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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RICHARD HELTEBRAKE, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B254132 (Los Angeles County Super. Ct. No. BC507269

APPEAL from orders of the Superior Court of the County of Los Angeles, Elizabeth A. White, Judge. Reversed.

Thomas Law Firm, Allen L. Thomas, Sivi G. Pederson, Gordon C. Stuart for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Ronald S. Whitaker, Assistant City Attorney, Adena M. Hopenstand, Deputy City Attorney, Gabriel S. Dermer, Deputy City Attorney, for Defendant and Respondent, City of Los Angeles.

Gregory P. Priamos, County Counsel, Anita C. Willis, Assistant County Counsel, L. Alexandra Fong, Deputy County Counsel, for Defendant and Respondent, County of Riverside.

INTRODUCTION

Plaintiff and appellant Richard Heltebrake asserts that he is entitled to a reward offered by respondents government agencies in connection with the encirclement and death of Christopher Dorner (Dorner), who allegedly killed several people and was the object of an intensive manhunt. Plaintiff appeals from the trial court's orders granting the special motions to strike pursuant to the anti-SLAPP[1] statute, Code of Civil Procedure section 425.16[2] of defendants and respondents the County of Riverside and the City of Los Angeles (anti-SLAPP motions). Plaintiff contends that the trial court erred in granting the anti-SLAPP motions. We reverse the orders, holding that defendants did not establish that the claims based on a reward offer involve protected activity so as to be covered under the anti-SLAPP statue. We will address in a separate opinion plaintiff's appeal of a judgment entered in favor of the City of Riverside following the trial court's sustaining of its demurrer without leave to amend.[3]

FACTUAL AND PROCEDURAL BACKGROUND

A. The Pleadings and Proceedings

Plaintiff filed a complaint against defendants and others that ultimately was the subject of an anti-SLAPP motion by defendant the County of Riverside. Plaintiff alleged five causes of action against defendants: (1) breach of contract, (2) violation of his federal due process rights, (3) violation of his California due process rights, (4) declaratory relief, and (5) injunctive relief.

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[1] "SLAPP is an acronym for strategic lawsuit against public participation. [Citation.]" (*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 957, fn. 3.)

[2] All statutory citations are to the Code of Civil Procedure unless otherwise noted.

[3] We also deal with the attorney fees award to the County of Riverside in a separate opinion in case number B256287.

Plaintiff alleged that on February 3, 2013, Dorner killed several people and became the subject of widespread search in Southern California; during a February 10, 2013, press conference, Los Angeles City Mayor Antonio Villaraigosa offered a $1 million reward for Dorner's capture; the "City of Los Angeles, [and the] County of Riverside . . . each offered a reward for the apprehension and capture of Dorner;" and on February 10, 2013, he learned of the $1 million reward offered by the City of Los Angeles for the capture of Dorner.

Plaintiff alleged detailed facts concerning the events leading up to Dorner's apprehension, including that on February 12, 2013, Dorner took from plaintiff, plaintiff's truck and continued fleeing from law enforcement. At 12:40 p.m., shortly after Dorner took plaintiff's vehicle, plaintiff used his cellular telephone to contact San Bernardino County Deputy Sheriff Paul Franklin to report the incident and the location of Dorner, and plaintiff provided the deputy with a description of plaintiff's truck. While speaking to Deputy Franklin, plaintiff heard gunshots and reported it to the deputy. Plaintiff alleged that "Deputy Franklin responded to plaintiff's report by reporting the information to other law enforcement personnel," found plaintiff's truck, and located Dorner in a cabin. Law enforcement surrounded the cabin and Dorner died during attempts to apprehend him. According to plaintiff, his telephone call to Deputy Franklin was a substantial factor in causing what amounted to the apprehension of Dorner.

Plaintiff alleged that he accepted defendants' reward offers, but defendants have failed and refused to pay the reward monies to plaintiff. Plaintiff also alleged that defendants "attempted to modify the vested contract and/or create a novation by unilaterally establishing administrative procedures to determine payment of the reward without consideration and requiring plaintiff to agree to the procedure or forfeit his right to the reward."

In the cause of action for violation of his federal due process rights, plaintiff alleged that on or about April 5, 2013, the City of Los Angeles issued "Procedures for the Dorner Investigation Reward" (Procedures), the alleged purpose of which was to create a process for the distribution of the reward monies. The County of Riverside adopted those

Procedures. The Procedures included the establishment of a tribunal, composed of three retired judges, to decide how the reward money would be determined, and provided that plaintiff would forfeit any claim he had to the reward monies unless he waived his right to a jury trial and any right he had to appeal the decision by the tribunal. Plaintiff alleged there were other deficiencies in the Procedures. He alleged that he had a "valid and existing contractual, property right" to the reward monies, and defendants "mandate[d] that plaintiff agree" to the Procedures, "depriv[ing] plaintiff of his [federal] due process rights . . . " and "violat[ing] plaintiff's right to his contractual property right without just compensation [and] impair[ing] his vested contract right . . . ." In the cause of action for violation of his California due process rights, plaintiff alleged that he had a "valid and existing contractual, property right" to the reward monies, and defendants' mandate that plaintiff agree to the Procedures "deprived plaintiff of his due process rights" secured by the California Constitution.

In his declaratory relief cause of action, plaintiff alleged that there is an actual controversy relating to whom is entitled to the reward money, and that he is entitled to all of it. In his injunctive relief cause of action, plaintiff sought "injunctive relief to prevent defendants . . . from conducting any administrative procedural process, hearing or tribunal to decide who is entitled to the Dorner reward and/or paying any money determined by such process . . . ."

The County of Riverside filed an anti-SLAPP motion to strike the complaint pursuant to section 425.16, and the trial court granted the motion. While the County of Riverside's anti-SLAPP motion was pending, plaintiff filed a motion to conduct limited discovery pending the County of Riverside's motion. The trial court denied plaintiff's discovery motion after the trial court issued its minute order granting the County of Riverside's motion, but before the service of the notice of entry of the order.[4]

[4] Section 425.16, subdivision (g) states, "All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the

After the anti-SLAPP motion by the County of Riverside, plaintiff filed a first amended complaint (FAC) against the City of Los Angeles, and others, which complaint ultimately was the subject of an anti-SLAPP motion by the City of Los Angeles. Plaintiff alleged causes of action for (1) breach of contract, (2) violation of his federal due process rights, (3) violation of the California due process rights, (4) and declaratory relief. The allegations in the FAC are similar to the allegations in the complaint, although additional allegations were made.

Plaintiff alleged in the FAC, inter alia, that Los Angeles City Mayor Villaraigosa stated during the February 10, 2013, press conference that the $1 million reward offer made "was comprised of funds donated from multiple jurisdictions, including the Cit[y] of Los Angeles . . ., and private entities and individuals." On February 12, 2013, the City of Los Angeles "ratified and/or reformed the February 10th offer made by Mayor Villaraigosa when the City of Los Angeles adopted [a] resolution to offer $100,000 for information leading to the identification, apprehension and conviction of Dorner." Plaintiff repeated his allegation from his complaint that on February 10, 2013, he learned of the $1 million reward offered by the City of Los Angeles Mayor Antonio Villaraigosa for the capture of Dorner, and also alleged, without specifying a date and time, that he "was aware that a Dorner reward offer was being made" by the City of Los Angeles. Plaintiff alleged additional detailed facts concerning the events leading up to the apprehension and capture of Dorner.[5]

Plaintiff in a cause of action for breach of trust and fiduciary duty against the City of Los Angeles alleged, "On April 5, 2013, defendant [the] City of Los Angeles created a trust, known as the Dorner Reward Trust Account, for the purpose of distributing the Dorner Investigation Award monies. . . . The reward funds deposited are believed to be

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motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision."

[5] A letter attached to the FAC, made on plaintiff's behalf, stated that "Dorner was surrounded and captured by law enforcement where he ultimately died."

an amount of not less than one million dollars." The City of Los Angeles was trustee of the Dorner Reward Trust Account, and the City of Los Angeles violated its fiduciary duties owed to plaintiff "when it wrongfully distributed the trust funds without consideration of plaintiff's . . . legal right to such trust property."

The City of Los Angeles filed an anti-SLAPP motion to strike the FAC, and the trial court granted it. The trial court had judicially noticed provisions of the City of Los Angeles's Administrative Code and Charter, which provisions specified the contractual powers of that entity.

B. Authorization of Reward Offers and Plaintiff's Acceptance Notifications

The following from the record is a brief timeline of the events authorizing reward offers and plaintiff's notifications to defendants of acceptance of the reward offers:

(a) The City of Los Angeles

On February 12, 2013, the City of Los Angeles "adopted" a motion to offer a $100,000 reward for information leading to the apprehension and conviction of Dorner and that the reward offer shall be in effect for sixth months. On February 19, 2013, plaintiff sent a letter to the City of Los Angeles notifying it that he was accepting the reward offered by Mayor Villaraigosa and making a claim "for the entire reward in the published amount of one million, two hundred thousand dollars."

(b) The County of Riverside

On February 13, 2013, the County of Riverside's Board of Supervisors granted a motion to offer a reward of up to $100,000 for information leading to the apprehension of Dorner. On February 25, 2013, plaintiff sent a letter to the clerk of the County of Riverside's Board of Supervisors notifying him that plaintiff was accepting the reward offer and making a claim for it.

DISCUSSION

A. Motion to Strike Portions of Plaintiff's Appendix on Appeal

The City of Los Angeles filed with us a motion to strike portions of plaintiff's appendix on appeal concerning the interlineated and annotated copy of the City's memorandum of points and authorities in support of the anti-SLAPP motion to strike the FAC; the moving, opposition, reply papers before the trial court; and the trial court's order regarding the anti-SLAPP motion filed by the City of Irvine, which city is not a party to this appeal. Plaintiff does not oppose the motion concerning the memorandum of points and authorities in support of the anti-SLAPP motion to strike plaintiff's FAC filed by the City of Los Angeles. The City of Los Angeles filed an appendix that included a copy of the document that is not interlineated or annotated. We grant the motion concerning the marked up memorandum of points and authorities in support of the motion to strike by the City of Los Angeles.

Plaintiff opposes the motion concerning the moving, opposition, reply papers, and the trial court's order regarding the anti-SLAPP motion filed by the City of Irvine. Plaintiff argues that the City of Irvine's motion is similar to the motions of the County of Riverside and the City of Los Angeles and that the documents relating to the City of Irvine's motion contains information that was not available to plaintiff at the time he opposed defendants' motions. We grant the motion to strike as to these documents as well because they were not before the trial court at the time the trial court ruled on defendants' motions. "It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.]" (*In re Zeth* S. (2003) 31 Cal.4th 396, 405.) Generally, documents that were not before the trial court cannot be included in the record on appeal. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1; *Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 882.)

B. Anti-SLAPP Motions

Plaintiff contends that the trial court erroneously granted the anti-SLAPP motions of the County of Riverside and the City of Los Angeles. The trial court erred in granting those motions because defendants did not establish that plaintiff's claims are subject to an anti-SLAPP motion.

1. Standard of Review

We review de novo the trial court's order denying an anti-SLAPP motion. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326; *Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 79.) "'We consider "the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) However, we neither "weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." [Citation.]' [Citation.]" (*Flatley v. Mauro*, *supra*, 39 Cal.4th at p. 326.)

2. Applicable Law

As our Supreme Court stated, "A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted Code of Civil Procedure section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) "The goal [of section 425.16] is to eliminate meritless or retaliatory litigation at an early stage of the proceedings." (*Seelig v. Infinity Broadcasting Corp*. (2002) 97 Cal.App.4th 798, 806.)

Section 425.16, provides that "[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).) As we stated in *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, at pages 468 through 469, "In ruling on a special motion to strike under section 425.16, the trial court employs a two-prong analysis. Initially, under the first prong, the trial court determines '"whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. . . . If the court finds such a showing has been made, it then determines [under the second prong] whether the plaintiff has demonstrated a probability of prevailing on the claim." [Citation.]' [Citation.]" """"The defendant has the burden on the first issue, the threshold issue; the plaintiff has the burden on the second issue. [Citation.]' [Citation.]" [Citations.]'" (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 34-35.) "'Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.' [Citation.]" (*Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 456.) The court in *Overstock.com, Inc. v. Gradient Analytics, Inc*. (2007) 151 Cal.App.4th 688, at pages 699 through 700, explained, "Precisely because the statute (1) permits early intervention in lawsuits alleging unmeritorious causes of action that implicate free speech concerns, and (2) limits opportunity to conduct discovery, the plaintiff's burden of establishing a probability of prevailing is not high . . . . Only a cause of action that lacks 'even minimal merit' constitutes a SLAPP. [Citation.]"

3. Proceedings

The County of Riverside argued in its anti-SLAPP motion to strike the complaint that plaintiff's causes of action were based on protected speech and that plaintiff could not establish a likelihood of success on the merits. The trial court granted the motion. The trial court determined that plaintiff's causes of action arose out of protected speech

pertaining to Mayor Villaraigosa's televised reward announcement, or the "conduct" of instituting the Procedures to claim the reward and the "communications" made in explaining those Procedures. The trial court also concluded that the evidence did not establish that plaintiff's telephone call to Deputy Franklin led to Dorner's apprehension because while plaintiff was speaking to Deputy Franklin, plaintiff heard gunshots that were fired by Dorner and two Department of Fish and Wildlife (DFW) officers. The trial court decided that because DFW officers were aware of Dorner's location, plaintiff's telephone call to Deputy Franklin would not have assisted law enforcement in capturing Dorner.

As did the County of Riverside, the City of Los Angeles argued in its anti-SLAPP motion to strike the FAC that plaintiff's causes of action were based on protected speech and plaintiff could not establish a likelihood of success on the merits. The trial court granted the motion. The trial court determined that plaintiff's claims arose out of protected speech pertaining to Mayor Villaraigosa's televised reward announcement, or the Procedures to allocate the reward funds. The trial court also found that plaintiff's claims failed because plaintiff did not allege that the contract was entered into pursuant to the requirements of the City of Los Angeles's Charter.

4. Analysis

The County of Riverside and the City of Los Angeles have the burden of showing that the challenged causes of action arise from protected activity. (*Rohde v. Wolf, supra,* 154 Cal.App.4th at pp. 34-35.) In deciding whether an action "arises from" protected activity, we consider "'the pleadings, and supporting and opposing affidavits stating the facts [on] which the liability or defense is based.'" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) "The 'arising from' prong encompasses any action *based on* protected speech or petitioning activity as defined in the statute [citation], regardless of whether the plaintiff's lawsuit *was intended* to chill [citation] or actually chilled [citation] the defendant's protected conduct." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 187.)

Section 425.16, subsection (e), provides, "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, 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."

"[C]onduct alleged to constitute breach of [a] contract *may*" be protected activity. (*Navellier v. Sletten, supra,* 29 Cal.4th at p. 92, italics added.) Our Supreme Court has explained however that in order to show that a challenged cause of action is one "'arising from' protected activity," "the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech. [Citations.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.)

a) City of Los Angeles

Government Code section 53069.5 authorizes defendants to offer and pay a reward, and determine the amount of such rewards, for information leading to the determination of the identity of, and the apprehension of, any person whose willful misconduct results in injury or death to any person. Government Code section 53069.7 authorizes defendants to offer and pay a reward and determine the amount of such a reward, for one who furnishes information leading to the arrest and conviction of any person who killed or seriously harmed a peace officer.

The City of Los Angeles contends that the $1 million reward offer made by Mayor Villaraigosa in the press conference is protected activity under section 425.16, subdivision (e)(3) as "written or oral statement[s] or writing[s] made in a place open to the public or a public forum in connection with an issue of public interest," or subdivision (e)(4) as "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 City of Los Angeles argues that the "reward motion that [plaintiff] alleges was a ratification or reformation of Mayor Villaraigosa's alleged $1,000,000 reward offer," is protected activity under section 425.16, subdivision (e)(1) as a "written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law," subdivision (e)(2) as a "written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law," or subdivision (e)(3) as a "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."

Even if the conduct referred to by the City of Los Angeles are protected activities, the City of Los Angeles has the burden to establish that plaintiff's claims "arise from" those protected activities. (*City of Cotati v. Cashman*, *supra*, 29 Cal.4th at p. 78; *Rohde v. Wolf*, *supra*, 154 Cal.App.4th at pp. 34-35.) The City of Los Angeles has not established that plaintiff's claims, premised on the alleged breach of contract by the City of Los Angeles, arise from a protected act.

As we stated in *Lunada Biomedical v. Nunez*, *supra*, 230 Cal.App.4th 459, at page 472-473, "It is true that even when 'a party's litigation-related activities constitute "act[s] in furtherance of a person's right of petition or free speech," it does not follow that any claims associated with those activities are subject to the anti-SLAPP statute.' (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537 [52 Cal.Rptr.3d 712].) '"[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.

[Citation.] Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such. [Citation.]"' (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477 [87 Cal.Rptr.3d 275, 198 P.3d 66]; see *Copenbarger v. Morris Cerullo World Evangelism* [(2013)] 215 Cal.App.4th [1237,] 1245 ['"[t]he pivotal distinction" is "whether an actual or contemplated unlawful detainer action by a landlord (unquestionably a protected petitioning activity) merely 'preceded' or 'triggered' the tenant's lawsuit, or whether it was instead the 'basis' or 'cause' of that suit"'].)"

The court in *Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, at pages 1214-1215 also stated, "In deciding whether an action is a SLAPP, the trial court should distinguish between (1) speech or petitioning activity that is mere *evidence* related to liability and (2) liability that is *based on* speech or petitioning activity." "To determine whether defendant has met its burden [that the challenged cause of action is one arising from defendant's right of petition or free speech] we must look at the 'gravamen of the lawsuit' [Citation.]" (*Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, 715.) If a cause of action is "based on both protected activity and unprotected activity," if "the protected conduct is 'merely incidental' to the unprotected conduct," it is not subject to section 425.16. (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1550-1551.) Plaintiff's claims concerning his claim for reward funds are not the types of claims that are within the reach of the anti-SLAPP statute.

A number of cases hold that while activities protected in the anti-SLAPP statute were involved, the claim did not arise from those activities. For example, in *Gotterba v. Travolta* (2014) 228 Cal.App.4th 35, the defendants' counsel sent to the plaintiff a letter demanding that he stop making statements that were allegedly in breach of a confidentiality agreement, that the statements subjected the plaintiff to "enormous liability," and the plaintiff was to "'proceed at [his] peril.'" (*Id*. at p. 38.) The plaintiff filed an action for declaratory relief, alleging that "a judicial declaration is necessary so that he may determine his rights and duties under the agreement and because [the

defendants] 'ha[d] repeatedly threatened legal action' against him 'based upon alleged violations and prospective violations of the purported "confidentiality agreement."'" (*Id.* at p. 39.)

In affirming the trial court's order denying the defendants' anti-SLAPP motion, the court stated, "The complaint seeks declaratory relief regarding the validity of the asserted termination agreements and not the propriety of [the defendants'] demand letters. [¶] . . . That 'protected activity may lurk in the background—and may explain why the rift between the parties arose in the first place—does not transform a [contract] dispute into a SLAPP suit.' [Citation.] [¶] . . . The lawsuit also does not seek to curtail [the defendants'] right to send demand letters." (*Gotterba v. Travolta*, *supra*, 228 Cal.App.4th at pp. 41-42.) Similarly, here, plaintiff asserts that the City of Los Angeles breached its contract, and does not dispute the propriety of the City of Los Angeles's making of the reward offer.

In *Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, the plaintiff, a court reporting company, filed a lawsuit seeking to recover unpaid fees for its services. Prior to the filing of the lawsuit, the defendants, who were attorneys, protested that the plaintiff's court reporting fees were "illegal, excessive, and unnecessary." (*Id.* at p. 186.) The defendants filed an anti-SLAPP motion contending that the complaint was filed in retaliation for their protests against the plaintiff's fees, and that the complaint arose from protected activity because the protests occurred during protected legal proceedings. (*Ibid.*) The court held that the anti-SLAPP statute did not apply because the plaintiff's allegations regarding the arguably protected activity "are only incidental to the causes of action for breach of contract and common counts, which are based essentially on nonprotected activity—the nonpayment of overdue invoices." (*Id.* at p. 190.)

In *City of Alhambra v. D'Ausilio* (2011) 193 Cal.App.4th 1301 the plaintiff, the City of Alhambra, filed an action for declaratory relief to obtain a determination that defendant's conduct of being involved in protests was a breach of a settlement agreement. The trial court denied the anti-SLAPP motion. The court affirmed, holding that, despite

that the conduct in question was protected activity, the plaintiff's action did not arise from it. The court stated, "The City did not sue [the defendant] because he engaged in protected speech; the City sued him because it believed he breached a contract which prevented him from engaging in certain speech-related conduct and a dispute exists as to the scope and validity of that contract." (*Id*. at p. 1308.)

In *USA Waste of California, Inc. v. City of Irwindale* (2010) 184 Cal.App.4th 53, we held that the anti-SLAPP statute did not apply because the plaintiff's claims concerned whether the city could use guidelines to alter the backfilling standards for a particular landfill operation and were not based on the city's issuance to the plaintiff of a notice of violation of those guidelines. (*Id*. at p. 63.) Similarly, the court in *Graffiti Protective Coatings, Inc. v. City of Pico Rivera, supra,* 181 Cal.App.4th 1207, reversed the trial court's order granting the city's anti-SLAPP motion in connection with an action seeking to invalidate the city's contract as not complying with municipal laws requiring competitive bidding. The court stated that the plaintiff's claims were "not based on any statement, writing, or conduct by the city in furtherance of its right of free speech or its right to petition the government for the redress of grievances. Rather, plaintiff's claims are based on state and municipal laws requiring the city to award certain contracts through competitive bidding." (*Id*. at p. 1211.)

In *Wang v. Wal-Mart Real Estate Business Trust* (2007) 153 Cal.App.4th 790, the plaintiffs sued for breach of contract and fraud involving a sale of two parcels of their real estate for a commercial development, alleging that the defendants agreed to provide street access for the plaintiffs' remaining properties in the development plans that had to be approved by the city. (*Id*. at pp. 795-798.) The city approved the defendants' plans, but it included a change that deprived the plaintiffs of street access. (*Ibid*.) The defendants filed an anti-SLAPP motion claiming city approval was required for the project and the action arose from that protected petitioning act of submitting the plans to the city. (*Id*. at p. 798.) The court disagreed and held the action arose from the breach of the agreement and not from the defendants' petition to the city for approval of the plans. (*Id*. at p. 809-810.)

As the claims asserted by the plaintiffs in the cases referred to above, plaintiff's claims here do not arise from a protected act. The gravamen of plaintiff's lawsuit is that defendants failed and refused to pay the reward monies to plaintiff as they should have pursuant to an oral agreement. Just as oral contracts or promises that are sought to be enforced could not reasonably be protected activities, here too, the alleged breach of an enforceable promise does not arise from protected activities under the anti-SLAPP statute. Similarly, that the challenge of the formal approval of the offer is involved does not subject the claims to the SLAPP statute. (See *San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn*. (2004) 125 Cal.App.4th 343, 357 (*San Ramon Valley*) ["To decide [that a motion to strike under the anti-SLAPP statute is applicable] would significantly burden the . . . rights of those seeking . . . review for most types of governmental action"].) The oral statement and acts claimed by the City of Los Angeles to be protected under the anti-SLAPP statute are only incidental to plaintiff's claims (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures*, *supra*, 184 Cal.App.4th at pp. 1550-1551), which are not subject to the anti-SLAPP statute.

The City of Los Angeles relies on *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450 (*Hecimovich*), in which the plaintiff was a volunteer basketball coach of a fourth grade basketball team in an afterschool program. (*Id*. at pp. 454, 455.) The plaintiff's attempts to resolve a discipline problem concerning a child with the child's parents "only exacerbated the situation," and according to the plaintiff, the child's parents were "'rallying team parents to remove' him." (*Ibid*.) The plaintiff involved the volunteer league commissioner, who involved other league officials. This caused there to be an "extensive review of the matter—and numerous e-mails, the upshot of which was that plaintiff was told that he would not be allowed to coach team the following year . . . ." (*Id*. at pp. 454, 457.)

The plaintiff, representing himself, filed a complaint against the nonprofit parent teacher organization and several of the league commissioners and officials alleging eight causes of action, including "libel and slander" and breach of contract. (*Hecimovich*,

supra, 203 Cal.App.4th at p. 456.) The trial court found that the "'gravamen' of plaintiff's complaint was defamation," *(id*. at p. 455) and the court stated that in the plaintiff's 20-page complaint, he did not "even attempt to allege what he claimed to be the defamatory communication(s)" (*Id*. at p. 457, fn. omitted.) As to his breach of contract claim, the plaintiff alleged that that he was not allowed to continue coaching despite the absence of good cause, (*id*. at p. 474) and "all the causes of action arise from the same fundamental setting—a setting involving an issue of public interest." (*Id*. at p. 473.)

The court reversed the trial court's order denying the defendants anti-SLAPP motion. The court addressed whether the plaintiff's breach of contract claim concerned protected activity for purposes of the anti-SLAPP statute only as a "preliminary observation" concerning the plaintiff's "Remaining Claims"—claims other than the defamation claim. (*Hecimovich, supra,* 203 Cal.App.4th at pp. 472-473.) In doing so, the court rejected the plaintiff's general contention that "'breaching a contract is *never* a protected exercise of free speech or right of petition and hence cannot constitute a protected activity for ant-SLAPP purposes.'" (*Id.* at p. 473.) Although the court implicitly found that the breach of contract action in that case concerned communications amounting to protected activity for purposes of the anti-SLAPP statute, it did not expressly do so. It did not state what communications were the alleged basis for the breach of the contract and did not provide any analysis concerning the protected activity in connection with the breach of contract claim.

Hecimovich, supra, 203 Cal.App.4th 450 did not involve a governmental agency's alleged breach of contract, and as we explain, plaintiff's claims here do not arise from protected activity. More importantly, although the subject of the Dorner matter and the offer of a reward were made in place open to the public and in connection with the public interest, its ultimate enforceability were not in connection with an "issue of public interest." (§ 425.16, subd. (e).) There was no controversy or conflicting views concerning reward offers to apprehend Dorner. Moreover, whether a unilateral contract alleged in this case was actually formed does not arise out of the alleged statements, but

rather on the later legislative acts and acts of the plaintiff. "To extend the anti-SLAPP statute to litigation merely challenging the application, interpretation, or validity [or enforceability] of a statute or ordinance [or offer] would expand the reach of the statute way beyond any reasonable parameters." (*USA Waste of California, Inc. v. City of Irwindale, supra,* 184 Cal.App.4th at p. 66.)

b) County of Riverside

The County of Riverside contends that its adoption of the Procedures and the recommendations of its panel, and its denial of plaintiff's request for the reward funds, are protected activities under section 425.16, subdivision (e)(2) as "a written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law," or subdivision (e)(4) as "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."[6] (Code Civ. Proc., § 425.16, subds. (e)(2) and (e)(4).) *San Ramon Valley, supra,* 125 Cal.App.4th 343, involved a suit by a fire protection district challenging a decision by a retirement board to increase contributions to support increased benefits. (*Id*. at pp. 347-348.) The board filed an anti-SLAPP motion, arguing its decision to require additional pension contributions after a public hearing and a majority vote of the board's members constituted protected activity. (*Id*. at pp. 348-349, 353.) The trial court denied the motion, and the appellate court affirmed, holding the board's adoption of a pension contribution requirement was not an exercise of free speech or the right to petition. (*Id*. at pp. 346, 357.) The court stated that "there is nothing about that decision, qua governmental action, that implicates the exercise of free speech or petition. The Board's resolution was simply to impose a requirement that the District pay a contribution to the [retirement association] of nearly $2.3 million for

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[6] The County of Riverside does not contend that the County of Riverside's enactment of its resolution offering a $100,000 reward for the "apprehension" of Dorner was a protected activity.

proposed enhanced retirement benefits to District employees. Thus, while the District's petition arises out of the Board's adoption of the $2.3 million contribution rate, the *substance* of the Board's action does not constitute the exercise of the Board's right of speech or petition. [¶] . . . [¶] [T]he Board was not sued based on the content of speech it has promulgated or supported, nor on its exercise of a right to petition. The action challenged consists of charging the District more for certain pension contributions than the District believes is appropriate. This is not governmental action which is speech-related." (*Id*. at pp. 355, 357.)

Just as the challenged governmental actions in *San Ramon Valley, supra,* 125 Cal.App.4th 343, do not involve protected activity under the SLAPP statute, the same is true here. The County of Riverside's adoption of the Procedures and denying plaintiff's request for reward funds do not constitute an exercise of the county's rights to speech or petition. If they did, virtually any challenge to governmental activity would be subject to the anti-SLAPP statute, which would be an absurd extension of its reach. **As** discussed, "'the claims against the [County of Riverside] are not based on any statement, writing, or conduct in furtherance of the [County's] right of petition or free speech.' [Citation.]" (*USA Waste of California, Inc. v. City of Irwindale*, *supra*, 184 Cal.App.4th at p. 65.)

Plaintiff claims that the County of Riverside breached the reward contract by failing or refusing to pay him the reward monies, not because of the County of Riverside's statements made in denying plaintiff's claim. In addition, plaintiff's claims attack the Procedures themselves, not the County of Riverside's statements in adopting them, and we reject the County of Riverside's contention that they are so intertwined so as to subject plaintiff's claims to an anti-SLAPP motion.

By holding that the anti-SLAPP statute is not applicable to the claims against the City of Los Angeles and the County of Riverside, we do not express any opinion on the merits of the claims. The resolution of these claims will be made in further proceedings.

C. Other Contention

Plaintiff also contends that the trial court erred in denying his motion to conduct limited discovery. Because we hold that the trial court erred in granting defendants' anti-SLAPP motions, we do not reach this contention.

DISPOSITION

We reverse the orders. Plaintiff shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.