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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GASPAR PHYSICAL  
THERAPY, INC., a California  
Professional Corporation; and  
BRIAN STONE, an individual,  
  
Plaintiffs,  
  
v.  
  
DAVID W. "DAVE" ROBERTS,  
an individual; RE-ELECT  
SUPERVISOR DAVE ROBERTS  
2016, a corporation or other form  
of entity; and DOES 1-20,  
inclusive,  
  
Defendants.

Case No.: 17-cv-2051-WQH-JLB  
  
**ORDER**

HAYES, Judge:

The matter before the Court is the Application to Stay Defendant's Motion to Strike and Allow Plaintiffs to Conduct Discovery (ECF No. 12) filed by Plaintiffs Gaspar Physical Therapy, Inc. and Brian Stone.

1 **I. Background**

2 On October 5, 2017, Plaintiffs Gaspar Physical Therapy, Inc. and Brian Stone filed  
3 the Complaint (ECF No. 1) against Defendants David W. Roberts and Re-Elect Supervisor  
4 Dave Roberts 2016.

5 On November 13, 2017, Defendant Roberts filed a Motion to Strike All Causes of  
6 Action Pursuant to California Code of Civil Procedure Section 425.16 (Anti-SLAPP<sup>1</sup>  
7 Statute) with a December 18, 2017 hearing date (the “Anti-SLAPP Motion”). (ECF No. 6).  
8 The Anti-SLAPP Motion is based on a Memorandum of Points and Authorities (ECF No.  
9 6-1), two Declarations (ECF Nos. 6-2 and 6-3), and seven Exhibits (ECF Nos. 6-5 through  
10 6-11).

11 On November 22, 2017, Plaintiffs filed an Application to Stay Defendant’s Motion  
12 to Strike and Allow Plaintiffs to Conduct Discovery (the “Motion for Discovery”) (ECF  
13 No. 12). Plaintiffs seek to conduct discovery on fourteen issues by propounding requests  
14 for productions, interrogatories, and conducting seven depositions. *Id.* at 3–5. On  
15 November 28, 2017, the Court issued an Order (ECF No. 14) vacating the December 18,  
16 2017 hearing date for the Anti-SLAPP Motion and setting a briefing schedule for the  
17 Motion for Discovery. On December 15, 2017, Roberts filed a Response to the Motion for  
18 Discovery. (ECF No. 15).<sup>2</sup> On January 4, 2018, Plaintiffs filed a Reply in support of the  
19 Motion for Discovery. (ECF No. 26).

20 **II. Discussion**

21 California’s Anti-SLAPP Statute applies to “cause[s] of action against a person  
22 arising from any act of that person in furtherance of the person’s right of petition or free  
23 speech under the United States Constitution or the California Constitution in connection  
24 with a public issue.” Cal. Civ. Proc. Code § 425.16(b)(1). The Anti-SLAPP Statute gives  
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26 <sup>1</sup> SLAPP is an acronym for “Strategic Lawsuit Against Public Participation.” *Mindys Cosmetics, Inc.*  
27 *v. Dakar*, 611 F.3d 590, 595 (9th Cir. 2010).

28 <sup>2</sup> Roberts has also filed a Second Response to the Motion for Discovery addressing six Exhibits to the  
Motion for Discovery that Plaintiff filed after December 15, 2017. (ECF No. 21).

1 defendants faced with such causes of action the option to file “a special motion to strike,”  
2 *id.*, commonly referred to as an “anti-SLAPP motion,” *see, e.g., Metabolife Int’l, Inc. v.*  
3 *Wornick*, 264 F.3d 832, 838 (9th Cir. 2001). A court should grant an anti-SLAPP motion  
4 seeking to strike a cause of action that falls within the scope of § 425.16(b)(1) “unless the  
5 court determines that the plaintiff has established that there is a probability that the plaintiff  
6 will prevail on the claim.” Cal. Civ. Proc. Code § 425.16(b)(1). “In making [that]  
7 determination, the court shall consider the pleadings, and supporting and opposing  
8 affidavits stating the facts upon which the liability or defense is based.” *Id.* § 425.16(b)(2).  
9 Under the terms of Cal. Civ. Proc. Code § 425.16(g), the filing of an anti-SLAPP motion  
10 stays all discovery proceedings in the action until the court enters an order ruling on the  
11 anti-SLAPP motion.

12         In *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 846–47 (9th Cir. 2001), the Ninth  
13 Circuit Court of Appeals held that the discovery stay required by Cal. Civ. Proc. Code §  
14 425.16(g) does not apply in federal court. The Court of Appeals found that § 425.16(g)  
15 “directly collides” with Fed. R. Civ. P. 56(f), which requires discovery “where the  
16 nonmoving party has not had the opportunity to discover information that is essential to its  
17 opposition.” *Metabolife*, 264 F.3d at 846 (quoting *Anderson v. Liberty Lobby, Inc.*, 477  
18 U.S. 242, 250 n.5 (1986)). The Court of Appeals ordered the district court to allow  
19 discovery as to information that it found “[was] in the defendants’ exclusive control,” and  
20 “may [have] be[en] highly probative” of the falsity of the statements in question (an  
21 element for which the *Metabolife* plaintiff had the burden of production in order to survive  
22 the *Metabolife* defendant’s anti-SLAPP motion). *Id.* at 847; *see also id.* at 850 (“The  
23 district court’s decision not to allow *Metabolife* discovery on falsity issues . . . is  
24 REVERSED because *Metabolife* identified and requested discovery of probative  
25 information solely available from the defendants.”).

26         The Anti-SLAPP Motion (ECF No. 6) is not “founded on purely legal arguments”  
27 considering it was filed with two declarations (ECF Nos. 6-2 and 6-3), and seven Exhibits  
28 (ECF Nos. 6-5 through 6-11). *Z.F. v. Ripon Unified Sch. Dist.*, 482 F. App’x 239, 240 (9th

1 Cir. 2012). Consequently, the Anti-SLAPP Motion “must be treated as though it were a  
2 motion for summary judgment and discovery must be permitted.” *Id.* Plaintiffs request  
3 discovery on fourteen issues. (ECF No. 12). Under *Metabolife*, Plaintiffs’ requests for  
4 discovery should be granted only if they seek information that (1) is in the Defendants’  
5 exclusive control and (2) may be highly probative of issues on which Plaintiffs must  
6 produce evidence in order to defeat the Anti-SLAPP Motion. 477 U.S. at 850.

7 **III. Conclusion**

8 The Court HEREBY:

- 9 1. GRANTS Plaintiffs’ request to stay the Anti-SLAPP motion. *See* ECF No. 12.  
10 2. REFERS Plaintiffs’ requests for discovery, *see* ECF No. 12, to the United States  
11 Magistrate Judge.

12 Dated: February 9, 2018

  
13 Hon. William Q. Hayes  
14 United States District Court  
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