

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
SOUTHERN DISTRICT OF CALIFORNIA**

NICHOLAS A VENA, Plaintiff, v. MOORE, SCHULMAN & MOORE, APC, et al. Defendants.
--

Case No.: 3:22-cv-0437-W-BLM

**ORDER DENYING DEFENDANTS’
MOTION TO DISMISS AND STRIKE
[DOC.7]**

Defendants Moore, Schulman & Moore, APC and Julie Westerman move to dismiss the federal cause of action under Federal Rule of Civil Procedure 12(b)(6) and move to strike the state-based causes of action under California’s Anti-SLAPP Statute, Code Civ. Pro., § 425.16. Plaintiff Nicholas A. Vena opposes.

The Court decides the matters on the papers submitted and without oral argument. Civ. L.R. 7.1(d.1). For the reasons that follow, the Court **DENIES** Defendants’ motion [Doc. 7].

1 **I. BACKGROUND**

2 This lawsuit arises out of an underlying state court marital-dissolution proceeding
3 between Plaintiff Nicholas A. Vena and Christine Vena. In this case, Nicholas is suing
4 Christine’s former attorneys for, among other things, allegedly violating his due-process
5 right to a fair and unbiased tribunal.

6
7 **A. The Underlying Marital Dissolution Proceeding.**

8 On November 18, 2019, Christine filed a petition for legal separation against
9 Nicholas in the San Diego Superior Court, North County Family Division. (*Compl.*
10 [Doc. 1] ¶ 10.) Christine is represented by Defendant Julie Westerman, a partner of
11 Defendant Moore, Schulman & Moore, APC (“MSM”). (*Id.*) “In addition to legal
12 separation, the case involved substantial contested issues, including child custody and
13 visitation; child support; spousal support; property characterization; valuation, and
14 division; and attorney’s fees and costs.” (*Id.*)

15 On November 5, 2020, the petition was amended, converting it to a marital-
16 dissolution action. (*Compl.* ¶ 11.) On July 15, 2021, the case was bifurcated and a
17 status-only judgment filed. (*Id.*) Nicholas’s and Christine’s marriage has now been
18 dissolved, but other substantial issues remain pending. (*Id.* ¶¶ 11, 17.)

19 On March 13, 2020, Nicholas invoked his right to an evidentiary hearing on child
20 custody. (*Compl.* ¶ 17.) Judge William Wood entered temporary orders and set a trial
21 for October. (*Id.*) Unfortunately, because of the COVID-19 pandemic, the trial date was
22 vacated, which resulted in Nicholas being deprived of time with his children. (*Id.* ¶¶ 17,
23 18.) To expedite the action, Nicholas agreed to appoint a privately compensated
24 temporary judge to preside over the case. (*Id.* ¶ 18.)

25
26 **B. The Parties Retain Commissioner Jeannie Lowe.**

27 Defendant Westerman suggested two candidates, one of which was retired family
28 court commissioner, the Hon. Jeannie Lowe. (*Compl.* ¶ 18.) Nicholas agreed and

1 entered an agreement with the alternate dispute resolution organization JAMS to hire
2 Commissioner Lowe to adjudicate their marriage dissolution, preside over the child
3 custody trial and financial trial, and resolve certain discovery motions and hearings. (*Id.*
4 ¶ 19.) Commissioner Lowe’s fees were \$4,000 per day, \$2,200 per half day, and
5 additional time was \$500 per hour, plus other fees and expenses. (*Id.* ¶ 19.) Each party
6 was responsible for half the fees. (*Id.* ¶ 20.) Nicholas’s portion amounted to over
7 \$63,000. (*Id.*)

8 On September 17, 2020, Commissioner Lowe signed her oath of office, which
9 included a promise to comply with Canon 6 of the Code of Judicial Ethics. (*Compl.* ¶
10 21.) The next day, Commissioner Lowe signed a disclosure checklist, disclosing her past
11 service as a “neutral” for MSM (Christine’s law firm), but no new or impending
12 engagements with the firm. (*Id.* ¶ 22.) The court signed her appointment on October 6,
13 2020. (*Id.* ¶ 21.)

14
15 **C. Defendants Retain Commissioner Lowe in Eight New or Expanded**
16 **Matters Without Disclosing to Nicholas.**

17 Unbeknownst to Nicholas and his counsel, on September 22, just days after
18 Commissioner Lowe signed her disclosure checklist, MSM began sending a large volume
19 of lucrative business to Commissioner Lowe via JAMS. (*Compl.* ¶ 26.) The first matter
20 was an expansion of a previously disclosed case, which had been closed but was
21 reopened. (*Id.*) Over the course of several months, MSM retained Commissioner Lowe
22 in multiple new matters, most of which were ongoing during Nicholas’s and Christine’s
23 child-custody trial. (*Id.* ¶ 27.) In total, MSM offered Commissioner Lowe employment
24 in eight new or expanded matters. (*Id.*)

25 Commissioner Lowe never disclosed any of the expanded or new matters. (*Compl.*
26 ¶ 29.) Nicholas alleges “MSM and Westerman intended that [he] and his counsel remain
27 unaware of the new business and the money going to Commissioner Lowe” because if the
28 business dealings were disclosed, “MSM and Westerman knew that Commissioner Lowe

1 would likely be deemed disqualified as of the date she began engaging in undisclosed
2 business dealings with them.” (*Id.* ¶ 31.) Further, Nicholas alleges that once their
3 dealings began to come to light, MSM and Westerman resisted requests to fully disclose
4 their dealings with Commissioner Lowe. (*Id.*)

5 As a result of MSM’s retention of Commissioner Lowe on the undisclosed matters,
6 Nicholas alleges that she was biased and openly favored Christine’s counsel. (*Compl.* ¶
7 39.) According to the Complaint, Commissioner Lowe exhibited an unusual and
8 inappropriate degree of familiarity towards Christine’s attorneys, including Westerman,
9 while behaving coldly to Nicholas’s attorney. (*Id.*) And during the litigation, Westerman
10 relied on MSM’s favored status to make baseless arguments, misrepresent the record, and
11 violate procedural rules. (*Id.* ¶ 40.) Ultimately, Commissioner Lowe tentatively awarded
12 Christine more than half-time physical custody and final decision-making authority over
13 all the children, including an older child who lived full-time with Nicholas. (*Id.* ¶ 41.)

14 When Commissioner Lowe’s acceptance of the undisclosed business came to light,
15 Nicholas’s counsel moved to disqualify her. (*Compl.* ¶ 43.) Ultimately, Commissioner
16 Lowe recused herself and the case was reassigned to Superior Court Judge Victor Torres.
17 (*Id.* ¶ 47.) On February 17, 2022, Judge Torres issued an order voiding all of
18 Commissioner Lowe’s orders “for failure to disclose....” (*Id.*) Nicholas contends that by
19 then, he had incurred over \$1 million in costs and legal fees for the voided legal
20 proceedings. (*Id.* ¶ 49.)

21 On April 1, 2022, Nicholas filed this lawsuit against MSM and Westerman. (*See*
22 *Compl.*) The Complaint asserts four causes of action for: (1) violation of federal civil
23 rights, under 42 U.S.C. § 1983; (2) negligence; (3) willful misconduct; and (4) intentional
24 interference with contractual relations. (*Id.*) On May 10, 2022, Defendants filed this
25 motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) and motion to strike
26 under California’s Anti-SLAPP Statute. Nicholas opposes the motion.

1 **II. MOTION TO DISMISS**

2 **A. Standard**

3 The Court must dismiss a cause of action for failure to state a claim upon which
4 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
5 tests the legal sufficiency of the complaint. See Parks Sch. of Bus., Inc. v. Symington, 51
6 F.3d 1480, 1484 (9th Cir. 1995). A complaint may be dismissed as a matter of law either
7 for lack of a cognizable legal theory or for insufficient facts under a cognizable theory.
8 Balisteri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1990). In ruling on the
9 motion, a court must “accept all material allegations of fact as true and construe the
10 complaint in a light most favorable to the non-moving party.” Vasquez v. L.A. Cnty.,
11 487 F.3d 1246, 1249 (9th Cir. 2007).

12 A complaint must contain “a short and plain statement of the claim showing that
13 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Supreme Court has
14 interpreted this rule to mean that “[f]actual allegations must be enough to raise a right to
15 relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 554, 555
16 (2007). The allegations in the complaint must “contain sufficient factual matter, accepted
17 as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556
18 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570).

19 Well-pled allegations in the complaint are assumed true, but a court is not required
20 to accept legal conclusions couched as facts, unwarranted deductions, or unreasonable
21 inferences. See Papasan v. Allain, 478 U.S. 265, 286 (1986); Sprewell v. Golden State
22 Warriors, 266 F.3d 979, 988 (9th Cir. 2001).

23
24 **B. Analysis**

25 Defendants move to dismiss Nicholas’s first cause of action for violation of his
26 Fifth Amendment rights, under 28 U.S.C. § 1983. To state a section 1983 claim, a
27 plaintiff must allege facts setting forth two essential elements: (1) that a right secured by
28 the Constitution or laws of the United States was violated, and (2) that the alleged

1 violation was committed by a person acting under the color of State law. Long v. County
2 of L.A. 442 F.3d 1178, 1185 (9th Cir. 2006) (citing West v. Atkins 487 U.S. 42, 48
3 (1988)).

4 With regard to the second element, “a claim may lie against a private party who ‘is
5 a willful participant in joint action with the State or its agents. Private persons, jointly
6 engaged with state officials in the challenged action, are acting ‘under color’ of law for
7 purposes of § 1983 actions.’” DeGrassi v. City of Glendora, 207 F.3d 636, 647 (9th Cir.
8 2000) (quoting Dennis v. Sparks, 449 U.S. 24, 27–28 (1980)). Whether someone is
9 acting under the color of State law is generally a question of fact, not law. Schowengerdt
10 v. Gen’l Dynamics Corp., 823 F.3d 1328, 1338 (9th Cir. 1987).

11 Defendants contend Nicholas fails to plead facts demonstrating Defendants were
12 acting under color of state law. While Defendants do not dispute that Commissioner
13 Lowe was a state actor for purposes of section 1983 liability, they argue the Complaint’s
14 factual allegations fail to demonstrate joint action between them. The Court disagrees.

15 Nicholas’s section 1983 claim is premised on Defendants’ and Commissioner
16 Lowe’s violation of his due-process rights. (*Compl.* ¶¶ 54–56.) These include the right
17 to a fair tribunal and unbiased decisionmaker: “a ‘fair trial in a fair tribunal is a basic
18 requirement of due process.’ . . . Not only is a biased decisionmaker constitutionally
19 unacceptable but ‘our system of law has always endeavored to prevent even the
20 probability of unfairness.’” Withrow v. Larkin, 421 U.S. 35, 46 (1975) (quoting In re
21 Murchison, 349 U.S. 133, 136 (1955)). Accordingly, the issue is whether the
22 Complaint’s factual allegations and the reasonable inferences from those allegations
23 demonstrate that Defendants were willful participants in violating Nicholas’s right to a
24 fair and unbiased tribunal.

25 The Complaint alleges that several days after Commissioner Lowe signed her oath
26 of office in the marital-dissolution proceeding, Defendants began hiring her to work on
27 new or expanded matters, none of which were disclosed to Nicholas. (*Compl.* ¶ 26–29.)
28 Defendants allegedly engaged Commissioner Lowe on the undisclosed matters to make

1 her “beholden to them.” (*Id.* ¶ 37.) The Complaint further alleges that because of their
2 financial relationship, Westerman was allowed to make baseless arguments, misrepresent
3 the record, and violate procedural rules without being held accountable. (*Id.* ¶ 40.)
4 Instead, MSM and their client were ultimately rewarded by Commissioner Lowe, who
5 modified the previous order for joint legal custody and awarded Christine more than half-
6 time physical custody, including final decision-making authority over the child who lived
7 with Nicholas. (*Id.* ¶ 39.)

8 Based on these factual allegations, the Court finds that Nicholas has adequately
9 pled that his right to a fair and unbiased tribunal in the marital-dissolution proceeding
10 was violated and that Defendants willfully participated with Commissioner Lowe in the
11 violation.

12 13 **III. ANTI-SLAPP MOTION**

14 **A. Standard**

15 In moving to strike under the Anti-SLAPP statute, “the moving party must show
16 (1) the complaint alleges *protected speech or conduct*, and (2) the ‘relief is sought based
17 on allegations *arising from*’ the protected activity.” Gaynor v. Bulen, 19 Cal.App.5th
18 864, 877 (2018) (emphasis in original) (quoting Baral v. Schnitt, 1 Cal.5th 376, 396
19 (2016)). If the moving party satisfies this showing, the burden shifts to the opposing
20 party to demonstrate a probability of prevailing on the claim. Navellier v. Sletten, 29
21 Cal.4th 82, 88 (2002).

22 In evaluating if the relief sought *arises from* protected activity, the “focus is not the
23 form of the plaintiff’s cause of action but, rather, the defendant’s *activity* that gives rise to
24 his or her asserted liability—and whether that activity constitutes protected speech or
25 petitioning.” Navellier, 29 Cal.4th at 92 (emphasis in original). “A claim arises from
26 protected activity when that activity underlies or forms the basis for the claim.” Park v.
27 Board of Trustees of California State University, 2 Cal.5th 1057, 1062 (2017) (citations
28 omitted). “Critically, ‘the defendant’s act underlying the plaintiff’s cause of action must

1 itself have been an act in furtherance of the right of petition or free speech.” *Id.* at 1063
2 (quoting *City of Cotati v. Cashman*, 29 Cal.4th 69, 78 (2002)). “The mere fact that an
3 action was filed after protected activity took place does not mean the action arose from
4 that activity for the purposes of the anti-SLAPP statute.” *Id.* (quoting *Navellier*, 29
5 Cal.4th at 89) (internal bracket omitted).

6
7 **B. Analysis.**

8 Defendants argue that Nicholas’s state-law claims arise from their “petitioning in
9 front of a particular temporary judge for ADR services....” (*P&A* 8:14–17.) In support
10 of this argument, Defendants cite the Complaint’s allegations that they “sent a large
11 volume of lucrative business to Commissioner Lowe via JAMS” and that Defendants
12 “offered Commissioner Lowe employment in *eight* new or expanded matters.” (*PA&*
13 9:27–10:6, citing *Compl.* ¶¶ 26, 27.) (*Id.* 9:27–10:6, citing *Compl.* ¶ 27.) The Court is
14 not persuaded by Defendants’ argument.

15 Defendants fail to support the contention that this lawsuit arises from “petitioning”
16 activity in front of Commissioner Lowe. They acknowledge that under the statute,
17 “petitioning” generally involves “any ‘written or oral statement or writing made before
18 ... a judicial proceeding’” or any “legal petitions and ‘all communicative acts performed
19 by attorneys as part of their representation of a client....’” (*P&A* 8:16–21, citing Code
20 Civ. Pro. § 425.16 (e)(1) and *Optional Capital, Inc. v. Akin Gump Strauss Hauser & Feld,*
21 *LLP*, 8 Cal.App.5th 95, 113 (2017)). Yet, Defendants do not point to any conduct
22 typically considered “petitioning,” such as legal petitions, briefs, oral statements,
23 arguments or any other communicative acts on behalf of a client that gives rise to their
24 potential liability in this case. Instead, Defendants rely on the Complaint’s allegation that
25 they hired Commissioner Lowe: “the Complaint alleges that MSM ‘sent a large volume
26 of lucrative business to Commissioner Lowe via JAMS’” and “further alleges MSM
27 offer[ed] Commissioner Lowe ‘eight new or expanded matters.’” (*Id.* 9:27–10:6, citing
28

1 *Compl.* ¶¶ 26, 27.) Defendants, however, provide no support for the proposition that
2 hiring Commissioner Lowe constitutes “petitioning” activity under the statute.

3 All the cases Defendants cite involve claims arising from negotiations, arguments
4 or other communications made during underlying litigation. In Optional Capital, Inc., 8
5 Cal.App.5th 95, the attorneys’ conduct involved “work in negotiating a settlement of the
6 state court action” and “Plaintiff even relie[d] on *in-court* statements by Akin lawyers as
7 evidence of” the conduct giving rise to the claim. *Id.* at 114. In Navellier, 29 Cal.4th 82,
8 the lawsuit arose out of defendant’s negotiation and execution of a release agreement
9 entered in an earlier lawsuit, defendant’s argument regarding the validity of the release in
10 the case, and the counterclaims pursued. *Id.* at 90–91. In Kashian v. Harriman, 98
11 Cal.App.4th 892 (2002), the claim “arose directly from [defendant’s] acts or statements,
12 or alleged act or statements, made in connection with environmental litigation he was
13 bringing on behalf of” defendant’s client and other organizations. *Id.* at 907–908. Thus,
14 none of Defendants’ cases support the theory that an attorney’s retention of a temporary
15 judge for ADR services is protected under the Anti-SLAPP statute.

16 The Court is also not convinced that the activity giving rise to Nicholas’s state-law
17 claims is simply Defendants’ retention of Commissioner Lowe. Instead, the Complaint’s
18 allegations establish that Nicholas’s state-law claims are also based on Defendants’
19 failure to disclose the formation of their financial relationship, i.e., the retention.

20 In addition to alleging Commissioner Lowe was obligated to disclose “information
21 relevant to the question of disqualification, including business relationships with lawyers
22 in the case” (*Compl.* ¶¶ 22–25), Nicholas alleges that Defendants knew their financial
23 relationship with Commissioner Lowe had to be disclosed but intended to keep Nicholas
24 and his counsel from learning about it:

25 31. Because of their training and experience, Westerman and the other
26 MSM partners knew of the disclosure requirements. MSM and Westerman
27 also knew that Commissioner Lowe would not disclose these business
28 dealings, and intended for the new business not to be disclosed. This was
only confirmed when she refrained from disclosing the first engagement,

1 followed by each one afterwards. MSM and Westerman intended that Nick
2 and his counsel remain unaware of the new business and the money going to
3 Commissioner Lowe. Had the undisclosed business dealings come to light,
4 MSM and Westerman knew that Commissioner Lowe would likely be
5 deemed disqualified as of the date she began engaging in undisclosed
6 business dealings with them. They not only did not reveal the truth, but
7 resisted requests to fully disclose their dealings with Commissioner Lowe
8 once those dealings began to come to light. They resisted Nick's counsel's
9 efforts to remove Commissioner Lowe from the case, both by termination of
10 the stipulation, and also by disqualification.

11
12 32. The continuing disclosure requirement is intended to allow parties to
13 evaluate a judge's impartiality going forward, and if warranted to take
14 remedial action, such as seeking disqualification. Nondisclosure not only
15 thwarts this purpose, but also gives a secret advantage to artful parties, who
16 can rely on and take advantage of their favored status while blindsiding their
17 duped opponents.

18 (*Id.*, emphasis added.) Defendants' liability for failing to disclose is then specifically set
19 forth in the state-law causes of action. The negligence and willful-misconduct causes of
20 action both allege:

21 Westerman and MSM breached their duty to Nick when they channeled
22 lucrative business to Commissioner Lowe that ***neither she nor they***
23 ***disclosed***, which they knew would not be disclosed, and which they knew
24 was not likely to be discovered promptly, if ever. In fact, they both expected
25 and hoped Nick and his counsel would not discover it at all.

26 (*Compl.* ¶¶ 65, 69, emphasis added.) The intentional interference with contractual
27 relations cause of action then specifically attributes Nicholas's injury—i.e., the
28 disruption of his contract with JAMS—to the failure to disclose:

Because Westerman and MSM brought about the facts creating
disqualification at the very beginning of the case [i.e., by retaining and
failing to disclose the retention of Commission Lowe] all of Commissioner
Lowe's rulings were void when made and never had any legal import. Their
actions therefore were substantially certain to deprive Nick of the benefit of
his bargain with JAMS. This amounts to a disruption of the contractual
relationship.

1 (*Id.* ¶ 78.) Thus, Nicholas’s state-law causes of action and his injuries do not arise simply
2 from Defendants hiring Commissioner Lowe, but from their failure to disclose it.

3 While none of the cases the parties cite involve claims arising from an attorney
4 hiring a temporary judge, the Court is persuaded by one California Court of Appeal case
5 that such conduct is not protected. In Coretronic Corp. v. Cozen O’Conner, 192
6 Cal.App.4th 1381 (2011), Coretronic filed a claim with its insurance carrier requesting a
7 defense in an underlying trade dispute with E&S International Enterprises, Inc. (“E&S”).
8 The insurer retained the Cozen O’Connor law firm (“Cozen”) as coverage counsel to
9 evaluate the claim. The insurer denied Coretronic’s claim, but Coretronic continued to
10 communicate and share confidential information with the Cozen attorneys hoping the
11 insurer would reconsider its denial. Meanwhile, Cozen began representing E&S—the
12 party suing Coretronics—in an unrelated lawsuit. When the Cozen attorney involved
13 with Coretronic realized the firm was also representing E&S, he disclosed it and the firm
14 withdrew from representing E&S. Coretronics then sued Cozen alleging the “lawyers
15 concealed their concurrent status as E&S’s counsel in the other action as a means to gain
16 access to plaintiffs’ sensitive information that would benefit E&S in its lawsuit against
17 plaintiffs.” *Id.* at 1387.

18 Cozen responded to the complaint by filing an Anti-SLAPP motion, which the trial
19 court denied. In affirming the decision, the Court of Appeal rejected the theory that
20 because the attorneys’ failure to conceal arose in the context of litigation it involved
21 petitioning activity:

22 The gravamen of the complaint is premised on defendants’ failure to
23 disclose Cozen's representation of E&S, while obtaining from plaintiffs their
24 confidential information involving their defense of the lawsuit E&S brought
25 against them. That the concealment occurred in the context of litigation does
26 not change this result, as it is clear that any litigation activity is only
27 incidental to plaintiffs' allegations of wrongdoing.

28 *Id.* at 1391.

1 Similar to Coretronic, although the factual background for Nicholas’s state-law
2 causes of action involve other legal proceedings, Defendants’ alleged liability does not
3 arise from any litigation-related activity. Instead, like the Cozen attorneys, Defendants’
4 liability arises from the creation of a relationship with a third party, and the failure to
5 disclose it. Thus, in both cases, “any assertedly protected activity is not the root of the
6 complaint; it is merely the setting in which the claims arose.” Id., at 1392.

7 For these reasons, the Court finds Defendants failed to establish that this lawsuit
8 arises from petitioning activity. Thus, the Court does not reach whether Nicholas has
9 demonstrated a probability of success on the merits. See Coretronic, 192 Cal.App.4th at
10 1393 (“Because we conclude plaintiffs’ claims to not arise from protected activity, we
11 need not consider whether plaintiffs have demonstrated a probability of prevailing on the
12 merits of those claims.”).

13 14 **C. Objections.**

15 Nicholas objects to Defendants’ Reply on the basis that it makes new arguments
16 and alleges new facts. (*Pl’s Obj.* [Doc. 14] 1:25–28.) Most of Defendants’ allegedly
17 new arguments and facts relate to whether Nicholas can satisfy the probability-of-
18 success-on-the-merits prong of the Anti-SLAPP analysis. (*See id.* 2:12–3:9.) As set forth
19 above, because Defendants failed to establish that their potential liability arises from
20 protected conduct, the Court did not address the probability of success prong. Thus,
21 those objections are overruled as moot.

22 Nicholas also objects to Defendants’ Reply, which cites the marital-dissolution
23 action to rebut Nicholas’s contention that (1) Defendants failed to discuss what the
24 underlying mediations were about and (2) that private, contractual arbitrations are not
25 covered by the Anti-SLAPP statute. (*See Pl’s Obj.* 2:3–11, citing *Reply* 5:11–6:12.)
26
27
28

1 Again, the Court did not rely on either issue is deciding the Anti-SLAPP motion and
2 therefore the objections are moot.¹

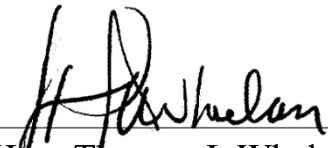
3 Next, Defendants object to Nicholas’s Sur-Reply [Doc. 13]. (*See Defs’ Obj.* [Doc.
4 14].) Nicholas argues the Sur-Reply is necessary to address the new arguments and facts
5 raised in Defendants’ Reply. (*Sur-Reply* 1:23–26.) Because none of the new issues
6 raised in Defendants’ Reply had any bearing on resolution of the Anti-SLAPP motion,
7 the Court **GRANTS** Defendants’ objection and will not consider any of the arguments
8 made in the Sur-Reply.

9
10 **IV. CONCLUSION & ORDER**

11 For the foregoing reasons, the Court **DENIES** Defendants’ motion [Doc. 7].

12 **IT IS SO ORDERED.**

13 Dated: August 31, 2022

14
15 
16 Hon. Thomas J. Whelan
United States District Judge

17
18
19
20
21
22
23
24
25
26
27 ¹ To the extent the Reply also intended to assert the state-law causes of action are based on petitioning
28 activity in the marital-dissolution action, the Court agrees that the argument was not included in the
moving papers, which only relied on the “eight new or expanded matters.” (*See P&A* 10:2–6.)
Accordingly, the Court would **GRANT** Nicholas’s objection.