12. TIME: 8:30 CASE#: MSN17-0098
CASE NAME: CITY OF SAUSALITO VS. GOLDEN G
HEARING ON DEMURRER TO CIVIL PETITION of CITY OF SAUSALITO FILED BY GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTAT
**** TENTATIVE RULING: ****

Defendant's demurrer is continued to May 4, 2017 in Department 17 at 8:30 a.m.

The Court requests that the parties e-mail courtesy copies of their papers relating to the demurrer to Department 17 with the opposing party included on any such e-mails. Attachments to these documents do not need to be e-mailed. The Court also notes that many of the Defendant's papers filed on February 27, 2017, appear to be poor copies. If possible, Defendant should e-mail clean copies of its papers. Department 17's e-mail address is cxlit@contracosta.courts.ca.gov. Unless otherwise indicated, courtesy copies will not be needed once the matter is established on File & Serve Xpress.

13. TIME: 8:30 CASE#: MSN17-0098
CASE NAME: CITY OF SAUSALITO VS. GOLDEN G
HEARING ON MOTION TO/FOR STRIKE "SLAPP" SUIT FILED BY GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTAT
**** TENTATIVE RULING: ****

As a preliminary matter, the Court orders this case to e-filing effective April 20, 2017. Nothing will be paper filed in this case after April 20, 2017. The parties shall contact File & Serve Xpress, the Court's e-filing service provider, and make all necessary arrangements. The Court will send out a separate e-filing order in the near future. The parties, as well as support staff involved in e-filing, are urged to review that order carefully and abide by its terms.

Defendant/ Respondent Golden Gate Bridge, Highway and Transportation District's ("District") special motion to strike is denied.

Petitioner/ Plaintiff the City of Sausalito ("City") has sued the District for violation of the California Environmental Quality Act ("CEQA"), the public trust doctrine and three claims for declaratory relief. The District's special motion to strike is against three causes of action: cause of action one for violation of CEQA, cause of action two for violation of the public trust doctrine and cause of action five for declaratory relief. The City's complaint is generally based on the District's plan to replace the ferry terminal in Sausalito (the "Project"). The three claims that are the subject of this motion are all related to the District's claim that it does not need the City's consent to move forward with the Project and a dispute about whether the City is a responsible agency under CEQA.

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by [Code of Civil Procedure]

section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385.) When deciding whether a cause of action arises from protected activity, the Court " 'examine[s] the *principal thrust* or *gravamen* of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies'… [Citation.]" (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1272 (emphasis original).) The Court "assess[es] the principal thrust by identifying '[t]he allegedly wrongful and injury-producing conduct … that provides the foundation for the claim.' [Citation.] If the core injury-producing conduct upon which the plaintiff's claim is premised does not rest on protected speech or petitioning activity, collateral or incidental allusions to protected activity will not trigger application of the anti-SLAPP statute. [Citation.]" (*Ibid*.)

However, the "court should distinguish between (1) speech or petitioning activity that is mere *evidence* related to liability and (2) liability that is *based on* speech or petitioning activity." (*Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1214-1215.) "[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation.] Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such. [Citation.] In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity. [Citations.]" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89; see also *Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, 1399 (distinguishing between wrongful acts and evidence of wrongful acts).)

District argues that each of the causes of action that are the subject of this motion are based on the District's September 2, 2016 letter in which the District told the City that it did not need its consent for the Project. The District says that is the only conduct in which the District has been engaged, so the City's claims are necessarily based on the District's words. It contends the September 2016 letter constitutes 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 under Code of Civil Procedure §425.16(e)(4). The key question here is whether the City's claims against the District arise from this letter.

The City argues that it is not suing the District because of the letter, but instead is suing the District for the unlawful actions of withdrawing its request for the City's consent to the Project in order to circumvent CEQA and because the District repudiated the City's authority as a responsible agency in violation of law.

The Court has reviewed the complaint finds that the City's characterization of its claims is correct. In the first cause of action for violation of CEQA, the City alleges that the District's conduct is unlawful because the City is a responsible agency under the project and is required to review the environmental effects of the project and because the District cannot revoke the City's status as a responsible agency. (Comp. ¶ 40.) Similar allegations are included in the other two challenged causes of action. (Comp. ¶¶ 47 and 59.) The relief requested for these causes of

action includes writs of mandate instructing the District to comply with CEQA and the public trust doctrine and injunctive relief that would prohibit the District from moving forward with the Project until it complies with CEQA and the public trust doctrine. (Comp. Prayer for Relief ¶¶ 1, 2, 5 and 6.) The Court finds that the City's claims against the District do not arise from the September 2016 letter; they arise from the District's actions. That letter is merely evidence of the City's claims that the District is not acting in compliance with CEQA and the public trust doctrine.

San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn. (2004) 125 Cal.App.4th 343 (*San Ramon*) supports the Court's finding that the City's complaint does not arise from protected activity. In *San Ramon,* the county retirement system and its board determined increased contributions owed by the fire protection district. The district brought claims for traditional and administrative writs of mandate and for declaratory relief. The county retirement system filed a special motion to strike. (*Id*. at 347-348.) The county argued that the anti-SLAPP statute applied because the district's petition arose from discussions and votes in public proceedings regarding contributions by the district, which were acts in furtherance of their constitutionally protected right to free speech. (*Id*. at 353.) The court disagreed and explained that the county "was not sued based on the content of speech it has promulgated or supported, nor on its exercise of a right to petition. The action challenged consists of charging the [district] more for certain pension contributions than the [district] believes is appropriate. This is not governmental action which is speech-related." (*Id*. at 357.)

In reply, the District argues that if the City's claim is not based on the September 2016 letter then it is based on the City forcing the District to engage in petitioning activity and thus, the City's claim still arises from protected activity. This is a new argument first raised in reply and arguments first raised in reply are generally not considered by the Court. (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 ("Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.").)

Therefore, the Court finds that the District has not met its burden of showing that the challenged causes of action arise from protected activity. For this reason, the District's motion is denied.

The Court has given serious consideration to awarding the City its attorney's fees, however, the District's motion does not rise to the high standard for awarding fees; i.e. the motion is "frivolous or is solely intended to cause unnecessary delay." (Code of Civil Procedure § 425.16(c).) Therefore, the City's request for its attorney's fees is denied.