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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FARMERS INSURANCE EXCHANGE,
et al.,

Plaintiffs,

v.

STEELE INSURANCE AGENCY, INC.,
et al.,

Defendants.

No. 2:13-cv-00784-MCE-DAD

MEMORANDUM AND ORDER

AND RELATED CROSS-ACTION

Plaintiffs Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, and Farmers New World Life Insurance Company (collectively "Cross-Defendants" or "Farmers") filed this action against Defendants Steele Insurance Agency ("SIA"), Troy Steele ("Steele"), Ted Blalock ("Blalock"), Larry McCarren ("McCarren"), Bill Henton ("Henton"), and Cindy Jo Perkins ("Perkins") (collectively "Defendants") for the alleged misappropriation of Farmers' trade secrets, as well as for other violations of state and federal law pertaining to the operation of the parties' respective insurance companies. Specifically, Farmers' operative Second Amended Complaint ("SAC") alleges the following causes of action: (1) breach of

1 contract against McCarren; (2) misappropriation of trade secrets against all Defendants;
2 (3) violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030(a)(2)(C),
3 against Henton and Perkins; (4) violation of the CFAA, 18 U.S.C. § 1030(a)(4), against
4 Henton and Perkins; and (5) civil conspiracy against all Defendants. ECF No. 48.

5 On June 3, 2014, Defendants SIA and Steele (collectively “Cross-Claimants”) filed
6 a First Amended Cross-Claim (“FACC”) against Cross-Defendants for interference with
7 prospective business advantage. ECF No. 72. Presently before the Court is Cross-
8 Defendants’ (1) anti-SLAPP Motion to Strike the FACC (“anti-SLAPP Motion”), ECF
9 No. 74, and (2) Motion to Dismiss the FACC for failure to state a claim pursuant to
10 Federal Rule of Civil Procedure 12(b)(6), ECF No. 75. For the reasons set forth below,
11 the anti-SLAPP Motion, ECF No. 74, is GRANTED WITHOUT LEAVE TO AMEND and
12 the Motion to Dismiss, ECF No. 75, is DENIED AS MOOT.¹

13 14 **BACKGROUND²**

15
16 Cross-Defendants are a group of five insurance exchanges, each of which sells
17 insurance provided by Farmers. Cross-Claimants are SIA and Steele. Steele is a
18 former Farmers district manager who left Farmers to start SIA, which competes with and
19 does not offer Farmers products. Cross-Defendants’ SAC generally alleges that former
20 Farmers agents and district managers misappropriated Farmers’ trade secrets by
21 downloading and copying Farmers’ customer lists off Farmers’ online “dashboard.” The
22 lists contain customer information, including when policies were up for renewal and what
23 types of policies customers had. Cross-Defendants also allege that Defendants took
24 advantage of elderly or ill Farmers agents to gain access to Farmers’ customer lists.

25
26 ¹ Because oral argument would not be of material assistance, the Court ordered this matter
submitted on the briefs. E.D. Cal. Local R. 230(g); see ECF No. 87.

27
28 ² Because the parties are familiar with the background of this case, the Court recites only a
general overview of the facts which are relevant to the Court’s disposition of the pending motions. These
facts are taken, at times verbatim, from the SAC and FACC. ECF No. 72. Additional facts may be found
in the Court’s previous Orders, ECF Nos. 47 and 70.

1 Cross-Defendants claim that Defendants have improperly solicited Farmers customers
2 and convinced them to switch to SIA and as a result Farmers has lost approximately two
3 hundred customers to SIA.

4 In their FACC, Cross-Claimants assert that before Cross-Defendants filed the
5 initial complaint in this lawsuit on April 23, 2013, a Farmers district manager, Audrey
6 Peguero (“Peguero”), “orally made false statements. . . to Cross-[D]efendants’ insurance
7 agents that Cross-[D]efendants had filed a lawsuit against Cross-[C]laimants, falsely
8 stating that Cross-[C]laimants had misappropriated Cross-[D]efendants’ confidential
9 policyholder information for the purpose of soliciting policyholders to. . .switch their
10 insurance business to Cross-[C]laimant SIA, and that Cross-[D]efendants would be
11 putting Cross-[C]laimants out of business.” ECF No. 72 ¶ 19. According to Cross-
12 Claimants, as a result of this wrongful conduct, their relationships with customers,
13 potential customers, and various insurance carriers have been disrupted and they have
14 lost income. See id. ¶ 21.

15 16 STANDARD³

17
18 California’s anti-SLAPP (strategic lawsuit against public participation) statute is
19 designed to discourage suits that “masquerade as ordinary lawsuits but are brought to
20 deter common citizens from exercising their political or legal rights or to punish them for
21 doing so.” Batzel v. Smith, 333 F.3d 1018, 1024 (9th Cir. 2003) (internal quotation
22 marks omitted). The statute provides:

23 A cause of action against a person arising from any act of
24 that person in furtherance of the person’s right of petition or
25 free speech under the United States Constitution or the
26 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.

27
28 ³ Because the Court grants the anti-SLAPP Motion, the Rule 12(b)(6) Motion is moot. Accordingly,
the Rule 12(b)(6) standard is not included herein.

1 Cal. Civ. Proc. Code § 425.16(b)(1). The anti-SLAPP statute “was enacted to allow early
2 dismissal of meritless first amendment cases aimed at chilling expression through costly,
3 time-consuming litigation.” Metabolife Int’l, Inc. v. Wornick, 264 F.3d 832, 839 (9th Cir.
4 2001). In particular, the California legislature found:

5 [T]here has been a disturbing increase in lawsuits brought
6 primarily to chill the valid exercise of the constitutional rights
7 of freedom of speech and petition for the redress of
8 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.

9 Cal. Civ. Proc. Code § 425.16(a). The legislature specifically provided that the anti-
10 SLAPP statute should be “construed broadly.” Id.; see also Briggs v. Eden Council for
11 Hope & Opportunity, 19 Cal. 4th 1106, 1119-20 (1999).

12 A defendant may file an anti-SLAPP motion in federal court. See Thomas v. Fry’s
13 Elecs., Inc., 400 F.3d 1206, 1206-07 (9th Cir. 2005) (per curiam). The Court must
14 evaluate the anti-SLAPP Motion in two steps. “First, the defendant moving to strike must
15 make a threshold showing. . . that the act or acts of which the plaintiff complains were
16 taken in furtherance of the [defendant’s] right of petition or free speech under the United
17 States of California Constitution in connection with a public issue, as defined in
18 [subsection (e) of] the statute.” Hilton v. Hallmark Cards, 599 F.3d 894, 903 (9th Cir.
19 2010) (internal quotation marks and citations omitted).

20 “Second, [i]f the court finds that such a showing has been made, it must then
21 determine whether the plaintiff has demonstrated a probability of prevailing on the
22 claim.” Id. (internal quotation marks and citation omitted). “Put another way, the plaintiff
23 must demonstrate that the complaint is both legally sufficient and supported by a
24 sufficient prima facie showing of facts to sustain a favorable judgment if the evidence
25 submitted by the plaintiff is credited.” Wilson v. Parker, Covert & Chidester, 28 Cal. 4th
26 811, 821 (2002) (internal quotation marks omitted); see also Batzel, 333 F.3d at 1024.
27 “[T]hough the court does not weigh the credibility or comparative probative strength of
28 competing evidence, [i]f it should grant the [anti-SLAPP motion] if, as a matter of law, the

1 defendant’s evidence supporting the motion defeats the plaintiff’s attempt to establish
2 evidentiary support for the claim.” Wilson, 28 Cal. 4th at 821 (emphasis in original); see
3 Cal. Civ. Proc. Code § 425.16(b)(2). Thus, the anti-SLAPP statute “subjects to potential
4 dismissal only those actions in which the plaintiff cannot state and substantiate a legally
5 sufficient claim.” Navellier v. Sletten, 29 Cal. 4th 82, 92 (2002) (citation and internal
6 quotation marks omitted).

7 “Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e.,
8 that arises from protected speech or petitioning and lacks even minimal merit—is a
9 SLAPP, subject to being stricken under the statute.” Id. at 89 (emphasis in original).
10 “These rules apply with equal force to an anti-SLAPP motion brought by a cross-
11 defendant, since section 425.16 ‘treats complaints identically with cross-complaints.’”
12 Kurz v. Syrus Sys., LLC, 221 Cal. App. 4th 748, 758 (2013) (internal quotation marks
13 and citations omitted).

14 15 ANALYSIS

16
17 In order to rule on the instant anti-SLAPP Motion, the Court must address the
18 following issues. First, the Court must address Cross-Claimants’ contention that the
19 commercial speech exemption, codified at section California Code of Civil Procedure
20 section 425.17, exempts the FACC from an anti-SLAPP motion. If the exemption does
21 not apply, the Court must determine whether Cross-Defendants have met their burden of
22 showing that their alleged statements were taken in furtherance of the right of free
23 speech in connection with a public issue. If Cross-Defendants have met their burden,
24 the Court finally must determine whether Cross-Claimants have met their burden of
25 showing the FACC is legally sufficient and supported by a prima facie showing of facts.

26 A. Commercial Speech Exemption

27 Cross-Claimants contend that the commercial speech exemption, codified at
28 California Code of Civil Procedure section 425.17(c), exempts their claim from an anti-

1 SLAPP motion. This statutory exemption to the anti-SLAPP provision was enacted by
2 the Legislature in 2003 to curb a “disturbing abuse” of the anti-SLAPP statute. Cal. Civ.
3 Proc. Code § 425.17(a). Under section 425.17(c), causes of action arising from
4 commercial speech are exempt from the anti-SLAPP law when:

- 5 1) the cause of action is against a person primarily engaged
6 in the business of selling or leasing goods or services;
- 7 2) the cause of action arises from a statement or conduct by
8 that person consisting of representations of fact about that
9 person’s or a business competitor’s business operations,
10 goods, or services;
- 11 3) the statement or conduct was made either for the purpose
12 of obtaining approval for, promoting, or securing sales or
13 leases of, or commercial transactions in, the person’s
14 goods or services or in the course of delivering the
15 person’s goods or services; and
- 16 4) the intended audience is an actual or potential buyer or
17 customer, or a person likely to repeat the statement to, or
18 otherwise influence, an actual or potential buyer or
19 customer.

20 Weiland Sliding Doors & Windows, Inc. v. Panda Windows & Doors, LLC, 814 F. Supp.
21 2d 1033, 1037 (S.D. Cal. 2011) (citing Simpson Strong-Tie Co. v. Gore, 49 Cal. 4th 12,
22 30 (2010)).

23 Here, the first two requirements are met. Both Cross-Claimants and Cross-
24 Defendants are primarily engaged in the business of selling goods and services,⁴ and
25 the statements at issue consist of representations of fact about Cross-Claimants’
26 business operations. However, the third and fourth requirements are not satisfied.

27 As to the third requirement, the Court finds that Peguero’s alleged statements
28 were not made “for the purpose of obtaining approval for, promoting, or securing . . .
commercial transactions” in Cross-Defendants’ services, or “in the course of delivering”
Cross-Defendants’ services. Id. Rather, the statements were made by a Farmers
district manager to Farmers agents; there are no specific facts pled to support a

⁴ Insurance is explicitly included as a good or service under the statute. Cal. Civ. Proc. Code § 425.17(c)

1 conclusion that the Farmers agents disclosed the information allegedly communicated
2 by Peguero to obtain business for Farmers.

3 As to the fourth requirement, the Court finds the direct intended audience of
4 Peguero's communications was Farmers agents. Moreover, based on the facts as pled,
5 the Court cannot find that the Farmers agents were "likely to repeat the statement to, or
6 otherwise influence, an actual or potential buyer or customer." Id. (emphasis added).
7 Much more likely is that Peguero's alleged communications were intended to remind the
8 agents of their continuing duty to Farmers and the potential repercussions of violating
9 that duty.

10 Accordingly, Cross-Claimants have not met their burden of demonstrating that the
11 commercial speech exemption applies and the Court must continue the anti-SLAPP
12 analysis.

13 **B. Cross-Defendants' Burden**

14 Next, the Court must determine whether Cross-Defendants have met their burden
15 of showing that the act of which Cross-Claimants complain was taken in furtherance of
16 Cross-Defendants' right of free speech in connection with a public issue. To meet this
17 burden, Cross-Defendants' conduct⁵ must have been conducted "in furtherance" of the
18 exercise of free speech rights. Hilton, 599 F.3d at 903. "By its terms, this language
19 includes not merely actual exercises of free speech rights but also conduct that furthers
20 such rights." Id. (citing Cal. Civ. Proc. Code § 425.16(e)(4)). As used in the anti-SLAPP
21 statute, an

22 "act in furtherance of a person's right of petition or free
23 speech under the United States or California Constitution in
24 connection with a public issue" includes: (1) any written or
25 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

26 ⁵ Cross-Defendants note that district manager Audrey Peguero, who allegedly made the
27 statements complained of in the FACC, is an independent contractor and thus it is unclear whether her
28 statements could be attributable to Cross-Defendants. See ECF No. 74 at 5; ECF No. 85 at 2. The Court
assumes without deciding that Cross-Defendants could be held accountable for Peguero's alleged
statements.

1 review by a legislative, executive, or judicial body, or any
2 other official proceeding authorized by law, (3) any written or
3 oral statement or writing made in a place open to the public
4 or a public forum in connection with an issue of public
5 interest, or (4) any other conduct in furtherance of the
6 exercise of the constitutional right of petition or the
7 constitutional right of free speech in connection with a public
8 issue or an issue of public interest.

9 Cal. Civ. Proc. Code § 425.16(e).

10 “A claim for relief filed in federal district court indisputably is a ‘statement or writing
11 made before a . . . judicial proceeding.’” Navellier, 29 Cal. 4th at 90 (quoting Cal. Civ.
12 Proc. Code § 425.16(e)(1)). Moreover, California courts have taken a “fairly expansive
13 view of what constitutes litigation-related activities,” Neville v. Chudacoff, 160 Cal. App.
14 4th 1255, 1263 (2008), and communications in connection with anticipated litigation are
15 considered to be under consideration or review by a judicial body in connection with the
16 anti-SLAPP statute, see id. at 1268.

17 Here, the gravamen of the FACC is that a few weeks prior to the filing of a
18 complaint in this case, a Farmers district manager stated to Farmers agents that
19 Farmers had filed a lawsuit against Cross-Claimants due to misappropriation of Farmers’
20 confidential policyholder information and solicitation of Farmers’ customers. See ECF
21 No. 72 ¶ 19. The Court finds that Peguero’s alleged statements to Farmers agents
22 about a lawsuit based on misappropriation of trade secrets were made in connection
23 with anticipated litigation and were therefore connected with an issue under
24 consideration or review by a judicial body. Thus, the Court must determine whether
25 Cross-Claimants have met their burden of showing the FACC is legally sufficient and
26 supported by a prima facie showing of facts

27 **C. Cross-Claimants’ Burden**

28 “[T]he [anti-SLAPP] statute does not bar a plaintiff from litigating an action that
arises out of the defendant’s free speech or petitioning; it subjects to potential dismissal
only those actions in which the plaintiff cannot state and substantiate a legally sufficient
claim.” Hilton, 599 F.3d at 908 (quoting Navellier, 29 Cal. 4th at 93). Accordingly,

1 “[o]nce it is determined that an act in furtherance of protected expression is being
2 challenged, the plaintiff must show a ‘reasonable probability’ of prevailing in its claims for
3 those claims to survive dismissal.” Metabolife Int’l, 264 F.3d at 840 (citing § 425.16(b)).
4 “To do this, the plaintiff must demonstrate that the complaint is legally sufficient and
5 supported by a prima facie showing of facts to sustain a favorable judgment if the
6 evidence submitted by the plaintiff is credited.” Id. (internal citation and quotation marks
7 omitted). “Thus, a defendant’s anti-SLAPP motion should be granted when a plaintiff
8 presents an insufficient legal basis for the claims or when no evidence of sufficient
9 substantiality exists to support a judgment for the plaintiff.” Metabolife Int’l, 264 F.3d at
10 840 (citation and internal quotation marks omitted). “At this second step of the anti-
11 SLAPP inquiry, the required probability that [Cross-Claimants] will prevail need not be
12 high.” Hilton, 599 F.3d at 908.

13 Cross-Defendants contend that the FACC is defeated by California’s litigation
14 privilege, codified at California Civil Code section 47(b), and thus Cross-Claimants
15 cannot show that the claim has even minimal merit. “For well over a century,
16 communications with ‘some relation’ to judicial proceedings have been absolutely
17 immune from tort liability by the privilege codified as section 47(b).” Rubin v. Green,
18 4 Cal. 4th 1187, 1193 (1993). “The usual formulation is that the privilege applies to any
19 communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other
20 participants authorized by law; (3) to achieve the objects of the litigation; and (4) that
21 have some connection or logical relation to the action.” Mindys Cosmetics, Inc. v. Dakar,
22 611 F.3d 590, 599 (9th Cir. 2010) (quoting Silberg v. Anderson, 50 Cal. 3d 205, 212
23 (1990)). “The principal purpose of section 47(2) is to afford litigants and witnesses the
24 utmost freedom of access to the courts without fear of being harassed subsequently by
25 derivative tort actions.” Silberg, 50 Cal. 3d at 213 (internal citation omitted).

26 Communications made preparatory to or in anticipation of the bringing of action fall
27 within the absolute litigation privilege, which is historically extremely broad. See Dove
28 Audio, Inc. v. Rosenfeld, Meyer & Susman, 47 Cal. App. 4th 777, 784 (1996). Indeed, “it

1 is late in the day to contend that communications with ‘some relation’ to an anticipated
2 lawsuit are not within the privilege.” Rubin, 4 Cal. 4th at 1194-95 (emphasis in original).

3 “Because the litigation privilege protects only publications and communications, a
4 ‘threshold issue in determining the applicability’ of the privilege is whether the
5 defendant’s conduct was communicative or noncommunicative.” Lopez Reyes v.
6 Kenosian & Miele, LLP, 525 F. Supp. 2d 1158, 1162 (N.D. Cal. 2007) (quoting
7 Jacob B. v. County of Shasta, 40 Cal. 4th 948, 957 (2007)). “The distinction between
8 communicative and noncommunicative conduct hinges on the gravamen of the action.”
9 Id. (citing Rubin, 4 Cal. 4th at 1195; Pac. Gas & Elec. Co. v. Bear Stearns & Co., 50 Cal.
10 3d 1118, 1132 n.12 (1990)). “[I]f the gravamen of the action is communicative, the
11 litigation privilege extends to noncommunicative acts that are necessarily related to the
12 communicative conduct Stated another way, unless it is demonstrated that an
13 independent, noncommunicative, wrongful act was the gravamen of the action, the
14 litigation privilege applies.” Id. (quoting Jacob B., 40 Cal. 4th at 957).

15 Here, the gravamen of the FACC is based on alleged statements by a Farmers
16 district manager. Thus, the conduct is communicative and the only remaining question
17 is whether the complained-of statements were made “in relation to judicial proceedings.”
18 The Court finds that Peguero’s statements fall within the historically broad absolute
19 litigation privilege as it applies to communications made in anticipation of bringing an
20 action.

21 Dove Audio is instructive. In that case, Dove published a recording and agreed to
22 pay a two percent royalty for the participation of certain celebrities, to be divided equally
23 among the celebrities’ designated charities. Dove Audio, 47 Cal. App. 4th at 779-80.
24 One of the celebrities’ children realized that only minimal royalty payments had been
25 received and asked a law firm to look into the situation, obtain the support of other
26 celebrities who participated in the recording, and contact a governmental agency to
27 request an investigation. Id. at 780. The law firm sent a letter to the other celebrities
28 stating that “little if any money went to the charities” and that the firm “intend[ed] to file a

1 complaint with the State Attorney General’s Office.” Id. (emphasis added). Dove filed an
2 action seeking damages for libel and for interference with economic advantage, alleging
3 that the letter implied that Dove kept royalties rather than pay them to the celebrities’
4 charities and resulted in other celebrities refusing to work with Dove. The court
5 disagreed, holding that the communication was protected by the absolute litigation
6 privilege, even where the letter was only in preparation for sending a complaint to the
7 California Attorney General, who does not have the power to hold hearings, decide
8 issues, or affect the personal or property rights of private persons. Id.

9 As in the Dove Audio case, Cross-Defendants’ communications through Peguero
10 were made in anticipation of bringing an action. And in other ways, Cross-Defendants’
11 actions fall more squarely within the litigation privilege than the actions taken in Dove
12 Audio. For instance, in this case Cross-Defendants planned to file a lawsuit, which falls
13 squarely within the absolute litigation privilege, while in Dove Audio the communication
14 at issue was only in preparation for sending a complaint to a state executive officer who
15 could not even hold a hearing on the issue. In addition, Peguero’s statements here were
16 made only to Farmers agents, while in Dove Audio the letter’s intended audience was to
17 the defendant’s alleged victims.

18 Accordingly, the Court finds that the section 47 litigation privilege applies to
19 Cross-Defendants’ communications and there is no probability that Cross-Claimants
20 would prevail on their claim for interference with a prospective business advantage.
21 Thus, the Court grants the anti-SLAPP Motion.⁶

22 **D. Leave to Amend**

23 The FACC was Cross-Claimants’ second attempt to survive an anti-SLAPP
24 motion. Although the Court granted the first such motion, leave to amend was granted
25 based on the Ninth Circuit’s directive that “granting a defendant’s anti-SLAPP motion to
26 strike a plaintiff’s initial complaint without granting the plaintiff leave to amend would

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28 ⁶ Aside from the application of the litigation privilege, the fact that the Court granted Farmers a preliminary injunction undercuts Cross-Claimants’ claim on the merits.

1 directly collide with Federal Rule of Civil Procedure 15(a)'s policy favoring liberal
2 amendment." Verizon Del., Inc. v. Covad Commc'ns Co., 377 F.3d 1081, 1091 (9th Cir.
3 2004). Based on the facts alleged in the FACC and the Court's findings with regard to
4 the application of the commercial speech exemption and the anti-SLAPP statute,
5 however, the Court finds that further leave to amend would be futile. Accordingly, Cross-
6 Defendants' anti-SLAPP Motion is GRANTED WITHOUT LEAVE TO AMEND.

7 **E. Attorneys' Fees**

8 Cross-Defendants request attorneys' fees and costs incurred in bringing the anti-
9 SLAPP Motion. ECF No. 74 at 8; ECF No. 6. As stated above, California's anti-SLAPP
10 statute provides a mechanism for a defendant (or cross-defendant) to strike civil actions
11 or claims brought primarily to chill the exercise of free speech. Cal. Civ. Proc. Code
12 § 425.16(c). To deter such chilling, "a prevailing defendant on a special motion to strike
13 shall be entitled to recover his or her attorney's fees and costs." Id. § 425.16(c).
14 Accordingly, the Court grants Cross-Defendants' request.

15 Thus far, however, Cross-Defendants have provided inconsistent estimates of
16 attorneys' fees and costs. In the anti-SLAPP Motion, Cross-Defendants requested
17 \$2,552.00. ECF No. 74 at 8. However, counsel's accompanying declaration identifies
18 the applicable fees and costs "in excess of \$1,856." ECF No. 74, Decl. of Michael A.S.
19 Newman. Moreover, Cross-Defendants' request appears to include fees expected to
20 arise from appearing for a hearing with respect to the instant motion, which did not
21 occur. Id. Accordingly, consistent with the time limits indicated below, Cross-
22 Defendants shall submit documentation in support of the hours actually worked and the
23 rates requested for all attorneys' fees and costs sought.

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3 **CONCLUSION**

4 For the reasons set forth above, Cross-Defendants' anti-SLAPP Motion to Strike,
5 ECF No. 74, is GRANTED WITHOUT LEAVE TO AMEND. Cross-Defendants' request
6 for attorneys' fees is GRANTED. As soon as practicable and not later than twenty (20)
7 days after the date this Memorandum and Order is filed electronically, Cross-Defendants
8 shall submit documentation in support of the hours actually worked and the rates
9 requested for all requested attorneys' fees and costs. Cross-Defendants' Motion to
Dismiss, ECF No. 75, is DENIED AS MOOT.

10 IT IS SO ORDERED.

11 Dated: December 11, 2014

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16 MORRISON C. ENGLAND, JR., CHIEF JUDGE
17 UNITED STATES DISTRICT COURT
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