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BOARD OF HARBOR COMMISSIONERS and
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ENDORSED FILED
SAN MATEO COUNTY

JUL 13 2015

Clerk of the Superior Court
By TYLER MAXWELL
DEPUTY CLERK

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN MATEO**
12

13 THREE CAPTAINS SEA PRODUCTS, INC.,
14 a California Corporation,

15 Petitioner,

16 v.

17 SAN MATEO COUNTY HARBOR
DISTRICT BOARD OF HARBOR
18 COMMISSIONERS and SAN MATEO
COUNTY HARBOR DISTRICT,

19 Respondents.
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CASE NO. CIV 534067

**MEMORANDUM IN SUPPORT OF
RESPONDENTS' SPECIAL MOTION TO
STRIKE PETITIONER'S VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT**

CODE CIV. PROC., § 425.16

Judge: Hon. George A. Miram
Date: August 6, 2015

Time: 2:00 p.m.
Dept.: 28, Courtroom 2F

Action Filed: June 2, 2015
Trial Date: TBD

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. INTRODUCTION | 1 |
| II. FACTUAL BACKGROUND | 2 |
| III. PROCEDURAL BACKGROUND | 5 |
| IV. ARGUMENT | 5 |
| A. The Anti-SLAPP Statute Protects Governmental Entities and Officials from Lawsuits which Arise from the Constitutional Right of Petition and Free Speech. | 6 |
| B. Three Captains' Second Cause of Action Arises from Commissioner Brennan's Statements to the California Coastal Commission, Which Are Activities Protected by Section 425.16. | 8 |
| C. Three Captains Will Not Prevail on Its Second Cause of Action. | 10 |
| 1. The California Coastal Commission Required Three Captains to Obtain a Permit for Its New Hoist. | 11 |
| 2. Three Captains' Allegations Regarding Commissioner Brennan's Contact with the Coastal Commission Are Irrelevant and Baseless. | 11 |
| D. The District Is Entitled to Recover Its Attorneys' Fees and Costs. | 14 |
| V. CONCLUSION | 15 |

TABLE OF AUTHORITIES

Page

STATE CASES

| | |
|---|----|
| <i>American Humane Assn. v. L.A. Times Communications</i> (2001) 92 Cal.App.4th 1095 | 14 |
| <i>Bradbury v. Superior Court</i> (1996) 49 Cal.App.4th 1108, 1114-1115..... | 7 |
| <i>Hunter v. CBS Broadcasting, Inc.</i> (2013) 221 Cal.App.4th 1510 | 7 |
| <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, | 14 |
| <i>Matson v. Dvorak</i> (1995) 40 Cal.App.4th 538 | 10 |
| <i>Overstock.com v. Gradient Analytics, Inc.</i> (2007) 151 Cal.App.4th 688 | 10 |
| <i>Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP</i> (2005) 133 Cal.App.4th 658 | 7 |
| <i>Schaffer v. City & County of S.F.</i> (2008) 168 Cal.App.4th 992 | 6 |
| <i>Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd.</i> 225 Cal.App.4th 1345 (2014)..... | 5 |
| <i>Tuszynska v. Cunningham</i> (2011) 199 Cal.App.4th 257 | 7 |
| <i>Vergos v. McNeal</i> (2007) 146 Cal.App.4th 1387 | 10 |

STATUTES

| | |
|---|----|
| California Code of Regulations section 18702 | 12 |
| California Code of Regulations sections 18702.3 | 12 |
| Code of Civil Procedure section 425.16 | 1 |
| Pub. Resources Code, § 30300 et seq | 3 |

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I. INTRODUCTION

The San Mateo County Harbor District moves to strike Three Captains Sea Products, Inc.'s second cause of action, as alleged in its Verified Petition and Complaint. That cause of action arises from and attacks constitutionally protected political advocacy. Its challenge is without basis and should be stricken under the Anti-SLAPP law, Code of Civil Procedure section 425.16.

Three Captains has filed a meritless action attacking a Resolution by the District's Board of Harbor Commissioners, directing Three Captains to remove a hoist it built on Johnson Pier in Pillar Point Harbor. Three Captains received temporary permission for the hoist under an agreement with the District, but that permission ended under the agreement's express terms. Moreover, Three Captains failed to obtain a permit required by the California Coastal Commission, which violated the terms of Three Captains' lease.

Despite these facts, Three Captains claims it should have been allowed to keep its hoist. As relevant to this motion, it asks the Court to ignore the permit requirements imposed by the California Coastal Commission because it claims one of the Harbor District's Commissioners, Sabrina Brennan, appeared before the Coastal Commission and advocated against Three Captains' permit application. In this way, Three Captains seeks to penalize the Harbor District for the protected and lawful political speech of one of its Commissioners. Section 425.16 explicitly protects statements made in connection with an issue under consideration by a governmental entity, such as those allegedly made by Commissioner Brennan.

In light of the protection afforded by Section 425.16, Three Captains can only maintain its claim if it can demonstrate, by admissible evidence, that it has a reasonable probability of prevailing on the merits. This it cannot do. Contrary to Three Captain's arguments, there is no question that the Coastal Commission required Three Captains to obtain a Coastal Development Permit, and Three Captains never challenged the Coastal Commission's jurisdiction. And the evidence demonstrates that (1) Commissioner Brennan violated no law when she contacted the Coastal Commission and (2) that Three Captains' failure to obtain the Coastal Commission permit was caused by its own failure to submit a complete application and by the concerns raised by other fishing businesses, rather than as a result of anything Commission Brennan said or did.

1 Accordingly, as Three Captains' second cause of action is without merit and impermissibly
2 targets the Constitutional right to petition, the Court should grant the District's motion to strike,
3 dismiss the second cause of action with prejudice, and award the District its attorneys' fees.

4 II. FACTUAL BACKGROUND

5 The San Mateo County Harbor District was established in 1933 by a Resolution of the
6 Board of Supervisors of the County of San Mateo. (Verified Petition for Administrative Mandate
7 and Complaint for Declaratory and Injunctive Relief ("Petition") ¶3.) The District operates two
8 facilities in San Mateo County, California: one at Pillar Point Harbor, which is located in
9 Princeton, north of Half Moon Bay; and the other at Oyster Point Marina/Park, located in South
10 San Francisco. (*Ibid.*) Pillar Point Harbor, which includes Johnson Pier, is a working fishing
11 harbor with 369 berths. (*Ibid.*)

12 The District is governed by a five-member Board of Harbor Commissioners, each of whom
13 is elected by San Mateo County voters for staggered, four-year terms. (Petition ¶5.) Sabrina
14 Brennan is a member of the Board, elected by county voters in 2012. (Declaration of Sabrina
15 Brennan in support of special motion to strike ("Brennan Decl."), ¶1.) In addition to being a
16 Harbor Commissioner, she is a professional print broker and the owner and founder of Digital
17 Fusion Media, Inc., which specializes in environmental graphics, architectural signage, and event
18 and exhibition graphics. (*Id.* ¶2.) She does not have any financial interest in any fishing or
19 seafood businesses at Pillar Point Harbor. (*Ibid.*)

20 Petitioner Three Captains is a California Corporation. (Petition ¶2.) Larry Fortado is
21 Three Captains' principal shareholder, officer, and director. (*Ibid.*) Three Captains leases space
22 on Johnson Pier at Pillar Point Harbor for its commercial fish-buying and fish-unloading business.
23 (Brennan Decl., ¶¶5-6.) Under the terms of that Lease, Three Captains must provide all equipment
24 for the operation of its business, including a winch and hoist for the purposes of loading or
25 unloading fish. (Brennan Decl., ¶7, Ex. A.) The Lease provides that Three Captains "may provide
26 a second winch and hoist at a location approved in advance by the Harbor Master." (*Ibid.*)
27 Additionally, the Lease requires Three Captains to "obtain and pay for all licenses and permits
28 required for [its] construction and occupancy and use of the Premises," and that "it shall be the

1 sole responsibility of [Three Captains] to obtain and comply with the requirements of said permits,
2 licenses, and/or Approvals." (*Ibid.*)

3 Pursuant to the Lease, on March 28, 2014, District Harbor Master Scott Grindy and Mr.
4 Fortado entered into an agreement authorizing Three Captains to install a new hoist on Johnson
5 Pier. (Brennan Decl., ¶8, Ex. B.) The agreement provided that the installation would be
6 "probationary or tentative . . . for *up to 1 year*," ending April 1, 2015, and required Three Captains
7 to provide copies of all required permits and certifications. (*Id.* ¶¶8-9, emphasis added.)

8 Starting in April 2014, Commissioner Brennan was contacted by representatives of fishing
9 companies operating on Johnson Pier regarding construction work being performed on and around
10 Johnson Pier. (Brennan Decl., ¶10.) She was advised that electrical work, including the digging
11 of a long trench in the Harbor's parking lot and laying of related pipe, was being performed, and
12 there was concern that necessary permits had not been acquired. (*Id.* ¶10.)

13 After she looked into the matter, Commissioner Brennan learned that the work was being
14 performed by the District to accommodate Three Captains' new hoist, and she investigated
15 whether all necessary permits had been acquired. (Brennan Decl., ¶¶12-14.) In May, she learned
16 that Lisa Damrosch, of Bettencourt Fisheries, had contacted the San Mateo County Planning and
17 Building Department, as well as the California Coastal Commission,¹ regarding her concern that
18 proper permits had not been obtained for the work on Johnson Pier. (*Id.* ¶15.) In response to Ms.
19 Damrosch's concerns, Steve Monowitz, Community Development Director with the Planning and
20 Building Department, researched whether or not the Coastal Commission had permit jurisdiction
21 over Johnson Pier. (*Id.* ¶16.) He determined that construction work was taking place entirely on
22 fill and over water, without the required Coastal Development Permit ("CDP"), and advised the
23 Coastal Commission of this fact in June 2014. (*Ibid.*)

24 On or about September 4, 2014, roughly five months after the location of its new hoist was
25 temporarily approved by Mr. Grindy, Three Captains applied to the Coastal Commission for a

26
27 ¹ The California Coastal Commission is the state agency charged with coastal zone planning and
28 management. (Pub. Resources Code, § 30300 et seq.)

1 CDP. (Brennan Decl., ¶17.) On October 29, 2014, Coastal Commission staff published notice
2 that the Coastal Commission's Executive Director proposed waiving Three Captains' CDP
3 requirement for its new hoist. (Brennan Decl., ¶18, Ex. C.) The notice advised that the waiver
4 issue would be considered by the Coastal Commission on November 13, 2014, and that concerned
5 citizens should contact Coastal Commission staff member Renee Ananda with questions or
6 objections. (*Ibid.*)

7 After the proposed waiver was announced, Mike McHenry, from Pillar Point Seafood, and
8 Ms. Damrosch contacted Commissioner Brennan and advised her that Three Captains' new hoist
9 interfered with the operations of fishing businesses on Johnson Pier. (Brennan Decl., ¶19.) They
10 stated that they were concerned about the economic impact of the hoist, an issue the Coastal
11 Commission would consider when evaluating a CDP application. (*Ibid.*) After learning of these
12 concerns, Commissioner Brennan scheduled a meeting to discuss the matter with Coastal
13 Commission staff, including Ms. Ananda. (*Id.* ¶20.)

14 Upon arriving for the meeting on November 6, Commissioner Brennan learned that
15 members of the Half Moon Bay Seafood Marketing Association had met with Ms. Ananda earlier
16 in the day and that, following the meeting, Coastal Commission staff had decided to withdraw the
17 waiver for Three Captains' permit. (Brennan Decl., ¶¶21-22.) On November 7, 2014, the Coastal
18 Commission provided notice that the Executive Director had withdrawn his recommendation for a
19 permit waiver. (*Id.* ¶24, Ex. D.)

20 On December 12, 2014, the Coastal Commission wrote Three Captains to advise that the
21 waiver had been pulled "because new information was presented by the fishing community as to
22 the proposed hoist's potential effect on operations and economic conditions for the fishing
23 community in the area of Johnson Pier." (Brennan Decl., ¶25, Ex. E.) The Coastal Commission
24 went on to advise Three Captains that its CDP application was incomplete. (*Ibid.*)

25 On February 11, 2015, the Coastal Commission again wrote Three Captains to advise it
26 that, although it was processing Three Captains' permit application, the application remained
27 incomplete. (Brennan Decl., ¶26, Ex. F.) Additionally, the Coastal Commission responded to
28 Three Captains' questions regarding its permit jurisdiction, noting that it "has permit jurisdiction as

1 provided by Coastal Act Section 30601" and that the area of Johnson Pier "is under the retained
2 jurisdiction of the Coastal Commission." (*Ibid.*)

3 With Three Captain's CDP application still unresolved and its temporary permission for its
4 new hoist coming to a close, the District's Board held a public meeting on March 4, 2015,
5 considered evidence, and voted to direct the District's General Manager to send a letter notifying
6 Three Captains that the District was discontinuing the one-year probationary agreement, effective
7 April 2, due in part to its failure to obtain a CDP. (Brennan Decl., ¶27.)

8 On May 6, the Board adopted Resolution 11-15, adopting and affirming the factual
9 findings made during the Board's March 4, 2015 public meeting. (Brennan Decl., ¶27; *see also*
10 Petition, Ex. A.) The Resolution invited Three Captains to apply to the Board to install a new
11 hoist at a different location. (Petition, Ex. A., at p. 2.)

12 III. PROCEDURAL BACKGROUND

13 On June 2, 2015, Three Captains filed a Verified Petition for Administrative Mandate and
14 Complaint for Declaratory and Injunctive Relief in San Mateo County Superior Court. The
15 District was served with Three Captains' Petition on June 9, 2015. On June 11, 2015, Three
16 Captains filed a motion for stay of Board Resolution 11-15. The motion was denied on June 23
17 for insufficient notice under Code of Civil Procedure section 1005. After the denial, the District
18 agreed to stipulate to a stay of the Resolution. An order granting the stipulated stay was signed by
19 the Honorable John Grandsaert on June 30, 2015.

20 IV. ARGUMENT

21 Courts engage in a two-step process in determining whether a cause of action is subject to
22 a special motion to strike under Section 425.16. (*Schwarzburd v. Kensington Police Protection &*
23 *Community Services Dist. Bd.* (2014) 225 Cal.App.4th 1345, 1350.) First, the burden is on the
24 defendant to demonstrate that the challenged cause of action arises from protected activity. (*Ibid.*)
25 If the defendant makes this showing, the burden shifts to the plaintiff to establish, by way of
26 admissible evidence, that it has a reasonable probability of prevailing on the merits. (*Ibid.*) If the
27 plaintiff fails to meet its shifted burden, the motion to strike is granted, the cause of action is
28 stricken, and the prevailing defendant is entitled to recover her attorneys' fees and costs. (*Schaffer*

1 v. *City & County of S.F.* (2008) 168 Cal.App.4th 992, 998, citing Code Civ. Proc., § 425.16, subd.
2 (c).) If the motion is successful, the court may not grant leave to amend. (*See Schaffer*, 168
3 Cal.App.4th at p. 1005.)

4 Here, Three Captains' second cause of action arises from Commissioner Brennan's
5 protected activity, Three Captains has no reasonable probability of prevailing, and the Court
6 should grant the District's motion and award the District fees and costs.

7 **A. The Anti-SLAPP Statute Protects Governmental Entities and Officials from Lawsuits**
8 **which Arise from the Constitutional Right of Petition and Free Speech.**

9 Code of Civil Procedure section 425.16 ("Section 425.16"), subdivision (b)(1) provides:

10 A cause of action against a person arising from any act of that person in furtherance
11 of the person's right of petition or free speech under the United States Constitution
12 or the California Constitution in connection with a public issue shall be subject to a
13 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. To
this end, this section shall be construed broadly.

14 The purpose of this special motion to strike, or anti-SLAPP motion², is to "curtail the chilling
15 effect meritless lawsuits may have on the exercise of free speech and petition rights." (*Schaffer*,
16 *supra*, 168 Cal.App.4th at p. 998.) To that end, Section 425.16 provides for the dismissal of a
17 lawsuit, or cause of action, which arises from any statement or writing made: (1) before any
18 proceeding authorized by law; (2) in connection with an issue under consideration by a proceeding
19 authorized by law; or, (3) in a public forum in connection with an issue of public interest. (Code
20 Civ. Proc., § 425.16, subd. (e).) A cause of action "arises from" protected activity, for the
21 purposes of the statute, when the activity forms the basis of the cause of action. (*Schwarzbud*,
22 *supra*, 225 Cal.App.4th at p. 1350.) A "mixed" cause of action—one which alleges both protected
23 and unprotected activity—is also subject to a special motion to strike under this Section, unless the
24 protected conduct is "merely incidental" to the unprotected conduct. (*See Peregrine Funding, Inc.*

25 _____
26 ² Section 425.16 is also referred to as the "anti-SLAPP" statute, as it provides a method for
27 dispensing with so-called SLAPPs, or Strategic Lawsuits Against Public Participation. (*See, e.g.,*
28 *Schwarzbud, supra*, 225 Cal.App.4th at p. 1348.)

1 *v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 672.)

2 Section 425.16, therefore, explicitly protects statements made "in connection with an issue
3 under consideration or review by a legislative, executive, or judicial body, or any other official
4 proceeding authorized by law." (Code Civ. Proc., § 425.16, subd. (e)(2); see also *Schaffer*, 168
5 Cal.App.4th at p. 999.) This protection is not limited to statements made by private citizens; it
6 also applies to those of government entities and officials. (*Bradbury v. Superior Court* (1996) 49
7 Cal.App.4th 1108, 1114-1115.)

8 In *Schaffer*, for instance, the court held that Section 425.16 protects written statements
9 made by police department employees in the course and scope of their duties. (*Schaffer, supra*,
10 168 Cal.App.4th at pp. 1003-1004.) There, a woman was charged with assault following an
11 altercation with an employee of a prominent local family. (*Id.* at pp. 995-996.) The charges were
12 filed by an assistant district attorney with ties to the family, and were based on an affidavit sworn
13 by a sergeant in the city's police department. (*Ibid.*) The case was subsequently dismissed for
14 lack of evidence. (*Ibid.*) After the charges were dropped, the woman sued the city and the
15 sergeant, alleging that she had been prosecuted in an effort to intimidate her from bringing a claim
16 against the family. (*Ibid.*) Holding that the complaint arose from the sergeant's affidavit, which
17 constituted a statement in connection with an issue under review by the district attorney's office,
18 the trial court granted the defendants' motion to strike and dismissed the complaint as to both the
19 sergeant and the city. (*Id.* at p. 997.) On appeal, the court affirmed, finding that, given Section
20 425.16's unambiguous language and broad interpretation, the sergeant's activity was clearly
21 protected. (*Id.* at p. 1004.)

22 Section 425.16 also protects speech without regard for the underlying motive of the
23 speaker. (*Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257; see also *Hunter v. CBS*
24 *Broadcasting, Inc.* (2013) 221 Cal.App.4th 1510 [holding that an allegedly discriminatory motive
25 was irrelevant to anti-SLAPP analysis because a broadcaster's staffing decision, which formed the
26 basis for the plaintiff's claim constituted protected activity].) In *Tuszynska*, an attorney who
27 provided legal services to members of a sheriff's association by way of the association's legal
28 defense fund, brought a civil rights suit against the association, fund, and its administrator alleging

1 she received fewer referrals than her male counterparts because of her gender. (*Tuszynska, supra*,
2 at pp. 263-264.) The trial court denied defendants' motion to strike, reasoning that the plaintiff's
3 claims were based on defendants' alleged failure to refer cases to her, which was not protected
4 conduct. (*Id.* at pp. 264-265.) On appeal, the court disagreed, finding that the claims did arise
5 from protected conduct—communications related to attorney selection and funding—and that the
6 trial court had incorrectly drawn a distinction between motive and conduct, when only the latter
7 was relevant. (*Id.* at pp. 270-272.) "Just as the plaintiff's intent in suing a defendant is irrelevant"
8 to whether the claims arose from defendant's protected conduct, "the defendant's purported motive
9 in undertaking speech and petitioning activities is irrelevant in determining whether the plaintiff's
10 cause of action is based on those activities." (*Id.* at p. 271.)

11 **B. Three Captains' Second Cause of Action Arises from Commissioner Brennan's**
12 **Statements to the California Coastal Commission, Which Are Activities Protected by**
13 **Section 425.16.**

14 Three Captains' second cause of action arises from protected activity and should be
15 stricken. By that claim, Three Captains seeks to set aside the Board's decision regarding its hoist
16 on the grounds that Three Captains either: (1) was not required to obtain a permit; or, (2) that
17 Commissioner Brennan's contact with the Coastal Commission prevented it from obtaining the
18 permit. (Petition ¶58.) There is no real dispute that Three Captains was required to get a permit
19 from the Coastal Commission. It was required by the Lease's plain terms. (Brennan Decl., ¶7, Ex.
20 A [Three Captains must "obtain and pay for all licenses and permits required for [its] construction
21 and occupancy and use of the Premises."].) The Coastal Commission exercised jurisdiction over
22 the hoist and advised Three Captains that a CDP was required for the new hoist. (*Id.*, ¶¶16-17, 25-
23 26.) And, the Coastal Commission explicitly decided *not* to waive the permit requirement. (*Id.*,
24 ¶24, Ex. D).³ (*See also* Section IV.C, below.) Therefore, Three Captains' second cause of action
25 does not significant arise from a dispute over the need for a CDP.

26 ³ To the extent that Three Captains disputes the Coastal Commission's jurisdiction, it may do so in
27 a writ against *that* Commission, which Three Captains has not done. The Coastal Commission's
28 jurisdiction cannot be challenged by a writ against the Harbor District.

1 Instead, it is fairly clear that the gravamen of Three Captains' cause of action "arises from"
2 Commissioner Brennan's statements to the Coastal Commission regarding Three Captains' permit
3 application. (*See* Petition ¶¶24-29, 52-53.) In that portion of its claim, Three Captains alleges that
4 "the Commission"⁴—through the actions of Brennan—deliberately interfered with Three Captains'
5 efforts," and that, "[b]ut for Brennan's actions, Three Captains would have obtained a [permit]
6 waiver in November 2014." (*Id.* ¶57.) Specifically, Three Captains alleges that Commissioner
7 Brennan contacted the Coastal Commission after learning that it was considering waiving the
8 permit requirement, informed the Coastal Commission about the concerns of the fishing
9 community, attempted to coordinate a meeting between the fishing community and the Coastal
10 Commission, and met with the Coastal Commission herself concerning the permit application.⁵
11 (*Id.* ¶¶24-29, 52-54.)

12 These allegations reflect that, as in *Schaffer*, Commissioner Brennan was communicating
13 with the Coastal Commission with regard to a subject under consideration—namely, Three
14 Captains' application for a CDP. This is conduct that is explicitly protected under Section 425.16,
15 subdivision (e)(2). Additionally, while Three Captains suggests that Commissioner Brennan was
16 engaged in improper conduct on behalf of selected members of the fishing community,⁶ her
17 alleged motive has no bearing on whether or not her statements to the Coastal Commission are

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19 ⁴ Presumably, by "Commission," Three Captains refers to the District's Board of Harbor
Commissioners and not the California Coastal Commission.

20 ⁵ Three Captains variously alleges that Commissioner Brennan contacted the Coastal
21 Commission in her official capacity, on behalf of members of the commercial fishing community,
22 or on her own. (Petition ¶¶26, 29.) For the purposes of Section 425.16, it does not matter what
23 capacity Commissioner Brennan acted in when contacting the Coastal Commission. The anti-
SLAPP statute protects the speech and petition rights of private individuals as well as government
24 officials and, according to its express language, the statute "shall be construed broadly."
(*Bradbury, supra*, 49 Cal.App.4th at pp. 1114-1115; Code Civ. Proc., § 425.16, subd. (a).)

25 ⁶ Three Captains baldly alleges that Commissioner Brennan engaged in "subterfuge" on behalf of
26 Pillar Point Seafood, falsely represented to the Coastal Commission that she was acting on behalf
27 of interests other than Pillar Point Seafood, and used her position as Commissioner to influence
the Coastal Commission to rescind its permit waiver. (Petition ¶¶25, 52, 53.) While these
28 allegations do not affect the fact that her statements to the Coastal Commission are protected
under Section 425.16, they are also speculative and false. (*See* Brennan Decl., ¶¶10-26.)

1 protected. (*See Tuszynska, supra*, 199 Cal.App.4th at pp. 270-272.)

2 Moreover, this is not merely an abstract right for Commissioner Brennan. For some eight
3 years, she has had regular, non-official contact with the Coastal Commission regarding coastal
4 erosion, trails, and development, arising out of her concern for coastal preservation as a resident of
5 Seal Cove. (Brennan Decl., ¶4.) Allowing Three Captains to pursue its claim would have an
6 immediate chilling effect on Commissioner Brennan and her ability to interact with the Coastal
7 Commission on issues of personal concern to her, cutting against the very purpose of the anti-
8 SLAPP statute – to curtail the chilling effect lawsuits may have on the exercise of free speech and
9 petition rights. (*See Schaffer, supra*, 168 Cal.App.4th at p. 998.)

10 The protections of the anti-SLAPP statute are to be construed broadly, and the conduct that
11 underlies Three Captains' second cause of action comes within its express language. (*Schaffer*,
12 168 Cal.App.4th at pp. 1003-1004; *Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1395-1396
13 [statutory hearing procedures qualify as official proceedings authorized by law]; *see also*
14 *Peregrine Funding, supra*, 133 Cal.App.4th at p. 672 [protected conduct not "merely incidental" to
15 a cause of action is proper basis of anti-SLAPP motion].) Accordingly, the District has met its
16 burden of demonstrating the statements are protected, and the burden shifts to Three Captains to
17 demonstrate probability of success on its claims.

18 **C. Three Captains Will Not Prevail on Its Second Cause of Action.**

19 To overcome the defendant's showing on a special motion to strike, a plaintiff "must
20 demonstrate that the [cause of action] is both legally sufficient and supported by a sufficient prima
21 facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is
22 credited." (*Matson v. Dvorak* (1995) 40 Cal.App.4th 538, 548.) In meeting this burden, a plaintiff
23 "cannot rely on allegations in the complaint, but must set forth evidence that would be admissible
24 at trial." (*Overstock.com v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699.)

25 Three Captains' second cause of action nominally attacks the Board's decision to revoke
26 permission for its hoist by claiming that there was insufficient evidence to support the Board's
27 decision. (Petition ¶47.) In reality, however, rather than alleging a lack of evidence, Three
28 Captains claims that: (1) a permit was not required; and (2) even if one was required,

1 Commissioner Brennan improperly prevented the Coastal Commission from timely issuing a
2 permit (or waiver therefor), ultimately contributing to the Board's decision. (*Id.* ¶58.) As
3 demonstrated by its own allegations and the sworn declaration of Commissioner Brennan, Three
4 Captains does not have a reasonable probability of prevailing on either of these grounds.

5 **1. The California Coastal Commission Required Three Captains to Obtain a**
6 **Permit for Its New Hoist.**

7 First, Three Captains alleges that no Coastal Development Permit was required for the new
8 hoist. (Petition ¶58.) But the Coastal Commission asserted jurisdiction over Three Captains' hoist
9 and directed Three Captains to seek a permit. (Brennan Decl., ¶¶16-18; *see also* ¶26, Ex. F.)
10 Three Captains never challenged that assertion of authority by petition for writ of mandate or
11 otherwise. Instead, Three Captains applied for a permit, and its application was received and
12 processed by the Coastal Commission. (Petition ¶50; Brennan Decl., ¶¶16-18.) Further, Three
13 Captains admits that it did not intend to operate the new hoist "until it obtain[ed] a permit."
14 (Petition ¶47.) Although the Coastal Commission considered waiving the permit requirement, it
15 decided against the waiver after members of the commercial fishing community raised concerns
16 about the hoist's economic impact. (Brennan Decl., ¶¶19-24.) Finally, in a February 2015 letter
17 from the Coastal Commission to Mr. Fortado, the Coastal Commission put any question to rest:
18 "In response to your questions regarding permit jurisdiction, the Commission has permit
19 jurisdiction as provided by Coastal Act Section 30601." (*Id.* ¶26, Ex. F.) And, again, Three
20 Captains has never challenged the Coastal Commission's decision not to waive the permit
21 requirement. It is therefore beyond meaningful dispute that a Coastal Commission permit was
22 required for the new hoist location. Three Captains cannot succeed on this argument.

23 **2. Three Captains' Allegations Regarding Commissioner Brennan's Contact with**
24 **the Coastal Commission Are Irrelevant and Baseless.**

25 Second, Three Captains claims that Commissioner Brennan improperly interfered with
26 Three Captains' CDP application. But that allegation provides no basis for Three Captains to
27 ignore its obligation to get a permit. Three Captains does not allege that Commissioner Brennan
28

1 acted illegally, nor has it identified any legal theory upon which the Court could decide to waive
2 Three Captains' obligation to obtain a permit as a result of Commissioner Brennan's conduct.⁷ As
3 a result, even if the allegations about Commissioner Brennan's contacts with the Coastal
4 Commission were true, they do not support issuance of a writ effectively waiving Three Captains'
5 obligation to get a permit from the Coastal Commission.

6 Further, there is no evidence to support Three Captains' allegations, all of which are made
7 on information or belief. (Petition ¶¶24-25, 28-29, 52-53.) Such unsupported hunches cannot
8 form the basis of a prima facie showing of probable success. (*Overstock.com, supra*, 151
9 Cal.App.4th at p. 699.)

10 To the contrary, the evidence demonstrates that the Coastal Commission's decisions were
11 based on concerns communicated by fishing businesses operating on Johnson Pier and on Three
12 Captains' repeated failure to submit a complete application, not because of anything Commissioner
13 Brennan did or failed to do. (*See* Brennan Decl., ¶¶10-17.) Beginning in April 2014,
14 Commissioner Brennan was contacted by representatives of fishing companies operating on
15 Johnson Pier—including Pillar Point Seafood and Bettencourt Fisheries—regarding electrical
16 work being performed on and around Johnson Pier. (*Id.* ¶¶10-11.) After investigating, she learned
17 that the work was being performed by the District in order to accommodate Three Captains' new
18 hoist, and decided to look into whether or not the requisite permits had been acquired for both the
19 electrical work and the hoist. (*Id.* ¶¶12-14.)

20 During the course of her investigation, she also discovered that Ms. Damrosch had
21 contacted the San Mateo County Planning and Building Department, as well as the Coastal
22

23 ⁷ While Three Captains' Petition does not allege that Commissioner Brennan acted illegally, in a
24 March 28, 2015 letter from Mark Scheer, counsel for Three Captains, to the Board, Mr. Scheer
25 suggests that Commissioner Brennan's contact with the Coastal Commission violates California
26 Code of Regulations sections 18702 and 18702.3, which prohibit a public official from using her
27 position to influence a governmental decision in which she has a disqualifying financial interest.
28 These Sections do not apply. Commissioner Brennan has no such financial interest. (Brennan
Decl., ¶3.) Three Captains appears to concede as much, having chosen not to include any claims
in its Petition based on Section 18702 or 18702.3.

1 Commission, regarding her own concerns that proper permits had not been acquired for the work.
2 (Brennan Decl., ¶15.) In response to Ms. Damrosch's concerns, Steve Monowitz, Community
3 Development Director with the Planning and Building Department, researched whether or not the
4 Coastal Commission had permit jurisdiction over Johnson Pier. (*Id.* ¶16.) He determined that
5 construction work was taking place entirely on fill and over water, without the required CDP, and
6 advised the Coastal Commission of this fact in June 2014. (*Id.* ¶16.) Thus, San Mateo County,
7 not Commissioner Brennan, brought Three Captains' hoist to the attention of the Coastal
8 Commission.

9 Further, when Commissioner Brennan did make contact with the Coastal Commission
10 regarding Three Captains' permit application, it was in response to concerns raised by
11 representatives from Pillar Point Seafood and Bettencourt Fisheries, her constituents. (Brennan
12 Decl., ¶¶18-20.) She first learned that the Coastal Commission was considering waiving the
13 permit requirement on or about October 29, 2014, the date on which the Coastal Commission
14 published notice of the proposed waiver. (*Id.* ¶18.) The notice directed the public to contact
15 Renee Ananda at the Coastal Commission with any questions or objections. (*Id.* ¶18, Ex C.)
16 Commissioner Brennan was contacted by representatives of Pillar Point Seafood and Bettencourt
17 Fisheries, both of whom raised concerns about a possible waiver and advised that Three Captains'
18 hoist was interfering with fishing operations at Johnson Pier. (*Id.* ¶19.) In response to their
19 concerns, as well as her own, Commissioner Brennan contacted Coastal Commission staff
20 members Nancy Cave and Renee Ananda and scheduled time to meet with them on November 6,
21 2014. (*Id.* ¶¶20, 23.)

22 After she arrived at the Coastal Commission on November 6, she learned that
23 representatives of the Half Moon Bay Seafood Marketing Association had met with Ms. Ananda
24 earlier in the day and that, following that meeting, Coastal Commission staff decided to withdraw
25 the waiver. (Brennan Decl., ¶¶21-22.) Accordingly, although she met with Ms. Ananda and Ms.
26 Cave on November 6, their discussion included topics unrelated to Three Captains' permit. (*Id.*
27 ¶22.) Thus, the Coastal Commission decided not to waive Three Captains' need for a permit
28 based on the information provided by representatives of the Half Moon Bay Seafood Marketing

1 Association and concerned businesses, not based on anything Commissioner Brennan did or said.
2 (*Id.* ¶¶21-23.)

3 Finally, Three Captains alleges that Commissioner Brennan's communications with the
4 Coastal Commission resulted in its failure to obtain a permit by the time the Board met in early
5 March 2015. (Petition ¶¶57-58.) In reality, Three Captains did not obtain a permit in large part
6 due to its repeated failure to submit a complete application. At least twice after it applied for a
7 permit—on December 12, 2014 and February 11, 2015—the Coastal Commission contacted Three
8 Captains, informed it that its permit application was incomplete and requested additional
9 information. (See Brennan Decl., ¶¶25, 26.) Had Three Captains timely submitted a complete
10 permit application, it seems reasonably likely that the Coastal Commission could and would have
11 decided whether to grant that permit before Three Captains' permission to construct its hoist at the
12 new location on Johnson Pier terminated on March 4, 2015.⁸

13 As a result of the foregoing, Three Captains cannot make a prima facie showing of facts to
14 sustain a judgment in its favor, and the court should strike its second cause of action.

15 **D. The District Is Entitled to Recover Its Attorneys' Fees and Costs.**

16 The District is entitled to its fees on this motion. (Code Civ. Proc., § 425.16, subd. (c).)
17 Indeed, the Supreme Court of California has construed this fee provision as mandatory. (*Ketchum*
18 *v. Moses* (2001) 24 Cal.4th 1122, 1131 [subdivision (c) provides that "any SLAPP defendant who
19 brings a successful motion to strike is entitled to mandatory attorney fees"].) Because the District
20 will likely incur additional fees in drafting a reply and appearing at hearing, the District will
21 provide their fee documents by separate motion, as permitted. (See *American Humane Assn. v.*
22 *L.A. Times Communications* (2001) 92 Cal.App.4th 1095, 1097.)

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26 ⁸ It is also worth noting that Three Captains remains free to apply for a Coastal Commission
27 permit, and the Harbor District has repeatedly recommended that it do so. (Petition, Ex. A, at p.
28 2.)

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V. CONCLUSION

For the foregoing reasons, the District's special motion to strike under Section 425.16 should be granted, Three Captains' second cause of action dismissed without leave to amend, and the District awarded its fees.

DATED: July 13, 2015

HANSON BRIDGETT LLP

By: 

STEVEN D. MILLER

ADAM W. HOFMANN

BRENDAN A. QUIGLEY

Attorneys for Respondents

SAN MATEO COUNTY HARBOR DISTRICT

BOARD OF HARBOR COMMISSIONERS and

SAN MATEO COUNTY HARBOR DISTRICT

1 PROOF OF SERVICE

2 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I
4 am employed in the County of San Francisco, State of California. My business address
is 425 Market Street, 26th Floor, San Francisco, CA 94105.

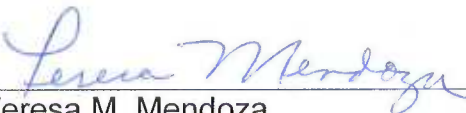
5 On July 13, 2015, I served true copies of the following document(s) described as
6 **MEMORANDUM IN SUPPORT OF RESPONDENT'S SPECIAL MOTION TO STRIKE**
7 **PETITIONER'S VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** on
the interested parties in this action as follows:

8 Todd W. Blischke, Esq.
9 Williams Kastner & Gibbs, PLLC
601 Union Street, Suite 4100
Seattle, WA 98101
Telephone: (206) 628-6600

10 **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or
11 package provided by the overnight service carrier and addressed to the persons at the
addresses listed in the Service List. I placed the envelope or package for collection and
12 overnight delivery at an office or a regularly utilized drop box of the overnight service
carrier or delivered such document(s) to a courier or driver authorized by the overnight
13 service carrier to receive documents.

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

16 Executed on July 13, 2015, at San Francisco, California.

17 
18 Teresa M. Mendoza