COURT RULING

Youth for Environmental Justice, et al. v. City of Los Angeles, et al.
BC 600 373

TYPE OF MOTION:	(1), (4): Special Motion to Strike First Amended Cross-Complaint; (2), (5): Demurrer to First Amended Cross-Complaint; (3): Motion to Strike First Amended Cross-Complaint.
MOVING PARTY:	(1)-(3): Cross-Defendants City of Los Angeles, City of Los Angeles Department of City Planning, and Michael J. LoGrande; (4)-(5): Plaintiffs/Cross Defendants Youth for Environmental Justice, Center for Biological Diversity, and South Central Youth Leadership Coalition.
RESPONDING PARTY:	(1)-(5): Respondent-in-Intervention, California Independent Petroleum Association.
HEARING DATE:	Monday, April 10, 2017.

Plaintiffs/Petitioners allege the City of Los Angeles has unlawfully permitted industrial oil drilling operations in residential neighborhoods by ignoring California Environmental Quality Act's (hereinafter, "CEQA") environmental review requirements and illegally applying CEQA exemptions. Plaintiffs/Petitioners allege the City requires less protective conditions for drill sites in neighborhoods largely composed of people of color, in violation of anti-discrimination laws. Plaintiffs/Petitioners seek declaratory and injunctive relief to bring the City into compliance.

On November 6, 2015, Plaintiffs/Petitioners filed their petition for writ of mandate and verified complaint for declaratory and injunctive relief under the following causes of action (1) CCP §§1060, 1085, Violation of CEQA – Pattern and Practice of Failure to Apply CEQA; (2) CCP §§ 1060, 1085 Violation of CEQA – Pattern and Practice of Illegally Interpreting Exemptions; and (3) Violation of Government Code §11135 against Defendants City of Los Angeles (hereinafter, the "City"), City of Los Angeles Department of City Planning (hereinafter, "Department of City Planning"), Michael J. Logrande (hereinafter "Logrande") and DOES 1 through 20. On July 26, 2016, Respondent-in-Intervention, California Independent Petroleum Association (hereinafter, "CIPA") filed a Verified Complaint and Petition. On September 26, 2016, CIPA filed a Verified Cross-Complaint for (1) Declaratory Relief; and (2) Injunctive

Relief against Plaintiff/Petitioner Youth for Environmental Justice (hereinafter "Youth"), South Central Youth Leadership Coalition (hereinafter "South Central") and Center for Biological Diversity (hereinafter "Center") (hereinafter collectively "Environmental Groups"); Defendant City, Defendant Department of City Planning, and Defendant Logrande (hereinafter collectively "Municipal Cross-Defendants"). On September 28, 2016, Plaintiff filed requests for dismissal of the Complaint/Petition, with prejudice, against Defendants, which were entered on that date. On October 3, 2016, Cross-Defendants City, Department of City Planning and Logrande filed a Notice to State Court and Adverse Party of Removal to Federal Court. On November 3, 2016, at the request of CIPA and without opposition, the case was remanded from Federal Court.

Municipal Cross-Defendants now move this court, per Code of Civil Procedure §425.16 to strike the First Amended Cross-Complaint (hereinafter "FACC") on the grounds that the action is based upon communications and conduct in furtherance of Defendants' rights of petition and free speech under the United States and California Constitutions and Plaintiffs cannot establish a probability of success on the merits. Municipal Cross-Defendants also demur, per Code of Civil Procedure § 430.10(e) to the FACC on the grounds that it fails to state facts sufficient to constitute causes of action. Municipal Cross-Defendants further move this court per Code of Civil Procedure §§ 435 and 436 for an order striking the FACC as being not drawn in accordance with the orders of this court and the laws of the state of California.

Plaintiffs/Cross-Defendants Environmental Groups join in the above motions. Plaintiffs/Cross-Defendants also move this court, per Code of Civil Procedure §425.16 to strike the First Amended Cross-Complaint (hereinafter "FACC") on the grounds that the action is based upon communications and conduct in furtherance of Defendants' rights of petition and free speech under the United States and California Constitutions and Plaintiffs cannot establish a probability of success on the merits. Finally, Plaintiffs/Cross-Defendants demur, per Code of Civil Procedure § 430.10(e) to the FACC on the grounds that it fails to state facts sufficient to constitute causes of action and that Respondent CIPA lacks standing. Municipal Defendants join in these motions.

Each of the foregoing motions are DENIED. The demurrers are OVERRULED.

(1) SLAPP (Municipal Defendants)

All Requests for Judicial Notice and objections have been ruled on, and are in the Court's file.

CCP § 425.16 states, in pertinent part, as follows:

> (b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless

the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding...

. . .

(e) As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a 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 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 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 . . . .

"A special motion to strike under section 425.16—the so-called anti-SLAPP statute—allows a defendant to seek early dismissal of a lawsuit that qualifies as a SLAPP. 'SLAPP is an acronym for "strategic lawsuit against public participation."' (Jarrow Formulas, Inc. v. LaMarche (2003) 31 C.4th 728, 732, fn. 1). A SLAPP is '[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue.' (§ 425.16, subd. (b)(1).)." Nygard, Inc. v. Uusi-Kerttula (2008) 159 Cal.App.4th 1027, 1035.

"A SLAPP is subject to a special motion to strike 'unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.' (§ 425.16, subd. (b)(1).)." Nygard, *supra*, 159 Cal.App.4th at 1035. The

"evaluation of an anti-SLAPP motion requires a two-step process in the trial court," which is addressed below. Id.

Municipal Cross-Defendants Have Not Met Their Burden

The moving party bears the initial burden of showing that the action falls within the class of suits subject to the special motion to strike. Matson v. Dvorak (1995) 40 Cal.App.4th 539, 548; Dixon v. Superior Court (1994) 30 C.A.4th 733, 742; Wilcox v. Superior Court (1994) 17 Cal.App.4th 809, 819.

A defendant may meet this burden by showing that *the act which forms the basis for the plaintiff's suit* was (1) any written or oral statement made before a legislative, executive or judicial proceeding; (2) a statement or writing made in connection with an issue under consideration in such a proceeding or "any other official proceeding authorized by law;" (3) any written or oral statement made in a place open to the public or a public forum 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 an issue of public interest. § 425.16(e); Equilon Enterprises v. Consumer Cause (2002) 29 Cal.4th 53, 66; Dixon, *supra*, 30 Cal.App.4th at 742.

The act which forms the basis for Respondent CIPA's FACC is the implementation and enforcement of the settlement agreement, specifically of ZA Memo No. 133. Governmental actions, as such, do not implicate the exercise of free speech or petition. San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Ass'n (2004) 125 Cal.App.4th 343, 355. Municipal Cross-Defendants argue that the FACC attacks protected litigation tactics by alleging facts regarding the exclusion of Respondent CIPA from settlement negotiations, contrary to the orders of this court. While Municipal Cross-Defendants may feel just apprehension that this exclusion was not their finest hour, it is not the basis of the suit.

The basis of the suit as stated in the FACC is that the settlement between other parties adjudicated the rights of Respondent CIPA, and created a governmental action (i.e. ZA Memo No. 133) without the required review. (Declaration of Nathaniel Johnson [hereinafter "Johnson Dec."], Exhibit A, ¶¶ 35-37, 43, 47). While it is true that this eventuality likely would not occur without the decision to stonewall Respondent CIPA from the settlement negotiations, it very well could have. "Arising from" does not mean "in response to," it means "based upon." City of Cotati v. Cashman (2002) 29 Cal.4th 69, 77. Of course, this case differs from Cotati in that the FACC here does mention the previous proceedings; it would be incomprehensible if it attempted to do otherwise. However, the rule of Cotati is clear: "the statutory phrase "cause of action ... arising from" means simply that the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech." Id. at 78. Cross-Defendants' act was agreeing to a settlement which adjudicated the rights of Respondent CIPA and created a regulatory rule ex nihilo. In short, the act on which the suit is based is neither the exclusion from the prior negotiations, nor the negotiations

themselves: it is the settlement and regulation. The relief in the FACC is not related to the negotiations; Respondent CIPA seeks only to prevent enforcement of the settlement and regulation against its members.

Municipal Cross-Defendants argue that the act of settlement itself is protected under the statute, citing to Seltzer v. Barnes (2010) 182 Cal.App.4th 953; Navellier v. Sletten (2002) 29 Cal.4th 82; and Thayer v. Kabateck Brown Kellner LLP (2012) 207 Cal.App.4th 141. Each of these cases involved more than simply a settlement, and the facts are well afield from the facts of the case at hand. In Seltzer, the plaintiff sued her insurance company for negotiating a settlement of covered claims and leaving her on the hook for defense costs of non-covered claims. Seltzer, *supra*, 182 Cal.App.4th at 962. The Court of Appeal noted that (unlike the facts here) the direct issue in the case was whether plaintiff had been given an opportunity to have input on the settlement, and that the insurance company had the statutory right to settle any covered claims. Id. at 965-967. Seltzer is thus a case where the negotiation process was directly in issue, and not a case where the rights of one party are adjudicated by the settlement between other parties. In Navellier, likewise, the settlement negotiations were directly in issue because the claim was fraud. Navellier, *supra*, 29 Cal.4th at 90. Fraud inherently calls into question the negotiations surrounding the settlement; furthermore, plaintiffs in Navellier sued defendant for making released counterclaims in a different court. Id. Respondent here has filed the FACC in the same court, and there is no fraud alleged in the negotiations. Finally, Thayer involved a truly remarkable situation in which plaintiff sued counsel over the conduct of a case (and subsequent administration of settlement) to which plaintiff was not even a party. Thayer, *supra*, 207 Cal.App.4th at 155-156.

The unstated implication of Municipal Cross-Defendants' arguments is to insulate settlements from attack in responsive litigation; in this case, Municipal Defendants' argument thereby pits the right to free speech and petition against the right to due process. It is "ineluctably establish[ed] that neither a consent decree nor a trial court's approval of a consent decree can abrogate a third party's rights." Reed v. United Teachers Los Angeles (2012) 208 Cal.App.4th 322, 329. Settlement agreements which adjudicate the rights of other parties are therefore unenforceable on due process grounds. Id. at 339; c.f. Summit Media LLC v. City of Los Angeles (2012) 211 Cal.App.4th 921, 926-929. While it is true that claims of due process rights would not be wholly barred by a finding that the act of settlement alone is protected under the first prong of anti-SLAPP analysis, they certainly would be burdened. Finally, a suit to enforce a settlement agreement does not arise from protected activity under the statute. Applied Business Software, Inc. v. Pacific Mortg. Exchange, Inc. (2008) 164 Cal.App.4th 1108, 1117-1119. It would be a strange result indeed if a suit to enjoin enforcement received different treatment.

For the foregoing reasons, Municipal Cross-Defendants have not met their burden of showing that the action falls within the class of suits subject to the special motion to strike. Their motion is therefore DENIED.

Respondent Has Met Its Burden

Even if Municipal Cross-Defendants' communications were protected speech, Respondent CIPA has shown a probability of prevailing on the merits.

Once a defendant has made his/her/its prima facie showing that plaintiff's complaint "arises from" their constitutionally protected free speech activity, "the burden shifts to plaintiff to establish a 'probability' that plaintiff will prevail on whatever claims are asserted against defendant. [See CCP § 425.16(b)]." Weil & Brown, et al., Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2016), ¶ 7:1005.

"'(P)laintiff must demonstrate that *the complaint is both legally sufficient* and supported by a sufficient prima facie showing of facts to sustain a favorable judgment.' [Premier Med. Mgmt. Systems, Inc. v. California Ins. Guar. Ass'n (2006) 136 C.A.4th 464, 476 (emphasis in original; internal quotes omitted)—whether complaint could be *amended* to state valid claim is immaterial; see also Soukup v. Law Offices of Herbert Hafif (2006) 39 C.4th 260, 291]." Id. (emphasis theirs).

"The burden is on plaintiff to produce evidence that would be admissible at trial—i.e., to proffer a prima facie showing of facts supporting a judgment in plaintiff's favor. [Chavez v. Mendoza (2001) 94 C.A.4th 1083, 1087]." Id. "The 'probability of prevailing' is tested by the same standard governing a motion for summary judgment, nonsuit, or directed verdict. I.e., in opposing a SLAPP motion, it is plaintiff's burden to make a *prima facie* showing of *facts* that would support a judgment in plaintiff's favor..." Id. at ¶ 7:1008, p. 7(II)-53 (emphasis theirs). "Plaintiff must present evidence to overcome any privilege or defense to the claim that has been raised, in order to demonstrate a 'probability of success on the merits'..." Id. at ¶ 7:1015, p. 7(II)-54 (citation omitted).

"Our state due process constitutional analysis differs from that conducted pursuant to the federal due process clause in that the claimant need not establish a property or liberty interest as a prerequisite to invoking due process protection. (People v. Ramirez (1979) 25 Cal.3d 260, 263–264, 158 Cal.Rptr. 316, 599 P.2d 622; Smith v. Board of Medical Quality Assurance (1988) 202 Cal.App.3d 316, 327, 248 Cal.Rptr. 704.). Focused rather on an individual's due process liberty interest to be free from arbitrary adjudicative procedures (People v. Ramirez, supra, 25 Cal.3d at pp. 263, 268, 158 Cal.Rptr. 316, 599 P.2d 622), procedural due process under the California Constitution is "much more inclusive" and protects a broader range of interests than under the federal Constitution. [Citations]." Ryan v. California Interscholastic Federation-San Diego Section, (2001) 94 Cal.App.4th 1048, 1069.

"In People v. Ramirez, *supra*, 25 Cal.3d at pages 263–264, 158 Cal.Rptr. 316, 599 P.2d 622, our Supreme Court held that application of the due process clauses of the California Constitution "must be determined in the context of the individual's due process liberty interest in freedom from arbitrary adjudicative procedures. Thus, when a person is deprived of a statutorily conferred benefit, due process analysis must start not with a judicial attempt to decide whether the statute has created an 'entitlement' that can be defined as 'liberty' or 'property,' but with an assessment of what procedural protections

are constitutionally required in light of the governmental and private interests at stake."" Id.

"The Ramirez Court instructed the state courts to " 'evaluate the extent to which procedural protections can be tailored to promote more accurate and reliable administrative decisions in light of the governmental and private interests at stake' rather than relying 'on whether or not the state limits administrative control over a statutory benefit or deprivation by the occurrence of specified conditions....' " (Saleeby v. State Bar, *supra*, 39 Cal.3d at pp. 564–565, 216 Cal.Rptr. 367, 702 P.2d 525, quoting People v. Ramirez, *supra*, 25 Cal.3d at p. 267, 158 Cal.Rptr. 316, 599 P.2d 622.) The Ramirez Court further held that "the due process safeguards required for protection of an individual's statutory interests must be analyzed in the context of the principle that freedom from arbitrary adjudicative procedures is a substantive element of one's liberty. [Citation.] This approach presumes that when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudicial decision-making and in being treated with respect and dignity." (Id. at p. 268, 158 Cal.Rptr. 316, 599 P.2d 622.)." Id. at 1069-1070.

Municipal Cross-Defendants anchor their motion on the proposition that the settlement here was a settlement for fees and nothing more. (Memorandum p. 1:5-7, 10:19-21). Therefore, they argue, there could not be an interest of Respondent CIPA that is even remotely affected by the settlement. However, Municipal Cross-Defendants subsequently stipulated that the settlement agreement did in fact require implementation of ZA Memo No. 133[1]. (Opposition p. 1:3-6). This stipulation necessarily vitiates any argument regarding whether the settlement affected the rights of Respondent CIPA. The settlement requires that ZA Memo No. 133 be implemented, and the members of Respondent CIPA will be subject to it. There is no administrative process by which ZA Memo No. 133 may be appealed. (Declaration of Benjamin Saltsman ¶¶ 5-6, Exhibit B). As stated above, a settlement that adjudicates the rights of a third party violates due process. Reed, *supra*, 208 Cal.App.4th at 339; c.f. Summit Media, *supra*, 211 Cal.App.4th at 926-929. Therefore, in light of the stipulation, all Respondent CIPA need do to meet its burden is produce some evidence that ZA Memo No. 133 alters some existing right of theirs. Respondent CIPA has done so.

ZA Memo No. 133 states as follows:

> "There are existing active approvals which include conditions establishing a process for subsequent modifications or condition review...these conditions include processes that are inconsistent with the processes established in this memorandum...To the extent that any existing condition or grant in an existing approval gives the Zoning Administrator discretion in the process to be followed for a modification or condition review, the procedures in this Memorandum shall be followed...To the extent that any existing condition or grant in an existing approval mandates a procedure that is inconsistent with this Memorandum, the

[1] This Court realizes that the stipulation was for the purpose of the anti-SLAPP motion only. This Court accepts it as such for its limited purpose.

Zoning Administrator *shall* consider whether a Plan Approval process shall be initiated by the city *to revise any conditions* to protect the public health, safety, and welfare, including any condition establishing a process inconsistent with the purpose of this memorandum." (Declaration of Nathaniel Johnson [hereinafter "Johnson Dec."] Exhibit C, p. 2-3) (emphasis added).

Once permits have been granted, the permit holders have protected property interests in their continuation and use. See Today's Fresh Start, Inc. v. Los Angeles County Office of Educ. (2013) 57 Cal.4th 197, 214 (holding that a charter school had a protected property interest in its continuing operation) Anchor Pacifica Management Co. v. Green (2012) 205 Cal.App.4th 232, 245-247 (holding that a tenant had a protectable property interest in the renewal of her lease after its term expired); see also Beverly Oil Co. v. City of Los Angeles (1953) 40 Cal.2d 552, 557 (stating that zoning regulations concerning oil production, as an exercise of police power, must be crafted within the confines of due process). As the court stated in Anchor, a property interest may exist in a prospective renewal, even without an express term allowing for renewal, if the governmental actor in question has behaved in such a way as to make renewal expected. Anchor, *supra*, 205 Cal.App.4th at 246-247 ("As the Supreme Court explained in Perry v. Sindermann, *supra*, 408 U.S. 593, 92 S.Ct. 2694, a plaintiff complaining of a due process violation may look to the "rules and understandings" or "policies and practices" of the government actor to determine whether he or she has implicitly acquired a legitimate claim to a benefit.").

By its own terms, ZA Memo No. 133 alters the parameters of existing permits which include conditions or the possibility of modification. If any permit allowed for modification to be granted at the discretion of the Zoning Administrator, that provision has been unilaterally nullified in favor of an involved and rigid scheme. That is not a prospective injury; it existed as soon as ZA Memo No. 133 did. Furthermore, ZA Memo No. 133 requires the Zoning Administrator to unilaterally re-open consideration of, and potentially abrogate, any condition of an existing permit. Therefore, at the least, ZA Memo No. 133 places every previously-settled condition in an existing permit under review. At oral argument, counsel for Cross-Defendant Environmental Groups suggested that this was not a problem because the Plan Approval process includes a hearing. To accept that argument would be to embrace the concept of shifting goalposts, but more to the point, a potential dispute about the sufficiency of the Plan Approval process to alleviate the due process infringement (about which there is no evidence currently before the court) assumes that there has been a prima facie showing of infringement on a due process right, which is all that is required of Respondent CIPA at this stage. Finally, ZA Memo No. 133 by its terms considerably alters the historical practice regarding applying for permit modifications. Under Anchor, *supra*, 205 Cal.App.4th at 246-247, even if this change does not alter the existing permits, Respondent CIPA may have a claim that the acknowledged consistency of the previous practices created a protected property interest in new modifications.

Respondent CIPA has introduced evidence that its members do in fact have existing permits that have been altered by ZA Memo No. 133. (Declaration of Christine

Halley ¶¶ 6-8; Declaration of Louis P. Zylstra [hereinafter "Zylstra Dec."] ¶¶ 2, 6, 9, 11-14, 16-18). One of its members has already had a properly permitted and compliant site subjected to a full site review under the provisions of ZA Memo No. 133. (Zylstra Dec. ¶ 16-18). Furthermore, under ZA Memo No. 133, CIPA members would now need city approval to re-drill an already existing well (Declaration of Rock Zierman [hereinafter "Zierman Dec."] ¶ 11), and would have their fees increased by a factor of 169. (Declaration of Daniel Tormey ¶ 9). Municipal Cross-Defendants' argument in their Reply that ZA Memo No. 133 does not affect the existing rights of Respondent CIPA is contradicted by the evidence introduced by Respondent CIPA. Therefore, Respondent CIPA has met its burden to make a prima facie showing of facts which would support a judgment in its favor. The second prong of the statute is satisfied.

For the foregoing reasons, Municipal Cross-Defendants' Special Motion to Strike is DENIED.

(2) Demurrer (Municipal Cross-Defendants)

Municipal Cross-Defendants' challenge Respondent CIPA's standing on two grounds: (1) that the face of the settlement agreement does not implicate Respondent CIPA's rights, and (2) that Respondent CIPA has not articulated a statutory right implicated by ZA Memo No. 133. The first ground should be rejected; Respondent CIPA's claim centers on the allegation that ZA Memo No. 133 was part of, and enacted pursuant to, the settlement. (Johnson Dec. Exhibit A, ¶¶ 32-37). More importantly, as discussed in connection with the anti-SLAPP motion, above, Municipal Cross-Defendants have stipulated to the fact that ZA Memo No. 133 was enacted pursuant to the settlement agreement. They have therefore foreclosed any argument based on the face of the settlement agreement.

In response to the second ground, Respondent CIPA refers the court to its opposition to the demurrer of the Environmental Groups. For the reasons discussed below, in connection with that demurrer, Municipal Cross-Defendants' argument fails.

Municipal Cross-Defendants further argue that there is no actual controversy on which relief could be granted, and that the cause of action for declaratory relief therefore fails. However, the existence and application of ZA Memo No. 133 to the members of CIPA, as discussed above, is sufficient to create an actual case or controversy.

Furthermore, the multitude of factual disputes in this case preclude this court from sustaining a demurrer. As discussed above, the parties have placed in issue the application of ZA Memo No. 133 to CIPA members. In other words, at its most basic, this case necessarily involves a dispute over the application of a Zoning Memorandum to at least 500 wells controlled by 27 corporations which pay royalties to 1700 owners across the County of Los Angeles. (Zierman Dec. ¶ 6). There may also be a dispute, as discussed above, concerning whether the Plan Approval process, as applied to these various wells, is sufficient to satisfy the demands of due process. There may even be a dispute, as discussed above, concerning whether the previous approval practices created

such an expectation of new modifications that a change in those practices constitutes a due process violation. In sum, this case requires the court to determine whether protected interests across the county were infringed, how, and when, and whether the process available to Respondent CIPA is sufficient. These are all questions which necessitate considerable findings of fact. Resolution of this case on demurrer would therefore be highly improper.

For the foregoing reasons, the demurrer is OVERRULED.

(3) Motion to Strike FACC

Municipal Cross-Defendants make the central argument that Respondent CIPA was allowed to intervene on the basis that it would not enlarge the issues in the case. Respondent CIPA correctly points out that this is to re-argue the intervention. Municipal Cross-Defendants cite no authority to support the proposition that Respondent CIPA's intervention creates a binding contract with the court not to raise any other issues that may emerge later in the case. Once the intervention was permitted, Respondent CIPA became a party, entitled to all the rights of a party, not bound by the concessions of other parties, and free to pursue their own interests. Western Heritage Ins. Co. v. Superior Court (2011) 199 Cal.App.4th 1196, 1207; see also Simpson Redwood Co. v. State of California (1987) 196 Cal.App.3d 1192, 1202-1204 (holding that an intervenor may raise new causes of action not previously at issue); Marc Bellaire, Inc. v. Fleischman (1960) 185 Cal.App.2d 591, 595 ("[w]e need not be concerned with the fact that the intervener filed two pleadings, one in the nature of an answer and the other in the nature of a cross-complaint, because the relief which may be sought by an intervener is broad"). Moreover, there can be no argument of bad faith, as when Respondent CIPA intervened there was no settlement on the table. Municipal Cross-Defendants' argument therefore fails.

Municipal Cross-Defendants make two subsidiary arguments: (1) that the FACC is a sham pleading and (2) that Respondent CIPA needed leave of court to file a Cross-Complaint. The first argument is without merit; as discussed above, the silence of the formalized settlement regarding Respondent CIPA does not contradict its pleading that ZA Memo No. 133 is a part of the settlement and therefore the settlement affects Respondent CIPA's members.

The second argument is likewise without merit. While it is true that a cross-complaint must be filed concurrently with the answer (Code of Civil Procedure § 428.50), the fact that a complaint-in-intervention may be treated like an answer for purposes of analyzing a demurrer to it (Timberidge Enterprises, Inc. v. City of Santa Rosa (1978) 86 Cal.App.3d 873) does not make the complaint-in-intervention the answer for purposes of Section 428.50. This court did not treat the complaint-in-intervention that way when it granted the motion to intervene and allowed Respondent CIPA to demur after the stay on the case was lifted; there was no objection from Municipal Defendants then. (Johnson Dec. Exhibit H p. 41:25-43:13). Since answers may be filed concurrently with demurrers (Code of Civil Procedure § 430.30(c)), by implication Respondent CIPA

could have filed an answer with its demurrer, and consequently there was no need for leave of court to file a Cross-Complaint until then. Furthermore, even if the Municipal Cross-Defendants' argument were correct and Respondent CIPA had answered and was in posture as a defendant, Respondent CIPA would only need leave of court to file a cross-complaint against the plaintiff Environmental Groups, as complaints against other defendants are permitted until the setting of a trial date. No trial dates had been set as of the filing of the original Cross-Complaint on September 16, 2016. Therefore, in any event, the Cross-Complaint was procedurally proper as against Municipal Cross-Defendants.

For the foregoing reasons, Municipal Cross-Defendants' motion is DENIED.

(4) SLAPP (Environmental Groups)

This motion is made based primarily on the same arguments discussed above in connection with the same motion made by Municipal Cross-Defendants. There is, however, one additional argument: Cross-Defendant Environmental Groups briefly argue that Respondent CIPA cannot show a probability of prevailing on the merits because Cross-Defendant Environmental Groups are not state actors, and therefore cannot violate Respondent CIPA's due process rights. This argument was more fully briefed in connection with the demurrer, discussed below and to which the Opposition and Reply papers refer the court, but the anti-SLAPP motion is analytically prior to the demurrer.

In these particular circumstances, Cross-Defendant Environmental Groups' argument is not well taken. Where the actions of a non-state actor are intertwined with those of the state, the non-state actor may be subject to constitutional standards. See Anchor, *supra*, 205 Cal.App.4th at 244-245; Lugar v. Edmonson Oil Co., Inc. (1982) 457 U.S. 922, 930-932 (holding that actions authorized by state law are state actions, even if undertaken by private actors). Cross-Defendant Environmental Groups have stipulated to the fact that ZA Memo No. 133 was enacted as a requirement of the settlement agreement. (Opposition p. 1:4-9). Therefore, Cross-Defendant Environmental Groups are the reason ZA Memo No. 133 exists, and they may enforce its implementation by the City as a part of the settlement agreement. By virtue of these facts, the actions of Cross-Defendant Environmental Groups are intertwined with those of the Municipal Cross-Defendants, and they are therefore subject to constitutional due process standards.

Counsel for Cross-Defendant Environmental Groups suggested in oral argument that the FACC was insufficient because it did not specifically allege that Cross-Defendant Environmental Groups have the ability to enforce the settlement, or at least that part of it which relates to ZA Memo No. 133. This argument would require acumen on the part of counsel for Respondent CIPA that verges on clairvoyance. Settlement agreements are contracts, and are presumably enforceable as such; otherwise it is hard to see how they are anything other than a rather dull and somewhat expensive way of passing time. Respondent CIPA should not be saddled with the burden of pleading and then proving that this agreement is *not* what would be an extremely rare exception to the rule. Further, Cross-Defendant Environmental Groups have introduced no evidence and made no offer

of proof to show that this is in fact the exceptional agreement which is unenforceable by one party. Therefore, the FACC is sufficient on that point.

For the foregoing reasons, as well as the reasons discussed in connection with the similar motion of the Municipal Cross-Defendants, above, this motion is DENIED.

(5) Demurrer (Environmental Groups)

Cross-Defendant Environmental Groups' demurrer is OVERRULED.

Cross-Defendant Environmental Groups attack the standing of Respondent CIPA on many of the same grounds discussed above, in connection with the demurrer of Municipal Cross-Defendants. Primarily, Cross-Defendant Environmental Groups rely on Las Lomas Land Co., LLC v. City of Los Angeles (2009) 177 Cal.App.4th 837, 855 for the proposition that the California Constitution protects only property interests or benefits conferred by statute. Cross-Defendant Environmental Groups further rely on Las Lomas for the proposition that no due process right exists regarding a benefit that has not yet been conferred. Id. This argument is misplaced.

Las Lomas involved a developer who had not yet obtained his permits when the City Council stopped his project. Id. at 844. Here, as discussed above, Respondent CIPA's members already have permits to obtain oil on their land. Once permits have been granted, the permit holders have protected property interests in their continuation and use. See Today's Fresh Start, *supra*, 57 Cal.4th at 214 (holding that a charter school had a protected property interest in its continuing operation); Anchor, *supra*, 205 Cal.App.4th at 245-247 (a plaintiff may look to previous policies and practices of a governmental actor to establish a claim to a benefit); see also Beverly Oil, *supra*, 40 Cal.2d at 557 (stating that zoning regulations concerning oil production, as an exercise of police power, must be crafted within the confines of due process). Regulations that inhibit the continuation of oil production by CIPA members and alter the use or renewal of permits already granted to CIPA members are therefore subject to due process claims, and ZA Memo No. 133 is just such a regulation.

Cross-Defendant Environmental Groups' citation to Southern California Edison Co. v. Lynch (9th Cir. 2002) 307 F.3d 794, 806-808 is likewise misplaced. That case involved an argument regarding the length of time the district court judge had given the intervenor to brief its objections to the settlement. That is not the question at issue here.

Cross-Defendant Environmental Groups make one additional argument, discussed above in connection with their anti-SLAPP motion: that Cross-Defendant Environmental Groups are not state actors and are therefore not subject to due process claims. For the reasons set forth above, Cross-Defendant Environmental Groups are state actors for pleading purposes. Further, with regard to the above-noted suggestion of counsel that the FACC was insufficient because it did not specifically allege that Cross-Defendant Environmental Groups have the ability to enforce the settlement, pleadings are construed liberally. Respondent CIPA should not bear the burden of specifically alleging that

Cross-Defendant Environmental Groups did *not* make a highly unusual (not to say futile) agreement. Cross-Defendant Environmental Groups may produce evidence to show that they had no way of enforcing the settlement beyond the payment of fees and costs, and Respondent CIPA's due process claims against Cross-Defendant Environmental Groups may ultimately founder on that proposition. But that is yet another factual issue to add to the list above, and not properly considered on demurrer.

For the foregoing reasons, as well as the reasons set forth in connection with the demurrer of Municipal Cross-Defendants, the demurrer of Cross-Defendant Environmental Groups are OVERRULED.

Conclusion:

This Court is troubled regarding how this case has evolved to date, beginning with the then puzzling intense objections to granting intervener status to CIPA, and culminating in the settlement and instant motions.

Pleading caption not with standing, this case has morphed into a two party struggle; CIPA, on one side, and the City and Environmental Groups on the other. The open hostility to CIPA's presence is palpable.

Against this backdrop, and taking the stipulation for the purpose of this hearing at face value, the settlement was clearly not what it facially purported to be: a walkaway for fees. Its real agenda was implementation of rules and procedures that CIPA contends, and the uncontradicted evidence here shows, was detrimental to third parties.

There are procedures for the City of Los Angeles to change or modify its requirements in how it deals with business within its jurisdiction, but writing them in invisible ink inside a settlement is not one of them.

Implementation of ZA memo No 133, the purpose of the settlement, is not protected activity thus insulated from attack within the meaning of SLAPP.

Lastly, there are too many unanswered questions here to resolve this question through Demurrer. This case needs more time and discovery to achieve a just resolution for all involved.

Date: 7/19/17

Terry A. Green
Judge of the Superior Court