

PSC 1503643	Michael R. Solomon v. Desert Healthcare District, et al.	Motion and Special Motion to Strike Plaintiff's Complaint Pursuant to Code of Civil Procedure 425.16 (Anti-SLAPP) by Defendants Desert Healthcare District, Kay Hazen, Kathy Greco
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Ruling: Motion granted. Moving party to give notice and prepare the order.

This complaint for violation of the California Information Practices Act, Civil Code section 1798 *et seq.* is based upon allegations that Defendants, Kay Hazen, a director of Defendant Desert Healthcare District (District), and Kathy Greco, CEO of the District, disclosed private medical information relating to the emergency treatment of a stroke suffered by Plaintiff, a doctor who is also a District Director. Plaintiff claims that Hazen and Greco were involved in a scheme to illegally expand the service area of the District to distribute taxpayer funds to organizations outside the District, including organizations with which Hazen had business interests; that Plaintiff had opposed Greco's and Hazen's plans; and that the disclosures were made to, among other things, "create a question in the mind of the public and electorate about the mental competence of Plaintiff... and his ability to continue as a Director of the Desert Healthcare District..." (Compl, ¶ 21.)

The motion is based upon the grounds that complaint arises out of Defendant's exercise of the right to free speech and/or petition and that Plaintiff has not shown a probability of prevailing on the merits.

The Complaint Arises Out of Activity Protected by the Anti-SLAPP Statute. To prevail on an anti-SLAPP motion defendant must first make a *prima facie* showing that the suit arises from defendant's exercise of free speech or petition rights as defined in Code of Civil Procedure section 425.16(e). Among the conduct protected is "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." (CCP § 425.16(e)(4).) "Public interest" within the meaning of the anti-SLAPP statute includes "not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479; *Kurwa v. Harrington, Foxx, Dubrow & Canter, LLP* (2007) 146 Cal.App.4th 841, 846.) "Although matters of public interest include legislative and governmental

activities, they may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals.” (*Kurwa v. Harrington, Foxx, Dubrow & Canter, LLP, supra*, 146 Cal.App.4th at 846.)

A healthcare district, a specific category of special district, is a form of local government. A special district is defined as "any agency of the state for the local performance of governmental or proprietary functions within limited boundaries..." (Government Code § 16271(d).) The statements at issue here were according to Plaintiff’s own allegations made to discredit a public official as part of an alleged scheme by Greco and Hazen to illegally gain access to the use of taxpayer funds. As such, these statements are protected as 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.

Plaintiff Cannot Demonstrate a Probability of Prevailing Because the Statements Made Were Not Disclosures of Personal Information Obtained From Information Maintained by a State Agency. Once defendant makes such a *prima facie* showing under the first prong, the burden shifts to plaintiff to establish a “probability” that plaintiff will prevail on whatever claims are asserted against defendant. (CCP § 425.16(b).) A civil action may be brought against any person, other than a governmental employee acting in the scope of his or her employment, who intentionally discloses personal information obtained from information maintained by a state agency or from records within a system of records maintained by a federal agency. (CC § 1798.53.) Section 1798.3(b) defines “agency” as “every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

...

(4) A local agency, as defined in subdivision (a) of Section 6252 of the Government Code.”

Section 6252(a) defines “[l]ocal agency” to include “a county; city, whether general law or chartered; city and county; school district; municipal corporation; *district*; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.” (Emphasis added.)

Plaintiff offers little evidence of the private information obtained and disclosed. Plaintiff states that Greco “admitted to me that she had obtained my personal and confidential medical records from Dr. Siddiqi.” (Solomon Decl. ¶ 13.) It is unclear who Dr. Siddiqi is and whether the records obtained from him are records of the District. However, even if those records are those of the District, those records are not protected from disclosure because the District is a local agency as defined by Government Code section 6252(a) and, therefore, not a covered agency under Civil Code section 1798.3.