

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRANSAMERICA LIFE INSURANCE)
COMPANY,)

Plaintiff-in-Interpleader,)

v.)

YOUSEF RABADI, INTESAR)
ALTURK, BILL BILTAGI,)
LYSAGHT LAW GROUP LLP, and)
DOES 1 through 10,)

Defendants-in-Interpleader.)
_____)

YOUSEF RABADI, INTESAR)
ALTURK, and BILL BILTAGI,)

Cross-claimants,)

v.)

LYSAGHT LAW GROUP LLP, and)
BRIAN C. LYSAGHT,)

Cross-defendants.)
_____)

CV 15-07623-RSWL-Ex

ORDER re: Cross-
defendants Lysaght Law
Group LLP and Brian C.
Lysaght's Special Motion
to Strike Second Cross-
claim under C.C.P. §
425.16 [34] and Motion
to Dismiss Second Cross-
claim Pursuant to
F.R.C.P. 12(b)(6) [35]

1 Presently before the Court are two motions by
2 Cross-defendants Lysaght Law Group LLP ("LLG") and
3 Brian C. Lysaght ("Lysaght") (collectively, "Cross-
4 defendants"): (1) Special Motion to Strike Second
5 Cross-claim Under C.C.P. § 425.16 [34] ("Anti-SLAPP
6 Motion"), and (2) Motion to Dismiss Second Cross-claim
7 Pursuant to F.R.C.P. 12(b)(6) [35] ("12(b)(6) Motion").

8 Having reviewed all papers submitted pertaining to
9 these Motions, the Court **NOW FINDS AND RULES AS**
10 **FOLLOWS:** the Court **GRANTS** Cross-defendants' Anti-SLAPP
11 Motion [34] and dismisses as **MOOT** Cross-defendants'
12 12(b)(6) Motion [35].

13 I. BACKGROUND

14 A. Factual Background

15 Victoria Rabadi (the "Insured") was insured under a
16 life insurance policy by TLIC (the "Policy"). Compl. ¶
17 10. Cross-claimants Yousef Rabadi, Intesar Alturk
18 ("Alturk"), and Bill Biltagi ("Biltagi") (collectively,
19 "Cross-claimants") are the beneficiaries of the Policy.
20 Id.

21 On about April 15, 2015, Cross-defendants filed a
22 Notice of Attorney's Lien (the "Lien") in Los Angeles
23 Superior Court in connection with their representation
24 of the plaintiffs in case number BC459192 ("Los Angeles
25 Superior Court action"). Id. at ¶ 11; see also Decl.
26 of Natasha Riggs ("Riggs Decl."), Ex. D, ECF No. 36-4.
27 Cross-defendants claim that they represented Josef
28 Rabadi, Reem Rabadi, and Sandra Rabadi against Abraham

1 Khader and other defendants, including Alturk, in
2 connection with a securities fraud and RICO case. Id.
3 at p. 6. The Lien states that Cross-defendants have a
4 contractual attorney's lien on all proceeds and
5 compensation of any kind paid to Josef Rabadi, Reem
6 Rabadi, and/or Sandra Rabadi as clients. Id. at ¶ 11.

7 The Insured died on May 18, 2015. Id. at ¶ 13.
8 After the Insured died, Cross-claimants made claim to
9 the full Policy proceeds. Id. at ¶ 14.

10 On June 23, 2015, TLIC's attorney contacted Lysaght
11 on behalf of TLIC. See Decl. of Natasha Riggs ("Riggs
12 Decl."), Ex. G, ECF No. 36-7. The letter from TLIC's
13 attorney included a copy of Cross-defendants' Notice of
14 Attorney's Lien filed in the Los Angeles Superior Court
15 action, and stated that TLIC's attorney "would
16 appreciate your confirming whether the lien is still in
17 effect or has been satisfied." Id.

18 On June 29, 2015, Cross-defendants sent a reply to
19 TLIC stating that the Lien "remains in full force and
20 effect as a charging lien and has not been disturbed or
21 reduced since it was filed on April 14, 2014." Id.,
22 Ex. H, ECF No. 36-8.

23 On August 19, 2015, TLIC replied to Cross-
24 Defendants' June 29 letter, stating that Cross-
25 Defendants' former clients (Josef, Reem, and Sandra
26 Rabadi) are not named beneficiaries under the Insured's
27 Policy. Riggs Decl., Ex. I, ECF No. 36-9. TLIC stated
28 that it would not be paying the Policy proceeds to any

1 of these individuals. Id. TLIC also stated that "we
2 understand that your firm may be taking the position .
3 . . . that it is or could be entitled to some portion of
4 the Policy proceeds based on the Lien." Id. TLIC
5 noted that it had discussed the possibility of filing
6 an interpleader action with Cross-claimants, but that
7 "it is unclear if that is necessary given that you have
8 not unequivocal [sic] made a claim to any of the Policy
9 proceeds based on the Lien but have simply reaffirmed
10 the Lien is in effect and would be applicable to
11 payments (direct or indirect) made by [TLIC] to any of
12 the individuals subject to the Lien." Id.

13 TLIC alleges that Cross-defendants subsequently
14 demanded that TLIC pay 30% of the Policy benefits to
15 them pursuant to the Lien. Compl. ¶ 16; see Decl. of
16 Stephen E. Blaine ("Blaine Decl."), Ex. B, p. 7, ECF
17 No. 45-1.¹ Cross-defendants assert that the Lien
18 applies to the Policy proceeds because the proceeds
19 might be indirectly paid by one or more of the Cross-
20 claimants to one of more of Cross-defendants' former

21
22 ¹ In an email dated August 24, 2015, Cross-defendants state,
23 "Our lien . . . reaches all proceeds and compensation of every
24 kind and character, in cash or in-kind, transmitted directly or
25 indirectly to plaintiffs we represented or any third person in
26 which our former clients had a beneficial interest. The lien is
27 in no way limited to the nominal beneficiary under a policy."
28 Blaine Decl. ¶ 3, Ex. B, p. 7. Cross-defendants claim that
"[t]he fact that Rabadi who is the nominal beneficiary of the
Transamerica policy is a Rabadi with a different first name than
the Rabadis that we represented is not determinative of anything"
because Khader "routinely uses bogus names and entities to hide
the real beneficiaries and so far no one will advise us of
whether and to what extent he is involved with this policy." Id.

1 clients in the Los Angeles Superior Court action who
2 are subject to the Lien. Compl. ¶ 17; see also Blaine
3 Decl., Ex. B, p. 7.

4 Cross-claimants dispute Cross-defendants' claim and
5 assert that Cross-claimants are entitled to the
6 remaining 30% of the Policy proceeds. Compl. ¶ 18.

7 On September 18, 2015, TLIC paid the undisputed 70%
8 of the Policy proceeds to the trust account for Cross-
9 claimants. Id. at ¶ 20. TLIC alleges that it is
10 unable to determine which of the Defendants should be
11 paid the remaining 30% of the Policy proceeds without
12 the risk of exposing itself to multiple liability. Id.
13 at ¶ 21.

14 **B. Procedural Background**

15 On September 29, 2015, TLIC filed its Complaint-in-
16 Interpleader against Cross-claimants and Cross-
17 defendants [1].

18 Cross-claimants filed their Answer [20] and cross-
19 claims [22] against Cross-defendants on January 13,
20 2016. Cross-claimants assert two cross-claims for: (1)
21 declaratory relief, and (2) intentional interference
22 with contractual relations. Cross-cl. ¶¶ 1-20, ECF
23 No. 22.

24 On February 23, 2016, Cross-defendants filed the
25 instant Anti-SLAPP Motion [34], seeking to strike
26 Cross-claimants second cross-claim for intentional
27 interference with contractual relations. Cross-
28 defendants also filed a 12(b)(6) Motion [35].

1 The Opposition [45] and Reply [48] to Cross-
2 defendants' Anti-SLAPP Motion were timely filed, and
3 the matter was taken under submission on April 7, 2016
4 [52].

5 II. DISCUSSION

6 A. Legal Standard

7 A defendant may bring a special motion to strike
8 any cause of action "arising from any act of that
9 person in furtherance of the person's right of petition
10 or free speech under the United States Constitution or
11 the California Constitution in connection with a public
12 issue." Cal. Code Civ. Proc. § 425.16(b)(1). When
13 ruling on an anti-SLAPP motion, the court employs a
14 two-step process. It first looks to see whether the
15 moving party has made a prima facie showing that the
16 challenged causes of action arise from an act in
17 furtherance of protected activity. Drell v. Cohen, 181
18 Cal. Rptr. 3d 191, 194 (Cal. Ct. App. 2014) (citing
19 Cal. Code Civ. Proc. § 425.16(b)(2)); Equilon Enters.
20 v. Consumer Cause, Inc., 52 P.3d 685, 694 (Cal. 2002).
21 If the moving party meets this threshold requirement,
22 the burden then shifts to the other party to
23 demonstrate a probability of prevailing on its claims.
24 Drell, 181 Cal. Rptr. 3d at 194 (citing Cal. Code Civ.
25 Proc. § 425.16(b)(3)).

26 In making these determinations, the court considers
27 "the pleadings, and supporting and opposing affidavits
28 stating the facts upon which the liability or defense

1 is based." Cal. Code Civ. Proc. § 425.16(b)(2).

2 **B. Discussion**

3 1. Protected Activity

4 The Court must first determine whether Cross-
5 defendants have made a prima facie showing that the
6 cross-claim for intentional interference with
7 contractual relations arises from protected activity.

8 Cross-defendants argue that Cross-claimants' cause
9 of action for intentional interference with contractual
10 relations "is based on conduct in the exercise of LLG's
11 protected rights: the filing and assertion of a notice
12 of attorney's lien in the Superior Court." Anti-SLAPP
13 Mot. 1:16-17.

14 Cross-claimants argue that their intentional
15 interference claim is based on conduct that occurred
16 prior to the initiation of any litigation to enforce
17 the Lien, and accordingly, Cross-defendants'
18 communications were not made in any judicial
19 proceeding, and the communications are not protected
20 activity. Opp'n 2:17-24.

21 Statements made in litigation, or in connection
22 with litigation, are protected by section 425.16(e).
23 Drell, 181 Cal. Rptr. 3d at 194. Courts have adopted a
24 "fairly expansive view" of litigation-related conduct
25 to which the anti-SLAPP provisions apply. Kashian v.
26 Harriman, 98 Cal. App. 4th 892, 908 (Cal. Ct. App.
27 2002). In making a prima facie showing, it is not
28 enough to establish that the action was filed in

1 response to or in retaliation for a party's exercise of
2 the right to petition. Navellier v. Sletten, 52 P.3d
3 703, 708-09 (Cal. 2002); City of Cotati v. Cashman, 52
4 P.3d 695, 702 (Cal. 2002). Rather, the claim "must be
5 based on the defendant's protected free speech or
6 petitioning activity." Navellier, 52 P.3d at 708-09
7 (emphasis in original).

8 In Drell v. Cohen, the defendants asserted an
9 attorney fee lien in a personal injury lawsuit
10 involving a former client. 181 Cal. Rptr. 3d 191, 192
11 (Cal. Ct. App. 2014). Plaintiff, the client's
12 subsequent attorney, filed a complaint for declaratory
13 relief to determine the status of the defendants' lien.
14 Id. Defendants filed an anti-SLAPP motion asserting
15 that plaintiff's complaint arose from their protected
16 activity in filing the lien. Id. The appellate court
17 held that the complaint was not based on protected
18 activity because the complaint did not allege that
19 defendants engaged in wrongdoing by asserting their
20 lien, and did not seek to prevent defendants from
21 exercising their right to assert their lien. Id. at
22 195. The court emphasized that protected conduct which
23 is merely incidental to the claim does not fall within
24 the ambit of section 425.16. Id. at 194.

25 Here, Cross-defendants' Notice of Attorney's Lien
26 was filed in conjunction with the ongoing litigation in
27 the Los Angeles Superior Court, and is protected
28 petitioning activity. See id.; see also Decl. of

1 Natasha Riggs ("Riggs Decl.") ¶ 6, Exs. D & E, ECF No.
2 36. Unlike in Drell, where the plaintiff did not
3 allege that defendants engaged in wrongdoing by
4 asserting the lien, the cross-claim here is based
5 entirely on Cross-defendants assertion of their Lien,
6 and the "gravaman of the claim" is a SLAPP.² See Drell,
7 181 Cal. Rptr. 3d at 29. Accordingly, Cross-claimant's
8 cause of action for intentional interference with
9 contractual relations arises from Cross-defendants'
10 protected petitioning activity within the meaning of
11 section 425.16.

12 In addition, communications that are made in
13 anticipation of litigation are generally entitled to
14 protection, Briggs v. Eden Council for Hope &
15 Opportunity, 969 P.2d 564, 569 (Cal. 1999), and a
16 challenged communication is deemed to have been made
17 "in connection with" a lawsuit if the lawsuit was
18 "under serious consideration" at the time the
19 communication was made, Davis v. Hollins Law, 942 F.
20 Supp. 2d 1004, 1013 (E.D. Cal. 2013). Cross-claimants
21 argue that the challenged conduct was not Cross-
22 defendants' filing of the Notice of Lien in the Los
23 Angeles Superior Court action, but rather their
24 assertion to TLIC that they have a lien on the Policy

25
26 ² The second cross-claim alleges: "[B]y asserting . . . that
27 [Cross-defendants] had an attorney's lien on the Policy Proceeds
28 . . . [Cross-defendants] intended to interfere, and did
interfere, with Cross-claimants' receipt of the Policy Proceeds as provided by the terms of the Policy Proceeds." Cross-cl. ¶
18.

1 proceeds. See Opp'n 6:4-9. Even so, Cross-defendants'
2 communications with TLIC amount to protected
3 petitioning activity in anticipation of the instant
4 interpleader action. See Beheshti v. Bartley, No.
5 RG07320387, 2009 WL 5149862, at *5 (Cal. Ct. App. Dec.
6 29, 2009) (notice of lien was protected activity under
7 section 425.16 because it was made in anticipation of
8 litigation that materialized when an interpleader
9 action was filed).

10 After TLIC contacted Cross-defendants in June 2015,
11 Cross-defendants replied to TLIC that the Lien filed in
12 the Los Angeles Superior Court action remained in full
13 force. Riggs Decl., Ex. H.

14 On August 19, 2015, TLIC informed Cross-defendants
15 that TLIC would not be paying the Policy proceeds to
16 any of Cross-defendants' former clients, as those
17 individuals were not named beneficiaries under the
18 Policy. Riggs Decl., Ex. I. TLIC noted that an
19 interpleader action had been discussed with Cross-
20 claimants, but it was not clear if an interpleader was
21 necessary since Cross-defendants had not made an
22 unequivocal claim to the Policy proceeds. See id.

23 On August 25, 2015, Cross-defendants responded to
24 TLIC by making an unequivocal claim to any Policy
25 proceeds transmitted to their former clients or "any
26 third person in which our former clients had a
27 beneficial interest." Blaine Decl., Ex. B, p. 7. This
28 "unequivocal claim" was made in anticipation of this

1 interpleader action. Unlike in Davis, where the court
2 found that no lawsuit was "under serious consideration"
3 because no details were provided to show what event
4 might trigger the filing of a lawsuit, Cross-
5 defendants' "unequivocal claim" to the Policy proceeds
6 gave rise to the need for an interpleader action. See
7 942 F. Supp. 2d at 1013.

8 Cross-defendants also made clear that "[if] TLIC
9 wishes to litigate [LLG's] entitlement to 30% of [the
10 Policy proceeds], then there are mechanisms to do
11 that." Riggs Decl., Ex. I. Cross-defendants noted
12 that they encouraged the Insured's lawyer, Stephen
13 Blaine, "to seek judicial resolution of the matter but
14 he has not done so, notwithstanding his initial threats
15 to do so immediately." Id. Cross-defendants demanded
16 that TLIC pay 30% of the Policy proceeds to their
17 firm's account, and stated that "Mr. Blaine can if he
18 chooses seek to recover those amounts from us." Id.
19 These statements fall within the category of
20 "statements made in connection with or in preparation
21 of litigation," which are entitled to anti-SLAPP
22 protection. Kolar v. Donahue, McIntosh & Hammerton, 52
23 Cal. Rptr. 3d 712, 716 (Cal. Ct. App. 2006).

24 In addition, "conduct that would otherwise come
25 within the scope of the anti-SLAPP statute does not
26 lose its coverage . . . simply because it is *alleged* to
27 have been unlawful or unethical." Kashian v. Harriman,
28 98 Cal. App. 4th 892, 910-11 (Cal. Ct. App. 2002). The

1 legitimacy of Cross-defendants' conduct is not to be
2 resolved in determining whether the claim arises from
3 Cross-defendants' protected activity, but rather, must
4 be raised by Cross-claimants in connection with their
5 burden to show a probability of prevailing on the
6 merits. Flatley v. Mauro, 139 P.3d 2, 12 (Cal. 2006).

7 Because the second cross-claim for intentional
8 interference with contractual relations is based on
9 Cross-defendants' protected activity in connection with
10 and in anticipation of this interpleader action, the
11 Court will proceed to the next step of determining
12 whether there is a reasonable probability that Cross-
13 claimants will prevail on their claim.

14 2. Probability of Prevailing

15 In order to establish a probability of prevailing
16 on the claim, a plaintiff responding to an anti-SLAPP
17 motion must "state and substantiate a legally
18 sufficient claim." Premier Med. Mgmt. Sys., Inc. v.
19 Cal. Ins. Guar. Ass'n, 39 Cal. Rptr. 3d 43, 52 (Cal.
20 Ct. App. 2006) (citations omitted). The claimant must
21 demonstrate that the challenged cause of action was
22 "both legally sufficient and supported by a prima facie
23 showing of facts to sustain a favorable judgment if the
24 evidence submitted by the plaintiff is credited."
25 Navellier v. Sletten, 29 Cal. 4th 82, 89-90 (Cal. 2002)
26 (citations omitted). This determination is made in
27 light of the pleadings and evidentiary submissions of
28 both parties: "[T]hough the court does not weigh the

1 credibility or comparative strength of competing
2 evidence, it should grant the motion if, as a matter of
3 law, the defendant's evidence supporting the motion
4 defeats the plaintiff's attempt to establish
5 evidentiary support for the claim." Premier Med., 39
6 Cal. Rptr. 3d at 52.

7 Cross-claimants do not "state and substantiate a
8 legally sufficient claim." Premier Med., 39 Cal. Rptr.
9 3d at 52.

10 Under California law, a cause of action for
11 intentional interference with contractual relations
12 requires proof of the following elements: "(1) a valid
13 contract between plaintiff and a third party; (2)
14 defendant's knowledge of this contract; (3) defendant's
15 intentional acts designed to induce a breach or
16 disruption of the contractual relationship; (4) actual
17 breach or disruption of the contractual relationship;
18 and (5) resulting damage." United Nat. Maint., Inc. v.
19 San Diego Convention Ctr., Inc., 766 F.3d 1002, 1006
20 (9th Cir. 2014) (quoting Pac. Gas & Elec. Co. v. Bear
21 Stearns & Co., 791 P.2d 587, 589-90 (Cal. 1990)).
22 Wrongfulness independent of the inducement to breach
23 the contract is not an element of the tort for
24 intentional interference with existing contractual
25 relations. Quelimane Co. v. Stewart Title Guaranty
26 Co., 960 P.2d 513, 530 (Cal. 1998).

27 Here, Cross-claimants do not even allege a valid
28 contract between TLIC and Cross-claimants. The second

1 cross-claim does not incorporate the prior allegations
2 made in the first cross-claim, and the only allegation
3 that could support the existence of a contract is
4 paragraph 11, which states: "The Policy established an
5 economic relationship between [TLIC] and Cross-
6 claimants with the probability of a future economic
7 benefit to Cross-claimants as beneficiaries of the
8 Policy." Cross-cl. ¶ 11. This bare allegation,
9 without more, does not establish that the "Policy" is a
10 valid contract between TLIC and Cross-claimants.

11 Moreover, although Cross-claimants label their
12 second claim as "intentional interference with
13 contractual relations," the allegations are more
14 properly characterized as alleging a claim for
15 "intentional interference with prospective economic
16 relations." See id. A plaintiff seeking to recover
17 under a claim for intentional interference with
18 prospective economic relations must prove that the
19 defendant "not only knowingly interfered with the
20 plaintiff's expectancy, but engaged in conduct that was
21 wrongful by some legal measure other than the fact of
22 interference itself." Della Penna v. Toyota Motor
23 Sales, U.S.A., Inc., 11 Cal. 4th 376, 393 (Cal. 1995).
24 Cross-defendants' statements to TLIC in connection with
25 their Lien claim do not amount to an independent wrong,
26 and there is no probability that Cross-claimants would
27 prevail on a claim for intentional interference with
28 prospective economic relations.

1 In addition, the supporting evidence makes clear
2 that TLIC's attorney initiated the communications with
3 Cross-defendants concerning the Lien, and not vice
4 versa. See Riggs Decl., Exs. G, H. In response,
5 Cross-defendants confirmed that their Lien was still in
6 effect, which gave rise to this interpleader action.
7 This evidence is not sufficient to prove that Cross-
8 defendants knew of the alleged Policy between Cross-
9 claimants and TLIC, or acted intentionally to induce
10 TLIC to breach the Policy with Cross-claimants.

11 Lastly, Cross-claimants do not provide any
12 affidavits or evidence to demonstrate that TLIC
13 breached the Policy by seeking a determination in
14 interpleader of how to distribute the Policy proceeds.

15 To meet its burden to prove a probability of
16 success on their claim, Cross-claimants' sole argument
17 is to suggest that Cross-defendants' Notice of Lien
18 exceeds the scope of their retainer agreement with
19 their former clients, and cannot possibly attach to the
20 Policy proceeds. This assertion, if found to be true,
21 would not entitle Cross-defendants to any amount of the
22 Policy proceeds. However, this assertion is not
23 sufficient to support a tort claim for interference
24 with contractual or prospective economic relations.

25 III. CONCLUSION

26 For these reasons, the Court **GRANTS** Cross-
27 defendants' Anti-SLAPP Motion [34] to strike Cross-
28 claimants' second cross-claim for intentional

1 interference with contractual relations, with fees and
2 costs are awarded to Cross-defendants. Cal. Code Civ.
3 Proc. § 425.16(c)(1). Cross-defendants' 12(b)(6)
4 Motion [35] is **MOOT**.

5 **IT IS SO ORDERED.**

6
7 DATED: May 17, 2016

s/ RONALD S.W. LEW
8 **HONORABLE RONALD S.W. LEW**
9 Senior U.S. District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28