APPENDIX

APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

Court of Appeal, Second Appellate District, Division One - No. B291695

S262418

En Banc

[Filed: August 12, 2020]

BALUBHAI PATEL et al.,	)
Plaintiffs and Appellants,	)
	)
v.	)
	)
MANUEL CHAVEZ,	)
Defendant and Respondent.	)
	)

The petition for review is denied.
The request for an order directing depublication of the opinion is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX B

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B291695
(Los Angeles County Super. Ct. No. BC681074)

[Filed: April 30, 2020]

BALUBHAI PATEL et al.,	)
	)
Plaintiffs and Appellants,	)
	)
v.	)
	)
MANUEL CHAVEZ,	)
	)
Defendant and Respondent.	)
	)

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of the Factual and Procedural Summary *post*, and the Discussion *post*, parts C. and D.

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Frank A. Weiser for Plaintiffs and Appellants.

Law Office of Eugene Lee and Eugene D. Lee for Defendant and Respondent.

Plaintiffs and appellants Balubhai Patel, DTWO & E, Inc. (DTWO), and Stuart Union, LLC (collectively, plaintiffs) appeal from the trial court's order granting defendant and respondent Manuel Chavez's motion to strike plaintiffs' complaint against Chavez, pursuant to the anti-SLAPP statute, Code of Civil Procedure section 425.16. Plaintiffs' complaint alleges that Chavez, plaintiffs' former employee, falsely testified at a Labor Commissioner's hearing on wage claims Chavez filed against plaintiffs, which the Labor Commissioner ultimately decided in Chavez's favor. On this basis, plaintiffs' complaint asserts a federal civil rights cause of action against all defendants under section 1983 of title 42 of the United States Code (section 1983). The complaint also contains a petition for writ of mandate addressed to all defendants seeking reversal of the Labor Commissioner's award.[1]

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[1] The complaint also named two Labor Commissioner officials as defendants to all causes of action. Chavez's anti-SLAPP motion seeks to strike "the complaint," not just the causes of action alleged against Chavez, and the language of the court's order grants the motion without caveat. (Capitalization and boldface omitted.) But the Labor Commissioner officials named as defendants did not join Chavez's anti-SLAPP motion, and the court has since sustained their demurrer to a first amended complaint filed while Chavez's motion to strike was pending, leading the parties to stipulate to dismissing them as incorrectly named parties to this appeal. Thus,

On appeal, plaintiffs argue that the anti-SLAPP statute does not apply to federal causes of action, and that even if it did apply, plaintiffs met their burden of establishing a probability of success. We disagree on both points and affirm the trial court's order granting plaintiffs' motion to strike the complaint to the extent it asserts causes of action against Chavez.

FACTUAL AND PROCEDURAL SUMMARY

From 2002 to 2016, Chavez worked as an on-site property manager of the Stuart Hotel, a residential hotel owned and operated by plaintiffs.

A. *Labor Commissioner Proceedings Against Plaintiffs*

In October 2015, Chavez filed a wage claim with the California Labor Board, alleging plaintiffs paid Chavez less than minimum wage and engaged in other wage claim violations. On January 12, 2017 and March 6, 2017, a Berman hearing[2] took place regarding Chavez's

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the record is inconsistent with reading the order on appeal literally, and we instead construe it as striking the complaint only to the extent it alleges causes of action against Chavez.

[2] A Berman hearing is "a dispute resolution forum established by the Legislature to assist employees in recovering wages owed." (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1124.) " 'A Berman hearing is conducted by a deputy [Labor] [C]ommissioner, ". . . [and] is designed to provide a speedy, informal, and affordable method of resolving wage claims. In brief, in a Berman proceeding the [C]ommissioner may hold a hearing on the wage claim; the pleadings are limited to a complaint and an answer; . . . The [C]ommissioner must decide the claim within 15 days after the hearing. ([Lab. Code,] § 98.1.)" [Citation.] The

claims against plaintiffs. Chavez and others testified under oath. (See Cal. Code Regs., tit. 8, § 13505 [at Berman hearing, "[o]ral evidence shall be taken only on oath or affirmation"].) On September 26, 2017, the Labor Commissioner issued a ruling in Chavez's favor, awarding him approximately $235,000 in unpaid wages, penalties, and interest.

B. *Plaintiffs' Lawsuit*

On October 26, 2017, plaintiffs brought the action underlying this appeal[3] against Chavez and two Labor Commissioner officials, Maria Huerte, who had presided over the Berman hearing, and Julie Su. The complaint alleges that, at the Berman hearing, Chavez "produced a falsified report of the claimed monies owed[,] falsely testified and gave perjured testimony in support of his complaint." The complaint further alleges that "[p]laintiffs presented competent and credible evidence at the hearing that no monies were owed to [Chavez] on his complaint," and that the Labor Commissioner's ruling was illegal and/or incorrect in various ways.

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hearings are not governed by the technical rules of evidence, and any relevant evidence is admitted "if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (Cal. Code Regs., tit. 8, § 13502.)' " (*Sonic-Calabasas A, Inc. v. Moreno, supra,* 57 Cal.4th at p. 1128.)

[3] This was not the first lawsuit DTWO had filed against Chavez based on his wage claims. In December 2015, DTWO filed and served a complaint against Chavez, alleging Chavez was an independent contractor who had stolen hotel rental income and seeking an accounting of such income. DTWO dismissed the suit the day before trial.

The complaint characterizes this conduct by all defendants as a "state action" that "violated the constitutional and civil rights of plaintiffs," as a result of which plaintiffs suffered damages. Based thereon, the complaint asserts a section 1983 cause of action and seeks $10 million in damages from Chavez, Su, and Huerte. The complaint also contains a petition–addressed to all defendants–"[f]or a writ of mandate vacating and reversing the [Labor Commissioner's decision]." The complaint alleges this petition is "pursuant to . . . Labor Code [s]ection[ ] 98.2, and/or . . . Code of Civil Procedure [s]ection 1094.5" and claims that "[p]laintiffs are entitled to a de novo hearing on this matter."

C. *Procedural History Following Complaint*

In November 2017, Huerte and Su filed a demurrer. Shortly thereafter, Chavez filed the instant anti-SLAPP motion seeking to strike the complaint. Chavez argued that the causes of action arose solely from Chavez's testimony, which is protected conduct, and that therefore, as a matter of law, plaintiffs could not show a likelihood of success.

On June 11, 2018, the trial court held a hearing on Chavez's anti-SLAPP motion. In an order granting the motion that same day, the court concluded that the causes of action in the complaint arose from conduct protected under the anti-SLAPP statute, namely "testimony made in the underlying litigation before the Labor Commission[er]." It further concluded that, under the requisite anti-SLAPP analysis, this shifted the burden to plaintiffs to show a probability of success, and that plaintiffs could not do so, because "[Chavez's]

[s]tatements [during the Berman hearing] are absolutely privileged under Civil Code [section] 47, [subdivision] (b)–the [l]itigation [p]rivilege."

Plaintiffs timely appealed the order.

DISCUSSION

Plaintiffs argue that the trial court erred in granting Chavez's anti-SLAPP motion because the statute does not apply to federal causes of action brought in state court. In the alternative, plaintiffs argue that the trial court incorrectly concluded that plaintiffs failed to show a probability of success on their writ of mandate and section 1983 claims against Chavez, as is required under the applicable anti-SLAPP analysis. We disagree with both arguments.

A. *Anti-SLAPP Analytical Framework*

In ruling on an anti-SLAPP motion, a court is required to engage in a two-pronged analysis. First, a court must determine whether the complaint alleges protected free speech or petitioning activity, and whether the claims the movant seeks to strike "aris[e] from" such protected activity. (*Baral v.. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) If so, the burden shifts to the plaintiff to establish a prima facie showing of merit in " 'a summary-judgment-like procedure.' " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278, 291 (*Soukup*).) Any claims and/or allegations as to which the plaintiff fails to make such a prima facie showing must be stricken. (*Baral, supra,* 1 Cal.5th at p. 396.)

On appeal, we review a trial court's decision regarding an anti-SLAPP motion de novo, "engaging in the same two-step process." (*Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257, 266–267, disapproved on another point in *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1071.) In so doing, we consider "the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based." (Code Civ. Proc., § 425.16, subd. (b)(2).)

B. *The Anti-SLAPP Statute Applies to Section 1983 Claims Brought in State Court*

Plaintiffs argue that "[i]t is well established, and undisputed, that federal claims are not subject to California's Anti[-SLAPP] statute." We disagree. The cases plaintiffs cite for this proposition address "the applicability of the anti-SLAPP statute to claims *filed in federal court,"* not state court. (See, e.g., *Globetrotter Software v. Elan Computer Group* (N.D.Cal. 1999) 63 F.Supp.2d 1127, 1129, italics added.)

An analysis of whether to apply the anti-SLAPP statute to a federal claim in *state* court begins with the observations that the anti-SLAPP statute is a procedural law, rather than a substantive immunity (see *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1121 [anti-SLAPP statute affords "procedural protections"]; *San Diegans for Open Government v. San Diego State University Research Foundation* (2017) 13 Cal.App.5th 76, 95 ["the anti-SLAPP statute does not immunize or insulate defendants from any liability . . . [i]t only provides a procedure for weeding out, at an early stage, such

claims that are meritless"] (italics omitted)), and that a forum generally applies its own procedural law to cases before it. (See *Felder v. Casey* (1988) 487 U.S. 131, 138 (*Felder*).) As such, the anti-SLAPP statute will apply to adjudication of a federal claim in state court unless either (1) "the federal statute provides otherwise" (*Chavez v. Keat* (1995) 34 Cal.App.4th 1406, 1413-1414 (*Chavez*)), or (2) the anti-SLAPP statute "affect[s] plaintiffs' substantive federal rights," and is thus preempted. (*County of Los Angeles v. Superior Court* (2006) 139 Cal.App.4th 8, 17 (*County of Los Angeles*), citing *Felder, supra,* 487 U.S. at p. 138.) Neither is the case here.

As to the first possibility, "[n]othing in section 1983 imposes federal procedural law upon state courts trying civil rights actions." (*Chavez, supra,* 34 Cal.App.4th at p. 1414.) On this basis, California courts have held that the anti-SLAPP statute *does* apply to federal section 1983 claims a plaintiff chooses to file in California state court. (See *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1117–1118 (*Bradbury*); *Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1392, fn. 4 (*Vergos*).)

Published cases do not appear to have fully analyzed the second possibility, however. In *Bradbury,* for example, the court rejected a claim that it would "violate[ ] federal substantive law" to apply the anti-SLAPP statute to a federal civil rights action brought in state court, but relied only on the procedural versus substantive distinction in *Chavez, supra,* 34 Cal.App.4th at pages 1413-1414. (*Bradbury, supra,* 49 Cal.App.4th at pp. 1117-1118; see also *Vergos, supra,*

146 Cal.App.4th at p. 1392, fn. 4 [relying on *Bradbury*]; *Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1055–1056 [relying on *Bradbury* and *Vergos*].) We analyze the second possibility now and conclude that section 1983 does not preempt application of the anti-SLAPP statute to section 1983 claims in state court.

When a plaintiff chooses to bring a federal claim in state court, "state rules of evidence and procedure apply unless application of those rules would affect plaintiffs' substantive federal rights" (*County of Los Angeles, supra,* 139 Cal.App.4th at p. 17), and thereby " ' "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" ' " in enacting the underlying federal statute. (*Felder, supra,* 487 U.S. at p. 138, quoting *Perez v. Campbell* (1971) 402 U.S. 637, 649.) This is not the case with our state's anti-SLAPP statute and section 1983. Code of Civil Procedure section 425.16 applies neutrally to all types of causes of action and does not specifically target government conduct. (See *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 652 ["all kinds of claims could achieve the objective of a SLAPP suit"]; cf. *Felder, supra,* 487 U.S. at pp. 144–145 [state notice-of-claim statutes applying only to state government action preempted by section 1983, because government defendants are "the very persons and entities Congress intended to subject to liability" via section 1983].) The purpose of section 1983 claims is to "serve as an antidote to discriminatory state laws, to protect federal rights where state law is inadequate, and to protect federal rights where state processes are available in theory but not in practice." (*Williams v.*

Horvath (1976) 16 Cal.3d 834, 841.) Plaintiffs have identified no basis on which we might conclude that the expedited summary-judgment-like procedure created by the anti-SLAPP statute might " ' "stan[d] as an obstacle to the accomplishment and execution of" ' " this purpose. (*Felder, supra,* at p. 138.)

Of course, because an anti-SLAPP motion automatically stays discovery, a plaintiff may not have had the benefit of full discovery when defending the merits of his section 1983 claim under this expedited procedure. (See Code Civ. Proc., § 425.16, subd. (g).) But a court may permit discovery during the pendency of an anti-SLAPP motion when the court deems it necessary: "Courts deciding anti-SLAPP motions . . . are empowered to mitigate their impact by ordering, where appropriate, 'that specified discovery be conducted notwithstanding' the motion's pendency." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66, quoting Code Civ. Proc., § 425.16, subd. (g).) More importantly, the "second-step burden" a plaintiff may be forced to meet without the benefit of full discovery "is a limited one. . . . [T]he bar sits low[ ], at a demonstration of 'minimal merit' [citation]. At this stage, ' "[t]he court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law." ' " (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 891.) Moreover, a court will require a plaintiff to make this

minimal showing only *after* the defendant has established under the first prong that the plaintiff's lawsuit arises from protected activity. Finally, unlike many of the procedural statutes courts have concluded are preempted, the anti-SLAPP statute does not "condition ' . . . [¶] . . . plaintiff's right of recovery under . . . section 1983' " upon whether he complied with *the anti-SLAPP statute* (*County of Los Angeles, supra,* 139 Cal.App.4th at p. 18), but rather, on whether the plaintiff has established some probability that he has a right to recovery at all *under section 1983.* (Cf. *Felder, supra,* 487 U.S. at p. 144 [state notice-of-claim statute effectively created a "condition precedent" to bringing a federal claim that was unrelated to the merits of the claim].) Thus, the enforcement of anti-SLAPP discovery restrictions in section 1983 actions will not "frequently and predictably produce different outcomes . . . based solely on whether the claim is asserted in state or federal court." (*Felder, supra,* at p. 131.)

We must further consider whether the anti-SLAPP law's mandatory attorney fee shifting provisions (Code Civ. Proc., § 425.16, subd. (c))–either individually or considered together with the discovery restrictions noted above–unduly burden a substantive federal right when applied to section 1983 claims. We conclude they do not. These fee shifting provisions provide that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion."

(Code Civ. Proc., § 425.16, subd. (c)(1).) Although the potential for such fee-shifting might discourage some plaintiffs from pursuing section 1983 claims, that possibility does not rise to the level of defeating a plaintiff's ability to vindicate his federal rights through a section 1983 claim, particularly in light of the low bar plaintiffs must meet in order to save such claims and avoid attorney fees under the anti-SLAPP statute. The anti-SLAPP fee-shifting provisions are also partially reciprocal, such that defendants may be wary of bringing anti-SLAPP motions for the same reasons plaintiffs may be wary of filing lawsuits potentially subject to such motions. (See Code Civ. Proc., § 425.16, subd. (c)(1).) Plaintiffs have cited no authority suggesting that federal law preempts every state procedure that may place some additional burden on a plaintiff who choses to vindicate a federal right in state court. The procedural devices in the anti-SLAPP statute do not rise to the level necessary for them to "defeat" a "federal right."

The trial court therefore correctly applied the anti-SLAPP statute to plaintiffs' section 1983 claim.

C. *Prong One: All Claims Against Chavez Arise from Protected Conduct*

We therefore turn to the first prong of the anti-SLAPP analysis, under which we must determine whether the causes of action against Chavez arise from activity protected under the anti-SLAPP statute.

The complaint alleges no conduct by Chavez other than his having testified falsely at the Berman hearing. Testimony offered during "official proceedings"–even if

false–"constitute[s] the 'valid exercise' of the constitutional right of free speech to which the Legislature referred in [the anti-SLAPP statute]." (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1549; see Code Civ. Proc., § 425.16, subd. (e)(1) [reference to " 'act in furtherance of a person's right of petition or free speech' " in the statute "includes . . . any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law"].)

Plaintiffs briefly argue the complaint "is alleging far more than just Chavez's petitioning activity" because "[t]he claims include a claim that the bond undertaking under . . . Labor Code [section] 98[, subdivision] (b) (for filing this action) unconstitutionally burdens [plaintiffs'] petition[ing] rights in this case, and that the . . . wage award illegally applied Labor Code [section] 98[, subdivision] (b) retroactively to . . . Patel." This argument reflects a legal characterization of Chavez's protected conduct; it does not identify additional, nonprotected conduct. "In deciding whether the initial 'arising from' requirement is met, a court considers '*the facts* upon which the liability or defense is based' "–not legal characterizations of such facts. (*Navellier v. Sletten, supra,* 29 Cal.4th at p. 89 (italics added), citing Code Civ. Proc., § 425.16, subd. (b)(2).) Thus, the trial court correctly concluded that the causes of action against Chavez arise from conduct protected by the anti-SLAPP statute.

D. *Prong Two: The Trial Court Correctly Concluded Plaintiffs Failed to Establish a Probability of Success on Their Claims Against Chavez*

In the second prong of the anti-SLAPP analysis, plaintiffs bear the burden of establishing a probability of prevailing on the claims arising from protected activity. The trial court concluded that plaintiffs failed to do so because their claims were barred as a matter of law by the California litigation privilege. Plaintiffs argue on appeal that this state law privilege cannot bar a federal section 1983 claim. But even if the state law litigation privilege does not apply, plaintiffs' claims still would not assert any legally viable cause of action against Chavez.

1. *Section 1983 Claim*

Section 1983 "preserves constitutional rights from infringement by persons who act under federal or state authority, not private citizens who commit wrongful acts." (*Spampinato v. M. Breger & Co.* (2d Cir. 1959) 270 F.2d 46, 49.) Thus, "[a] prerequisite for any relief under section 1983 is that the defendant acted under color of state law." (*McMahon v. Lopez* (1988) 199 Cal.App.3d 829, 837.)

A private party is presumed not to act under color of state law. (*Sutton v. Providence St. Joseph Medical Center* (9th Cir. 1999) 192 F.3d 826, 835 (*Sutton*).) For private conduct to constitute governmental action, there must be "something more." (*Lugar v. Edmondson Oil Co., Inc.* (1982) 457 U.S. 922, 939 (*Lugar*); *Sutton, supra,* 192 F.3d at p. 835.)

Plaintiffs argue that, because the Labor Commissioner's decision "essentially relied on [Chavez's] testimony in issuing the award" to Chavez, Chavez's act of testifying was sufficiently connected with the Labor Commissioner's state action, and the requisite "something more" is present. Were this the case, however, every witness offering important testimony would be acting under color of state law and potentially subject to section 1983 liability. Neither law nor logic supports such a result. Indeed, federal law (like California state law) is inconsistent with such a result: Under federal law, witnesses in judicial proceedings enjoy absolute immunity from suits based on the testimony they offer, including in suits under section 1983. (See *Briscoe v. LaHue* (1983) 460 U.S. 325, 329 (*Briscoe*) ["[section] 1983 does not allow recovery of damages against a private party for testimony in a judicial proceeding"]; *Blevins v. Ford* (9th Cir. 1978) 572 F.2d 1336, 1339 (*Blevins*) [a witness "cannot be subjected to civil liability based upon his testimony"]; see also *Holt v. Castaneda* (9th Cir. 1987) 832 F.2d 123, 125–126 ["many courts, including the Supreme Court itself, have understood *Briscoe* to apply . . . to judicial proceedings generally"].) Plaintiffs cite no authority holding or even suggesting that a private citizen's testimony constitutes action "under color of state law."

Nor does Chavez's role as the plaintiff in the Labor Commissioner proceedings change this analysis. As a general rule, "[p]rivate use of state-sanctioned private remedies or procedures does not rise to the level of state action." (*Tulsa Professional Collection Services v. Pope* (1988) 485 U.S. 479, 485–486.) What conduct of

private parties may be "fairly attributable [to state action] is a matter of normative judgment, and the criteria lack rigid simplicity." (*Brentwood Acad. v. Tennessee Secondary Sch. Athletic Assn.* (2001) 531 U.S. 288, 295–296.) What is clear, however, is that a "state action may be found if, though only if, there is such a 'close nexus between the [s]tate and the challenged action' that seemingly private behavior 'may be fairly treated as that of the [s]tate itself.' " (*Id.* at p. 295.) There is no such nexus here. A private citizen who brings a wage claim or testifies before the Labor Commissioner is not performing any government function. Nor does the law delegate any role or responsibility to a private citizen by giving him the ability to pursue a wage claim at an administrative hearing and testify on his own behalf. Indeed, plaintiffs have not cited any case in any jurisdiction that suggests either prosecuting a claim or testifying in an official proceeding constitutes state action. Rather, the cases they cite deal with circumstances not remotely similar to this case. (See *Edmonson v. Leesville Concrete Co., Inc.* (1991) 500 U.S. 614, 627 [private attorney's use of preemptory challenges in jury selection actionable under section 1983 because attorney performing "a unique governmental function delegated to private litigants by the government"]; *Lugar, supra,* 457 U.S. at pp. 941–942 [involving "private party's joint participation with state officials in the seizure of disputed property" under state procedure "whereby state officials will attach property on the ex parte application of one party to a private dispute"] (italics omitted); *Howerton v. Gabica* (9th Cir. 1983) 708 F.2d 380, 383 [landlord's eviction of its tenant was under color of state law where police were

actively involved in each step of the eviction].) Moreover, as discussed above, reading any of the cases plaintiffs cite as supporting plaintiffs' state action argument would be inconsistent with the United States Supreme Court's conclusion that testimony in adjudicative proceedings is absolutely privileged from section 1983 liability. (See *Briscoe, supra,* 460 U.S. at p. 329; *Blevins, supra,* 572 F.2d at p. 1339.)

Plaintiffs' final argument that the question of state action is "highly factual . . . [and] makes a motion to dismiss improper" only underscores that they failed to meet their burden below. The second prong of the anti-SLAPP analysis employs not a motion to dismiss standard, but a "'summary-judgment-like procedure,'" based on facts offered by the plaintiff. (See *Soukup, supra,* 39 Cal.4th at pp. 278, 291.)

Because plaintiffs have offered no facts suggesting Chavez acted under color of state law, their section 1983 claim cannot survive the second prong of the anti-SLAPP analysis.

2. *Writ of Mandate*

Plaintiffs' "second cause of action" for "writ of mandate"–also referred to in the complaint as a petition for same–does not allege a viable cause of action against Chavez. (Capitalization, underlining, and boldface omitted.) The complaint cites as a legal basis for this cause of action Code of Civil Procedure section 1094.5 and Labor Code section 98.2.

Code of Civil Procedure section 1094.5 authorizes writs of administrative mandate, "issued for the purpose of inquiring into the validity of any final

administrative order or decision." (Code Civ. Proc., § 1094.5, subd. (a).) A writ of administrative mandate serves the limited purpose of determining "whether the [administrative agency] has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, subd. (b).) Writ relief is, therefore, only available against the administrative agency that made the challenged decision. Plaintiffs cannot seek such relief from Chavez.

Plaintiffs attempt to avoid this obvious and fatal flaw by suggesting their second cause of action constitutes an appeal from the Labor Commissioner decision under Labor Code section 98.2,[4] and that Chavez is necessarily a party to such an appeal by virtue of his being a party to the Labor Commissioner proceedings. Whether construed as an appeal from the Labor Commissioner's order or a petition for writ of mandate, however, plaintiffs' second cause of action seeks relief Chavez cannot help provide "vacating and reversing the [Labor Commissioner's decision]." Thus, even if the second cause of action were an appeal from an administrative award–and we do not conclude that it is–it still is not a legally viable claim against Chavez.

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[4] Labor Code section 98.2 provides in pertinent part that, "[w]ithin 10 days after service of notice of an order, decision, or award [of the Labor Commissioner] the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo." (Lab. Code, § 98.2, subd. (a).) Plaintiffs' second cause of action states that "[p]laintiffs are entitled to a de novo hearing on this matter and for a reversal of the [Labor Commissioner's decision]."

Plaintiffs thus failed to meet their burden under the second prong of the anti-SLAPP statute with respect to both claims against Chavez, because they both arise from Chavez's protected conduct at the Berman hearing. Accordingly, the trial court correctly granted Chavez's motion to strike the complaint as against Chavez.

DISPOSITION

The order is affirmed. Respondent is a warded his costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WHITE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

BC681074

[Filed: June 11, 2018]

BALUBHAI PATEL ET AL	)
	)
VS	)
	)
JULIE A SU ET AL	)
	)

Plaintiff Counsel FRANK A. WEISER (X)

Defendant Counsel EUGENE D. LEE (X)
JESSENYA Y. HERNANDEZ (X)

NATURE OF PROCEEDINGS:

DEFENDANT MANUEL CHAVEZ'S SPECIAL MOTION TO STRIKE THE COMPLAINT (SLAPP CCP 426.16)

CASE MANAGEMENT CONFERENCE

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

Special motion to strike is called for hearing and argued.

Anti-SLAPP looks at the substance of the case. This matter is based upon testimony made in the underlying litigation before the Labor Commission, it, therefore, constitutes protected speech within the anti-SLAPP statute. California Code of Civil Procedure section 425.16(e)(1) and (2); Haight Ashbury Free Clinics v. Happening House Ventures (2010) 184 Cal App 4th 1539; 1548. Defendant meets his burden.

Burden shift to the plaintiff. Statements are absolutely priviledged under Civil Code 47(b) – the Litigation Privilege.

Motion GRANTED.

Case management conference continued to 08/15/18 at 9:30 am in this Department.

Counsel for defendant Manuel Chavez to give notice.

APPENDIX D

42 U.S. Code § 1983.
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S. Code § 1988 -
Proceedings in vindication of civil rights

(a) APPLICABILITY OF STATUTORY AND COMMON LAW
The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as

such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) ATTORNEY'S FEES

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) EXPERT FEES

In awarding an attorney's fee under subsection (b) in

any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.20] *(Part 2 enacted 1872.)*

TITLE 6. OF THE PLEADINGS IN CIVIL ACTIONS [420 - 475] *(Title 6 enacted 1872.)*

CHAPTER 2. Pleadings Demanding Relief [425.10 - 429.30] *(Chapter 2 repealed and added by Stats. 1971, Ch. 244.)*

ARTICLE 1. General Provisions [425.10-425.55] *(Article 1 added by Stats. 1971, Ch. 244.)*

425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) 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.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of

Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) 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.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

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

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

(Amended by Stats. 2014, Ch. 71, Sec. 17. (SB 1304) Effective January 1, 2015.)