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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

13 SANTA ANA POLICE OFFICERS  
ASSOCIATION; GERRY SERRANO,

14 Plaintiffs,

15 vs.

16 CITY OF SANTA ANA, a Municipal  
17 Corporation; SANTA ANA POLICE  
DEPARTMENT, a public safety department;  
18 DAVID VALENTIN, Chief of Police;  
KRISTIN RIDGE, City Manager; SONIA  
19 CARVALHO, City Attorney; JASON  
MOTSKICK, Director of Human Resources;  
20 DOES I-X, inclusive,

21 Defendants.

**Case No. 30-2021-01230129-CU-OE-CJC**

**DEFENDANT DAVID VALENTIN'S  
NOTICE OF MOTION AND SPECIAL  
MOTION TO STRIKE PURSUANT TO  
CODE OF CIVIL PROCEDURE § 425.16;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

*[Filed concurrently with Declaration of David  
Valentin; Declaration of Seymour B. Everett;  
and [Proposed] Order]*

**Reservation ID: 73704646**

Date: June 15, 2022  
Time: 1:30 p.m.  
Dept.: C20

[Assigned For All Purposes To:  
Hon. Lon F. Hurwitz, Dept. C20]

Action Filed: November 8, 2021  
Trial Date: None Set

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1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on June 15, 2022, at 1:30 p.m., or as soon thereafter as  
3 counsel may be heard, in Department C20 of the above-captioned Court, located at 700 N. Civic  
4 Center Dr. W, Santa Ana, CA 92705, Defendant David Valentin ("Chief Valentin") will and  
5 hereby does move for an order granting his Special Motion to Strike Plaintiffs Santa Ana Police  
6 Officers Association and Gerry Serrano's ("Plaintiffs") Complaint pursuant to Code of Civil  
7 Procedure ("CCP") § 425.16.

8 This Motion is brought on the grounds that Plaintiffs' claims arise out of protected speech  
9 and petitioning activity by Chief Valentin, and this lawsuit has been brought primarily to chill and  
10 punish Chief Valentin for engaging in constitutionally protected activities. Plaintiffs cannot meet  
11 their burden to demonstrate a probability of prevailing on any claim because Plaintiffs' Complaint  
12 does not state claims upon which relief can be granted, and the claims are not legally cognizable,  
13 lack factual merit, and are barred by relevant defenses and immunities.

14 Chief Valentin's only burden to invoke the protection of CCP § 425.16 is to demonstrate  
15 that the challenged claims arise out of protected activity within the meaning of CCP § 425.16. The  
16 burden then shifts to Plaintiffs, who must (a) demonstrate their Complaint is legally sufficient, and  
17 (b) demonstrate, by admissible and competent evidence, a reasonable probability that they will  
18 prevail on the merits at trial.

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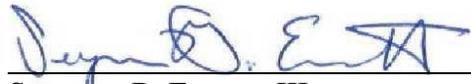
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This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of David Valentin and Seymour B. Everett, the exhibits to the declarations filed concurrently herewith, all of the pleadings, files, and records in this proceeding, all other matters of which this Court may take judicial notice, and any argument or evidence that may be presented to or considered by this Court prior to its ruling.

DATED: February 22, 2022 EVERETT DOREY LLP

By:   
Seymour B. Everett, III  
Samantha E. Dorey  
Christopher D. Lee  
James C. Truxaw  
Attorneys for Defendant  
DAVID VALENTIN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Santa Ana Police Officers Association ("SAPOA") and SAPOA President Gerry  
4 Serrano ("Serrano") (collectively, "Plaintiffs") filed an unsigned Complaint against the City of  
5 Santa Ana ("the City"), the Santa Ana Police Department, Chief of Police David Valentin ("Chief  
6 Valentin"), City Manager Kristine Ridge, City Attorney Sonia Carvalho, City Human Resources  
7 Director Jason Motsick, and ten Doe Defendants. (See Complaint, Everett Decl. ¶ 24, Ex. V.)  
8 Plaintiffs' Complaint is not based in law or fact. It is intended to personally and maliciously attack  
9 Chief Valentin and the other Defendants with baseless and false allegations in order to intimidate  
10 them and create leverage for Serrano's personal financial and political gain. Plaintiffs' meritless  
11 lawsuit not only threatens to unfairly damage the good reputation of Chief Valentin, it also  
12 unjustifiably threatens public confidence in the entire Santa Ana Police Department and in law  
13 enforcement as a whole. It is an affront to all peace officers, especially the brave men and women  
14 who serve the City of Santa Ana.

15 Moreover, Plaintiffs' claims infringe on Chief Valentin's constitutionally protected rights.  
16 Plaintiffs' Complaint is based on allegations that Chief Valentin should be liable for engaging in  
17 protected activity such as initiating investigations, petitioning government agencies, and engaging  
18 in protected speech. Chief Valentin is protected against this abusive lawsuit under the California  
19 anti-SLAPP statute, and Plaintiffs will be required to show that their claims are legally sound and  
20 supported by evidence. Plaintiffs will be unable to meet this burden because their claims against  
21 Chief Valentin are baseless, and solely intended to unfairly intimidate and harass. Accordingly,  
22 under the anti-SLAPP statute, Chief Valentin requests an Order striking Plaintiffs' Complaint and  
23 ordering Plaintiffs to pay Chief Valentin's attorneys' fees and litigation costs.

24 **II. FACTUAL BACKGROUND**

25 **A. Chief Valentin's Background**

26 Chief Valentin grew up in Santa Ana, and has devoted his professional career to serving  
27 the people of Santa Ana. (See Declaration of David Valentin ("Valentin Decl.") ¶¶ 2-3.)  
28 Throughout his law enforcement career spanning over thirty years, he worked his way up from the

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1 rank of police officer until he was appointed Acting Chief of Police in 2017, and confirmed  
2 unanimously by the City Council as permanent Chief of Police in 2018. (Valentin Decl. ¶ 3.)  
3 Contrary to Plaintiffs' allegations, Chief Valentin fully supports all of the men and women of the  
4 Santa Ana Police Department, who bravely put their lives on the line every day to protect and  
5 serve the people of Santa Ana. (Valentin Decl. ¶ 4.)

6 Included in his over thirty years of law enforcement experience, Chief Valentin has over  
7 nineteen years of command-level experience. (Valentin Decl. ¶ 5.) He has a Master's degree in  
8 Public Administration with an emphasis in Human Resources, and has completed the John F.  
9 Kennedy School of Government, state and local government program at Harvard University.  
10 (Valentin Decl. ¶ 6.) Chief Valentin is a leader in the law enforcement community, has consulted  
11 internationally on topics such as community oriented policing and cultural diversity, and is  
12 president-elect of the Orange County Chiefs of Police and Sheriffs Association. (Valentin Decl. ¶¶  
13 7-8.)

14 **B. Plaintiff Serrano's Background**

15 Serrano is a Sergeant in the Santa Ana Police Department, but has been released from  
16 policing duties since 2016 while serving as SAPOA's designated union representative and  
17 president. (Complaint ¶ 10.) As SAPOA president, Mr. Serrano has developed a reputation for  
18 attempting to silence City officials whom he considers political obstacles. (See Valentin Decl.  
19 ¶ 14.) For example, former Police Chief Carlos Rojas stated in 2017 that he "engendered the  
20 wrath" of Serrano after he began cracking down on officer misbehavior. (Everett Decl. ¶ 3, Ex. A.)  
21 Rojas filed a lawsuit alleging that Serrano had met with city councilmembers and offered them  
22 political support in exchange for signing an agreement that they would terminate the city manager  
23 and Chief Rojas. (Everett Decl. ¶ 4, Ex. B.) Chief Rojas also gave sworn testimony that when he  
24 was chief, he "went to investigators at the Orange County District Attorney's Office and FBI  
25 Public Corruption Unit with the information he was getting about corruption in the city—  
26 including the alleged police union bribery . . . ." (Everett Decl. ¶ 7, Ex. E.)

27 On October 9, 2011, Serrano was arrested for driving under the influence and hit-and-run  
28 in Westminster, and he reportedly refused to take blood and breath tests. (Everett Decl. ¶ 5, Ex.

1 C.) According to the Voice of OC, "The Westminster DUI allegations have figured prominently in  
2 allegations by at least three Santa Ana police officials that after Serrano was disciplined in 2012  
3 for his conduct in Westminster, he became upset at the police chief who disciplined him, Carlos  
4 Rojas and, as head of the police union, allegedly bribed City Council candidates to oust the police  
5 chief." (Id.) Reportedly, the Orange County District Attorney's ("DA") Office declined to file  
6 charges for Serrano's hit-and-run. (Id.)

7 Serrano's history of political attacks is not limited to police chiefs. On February 10, 2020,  
8 Serrano authored an opinion piece in the Voice of OC regarding his efforts to unseat City  
9 Councilwoman Cecilia Iglesias, arguing that she had made "slanderous comments about the  
10 Association." (Everett Decl. ¶ 8, Ex. F.) Serrano attached a letter drafted by SAPOA's counsel,  
11 demonstrating that Serrano's efforts to unseat Councilwoman Iglesias included legal claims against  
12 her. (Id.) Councilwoman Iglesias responded, "Serrano has made a series of bogus complaints  
13 against me. When he tells you that city, county and state officials have failed to act on these  
14 complaints, what he means is that neutral legal experts declared them groundless." (Everett Decl. ¶  
15 9, Ex. G.) In June 2020, it was reported that Serrano and SAPOA "have been accused of forcing  
16 the ouster of top city officials and attempting to coerce council candidates to do their bidding. Two  
17 recent lawsuits against the city that involve Serrano . . . have cost Santa Ana taxpayers \$650,000  
18 in settlements." (Everett Decl. ¶ 10, Ex. H.)

19 **C. The Evidence Shows That Plaintiffs Are Pursuing This Action Because Of**  
20 **CalPERS' Decision To Limit Portions Of Serrano's Pension**

21 Plaintiffs' claims are part of a continual legal and political campaign by Mr. Serrano to  
22 reverse a CalPERS decision preventing him from including portions of his compensation received  
23 while union president as part of his pension. Chief Valentin has never communicated with  
24 CalPERS regarding Serrano's pension. (Valentin Decl. ¶ 21.) However, in October 2020, Voice of  
25 OC published an article reporting that "the state's pension system for cities, CalPERS, says it's  
26 conducting an ongoing audit or review regarding Serrano," and that federal authorities had been  
27 "seeking information about Gerry Serrano" via grand jury subpoenas. (Everett Decl. ¶ 11, Ex. I.)  
28 The article noted that Serrano "is the highest-compensated city employee in Santa Ana other than

1 the police chief." (Id.) The article reported that Serrano's total compensation from the city had  
2 increased significantly during his years as union president, from \$346,000 all the way up to  
3 \$505,000 at the time of the article. (Id.) On October 8, 2020, a CalPERS representative told  
4 Serrano that his request to modify his pension poses "pension spiking issues." (Everett Decl. ¶ 13,  
5 Ex. K; Valentin Decl. ¶ 15, Ex. A.)

6 On July 1 and July 15, 2021, Serrano's attorney sent emails to Santa Ana Human  
7 Resources Director Jason Motsick, asking him to "please brief the Council on the idea of creating  
8 a job position in the City that would pay Gerry what he is being paid today . . . thus allowing his  
9 retirement to accurately reflect his compensation earnable." (Valentin Decl. ¶ 17, Ex. C.) Making  
10 no attempt to hide the actual motivation for this lawsuit, Mr. Goldwasser asked Mr. Motsick to  
11 **"discuss with the Council the possibility of a settlement of outstanding claims held by Gerry  
12 in an amount that would allow the purchase of an annuity that would ensure that his  
13 retirement would match that based on his current President's pay."** (Id.) On July 20, 2021,  
14 City Attorney Sonia Carvalho sent Serrano's attorney a letter discussing CalPERS' decision not to  
15 include portions of Serrano's pay as union president in his police sergeant pension. (Valentin Decl.  
16 ¶ 20, Ex. E.)

17 Subsequently, City Manager Kristine Ridge wrote a July 19, 2021 letter stating that  
18 Serrano "has mounted a questionable political pressure campaign to improperly boost his pension"  
19 and that "it is clear he intends to 'burn the City to the ground' unless he gets what he wants."  
20 (Everett Decl. ¶ 14, Ex. L; see also Valentin Decl. ¶¶ 16, 18, Ex. B, D.) Reportedly, Serrano's total  
21 pay and benefits exceeded "\$500,000 as of 2019, all while doing no work for the city as part of his  
22 full-time release provision under the police union's labor contract." (Id.) Other City officials have  
23 corroborated to Chief Valentin that Serrano has stated that he will "burn the City to the ground" if  
24 he does not get what he wants. (Valentin Decl. ¶ 19.) The Orange County Register reported on  
25 City Manager Kristine Ridge's letter regarding Serrano's political pressure campaign and pension  
26 issues, stating that "much of Serrano's pay doesn't qualify for retirement—so he would lose  
27 money. A lot of it. Enough to make him desperate enough to demand another city job in the  
28 \$240,000 range, documents say." (Everett Decl. ¶ 15, Ex. M.)

1 The campaign by Mr. Serrano includes the use of union money to change state law for his  
2 personal benefit. On February 3, 2022, The Anaheim Investigator published an article with photos  
3 showing that Serrano met with California State Treasurer Fiona Ma regarding his pension, and  
4 Treasurer Ma hosted a fundraiser for the girlfriend of one of Serrano's associates. (Everett Decl. ¶  
5 18, Ex. P; *see also* ¶ 19, Ex. Q.) The article contained emails showing that Serrano began  
6 communicating with Treasurer Ma in September 2020 and met her in Sacramento on March 15,  
7 2021. (Id.) Three days later, a CalPERS official sent an email to CalPERS CEO Marcie Frost with  
8 the subject line, "POA President Compensation" which contained a draft of proposed laws which  
9 would enable a police union president to bypass rules which prevent Serrano from increasing his  
10 pension. (Id.) The article reported that about two months after Serrano asked Treasurer Ma for  
11 help, SAPOA began donating to her re-election bid. (Id.) Form 460 filings with the City show that  
12 SAPOA made a total of \$15,900 in contributions to Treasurer Ma's campaign, which reportedly  
13 amounts to \$53 from each SAPOA member's union dues. (Id.)

14 On February 18, 2022, an article was published noting that a CalPERS administrative law  
15 judge had denied the City's appeal of CalPERS' decision to limit portions of Serrano's pension.  
16 (Everett Decl. ¶ 20, Ex. R.; Everett Decl. ¶ 25, Ex. W.)

17 **D. The Evidence Shows That This Lawsuit Is A Meritless Attempt To Intimidate,**  
18 **Harass, And Chill Chief Valentin's Public Participation**

19 Initially, Serrano expressed support for Chief Valentin when he became Chief. (Valentin  
20 Decl. ¶ 10.) However, over time, Serrano's relationship with Chief Valentin and other City  
21 officials deteriorated as Serrano began making meritless allegations against City officials in an  
22 attempt to gain leverage in his demands for a higher pension, and to retaliate against them for  
23 engaging in protected conduct. (Id.)

24 On February 22, 2021, the Voice of OC reported that Chief Valentin, in a 2018 memo to  
25 Serrano, had raised questions about whether Serrano had received excessive cash-outs of unused  
26 time off from City Hall, asserting that he had received an "anomaly" payment worth more than  
27 300 hours of time off in 2017. (Everett Decl. ¶ 12, Ex. J.) Thereafter, Serrano pursued a SAPOA  
28 vote of no-confidence against Chief Valentin.

1 On September 1, 2021, SAPOA published the results of their vote of no-confidence.  
2 (Valentin Decl. ¶ 22.) Chief Valentin believes Plaintiffs' vote of no-confidence was brought in  
3 retaliation for refusing Serrano's persistent demands which Chief Valentin believes would violate  
4 department policy, City policy, and the law. (Id.) While the vote of no-confidence was pending, on  
5 August 26, 2021 at 5:05 a.m., Serrano sent an ominous email to City Human Resources Director,  
6 Jason Motsick, making reference to workplace violence, stating "The working conditions for many  
7 are becoming unbearable. This is a recipe for a unfortunate incident happening when you have this  
8 type of behavior in a police station frequently occurring with armed personnel . . . I would hate for  
9 some thing bad to happen after several advisements to the city." (Valentin Decl. ¶ 23, Ex. F.) In  
10 response, Serrano was placed on administrative leave and ordered to submit to a fitness for duty  
11 exam. Plaintiffs' attorney followed up with an August 27, 2021 letter to the City Manager and  
12 Human Resources Director which echoed Serrano's ominous message, stating, "One need only  
13 read the articles regarding the Acton shooting involving fire personnel to realize how bad things  
14 can get if an employer allows work hostilities to go unchecked. Mr. Serrano, as well as everyone  
15 copied herein we presume, would hate for that type of situation to occur at the Police  
16 Department." (Valentin Decl. ¶ 25, Ex. G.)

17 In response to Plaintiffs' vote of no-confidence, Chief Valentin sent a letter to the entire  
18 Police Department on September 1, 2021, explaining that he is "the target of an increasingly  
19 intense personal and political attack primarily led by one police employee; centered on false,  
20 frivolous, harassing and retaliatory actions and claims." (Valentin Decl. ¶ 26, Ex. H.) Chief  
21 Valentin also issued a press release, explaining that the vote of no-confidence was a result of  
22 Serrano's personal and political attacks against him, and cited the Santa Ana Mayor and City  
23 Manager's statements of continuing support for Chief Valentin's work. (Valentin Decl. ¶ 27, Ex. I.)

24 In further efforts to harass and suppress public participation, on January 5, 2022, Plaintiffs'  
25 counsel sent correspondence to the Orange County DA calling for criminal investigation of Chief  
26 Valentin, and making baseless and malicious allegations that Chief Valentin had spied on Serrano  
27 and City Councilmembers. (Valentin Decl. ¶¶ 28-29, Ex. J.) The correspondence provided copies  
28 of Chief Valentin's office staff emails which unambiguously showed that Chief Valentin had

1 simply asked his staff to save emails that were sent or received by Chief Valentin's own email  
2 account. (Id.) Plaintiffs' frivolous demands to DA Spitzer required that defense counsel write its  
3 own correspondence to ensure the DA knew that Plaintiffs' allegations are baseless. (Everett Decl.  
4 ¶ 21, Ex. S.)

5 In a further attempt to harass Chief Valentin, Serrano recently appeared at a hearing on  
6 February 9, 2022 where an individual at the hearing was permitted to have only one  
7 representative. (Valentin Decl. ¶ 31.) The individual already had a representative, and Serrano was  
8 therefore not permitted to attend. (Id.) Chief Valentin requested that Serrano leave the hearing, and  
9 Serrano initially refused to leave, and said "What, you're looking at me," in a threatening manner.  
10 (Id.) Additionally, in Plaintiffs' ongoing efforts to burden, harass, and chill Chief Valentin's public  
11 participation, Plaintiffs' attorney, Corey Glave, has made reference to this lawsuit when  
12 communicating directly with Chief Valentin regarding unrelated legal matters. (Valentin Decl.  
13 ¶ 30.) Defense counsel has repeatedly demanded that Plaintiffs cease and desist this harassing  
14 conduct, and Plaintiffs have expressly and flatly refused. (Everett Decl. ¶ 22, Ex. T.)

15 Plaintiffs' efforts to burden and harass Chief Valentin extends even into the manner in  
16 which they have filed their lawsuit. In addition to the instant Complaint, Plaintiffs filed a separate  
17 Complaint the same day, containing numerous identical and false allegations. (Everett Decl. ¶ 23,  
18 Ex. U.)

19 As Chief of Police, Chief Valentin is duty-bound to address alleged administrative and  
20 criminal violations of any employee of the Santa Ana Police Department. Pursuant to those  
21 obligations, he has reported conduct involving Serrano that he believes to be administrative and  
22 criminal violations to other law enforcement agencies. (Valentin Decl. ¶ 32.)

23 **E. There Is No Factual Basis For The Allegations In Plaintiffs' Complaint**

24 Plaintiffs' Complaint contains six causes of action, five of which are asserted against Chief  
25 Valentin. Plaintiffs' Complaint contains twenty-two pages of disjointed factual narrative before  
26 asserting its causes of action, without explaining how the factual narrative is intended to support  
27 each claim. The myriad allegations heavily implicate Chief Valentin's First Amendment rights of  
28 petition and speech in his role as Chief of Police, including his right to conduct investigations,

1 implement administrative proceedings, and report suspected wrongdoing to other agencies. Chief  
2 Valentin maintains that Plaintiffs' lawsuit is part of an orchestrated effort by Serrano to suppress  
3 his public participation and free speech in relation to the services he performs for the City, and that  
4 all of Plaintiffs' allegations against him are based on fabrications or distortions of the facts.  
5 (Valentin Decl. ¶¶ 11-12.)

6 Plaintiffs' allegations include completely fabricated assertions that Chief Valentin spied on  
7 Serrano and members of the Santa Ana City Council by "redirecting copies of all e-mail  
8 communications sent by Serrano to City Councilmember Solorio . . . to his office" and that he "put  
9 a tracer" on Serrano's emails. (Complaint ¶ 16; Valentin Decl. ¶¶ 28-29, Ex. J.) Plaintiffs also  
10 allege, without a factual basis, that Chief Valentin and the other defendants "censored membership  
11 communications and/or denied the SAPOA the ability to send membership communications via  
12 the City's e-mail system." (Complaint ¶¶ 17, 47; Valentin Decl. ¶ 13.) Plaintiffs' malicious, false  
13 allegations have received media attention, creating a risk of unjustly undermining public  
14 confidence in the Police Department. (Everett Decl. ¶ 17, Ex. O.)

15 Plaintiffs also allege that Chief Valentin should be held liable for engaging in other  
16 constitutionally protected activity such as choosing not to "initiate an investigation" into police  
17 employees for spreading nondescript rumors about Plaintiffs (Complaint at ¶¶ 19-20), ordering an  
18 investigation of Serrano in relation to his involvement in a police investigation into theft of  
19 campaign signs (Complaint at ¶¶ 22-23), requesting that the Orange County DA open a criminal  
20 investigation into Serrano (Complaint at ¶¶ 24-25), for the manner in which he conducted an  
21 investigation into an alleged incident involving off-duty police officers, and initiating said  
22 investigation on a later date than Plaintiffs wanted (Complaint at ¶¶ 26-29), for the manner in  
23 which he conducted an investigation into alleged discrimination against female police officers  
24 (Complaint at ¶¶ 32-37), for not conducting an investigation of himself when Plaintiffs demanded  
25 such investigation (Complaint at ¶¶ 51-53), and for ordering an investigation of Serrano  
26 (Complaint ¶¶ 58-60). Plaintiffs also allege that Chief Valentin should be liable for the  
27 constitutionally protected administrative action of placing Serrano on administrative leave to  
28 submit to a fitness for duty exam, after Serrano sent an email to City officials in which he

1 ominously referenced possible workplace violence, before appearing at Police Department roll  
2 call, presumably armed. (Complaint ¶¶ 79-90; Valentin Decl. ¶¶ 23-25.) Plaintiffs also allege that  
3 Defendants should be liable for engaging in petitioning activity of "inquir[ing] of CalPERS as to  
4 the propriety of including a premium pay" in Plaintiffs' pension. (Complaint ¶ 30.)

5 **III. ARGUMENT**

6 **A. Code Of Civil Procedure § 425.16 Authorizes This Motion**

7 The anti-SLAPP statute, Code of Civil Procedure ("CCP") § 425.16 was enacted in 1992 to  
8 provide a procedure for expeditiously resolving "nonmeritorious litigation meant to chill the valid  
9 exercise of the constitutional rights of freedom of speech and petition in connection with a public  
10 issue." (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235.) "[S]ection  
11 425.16 requires that a court engage in a two-step analysis. First, the court decides whether the  
12 defendant has made a threshold showing that the challenged cause of action is one 'arising from'  
13 protected activity. (CCP § 425.16(b)(1).) If the court finds such a showing, it then must consider  
14 whether the plaintiff has demonstrated a probability of prevailing on the claim." (*City of Cotati v.*  
15 *Cashman* (2002) 29 Cal.4th 69, 76.) CCP § 425.16 applies to the conduct of public officials on  
16 matters of public interest. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 17.) Just as SLAPPs  
17 against individuals have a "chilling" effect on their participation in government decision making,  
18 SLAPPs filed against public officials can have a similarly "chilling" effect on their willingness to  
19 participate in governmental processes. (Sills, *SLAPPS: How Can the Legal System Eliminate Their*  
20 *Appeal?* (1993) 25 CONN. L.REV. 547, quoted with approval in *Vargas*, 46 Cal.4th at 19 fn.9.)

21 **B. This Lawsuit Arises From Acts In Furtherance Of Chief Valentin's Rights**

22 The anti-SLAPP statute applies to any cause of action arising from any act "in furtherance  
23 of the person's right of petition or free speech under the United States Constitution or the  
24 California Constitution in connection with a public issue." (Code Civ. Proc. § 425.16(b)(1).) Code  
25 of Civil Procedure section 425.16(e) states:

26 As used in this section, "act in furtherance of a person's right of petition or free  
27 speech under the United States or California Constitution in connection with a  
28 public issue" includes: (1) any written or 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

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

5 CCP § 425.16 “shall be construed broadly.” (CCP § 425.16(a).) A plaintiff, through artful  
6 pleading, cannot shield particular allegations of protected activity from an anti-SLAPP motion by  
7 intermingling them with allegations of unprotected activity. (*Bonni v. St. Joseph Health System*  
8 (2021) 11 Cal.5th 995, 1010.) Where a complaint contains such "mixed" causes of action, the first  
9 step of the anti-SLAPP statute is satisfied with respect to all alleged protected activity which  
10 actually supports a claim for recovery, and does not apply to those specific allegations that are  
11 merely incidental or collateral. (*See Baral v. Schnitt* (2016) 1 Cal.5th 376, 394.) The defendant can  
12 direct its anti-SLAPP motion to discreet claims within a count and ignore the unitary “cause of  
13 action” label given to it by the plaintiff. (*Id.* at 392-94.)

14 Plaintiffs' Complaint is filled with allegations that Chief Valentin should be held liable for  
15 activity in furtherance of his right to petition and free speech. For example, the majority of  
16 Plaintiffs' allegations against Chief Valentin are based on contentions that Chief Valentin engaged  
17 in investigative activity in his role as Chief of Police. Anti-SLAPP protection applies to lawful  
18 investigative activity. (*Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1074.)  
19 Plaintiffs' Complaint asserts that Chief Valentin should be liable for "fail[ing] to initiate an  
20 investigation" into police employees for allegedly spreading nondescript rumors about Plaintiffs  
21 (Complaint at ¶¶ 19-20), for ordering an investigation of Serrano in relation to his involvement in  
22 an investigation into theft of campaign signs (Complaint at ¶¶ 22-23), for requesting that the  
23 Orange County DA open a criminal investigation into Serrano (Complaint at ¶¶ 24-25), for the  
24 manner in which he conducted an investigation into an alleged incident involving off-duty police  
25 officers, and initiating said investigation on a later date than Plaintiffs wanted (Complaint at ¶¶ 26-  
26 29), for the manner in which he conducted an investigation into alleged discrimination against  
27 female police officers (Complaint at ¶¶ 32-37), for not conducting an investigation of himself  
28 when Plaintiffs demanded such investigation (Complaint at ¶¶ 51-53), and for ordering an

1 investigation of Serrano (Complaint ¶¶ 58-60). Plaintiffs also allege that Defendants should be  
2 liable for engaging in petitioning activity of "inquir[ing] of CalPERS as to the propriety of  
3 including a premium pay" in Plaintiffs' pension. (Complaint ¶ 30.) Anti-SLAPP protection applies  
4 to all of the above claims.

5 Plaintiffs allege that Chief Valentin "began spying" on Serrano and members of the Santa  
6 Ana City Council by "redirecting copies of all e-mail communications sent by Serrano to City  
7 Councilmember Solorio . . . to his office" and that he "put a tracer" on Serrano's emails.  
8 (Complaint ¶ 16.) Plaintiffs' counsel even asked the Orange County DA to pursue a criminal  
9 investigation of Chief Valentin based on this allegation. (Valentin Decl. ¶¶ 28-29, Ex. J.)  
10 However, this allegation is a complete fabrication. The documentation Plaintiffs submitted to the  
11 DA unambiguously shows that Chief Valentin simply asked his department staff to save emails *on*  
12 *his own email account*. (Id.) Thus, Plaintiffs' "spying" allegations arise from Chief Valentin's  
13 protected activity necessary to his ability to gather information and communicate as Chief of  
14 Police. (*See Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1118.)

15 Plaintiffs similarly are attempting to sue Chief Valentin for carrying out his essential  
16 government duties by initiating investigations and administrative proceedings. For example,  
17 Plaintiffs allege that Chief Valentin should he held liable for placing Serrano on administrative  
18 leave and ordering him to submit to a fitness for duty exam. However, Plaintiffs allege that the  
19 defendants only did so after Serrano sent an email to City officials in which he ominously  
20 referenced workplace violence, and stated that "bad situations" could occur at the Police  
21 Department because the employees are armed. (Complaint ¶¶ 79-90.) Plaintiffs' allegations, on  
22 their face, demonstrate that Defendants took actions which were completely within their  
23 discretionary authority in order to ensure the safe functioning of local government. Accordingly,  
24 Plaintiffs' claim that Chief Valentin should be held liable for such conduct is an attempt to chill his  
25 public participation in carrying out his administrative duties as Chief of Police.

26 Anti-SLAPP protection also applies to activity in which a person comments on matters of  
27 public concern, including political matters. (*Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146,  
28 1162; *see Conroy v. Spitzer* (1999) 70 Cal.App.4th 1446, 1451.) Plaintiffs' Complaint therefore

1 triggers anti-SLAPP protection when it asserts that Chief Valentin should be liable for advocating  
2 for a change in SAPOA leadership and encouraging candidates to run against Serrano. (Complaint  
3 ¶ 18.) Plaintiffs assert that Chief Valentin would question members' support for Serrano when they  
4 seek assignments and promotions, but Plaintiffs have failed to identify any specific person actually  
5 affected by such conduct. Plaintiffs have also failed to allege that Chief Valentin took any adverse  
6 action against such applicants. Beyond conclusory allegations, all that remains are assertions that  
7 Chief Valentin engaged in protected conduct of expressing opinions about Serrano and SAPOA.

8 Plaintiffs allege that Chief Valentin and the other defendants "censored membership  
9 communications and/or denied the SAPOA the ability to send membership communications via  
10 the City's e-mail system." (Complaint ¶¶ 17, 47.) Tellingly, Plaintiffs have not pleaded facts  
11 indicating that they were actually deprived of the ability to send emails to SAPOA members, or  
12 that Defendants refused to provide them the email addresses of SAPOA members, which Chief  
13 Valentin expressly denies. (Valentin Decl. ¶ 13.)

14 Anti-SLAPP protection also applies to communications seeking official investigations into  
15 perceived wrongdoing, any activity which is preparatory to, in anticipation of, or in connection  
16 with an internal investigation of a law enforcement agency, and public employees' reports and  
17 comments on issues of public interest relating to their official duties. (*See, e.g., Hansen v. Dept. of*  
18 *Corrections & Rehabilitation* (2008) 171 Cal.App.4th 1537, 1545 (allegations that defendants  
19 made false statements in an internal investigation triggered anti-SLAPP protection); *Salma v.*  
20 *Capon* (2008) 161 Cal.App.4th 1275, 1286; *Bradbury v. Superior Court* (1996) 49 Cal.App.4th  
21 1108, 1111-1116.) Plaintiffs' Complaint therefore triggers anti-SLAPP protection based on its  
22 assertion that Chief Valentin should be liable for requesting that the Orange County DA open a  
23 criminal investigation into Serrano (Complaint at ¶¶ 24-25). Chief Valentin does not dispute that  
24 he has communicated facts regarding Serrano which he believes constitute violations of  
25 Department and City policy or criminal law, with other law enforcement agencies. (Valentin Decl.  
26 ¶ 32.) Any such conduct by Chief Valentin is absolutely protected under the First Amendment.  
27 (*White v. Towers* (1951) 37 Cal.2d 727, 729-730.)

28 Anti-SLAPP protection also applies to acts in furtherance of public officials' requests that

1 other law enforcement agencies conduct their own investigations. (*Bradbury v. Superior Court*  
2 (1996) 49 Cal.App.4th 1108, 1116, citing *Kilgore v. Younger* (1982) 30 Cal. 3d 770, 779.)  
3 Plaintiffs' Complaint therefore triggers anti-SLAPP protection based on its assertions that Chief  
4 Valentin should be liable for petitioning CalPERS to inquire into the propriety of Serrano's  
5 pension calculation (Complaint ¶ 30), and that Chief Valentin engaged in a "letter and meeting  
6 campaign" with the DA's office requesting a criminal case be opened against Serrano. (Complaint  
7 at ¶¶ 24-25.) Thus, Plaintiffs' Complaint is based entirely on allegations that Chief Valentin should  
8 be held liable for exercising his constitutionally protected rights, or on facially meritless  
9 allegations. As a result, the burden shifts to Plaintiffs.

10 **C. Plaintiffs Cannot Establish A Reasonable Probability That They Will Prevail**  
11 **On The Merits At Trial**

12 To successfully resist a CCP § 425.16 motion to strike, a plaintiff must: (a) demonstrate  
13 that the complaint is legally sufficient and (b) "demonstrate, by admissible and competent  
14 evidence, a reasonable probability that it will prevail on the merits at trial." (*Vargas*, 46 Cal.4th at  
15 19-20.) If the pleadings are not adequate to support a cause of action, the plaintiff has failed to  
16 carry his burden in resisting the motion." (*Gilbert v. Sykes* (2007) 147 Cal.App. 4th 13, 31.) To  
17 demonstrate a reasonable probability of prevailing, Plaintiffs must produce a prima facie showing  
18 of facts sufficient to sustain a favorable judgment. (*Roberts v. Los Angeles County Bar Assn.*  
19 (2003) 105 Cal.App.4th 604, 616.) Plaintiffs also must present evidence sufficient to overcome  
20 privileges and defenses that have been raised. (*Flatley v. Mauro* (2006) 39 Cal. 4th 299, 323.)  
21 Plaintiffs cannot meet their burden because their claims are legally unsound, unsupported by  
22 evidence, and are barred by multiple applicable privileges and defenses. To satisfy their burden,  
23 Plaintiffs must demonstrate all of the following:

- 24 1. Plaintiffs must demonstrate that each state law claim of each Plaintiff was fairly  
25 reflected in a timely Government Claim, as required by the Government claims Act. (*See*  
26 *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal. 4th 983, 989-990.)
- 27 2. Plaintiffs must demonstrate that each Plaintiff exhausted its administrative  
28 remedies. (*See Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 69-70.) Notably, Plaintiffs

1 expressly pled that they failed to exhaust their administrative remedies in their first, second, third,  
2 fourth, and fifth causes of action, stating that they "have attempted, without success, to exhaust all  
3 administrative remedies." (Complaint ¶¶ 109, 140, 152, 170, 187.) Plaintiffs have likewise failed  
4 to adequately plead, and cannot prove, futility as an exception from administrative exhaustion.  
5 "The futility exception requires that the party invoking the exception 'can positively state that the  
6 [agency] has declared what its ruling will be on a particular case.' " (*Coachella Valley Mosquito &*  
7 *Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072,  
8 1080-1081.)

9           3. Plaintiffs must demonstrate that their claims have stated legally sound causes of  
10 action. All of Plaintiffs' statutory claims fail because they are based on statutes which do not allow  
11 for a private cause of action against an individual. (See Gov. Code § 3500(a) (MMBA is designed  
12 to promote full communication and improve relations "between **employees** and the public  
13 **agencies** by which they are employed"); Gov. Code § 3506.5 ("A **public agency** shall not do any  
14 of the following . . . ."); *see also, e.g., San Diego Police Officers' Ass'n v. Aguirre* (S.D.Cal. Feb.  
15 8, 2006) 2006 U.S. Dist. LEXIS 111872, at \*45-47 (granting Motion to Dismiss claim of violation  
16 of MMBA because plaintiff provided no legal authority holding individuals working for a city are  
17 subject to the MMBA); Gov. Code § 3309.5(c) (public safety officers may bring an action under  
18 POBRA "against any **public safety department** for alleged violations of this chapter."); Gov. Code  
19 § 3309.5(e) ("[a]n individual shall not be liable for any act for which a public safety department is  
20 liable under this section."); *see, e.g., Gay Law Students Ass'n v. Pac. Tel. & Tel. Co.* (1979) 24  
21 Cal.3d 458, 489 ("[A]n employee who has been discriminated against in violation of sections 1101  
22 or 1102 may maintain a cause of action against his **employer** . . . ."); *cf. Vierria v. California*  
23 *Highway Patrol* (E.D. Cal. 2009) 644 F.Supp.2d 1219, 1244 ("The relevant portions of [section  
24 1102.5] clearly indicate that the statute is meant to establish prohibited activity by employers,  
25 rather than individuals."); *Rosales v. City of L.A.* (2000) 82 Cal.App.4th 419, 427-428 (no private  
26 right of action for damages for improper disclosure of peace officer personnel records under Penal  
27 Code § 832.5, *et seq.*.)

28           4. Plaintiffs must demonstrate that their claims are not barred by government

1 immunities, including but not limited to prosecutorial immunity (Gov. Code § 821.6);  
2 discretionary act immunity (Gov. Code § 820.2); immunity from liability arising from the acts or  
3 omissions of others (including subordinates) (Gov. Code § 820.8); immunity for non-negligent  
4 execution or enforcement of any law (Gov. Code § 820.4); immunity for adoption of or failure to  
5 adopt an enactment, or failure to enforce an enactment (Gov. Code § 821); and qualified immunity  
6 (see *Wood v. Strickland* (1975) 420 U.S. 308, 318; *Brandon v. Holt* (1985) 469 U.S. 464, 471-73).

7 5. Plaintiffs must demonstrate that each state law claim of each Plaintiff as against  
8 each Defendant is not barred by the absolute privilege for communications in the proper discharge  
9 of an official duty set forth in Civil Code § 47(a).

10 **D. Chief Valentin Is Entitled to an Award of Attorneys' Fees**

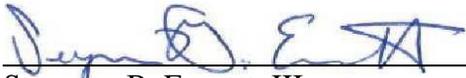
11 "[A] prevailing defendant on a special motion to strike shall be entitled to recover that  
12 defendant's attorney's fees and costs." (CCP § 425.16(c)(1).) The fee award is mandatory.  
13 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.)

14 **IV. CONCLUSION**

15 Based on the foregoing, Chief Valentin requests that every cause of action against him in  
16 Plaintiffs' Complaint be stricken without leave to amend. Chief Valentin also requests an award of  
17 attorney's fees and costs under CCP § 425.16(c)(1), with the amount to be determined upon  
18 noticed motion after this Motion is resolved.

19 DATED: February 22, 2022

EVERETT DOREY LLP

20  
21 By: 

Seymour B. Everett, III  
Samantha E. Dorey  
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**PROOF OF SERVICE**

**Santa Ana Police Officers Association v. City of Santa Ana, et. al.  
Orange County Superior Court, Case No. 30-2021-01230129-CU-OE-CJC**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 18300 Von Karman Avenue, Suite 900, Irvine, CA 92612.

On February 22, 2022, I served true copies of the following document(s) described as:

**DEFENDANT DAVID VALENTIN'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES**

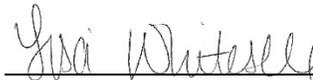
I served the documents on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address lwhitesell@everettdorey.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 22, 2022, at Irvine, California.

  
\_\_\_\_\_  
Lisa Whitesell

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**SERVICE LIST**

*Santa Ana Police Officers Association v. City of Santa Ana, et. al.*  
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