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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CITY OF AGOURA HILLS, a municipal corporation,)	CASE NO. 20VECV01312
)	
Plaintiff,)	<i>[Assigned for all purposes to Hon. Virginia Keeny in Dept. W]</i>
)	
vs.)	
)	
JAMES MAYFIELD, an individual; SHEILA ZAMEL, an individual; WHISPERING OAKS CHURCH, INC., a California Corporation; and DOES 1-50, inclusive,)	PLAINTIFF'S OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO STRIKE COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
Defendants.)	

[Filed concurrently with Declarations of Ramiro Adeva, Amir Hamidzadeh, Allen Tripolskiy; Exhibits to the Declarations, Objections to the Declaration of James Mayfield, and Request for Judicial Notice]

Complaint filed: November 12, 2020

Date: February 26, 2021
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1 Plaintiff, CITY OF AGOURA HILLS (“Plaintiff” or “City”), opposes Defendants James
2 Mayfield, Sheila Zamel and Whispering Oaks Church, Inc.’s (“Defendants”) Special Motion to
3 Strike Under Code of Civil Procedure § 425.16 (“Motion”) and hereby submits¹ its
4 Memorandum of Points and Authorities in Opposition as follows:

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I.

7 INTRODUCTION

8 The Special Motion to Strike the Complaint is premised on a conspiracy theory devoid of
9 any relevance or evidence. The Motion is premised on speculation that the intent of the lawsuit is
10 “all-out attack by the City on the free speech rights, and the right for the Mayfield to restore the
11 quite enjoyment of their property – all based on the say-so of misinformed, and possibly
12 malicious, neighbor(s).” (Motion, p. 7.) No such motivation exists nor is discussion of intent or
motivation pertinent to anti-SLAPP analysis.

13 Moving Party ignores the legal standards for anti-SLAPP motions and the factual and
14 legal showings necessary to prevail on such motions. The anti-SLAPP statute makes it clear that
15 the instant action is exempt from the statute and as a matter of law cannot be a SLAPP suit.
16 Moreover, the causes of action in the Complaint relate to a public nuisance arising from illegal
17 construction at Defendants’ property and use of said property for unpermitted commercial
18 activities – be it for profit or nonprofit – thus, they do not in any manner involve Defendants’
19 right to free speech or right to petition. Simply put, the gravamen of the Complaint, *i.e.*,
20 ***Defendants conduct of illegal construction activities and unpermitted use of their property as a
wedding venue, does not arise from their right to petition or free speech.*** Moreover, the second
21 prong of the anti-SLAPP statute cannot be satisfied by Defendants because the City’s evidence
22 shows a probability – and, indeed, more than a probability – that the City will succeed on its
23 claims.

24 As discussed herein, the Motion fails at every turn. Accordingly, the City is seeking
25 sanctions for the “frivolous” filing as the Motion is totally devoid of merit.
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28 ¹ In support of its Opposition, the City has concurrently filed Declarations and Exhibits, Request
for Judicial Notice and Evidentiary Objections to the Declaration of James Mayfield.

1 II.

2 **STATEMENT OF FACTS**

3 The Subject Property consists of 3.04 acres and has been improved with a two-story,
4 single-family dwelling. (Declaration of Assistant City Manager Ramiro Adeva (“Decl. Adeva”) ¶
5 3, Exhibit “1” [property detail report].) The Subject Property is owned by Mayfield and Zamel
6 (*Id.*, ¶ 3, Exhibit “1” [grant deed]), and is located in the City’s “RV” residential zone (*Id.*, Ex.
7 “3”). Mayfield and Zamel operate WOCI and Whispering Oaks Chapel at the Subject Property.
8 (*Id.*, ¶¶7-8, Exhibit “2” [WOCI registration records].)

9 On or about July 28, 2019, the City received several complaints from adjacent property
10 owners regarding construction activities at the Subject Property and that Defendants were
11 advertising the Subject Property as a commercial wedding venue (*Id.*, ¶6.) A review and
12 investigation by City Officials of the Defendants’ website “whiseringchapel.com”, social media
13 sites and online advertisements confirmed that the Subject Property was being advertised as a
14 commercial wedding venue and that construction activities were taking place at the Subject
15 Property. (*Id.*, ¶¶6, 8-11, Exhibits 3-6.)

16 On or about August 5, 2019, the City sent Defendants a notice of violations (the “NOV”).
17 (*Id.*, ¶ 12, Exhibit “7” [August 5, 2019 Notice of Violations].) The NOV advised Defendants that
18 due to the RV residential zoning, their operation of a wedding venue at the Subject Property was
19 unlawful. (*Ibid.*) The NOV further informed Defendants that their use of the Subject Property as
20 wedding venue was not a conditionally permitted use and thus constituted a public nuisance. (*Id.*,
21 ¶ 12.)

22 The NOV also advised Defendants that operation of the wedding venue at the Subject
23 Property constituted a commercial enterprise for gain under the AHMC and required a business
24 license to operate. (*Id.*, ¶ 13.) Defendants failed to apply for and/or obtain the requisite business
25 license. (*Ibid.*) However, due to the RV zoning district, operation of a wedding venue prohibits
26 the issuance of a business license under the AHMC. (*Ibid.*) As a result, the NOV required
27 Defendants to immediately and permanently terminate using the Subject Property as a wedding
28 venue, and cease advertising it as such, no later than August 9, 2019. (*Id.*, ¶ 14.) Lastly, in an

1 effort to expedite Defendants' voluntary code-compliance, the NOV requested an inspection by
2 the City on or before August 15, 2019. (*Id.*, ¶ 15.) Defendants failed and/or refused to permit the
3 requested inspection. (*Ibid.*) Further, as of the filing of the instant Motion, Defendants continue to
4 operate and advertise the Subject Property as a commercial wedding venue in violation of the
5 AHMC. (*Id.*, ¶ 16, Declaration of Code Compliance Officer Allen Tripolskiy ("Decl.
6 Tripolskiy"), ¶¶ 4, 5; Exhibit "8" [Defendants' recent social media posts].)

7 On or about August 21, 2019, the City sent additional correspondence to Defendants
8 addressing questions about their violations of the AHMC and advising them of further violations
9 at the Subject Property. (Decl. Adeva, ¶ 17, Ex. "9" [August 21, 2019 correspondence].) The
10 City, after performing a search of permits, informed Defendants that various structures on the
11 Subject Property (observed on Defendants' social media) were un-permitted and had no final
12 inspection approvals. (*Ibid.*) Further, Defendants were advised that operation of WOCl, i.e., the
13 operation of a church/place of worship at the Subject Property was a zoning violation. (*Ibid.*)
14 Defendants failed and/or refused to obtain a conditional use permit to operate such a church/place
15 of worship at the Subject Property. (*Ibid.*) The City again requested an inspection of the Subject
16 Property on or before September 5, 2019. Defendants failed and/or refused to permit the
17 requested inspection. (*Ibid.*)

18 As a result of Defendants' failure to permit two (2) requested inspections of the Subject
19 Property, the City obtained an inspection warrant on October 8, 2019. (Decl. Adeva at ¶ 18.) On
20 October 10, 2019, the City executed the inspection warrant on the Subject Property. (*Id.*, at ¶ 19;
21 Declaration of Building Official Amir Hamidzadeh ("Decl. Hamidzadeh" ¶ 6.)

22 On or about November 19, 2019, a Return on Inspection Warrant was filed with the
23 Superior Court which contained reports from the City's Building and Safety Division and the
24 City's Planning Division. (Decl. Hamidzadeh, ¶ 7; Decl. Adeva ¶ 20; Exhibit "10.") The reports
25 extensively outline the numerous building, zoning, and business code violations found at the
26 Subject Property. (Decl. Hamidzadeh, ¶¶ 20-21; Decl. Hamidzadeh, ¶¶ 9-10, Exhibit "10.")

27 On or about November 26, 2019, the City issued a second Notice of Violations (the
28 second "NOV") to Defendants. (Decl. Adeva, ¶ 23, Exhibit "11" [Second Notice of Violations].)

1 The NOV summarized the City’s findings and identified four (4) structures – a chapel with
2 cupola, bride’s cottage (with adjoining deck and two retaining walls), stable, and structure for
3 pool shade – which had been constructed, erected and/or altered without requisite City approvals,
4 permits and/or inspections, in violation of California Building Code² (“CBC”) as amended, and
5 the AHMC. (Decl. Aveda, ¶ 23, Exhibit “11”; see also Decl. of Hamidzadeh, ¶10.)

6 The second NOV further identified the following violations of Article IX of the AHMC
7 (the City’s zoning code): a) Operation of WOCI at the Subject Property and use thereof as a
8 commercial wedding venue, for religious services and other events without all requisite permits
9 and approvals; b) Construction of the aforementioned four structures in a hillside area without
10 first obtaining a conditional use permit, an architectural review, and/or a site plan review, in
11 violation of Article IX, Chapter 2, Part 3 of the AHMC, and Article IX, Chapter 6, Parts 2 and 3
12 of the AHMC; c) Housing animals within 35 feet of any street; d) Failing to obtain a ministerial
13 permit for an Accessory Dwelling Unit; e) A lack of a paved driveway access at the Subject
14 Property; and f) Construction within the protected zone of an oak tree without a valid oak tree
15 permit. (Decl. Aveda, ¶ 24.) Each of the aforementioned violations of the AHMC zoning code at
16 the Subject Property constitute a public nuisance. (*Id.*, at ¶ 25.)

17 The second NOV again advised Defendants that they must obtain a business license to
18 operate a commercial wedding venue at the Subject Property. (*Id.*, at ¶ 26.) In an effort to resolve
19 the outstanding violations at the Subject Property, the City requested Defendants meet with City
20 officials at City Hall on December 12, 2019 with to discuss a compliance timeline. (*Id.*, at ¶ 27.)
21 The second NOV advised Defendants’ of their options to ensure that the code violations at the
22 Subject Property were remedied, and that Defendants must either legalize the unlawful structures
23 or demolition them in compliance with the AHMC. (*Ibid.*)

24 Subsequent to the drafting of the second NOV and of the Building and Safety Division
25 Report, Hamidzadeh determined that the structures inspected at the Subject Property were subject
26 to additional violations of the AHMC. (Decl. Hamidzadeh, ¶ 12.) Defendants’ failure to obtain the

27
28 ² Pursuant to AHMC § 8100, the City has adopted the 2019 California Building Code as the
City’s building code, as amended in AHMC §§ 8103 and 8200-8205.

1 requisite permits for the structures on the Subject Property renders the structures substandard and
2 unsafe or dangerous. (*Ibid.*)

3 Defendants' maintenance of these substandard and unsafe or dangerous structures is itself
4 a public nuisance, and as a result of the aforementioned unlawful structural violations, the Subject
5 Property is deemed "substandard" which is also public nuisance. (*Id.* at ¶¶ 12-16.)

6 On February 12, 2020, Defendants attended a meeting with City officials wherein
7 Defendants ***refused to cease operation of the commercial wedding venue at the Subject***
8 ***Property.*** (Decl. Aveda, ¶ 28.) However, Defendants did agree to submit a site plan, architectural
9 review permits, and an oak tree permit by April 15, 2020. (*Ibid.*) Soon thereafter, the City mailed
10 Defendants the necessary documentation to bring the Subject Property into compliance. (*Id.*, at ¶
11 29, Exhibit "12" [February 21, 2020 correspondence with documents].) Even after the City
12 provided the necessary documentation to abate the violations, Defendants failed and/or refused to
13 submit the necessary applications by April 15, 2020. (*Id.*, at ¶ 30.)

14 On August 13, 2020, the City sent additional correspondence to Defendants regarding the
15 information they requested at the February 12, 2020 meeting. (*Id.*, at ¶ 30, Exhibit "13" [August
16 13, 2020 correspondence].) The City requested Defendants submit all permit applications and fees
17 by September 17, 2020 and further advised that City officials would be available via "Zoom" if
18 they wished to discuss any questions. (*Ibid.*) Defendants failed and/or refused to submit the
19 requisite permit applications and fees. (*Ibid.*)

20 In summary, despite exhaustive and repeated City effort to obtain voluntary compliance,
21 Defendants have failed and/or refused to undertake the actions necessary to abate the substandard,
22 unsafe or dangerous, unlawful, nonpermitted, unapproved, uninspected, and/or nuisance
23 conditions at the Subject Property, leaving the Subject Property a significant negative impact on
24 the surrounding properties as well as the character of the community. The City therefore had no
25 choice but to file the instant action for Equitable and Injunctive Relief for violation of municipal
26 code and public nuisance.

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III.

LEGAL DISCUSSION

California's anti-SLAPP (strategic lawsuits against public participation) statute aims to identify, early in the litigation process, meritless freedom of speech and petition cases aimed at chilling expression through costly, time consuming litigation. (Code Civil Procedure ("CCP") § 425.16, subd. (a).) In evaluating an anti-SLAPP motion, courts employ a two-step analysis. First, the defendant must make a prima facie showing that the lawsuit arises from the defendant's exercise of free speech or petition. (Code Civil Procedure section 425.16, subd. (b); *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 928.) Specifically, Defendant must establish that the acts complained about arise from "any act of that person in furtherance of that person's right of petition or free speech... in connection with a public issue." (*Equilon Enterprises v. Consumer Cause, Inc.*, (2002) 29 Cal.4th 53, 67; *Governor Gray Davis Comm. v. Am. Taxpayers All.*, (2002) 102 Cal. App. 4th 449, 456 - "[f]irst, the court decides whether the defendant has made a threshold prima facie showing ..." - quoting *Equillon, supra*, 29 Cal.4th 67.)

If the defendant makes the prima facie showing - and Defendants herein cannot - the burden then shifts to the plaintiff to show that there is probability the plaintiff will prevail on its claims. (*Equilon, supra*, 29 Cal.4th 53, 67.) To establish a "probability" of prevailing on the merits, the plaintiff must demonstrate that each cause of action challenged by the anti-SLAPP motion is legally sufficient and supported by a prima facie showing of facts sufficient to support a favorable judgment if the evidence submitted by the plaintiff is credited. (*Navellier v. Sletten*, (2002) 29 Cal. 4th 82, 93; *Grewal v. Jammu*, (2011) 191 Cal. App. 4th 977, 989 [plaintiff need show only a "**minimum level of legal sufficiency and triability**"] [emphasis added].)

In this case, even before the Court engages in the two-step process, sufficient grounds exist to deny the motion as this lawsuit is exempt from the anti-SLAPP statute.

A. THE MOTION SHOULD BE DENIED BECAUSE THE INSTANT ACTION IS EXPRESSLY EXEMPT FROM THE ANTI-SLAPP STATUTE

The instant action is not subject to the anti-SLAPP statute because it falls under the exception outlined in CCP § 425.17 subd. (b).

1 **1. The City’s Complaint Is Exempt From Anti-SLAPP Attack By Way Of**
2 **Section 425.17, subd.(b) Because It Is Brought Solely In The Public Interest**
3 **And/Or On Behalf Of The General Public**

4 Pursuant to § 425.17, subd.(b), actions brought solely in the public interest or on behalf
5 of the general public are exempt from striking under § 425.16, provided all of the following
6 elements are met:

7 “(1) The plaintiff does not seek any relief greater than or different from the relief sought
8 for the general public or a class of which the plaintiff is a member. A claim for attorney’s fees,
9 costs, or penalties does not constitute greater or different relief for purposes of this subdivision;

10 (2) The action, if successful, would enforce an important right affecting the public
11 interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the
12 general public or a large class of persons;

13 (3) Private enforcement is necessary and places a disproportionate financial burden on the
14 plaintiff in relation to the plaintiff’s stake in the matter.”

15 Each of the three prongs of section 425.17, subd.(b) is met in this action. The City is not
16 seeking any remedy greater than relief for the health and safety of the general public by way of
17 injunctive and other equitable relief to abate the conditions on Defendants’ property that
18 constitute a public nuisance pursuant to Agoura Hills Municipal Code, §§ 1200, 5604, 5605,
19 9842 (Complaint, ¶23, Request for Judicial Notice, “RJN” exhibits A-C, R) and Civil Code,
20 §3480.³ Although the City is seeking the recovery of statutory fees and costs, this fact alone does
21 not preclude the exemption of such suits. (CCP § 426.17 (b)(1).)

22 In addition, the granting of the relief sought in the Complaint would confer a significant
23 benefit on the general public because the stability of structures and the use of said structures are
24 important public health and safety issues. Further, Defendants’ ongoing unwillingness to abate
25 their public nuisance has made the filing of this private action necessary which has, in turn,
26 placed a disproportionate financial burden on the City in light of the fact that the action was
27 initiated for the benefit of the general public.

28 ³ “A public nuisance is one which affects at the same time an entire community or neighborhood,
or any considerable number of persons, although the extent of the annoyance or damage inflicted
upon individuals may be unequal.” (Civil Code, § 3480.

1 Accordingly, the instant action falls squarely within the purview of statutory exemption
2 from anti-SLAPP challenge by virtue of section 425.17. As such, the Motion should be denied.

3 **B. THE MOTION SHOULD BE DENIED BECAUSE THE CAUSES OF ACTION**
4 **ALLEGED IN THE COMPLAINT DO NOT ARISE FROM DEFENDANTS'**
5 **RIGHT TO FREE SPEECH OR PETITION**

6 Even if Defendants' anti-SLAPP motion were not statutorily exempt from anti-SLAPP
7 attack – and it is -- Defendants are not entitled to protection under section 425.16 because the
8 causes of action alleged against them in the Complaint are not based on any right of free speech
9 or petitioning activity. (*City of Cotati v. Cashman* (“*Cashman*”) (2002) 29 Cal.4th 69, 78.) To
10 determine whether the anti-SLAPP statute applies, the court examines “the principal thrust or
11 gravamen” of the causes of action alleged. (*Wang v. Wal-Mart Real Estate Business Trust* (2007)
12 153 Cal.App.4th 790, 802.) Put another way, the moving defendant’s burden is to demonstrate
13 that the act or acts of which the plaintiff complains were taken “in furtherance of the
14 [defendant’s] right of petition or free speech under the United States or California Constitution in
15 connection with a public issue,” as defined in Section 425.16 subd. (b)(1). (*Equilon, supra*, 29
16 Cal.4th 67.) “The critical consideration is whether the cause of action is based on the defendant’s
17 protected speech or petitioning activity.” (*Navellier, supra*, 29 Cal. 4th 82, 89 (emphasis
18 added).)

19 As used in Section 435.16, “act in furtherance of a person’s right of petition or free
20 speech free...in connection with a public issue” includes:

- 21 “(1) any written or oral statement or writing made before a legislative, executive, or
22 judicial proceeding, or any other official proceeding authorized by law,
23 (2) any written or oral statement or writing made in connection with an issue under
24 consideration or review by a legislative, executive or judicial body, or any other official
25 proceeding authorized by law,
26 (3) any written or oral statement or writing made in a place open to the public or a public
27 forum in connection with an issue of public interest,
28 (4) any other conduct in furtherance of the exercise of the constitutional right of free
speech in connection with a public issue or an issue of public interest.”

29 The Complaint expressly states (under each cause of action) that it arises from the use of
30 the Subject Property without the requisite permits, inspections and approvals (as a commercial
31 wedding venue), as well as Defendants’ construction and/or alterations of numerous unpermitted
32 structures. (Complaint, ¶14-16, 24, 35, 42.) No reasonable interpretation of the required

1 elements for application of the anti-SLAPP statute remotely suggests that the City's effort to
2 regulate such conduct by Defendants chills their right to petition or free speech. Defendants have
3 presented no admissible evidence to explain *how* the allegations in the Complaint affect their
4 right to petition or free speech. And Defendants' assertion that the intent of the Complaint is to
5 chill their speech and to harass them (Motion, p. 7) is unavailing because it ignores the
6 established principle that "the question of subjective intent is not relevant" in section 425.16
analysis. (*Cashman, supra*, 29 Cal.4th at 74.)

7 As to any conduct or issue relating to the right of free exercise of religion – which again
8 is not the gravamen of the Complaint - the anti-SLAPP statute is not available against a cause of
9 action arising from the First Amendment right of free exercise of religion. (*Castillo v. Pacheco*,
10 (2007) 150 Cal.App.4th 242, 250.) CCP section 425.26 was enacted to address a threat to "chill
11 the valid exercise of the constitutional rights of freedom of speech and petition for the redress of
12 grievances...; it "does not encompass conduct in furtherance of the right of free exercise of
13 religion" (*Id.*) Moreover, a city may exclude houses of worship from residential districts,
14 particularly when alternative sites are provided. (*Minney v. City of Azusa* (1958) 164 CA2d 12,
15 18; *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v.*
City of Porterville (1949) 90 Cal.App.2d 656, 661.)

16 In sum, Defendants failed to establish the threshold element of the applicability of the
17 anti-SLAPP statute to the Complaint because the gravamen of the Complaint, *i.e.*, ***Defendants***
18 ***conduct constituting their illegal construction activities and unpermitted use of their property***
19 ***as a wedding venue does not arise from their right to petition or free speech.*** As a result,
20 Defendants did not meet their burden of demonstrating that the City's Complaint falls within any
21 of the categories identified in section 425.16. Consequently, the Motion fails to establish the first
22 prong and must be denied on those grounds.

23 **C. EVEN IF THE BURDEN SHIFTED TO PLAINTIFF -- AND IT DID NOT -- THE**
24 **CITY'S EVIDENCE ESTABLISHES A REASONABLE PROBABILITY THAT IT**
25 **WILL PREVAIL ON THE MERITS OF ITS CLAIMS**

26 Although, as established above, Defendants did not carry their burden of establishing
27 entitlement to anti-SLAPP protection as they failed to show that the claims against them arise
28 under the statute, Plaintiff nonetheless provides herewith the necessary evidence to defeat
Defendants' Motion.

1 Under section 425.16,subd.(b)(1)), a plaintiff need only have stated claims that are legally
2 sufficient and supported by a *prima facie* showing of facts to sustain a favorable judgment if the
3 evidence submitted by the plaintiff is credited in order to withstand an anti-SLAPP motion.
4 (*Navellier, supra*, 29 Cal.4th 82, 88-89.) Indeed, to establish a probability of prevailing so as to
5 overcome an anti-SLAPP motion, the plaintiff need only show that his or her claim has minimal
6 merit. (*Hawran v. Hixon* (2012) 209 Cal.App.4th 256, 269.) In fact, the City’s evidence goes
7 well beyond that requirement.

8 **1. The City’s Evidence Establishes A Prima Facie Case for Public Nuisance and**
9 **Municipal Code Violations**

10 California Government Code sections 38771 through 38773.5 expressly authorize cities to
11 declare what constitutes a nuisance [“By ordinance the city legislative body may declare what
12 constitutes a nuisance”]. “A legislatively declared public nuisance constitutes a nuisance *per se*
13 against which an injunction may issue....” (*People ex rel. Department of Public Works v. Adco*
14 *Advertisers* (1973) 35 Cal.App.3d 507, 511.) The power of a city or state legislature to declare
15 certain uses of property a nuisance is well-settled, and “[a]s a nuisance *per se*, no proof beyond
16 the fact of the actual existence of the nuisance is required.” (*City of Costa Mesa v. Soffer* (1992)
17 11 Cal.App.4th 378, 382, 385.)

18 Accordingly, the City of Agoura Hills has enacted, *inter alia*, the following regulation:

- 19 • “[A]ny condition caused or permitted to exist in violation of any provisions of this
20 Code shall be deemed a public nuisance...” (AHMC § 1200; Request for Judicial
21 Notice (“RJN”), Exhibit “A”; Decl. of Hamidzadeh, ¶13);
- 22 • “The existence or maintenance of substandard building conditions is prohibited,
23 unlawful and constitutes a public nuisance.” (AHMC § 5604; RJN, Exhibit “B”; Decl.
24 of Hamidzadeh, ¶¶ 15, 16);
- 25 • “The existence or maintenance of substandard property is prohibited, unlawful and
26 constitutes a public nuisance.” (AHMC § 5605; RJN, Exhibit “C”; Decl. of
27 Hamidzadeh, ¶¶ 15, 16);
- 28 • “Any action taken or any condition caused or permitted to exist in violation of any of
the provisions of this article [Article IX (the City’s zoning code)] or in violation of any
permit or approval granted or issued hereunder shall be deemed a public nuisance.

1 Each day that such action or condition continues shall be deemed to be a new and
2 separate offense.” (AHMC § 9842; RJN, Exhibit “R”; Decl. Adeva, ¶25);

- 3 • “It is unlawful and a public nuisance for any person to maintain an unsafe or
4 dangerous building or structure.” (CBC § 116.6. (as adopted by AHMC 8103); RJN,
5 Exhibit “S”; Decl. of Hamidzadeh, ¶ 14);

6 As set forth above, the concurrently filed Declarations of City Officials document in detail
7 the violations of the AHMC at the Subject Property, and such violations constitute nuisances *per*
8 *se*, within the meaning of the AHMC.

9 Further, California Civil Code §3479, in pertinent part, defines a nuisance as,

10 [a]nything which is injurious to health...or is indecent or offensive to the
11 senses, or an obstruction of the free use of property, so as to interfere with the
12 comfortable enjoyment of life or property, or unlawfully obstructs the free
13 passage or use, in the customary manner...is a nuisance.

14 A “public” nuisance is one “which affects at the same time an entire community or
15 neighborhood, or any considerable number of persons, although the extent of the annoyance or
16 damage inflicted upon individuals may be unequal.” (Civil Code §3480.) The unlawful
17 conditions, as set forth above and in the declarations filed herewith, are active and continuing
18 public nuisances under the Civil Code as well as the AHMC.

19 In further support of the City’s probability of prevailing on its Complaint, the evidence in
20 support of the City’s claims provides the necessary grounds to deny Defendants Motion.
21 Specifically, when a city seeks to abate a nuisance *per se*, as in the present case, the court’s
22 inquiry is limited to whether a violation exists. (*City and County of San Francisco v. Burton*
23 (1962) 201 Cal.App.2d 749, 756-757.) In that regard, the actual condition of the property is the
24 only proof required to establish a public nuisance; no proof of a harmful effect is necessary
25 where the conditions violate the law such that the violation was declared by the city to be a
26 nuisance. (See, *McClatchy v. Laguna Lands Ltd.* (1917) 32 Cal.App. 718, 725.)

27 In any case, as established in the concurrently filed declarations, the conditions at
28 Defendants’ property are indisputable violations of the Agoura Hills Municipal Code,
constituting a public nuisance that must be abated such that it is, at the very least, reasonably
probable that the City will prevail on the merits at trial on the matters alleged in its Complaint.

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1 **2. There Is A Probability of Success on City’s Claim for Declaratory Relief**

2 A claim for declaratory relief is sufficient “if it sets forth facts showing the existence of
3 an actual controversy relating to the legal rights and duties of the respective parties under a
4 written instrument ... and requests that these rights and duties be adjudged by the court.”
5 *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947; *Ludgate Ins. Co. v. Lockheed Martin*
6 *Corp.* (2000) 82 Cal.App.4th 592, 605.

7 In the present case, the City’s evidence evinces a probability of success as to declaratory
8 relief claim because the concurrently filed Declarations establish the requisite actual, present
9 controversy between Plaintiff and Defendants. Specifically, the actual controversies illustrated
10 by Plaintiff’s evidence include the fact that Defendants contend that they have a right to maintain
11 the Subject Property as alleged in the Complaint. (Decl. of Adeva, ¶¶ 16, 30; Decl. Tripolskiy, ¶¶
12 3, 4; Exhibit “8”.) Moreover, the Motion concedes that there is the requisite actual, present
13 controversy. As to each of these issues, Plaintiff asks that this Court establish the legal rights and
14 duties of the parties, thus establishing the propriety of declaratory relief herein. In sum, Plaintiff
15 has established the requisite probability of success on the merits of the request for declaratory
16 relief such that Defendants’ anti-SLAPP motion relative to that claim must fail.

17 Thus, even if Defendants had carried their burden under the first prong of anti-SLAPP
18 analysis, the City’s evidence establishes the likelihood that it will prevail on the merits of the
19 Complaint. Because the City showed the requisite likelihood of prevailing on the merits,
20 Defendants Motion should be denied.

21 **D. THE CITY IS ENTITLED TO SANCTIONS BASED ON THE FRIVOLOUS**
22 **MOTION**

23 When, as here, an anti-SLAPP motion is “frivolous or solely intended to cause
24 unnecessary delay”, the court is *required* to award costs and reasonable attorney fees “pursuant
25 to section 128.5” to a “plaintiff prevailing on the motion.” (CCP § 425.16, subd.(c)(1); see
26 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) Section 128.5, subd.(b)(2), defines
27 “frivolous” as that which is “totally and completely without merit” or “for the sole purpose of
28 harassing an opposing party.” In turn, an anti-SLAPP motion is “totally and completely without
merit” when “any reasonable attorney would agree such motion is totally devoid of merit.”
(*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 199.) In the present case, it is abundantly clear
that the multiple procedural and substantive flaws in Defendants’ anti-SLAPP motion would

1 require any reasonable attorney to agree that the motion is “totally devoid of merit.” (*Moore*,
2 *supra*, 116 Cal.App.4th at 199.) Based on the foregoing, the City requests that this Court make a
3 finding that the Motion was “frivolous.” In the event that Court makes such a finding, the City
4 will file a noticed motion setting forth its entitlement to mandatory attorney fees and costs.

5 **IV.**

6 **CONCLUSION**

7 The instant action is exempt from the anti-SLAPP statute and the Complaint does not
8 allege any acts related to Defendants’ right to free speech or petition. Moreover, the City has
9 established its probability of prevailing on the Complaint. As such, the City respectfully requests
10 that this Court deny the Motion and find that the Motion was frivolous.

11 Dated: February 11, 2021

DAPEER, ROSENBLIT & LITVAK, LLP

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13
14 By: 

Caroline Karabian Castillo
Attorneys for Plaintiff
CITY OF AGOURA HILLS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11500 W. Olympic Blvd., Suite 550, Los Angeles, CA 90064-1524.

On February 11, 2021, I served the foregoing document described as **PLAINTIFF'S OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO STRIKE COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

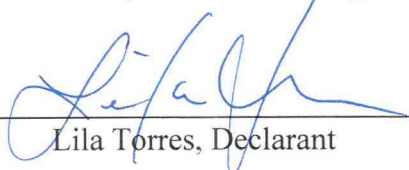
Counsel for Defendants

Robert L. Scott
SCOTT & ASSOCIATES
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Oxnard, CA 93036
E: scott@civiccenter.com

BY ELECTRONIC TRANSMISSION – ONE LEGAL. I caused an electronic version of the documents to be submitted to the Superior Court of California and thereafter caused an electronic version to be served to the persons in the above service list via the litigation support service One Legal.

BY OVERNIGHT DELIVERY. I enclosed the documents in an envelope or package provided by an overnight carrier and addressed to the persons at the addresses in the above service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of February 2021 at Los Angeles, California.



Lila Torres, Declarant