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Case Name: *Brian Exline v. Lisa Gillmor*
Case No.: 18-CV-336922

Currently before the Court is the special motion by defendant Lisa Gillmor ("Defendant") to strike the complaint of plaintiff Brian Exline ("Plaintiff"), and for an award of monetary sanctions.

Factual and Procedural Background

This action arises out of alleged violations of the Political Reform Act of 1974 (Gov. Code, § 81000, et seq.; hereafter, "PRA" or "Act"). Plaintiff alleges that Defendant has served as a member of the Santa Clara City Council since 2011, and has served as mayor of the City of Santa Clara since her appointment in 2016. (Complaint, ¶¶ 1-2.) Plaintiff allegedly resides in the jurisdiction of the City of Santa Clara. (*Id*. at ¶ 1.)

From at least 2011 to the present, Defendant "has done business under the name 'Public Property Advisors' " and "represented her position in Public Property Advisors alternately as 'independent contractor,' 'consultant,' 'Vice President,' and 'President.' " (Complaint, ¶¶ 11 & 15.) During this time period, Defendant was allegedly "an officer, partner, employee, and/or owner of 'Public Property Advisors,' and/or … held a 'position of management,' within the meaning of the … Act … ." (*Id*. at ¶ 22.) Additionally, 'Public Property Advisors c/o Lisa Gillmor' sent invoices to clients in amounts exceeding $500." (*Id.* at ¶ 11.) Defendant allegedly "received $500 or more in income per year from Public Property Advisors, from at least 2011 through 2016." (*Id*. at ¶ 23.)

Plaintiff alleges that Defendant "claimed Public Property Advisors is a 'division of another company doing business as Gary Gillmor & Associates, aka Gillmor & Associates," and "represented her position in Gary Gillmor & Associates as 'broker' and 'vice president.' " (Complaint, ¶ 13.) Defendant "incorporated Public Property Advisors, Inc." on November 17, 2017. (*Id*. at ¶ 14.)

Plaintiff alleges that Defendant "was required to disclose her income and position in Public Property Advisors on her" Form 700 filings.[1] (Complaint, ¶ 25.) However, Defendant did not disclose any income from or business position in Public Property Advisors on her Form 700 filings from 2011 through 2016, "and her failure to do so was intentional, or in the alternative, negligent." (*Id.* at ¶¶ 24 & 25.) Defendant "also did not amend any of her Form 700's to disclose such income or business position, although she did file amended Form 700's for 2011, 2012, 2013, 2014, and 2015." (*Id.* at ¶ 24.)

Plaintiff further alleges that "[a]n actual controversy has arisen between the parties with respect to [Defendant's] compliance with her duties under the … Act. Plaintiff contends, and [Defendant] disputes, that [Defendant's] Form 700 disclosures must include her income from, and business position in, Public Property Advisors. [Defendant] contends, and [P]laintiff disputes, that her Form 700 disclosures for 2011 through 2016 were adequate." (Complaint, ¶ 27.) Plaintiff contends that "[u]nless enjoined by the Court, [Defendant] will not amend her Form 700 filings for 2011 through 2016, and will continue to conceal her income and business position in Public Property Advisors." (*Id.* at ¶ 28.)

On or about July 27, 2018, Plaintiff allegedly "filed a written

request with the Santa Clara County District Attorney's Office, in its capacity as civil prosecutor under Government Code sections 91001 and 91007, to commence a civil action against Gillmor pursuant to Government Code section 91004 for violation of the Political Reform Act." (Complaint, ¶ 20.) "On or about September 27, 2018, the Santa Clara County District Attorney's Office gave written notice that it did not intend to file a civil action." (*Ibid.*)

Based on the foregoing allegations, Plaintiff filed a complaint against Defendant, alleging a single cause of action for violations of the PRA.

On December 21, 2018, Defendant filed the instant anti-SLAPP motion.[2] Plaintiff filed an opposition to the motion on March 26, 2019. On April 2, 2019, Defendant filed a reply.

Discussion

Pursuant to Code of Civil Procedure section 425.16, Defendant moves to strike Plaintiff's complaint and for an award of attorney fees.

I. Requests for Judicial Notice

A. Defendant's Request

Defendant asks the Court to take judicial notice of three news articles and a printout from the website of the Fair Political Practices Commission (hereafter, "FPPC").

As an initial matter, the news articles are not proper subjects of judicial notice because they are not relevant to the Court's discussion or disposition of this matter. (See *Silverado*

Modjeska Recreation & Park Dist. v. County of Orange (2011) 197 Cal.App.4th 282, 307, fn. 18 [" 'There is … a precondition to the taking of judicial notice in either its mandatory or permissive form—any matter to be judicially noticed must be relevant to a material issue.' [Citations.]"].) Defendant seeks judicial notice of the news articles to support her contention that the filing of the complaint was politically motivated. (D's Mem. Ps. & As., pp. 5:26-6:4.) But Plaintiff's purported motivation for filing the complaint has no bearing on the material issues before the Court. (See *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 58-59 (*Equilon*) ["Section 425.16 nowhere states that, in order to prevail on an anti-SLAPP motion, a defendant must demonstrate that the plaintiff brought the cause of action complained of with the intent of chilling the defendant's exercise of speech or petition rights. There simply is 'nothing in the statute requiring the court to engage in an inquiry as to the plaintiff's subjective motivations before it may determine [whether] the anti-SLAPP statute is applicable.' [Citation.]"].)

Moreover, the content of the newspaper articles is not a proper subject of judicial notice as the content is not necessarily indisputably true. (See *Walgreen Co. v. City & County of San Francisco* (2010) 185 Cal.App.4th 424, 443 [declining to take judicial notice of the contents of an article from the San Francisco Chronicle].) While the Court may take judicial notice of the mere existence of these articles, the Court cannot discern how this would be relevant to the disposition of the instant special motion to strike, and judicial notice is limited to matters which are relevant to the issue at hand. (See *Aquila, Inc. v. Super. Ct.* (2007) 148 Cal.App.4th 556, 569 (*Aquila*).)

Next, the printout from the FPPC website—which describes types of enforcement actions and represents that "[t]he vast

majority of cases are handled through the administrative enforcement process"—is not a proper subject of judicial notice. Although it might be appropriate to take judicial notice of the existence of a website itself, the same is not true of its factual content especially since Defendant does not establish that the content is not reasonably subject to dispute. (See *Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization* (2008) 160 Cal.App.4th 514, 519 [declining to take judicial notice of materials contained on the website pages of the American Coal Foundation and the U.S. Department of Energy]; see also *Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 737 [declining to take judicial notice of general information on "Nurse Practitioner Practice" posted on the California Board of Registered Nursing website].)

For these reasons, Defendant's request for judicial notice is DENIED.

B. Plaintiff's Request

Plaintiff asks the Court to take judicial notice of the following items pursuant to Evidence Code section 452, subdivision (h): "Forms 700 filed by [D]efendant"; an FPPC advice letter dated May 17, 1994; "[t]he fact that [D]efendant filed the Forms 700 attached as Exhibit A to the Declaration of Defendant Lisa Gillmor in Support of Special Motion to Strike Plaintiff's Complaint … for years 2011 through 2017, and that she made the representations and omissions therein"; "[t]he fact that [D]efendant filed the amended Forms 700 attached as Exhibit B to [her declaration] for years 2011 through 2016, and that she made the representations and omissions therein"; and "[t]he fact that the [FPPC] issued the May 17, 1994 advice letter attached as Exhibit A to the Declaration of Custodian of Records of Fair Political Practices Commission … in response to a question from

the City Attorney for the City of Santa Clara regarding [D]efendant's work for Public Property Advisors." (P's RJN, p. 1:2-21, emphasis omitted.)

Preliminarily, with respect to the Form 700 disclosures filed with the FPPC, the Court may properly take judicial notice of the existence of the Form 700 filings, but it cannot take judicial notice of the truthfulness of the documents or their proper interpretation. (See *StorMedia Inc. v. Super. Ct.* (1999) 20 Cal.4th 449, 457, fn. 9 [taking judicial notice under Evidence Code section 452, subdivision (h) of the existence a Form S-3 Registration Statement filed with the Securities and Exchange Commission, but declining to take judicial notice of the truthfulness and proper interpretation of the document]; see also *Aquila, supra,* 148 Cal.App.4th at p. 569 [stating that when a court takes judicial notice of public records, it does not also judicially notice the truth of all matters stated therein or the truth of factual matters which might be deduced therefrom].) Consequently, the Court cannot take judicial notice of the purported facts regarding the Form 700 filings as set forth in Plaintiff's request for judicial notice.

Similarly, as the FPPC advice letter is an official act and public record, the Court may properly take judicial notice of its existence, but the Court cannot take judicial notice of the truthfulness of the letter or its proper interpretation. (See *Aquila, supra,* 148 Cal.App.4th at p. 569 [stating that when a court takes judicial notice of official acts and public records, it does not also judicially notice the truth of all matters stated therein or the truth of factual matters which might be deduced therefrom].) Consequently, the Court cannot take judicial notice of the purported fact regarding the advice letter as set forth in Plaintiff's request for judicial notice.

Accordingly, Plaintiff's request for judicial notice is GRANTED IN PART and DENIED IN PART. The request is GRANTED as to the existence of the Form 700 filings and the advice letter. The request is DENIED in all other respects.

II. Evidentiary Objections

A. Plaintiff's Objections

In connection with his opposition papers, Plaintiff submits various objections to evidence presented by Defendant in support of her motion.

As an initial matter, Objection Nos. 1-8, 21-23, and 25 are sustained on the ground of relevance because, as explained above, evidence relating to Plaintiff's purported motivation for filing the complaint has no bearing on any material issue before the Court. (See *Equilon, supra,* 29 Cal.4th at pp. 58-59.)

Objection Nos. 9, 20, 24, 26, & 28-30 are overruled because the objectionable materials are merely headers in Defendant's declaration, not actual statements by Defendant.

Next, Objection Nos. 10 & 12 are sustained on the ground of lack of personal knowledge because Defendant does not set forth facts showing that she had personal knowledge of (i.e., perceived with her own senses) Plaintiff's counsel's request to the Santa Clara County District Attorney to conduct an investigation into the adequacy of Plaintiff's Form 700 disclosures. (See *People v. Montoya* (2007) 149 Cal.App.4th 1139, 1150 [to testify, a witness must have personal knowledge of the subject of the testimony, based on the capacity to perceive and recollect].)

Objection Nos. 11 & 31 are overruled because the grounds for objection proffered by Plaintiff lack merit.

Furthermore, Objection No. 13 is sustained in part and overruled in part. Objection No. 13 is sustained on the grounds of hearsay and the secondary evidence rule as to Defendant's statement that "[i]t is a matter of public record that PPA was a 'dba' (doing business as) or division of GGA from 1979 to 2017." (See Evid. Code, §§ 1200, 1521, & 1523.) Objection No. 13 is otherwise overruled.

Additionally, Objection Nos. 14-15 are sustained on the ground of improper opinion and the secondary evidence rule. (See Evid. Code, §§ 800-802, 1521, & 1523.)

Objection Nos. 16-19 is sustained on the ground of hearsay. (See Evid. Code, § 1200.)

Finally, Objection No. 27 is overruled as to Defendant's statement that she never intentionally violated any of the reporting requirements of the Act. Objection No. 27 should be otherwise sustained on the ground of improper opinion. (See Evid. Code, §§ 800-802.)

B. Defendant's Objections

In connection with her reply papers, Defendant submits various objections to evidence presented by Plaintiff in opposition to the motion.

Objection No. 1 to the declaration of Christine Peek ("Peek") is sustained as to the documents attached as Exhibit C to Peek's declaration on the ground of hearsay. (See Evid. Code, §

1200.) Objection No. 1 should be otherwise overruled.

Next, Objection No. 1 to the declaration of Kerry Hammon is sustained on the ground of hearsay. (See Evid. Code, § 1200.)

Objection No. 1 to the declaration of Kathleen Rief ("Rief"), Objection No. 1 to the declaration of Alvaro Meza ("Meza"), Objection Nos. 1-2 to the declaration of Brian Lau ("Lau") are overruled because the grounds for objection proffered by Defendant lack merit.

Finally, Defendant's objections to statements contained in Plaintiff's request for judicial notice are overruled because those statements do not constitute evidence.

III. General Anti-SLAPP Principles

Code of Civil Procedure section 425.16 provides in part, "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 Constitution or the 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).)

" 'The purpose of the anti-SLAPP statute is to encourage participation in matters of public significance and prevent meritless litigation designed to chill the exercise of First Amendment rights. [Citation.] The Legislature has declared that the statute must be "construed broadly" to that end.' " (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 268; Code Civ. Proc., § 425.16,

subd. (a).) “The point of the anti-SLAPP statute is that you have a right *not* to be dragged through the courts because you exercised your constitutional rights.” (*People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1317.)

A. Threshold Issue Regarding Any Applicable Exemption

A threshold consideration in evaluating an anti-SLAPP motion is whether the plaintiff’s lawsuit is exempt from the anti-SLAPP statute. (*Strathmann, supra,* 210 Cal.App.4th at p. 498; *San Diegans for Open Government v. San Diego State University Research Foundation* (2017) 13 Cal.App.5th 76, 93 (*San Diegans*); *Takhar v. People ex rel. Feather River Air Quality Management Dist.* (2018) 27 Cal.App.5th 15, 24 (*Takhar*).)

As is relevant here, Code of Civil Procedure section 425.17, subdivision (b) provides the anti-SLAPP statute does not apply to “any action brought solely in the public interest” if: (1) “[t]he plaintiff does not seek any relief greater than or different from the relief sought for the general public”; (2) the action, if successful, would “enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public”; and (3) “[p]rivate enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.”

That provision “thus provides a ‘safe harbor’ for a plaintiff from having to satisfy the anti-SLAPP statute. [Citation.] As an exception to the anti-SLAPP statute, it is to be ‘narrowly interpreted.’ [Citation.]” (*San Diegans, supra,* 13 Cal.App.5th at p. 93.) “ ‘A plaintiff has the burden to establish the applicability of

this exemption. [Citation.]' [Citation.]" (*Takhar, supra*, 27 Cal.App.5th at p. 24; see *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 26 [the burden of proof as to the applicability of an exemption falls on the party seeking the benefit of it].)

Although Code of Civil Procedure section 425.17, subdivision (b) provides that certain public interest lawsuits are exempt from the anti-SLAPP statute, subdivision (d)(2) of that statute provides an exception to that exemption for "[a]ny action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation." (Code Civ. Proc., § 425.17, subd. (d)(2).) Thus, regardless of whether the plaintiff's action is a public interest lawsuit under Code of Civil Procedure section 425.17, subdivision (b), if section 425.17, subdivision (d) also applies, the defendant may bring an anti-SLAPP motion. (*San Diegans, supra,* 13 Cal.App.5th at p. 93.)

B. Protected Activity

If the court determines the action is not exempt from the anti-SLAPP statute, it must then address whether the complaint should be stricken under section 425.16. (*San Diegans, supra,* 13 Cal.App.5th at p. 93; *Takhar, supra,* 27 Cal.App.5th at p. 27.) "Resolving that issue involves two steps. 'First, the defendant must establish that the challenged claim arises from activity protected by section 425.16.' [Citation.] The defendant meets this burden by showing the act underlying the plaintiff's cause of action fits one of the categories of protected speech enumerated

in section 425.16, subdivision (e).” (*San Diegans, supra,* 13 Cal.App.5th at p. 93; *Collier v. Harris* (2015) 240 Cal.App.4th 41, 50-51.)

Code of Civil Procedure section 425.16, subdivision (e) provides that 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 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, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

“The ‘principal thrust or gravamen’ of [a plaintiff’s] claim determines whether section 425.16 applies. [Citations.] The ‘ “meaning of ‘gravamen’ is clear; ‘gravamen’ means the ‘material part of a grievance, charge, etc.’ [Citation.]” [Citation.] [¶] In the context of the anti-SLAPP statute, the “gravamen is defined by the *acts on which liability is based* ....” [Citation.] The “focus is on the principal thrust or gravamen of the causes of action, i.e., the *allegedly wrongful and injury-producing conduct* that provides the foundation for the claims. [Citations.]” [Citation.]’ [Citation.]” (*Olive Properties v. Coolwaters Enterprises, Inc.* (2015) 241 Cal.App.4th 1169, 1175.) Thus, a defendant need only make a prima facie showing that complaint and the claims asserted therein “arise[] from” its exercise of free speech or petition rights

as defined in Code of Civil Procedure section 425.16, subdivision (e). (*Governor Gray Davis Committee v. American Taxpayer Alliance* (2002) 102 Cal.App.4th 449, 458-459 (*Governor*).)

In making its determination, the court "shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability ... is based." (Code Civ. Proc., § 425.16, subd. (b)(2).) "Courts must be careful to distinguish allegations of conduct on which liability is based from allegations of motives for such conduct. The court reviews the parties' pleadings, declarations, and other supporting documents to determine what conduct is actually being challenged, not to determine whether the conduct is actionable. [Citation.]" (*San Diegans, supra,* 13 Cal.App.5th at p. 94.)

C. Prima Facie Case Established by Admissible Evidence

" 'If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.' [Citation.]" (*San Diegans, supra,* 13 Cal.App.5th at p. 94.) " ' "To satisfy this prong, … 'the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " ' [Citation.]" (*Freeman v. Schack* (2007) 154 Cal.App.4th 719, 726–27; *Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 934.) "The second prong … is considered under a standard similar to that employed in determining nonsuit, directed verdict or summary judgment motions. … The plaintiff may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence. [Citation.] In reviewing the plaintiff's

evidence, the court does not weigh it; rather, it simply determines whether the plaintiff has made a prima facie showing of facts necessary to establish its claim at trial. [Citation.]" (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1017 (*Paiva*); *San Diegans, supra,* 13 Cal.App.5th at pp. 94-95.)

It is important to note the anti-SLAPP statute does not immunize or insulate a defendant from any liability for claims arising from protected activity; rather, it "provides a procedure for weeding out, at an early stage, such claims that are meritless. [Citations.]" (*San Diegans, supra,* 13 Cal.App.5th at p. 95.)

IV. Substantive Merits of Motion

As a threshold matter, Plaintiff asserts that his complaint is exempt from the anti-SLAPP statute as a public interest lawsuit under Code of Civil Procedure section 425.17, subdivision (b). Conversely, Defendant contends that the complaint is not exempt and, in any event, the action falls within the exception to the exemption for political works set forth in Code of Civil Procedure section 425.17, subdivision (d)(2). (D's Mem. Ps. & As., p. 7:24-25.)

If the exception to the public interest exemption applies, the Court need not determine whether Plaintiff's action is a public interest lawsuit under Code of Civil Procedure section 425.17, subdivision (b) because, even if it were, Defendant may still invoke the anti-SLAPP law. Consequently, the Court addresses the applicability of the exception first.

No court has addressed whether exception for political works set forth in Code of Civil Procedure section 425.17, subdivision (d)(2) applies to actions against individuals who file Form 700 disclosures. The issue presented is therefore one of first

impression, and poses a question of law, namely, the proper interpretation of a statute. (*R & P Capital Resources, Inc. v. California State Lottery* (1995) 31 Cal.App.4th 1033, 1036.)

A court's primary task in construing a statute is to determine the Legislature's intent. (*Major v. Silna* (2005) 134 Cal.App.4th 1485, 1493 (*Major*).) Where possible, the court follows the Legislature's intent, as exhibited by the plain meaning of the actual words of the law. (*Ibid.*) "California courts have 'scrupulously honored this principle' in interpreting the anti-SLAPP law. [Citation.]" (*Id.* at p. 1494.)

Civil Procedure section 425.17, subdivision (d)(2) encompasses "[a]ny action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation." The issue here is whether Defendant's Form 700 filings constitute political works.

The word "political" is typically understood to mean: (1) of, relating to, or involving the activity or profession of engaging in political affairs; and/or (2) pertaining to the conduct of government. (Black's Law Dict. (10th ed. 2014) ["politics (16c) 1. The science of the organization and administration of the state. 2. The activity or profession of engaging in political affairs." & "political *adj.* (16c) Of, relating to, or involving politics; pertaining to the conduct of government."], emphasis omitted.) Furthermore, "[t]he word 'work,' as ordinarily understood, means 'something produced or accomplished by effort, exertion, or exercise of skill,' or 'something produced by the exercise of creative talent or expenditure of creative effort.' [Citation.]" (*Major, supra,* 134

Cal.App.4th at p. 1494.)

Here, Defendant's Form 700 filings relate to the activity or profession of engaging in political affairs and pertains to the conduct of government. The Form 700 "is a standard form California public officials and employees must file to disclose their financial holdings. [Citations.]" (*Gananian, supra,* 199 Cal.App.4th at p. 1537, fn. 5.) "[O]ne of the central purposes of the disclosure requirements is to insure that public officials 'perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.' [Citation.]" (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 868 (*Bach*), citing Gov. Code, § 81001, subd. (b); see Gov. Code, § 81002, subd. (c) [stating that the PRA was enacted because "[a]ssets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided"].) Thus, Defendant's Form 700 filings can reasonably be described as political in nature. Moreover, Defendant's Form 700 filings constitute works as they were indisputably produced through Defendant's effort as she was required to, and did, fill out the forms.

Additionally, because the Legislature has accompanied the words "political" and "work" with illustrative examples, the Court's inquiry into their scope is also guided by the doctrine of *ejusdem generis.*[3] (*Major, supra,* 134 Cal.App.4th at p. 1494.) As previously articulated, subdivision (d)(2) encompasses "any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation." "The phrase 'including, but not limited to' is a term of

enlargement, and signals the Legislature's intent that subdivision (d)(2) applies to items not specifically listed in the provision. [Citation.]" (*Id.* at p. 1495.)

Viewed in the context of the anti-SLAPP law, Defendant's Form 700 filings are not meaningfully different in kind from the illustrative examples identified in subdivision (d)(2). There is no material distinction between Defendant's Form 700 filings—which contain information regarding Defendant's financial holdings which may be materially affected by her official actions—and an article of similar length and content in a newspaper circulated generally in Santa Clara.

For these reasons, the political works exception applies and Plaintiff's action falls outside the "public interest" exemption to the anti-SLAPP law.

Because the action is not exempt from the anti-SLAPP statute, the Court next addresses whether the challenged claim arises from activity protected by Code of Civil Procedure section 425.16.

As explained below, Plaintiff's claim arises from Defendant's exercise of free speech rights as defined in Code of Civil Procedure section 425.16, subdivision (e)(3) and (4). Those provisions encompass "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" and "any other conduct in furtherance of the exercise of the … constitutional right of free speech in connection with a public issue or an issue of public interest."

First, Plaintiff's claim involves written statements and/or

writings—Defendant's Form 700 filings. Specifically, Plaintiff's claim is based on the sufficiency, or adequacy, of the statements and disclosures made by Defendant in her Form 700 filings. (See Complaint, ¶¶ 24, 25, &27 ["A]n actual controversy has arisen between the parties with respect to [Defendant's] compliance with her duties under the … Act. Plaintiff contends, and [Defendant] disputes, that [Defendant's] Form 700 disclosures must include her income from, and business position in, Public Property Advisors. [Defendant] contends, and [P]laintiff disputes, that her Form 700 disclosures for 2011 through 2016 were adequate."]; see also *Kronemyer v. Internet Movie Database Inc.* (2007) 150 Cal.App.4th 941, 947 (*Kronemyer*) [appellant's contention that his lawsuit based on inaction—a failure to speak—was without merit because the action was based on the content of a website, which allegedly failed to list appellant in movie credits].) The injury producing conduct is that Defendant allegedly failed to adequately disclose information regarding Public Property Advisors on her Form 700 filings. Thus, the " 'activity ... that gives rise to [Defendant's] asserted liability' " (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062) is essentially communicative conduct.

Second, Defendant's Form 700 filings are public records accessible on the FPPC's website, a public forum. (See Gillmor Dec., Exs. A & B; see also *Gananian, supra,* 199 Cal.App.4th at p. 1537, fn. 5, citing Gov. Code, §§ 87202, 87302, & *California Family Bioethics Council, LLC v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1364–1365 [the Form 700 is a public record filed with the FPPC]; Gov. Code, § 81008 [every report and statement filed pursuant to this title is a public record open for public inspection and reproduction]; Asimow et al., Cal. Prac. Guide: Administrative Law (The Rutter Group 2017) ¶ 5:422 ["The economic interest disclosure forms of state and local

officials (Form 700) may be reviewed for evidence of disqualifying economic or financial interests. These are public records and may be obtained from the agency where the official or employee works. (See FPPC's website (*www.fppc.ca.gov*)"]; Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2018) ¶ 9:13 [Form 700 filings "can be reviewed on the Fair Political Practices Commission website (*www.fppc.ca.gov*)"]; *Kronemyer, supra,* 150 Cal.App.4th at p. 950 [websites accessible to the public are public forums].)

Third, Defendant's Form 700 filings were made in connection with a public issue or an issue of public interest—the assets and income of Defendant, a public official, which may be materially affected by her official actions. The PRA itself demonstrates that Defendant's financial interests are a public issue or an issue of public interest. (See Gov. Code, §§ 81001 ["The people find and declare as follows: (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth; (b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them … ."] & 81002, subd. (c) [stating that the PRA was enacted because "[a]ssets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided"]; see also *Bach, supra,* 207 Cal.App.3d at p. 868 ["[O]ne of the central purposes of the disclosure requirements is to insure that public officials 'perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.' [Citation.]"].)

Consequently, Plaintiff's lawsuit arises out of protected activity.

In opposition, Plaintiff argues that Defendant's Form 700 filings cannot constitute protected activity because the filings were false and, therefore, illegal. (P's Oppn., p. 7:5-28, citing *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696 [holding that because wife's report to police regarding abuse by her husband was admittedly false and therefore illegal, it did not constitute protected activity under the SLAPP statute].)

The California Supreme Court has recognized that Code of Civil Procedure "section 425.16 was expressly intended to protect *valid* speech and petitioning activity." (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 423 (*Montebello*), original italics, citing *Flatley v. Mauro* (2006) 39 Cal.4th 299, 317 (*Flatley*).) The statute " 'cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and, for that reason, not protected by constitutional guarantees of free speech and petition.' " (*Montebello*, *supra*, 1 Cal.5th at p. 423, quoting *Flatley*, *supra*, 39 Cal.4th at p. 317.) And so, in *Flatley*, the California Supreme Court recognized a narrow exception to the general rule that the legality and validity of purportedly protected conduct need not be evaluated at the first step of the anti-SLAPP analysis. (*Montebello*, *supra*, 1 Cal.5th at p. 423.) It concluded "that where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to

strike the plaintiff's action" and a court need not reach the second step of the analysis. (*Flatley*, *supra*, 39 Cal.4th at p. 320.)

The California Supreme Court more recently emphasized that it "made [ ] clear in *Flatley* that conduct must be illegal *as a matter of law* to defeat a defendant's showing of protected activity." (*Montebello*, *supra*, 1 Cal.5th at p. 424, original italics.) To establish illegality as a matter of law, the defendant must affirmatively concede the conduct at issue was illegal or the evidence must conclusively demonstrate the conduct was illegal. (*Ibid.*) Absent such circumstances, an "assertion of illegality is premature" at the first step of the analysis. (*Ibid.*)

Here, Defendant neither has conceded nor does the evidence conclusively establish the illegality of the statements made in Defendant's Form 700 filings. Thus, Plaintiff fails to establish illegality as a matter of law and Defendant meets its burden with respect to the first prong. (See *Governor, supra,* 102 Cal.App.4th at p. 459.)

Because Defendant makes the required showing, the burden shifts to Plaintiff to demonstrate the merit of his claim by establishing a probability of success on the merits.

In his complaint, Plaintiff alleges a single cause of action for violations of the PRA. Specifically, Plaintiff alleges that Defendant violated Government Code sections 87207 and 87209 by failing to report her position with and income from Public Property Advisors, and Defendant is consequently liable under Government Code section 91004 for an amount not more than the amount or value of the income or position not properly reported. (See Complaint, ¶¶ 21-29 & Prayer for Relief, ¶¶ 1-3.) In addition to monetary damages, Plaintiff seeks declaratory and injunctive

relief.

The Act, in addition to providing for civil enforcement by the FPPC, the city attorney, or the district attorney (Gov. Code, § 91001), specifically authorizes "[a]ny person residing in the jurisdiction" (Gov. Code, § 91003, subd. (a)) to sue to enjoin violations or to compel compliance with the provisions of the Act. Specifically, Government Code section 91004 provides that "[a]ny person who intentionally or negligently violates any of the reporting requirements of this act shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported."

With respect to specific reporting requirements, a filer must report income from a particular source if the gross income received from the source is $500 or more and the source is located in, doing business in, planning to do business in, or has done business during the previous two years in the jurisdiction of the filer's agency. (Gov. Code, § 82030, subd. (a), & 87207.)

Additionally, a filer must disclose any business positions held by that person. (Gov. Code, § 87209.) A "business position" means "any business entity in which the filer is a director, officer, partner, trustee, employee, or holds any position of management, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed." (*Ibid.*)

Here, Plaintiff fails to make the prima facie showing of facts

necessary to establish an entitlement to the sought-after relief under the Act.

First and foremost, Plaintiff does not present any evidence demonstrating that he resides within the subject jurisdiction. (See *Paiva, supra,* 168 Cal.App.4th at p. 1017 ["The plaintiff may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence. [Citation.]"].) Consequently, Plaintiff fails to establish that he can bring a civil action for Defendant's alleged violations of the PRA. (See Gov. Code, §§ 91003 & 91004.)

Second, Plaintiff does not present any admissible evidence showing that Defendant received a gross income from Public Property Advisors in the amount of $500 or more, such that Defendant was required to disclose any income that she received from Public Property Advisors. At best, Defendant's evidence shows that Public Property Advisors sent invoices to its clients in amounts exceeding $500 in 2014, 2015, and 2016; some of those invoices were paid; and Plaintiff was retained by Public Property Advisors as an independent contractor and received a fixed salary unrelated to fluctuations of revenue to Public Property Advisors on or around May 17, 1994. (See Meza Dec., Ex. A; see also Rief Dec., Ex. A; Lau Dec., Ex. A.) Plaintiff does not present any evidence establishing that Public Property Advisors was Defendant's sole proprietorship such that Defendant's income from Public Property Advisors constituted 100 percent of the gross income received by Public Property Advisors from its clients.[4] Furthermore, Plaintiff does not present evidence showing that Defendant received any kind of salary from Public Property Advisors from 2011 through 2016. Additionally, Plaintiff does not present any evidence identifying the amount of the fixed salary that Defendant purportedly received from Public Property

Advisors. Thus, Plaintiff has not made a prima facie case that Defendant violated Government Code section 87207.

Third, Defendant presents evidence that Public Property Advisors was merely a division of Gary Gillmor & Associates and was not an entity separate and distinct from Gary Gillmor & Associates during the relevant time period. (See Gillmor Dec., ¶¶ 15-16 ["Prior to November 17, 2017, PPA was a division of 'Gary Gillmor & Associates' ('GGA'), and had been so dating back to 1979. … From 1979 to November 20 1 7, PPA and GGA shared the same address and the same tax identification number. They were not separate legal entities."]; see also *1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 585 ["When assessing the plaintiff's showing, the court must also consider evidence that the defendant presents. [Citation.] The court does not, however, weigh that evidence against the plaintiff's, in terms of either credibility or persuasiveness. Rather, the defendant's evidence is considered with a view toward whether it defeats the plaintiff's showing as a matter of law, such as by establishing a defense or the absence of a necessary element. [Citations.]"].)

Plaintiff contends that Public Property Advisors cannot have been the same entity as Gary Gillmor & Associates because Gary Gillmor & Associates is a fictitious business name of a sole proprietorship, and Public Property Advisors and Gary Gillmor & Associates were not properly registered as fictitious business names of the sole proprietorship.[5] However, Plaintiff does not present any reasoned argument or legal authority demonstrating that a sole proprietor's failure to properly register certain fictitious business names means that entities other than the sole proprietorship are conducting business under those unregistered fictitious business names. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*) ["When [a party] fails to raise a

point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; see also *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 (*Schaeffer*) ["[A] point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion."].) Similarly, Plaintiff does not proffer reasoned argument or legal authority indicating that Defendant was required to separately list her position with and income from Public Property Advisors when she already reported that information with respect to Gary Gillmor & Associates. (See *Badie, supra,* 67 Cal.App.4th at pp. 784-785 ["When [a party] fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; see also *Schaeffer, supra,* 215 Cal.App.3d at p. 619, fn. 2 ["[A] point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion."].)

Fourth, even if Defendant did not include information regarding Public Property Advisors in her Form 700 filings, Plaintiff does not present any reasoned argument or admissible evidence showing that Defendant's failure to do so was intentional or negligent.

Because Plaintiff does not meet his burden with respect to the second prong, Defendant's anti-SLAPP motion is GRANTED.

V. Defendant's Request for Attorney Fees

Defendant requests an award of attorney's fees and costs in the amount of $11,120.

"[A] prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (Code Civ. Proc., § 425.16, subd. (c)(1).) A trial court "assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney … involved in the presentation of the case.'" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321, quoting *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131–1132.) "The court tabulates the attorney fee touchstone, or lodestar, by multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work." (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1321.)

Defendant prevailed on her anti-SLAPP motion and is, therefore, entitled to recover her attorney fees. Defendant submits a declaration from her counsel, in which counsel sets forth his qualifications. Counsel then declares that his hourly rate is $395; Defendant incurred a filing fee of $60; he spent 20 hours preparing and drafting the motion; he anticipates spending an additional 6 hours to review the opposition and prepare a reply; and he anticipates spending an additional 2 hours to attend the hearing on this motion.

As Defendant does not present any evidence that she has actually incurred fees in connection with her counsel's review of the opposition, preparation of the reply, and attendance at the hearing, those fees are not recoverable. In consideration of the foregoing, the Court finds Defendant may recover from Plaintiff $7,000 in attorney fees and the $60 filing fee for a total of $7,960.

Accordingly, Defendant's request for attorney fees is GRANTED in the amount of $7,960. Within 20 days of the date of

the filing of the Order, Plaintiff shall pay Defendant the amount of $7,960.

[1] "Form 700, titled 'Statement of Economic Interests' is a standard form California public officials and employees must file to disclose their financial holdings. [Citations.]" (*Gananian v. Wagstaffe* (2011) 199 Cal.App.4th 1532, 1537, fn. 5 (*Gananian*).)

[2] " 'SLAPP' is an acronym for '[s]trategic lawsuit against public participation.' [Citation.]" (*Serova v. Sony Music Entertainment* (2018) 26 Cal.App.5th 759, 764, fn. 1; *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491, fn. 1 (*Strathmann*).)

[3] " 'Meaning literally, "of the same kind," the doctrine of *ejusdem generis* is of ancient vintage. [Citation.]' [Citation.] As our Supreme Court explained in *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 141 …, ' "[*e*] *jusdem generis* applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is 'restricted to those things that are similar to those which are enumerated specifically.' " [Citation.] The canon presumes that if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage. [Citation.]' " (*Major, supra,* 134 Cal.App.4th at p. 1494.)

[4] Plaintiff mentions that some of the invoices state "Public Property Advisors c/o Lisa Gillmor"; however, "c/o" simply means "in care of" and such a statement, in and of itself, is insufficient to establish that Public Property Advisors was Defendant's sole proprietorship. (See e.g., *Philbrick v. Huff* (1976) 60 Cal.App.3d 633, 637; *Fitch v. Bekins Van & Storage Co.* (1937) 22 Cal.App.2d 101, 103-104; e
In re Lakemeyer's Estate (1901) 135 Cal. 28, 29.)

[5] Notably, there is no evidence in the record that Gary Gillmor & Associates is a fictitious business name of a sole proprietorship. In support of this contention, Plaintiff relies on a printout from the Department of Real Estate's website that was purportedly attached to Defendant's declaration as Exhibit C. But there is no Exhibit C attached to the Court's copy of Defendant's declaration.