

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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WILLIE CRAWFORD,  
  
Plaintiff,  
  
v.

No. C 16-1301 CW  
  
ORDER ON MOTION TO  
STRIKE AND MOTION  
TO FILE UNDER SEAL  
  
(Docket Nos. 13 &  
18)

CITY AND COUNTY OF SAN FRANCISCO,  
et al.,  
  
Defendants.

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Defendant City and County of San Francisco<sup>1</sup> filed a motion to strike Plaintiff Willie Crawford's state law causes of action under California's anti-SLAPP statute, California Code of Civil Procedure section 425.16. As explained below, the Court grants the motion in part and denies it in part.

BACKGROUND

I. Factual Background

Crawford, an African-American man, has worked for the San Francisco Department of Public Health for thirty years. He has been a Facilities Manager since approximately 2002.

Crawford's Second Amended Complaint (2AC) describes a pattern of discrimination culminating in a biased investigation. Crawford alleges that he outperforms his current classification, but was denied a classification elevation on April 23, 2015. Crawford also alleges that Department personnel spread untrue rumors about

<sup>1</sup> Other Defendants included in the original Complaint and the First Amended Complaint were not included in the Second Amended Complaint.

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1 him, which the City failed to stop. In particular, it is rumored  
2 that he "has a temper," and that people "should be careful if they  
3 ever see" his son, a "gangster rapper." 2AC ¶¶ 12-15. Most  
4 recently, on January 26, 2016, Crawford's attorney received an  
5 email stating that there was a rumor in the Department that  
6 Crawford had passed away.

7 Next, Crawford describes several problematic elements of the  
8 City's investigation. The investigation began in late August  
9 2015, after Crawford had filed the original complaint in this  
10 case.<sup>2</sup> Crawford alleges that the "true purpose . . . was to  
11 manufacture reasons for firing" him. Id. ¶ 18. Crawford alleges  
12 that the City Attorney investigator's witness summaries were broad  
13 and biased. He also alleges that the investigator "questioned  
14 witnesses while his tape-recorder was turned off; telling  
15 witnesses what he wanted them to talk about." Id. ¶ 20. Crawford  
16 states that the witness statement production to him was  
17 incomplete; at least two witnesses whose statements were missing  
18 from the production said positive things about Crawford. Later,  
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20 <sup>2</sup> The City argues that it began the investigation when  
21 Stephanie Aquino, an employee whom Plaintiff previously  
22 supervised, filed complaints with the Controller's Office and the  
23 Department of Human Resources dated August 17 and 25, 2015,  
24 respectively. The motion to file these documents under seal  
25 (Docket No. 18) is GRANTED. See San Francisco Campaign and  
26 Governmental Conduct Code § 4.123(a)(ii) (stating that the City  
27 shall keep confidential "[c]omplaints or reports to the  
28 Whistleblower Program and information related to the investigation  
of the matter"); Docket No. 18-1, Dec. of Willie Ramirez ¶ 5  
(declaring as the Department of Public Health's Labor Relations  
Director that it is his understanding that workplace complaints  
are not released to the general public). The motion is also  
GRANTED as to the resulting Controller's Office report.

1 on or about October 9, 2015, Crawford was placed on paid  
2 administrative leave for misconduct, but was not given any  
3 specifics on the alleged misconduct.

4 On December 1, 2015, the Director of Human Resources notified  
5 Crawford that he was to report for an interview with the  
6 investigator on December 8th.<sup>3</sup> Id. ¶ 23. On December 2,  
7 Crawford's then-attorney stated that he was not available on  
8 December 8, but offered two alternative dates. Id. ¶ 24. The  
9 Director responded that the investigators were available on the  
10 7th, that the interview could not take place later than the 7th,  
11 and that the interview would take place on the 7th. Id. Crawford  
12 then agreed to the 8th even though his attorney could not attend.  
13 Crawford's attorney argued that it would be unethical to proceed  
14 in the absence of an attorney in light of this pending lawsuit, to  
15 no avail.

16 Crawford arrived at the interview to find that there was a  
17 court reporter, although he had not been notified of this.  
18 Crawford alleges that the scope of the questioning "clearly showed  
19 that there was nothing specific. This was a fishing expedition  
20 designed to uncover some kind of misconduct or impropriety." Id.  
21 ¶ 27. There were many questions about Crawford's assets and  
22 financial situation, including the financial situation of his  
23 nephew who lives in China. In January 2016, Crawford's attorney  
24 filed a motion to disqualify the City Attorney from representing  
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26 <sup>3</sup> Paragraph 23 states that the interview was originally  
27 planned for the 4th, but Paragraph 24 describes the 8th as the  
28 date "that was initially offered."

1 Defendants. The City Attorney voluntarily withdrew without filing  
2 an opposition.

3 The 2AC contains other allegations that do not relate to the  
4 investigation of Crawford. Although Crawford was granted medical  
5 leave from December 9, 2015 through February 29, 2016, the City  
6 served him with a notice of intent to dismiss and notice of a  
7 Skelly<sup>4</sup> hearing to be conducted in early January 2016. This  
8 hearing occurred as scheduled without Crawford, in spite of  
9 Crawford's attorney's objections. Id. ¶ 32. The main  
10 participants were allegedly "tainted by bias." Id. ¶ 33.

11 Further, the Human Resources Director allegedly "took the  
12 extraordinary step of intervening and protecting" certain  
13 employees whom Crawford supervised and whom Crawford was planning  
14 on disciplining. Id. ¶¶ 36-38. Crawford also cites the City's  
15 investigation of a man who made the following statement about  
16 Crawford: "I wish he was dead, I hate this guy." Id. ¶ 40. In  
17 that investigation, the City interviewed Crawford first, even  
18 though he had not heard the comment, and then did not discipline  
19 the man who made the statement.

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22 <sup>4</sup> Skelly v. State Pers. Bd., 15 Cal. 3d 194, 215 (1975),  
23 holds that "the taking of punitive action against a permanent  
24 civil service employee" must fulfill certain due process  
25 requirements, including "notice of the proposed action, the  
26 reasons therefor, a copy of the charges and materials upon which  
27 the action is based, and the right to respond." The notice of  
28 intent to dismiss sent to Crawford on December 18, 2015 stated  
that evidence supported that he made statements that threatened  
bodily harm, engaged in a controlling, intimidating and fearful  
pattern of practice, misused City resources and was untruthful in  
the course of his interview. Dec. of Willie Ramirez at Ex. B.

1 Finally, Crawford cites two incidents that he also attributes  
2 to the alleged discrimination and harassment against him. In  
3 November 2014, Crawford discovered he had not been paid his  
4 salary, which the Human Resources Director attributed to a  
5 "payroll glitch" although it did not impact anyone else's salary.  
6 Id. ¶¶ 43-44. Additionally, three months of Crawford's emails  
7 were deleted from the department servers but had been sent to "one  
8 Arlena Winn, purportedly by him." Thus, he claims, his emails are  
9 "being read by others and forwarded to others." Id. ¶¶ 45-46.

10 II. Procedural History

11 In 2012, Crawford filed an official complaint with the  
12 California Department of Fair Employment and Housing (DFEH)  
13 alleging racial discrimination; in 2014, he amended the complaint  
14 to include harassment and retaliation. The DFEH issued him a  
15 right to sue letter.

16 On March 3, 2015, Crawford filed a complaint in San Francisco  
17 Superior Court.<sup>5</sup> At that point, he alleged only state law claims.  
18 The City answered his subsequent 2AC and removed the action to  
19 federal court because it contains a federal Family Medical Leave  
20 Act claim. The 2AC also contains five state law claims, including  
21 discrimination, harassment and retaliation claims under  
22 California's Fair Employment and Housing Act, an intentional  
23 infliction of emotional distress claim, and a claim for wrongful  
24 termination in violation of public policy.

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27 <sup>5</sup> The Court takes judicial notice of the state court  
28 complaints. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442  
F.3d 741, 746 n.6 (9th Cir. 2006); Docket No. 21.

DISCUSSION

California's anti-SLAPP statute provides,

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.

Cal. Civ. Proc. Code § 425.16(b)(1). California anti-SLAPP motions to strike are available to litigants proceeding in federal court. Thomas v. Fry's Elecs., Inc., 400 F.3d 1206, 1206 (9th Cir. 2005).

Courts analyze these motions in two steps. "First, the defendant must make a prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's rights of petition or free speech." Mindys Cosmetics, Inc. v. Dakar, 611 F.3d 590, 595 (9th Cir. 2010) (citation and internal quotation marks omitted). "Second, once the defendant has made a prima facie showing, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the challenged claims." Id.

"At [the] second step of the anti-SLAPP inquiry, the required probability that [a party] will prevail need not be high." Hilton v. Hallmark Cards, 599 F.3d 894, 908 (9th Cir. 2009). A plaintiff must show "only a 'minimum level of legal sufficiency and triability.'" Mindys, 611 F.3d at 598 (quoting Linder v. Thrifty Oil Co., 23 Cal. 4th 429, 438 n.5 (2000)). The plaintiff need only "state and substantiate a legally sufficient claim." Id. at 598-99 (citation and internal quotation marks omitted). In conducting its analysis, the "court 'does not weigh the

1 credibility or comparative probative strength of competing  
2 evidence,' but 'should grant the motion if, as a matter of law,  
3 the defendant's evidence supporting the motion defeats the  
4 plaintiff's attempt to establish evidentiary support for the  
5 claim.'" Id. at 599 (quoting Wilson v. Parker, Covert &  
6 Chidester, 28 Cal. 4th 811, 821 (2002)). At this stage, the court  
7 considers "the pleadings, and supporting and opposing affidavits  
8 stating the facts upon which the liability or defense is based."  
9 Id. at 598 (quoting Cal. Civ. Proc. Code § 425.16(b)(2)).

10 I. Protected Activity

11 Under the anti-SLAPP statute, the phrase "act in furtherance  
12 of a person's right of petition or free speech under the United  
13 States or California Constitution in connection with a public  
14 issue" includes:

15 (1) any written or oral statement or writing made before a  
16 legislative, executive, or judicial proceeding, or any other  
17 official proceeding authorized by law, [or] (2) any written  
18 or oral statement or writing made in connection with an issue  
19 under consideration or review by a legislative, executive, or  
judicial body, or any other official proceeding authorized by  
law . . . .

20 Cal. Civ. Proc. Code § 425.16(e). Written or oral statements  
21 "preparatory to or in anticipation of the bringing of an official  
22 proceeding are within the protection of section 425.16." Hansen  
23 v. Cal. Dep't of Corr. & Rehab., 171 Cal. App. 4th 1537, 1544  
24 (2008). This category includes communications seeking official  
25 investigations. Salma v. Capon, 161 Cal. App. 4th 1275, 1286  
26 (2008).

27 An internal proceeding may constitute an "official  
28 proceeding." Hansen, 171 Cal. App. 4th at 1544. Specifically, a

1 city's investigation into an employee's conduct and its  
2 determination that he had engaged in misconduct on the job may  
3 satisfy the first prong of section 425.16. See Miller v. City of  
4 L.A., 169 Cal. App. 4th 1373, 1383 (2008).

5 Here, many of Crawford's allegations relate to statements  
6 made in connection with an official proceeding authorized by law.  
7 For example, under the Charter of the City and County of San  
8 Francisco, the Civil Service Commission adopted a policy on  
9 workplace safety requiring investigation of "any reported  
10 incidents of threats or acts of violence by any employees."  
11 Docket No. 16-1, Request for Judicial Notice Ex. A.<sup>6</sup> The City's  
12 investigation of the co-worker who wished he were dead falls under  
13 this umbrella. Similarly, statements connected to the City's  
14 investigation of Crawford's acts constitute protected activity.

15 Further, the Charter grants the City Controller authority to  
16 receive complaints concerning "misuse of City government funds,  
17 and improper activities by City government officers and  
18 employees." Id. Ex. E, Charter § F1.107. It also requires the  
19 Controller to refer complaints that may constitute violations of  
20 criminal law to the District Attorney and violations of  
21 governmental ethics laws to the Ethics Commission and the City  
22 Attorney. Id. The Controller must "investigate and otherwise  
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24 <sup>6</sup> The Court grants the City's request for judicial notice of  
25 all attachments filed in Docket Number 16. See Tollis, Inc. v.  
26 Cty. of San Diego, 505 F.3d 935, 938 n.1 (9th Cir. 2007) (granting  
27 judicial notice of municipal ordinances); Az. Libertarian Party v.  
28 Reagan, 798 F.3d 723, 727 n.3 (9th Cir. 2015), cert. denied, 136  
S. Ct. 823 (2016) (taking judicial notice of "information posted  
on a governmental website" where its accuracy was undisputed).



1 attempt to resolve such individual complaints," with exceptions  
2 not applicable here. Id. According to the City, the  
3 investigation of Crawford was a "legally-required investigation of  
4 a whistleblower allegation against Crawford, regarding abuse of  
5 authority and misuse of City resources." Docket No. 13, Opening  
6 Br. at 10.

7 In addition, the Charter directs that the Human Resources  
8 Director "shall review and resolve allegations of discrimination"  
9 and "shall investigate all employee complaints concerning job-  
10 related conduct of City and County employees." Charter § 10.103.  
11 The City argues that it followed these procedures in response to  
12 Crawford's discrimination complaints. The City's investigation  
13 into Crawford's and Aquino's complaints constitutes the City's  
14 protected activity.

15 Crawford argues that the investigation of him is not  
16 protected because it was unlawful or done for an unlawful purpose.  
17 He argues that it was a pretext for retaliation. He claims that  
18 the alleged unlawfulness of the investigation removes his  
19 allegations from the ambit of an anti-SLAPP motion. However, the  
20 California Supreme Court has concluded that an activity's alleged  
21 unlawfulness renders the activity unprotected where "either the  
22 defendant concedes, or the evidence conclusively establishes, that  
23 the assertedly protected speech or petition activity was illegal  
24 as a matter of law." Flatley v. Mauro, 39 Cal. 4th 299, 320  
25 (2006). As the Ninth Circuit has clarified, California courts  
26 have concluded that defendants may show that activity is protected  
27 "even when their conduct was allegedly unlawful." Doe v. Gangland  
28 Prods., Inc., 730 F.3d 946, 954 (9th Cir. 2013). Flatley presents

1 an "exception" to that rule. Id. n.2 Here, the City has not  
2 conceded that the investigation was illegal, and the Court cannot  
3 conclude as a matter of law that it was.

4 Notably, several of Crawford's allegations regarding the  
5 City's actions do not constitute protected activity, including the  
6 City's failure to elevate his classification, the failure to stop  
7 rumors spread about him and his son, the "payroll glitch," the  
8 deletion of his emails and the transfer of employees he  
9 supervised. The Court must decide whether the causes of actions  
10 at issue are "mixed" and therefore subject to anti-SLAPP  
11 protection, or based on so few protected allegations that the  
12 causes of action are not protected. "A mixed cause of action is  
13 subject to section 425.16 if at least one of the underlying acts  
14 is protected conduct, unless the allegations of protected conduct  
15 are merely incidental to the unprotected activity." Salma, 161  
16 Cal. App. 4th at 1287. Here, the allegations related to official  
17 investigations authorized under law are not "merely incidental" to  
18 the other allegations at issue. Thus, the allegations satisfy the  
19 first step of the anti-SLAPP inquiry; they comprise mixed causes  
20 of action and are subject to protection.

21 II. Probability of success

22 There are two main approaches to the second step on mixed  
23 causes of action. Under the first approach, "if any part of a  
24 mixed cause of action satisfies the second prong of anti-SLAPP,  
25 the entire cause of action continues." Liberi v. Taitz, 2016 WL  
26 1382398, at \*1 n.2 (9th Cir.) (following Wallace v. McCubbin, 196  
27 Cal. App. 4th 1169, 1212 (2011)); see also Haight Ashbury Free  
28 Clinics, Inc. v. Happening House Ventures, 184 Cal. App. 4th 1539,

1 1554 (2010); Burrill v. Nair, 217 Cal. App. 4th 357, 382 (2013).  
2 That is, if the plaintiff has a probability of success on either  
3 the allegations of protected activity or the allegations of  
4 unprotected activity, the entire cause of action continues. Under  
5 the second approach, where a plaintiff has established a  
6 probability of prevailing on allegations of unprotected activity  
7 but not on allegations of protected activity, the protected  
8 activity allegations may be parsed from the causes of action and  
9 stricken, while the allegations related to unprotected activity  
10 may remain part of the complaint. See City of Colton v.  
11 Singletary, 206 Cal. App. 4th 751, 774 (2012); Cho v. Chang, 219  
12 Cal. App. 4th 521, 527 (2013). Although the California Supreme  
13 Court is expected to answer this question within the next few  
14 months,<sup>7</sup> the Court follows the first approach in an abundance of  
15 caution.

16 The City argues that, due to California's litigation  
17 privilege, Crawford's state law claims have no probability of  
18 prevailing and thus cannot meet the second prong of the anti-SLAPP  
19 test. See Flatley, 39 Cal. 4th at 323 ("The litigation privilege  
20 . . . may present a substantive defense a plaintiff must overcome  
21 to demonstrate a probability of prevailing."). A publication or  
22 broadcast made "in any . . . official proceeding authorized by  
23 law" is privileged. Cal. Civ. Code § 47(b). The privilege  
24 "grants absolute immunity from tort liability." Flatley, 39 Cal.  
25 4th at 324; see also Ribas v. Clark, 38 Cal. 3d 355, 364 (1985)

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27 <sup>7</sup>Oral argument in Baral v. Schnitt, Case No. S225090, was  
28 heard on May 5, 2016.

1 (applying the privilege to statutory causes of action). Although  
2 the litigation privilege is similar to the description of  
3 protected activity in the anti-SLAPP statute, the two are not  
4 coterminous in all respects. See Flatley, 39 Cal. 4th at 320-25.  
5 Rather, the privilege applies to communications made (1) in  
6 judicial or quasi-judicial proceedings; (2) by litigants or other  
7 participants authorized by law; (3) to achieve objects of the  
8 litigation; and (4) that have some connection or logical relation  
9 to the action. Silberg v. Anderson, 50 Cal. 3d 205, 212 (1990);  
10 Feldman v. 1100 Park Lane Assocs., 160 Cal. App. 4th 1467, 1485  
11 (2008).

12 Here, the statements made in connection with the protected  
13 investigation are subject to the litigation privilege. The  
14 litigation privilege encompasses "a communication concerning  
15 possible wrongdoing, made to an official governmental agency . . .  
16 and which communication is designed to prompt action by that  
17 entity." Williams v. Taylor, 129 Cal. App. 3d 745, 753 (1982).  
18 It also encompasses statements made in or about many different  
19 types of governmental investigations. Braun v. Bureau of State  
20 Audits, 67 Cal. App. 4th 1382, 1389 (1998) (collecting cases).  
21 Further, the privilege is not limited to statements made during  
22 the proceeding, but may extend to steps taken prior to or after  
23 the proceeding. Feldman, 160 Cal. App. 4th at 1485. Therefore,  
24 the City cannot be held liable based on statements made to  
25 initiate proceedings, statements within the proceedings,  
26 statements regarding the proceedings or statements that are the  
27 result of the proceedings unless an exception applies. Notably,  
28 non-communicative acts, such as the fact of an investigation or

1 the fact of the appearance of a court reporter, would not fall  
2 under this privilege.

3 As explained above, many of Crawford's allegations fall  
4 outside of official proceedings. The Court examines each claim  
5 for viability, without considering the allegations of  
6 communications that are subject to the litigation privilege.

7 a. Racial discrimination (FEHA)

8 The City argues that Crawford's racial discrimination claim  
9 should be stricken. In employment discrimination cases, courts  
10 typically use the burden-shifting framework described in McDonnell  
11 Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), and Texas  
12 Department of Community Affairs v. Burdine, 450 U.S. 248, 252-56  
13 (1981). Although this framework was originally created to  
14 evaluate Title VII claims, California courts have since adopted it  
15 to analyze FEHA claims, as well. Guz v. Bechtel Nat'l Inc., 24  
16 Cal. 4th 317, 354 (2000); Bradley v. Harcourt, Brace & Co., 104  
17 F.3d 267, 270 (9th Cir. 1996). The plaintiff must generally  
18 provide evidence that (1) he was a member of a protected class,  
19 (2) he was qualified for the position he sought or was performing  
20 competently in the position he held, (3) he suffered an adverse  
21 employment action and (4) some other circumstance suggests  
22 discriminatory motive. Guz, 24 Cal. 4th at 355.

23 The allegations in the 2AC are insufficient to suggest a  
24 discriminatory motive. While the rumor that people should be  
25 careful of Crawford because his son was a rapper could be  
26 considered racially charged, Crawford does not allege that the  
27 City knew of this rumor. There is no inference of race  
28 discrimination to be drawn from the City's failure to discipline

1 Crawford's co-worker following an investigation into a report that  
2 he wished Crawford were dead. The Court GRANTS the City's motion  
3 on this claim, with leave to amend. Cf. Verizon Del., Inc. v.  
4 Covad Commc'ns Co., 377 F.3d 1081, 1091 (9th Cir. 2004) ("granting  
5 a defendant's anti-SLAPP motion to strike a plaintiff's initial  
6 complaint without granting the plaintiff leave to amend would  
7 directly collide with Fed. R. Civ. P. 15(a)'s policy favoring  
8 liberal amendment").

9 b. Harassment (FEHA)

10 To evaluate a plaintiff's claims of racial harassment under  
11 FEHA, California courts rely on federal case law interpreting  
12 Title VII. Etter v. Veriflo, 67 Cal. App. 4th 457, 464 (1998).  
13 Crawford must prove that (1) he was subjected to verbal or  
14 physical conduct related to his membership in a protected class;  
15 (2) the conduct was unwelcome; and (3) the conduct was  
16 sufficiently severe or pervasive to alter the conditions of his  
17 employment and create an abusive work environment. Vasquez v.  
18 Cty. of L.A., 349 F.3d 634, 642 (9th Cir. 2003) (citing Gregory v.  
19 Widnall, 153 F.3d 1071, 1074 (9th Cir. 1998)).

20 This claim qualifies for anti-SLAPP protection at the first  
21 step because Crawford alleges that the City's investigation of him  
22 constituted racial harassment. But again, the only allegations  
23 related to Crawford's race pertain to failure to stop rumors that  
24 his son was a rapper. This alleged conduct is not sufficiently  
25 severe or pervasive to alter the conditions of employment and  
26 create an abusive environment. Thus, no part of the claim is  
27 triable. The Court GRANTS the City's motion to strike Crawford's  
28 harassment claim, with leave to amend.

1 c. Retaliation (FEHA)

2 It is unlawful for "any employer . . . to discharge, expel,  
3 or otherwise discriminate against any person because the person  
4 has opposed any practices forbidden under [FEHA] or because the  
5 person has filed a complaint . . . ." Cal. Gov. Code § 12940(h).  
6 Claims for retaliation under FEHA are analyzed under the burden-  
7 shifting framework established in McDonnell Douglas, 411 U.S. 792.  
8 Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1042 (2005). To  
9 establish a prima facie case of retaliation, a plaintiff must  
10 "show (1) he or she engaged in a 'protected activity,' (2) the  
11 employer subjected the employee to an adverse employment action,  
12 and (3) a causal link existed between the protected activity and  
13 the employer's action." Id. at 1042. Once a plaintiff  
14 establishes a prima facie case, a presumption of retaliatory  
15 intent arises. See id. To overcome this presumption, the  
16 defendant must come forward with a legitimate, non-retaliatory  
17 reason for the employment decision. Id. If the defendant  
18 provides that explanation, the presumption disappears and the  
19 plaintiff must demonstrate that the defendant acted with  
20 retaliatory intent. See id.

21 Here, the 2AC states that filing formal complaints and filing  
22 this lawsuit constitute Crawford's protected activity.  
23 Allegations that the City retaliated against Crawford by pursuing  
24 the investigation against him squarely implicate anti-SLAPP  
25 protection. The litigation privilege applies to the allegedly  
26 retaliatory investigation and report. See Gallanis-Politis v.  
27 Medina, 152 Cal. App. 4th 600, 617 (2007). However, the privilege  
28

1 would not protect the City from suit based on an allegedly  
2 retaliatory termination if Crawford is fired.

3           Nonetheless, Crawford has demonstrated that his retaliation  
4 claim is triable. The City served Crawford with a Skelly notice  
5 after he filed his lawsuit, which alone demonstrates a possibility  
6 of success. Further, the timing of the investigation demonstrates  
7 possible retaliatory intent. For these reasons, the Court DENIES  
8 the City's motion to strike Crawford's retaliation claim.

9           d. Intentional Infliction of Emotional Distress

10           To state a claim for intentional infliction of emotional  
11 distress, a plaintiff must allege (1) extreme or outrageous  
12 conduct with intent to cause, or with reckless disregard for the  
13 probability of causing, emotional distress, (2) that he actually  
14 suffered severe emotional distress, and (3) actual and proximate  
15 causation. Potter v. Firestone Tire & Rubber Co., 6 Cal. 4th 965,  
16 1001 (1993).

17           To illustrate, "mere insult, indignity, annoyance, or even  
18 threats, where the case is lacking in other circumstances of  
19 aggravation" do not constitute extreme or outrageous conduct.  
20 Yurick v. Super. Ct., 209 Cal. App. 3d 1116, 1128 (1989).

21           Outrageous conduct is "that which is the most extremely  
22 offensive." Id. at 1129. It cannot be said that Crawford's  
23 allegations listed here, even including the protected activity,  
24 constitute such extremely offensive conduct. Therefore, the Court  
25 STRIKES this cause of action, but grants leave to amend.

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1 e. Wrongful Termination in Violation of Public Policy  
2 California Government Code section 815 bars Tameny<sup>8</sup> actions  
3 against public entities. Miklosy v. Regents of Univ. of Cal., 44  
4 Cal. 4th 876, 900 (2008); see also Anthoine v. N. Cent. Ctys.  
5 Consortium, 605 F.3d 740, 754 (9th Cir. 2010) (same). Because  
6 Crawford conceded at oral argument that this claim is not viable,  
7 the Court GRANTS the City's motion to strike this cause of action.

8 CONCLUSION

9 For the foregoing reasons, the Court GRANTS the City's motion  
10 to strike Crawford's claims of discrimination, harassment, and  
11 intentional infliction of emotional distress, with leave to amend,  
12 and dismisses his claim for wrongful termination without leave to  
13 amend. It DENIES the City's motion as to Crawford's claim of  
14 retaliation (Docket No. 13).

15 The Court GRANTS the City's motion to file certain documents  
16 under seal (Docket No. 18).

17 IT IS SO ORDERED.

18  
19 Dated: June 22, 2016

  
20 CLAUDIA WILKEN  
21 United States District Judge  
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28 <sup>8</sup> Tameny v. Atl. Richfield Co., 27 Cal. 3d 167 (1980).