

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

24STCV21825

February 24, 2025

**ROADRUNNER JMTC LLC, AS SUCCESSOR-IN-INTEREST
TO THE JOHN MICHAEL CRICHTON TRUST, vs WARNER
BROS. TELEVISION, A DIVISION OF WB STUDIO
ENTERPRISES INC., et al.**

1:36 PM

Judge: Honorable Wendy Chang
Judicial Assistant: Crystal Cain
Courtroom Assistant: Arthur Aguilar

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The matter is not called for hearing.

The Court, having taken the matter under submission on 01/30/2025 for Hearing on Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) (8312), now rules as follows:

The Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) filed by WARNER BROS. TELEVISION, a division of WB STUDIO ENTERPRISES INC., R. Scott Gemmill, John Wells, Noah Wyle, WARNERMEDIA DIRECT, LLC, JOHN WELLS PRODUCTIONS on 01/31/2025 is Denied.

I. Background

This case arises from a dispute over the production of the television show The Pitt, a medical drama that takes place in an emergency room in a Pittsburgh hospital.

II. Analysis

A. Timeliness

Code of Civil Procedure Section 1005(b) requires that all moving and supporting papers be served and filed at least 16 court days before the hearing, with extended notice if the papers are served by mail. All papers opposing a motion shall be served and filed at least 9 court days before hearing. All reply papers shall be served and filed at least five court days before hearing. (Code Civ. Proc., § 1005(b).)

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The motion was timely filed and served under Code Civ. Proc., § 1005(b) and under the stipulated schedule set out by the Parties.

Under Code of Civil Procedure Section 425.16(f), an Anti-SLAPP Motion must be filed within 60 days of the service of the complaint, or at a later time as determined by the Court.

The motion was filed within an extended period as agreed by the Parties. There is no dispute over the timing of the motion.

B. Anti-SLAPP

1. Objections

Defendants' objections to the declaration of Katz are overruled.

Defendants' objections to the declaration of Leavitt #1, 2, 3, 4, 5, 6, 7, 8, and 9 are sustained.

Defendants' objections to the declaration of Rodman are sustained.

2. Legal Standard

In determining whether to grant or deny a Code of Civil Procedure section 425.16 special motion to strike, the court engages in a two-step process. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061.) First, the court must decide whether the moving party has met the threshold burden of showing that the plaintiff's cause of action arises from the moving party's constitutional rights of free speech or petition for redress of grievances. (*Ibid.*) This burden may be met by showing the act which forms the basis for the plaintiff's cause of action was an act that falls within one of the four categories of conduct set forth in Code of Civil Procedure Section 425.16, subdivision (e):

- (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 with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
- (3) any written or oral statement or writing made in a place open to the public or a public forum

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in 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.

If the defendant meets this initial burden, the burden shifts to the plaintiff to prove the plaintiff has a legally sufficient claim and to prove with admissible evidence a probability of prevailing on the claim. (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 855.) The trial court considers the pleadings and evidence of both parties. (*Ibid.*) The plaintiff's proof must be made upon competent admissible evidence. (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940.)

The court "does not weigh evidence or resolve conflicting factual claims." (*Ibid.*) The court's inquiry "is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment" accepting the plaintiff's evidence as true. (*Ibid.*) "The court evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] '[C]laims with the requisite minimal merit may proceed.'" (*Id.*; see also *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

"Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal. 4th 82, 89 (emphasis in original.)

3. Prong One: Protected Activity

Under the first prong, the moving party must show that the actions that form the basis for the challenged cause(s) of action are protected under the Code of Civil Procedure Section 425.16. "At this first step, courts are to consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability. The defendant's burden is to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009 (internal quotes omitted) (internal citations omitted).) Assertions that are 'merely incidental' or 'collateral' are not subject to section 425.16. Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." (*Baral v. Schnitt* (2016) 1 Cal.5th

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376, 394 (internal citations omitted).)

“When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by statute, the second step is reached.” (Baral, supra, 1 Cal.5th at 396.)

“[C]onduct alleged to constitute breach of contract may also come within constitutionally protected speech or petitioning. The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning” (Navellier v. Sletten (2002) 29 Cal.4th 82, 92 (emphasis in original).)

It is well-established in California that the creation of a television show is an exercise of free speech. (e.g. Musero v. Creative Artists Agency, LLC (2021) 72 Cal.App.5th 802, 816 (“Creating a television show is an exercise of constitutionally protected expression”).)

Plaintiffs assert that their suit is premised not on the protected activity of creating a television show but unprotected activity, namely breach of contract and interference with the Estate's contract rights. (Opp. at 11.) Plaintiffs argue “. . . WBTV's breach of the Agreement's frozen rights provision did not contribute to a public discussion of the challenges in urban emergency medicine. The purpose of the frozen rights provision was to guarantee Michael Crichton and his successors creative and financial participation in future works based on or in any way derived from ER.” (Opp. at 12 (internal citations omitted).)

Defendants counter that the entire lawsuit is premised on the making of The Pitt, because the alleged breach, an alleged failure to obtain and pay for rights, would not be a cause of action but for the making of The Pitt, which is a constitutionally protected act of free speech.

This Court agrees with Defendants. In Norman v. Ross (2024) 101 Cal.App.5th 617, a writer sued a producer, show creator and production studio, among others, alleging that the Defendants stole her idea for a television show and used it for spin-off series. The Norman court found that the breach of contract and the intentional interference with contract claims at issue in that matter were both premised on the protected activity of making the television show. (Norman, supra, 101 Cal.App.5th at 651,654-655.) Thus, defendants met prong 1 of the anti-SLAPP statute.

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Similarly, this Court finds that the claims in this lawsuit, under all theories, are premised on the protected activity of the creation of The Pitt. Defendants meet their burden under Prong One. (Id.)

4. Prong Two: Probability of Prevailing

If the Defendant meets the burden of demonstrating that at least portions of the Complaint arise from protected activity, the burden shifts to Plaintiff to establish a probability of succeeding on the merits. (Kyle v. Carmon (1999) 71 Cal.App.4th 901, 907.)

Because this Court's ruling is premised upon the unique procedural aspects of an anti-SLAPP motion, the Court discusses the standard in detail.

The purpose of an anti-SLAPP motion is to weed out meritless claims at an early stage. (Monster Energy Co. v. Schecter (2019) 7 Cal.5th 781, 788.) Under Prong 2, "plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (Matson v. Dvorak (1995) 40 Cal.App.4th 539, 548 [internal quotations omitted].)

"The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] "[C]laims with the requisite minimal merit may proceed." (Monster Energy, supra, 7 Cal.5th at 788.)

The Complaint alleges three causes of action: (1) Breach of Contract; (2) Breach of Implied Contract of Good Faith and Fair Dealing; and (3) Intentional Interference with Contractual Relations. All three of these claims rely on the issue of whether The Pitt is a derivative work or otherwise infringes the copyright of ER. Defendants have spent significant time in the briefs and in oral argument asking the Court to resolve this question at this early stage of the proceeding.

Constrained by the procedural rules under the anti-SLAPP statute, the Court finds that the evidence submitted by Plaintiffs meet the minimal merit standard to demonstrate at least a prima

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facie case that The Pitt is derived from ER. Under anti-SLAPP standards, the Court cannot find Plaintiffs' claims to be totally meritless. Plaintiffs' evidence establish a timeline of various communications and events to show the negotiations with the Estate over an ER reboot, failure of those negotiations, and the creation of The Pitt. Plaintiffs' evidence challenges Defendants' assertion of the applicable definition of derivative works as intended by the parties when drafting the original Agreement. While Defendants challenge Mr. Katz's declaration, that challenge goes to the weight and not the admissibility of his testimony. Mr. Katz testimony, as the original drafter of the clause in question, is sufficient to challenge Defendants' definition of derivative works in the Agreement. Not weighing the parties' evidence, and accepting Plaintiff's evidence as true, as the Court must under the anti-SLAPP statute (*id.*), the Court finds that Plaintiffs meet their burden to demonstrate minimal merit. The Court cannot determine the ultimate question of whether or not The Pitt is, in fact, derivative of ER within the meaning of the Agreement through this motion.

III. Conclusion

Defendants' anti-SLAPP motion is DENIED.

The Court sets the following:

Case Management Conference is scheduled for 03/26/2025 at 08:30 AM in Department 36 at Stanley Mosk Courthouse.

The Judicial Assistant is to give notice.

Certificate of Mailing is attached.