of the gangway as just one example. (*Id.*, Ex. E. at p. 25.) On August 22, 2016, the City informed the District of concerns regarding the continuing adequacy of environmental review for the Project given the passage of time, changed circumstances and new

information, and requested a two-week extension of the review period to October 14, 2016 to allow LSA to complete its CEQA analysis. (*Id.*, Ex. F.) District Manager Mulligan responded in writing on September 2, 2016, objecting to the City's contention that additional CEQA review may be warranted, withdrawing the District's request for the City's consent for the Project under the Lease and repudiating the City's authority to regulate the size or operation of the proposed Project. (*Id.*, Ex. G, p 5.) In response, the City filed the Complaint on September 13, 2016. After the City filed this Complaint, the District approved a $3,354,000 budget increase to the Professional Services Agreement with its consulting engineer for the Project in part to "complete the remaining work" at the Sausalito facility, including preparing additional environmental studies, obtaining all required permits, finalizing designs, and preparing bid documents for construction contracts. (Declaration of Alex Merritt, Ex. B, p. 9 [engineering staff report] and Ex. A and C.) Moreover, contradicting the District's dismissal of the City's CEQA concerns as "nonsense" (Mtn., p. 15), the District's Attorney's Report submitted to the Board after this Motion was filed reveals that the District's counsel have advised District staff "in connection with CEQA addendum approval process" for the Project. (*Id.*, Ex. D, p. 2.)

III. ARGUMENT

A. The District Cannot Satisfy Its Burden Of Proof Because The Complaint Does Not Arise From Protected Activity

A SLAPP suit seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for grievances. (*Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 142.) The Anti-SLAPP statute establishes a two-part test. The party bringing the anti-SLAPP motion has the initial burden of showing that the lawsuit or cause of action arises from an act in furtherance of free speech. The District cannot satisfy this burden of proof because (1) the District's September 2 letter triggering the Complaint was not itself an act in furtherance of the right of speech or petition and (2) the Complaint does not arise from protected speech or petition.

1. The District's September 2 Letter Was Unprotected Official Agency Action In Furtherance Of Developing the Project

"In order to show that a challenged cause of action is one 'arising 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." (*Schwartzburd v. Kensington Police Protection & Community Services* (2014) 225 Cal.App.4th 1345, 1353.)

San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assoc. (2004) 125 Cal.App.4th 343, 346-347 (*San Ramon*) in instructive. In that case, the court of appeal upheld the trial court's denial of an anti-SLAPP motion in a mandamus action brought by a fire district after a county retirement board decided to increase contributions payable by the fire district because the litigation did not arise from protected activity. The court explained:

> Even if the conduct of individual public officials in discussing and voting on a public entity's action or decision could constitute an exercise of rights under the anti-SLAPP statute – and issue we need not and do not address – this does not mean that litigation challenging a public entity's action or decision always arises from protected activity. **In the present case, the litigation does not arise from the speech or votes of public officials, but rather from the action taken by the public entity administered by those officials**. Moreover, that action was not itself an exercise of the public entity's right of free speech or petition. [emphasis added].

As in *San Ramon*, the Complaint arises from the District's *actions* effectuated by General Manager Mulligan's September 2 letter (1) formally withdrawing the District's request for the City's consent under the terms of the Lease and (2) repudiating the City's legal authority to regulate the Project, in violation of the Lease, CEQA and the Public Trust Doctrine. (Complaint, ¶¶ 34, 39-41 [CEQA]; 47 [public trust], Prayer, ¶¶ 1-9.) The District concedes this point by requesting judicial notice of this letter in support of its demurrer to the Complaint on the grounds that it constitutes "an official act of the District." (Friedman Decl., Ex. G.)

Also as in *San Ramon*, the District's actions were not in furtherance of the right of petition or free speech. To the contrary, the District admits that it sent its September 2 letter "in response to the City's evident unwillingness to support the Project," and that it withdrew its request for the City's consent for the Project in furtherance of its desire to *develop the Project* without "further

delay." (Mtn., pp. 1:17, and 8:3.)[1] Simply stated, the District wanted to accelerate action on the Project. "Free speech" was not the issue.

2. Nor Can The District Satisfy Its Burden Of Proving The Complaint Arises From Protected Activity

"[Courts] look to the gravamen of the plaintiff's cause of action to determine whether the anti-SLAPP statute applies. 'When the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on non-protected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute." ((*Schwarzburd, supra*, at 1353, quoting *Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal. App.4th 181, 186.)[2] A cause of action arises from protected conduct if the *wrongful, injurious act(s)* alleged by the plaintiff constitute protected conduct. (*Old Republic Construction Program Group v. Boccardo Law Firm* (2014) 230 Cal.App.4th 859, 868 [emphasis in original]; see also: (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477 [gravamen is unprotected property dispute].)

Gallimore v. State Farm & Fire Casualty Ins. Co. (2002) 102 Cal.App.4th 1388 is instructive. In that case, the court reversed the trial court's grant of an anti-SLAPP motion brought against a complaint alleging unlawful claims practices that relied on an insurer's submissions to the Department of Insurance. The court held that "[t]he allegations that State Farm engaged in claims handling misconduct do not charge an act that State Farm could or would argue was done by it 'in furtherance of' its petition or free speech rights." (*Ibid.*) As in *Gallimore*, the

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[1] The District's alleged concern with "delay" is dubious. The City requested a mere two-week extension of time to make its consent determination under the Lease. Moreover, if the City Council denied consent for the Project on grounds the District believed were unreasonable, the District had recourse under the Lease. (Politzer Decl., Ex. B, §§ 5.4 [reasonableness], 12.1-12.3 [dispute resolution].) It therefore is evident that the District in fact sought to block the City's CEQA review, and any regulation of the Project that might flow from that analysis. The District's actions thus directly contravene CEQA's mandates.

[2] As an illustration of the District's disregard of this guiding legal principle, the Motion relies heavily on a single reference in the Complaint to Mr. Mulligan's opinion that no supplemental environmental review is needed to argue that the Complaint challenges Mr. Mulligan's opinion. (Mtn., p. 10, citing Complaint ¶ 40.) However, the Complaint alleges this opinion is "*irrelevant.*" It does not challenge this opinion nor request a writ of mandate compelling supplemental environmental review. Instead, the Complaint seeks declaratory and injunctive relief affirming the City's legal authority as responsible agency to analyze the Project to independently determine whether supplemental environmental review is required under CEQA.

City's CEQA and Public Trust Doctrine causes of action call the District to task for its unlawful actions in withdrawing its request for the City's consent to the Project to circumvent CEQA and repudiating the City's legal authority to regulate the size or operation of the Project in violation of the Lease and state law. These wrongful acts that are the subject of the Complaint are *not* "protected activity." (*CTRPA, supra*, 163 Cal.App.3d at 905 [describing government agency repudiation of inter-governmental relationship as pernicious and promoting anarchy] (discussed *infra,* pp. 12-13).) In sum, because the Complaint does not arise from protected activity, the Court must deny the Motion.

B. The City's CEQA and Public Trust Claims Are Likely To Prevail

Under the second prong of the SLAPP statute, the burden shifts to the City to demonstrate a probability of prevailing on the CEQA and public trust claims. (*Tamkin, supra*, at 142.) The court "accepts as true evidence favorable to the plaintiff and evaluates defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." (*Robles v. Chalilpoyil* (2010) 181 Cal.App.4th 566, 573.) The plaintiff's cause of action needs to have only 'minimal merit' to survive an anti-SLAPP motion." (*Kenne v. Stennis* (2014) 230 Cal. App. 4th 953, 963.) The Motion fails under this prong as well.

1. The City's CEQA Cause Of Action Is Likely To Prevail

The City is a responsible agency under CEQA because the Project requires discretionary approvals from the City in the form of consent under the Lease, a Lease amendment for permanent and temporary structures for the Project, and approval under the Public Trust Doctrine. (Pub. Res. Code §21069; CEQA Guidelines, § 15381; Politzer Decl., Ex. B, § 5.4 [Lease]; Friedman Decl., Ex. A, p. 1-9 [MND -Lease amendment required]; Politzer Decl., Ex. A [trust grant].) The City therefore was required to consider the environmental effects of the Project and determine whether supplemental environmental review was required. (CEQA Guidelines §§ 15004(a); 15096(f).) The City also was required to mitigate or avoid the direct or indirect environmental effects of those parts of the Project which it decides to carry out or approve. (CEQA Guidelines, § 15096 (g)(1).)

The District's withdrawal of the Project from the City on September 2 to halt the City's pending CEQA review, coupled with its repudiation of the City's legal status as a responsible agency and authority to regulate the size or operation of the Project, violated CEQA by preventing the City from completing its duties as a responsible agency. (Politzer Decl., Ex. G, p. 5. [September 2 letter determining in part: "the City has no land use authority over [the Project], and "the City is no longer a responsible agency under the terms of CEQA and should halt any environmental review process."].) The District's action additionally violated CEQA by foreclosing alternatives or mitigation measures the City might otherwise impose on the Project in fulfilling its duties as responsible agency. (CEQA Guideline § 15004(b)(2)(B) ["....[public] agencies shall not....take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project."].)[3] The District concedes that the September 2 letter was an "official act" of the District. (Friedman Decl., Ex. G, p. 2.) The City therefore properly brings this cause of action pursuant to Public Resources Code section 21168.5, which authorizes claims to attack, annul or void "determinations, findings or decisions" in violation of CEQA's requirements. (Pub. Res. Code § 21168.5.)

The City's request for injunctive and declaratory relief in response to the District's repudiation of the City's rights under CEQA is expressly authorized under the holding in *CTRPA, supra,* 163 Cal. App. 3d at 902-904. In that case, Day and Night sought California Tahoe Regional Planning Agency (CTRPA) approval for the construction of an addition to its existing warehouse building in the City of South Lake Tahoe. CTRPA informed Day and Night that the proposed project did not conform to CTRPA's land ordinance. Thereafter, the city repudiated the

[3] The District's contention that the City may still conduct further environmental analysis of the Project, notwithstanding the District's repudiation of the City's authority under CEQA to regulate the size or operation of the Project, makes no sense and renders such further environmental analysis an idle act. "The purpose of CEQA is "not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." (CEQA Guidelines, § 15003(g) see also: *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agric. Assoc.*, (1986) 42 Cal. 3d 929, 936 ["CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine...a project must be open for public discussion and subject to agency modification during the CEQA process."].

CTRPA's authority by resolving that it would no longer require CTRPA approval as a predicate for issuance of a building permit. (*Id.* at 901.) CTRPA then filed suit against the city for declaratory and injunctive relief to quell the city's "governmental insurgency." (*Ibid.*) CTRPA obtained a preliminary injunction precluding the issuance of building permits without compliance with CTRPA requirements. (*Ibid.*) However, Day and Night obtained a building permit from the city and completed construction of its project before the trial court issued its injunction. CTRPA then sued to remove the warehouse addition. The trial court ruled CTRPA was estopped from pursuing this action because it was bound by privity to the city's action, and because it failed to timely take action to enjoin the issuance of permits by the city. (*Id.*, at 902-903.)

The court of appeal reversed, holding that no privity existed because there was a "rather palpable conflict of interest" between the two agencies. (*Id.* at 905.) The court also rejected as "vacuous" Day and Night's claims that CTRPA is "bound by the actions of the city which repudiated its authority and the authority of state law." (*Id.* at 903-904.) The court held that to find an estoppel in this context would have the pernicious effect of inducing governmental agencies to disregard the rule of law, noting that "[t]here is no authority for such anarchy." (*Id.* at 905.) Further rejecting Day and Night's alternative defense of laches, the Court stated that CTRPA's lawsuit to quell the city's insurrection was "quite prompt." (*Id.* at fn. 1.)

Although *CTRPA* involved claims brought by the regional agency in response to the city's repudiation of the regional agency's legal authority, the same principles apply in this case. Here, as in *CTRPA*, the repudiating defendant agency disregarded *state law requirements*. In *CTRPA*, the court held Day and Night could not rely upon the conduct of the city because CTRPA's authority to enforce the land use ordinance at issue derives from state law. (*Id.* at fn. 2.) The same is true here. The City's legal authority to regulate the Project derives from state law under CEQA and the Public Trust Doctrine (as well as the Lease, which itself is subject to the public trust, Politzer Decl., Ex. B, § 1.1.) There is no dispute that neither the District or the Project is exempt from state law requirements under CEQA and the Public Trust Doctrine. Consequently, like the repudiating public agency and project proponent in *CTRPA*, the District acts in violation of CEQA

and the Public Trust Doctrine at its peril. In sum, the City properly brings this action to remedy the District's repudiation of the City's rights under CEQA.

2. The City's Public Trust Cause of Action Is Likely To Prevail

Before granting a discretionary approval that may impact the public trust, "[t]he state or trustee has an 'affirmative duty to take the public trust into account in the planning and allocation of trust resources, and to protect public trust uses whenever feasible." (*San Francisco Baykeeper, Inc. v. California State Lands* (2015) 242 Cal. App. 4th 202, 234.) Where no change is proposed to an existing public trust use, the trustee may satisfy this duty as part of, and concurrently with CEQA review. (*Citizens for East Shore Parks v. California State Lands Com.*, (2011) 202 Cal.App.4th 549, 577-578 citing *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) In *Citizens*, the Court affirmed the denial of claims brought against a public trustee under CEQA and the Public Trust Doctrine arising from the trustee's approval of a lease allowing a petroleum company to continue operating a marine terminal because the trustee adequately analyzed potential public trust impacts of the lease renewal as part of its CEQA review. (*Id.* at 578.) Here, however, the District's repudiation of the City's legal authority impedes the City's ability to perform the legally required public trust impacts analysis performed by the trustee in *Citizens*. The District's violation of these "procedural requirements" supports a cause of action under the Public Trust Doctrine. (*Id.* at 573.)

Additionally, the Public Trust Doctrine authorizes the City as trustee to bring a claim against any third party to protect the trust from potential harm. (*Center for Biological Diversity v. FPL Group, Inc.* (2008) 166 Cal. App. 4th 1349, 1367 (*CBD*).) Such is the case here. The District's actions threaten to harm the public trust by impeding the City's ability to analyze the Project's potential public trust impacts, balance competing public trust uses, and impose appropriate mitigations or conditions on the size or operation of the Project to preserve public trust uses. Not only is the City authorized to bring this claim, it must do so to protect the public trust and preserve its rights. (*CTRPA, supra,* 163 Cal.App.3d at 902-904, fns. 1-2.)

3. The City's CEQA and Public Trust Claims Are Ripe

Contrary to the District's argument (Mtn., pp. 14-16), the City's CEQA and Public Trust claims are ripe for five reasons. First, under the holding in *CTRPA*, *supra*, 163 Cal.App.3d at 902-904, fns. 1 and 2, the City must "promptly" quell the District's insurrection to preserve the City's legal rights.

Second, because the City's claims against the District under CEQA and the public trust are ripe, and the City risks waiver of these rights by delay or inaction (*CTRPA, supra*, at 902-903, fns. 1-2), the City would be exposed to claims from third parties under CEQA and the Public Trust Doctrine by not promptly pursuing this action. (*See e.g., Concerned Citizens, supra*, 42 Cal. 3d at 939 ["it is up to the agency, not the public, to ensure compliance with [CEQA] in the first instance."]; *CBD, supra,* at 1367 [public may seek judicial compulsion against trustee that cannot or will not enforce a valid cause of action against a third person].)

Third, the District's representation to this Court that it has not yet decided whether to proceed with the Project is unsupported by the Motion and refuted by the evidence. Mr. Mulligan's Declaration in support of the Motion states only that since September 2016, the District has not renewed its request for consent to the City. (*Compare* Mtn., p. 15 with Mulligan Decl., ¶ 14.) He does not confirm either that the District has abandoned the Project, or that it commits to return to the City for consent under the Lease and the City's compliance with CEQA and the Public Trust Doctrine. Indeed, the Motion admits that the District acted on September 2 to avoid "further delay" – an objective that implies the District's intent to proceed with the Project more expeditiously, without interference from the City. (Mtn. p. 5.) Additionally, subsequent to the City's filing of this Complaint, the District has approved a contract amendment and $3.5 million budget increase with its consultants to further pursue the Project through construction bids. (Merritt Decl., Exs. A-D.)

Fourth, prompt resolution of this dispute fosters CEQA's public policy promoting public agency environmental review "early enough to serve, realistically, as a meaningful contribution to public decisions." (*Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 135.)

Fifth, prompt resolution of this dispute is necessary for BCDC, who has requested "clarity" on these legal issues because it may not assert jurisdiction and consider the Project until this dispute is resolved. (Friedman Decl., Exs. A-D.)

C. The Complaint Is Not Subject To An Anti-SLAPP Motion

1. The Complaint Falls Under The Public Interest Exception

The Complaint falls under the public interest exception which applies to "any action brought solely in the public interest or on behalf of the general public," if three requirements are met. (§425.17(b)(1)-(3).) "The applicability of the public interest exception is determined by examining the complaint." (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1466 (*Tourgeman*).) The District's argument that this exception does not apply ignores the allegations in the complaint, and controlling case law (Mtn., pp. 17-18 [citing neither].)

The Complaint is brought solely in the public interest because (1) it does not seek damages or restitution; (2) the sole remedies sought are declaratory and injunctive relief; and (3) the City 's claims seek to benefit the public by ensuring the District's compliance with state law. (Complaint, ¶¶ 35-41 [CEQA]; 42-47 [public trust]; 57-60 [CEQA], Prayer, ¶¶ 1-9.) (*Tourgeman, supra,* 222 Cal.App.4th at 1461 [finding these facts sufficient].) The Motion does not challenge this threshold element. (Mtn., pp. 16-17.) The Complaint satisfies all three requirements.

The first requirement is that "the plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which plaintiff is a member...." The Complaint satisfies this requirement because it does not seek damages or other personal relief, but instead seeks declaratory and injunctive relief to compel the District to comply with state law. (Complaint, *supra*, p. 9; *People ex rel. Strathmann v. Acacia Research Corporation* (2012) 210 Cal.App.4th 487, 503-505 (*Strathmann*) [finding these facts sufficient].)[4] The District's assertion

[4] Compare*: Club Members for an Honest Election v. Sierra Club (*2008) 45 Cal. 4th 309, 316 [not satisfied regarding claims to benefit individual members];; *Blanchard v. DIRECTTV, Inc.* (2004) 123 Cal. App. 4th 903, 914 [not satisfied for claims for personal accounting and restitution]; *Holbrook v. City of Santa Monica* (2006) 144 Cal. App. 4th 1242, 1250 [not satisfied for council member claims to prevent late-night meetings for personal interests].)

that the CEQA and public trust causes of action do not serve the public interest is baseless. (Mtn., p. 17.) (*Friends of the College of San Mateo Gardens v. San Mateo Community College* (2016) 1 Cal.5th 937, 944 [describing CEQA's public purposes]; *Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal. App. 4th 549, 570. [describing the inherent public purpose of the public trust].)

The second requirement is that "[t]he action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons." (§ 425.17(b)(2).) This requirement is satisfied because the CEQA and public trust causes of action are of "the kind that seek[] to vindicate public policy goals." (*Tourgeman*, *supra*, at 1462-1463 [condition satisfied because enforces federal law]; *Strathmann, supra*, at 499 [same re: state law].)

The third requirement is that "private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." (§425.17(b)(3).) The Complaint was "necessary" because no other public agency has sought to enforce the rights the City seeks to vindicate. (Friedman Decl., ¶ 9; Ex. F; *Tourgeman*, *supra*, at 1464.) The Complaint also places a disproportionate financial burden on the City in relation to its stake in this matter. "Courts first focus on what sort of financial stake the plaintiff had in the outcome, *i.e.*, what the plaintiff hoped to gain financially from the litigation in comparison to what it cost." (*Blanchard*, *supra*, at 915.) The City satisfies this requirement because it does not seek any financial benefit from this action, and instead solely seeks declaratory and injunctive relief. (*Tourgeman*, *supra*, at 1465; *Northern Cal. Carpenters Regional Council v. Warmington Hercules Association* (2004) 124 Cal. App. 4th 296, 301.) Contrary to the District's assertion, a plaintiff does not forfeit this exception merely because of potential fee recovery under the private attorney general statute. That contention is inconsistent with *Strathmann*, *supra*, 210 Cal.App.4th at pp. 502-503 [contingent fee recovery not disqualifying "personal benefit"] and, if true, would largely nullify the exception. Moreover, the City's potential exposure to an adverse costs award alone is sufficient to satisfy this condition. (*Tourgeman*, *supra*, 222 Cal.App.4th at 1467.)

Without authority, the District argues that the public interest exception is not available to public entities. (Mtn., pp. 16-17.) However, that contention does not survive scrutiny under the three tests courts employ to interpret statutes: (1) the plain meaning of the statutory language; (2) the legislative history; and (3) the reasonableness of the proposed construction. (*Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd.* (1994) 23 Cal. App. 4th 1120, 1126.) First, had the Legislature intended to exclude actions brought by public entities from the scope of this exception, it could easily have stated so. It did not.

Second, the Legislature enacted the public interest exception "to curb the 'disturbing abuse' of the anti-SLAPP statute to 'undermine the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16." (*Strathmann, supra*, at 499.) Contrary to the District's contention, the Legislature sought to extend "*parallel protection*" to both public prosecutors and private attorneys general alike. (*Id.*, at 501 [emphasis added] citing (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 515 (2003-2004 Reg. Sess.) as amended June 27, 2003, pp. 11-12; *Blanchard, supra,* 123 Cal. App. 4th at 914 ["The Legislature sharply defined the public-interest exception....by reference to three factors corresponding to the state's private attorney general statute so that [it] parallels the existing exception for actions by the attorney general and public prosecutors."].)

Third, the District offers no rationale for the Legislature to exclude public entities from the scope of the public interest exception, nor could it. The District's proposed construction is unreasonable because public entities, by definition, act on behalf of the public, and therefore are more likely than private prosecutors to bring actions in the public interest. (*See Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 506 ["statutes must be given reasonable construction that conforms to the apparent purpose and intention of the law makers."].) For all of the foregoing reasons, the City's CEQA and Public Trust Doctrine causes of action are not subject to this Motion.

2. The Public Trust Doctrine Cause Of Action Falls Under the Public Prosecutor Exception

Section 425.16, subdivision (d), of the Anti-SLAPP statute exempts enforcement actions brought in the name of the people of the State of California by, among others, a city attorney,

acting as a public prosecutor. This exception applies to the City's public trust cause of action because it is brought by the City's Attorney, and the City sues on this claim in its capacity as trustee for the State of California. (Complaint ¶¶ 1, 2, 43, 45, 47, Prayer, ¶ 2; *CBD, supra,* at 1367. [The trustee alone has the right to bring trust protection actions against third parties].)

D. The Court Should Award The City Its Fees And Costs Opposing This Motion

Because the District's Motion is frivolous, Section 425.16 (c)(1) requires the Court to award the City its reasonable fees and costs. The Motion is frivolous because any reasonable attorney would agree that it is objectively totally devoid of merit. (*Nunez v Pennisi* (2015) 241 Cal.App.4th 861.) The Motion is self-defeating because the District admits that the September 2 letter constituted official agency action in furtherance of developing the Project without "further delay." The gravamen of the Complaint unquestionably challenges District action repudiating the City's legal authority under the Lease and state law, rather than free speech. The District also ignored directly applicable California law demonstrating that the City's claims are cognizable and ripe, and that the Complaint falls under exemptions to the SLAPP statute. Any one of these deficiencies demonstrates that the Motion is objectively devoid of merit. The Court therefore should award reasonable fees and costs to the City. (Friedman Decl., ¶ 11.).

IV. CONCLUSION

For all of these reasons, the Court should deny this Motion and award the City its reasonable costs and attorneys' fees.

Dated: April 3, 2017

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