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*Exempt from filing fees per  
Government Code § 6103*

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8 Kristine Ridge, Sonia Carvalho and Jason  
9 Motsick

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ORANGE – CENTRAL DISTRICT

12 SANTA ANA POLICE OFFICERS  
13 ASSOCIATION; GERRY SERRANO,

14 Plaintiffs,

15 vs.

16 CITY OF SANTA ANA, a Municipal  
17 Corporation; SANTA ANA POLICE  
18 DEPARTMENT, a public safety department;  
19 DAVID VALENTIN, Chief of Police;  
20 KRISTIN RIDGE, City Manager; SONIA  
21 CARVALHO, City Attorney; JASON  
22 MOTSICK, Director of Human Resources;  
23 DOES 1 – X, inclusive,

24 Defendants.

Case No. 30-2021-01230129-CU-OE-CJC

[Assigned to Honorable Lon Hurwitz Dept. 20]

**NOTICE OF MOTION AND SPECIAL  
MOTION TO STRIKE PURSUANT TO  
C.C.P. § 425.16, TO STAY DISCOVERY,  
AND FOR ATTORNEYS’ FEES, BY  
DEFENDANTS CITY OF SANTA ANA,  
KRISTINE RIDGE, SONIA CARVALHO,  
AND JASON MOTSICK;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

[Filed concurrently with Declarations of Soojin  
Kang, Kristine Ridge, and Sonia Carvalho, and  
Exhibit Attached Thereto; [Proposed] Order]

Date: June 15, 2022

Time: 1:30 p.m.

Dept: 20

Reservation No.: 73705096

Action Filed: 11/08/2021

Trial Date: None Set

25 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

26 PLEASE TAKE NOTICE that on June 15, 2022 at 1:30 p.m., or as soon thereafter as the  
27 matter may be heard in Department 20 of the above-referenced Court, located at 700 W Civic Center  
28

1 Dr, Santa Ana, CA 92701, Defendants City of Santa Ana (“City”), Kristine Ridge, Sonia Carvalho  
2 and Jason Motsick will, and hereby do, specially move to strike the first, third and fourth causes of  
3 action in the Complaint, which Plaintiffs purport to bring pursuant to the Meyers-Milias-Brown Act  
4 (“MMBA”), Gov Code § 3500-3511, an alleged “Violation of Freedom of Speech”, and the Political  
5 Affiliations statutes, Labor Code §1101-1102.5, respectively.

6 This Special Motion is made pursuant to Code of Civil Procedure section 425.16,  
7 subdivision (b)(1) on the ground that the subject claims identified herein arise from acts of  
8 Defendants in furtherance of their rights of petition or free speech under the United States  
9 Constitution and the California Constitution in connection with public issues. Furthermore, the  
10 subject claims are factually and legally unsupported, especially as to the individually-named  
11 Defendants who are statutorily immune from suit. The request for the Court to stay discovery is  
12 based upon Code of Civil Procedure section 425.16, subdivision (g). Finally, Defendants’ request  
13 for attorneys’ fees is brought pursuant to Code of Civil Procedure section 425.16, subdivision (c).

14 This Motion is based upon the Notice of Motion, the attached Memorandum of Points and  
15 Authorities, the Declarations of Soojin Kang, Kristine Ridge, and Sonia Carvalho, and attached  
16 exhibit(s), the pleadings and records on file herein, and such other matter, oral or documentary, as  
17 the Court may consider at the time it rules upon this Motion.

18 DATED: February 22, 2022

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

20  
21 By: 

22 JEFFREY S. RANEN  
23 SOOJIN KANG  
24 Attorneys for Defendants City of Santa Ana, non-  
25 jural entity, Santa Ana Police Department, Kristine  
26 Ridge, Sonia Carvalho and Jason Motsick  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Special Motion to Strike challenges three claims of the six-count “retaliation”  
4 complaint brought by a Santa Ana Police sergeant, Gerry Serrano, and the Santa Ana Police Officers  
5 Association (“SAPOA”) for which Serrano serves as president, as against the City of Santa Ana, its  
6 police chief, city manager, city attorney, and human resources director. The Complaint contains  
7 ninety-five background paragraphs narrating seventeen incidents ostensibly showing that  
8 Defendants violated their rights to free speech and government participation. Plaintiffs rely upon  
9 five incidents to support their claims under the Meyers-Milias-Brown Act (“MMBA”), a novel claim  
10 for “Violation of the Constitutional Right to Freedom of Speech”, and the Political Affiliations  
11 statutes. All five incidents, without question, constitute protected activity under Code Civ. Proc.  
12 §425.16. Consequently, these allegations may not support these three claims.

13 Furthermore, the three challenged claims are otherwise legally and factually unsupported.  
14 As to all three, Plaintiffs fail to allege sufficient facts which support the legal theories. The MMBA  
15 claim is untenable because Plaintiffs failed to file it with the Public Employment Relations Board,  
16 thereby solidifying a failure to exhaust defense. Plaintiffs request that the Court create a “Violation  
17 of the Constitutional Right to Freedom of Speech” claim based on the protected activity of  
18 Defendants. Therefore, as to all Defendants, Plaintiffs’ first, third and fourth causes of action must  
19 be stricken.

20 Finally, the entire Complaint must be stricken as to the public officials that Plaintiffs sued  
21 in the first to fifth causes of action. Because Plaintiffs purport to incorporate all background  
22 allegations into every claim, they all rest upon protected activity. Furthermore, the individual  
23 Defendants are statutorily immune from these claims, as a matter of law, under Government Code  
24 §§820.4 and 821.6. Moreover, California law does not recognize any of these claims as against  
25 public officials. Under these circumstances, the public officials’ presence in this case is  
26 unexplainable other than as Plaintiffs’ determination to retaliate against them for engaging in  
27 protected activity under Code Civ. Proc. §425.16. Accordingly, Defendants’ Special Motion to  
28 Strike, to Stay Discovery, and for Attorneys’ Fees must be granted.

1 **II. BACKGROUND**

2 **A. The Allegations Of The Complaint.**

3 Serrano, a sergeant within the Santa Ana Police Department, is also president of SAPOA.  
4 Complaint ¶2. Defendants, David Valentin (“Valentin”), Kristine Ridge (“Ridge”), Sonia Carvalho  
5 (“Carvalho”), and Jason Mostick (“Mostick”), respectively, serve as chief of police, city manager,  
6 city attorney, and human resources director for the City of Santa Ana (the “City”). Complaint ¶3-8.  
7 Plaintiffs accuse Valentin and Carvahlo of animosity towards them, suggesting that Valentin’s  
8 expression of proposals, which were counter to those presented by Plaintiffs, before the city council,  
9 evidenced Valentin’s concern “with the SAPOA’s and Serrano’s political influence.” Complaint  
10 ¶12. This led Plaintiffs to believe “that Defendants Valentin and Carvahlo formed a conspiracy to  
11 attack Serrano and the SAPOA.” *Id.* at ¶14. Plaintiffs thereafter narrate seventeen circumstances  
12 they contend establish that Defendants retaliated against them for exercising their First Amendment  
13 rights. Complaint ¶16-94. Declaration of Soojin Kang (“Kang Decl.”), ¶3; Ex. A.

14 The Complaint contains six causes of action: (1) a claim under the Meyers-Milias-Brown  
15 Act (“MMBA”), Government Code § 3500-3511; (2) a claim under the Public Safety Officers  
16 Procedural Bill of Rights Act (“POBRA”), Government Code § 3300-3313; (3) a claim for  
17 “Violation of the Constitutional Right to Freedom of Speech”; (4) a claim under the Political  
18 Affiliations statutes, Labor Code §1101-1102.5; (5) a claim under the Peace Officers’ statutes, Penal  
19 Code § 832.5-832.8, and Evidence Code § 1043-1046; and (6) retaliation under the Fair  
20 Employment and Housing Act (“FEHA”), Government Code §12900 *et seq.* Complaint ¶96-202.  
21 Plaintiffs incorporate the first ninety-five paragraphs of the Complaint into each cause of action.  
22 Complaint ¶96, 113, 144, 156, 174, and 191.

23 **B. The Procedural Posture Of The Case.**

24 Plaintiffs filed the unsigned Complaint on November 8, 2021. Plaintiffs’ November 10,  
25 2021 attempt to serve Defendants with process was ineffective because: (a) the summons was  
26 neither signed by the Clerk of the Court nor contained the Court’s seal; and (b) failed to indicate  
27 who was served or by what method. Code Civ. Proc § 412.20; *Mannesmann Demag v. Superior*  
28 *Court* (1985) 172 Cal. App. 3d 1118, 1122-23. The City of Santa Ana specially appeared to file a



1 motion to quash service of summons on December 10, 2021, followed by a December 15, 2021 ex  
2 parte motion to advance the hearing date from April 20, 2022 to January 7, 2022, which the Court  
3 granted. Kang Decl., ¶3-7; Ex. A-C.

4 In the interim, Plaintiffs properly served the City of Santa Ana on December 23, 2021.  
5 Though Plaintiffs’ attempt to serve the individual defendants on December 23, 2021 was legally  
6 defective, the City of Santa Ana agreed to accept service of process for the individual defendants on  
7 January 7, 2022. As a result, the hearing on the motion to quash service of summons was rendered  
8 moot and was not heard. Kang Decl., ¶8-10; Ex. D-E. As the Santa Ana Police Department is a  
9 non-jural entity, it was not and cannot be served.

10 Defendants removed this matter to the U.S. District Court for the Central District of  
11 California on January 24, 2022, based on federal question jurisdiction, because the third cause of  
12 action referenced the First Amendment to the United States Constitution and 42 U.S.C. §1983. Per  
13 Stipulation that the third cause of action was based solely on the California Constitution, the parties  
14 agreed that the District Court should remand the case to this Court. Kang Decl., ¶12-13; Ex. F.

15 **III. THIS SPECIAL MOTION IS TIMELY-FILED THEREBY REQUIRING STAY OF  
16 AND DISCOVERY.**

17 Generally, a special motion “may be filed within 60 days of the service of the complaint or,  
18 in the court’s discretion, at any later time upon terms it deems proper.” Code Civ. Proc. §425.16(f).  
19 The 60<sup>th</sup> day following the December 23, 2021 service of process was February 21, 2022, a holiday  
20 under California law. Gov. Code §6700(a)(5). Hence, this Special Motion is timely-filed on  
21 February 22, 2022. Code Civ. Proc. §12a. Therefore, discovery must be stayed. Code Civ. Proc.  
22 §425.16(g) (“[a]ll discovery proceedings in the action shall be stayed upon the filing of a notice of  
23 motion made pursuant to this section. The stay of discovery shall remain in effect until notice of  
24 entry of the order ruling on the motion...”).

25 **IV. THE FIRST, THIRD AND FOURTH CAUSES OF ACTION MUST BE STRICKEN  
26 BECAUSE THEY ARE BASED ON PROTECTED ACTIVITY AND LEGALLY  
27 INSUFFICIENT.**

28 Adjudication of a special motion to strike involves a two-step process. *Bonni v. St. Joseph  
Health System* (2021) 11 Cal. 5th 995, 1009. At the initial stage, the moving defendant must identify

1 the acts alleged in the complaint that it asserts are protected and what claims for relief are predicated  
2 on them. *Bonni*, 11 Cal. 5th at 1010. The court should examine whether those acts are protected and  
3 supply the basis for any claims. *Id.* It does not matter that other unprotected acts may also have been  
4 alleged within what has been labeled a single cause of action; these are disregarded at this stage. *Id.*  
5 So long as the court determines that relief is sought based on allegations arising from activity  
6 protected by the statute, the second step is reached with respect to these claims. *Id.*

7 If the defendant makes the requisite showing, the burden shifts to the plaintiff to demonstrate  
8 the merit of the claim by establishing a probability of success. *Baral v. Schnitt*, (2016) 1 Cal. 5th  
9 376, 384. This is a summary judgment-like procedure for which the court’s inquiry is limited to  
10 whether the plaintiff has stated a legally sufficient claim and made a prima facie showing sufficient  
11 to sustain a favorable judgment. *Id.* at 384-85. The court, without resolving evidentiary conflicts,  
12 must determine whether the plaintiff’s showing, if accepted by the trier of fact, would be sufficient  
13 to sustain a favorable judgment. *Id.* at 396. If so, then the challenged claim may proceed. *Id.*  
14 Otherwise, the claim should be stricken. *Id.* Allegations of protected activity supporting the stricken  
15 claim are eliminated from the complaint, unless they also support a distinct claim on which the  
16 plaintiff has shown a probability of prevailing. *Id.*

17 Plaintiffs, in their first, third and fourth causes of action for alleged violations of the MMBA,  
18 the Constitutional Right to Freedom of Speech, and the Political Affiliations statutes, respectively,  
19 accuse Defendants of retaliation in response to Plaintiffs’ allegedly protected activity. The common  
20 thread with these three claims is the requirement of retaliation due to the exercise of free speech  
21 rights. As shown below, the allegations upon which these claims rest constitute the protected activity  
22 of Defendants. *See* Complaint ¶¶18, 22-25, 30, 31, 58-60. Hence, it is Plaintiffs, through this lawsuit,  
23 not Defendants, who seek to suppress and punish protected activity. Because these claims lack  
24 factual and legal support, they are amenable to early disposition *via* this Special Motion.

25 **V. THE “OTHER INTERFERENCE” IDENTIFIED BY PLAINTIFFS IS**  
26 **PROTECTED ACTIVITY.**

27 Protected conduct includes “conduct in furtherance of the exercise of the constitutional right  
28 of petition or the constitutional right of free speech in connection with a public issue or an issue of

1 public interest.” Code Civ. Proc. §425.16(e)(4). In *Macias v. Hartwell* (1997) 55 Cal. App. 4th 669,  
2 the court of appeal affirmed the trial court’s order granting the defendant’s anti-SLAPP motion in  
3 the context of a defamation action arising from an election for union president. The plaintiff, who  
4 lost the election, claimed that the defendant’s flyer representing that the plaintiff was terminated for  
5 misappropriation of funds, insubordination, excessive absence and disloyalty, was defamatory. The  
6 court reasoned: “Where, as here, a candidate speaks out on issues relevant to the office or the  
7 qualifications of an opponent, the speech activity is protected by the First Amendment.” *Id.* at 673.  
8 *Macias* stands for the proposition that speech activity related to the qualifications of a candidate for  
9 president of a union is protected activity under the anti-SLAPP statute.

10 Plaintiffs claim “Other Interference”, alleging that:

11 **Defendant Valentin has engaged in action to advocate for a change of leadership**  
12 **in the SAPOA** and has attempted to interfere with SAPOA elections. **Said action**  
13 **includes**, but is not limited to, encouraging candidates to run against Serrano for the  
14 position of Association President. Said action includes, but is not limited to,  
15 **encouraging candidates to run against Serrano for the position of Association**  
16 **President**, and questioning members’ support for Serrano when they are seeking  
17 special assignments and promotions.

18 Complaint ¶18. (Emphasis added).

19 This allegation supports Plaintiffs’ claims under the MMBA, the Violation of Freedom of  
20 Speech and Political Affiliations statutes. However, the emboldened language involves the exercise  
21 of free speech in the context of a public issue concerning the membership and leadership of an  
22 employee organization. *Macias v. Hartwell* (1997) 55 Cal. App. 4th 669. In *Garcetti v. Ceballos*,  
23 547 U.S. 410 (2006), the Court held that the First Amendment only protects a public employee who  
24 speaks both on a matter of public concern and as a citizen. But in *Schaffer v. City and County of*  
25 *San Francisco* (2008) 168 Cal. App. 4th 992, 1001, the court held that a police officer’s protection  
26 under Code Civ. Proc. §425.16 was not limited by *Garcetti*, reasoning the salient question was  
27 whether the acts complained of fall within the statutory definition that the legislature deemed  
28 appropriate for anti-SLAPP motions. Thus, section 425.16 protection extends to public employees,  
including police officers, who issue reports and comment on issues of public interest relating to their  
official duties. *Id.*; *Bradbury v. Sup. Ct.* (1996) 49 Cal. App. 4 th 1108, 1117 (“Petitioners made a

1 prima facie showing that the report and media statements related to an official investigation, were  
2 made in a public forum, and involved an issue of public interest. Thus, the “other interference”  
3 alleged by Plaintiffs is, without question, protected activity.

4 **VI. DEFENDANTS’ INVESTIGATION OF STOLEN CAMPAIGN SIGNS,  
5 AND REPORTING OF SERRANO’S POLITICALLY-MOTIVATED  
6 INTERFERENCE WITH AN INVESTIGATION, WAS PROTECTED  
7 ACTIVITY.**

8 It is well-settled that reports to the police of alleged criminal activity are protected under  
9 425.16(e)(2). *People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86  
10 Cal. App. 4th 280, 285 (“[A] complaint to the Attorney General seeking an investigation was also  
11 protected [under section 425.16] as a communication made in connection with an official  
12 proceeding.”); *Salma v. Capon* (2008) 161 Cal. App. 4th 1275, 1286-1287 (contacting municipal  
13 departments seeking official investigation is protected activity under section 425.16); *Siam v.*  
14 *Kizilbash* (2005) 130 Cal. App. 4th 1563, 1569-1570 (“Communications that are preparatory to or  
15 in anticipation of commencing official proceedings come within the protection of the anti-SLAPP  
16 statute.”); *Hansen v. Cal. Dept. of Corrections & Rehab* (2008) 171 Cal. App. 4th 1537, 1544  
17 (holding that statements upon which complaint was based during internal investigation constitute  
18 protected activity under 425.16(e)(2), even if the subject of the complaint is not formally charged).

19 Plaintiffs complain of a “Campaign Signs” incident in April 2020, when they: (a) reported  
20 the theft of campaign signs related to a recall of a City Council member; (b) identified the City  
21 Council member as a suspect; and (c) complained to Valentin that a police commander “doctored”  
22 the police report to omit the name of the Council member. Complaint ¶22. Plaintiffs aver that:  
23 “Instead of investigating the unlawful actions of the Police Commander, **Valentin ordered his  
24 Internal Affairs commander and investigators to conduct an investigation of Serrano.**” *Id.* at  
25 ¶23. (Emphasis added).

26 Plaintiffs further allege:

27 When the Plaintiffs obtained a video recording showing the former City Council  
28 person stealing the campaign signs, **Defendant Valentin, Defendant Carvalho  
and other private attorneys employed by her firm, directly and through  
Valentin’s supporters pressured the Orange County District Attorney’s office**

1 to open a criminal case against Serrano. When the District Attorney’s office  
2 rejected Valentin’s pressures Valentin became upset. **With the help of Defendant**  
3 **Carvalho and her private law firm, he began a lengthy letter and meeting**  
4 **campaign in which he chastised the District Attorney’s decision and knowingly**  
5 **included false information in the communications with the District Attorney’s**  
6 **office.**

5 Complaint ¶24. (Emphasis added).

6 Finally, Plaintiffs complain: “**As part of the April, 2020, efforts to wrongfully bring a**  
7 **criminal case against Serrano, Defendants used department resources, including the Internal**  
8 **Affairs Unit, to draft memoranda with adverse comments about Serrano.**” Complaint ¶25.

9 The bold language directly implicates the communications of the Police Chief Valentin,  
10 Carvalho and the City regarding a potential criminal investigation, related to Plaintiff Serrano. In  
11 his September 30, 2020 letter to Paul Walters, Chief of the Bureau of Investigations at the Orange  
12 County District Attorney’s Office, Defendant Valentin indicated that “Sgt. Serrano is currently  
13 under investigation for allegations involving evidence and witness tampering in a related criminal  
14 case involving political signs...” Carvalho Decl., ¶4; Ex. I. In his follow up letter dated October 21,  
15 2020, Valentin explained that Serrano was not assigned to the campaign sign case when he allegedly  
16 interfered with evidence in the investigation. Carvahlo Decl., ¶4; Ex. J. In other words, Plaintiff  
17 Serrano interfered in a criminal investigation to which he was not assigned, while on leave from  
18 duty as a police officer, where the investigation could have criminally implicated a City Council  
19 member with whom Serrano admittedly had “political differences” and whom he blamed for  
20 initiating a CalPERS inquiry that resulted in a substantial reduction in his pensionable income.  
21 Declaration of Kristine Ridge (“Ridge Decl.”), ¶5-6; Ex. M - pg. 4, fn. 1 and pg. 14. The  
22 communications and the related investigation are, without question, protected under Code Civ Proc  
23 §425.16(e)(2). *Building Permit Consultants, Inc.*, 86 Cal. App. 4th at 285; *Capon*, 161 Cal. App.  
24 4th at 1286-1287; *Siam*, 130 Cal. App. 4th at 1569-1570; *Hansen*, 171 Cal. App. 4th at 1544.

25 **VII. DEFENDANTS’ COMMUNICATIONS WITH EXECUTIVE BODIES**  
26 **CONCERNING PENDING ISSUES ARE PROTECTED ACTIVITIES.**

27 In *Baetz v. Pension Consulting Alliances, Inc.*, 2017 U.S. Dist. LEXIS 222252, \*11-12 (C.D.  
28 Cal. 2017), the court granted the defendant’s anti-SLAPP motion dismissing a defamation claim

1 which arose from statements made to CalPERS concerning the plaintiff’s potential management of  
2 a pension fund. In doing so, the Court determined that the defendant’s representations to CalPERS  
3 were “any written or oral statement ... made in connection with an issue under consideration or  
4 review by an executive body” under Civ. Proc. Code §425.16(e)(2). The same analysis as to  
5 CalPERS should apply as to representations to the California Fair Political Practices Commission  
6 as to any issues under consideration by that entity.

7 Plaintiffs complain about the “Pension Issue” as follows:

8 In October, 2020, the **Defendants inquired of CalPERS as to the propriety of**  
9 **including a premium pay, called “Confidential” received by Serrano while on**  
10 **paid release time to serve as the SAPOA President in its calculation of his**  
11 **pension.** ... When it appeared that there might be a question regarding the inclusion  
12 of the premium in the calculation of Serrano’s pension, the City and SAPOA  
13 reached an agreement acceptable to CalPERS. However, because Serrano  
14 continued to carry out his duty to represent the Association and its members,  
15 activity that is clearly protected under the law, Defendants failed and refused to  
16 take the necessary steps to resolve the issue.<sup>1</sup>

17 Complaint ¶30. (Emphasis added).

18 Plaintiffs similarly reference an “FPPC Complaint” as follows:

19 In November of 2020, Sonia Carvalho, believed to be acting on her own personal  
20 vendetta and without City Council approval **sent a request to the California Fair**  
21 **Political Practices Commission seeking a finding that Serrano, as the SAPOA**  
22 **President, engaged in a conflict of interest by negotiating a side letter**  
23 **agreement related to the pension issue.** As the City Council was scheduled to  
24 approve the resolution of the pension issue, Carvalho made multiple inquires to the  
25 FPPC for an opinion letter finding Serrano was engaging in an unethical conflict of  
26 interest. It is believed that Carvalho was acting on her own and **with the sole**  
27 **purpose of personally interfering with the SAPOA/Serrano and/or with intent**  
28 **to harm Serrano.**

Complaint ¶31. (Emphasis added).

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<sup>1</sup> Contrary to Plaintiffs’ allegations, pensionability is determined by CalPERS and when CalPERS determined that certain categories of Plaintiff Serrano’s compensation did not qualify for inclusion in his pension calculation, the City attempted to assist Plaintiff Serrano by filing and pursuing an appeal of the determination. On or about February 17, 2022, an administrative law judge issued a proposed decision in the appeal. Ridge Decl., ¶5, Ex. M.

1 Plaintiffs attribute retaliation by Defendants for inquiries concerning pending issues  
2 impacting the pension of Serrano with CalPERS and the FPPC. These alleged acts of retaliation  
3 consist of nothing more than protected communications which may never form the basis of  
4 Plaintiffs' alleged claims. *Baetz*, 2017 U.S. Dist. LEXIS 222252 at \*11-12. The question of Plaintiff  
5 Serrano's pension, moreover, relates to a legal dispute which remains pending with CalPERS. On  
6 February 17, 2022, an administrative law judge from CalPERS issued a proposed decision on appeal  
7 which denied Plaintiff Serrano's request to include in the basis of the amount of his law enforcement  
8 retirement pension the special compensation he receives by serving as SAPOA president. Ridge  
9 Decl., ¶5; Ex. M.

10 Furthermore, the declaration of Defendant Carvahlo establishes that she corresponded with  
11 the FPPC, in the course of her role as City Attorney, in order to ensure that the City of Santa Ana  
12 complied with the Political Reform Act, FPPC and other statutory regulations which prohibits public  
13 officers, while acting in their official capacities, from making contracts in which they are financially  
14 interested. Carvahlo Decl., ¶3. This inquiry was directly related to the pending legal issue regarding  
15 Defendant Serrano's proposed pension, the negotiations of which Serrano sought to participate in.  
16 The FPPC responded to Carvahlo's inquiry. Carvahlo has requested advice from the FPPC on  
17 numerous occasions. *Id.* Therefore, the contention that this request was motivated by a personal  
18 vendetta is false. *Id.*

19 Communications concerning Plaintiff Serrano's efforts to retire with a law enforcement  
20 pension padded by inclusion of the special compensation he receives as president of SAPOA, is  
21 conduct in furtherance of the constitutional right to petition, and engage in free speech, in connection  
22 with an issue of public interest under Code Civ. Proc. 425.16(e)(4). *See e.g.* Kang Decl., ¶14, Ex.  
23 G, February 10, 2022 Orange County Register article, "Tawdry plan to spike union prez's pension"  
24 (advocating for legislative solution to protect taxpayers from Serrano's attempted pension windfall).  
25 Therefore, communications regarding Plaintiff Serrano's pension is not only protected as  
26 communications relative to pending legal proceedings, they are also protected because they relate  
27 to an issue of public interest in Orange County.

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The questioning of Plaintiff Serrano’s approach to his pension correlates with an uptick of Plaintiffs’ complaints as against Defendant Valentin and others who disagreed with Serrano’s position. Ridge Decl., ¶6. Plaintiffs allege that they made a May 13, 2021 complaint against Defendant Valentin for several reasons. Complaint ¶51. At the same time, Plaintiff Serrano sent text messages and emails to City Council members calling for the termination of Defendant Valentin, causing Defendant Ridge to issue the May 18, 2021 Employee Conduct Warning Letter of which Plaintiffs take issue. Complaint ¶54, 56; Ridge Decl., ¶4; Ex. K. Defendant Ridge’s July 19, 2021 correspondence to the City Council, regarding the continued employment of the Chief of Police, was, without question, protected activity concerning an issue of public interest in Orange County. Complaint ¶69-70; Ridge Decl, ¶4; Ex. L. All of these issues also directly relate to Plaintiff Serrano’s pension issue. Id.

**VIII. THE INVESTIGATION OF A COMPLAINT, RELATIVE TO BREACH OF A SETTLEMENT AGREEMENT, WAS PROTECTED ACTIVITY.**

Statements made in anticipation of litigation contemplated in good faith and under serious consideration are protected by the anti-SLAPP statute. *Bailey v. Brewer* (2011) 197 Cal. App. 4th 781, 789-790. Likewise, communications that are preparatory to or in anticipation of commencing official proceedings come within the protection of the anti-SLAP statute. *Siam v. Kizilbash*, (2005) 130 Cal. App. 4th 1563, 1569-1570. Finally, statements upon which a complaint is based during internal investigations constitute protected activity under 425.16(e)(2), even if the subject of the complaint is not formally charged. *Hansen v. Cal. Dept. of Corrections & Rehab*, (2008) 171 Cal. App. 4th 1537, 1544.

Plaintiffs complain about Defendants’ “Investigation of Serrano” regarding the following:

On or about May 27, 2021, **Defendant Valentin ordered an investigation of Serrano based on alleged comments Serrano made in his capacity as the current President of the SAPOA about a former SAPOA President in October, 2020.** The investigation was opened even though legal counsel for the City of Santa Ana indicated, in writing that to the extent Serrano’s statements were made as a POA President, Mr. Serrano was not speaking as a police sergeant of the City or the Santa Ana Police Department, and acknowledged that the City was not able to restrict the conduct of the POA and/or its President which relate to the administration of the POA as such action would be a violation of the **Meyer-Milias-Brown Act.** (See Government Code section 3506.5(d)). Counsel for the City





1 acknowledged, therefore, the City was not able to direct Mr. Serrano to engage or  
2 not engage in conduct that is done in his capacity as President of the POA in relation  
to the administration of the POA.

3 Complaint ¶58. (Emphasis added).

4 Plaintiffs further explain the City had settled claims with the former president of SAPOA  
5 and his wife, subject to a settlement agreement. Complaint ¶59. Plaintiffs aver that: “the former  
6 POA President, in an effort to obtain more money from the City, alleged that Serrano violated the  
7 settlement agreement even though Serrano was not a party to the action or the agreement.” *Id.* On  
8 October 26, 2020, the former SAPOA President filed a written complaint against Serrano.  
9 Complaint ¶59.

10 Defendants' investigation into that claim thus forms the basis of several of Plaintiffs' claims  
11 of retaliation: “It appeared that the City was not going to take action on the frivolous complaint, but  
12 Defendant Valentin and possibly others, **in order to further retaliate against Serrano and the**  
13 **SAPOA, initiated the investigation nine months later...**” Complaint ¶60.

14 Again, the bold language relates to the commencement of an investigation based on an actual  
15 complaint, filed by a former SAPOA president, as against Serrano, where there was a genuine  
16 possibility of litigation as against the City. The City's investigation of this complaint is protected  
17 activity. *Brewer*, 197 Cal. App. 4<sup>th</sup> at 789-790; *Siam*, 130 Cal. App. 4<sup>th</sup> at 1569-1570; *Hansen*, 171  
18 Cal. App. 4<sup>th</sup> 1537, 1544. Indeed, Plaintiff Serrano's service as president of SAPOA cannot  
19 preclude Defendants from investigating prospective lawsuits as against the City, irrespective of  
20 whether Serrano's actions contributed to the complained-of situation. Therefore, because this  
21 investigation constitutes protected activity, it may not support Plaintiffs' retaliation-related claims.

22 **IX. THE MMBA CLAIM, BASED ON PROTECTED ACTIVITY, IS UNTENABLE.**

23 In the First Cause of Action for violation of the MMBA, Plaintiffs cite Government Code  
24 §3502.1 for: “No public employee shall be subject to punitive action or denied promotion, or  
25 threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or  
26 recognized representative of any employee bargaining unit.” Complaint ¶ 98. Plaintiffs also cite  
27 Government Code §3506 for the proposition that “Public agencies and employee organizations shall  
28 not interfere with, intimidate, restrain, coerce or discriminate against public employees because of

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1 their exercise of their rights under section 3502.” Id. at ¶101. Plaintiffs also cite Government Code  
2 §3506.5 for the prohibition that a public agency may not “impose or threaten to impose reprisals on  
3 employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere  
4 with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter[.]”  
5 Id. at ¶102. Therefore, according to Plaintiffs, “Defendants, and each of them, in undertaking the  
6 acts and/or omissions listed above, violated the above provisions of the Myers-Milias-Brown Act  
7 (MMBA), including, but not limited to interfering with, intimidating, restraining, coercing and/or  
8 discriminating against the SAPOA, Gerry Serrano and/or other public employees who are members  
9 of the SAPOA because of their exercise of their rights under the Act.” Id. at ¶104.

10 The five instances of alleged MMBA violations identified above consist of protected activity  
11 which may not support Plaintiffs’ claims of retaliation. Plaintiff also fails to identify instances of  
12 conduct which reasonably fall within the prohibitions defined by the MMBA statutory language.  
13 Furthermore, Plaintiffs failed to present these claims, and exhaust their administrative remedies,  
14 before the Public Employment Relations Board (“PERB”) which has exclusive jurisdiction as to the  
15 validity of the charges. *Ass’n of Los Angeles Deputy Sheriffs* (2019) 256 Cal. Rptr. 3d 139, 153  
16 (affirming dismissal of MMBA claim without prejudice, via demurrer, until union exhausted its  
17 administrative remedies before statutory equivalent to PERB); *Boling v. Public Employment*  
18 *Relations Board*, 422 P.3d 552, 60 (Cal. 2018). Challenges to PERB’s decisions are presented by  
19 petition for writ of extraordinary relief to the district court of appeal, not the superior court. *See*  
20 *Government Code § 3509.5(b) and (c)*. Accordingly, this claim must be stricken.

21 **X. THE HYPOTHETICAL FREEDOM OF SPEECH CLAIM FAILS.**

22 In the third cause of action for “Violation of Freedom of Speech”, Plaintiffs contend that:  
23 “Defendants, and each of them, have engaged in acts and/or omissions to violate Plaintiffs right to  
24 freedom to speak, write and publish their sentiments, and/or their ability to petition government for  
25 redress of grievances, assemble and to consult for the common good.” Complaint ¶146. Plaintiff  
26 further argue that: “Each and every act listed above, individually or jointly, constitutes a violation  
27 of Plaintiffs’ speech rights and/or the California Constitution and therefore this court should render  
28

1 all available and proper relief to remedy the violations and to prevent future violations of a like or  
2 similar nature.” Complaint ¶148. The five instances of alleged retaliation identified above consist  
3 of protected activity for which Plaintiffs may not base their alleged constitutional claim. Therefore,  
4 this cause of action should be stricken.

5 Furthermore, Plaintiffs contend that: “[w]hile the U.S. Constitution grants citizens  
6 protections for free speech under the First Amendment to the U.S. Constitution, which are enforced  
7 via 42 USC §1983, the California Constitution also protects this right.” Complaint ¶145. “Plaintiffs  
8 specifically seek a “make whole” remedy.” Id. at ¶148.

9 The Court should reject Plaintiffs’ request to create a “make whole” remedy for two reasons.  
10 First, the California Supreme Court has rejected a claim for money damages for violation of free  
11 speech portions of the California Constitution. *Degrassi v. Cook*, 58 P.3d 360 (Cal. 2002). Second,  
12 the circumstances of this case raise an overwhelming inference that Plaintiffs are punishing their  
13 perceived adversaries’ participation in protected activity. Consequently, Plaintiffs’ third cause of  
14 action must be stricken.

15 **XI. PLAINTIFFS ABUSE THE POLITICAL AFFILIATIONS STATUTE.**

16 In the Fourth Cause of Action, for Violation of Labor Code §1101-1102.5, which are part of  
17 the “Political Affiliations” statutes, Plaintiffs cite statutory language prohibiting employers from  
18 interfering with employees’ rights to engage in politics or from retaliating against an employee for  
19 disclosing information to the government or law enforcement. Complaint ¶157-159. Plaintiffs aver  
20 that: “Defendants, and each of them, have engaged in retaliation against both Plaintiffs for disclosing  
21 information, or because the employer believed that the employee disclosed or may disclose  
22 information, to a government or law enforcement agency where the employee had reasonable cause  
23 to believe that information disclosed a violation of state or federal statute, or a violation of or  
24 noncompliance with a local, state, or federal rule or regulation.” Id. at ¶162. Therefore, in this claim,  
25 Plaintiffs accuse Defendants of retaliating against them for reporting claims and the continued  
26 pursuit of politics.

27 The five circumstances identified above, wherein Plaintiffs impute retaliatory motive to  
28 Defendants, constitute protected activity which may not support this claim. Plaintiffs otherwise fail

1 to set forth sufficient facts to establish any violations of the Political Affiliations statutes. The  
2 remaining incidents alleged in the Complaint are too attenuated to satisfy the statutory criteria.  
3 Consequently, the Political Affiliations claim fails.

4 Last, SAPOA is not an employee under the Political Affiliations statutes. Labor Code  
5 §1106(“employee” includes, but is not limited to, any individual employed by the state or any  
6 subdivision thereof, any county, city, city...”). Thus, as to SAPOA, this claim is irreparably  
7 defective.

8 **XII. ALL CLAIMS AGAINST THE PUBLIC OFFICIALS MUST BE STRICKEN.**

9 Plaintiffs name the public officials individually in the first to fifth causes of action. As  
10 Plaintiffs incorporated paragraphs 1 to 95 of the Complaint into each cause of action, these claims  
11 are based on protected activity relative to pending proceedings, investigations and issues of public  
12 interest. As against the public officials, these claims are legally untenable because statutory  
13 immunity protects the individual defendants from suit. *See* Gov Code § 820.4, 821.6.

14 In *Randle v. City and County of San Francisco*, (1986) 186 Cal. App. 3d 449, 455, the court  
15 explained that, under Government Code §821.6, “A public employee is not liable for injury caused  
16 by his instituting or prosecuting any judicial or administrative proceeding within the scope of his  
17 employment, even if he acts maliciously and without probable cause.” Furthermore, “[t]his section  
18 applies to police officers as well as public prosecutors since both are public employees within the  
19 meaning of the Government Code.” *Id.* at 455. This analysis applies to all claims predicated on  
20 California law. *Id.* at 460-61. Consequently, the individual defendants are privileged as against  
21 liability for their participation in protected activity.

22 All of the claims, as stated against the individual defendants, are legally untenable. The first  
23 cause of action fails because the MMBA does not provide a cause of action as against public  
24 officials. *See San Diego Police Officers’ Ass’n v. Aguirre*, 2006 U.S. Dist. LEXIS 111872, at \*45-  
25 47 (S.D. Cal. 2006). The second cause of action under POBRA is similarly unsupportable because  
26 “An individual shall not be liable for any act for which a public safety department is liable.”  
27 Government Code §3309.5(e). As to the third cause of action, for “Violation of Constitutional Right  
28 to Freedom of Speech”, that claim should be recognized as against the public officials given the

1 immunity provided by Government Code §821.6. The fourth cause of action under the Political  
2 Affiliations statutes is foreclosed as against the public officials by the statutory language. Labor  
3 Code §1104 (“[i]n all prosecutions under this chapter, the employer is responsible for the acts of his  
4 managers, officers, agents, and employees.”); *Vierria v. Cal. Highway Patrol*, 644 F. Supp. 2d 1219,  
5 1244 (E.D. Cal. 2009)(holding public officials are not liable for alleged violations of the Political  
6 Affiliations statutes). Last, California legislature has not created a cause of action against public  
7 officials under the Peace Officer statutes.

8 In sum, Plaintiffs’ claims as against the individual defendants are based upon protected  
9 activity. The public officials are statutorily immune from liability based on their communications  
10 relative to investigations and issues of public interest presented before governmental bodies.  
11 Moreover, California law does not recognize these claims as against public officials. Given the clear  
12 inapplicability of any of Plaintiffs’ causes of action to public officials, Plaintiffs’ inclusion of the  
13 individual Defendants in their suit is unexplainable other than a deliberate attempt to retaliate against  
14 them for engaging in protected activity. Therefore, all allegations against the individual defendants  
15 must be stricken.

16 **XIII. CONCLUSION**

17 For the foregoing reasons, Defendants respectfully request that the Court grant their Special  
18 Motion to Strike, to Stay Discovery, and for an award of Attorneys’ Fees pursuant to Civ. Proc.  
19 Code §425.16(c).

20 DATED: February 22, 2022

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

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24 By: 

JEFFREY S. RANEN

SOOJIN KANG

Attorneys for Defendants City of Santa Ana, non-  
jural entity, Santa Ana Police Department, Kristine  
Ridge, Sonia Carvalho and Jason Motsick

1 **PROOF OF SERVICE**

2 *Santa Ana Police Officers Association, et al. v City of Santa Ana, et al.*  
3 Orange County Superior Court Case No.: 30-2021-01230129-CU-OE-CJC  
4 (LBBS File No.: 51601-02)

5 STATE OF CALIFORNIA )  
6 ) ss.  
7 COUNTY OF LOS ANGELES )

8 At the time of service, I was over 18 years of age and not a party to the action. My  
9 business address is 633 West 5<sup>th</sup> Street, Suite 4000, Los Angeles, California, 90071.

10 On February 22, 2022, I served the following document(s):

11 **NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PURSUANT TO  
12 C.C.P. § 425.16, TO STAY DISCOVERY, AND FOR ATTORNEYS’ FEES, BY  
13 DEFENDANTS CITY OF SANTA ANA, KRISTINE RIDGE, SONIA CARVALHO,  
14 AND JASON MOTSICK; MEMORANDUM OF POINTS AND AUTHORITIES**

15 I served true and correct COPIES of the above-referenced document(s) on the following  
16 person(s) at the following address(es) (including fax numbers and e-mail addresses, if applicable):

17 SEE ATTACHED SERVICE LIST

18 The documents were served by the following means:

19  (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based upon a court order or an  
20 agreement of the parties to accept service by e-mail or electronic transmission, I caused the  
21 documents to be sent from e-mail address [kirk.gile-creque@lewisbrisbois.com](mailto:kirk.gile-creque@lewisbrisbois.com). to the  
22 persons at the e-mail addresses listed above. I did not receive, within a reasonable time  
23 after the transmission, any electronic message or other indication that the transmission was  
24 unsuccessful.

25 I declare under penalty of perjury under the laws of the State of California that the  
26 foregoing is true and correct.

27 Executed on February 22, 2022, at Los Angeles, California.

28 *Kirk D. Gile-Creque*  
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KIRK D. GILE-CREQUE

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**SERVICE LIST**

*Santa Ana Police Officers Association, et al. v City of Santa Ana, et al.*  
Orange County Superior Court Case No.: 30-2021-01230129-CU-OE-CJC  
(LBBS File No.: 51601-02)

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