

## PARTIES/ATTORNEYS

Plaintiff	Evolver Group, LLC	H. Mark Madnick, Esq. Jonathan M. Starre, Esq. Armound Ghoorchian, Esq.  Kramar Madnick, LLP
Defendants	Billy Lemac Harrington (erroneously sued as “Billy Lee Harrington”) and Lura Lynn Harrington (erroneously sued as Lura Lynne Harrington”), individually and as Trustee of the Harrington Family Trust	Eric K. Yaeckel Ryan T. Kuhn Karoline D. Kitlowski  Sullivan & Yaeckel Law Group, APC

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## RECOMMENDATION

For all the reasons discussed below, the court finds defendants have not met their burden on the first step in the analysis. Because they have not met the burden to show that the complaint arises from protected activity, the court need not consider whether plaintiff demonstrated it is likely to succeed on the merits. The burden does not shift. The motion is denied.

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According to the complaint, plaintiff Evolver Group LLC was a tenant of a portion of agricultural real property located at 3770 Highway 33, Ventucopa, California. The property was owned and leased by defendant Harrington Family Trust, of which defendants Billy Lee Harrington and Lura Lynn Harrington are Trustees. Plaintiff leased the property to host private gatherings and community events. To that end, plaintiff made substantial improvements on the Premises by spending over \$1.5 million to build luxury amenities and services and commenced operation. On or about August 2, 2023, plaintiff received a notice (“Notice of Violation”) from Santa Barbara County that it was required to obtain a conditional use permit for the agreed use of the premises under the lease. Plaintiff immediately set out to obtain the required permits, hiring consultants to prepare the permit application. The County agreed to work with plaintiff to extend deadlines to obtain the permit so that currently scheduled events would not need to be canceled. On or about January 11, 2024, the County sent plaintiff and defendants an Abatement

Schedule purporting to extend the effective date of the Notice of Violation, extending the time to obtain the Permit to March 30, 2024.

By February 2024, Plaintiff completed every requirement and obtained every approval in its power in furtherance of obtaining the Permit, with the exception of obtaining the certificate of compliance from the County Surveyor for the parcel validation. The Parcel Validation Application required the Owner's Authorization from defendants. Defendant was required to provide consent for the surveyor to validate the parcel where the Premises was located. For the first time, the defendants refused.

On March 27, 2024, counsel for defendant Lee sent Plaintiff a "cease-and-desist" letter, demanding that plaintiff cease all events planned on the Premises. On March 28, 2024, during a conference call between the County, defendant Lee, his lawyer, and plaintiff, plaintiff asked defendant Lee and his lawyer when they would allow the parcel validation to occur. It was then, for the first time, that defendant Lee explicitly stated, through his lawyer, that plaintiff would not receive help nor defendant Lee's authorization for the parcel validation. Defendant Lee further promised to "hire security" to ensure that no one would enter the property. The County refused to grant the permit without the parcel validation and denied plaintiff's application for a conditional use permit.

Defendants' threat to take matters into their own hands and hire professional security to block any entrants to the event created a safety concern that plaintiff could not risk. Plaintiff was forced to suspend its business, close the premises to guests, and cancel 15 previously scheduled events, including several weddings, with little notice.

On August 8, 2024, Evolver Group filed its complaint against defendants alleging the following causes of action: (1) Breach of Lease; (2) Fraudulent Concealment; (3) Negligent Misrepresentation; (4) Breach of Implied Covenant of Good Faith and Fair Dealing; (5) Breach of Covenant of Quiet Enjoyment; (6) Intentional Interference With Prospective Economic Advantage; (7) Negligent Interference With Prospective Economic Advantage; (8) Intentional Interference With Contractual Relations; (9) Constructive and Retaliatory Eviction; (10) Declaratory Relief; and (11) Equitable Indemnity.

On August 20, 2024, defendants filed their special motion to strike select claims and the 1st through 9th causes of action and the 11th cause of action from the complaint pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP legislation. Opposition and reply have been filed.

### Related Cases

The court notes there are several pending civil cases that appear to be related to this one. The court finds the following cases are related:

- Harrington Family Trust v. Evolver Group (24CV01860);
- Baretto v. Evolver Group et al. (24CV02692);
- Green v. Evolver Group et al. (24CV02727);
- Harrington v. Evolver Group (24CV02762); and
- Evolver Group v. Harrington et al. (24CV04451).

The motions to be relieved as counsel in case Nos. 24CV02692 and 24CV02727 are continued from October 9, 2024 in Dept. 1 to October 15, 2024 in Dept. 2 to be heard concurrently with the motion to be relieved as counsel in Case No. 24CV04451. The motion to be relieved as counsel in Case No. 24CV02762 will remain on calendar on October 18, 2024. Counsel for Evolver Group is ordered to give notice of this ruling.

#### Legal Standards Applicable to Anti-SLAPP Motions

The legal standards under the anti-SLAPP scheme are settled. “A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056 [internal citations omitted].) “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 or 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.” (Code Civ. Proc., § 425.16, subd. (b)(1).)<sup>1</sup>

Under the statute, 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; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of

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<sup>1</sup> All future references are to the Code of Civil Procedure unless indicated otherwise.

free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

To determine whether a cause of action (or complaint) should be stricken under the anti-SLAPP statute, section 425.16 establishes a two-part test:

- Under the first part, the party bringing the motion has the initial burden of showing that the cause of action arises from an act in furtherance of the right of free speech or petition—i.e., that it arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.)
- Once the moving party has met its burden, the burden shifts to the other party to demonstrate a probability of prevailing on the cause of action. (*Ibid.*)

Only a cause of action that satisfies both parts 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. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

In determining whether defendant has sustained its initial burden, the court considers the pleadings, declarations, and matters which may be judicially noticed. (*Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 329.)

#### 1. Whether the Action Arises from Protected Activity

To prevail on the first step, defendants must identify all allegations of protected activity and all claims for relief supported by those allegations. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) Here, defendants move to strike all allegations that occurred during proceedings with the County of Santa Barbara Planning and Development Department (e.g., paragraph 25) and those from defendant’s attorney (e.g., paragraph 24). Defendants argue that these allegations are immunized under section 425.16 because they were made in either a quasi-judicial proceeding or in anticipation of litigation. (See Notice of Motion.) These allegations in particular state:

“On March 28, 2024, during a conference call between the County, Defendant Lee, his lawyer, and Plaintiff, Plaintiff asked Defendant Lee and his lawyer when they would allow the parcel validation to occur. It was then, for the first time, that Defendant Lee explicitly stated, through his lawyer, that Plaintiff would not receive help nor Defendant Lee’s authorization for the parcel validation. Furthermore, regardless of whatever enforcement action or penalties the County threatened, Defendants’ lawyer promised that Defendant Lee would “hire security” to ensure that no one would be able to enter the property. This was despite the fact that the county said they would not take any enforcement action and would only consider imposing fines of up to \$100- \$200 per day.”

(Complaint, ¶ 25.)

On March 23, 2024, Counsel for Defendant Lee sent Plaintiff a “cease-and-desist” letter, purporting to demand that Plaintiff cease all events planned on the Premises. Thereafter, the parties attended a further conference call to resolve the dispute. At that time, Defendant Lee’s lawyer forcefully demanded that Plaintiff promise that there would be no more events or Defendant Lee would bring suit.

(Complaint ¶24).

“A claim arises from a protected activity when that activity underlies or forms the basis for the claim.” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062.) Courts must “consider the elements of the challenged claims and what actions by defendant supply those elements and ... form the basis for liability.” (*Laker v. Bd. of Trustees* (2019) 32 Cal.App.5th 745, 771.) The protected activity must “supply elements of the challenged claim” such that “but for” the defendant’s “alleged actions taken in connection with” the protected activity, the plaintiff’s claim would have no basis. (*Park, supra*, 2 Cal.5th at 1063-64.) The “mere fact that an action was filed after protected activity took place does not mean the action arose from that activity ...” (*Id.* at 1063.) If the protected activity supplies only “evidence of the parties’ disagreement,” merely leads to the liability creating activity, or provides only evidentiary support for the plaintiff’s claim, the allegation is not subject to attack under Code of Civil Procedure §425.16. (*Id.* at 1064.) Thus, “where a plaintiff’s claim attacks only the defendant’s decision to undertake a particular act, and if that decision is not itself protected activity, that claim falls outside the ambit of the anti-SLAPP statute.” (*Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 701—defendant’s decision to terminate agreement communicated by letter to plaintiff not protected activity.)

To determine whether a claim arises from protected activity, the court must examine the complaint. (See *Wang v. Wal-Mart Real Estate Business Trust* (2007) 153 Cal.App.4th 790, 802.) As noted above, the salient allegations are contained in paragraphs 24 and 25, which were incorporated by reference into each subsequent cause of action. Defendants ultimately seek to strike the first through ninth and the eleventh causes of action.

- The first cause of action for breach of lease and fourth cause of action for breach of the implied covenant of good faith and fair dealing assert defendants breached the lease by refusing to cooperate in the permitting process and by threatening to hire private security to keep out plaintiff, its clients, and the County. (Complaint, ¶¶ 34, 59.)

- The second and third causes of action allege fraudulent concealment and negligent misrepresentation based on defendants' failure to disclose that they did not intend to cooperate with the land use permitting process because they had created conditions on the land that were not code-complaint. (Complaint, ¶¶ 40, 49.)
- The fifth cause of action alleges breach of the covenant of quiet enjoyment by wrongfully denying access to the County, through its acts and or omissions, to conduct the requisite parcel validation required for the County to issue the Permit and rendering the premises unusable for the commercial use contemplated. (Complaint, ¶¶ 64-65.)
- The sixth cause of action for intentional interference with prospective economic advantage and the seventh cause of action for negligent interference with prospective economic advantage both identify defendants wrongful conduct in refusing to cooperate in the permitting process and by threatening to hire private security to keep out plaintiff, its clients, and the County. (Complaint, ¶¶ 71 and 77.)
- The eighth cause of action for intentional interference with contractual relations likewise identifies defendants wrongful conduct as refusing to cooperate in the permitting process. (Complaint, ¶ 84.)
- The ninth cause of action for constructive and retaliatory eviction again identifies defendants wrongful conduct as refusing to cooperate in the permitting process. (Complaint, ¶ 90.)
- The eleventh cause of action for equitable indemnity identifies defendants conduct as the cause of plaintiff's damages. (Complaint, ¶ 101.)

Several cases hold “[a] claim does not arise from constitutionally protected activity simply because it is triggered by such activity or is filed after it occurs. [Citation.] Rather, the focus is on the substance of the lawsuit.” (*World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1568; see also *Baharian-Mehr v. Smith* (2010) 189 Cal.App.4th 265, 272 [“If the mention of protected activity is ‘only incidental to a cause of action based essentially on nonprotected activity,’ then the anti-SLAPP statute does not apply”]; *Navellier v. Sletten, supra*, 29 Cal.4th 82, 89 [“[T]hat a cause of action arguably may have been ‘triggered’ by protected activity does not [mean] that it is one arising from such”].) The facts at issue in *Wang v. Wal-Mart Real Estate Business Trust* (2007) 153 Cal.App.4th 790 (*Wang*) illustrate how the principle applies.

In *Wang*, the Wangs sold a portion of their land to Wal-Mart, with the understanding that Wal-Mart would relocate a road needed to provide them with

access to their remaining adjoining property. In the development plans submitted to the City of San Bernardino, Wal-Mart did not include a relocated access road. Rather, Wal-Mart obtained a city resolution that vacated the road and replaced it with emergency access and an alley, leaving the Wangs' property landlocked. The Wangs sued Wal-Mart and the city, among others, claiming that the defendants' planning and development of the Wal-Mart store wrongfully deprived their real property of street access. (*Wang, supra*, 153 Cal.App.4th at pp. 795–798.)

The defendants brought an anti-SLAPP motion, contending the allegations of the complaint arose from protected petitioning activity. The trial court granted the motion, ruling that all claims were based on the defendants' governmental permitting activity associated with the proposed development. (*Wang, supra*, 153 Cal.App.4th at p. 807.) The Court of Appeal reversed, holding that the acts underlying the Wangs' causes of action were “acts that Wal-Mart carried out in furtherance of its economic interests in implementing the contractual agreement....” (*Id.* at p. 809.) The court explained: “The requests to governmental authorities for approval of land use planning items were made only in conjunction with the principal business transaction. The overall thrust of the complaint challenges the manner in which the parties privately dealt with one another, on both contractual and tort theories, and does not principally challenge the collateral activity of pursuing governmental approvals.” (*Ibid.*) The court therefore concluded that plaintiffs' “causes of action raised only collateral or incidental facts with respect to any” protected petitioning conduct. (*Ibid.*)

The contract at issue in *Wang* contemplated that the Wangs' remaining parcels would retain street access, and the plaintiffs primarily sought to enforce the terms of their contract with Wal-Mart. The fact that enforcement of those terms would preclude Wal-Mart from obtaining governmental permits to eliminate access to the plaintiffs' property was merely incidental to the gist of the complaint. (*Wang, supra*, 153 Cal.App.4th at p. 809.) Similarly, the conduct complained of here was defendants' refusal to cooperate in the attainment of the necessary permit. Like the plaintiff in *Wang*, plaintiff here merely seeks to enforce the terms of the contract. The fact defendants' decision not to cooperate was communicated during County violation hearing, or by defendants' attorney in anticipation of litigation, is incidental to the gist of the complaint. The overall thrust of the complaint challenges the manner in which the parties privately dealt with one another.

Therefore, defendants have not met their burden on the first step in the analysis. Because they have not met the burden to show that the complaint arises from protected activity, the court need not consider whether plaintiff demonstrated it is likely to succeed on the merits. The burden does not shift. The motion is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of

Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))