

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
EASTERN DISTRICT OF CALIFORNIA

JESSE VANG; WANG CHANG; JOUA
CHAO MOUA; ALEXANDER VANG;
DANG XIONG; DOLLARSAI YURGH;
JOUA YENG VANG; MANISY MOUA;
POUA VANG; RICHARD VANG; and
DOES 1-200,

Plaintiffs,

v.

SHERIFF JON LOPEY,
individually and in his
capacity as Sheriff for the
COUNTY OF SISKIYOU; COLLEEN
SETZER; individually and in
her capacity as Clerk for the
COUNTY OF SISKIYOU; ALEX
NISHIMURA, individually and
in his capacity as an agent
of the CALIFORNIA SECRETARY
OF STATE; the COUNTY OF
SISKIYOU; CALIFORNIA
DEPARTMENT OF FORESTRY AND
FIRE PROTECTION; Does 1-20,
in their individual capacity;
and DOES 1-20, inclusive,

Defendants.

No. 2:16-cv-2172-JAM-CMK

**ORDER DENYING DEFENDANTS' MOTION
TO STRIKE**

Defendants Sheriff Jon Lopey, County Clerk Colleen Setzer,
and the County of Siskiyou (collectively "Defendants") filed a

1 special motion to strike Plaintiffs' complaint pursuant to
2 California Code of Civil Procedure Section 425.16
3 ("Section 425.16" or "the anti-SLAPP statute"). ECF No. 16.
4 Plaintiffs oppose the motion. ECF No. 30. For the reasons set
5 forth below, the Court DENIES Defendants' motion to strike.¹

6
7 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

8 Plaintiffs, ten members of the Hmong community, allege that
9 "[t]he local government in Siskiyou County is engaged in a
10 systematic campaign to deprive Plaintiffs, and other members of
11 the Hmong community, of their right to vote, and their right to
12 the exclusive use and enjoyment of their private property."
13 Compl. ¶ 1, ECF No. 1. Plaintiffs further allege that
14 "[D]efendants conspired to disenfranchise Plaintiffs by
15 challenging their status as California residents through racially
16 discriminatory implementation and enforcement of County
17 Ordinances, and as to some plaintiffs, threatened prosecution."
18 Compl. ¶ 2.

19 In the June 2016 primary election, the voters of Siskiyou
20 County approved two ordinances regarding the cultivation of
21 marijuana. Compl. ¶ 4. Plaintiffs allege that Defendants have
22 disproportionately targeted the Hmong community in enforcing the
23 new ordinances. Compl. ¶ 4. Plaintiffs also allege that
24 Defendants executed search warrants on various properties and
25 that during the searches "residents who were present were

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for November 15, 2016.

1 handcuffed and held at gunpoint while their properties were
2 ransacked." Compl. ¶ 31. Defendants allegedly seized medical
3 marijuana plants during the searches. Compl. ¶ 31.
4 Additionally, each Plaintiff alleges that individuals with guns
5 came onto their property to investigate voter fraud. Compl. at
6 12-21.

7 Plaintiffs bring eleven causes of action: (1) violation of
8 the Fourth Amendment right against unreasonable search and
9 seizure, (2) violation of the Fourteenth Amendment, (3) municipal
10 liability against the County on a failure to train theory,
11 (4) supervisory liability against Sheriff Lopey, (5) employer
12 liability against the County, (6) negligence, (7) negligent
13 hiring and supervision, (8) violation of California Elections
14 Code Section 14027, (9) violation of Section 2 of the Voting
15 Rights Act, codified at 52 USC § 10301, (10) negligent infliction
16 of emotional distress, and (11) ratification against the County.
17 Compl. at 24-30. Plaintiffs bring their first through fifth and
18 eleventh claims pursuant to § 1983. Id.

20 II. OPINION

21 A. Legal Standard

22 The California legislature enacted Section 425.16 to
23 "provide a procedure for expeditiously resolving nonmeritorious
24 litigation meant to chill the valid exercise of the
25 constitutional rights of freedom of speech and petition in
26 connection with a public issue." Riese v. Cty. of Del Norte,
27 2013 WL 4732603, at *2 (N.D. Cal. Sept. 3, 2013) (citing Hansen
28 v. Cal. Dep't of Corr. & Rehab., 171 Cal. App. 4th 1537, 1542-43

1 (2008)). Section 425.16 provides that:

2 A cause of action against a person arising from any
3 act of that person in furtherance of the person's
4 right of petition or free speech under the United
5 States Constitution or the California Constitution in
6 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.

7 Cal. Civ. Proc. Code § 425.16(b)(1). The statute defines "act
8 in furtherance of a person's right of petition or free speech"
9 as:

10 (1) any written or oral statement or writing made
11 before a legislative, executive, or judicial
12 proceeding, or any other official proceeding
authorized by law,

13 (2) any written or oral statement or writing made in
14 connection with an issue under consideration or review
15 by a legislative, executive, or judicial body, or any
16 other official proceeding authorized by law,

17 (3) any written or oral statement or writing made in a
18 place open to the public or a public forum in
connection with an issue of public interest, or

19 (4) any other conduct in furtherance of the exercise
20 of the constitutional right of petition or the
21 constitutional right of free speech in connection with
22 a public issue or an issue of public interest.

23 Cal. Civ. Proc. Code § 425.16(e).

24 In deciding an anti-SLAPP motion, courts engage in a two-
25 step process. Riese, 2013 WL 4732603, at *2. "First, the
26 moving defendant has the burden to demonstrate that the act or
27 acts of which the plaintiff complains were taken in furtherance
28 of the defendant's right of petition or free speech under the
United States or California Constitution in connection with a
public issue as defined in the statute." USA Wheel & Tire
Outlet #2, Inc. v. United Parcel Serv. Inc., 2014 WL 197733, at
*2 (C.D. Cal. Jan. 14, 2014). The defendant must "demonstrat[e]

1 that the facts underlying the plaintiff's complaint fit[] one of
2 the categories spelled out in section 425.16, subdivision (e)."
3 Riese, 2013 WL 4732603, at *2. Second, if the court finds that
4 the defendant has met its burden, the court "must determine
5 whether the plaintiff has demonstrated a probability of
6 prevailing on the claim." Id.

7 B. Analysis

8 Plaintiffs bring their first through fifth and eleventh
9 claims under 42 U.S.C. § 1983 and their ninth claim under the
10 Voting Rights Act. The Court cannot strike these federal claims
11 under the anti-SLAPP statute. See id. at *3 (stating that "the
12 anti-SLAPP statute cannot be used to strike federal causes of
13 action"). Defendants' special motion to strike therefore
14 pertains only to Plaintiffs' sixth, seventh, eighth, and tenth
15 causes of action.

16 Defendants argue that the anti-SLAPP statute applies in
17 this case because "the County Defendants' alleged conduct was
18 during or in connection with official proceedings authorized by
19 law on matters of public interest." Mot. to Strike at 9.
20 Defendants argue that "[i]nvestigatory activities by public
21 agencies are 'official proceedings authorized by law.'" Id.
22 Defendants also contend that because investigatory activities
23 are "official proceedings authorized by law," such activities
24 are protected under the anti-SLAPP statute. Id.

25 Defendants' argument fails for at least three reasons.
26 First, Defendants do not indicate under which of the four
27 enumerated categories of protected activities their actions
28 fall. Defendants state in their motion to strike that "[a]

1 defendant meets the burden of establishing [the] first step 'by
2 demonstrating that the act underlying the plaintiff's cause fits
3 on one of the categories spelled out in section 425.16,
4 subdivision (e).' " Mot. to Strike at 8. Despite their own
5 admission of this burden, Defendants fail to identify the
6 category into which their acts fit.

7 Second, the cases that Defendants rely upon in support of
8 their argument that their investigatory activities are protected
9 by the anti-SLAPP statute are not directly on point. In
10 Garamendi v. Golden Eagle Ins. Co., 128 Cal. App. 4th 452, 478
11 (2005), the court stated that "[t]he term 'official proceeding'
12 extends to investigatory activities by public agencies." The
13 defendants in Garamendi, however, did not bring a special motion
14 to strike under the anti-SLAPP statute. Garamendi does not
15 mention Section 425.16 and only discusses the term "official
16 proceeding" as it pertains to the litigation privilege created
17 by California Civil Code Section 47. Id. Defendants apparently
18 rely on Garamendi because the California Supreme Court once
19 stated that statements protected under the Section 47(b)
20 litigation privilege are 'equally entitled to the benefits of
21 section 425.16.'" Briggs v. Eden Council for Hope and
22 Opportunity, 19 Cal. 4th 1106, 1115 (1999). Mot. to Strike at 9
23 (quoting. But Defendants' reliance on Briggs is misplaced: the
24 California Supreme Court more recently held that "the litigation
25 privilege and the anti-SLAPP statute are substantively different
26 statutes that serve quite different purposes" and that the
27 litigation privilege may apply to statements that are
28 "nonetheless not protected under the anti-SLAPP statute."

1 Flatly v. Mauro, 39 Cal. 4th 299, 322 (2006). Flatly makes
2 clear that privilege under Section 47(b) and protection under
3 Section 425.16 are not synonymous, as Defendants suggest.

4 Third, the anti-SLAPP statute specifically protects
5 "statement[s] or writing[s]" or "conduct in furtherance of the
6 exercise of the constitutional right of petition or the
7 constitutional right of free speech." Cal. Civ. Proc. Code
8 § 425.16. Defendants do not identify any specific "statement[s]
9 or writing[s]" that gave rise to Plaintiffs' allegations.
10 Defendants argue that their investigatory *conduct* is entitled to
11 anti-SLAPP protection, but they fail to show whether such
12 conduct was performed "in furtherance of" Defendants' right of
13 petition or free speech.

14 Defendants fail to meet their burden to show that the anti-
15 SLAPP statute applies to their alleged acts in this case. Thus,
16 the Court need not engage in step two of the anti-SLAPP
17 analysis. Defendants' motion to strike is denied.

18 C. Fees and Costs

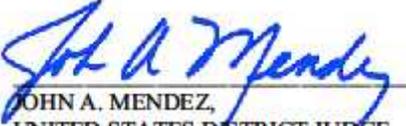
19 The Court denies Defendants' request for fees and costs
20 associated with this motion because Defendants have not
21 prevailed. See Cal. Civ. Pro. Code § 425.16(c).

22 II. ORDER

23 For the reasons set forth above, the Court DENIES
24 Defendants' special motion to strike.

25 IT IS SO ORDERED.

26 Dated: January 4, 2017

27 
28 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE