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United States District Court
Central District of California

ITN FLIX, LLC, et al.,
Plaintiffs,
v.
GLORIA HINOJOSA, et al.,
Defendants.

Case No: 2:14-CV-08797-ODW (AGR_x)

**ORDER GRANTING DEFENDANTS’
MOTION FOR RULING ON
DEFENDANTS’ ANTI-SLAPP
MOTION TO STRIKE [116]; AND
GRANTING, IN PART,
DEFENDANTS’ MOTION TO
STRIKE [34]**

I. INTRODUCTION

Presently before the Court are Rodriguez Defendants’¹ Motion for a Ruling on Anti-SLAPP Motion (“Motion for Ruling”) (ECF No. 116) and Motion to Strike Pursuant to California Anti-SLAPP Statute (“Anti-SLAPP Motion”) (ECF No. 34). For the reasons that follow, the Court **GRANTS** the Motion for Ruling and **GRANTS, IN PART**, the Anti-SLAPP Motion.²

¹ Plaintiffs ITN Flix, LLC and Gil Medina (“Plaintiffs”) sued two groups of defendants in this action, the “Rodriguez Defendants” and the “Hinojosa Defendants.” (See Compl., ECF No. 1.) “Rodriguez Defendants” include Robert Rodriguez and production companies Machete Kills, LLC; El Chignon, Inc.; Troublemaker Studios, L.P.; and Quick Draw Productions, LLC. “Hinojosa Defendants” include Gloria Hinojosa and Amstel, Eisenstadt, Frazier & Hinojosa Talent Agency. Hinojosa Defendants are not party to these motions.

² Having carefully considered the papers filed in connection with the motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 The parties are familiar with the extensive factual and procedural background,
3 and the Court does not detail it again here. The Court described the factual history of
4 this matter at length in its order granting Defendants’ motions to dismiss and strike
5 and incorporates that background by reference. (*See* Order Granting Defs.’ Mots. to
6 Dismiss (“Order MTD”) 2–7, ECF No. 75.)

7 In November 2014, Plaintiffs filed this action asserting nine causes of action
8 against various Defendants premised on written agreements purporting to restrict actor
9 Danny Trejo’s publicity rights and acting services. (*See generally* Compl.) In May
10 2015, the Court dismissed Plaintiffs’ Complaint, finding, among other things, that the
11 written exclusive agreements were unenforceable as unlawful restraints on trade.
12 (Order MTD 14.) The Court also granted Rodriguez Defendants’ Motion to Strike but
13 did not award attorneys’ fees. (Order MTD 18.) Plaintiffs appealed the grant of the
14 motions, and Rodriguez cross-appealed the failure to award attorneys’ fees. (Notices
15 of Appeal, ECF Nos. 77, 79.)

16 On April 4, 2017, the Ninth Circuit issued its decision. *ITN Flix, LLC v.*
17 *Hinojosa*, 686 F. App’x 441 (9th Cir. 2017). The Ninth Circuit affirmed dismissal of
18 the Complaint, finding that the written exclusive agreements were void as unlawful
19 restraints on trade. *Id.* at 443–45. However, the Ninth Circuit found that Plaintiffs
20 should have been granted limited leave to amend as to two causes of action. *Id.* at
21 444–45. Regarding the Anti-SLAPP³ Motion, the Ninth Circuit found that the Court
22 erred “by analyzing the anti-SLAPP motion brought under Cal. Civ. Proc. Code
23 § 425.16(b)(1) as a motion to strike pleadings under Federal Rule of Civil Procedure
24 12(f).” *Id.* at 445. Accordingly, it vacated the grant of the anti-SLAPP motion and
25 remanded for reconsideration. *Id.* The Ninth Circuit issued its Mandate on August
26 16, 2017. (Mandate, ECF No. 92.)

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28 ³ “SLAPP” refers to Strategic Lawsuit against Public Participation. *Baral v. Schnitt*, 1 Cal. 5th 376,
381 n.1 (2006).

1 On October 29, 2018, Plaintiffs filed their First Amended Complaint (“FAC”).
2 (FAC, ECF No. 93.) The Court addresses Defendants’ subsequent motions to dismiss
3 and/or strike the FAC in a separate order, issued concurrently. Rodriguez Defendants
4 also moved for a ruling on their earlier Anti-SLAPP Motion. (See Mot. Ruling.)
5 Rodriguez Defendants’ Anti-SLAPP Motion was fully briefed in 2015 (see ECF
6 Nos. 34, 47, 71) and their Motion for Ruling on the Anti-SLAPP Motion is fully
7 briefed at this time (see ECF Nos. 116, 123, 129). Accordingly, the Court now
8 reconsiders Rodriguez Defendants’ Anti-SLAPP Motion.

9 III. LEGAL STANDARD

10 California’s anti-SLAPP statute allows defendants to make a special motion to
11 strike a “cause of action against a person arising from any act of that person in
12 furtherance of the person’s right of petition or free speech . . . in connection with a
13 public issue.” Cal. Civ. Proc. Code § 425.16(b)(1); see also *Newsham v. Lockheed*
14 *Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999) (concluding that the twin
15 aims of the *Erie* doctrine “favor application of California’s Anti-SLAPP statute in
16 federal cases”). An act qualifies for protection under this statute if it falls within one
17 of four categories, two of which are relevant here:

- 18 (3) any written or oral statement or writing made in a place open to the
19 public or a public forum in connection with an issue of public interest, or
20 (4) any other conduct in furtherance of the exercise of the constitutional
21 right of petition or the constitutional right of free speech in connection
with a public issue or an issue of public interest.

22 Cal. Civ. Proc. Code § 425.16(e). The anti-SLAPP statute must be construed broadly.
23 *Hilton v. Hallmark Cards*, 599 F.3d 894, 902 (9th Cir. 2010); *Rand Res., LLC v. City*
24 *of Carson*, 6 Cal. 5th 610, 619 (2019).

25 Anti-SLAPP motions are evaluated under a two-step procedure. *Safari Club*
26 *Int’l v. Rudolph*, 862 F.3d 1113, 1119 (9th Cir. 2017). First, a court determines
27 whether “the defendant has shown the challenged cause of action ‘aris[es] from’
28 activity taken ‘in furtherance’ of the defendant’s right to petition or free speech.” *Id.*

1 (alteration in original). “If so, the burden shifts to the plaintiff to show ‘a [reasonable]
2 probability of prevailing on the challenged claims.” *Id.* (alteration in original)
3 (quoting *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 595 (9th Cir. 2010)); *see*
4 *also Baral*, 1 Cal. 5th at 396 (summarizing the showing and findings required). “If
5 the plaintiff cannot meet the minimal burden of stating and substantiating a legally
6 sufficient claim, the claim is stricken pursuant to the statute.” *Jordan-Benel v.*
7 *Universal City Studios, Inc.*, 859 F.3d 1184, 1188–89 (9th Cir. 2017) (alterations and
8 quotation marks omitted). Courts must consider the pleadings and affidavits in
9 making this determination. Cal. Civ. Proc. Code § 425.16(b)(2); *see also Navellier v.*
10 *Sletten*, 29 Cal. 4th 82, 89 (2002).

11 IV. DISCUSSION

12 Rodriguez Defendants move to strike certain causes of action, arguing that they
13 all arise from conduct protected by the anti-SLAPP statute, specifically Rodriguez
14 Defendants’ expressive conduct of “creation, production, and distribution of the
15 *Machete* films.” (Anti-SLAPP Mot. 11.) Plaintiffs respond that this is only “part of
16 the story,” and that Rodriguez Defendants also “frustrat[ed] Plaintiffs’ ability to
17 engage in their own expressive conduct competitive with Rodriguez’s.” (Opp’n Anti-
18 SLAPP Mot. 11 (“Opp’n Anti-SLAPP”), ECF No. 47.) By this, Plaintiffs appear to
19 refer to Plaintiffs’ allegation that Rodriguez Defendants pressured Trejo not to work
20 with Plaintiffs on *Vengeance*. (See Opp’n Anti-SLAPP 7; Compl. ¶ 54; Decl. of Gil
21 Medina ¶ 108; ECF No. 47-1.)

22 A. “Arising from” Protected Activity

23 Rodriguez Defendants must “make a prima facie showing that each cause of
24 action . . . arises from activity [taken] in furtherance of” the right to petition or of free
25 speech in connection with a public issue or an issue of public interest. *Safari Club*,
26 862 F.3d at 1119 (alterations and internal quotation marks omitted) (citing Cal. Civ.
27 Proc. Code § 425.16(b)(1)). “[T]he critical consideration is whether the cause of
28 action is *based on* the defendant’s protected conduct.” *Id.* at 1119–20 (alteration in

1 original) (internal quotation marks omitted). “[A]n anti-SLAPP motion may strike
2 distinct claims within a cause of action, even if the entire cause of action is not subject
3 to anti-SLAPP.” *Jordan-Benel*, 859 F.3d at 1189 n.4 (citing *Baral*, 1 Cal. 5th at 382
4 (holding that mixed-claims are subject to the special motion to strike to the extent they
5 are supported by allegations consisting of protected conduct)).

6 Thus, the Court first identifies Rodriguez Defendants’ conduct underlying the
7 challenged causes of action and then determines whether that conduct was in
8 furtherance of the exercise of Rodriguez Defendants’ rights of free speech in
9 connection with a matter of public interest. *See Tamkin v. CBS Broad., Inc.*, 193 Cal.
10 App. 4th 133, 142–43 (2011).

11 *1. Claims at Issue*

12 Rodriguez Defendants challenge Plaintiffs’ first, second, third, sixth, eighth, and
13 ninth causes of action. (Notice of Anti-SLAPP Mot. 1, ECF No. 34.) These causes of
14 action are: (1) intentional interference with contract; (2) intentional interference with
15 economic relations under Utah law; (3) intentional interference with prospective
16 economic advantage; (6) unjust enrichment; (8) unfair competition; and
17 (9) negligence. (*See Compl.*)

18 Although Rodriguez Defendants contend the challenged causes of action arise
19 primarily from the creation of the *Machete* films, Plaintiffs appear to assert a second
20 theory, that Rodriguez Defendants pressured Trejo to stop working with Plaintiffs
21 notwithstanding the written agreements. (Opp’n Anti-SLAPP 7.) Under the first
22 theory, Plaintiffs allege that Rodriguez Defendants: cast Trejo in *Machete* (Compl.
23 ¶ 41); produced *Machete* to undermine Plaintiffs’ *Vengeance* project (Compl. ¶ 36);
24 and released *Machete Kills* after wrongfully eliminating the competition, *Vengeance*
25 (Compl. ¶ 64). As to the second theory, Plaintiffs assert one allegation that Trejo told
26 Plaintiffs that Rodriguez Defendants pressured Trejo to stop working with Plaintiffs
27 on *Vengeance*. (Compl. ¶ 54.) Plaintiffs allege that, by these theories, Rodriguez
28 Defendants induced Trejo to breach the written exclusive agreements; interfered with

1 the prospective release and success of *Vengeance*; reaped the benefits of *Vengeance*'s
2 lack of success; and breached a duty allegedly owed to Plaintiffs to protect Plaintiffs'
3 business interests concerning Trejo and *Vengeance*.

4 Having identified the challenged causes of action, supporting theories, and
5 alleged activity at issue, the next question is whether that activity was in furtherance
6 of Rodriguez Defendants' free speech rights.

7 2. *In Furtherance of the Exercise of Free Speech Rights*

8 As noted, Rodriguez Defendants' initial burden is to show that Plaintiffs'
9 challenged causes of action arise from conduct in furtherance of activity protected by
10 the anti-SLAPP statute. *Safari Club*, 862 F.3d at 1119. "An act is in furtherance of
11 the right of free speech if the act helps to advance that right or assists in the exercise
12 of that right." *Tamkin*, 193 Cal. App. 4th at 143. The anti-SLAPP statute expressly
13 recognizes four categories of protected conduct, two of which Rodriguez Defendants
14 invoke here: "any written or oral statement or writing made in a place open to the
15 public or a public forum in connection with an issue of public interest," and "any other
16 conduct in furtherance of the exercise of the constitutional right of petition or the
17 constitutional right of free speech in connection with a public issue or an issue of
18 public interest." Cal. Civ. Proc. Code §§ 425.16(e)(3) & (e)(4). Rodriguez
19 Defendants need only show the conduct underlying each cause of action falls within
20 one protected category. *Safari Club*, 862 F.3d at 1121.

21 Rodriguez Defendants move to strike the challenged causes of action on the
22 basis that they arise from "expressive conduct in connection with the production and
23 exhibition of the movies 'Machete' and 'Machete Kills.'" (Notice of Anti-SLAPP
24 Mot. 1.) They are correct that such expressive conduct falls within the ambit of the
25 Anti-SLAPP statute's protections, but they fail to address Plaintiffs' allegation that
26 Rodriguez Defendants pressured Trejo to stop working with Plaintiffs, which is not.

27 Under California law, the creation, production, and distribution of entertainment
28 such as television or film are activities in furtherance of the exercise of the right to

1 free speech, and thus protected under the anti-SLAPP statute. *See Tamkin*, 193 Cal.
2 App. 4th at 143; *see also Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 578
3 (1977) (“There is no doubt that entertainment, as well as news, enjoys First
4 Amendment protection.”); *Wilder v. CBS Corp.*, No. 2:12-cv-8961-SVW-RZ, 2016
5 WL 693070, at *10–11 (C.D. Cal. Feb. 13, 2016) (finding the production and
6 distribution of a television show to be in furtherance of the right to free speech).

7 Further, the parties do not dispute that the *Machete* films are matters of public
8 interest. A matter of public interest may be “conduct [that] concerns a person or entity
9 in the public eye,” “conduct that could directly affect a large number of people,” or “a
10 topic of widespread, public interest.” *Rand Res.*, 6 Cal. 5th at 621 (internal quotation
11 marks omitted); *see also Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042
12 (2008) (discussing that an issue of public interest is “any issue in which the public is
13 interested”). *Machete* was released on over 2600 theater screens domestically, named
14 as one of the top 100 domestic grossing films in 2010, and nominated for numerous
15 awards. (Anti-SLAPP Mot. 5; Decl. of Robert Rodriguez (“Decl. Rodriguez”) ¶ 19,
16 ECF No. 34-26.) In 2013, *Machete Kills* was similarly released on over 2500 screens
17 domestically. (Decl. Rodriguez ¶ 19.) As such, it is clear that the films directly
18 affected a large number of people and that the public was interested. Thus, activities
19 advancing the creation, production, and distribution of the *Machete* films, including
20 casting Trejo, are actions in furtherance of the exercise of free speech in connection
21 with an issue of public interest and subject to the anti-SLAPP statute.

22 Rodriguez Defendants do not address Plaintiffs’ second theory underlying their
23 claims, that Rodriguez Defendants pressured Trejo not to work with Plaintiffs on
24 *Vengeance*. Such conduct does not further the exercise of free speech rights as it does
25 nothing to advance the creation, distribution, or production of the *Machete* films.
26 Thus, to the extent that Plaintiffs’ causes of action arise from this theory that
27 Rodriguez Defendants pressured Trejo not to work with Plaintiffs on *Vengeance*, the
28 conduct is not protected by the anti-SLAPP statute.

1 Rodriguez Defendants have met their burden to show that the challenged causes
2 of action arise, in part, from the protected activity of creation, production, and
3 distribution of the *Machete* films. Accordingly, the burden shifts to Plaintiffs to show
4 a reasonable probability of prevailing on the challenged causes of action.

5 **B. Reasonable Probability of Prevailing**

6 “[I]n cases involving allegations of both protected and unprotected activity, the
7 plaintiff is required to establish a probability of prevailing on any claim for relief
8 based on allegations of protected activity.” *Baral*, 1 Cal. 5th at 395. The unprotected
9 activity is disregarded. *Id.* at 396. To show a probability of prevailing on the
10 challenged claims, “plaintiff[s] must demonstrate that the complaint is both legally
11 sufficient *and* supported by a sufficient prima facie showing of facts to sustain a
12 favorable judgment” if the plaintiffs’ evidence is credited. *Safari Club*, 862 F.3d at
13 1122 (emphasis added). As this requirement is in the conjunctive, where the plaintiff
14 does not demonstrate a legally sufficient claim, no factual showing will be sufficient.

15 “[W]hen an anti-SLAPP motion to strike challenges only the *legal sufficiency*
16 of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6)
17 standard and consider whether a claim is properly stated.” *Planned Parenthood Fed’n*
18 *of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018) (emphasis
19 added), *amended*, 897 F.3d 1224 (9th Cir. 2018). Plaintiffs contend the Court should
20 treat this Motion as a factual challenge, meaning Plaintiffs must be allowed discovery
21 before the Court rules. (See Opp’n Mot. Ruling 11, ECF No. 123 (citing *Planned*
22 *Parenthood*, 890 F.3d at 834 (“[W]hen an anti-SLAPP motion to strike challenges the
23 factual sufficiency of a claim, then the [Rule] 56 standard will apply” and discovery
24 must be allowed.)).) However, Plaintiffs concede the Anti-SLAPP Motion was fully-
25 briefed in 2015, including Plaintiffs’ evidentiary support. (Opp’n Mot. Ruling 1.)
26 Plaintiffs also concede that “the merits of the pleading sufficiency challenge have
27 already been decided. . . . Rodriguez Defendants did win on the pleadings.” (Opp’n
28 Mot. Ruling 12.) “All that really remains . . . is whether the claims which were

1 decided by the pleading sufficiency challenge (which was *all* of the claims) were
2 claims arising out of protected activity subject to the [a]nti-SLAPP statute.” (Opp’n
3 Mot. Ruling 12.) Thus, Plaintiffs appear to concede that they cannot make a showing
4 of legal sufficiency.

5 The Court previously dismissed Plaintiffs’ Complaint under Rule 12(b)(6); the
6 Ninth Circuit affirmed with limited leave to amend as to two causes of action; and the
7 Court, in a concurrently-issued order, dismisses the two remaining amended claims
8 under Rule 12(b)(6) without leave to amend. In light of the above and this procedural
9 posture, the Court proceeds with Rodriguez Defendants’ Anti-SLAPP Motion as to
10 only the *legal sufficiency* of Plaintiffs’ Complaint under Rule 12(b)(6), and does not
11 consider any factual challenge the motion may have raised.

12 *1. First Cause of Action*

13 Plaintiffs’ first cause of action is for intentional interference with contractual
14 relations. As the first of five elements on this cause of action, a plaintiff must allege
15 facts sufficient to establish a valid contract between plaintiff and a third party. *Pac.*
16 *Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990). The Court
17 previously dismissed this cause of action for failure to state a claim, finding the
18 alleged written contracts void as unlawful restraints on trade. (Order MTD 14.) The
19 Ninth Circuit affirmed, with limited leave to amend. *ITN Flix*, 686 F. App’x at 443–
20 44. Following Plaintiffs’ amendment, the Court again found Plaintiffs’ first cause of
21 action fails to state a claim under Rule 12(b)(6). Accordingly, the Court finds that
22 Plaintiffs cannot establish a probability of prevailing on their first cause of action.

23 *2. Second and Third Causes of Action*

24 Plaintiffs’ second and third causes of action are essentially the same, but under
25 different state laws, Utah and California. The second cause of action is for intentional
26 interference with economic relations under Utah law. The Ninth Circuit affirmed
27 dismissal of the second cause of action as duplicative of the third. *Id.* at 445. This
28 Court previously dismissed the third cause of action for intentional interference with

1 prospective economic advantage under California law and the Ninth Circuit affirmed,
2 finding Plaintiffs’ allegations insufficient to state a claim. *Id.* at 444. Accordingly,
3 the Court finds that Plaintiffs cannot establish a probability of prevailing on their
4 second or third causes of action.

5 3. *Sixth, Eighth, and Ninth Causes of Action*

6 Plaintiffs also cannot establish a probability of prevailing on their sixth cause of
7 action for unjust enrichment, eighth cause of action for unfair competition, and ninth
8 cause of action for negligence. The Court previously dismissed these causes of action
9 without leave to amend. (Order 15–18.) Plaintiffs appear to have not raised the sixth
10 and eighth causes of action on appeal, as the Ninth Circuit did not address them. The
11 Ninth Circuit affirmed dismissal of the ninth cause of action for negligence “because
12 [Plaintiffs] identified no special relationship with any Defendant that creates a duty of
13 care owed to [them].” *ITN Flix*, 686 F. App’x at 445. Accordingly, the Court finds
14 that Plaintiffs cannot establish a probability of prevailing on their sixth, eighth, or
15 ninth causes of action.

16 **C. Conclusion as to Anti-SLAPP Motion**

17 Rodriguez Defendants have shown that the challenged causes of action arise in
18 large part from activity taken in furtherance of their exercise of free speech rights, and
19 thus subject to the anti-SLAPP statute. Plaintiffs cannot show a reasonable
20 probability of prevailing on any of the challenged causes of action. Accordingly, the
21 Court **GRANTS, IN PART**, Rodriguez Defendants’ Anti-SLAPP Motion and
22 **ORDERS** that Plaintiffs’ first, second, third, sixth, eighth, and ninth causes of action
23 are **STRICKEN** to the extent they are premised on the protected activity of Rodriguez
24 Defendants’ casting Trejo in, creating, producing, and distributing the *Machete* films.
25 *See Baral*, 1 Cal. 5th at 382.

26 **D. Attorneys’ Fees**

27 The Ninth Circuit directed, “[o]n remand, if the district court grants the anti-
28 SLAPP motion, it should consider whether attorney’s fees are proper and it should do


1 so even if it also grants a motion to dismiss.” *ITN Flix*, 686 F. App’x at 445. “[A]
2 prevailing defendant on a special motion to strike *shall be* entitled to recover his or
3 her attorney’s fees and costs.” Cal. Civ. Proc. Code § 425.16(c) (emphasis added). As
4 Rodriguez Defendants prevailed on their anti-SLAPP motion, they are entitled to their
5 attorneys’ fees and costs. The parties are **ORDERED** to confer as to the amount of
6 attorneys’ fees to be awarded and submit a stipulation within thirty (30) days from the
7 date of this order. Should the parties be unable to reach an agreement, they shall file a
8 joint status report to that effect within thirty (30) days from the date of this order and
9 propose a briefing schedule for a noticed motion.

10 **V. CONCLUSION**

11 As discussed above, the Court **GRANTS** Rodriguez Defendants’ Motion for
12 Ruling (ECF No. 116) and **GRANTS, IN PART**, Rodriguez Defendants’ Anti-
13 SLAPP Motion (ECF No. 34).

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15 **IT IS SO ORDERED.**

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17 August 6, 2019

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21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**
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