

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL THORNBROUGH,	)	
	)	
Plaintiff,	)	2:09-cv-02613-GEB-GGH
	)	
v.	)	<u>ORDER ON DEFENDANTS' PENDING</u>
	)	<u>MOTIONS*</u>
WESTERN PLACER UNIFIED SCHOOL	)	
DISTRICT, SCOTT LEAMAN, DAVID	)	
GIRARD, KATHY ALLEN, AND ROBERT	)	
NOYES,	)	
	)	
Defendants.	)	
_____	)	

Four pending motions were filed by various defendants, each challenging Plaintiff's first amended complaint. Defendants Scott Leaman, Kathy Allen, Robert Noyes and the Western Placer Unified School District ("WPSUD") (collectively, the "School District Defendants"), filed a motion under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's first amended complaint. (Docket No. 39.) Defendant David Girard also filed a dismissal motion under Federal Rule of Civil Procedure 12(b)(6) and a motion to strike certain portions of Plaintiff's first amended complaint under Federal

* This matter is deemed to be suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 Rule of Civil Procedure 12(f) and a "special motion to strike"
 2 Plaintiff's state law claims under California's "anti-SLAPP" statute,
 3 California Civil Procedure Code section 425.16. (Docket Nos. 40, 42,
 4 48.) For the reasons stated below, the School District Defendants'
 5 dismissal motion is granted and denied in part; Defendant Girard's
 6 Rule 12(b)(6) dismissal motion and his anti-SLAPP motion to strike are
 7 granted and his motion to strike under Rule 12(f) is denied as moot.

8 I. LEGAL STANDARDS

9 A. Standard for Dismissal Under Federal Rule of Civil Procedure 10 12(b)(6)

11 A Rule 12(b)(6) motion "challenges a complaint's compliance
 12 with . . . pleading requirements." Champlaine v. BAC Home Loans
 13 Servicing, LP, No. S-09-1316 LKK/DAD, 2009 WL 3429622, at *1 (E.D.
 14 Cal. Oct. 22, 2009). A pleading must contain "a short and plain
 15 statement of the claim showing that the pleader is entitled to relief
 16" Fed. R. Civ. P. 8(a)(2). The complaint must "give the
 17 defendant fair notice of what the [plaintiff's] claim is and the
 18 grounds upon which relief rests" Bell Atlantic Corp. v.
 19 Twombly, 550 U.S. 544, 555 (2007). Further, "[a] pleading that offers
 20 labels and conclusions or a formulaic recitation of the elements of a
 21 cause of action will not do. Nor does a complaint suffice if it
 22 tenders naked assertions devoid of further factual enhancement."
 23 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

24 To avoid dismissal, the plaintiff must allege "only enough
 25 facts to state a claim to relief that is plausible on its face."
 26 Twombly, 550 U.S. at 547. "A claim has facial plausibility when the
 27 plaintiff pleads factual content that allows the court to draw the
 28 reasonable inference that the defendant is liable for the misconduct

1 alleged." Iqbal, 129 S. Ct. at 1949. Plausibility, however, requires
2 more than "a sheer possibility that a defendant has acted unlawfully."
3 Id. "When a complaint pleads facts that are merely consistent with a
4 defendant's liability, it stops short of the line between possibility
5 and plausibility of entitlement to relief." Id. (quotations and
6 citation omitted).

7 In evaluating a dismissal motion under Rule 12(b)(6), the
8 court "accept[s] as true all facts alleged in the complaint, and
9 draw[s] all reasonable inferences in favor of the plaintiff." Al-Kidd
10 v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009). However, neither
11 conclusory statements nor legal conclusions are entitled to a
12 presumption of truth. See Iqbal, 129 S. Ct. at 1949-50.

13 The School District Defendants' dismissal motion is
14 accompanied by a request that the court take judicial notice of two
15 documents: 1) the Hearing Officer's Modified Findings and
16 Recommendation submitted to the WPUSD Board of Trustees on April 28,
17 2009 in the In re Michael Thornbrough administrative proceeding; and
18 2) the Minutes from the special meeting of the WPUSD Board of Trustees
19 held on April 28, 2009. (Request for Judicial Notice ("RJN") Exs. A,
20 B.) Defendants argue the Hearing Officer's Modified Findings and
21 Recommendation and the WPUSD Board of Trustee's Minutes "fall[] within
22 the definition of 'adjudicative facts' and may be judicially noticed."
23 (School District Defs.' Mot. to Dismiss 6:15-21.) Plaintiff counters
24 arguing the Hearing Officer's Findings and Recommendation and the
25 WPUSD's actions "are not final because they are subject to a pending
26 writ petition filed in the Placer County Superior Court." (Pl.'s
27 Objections to School District Defs.' RJN 1:23-24.) Plaintiff further
28 argues that while the court may take judicial notice of the fact that

1 findings were made, it may not treat the Hearing Officer's conclusions
2 as binding or conclusive in this action. (Id. 2:10-13.)

3 A judicially noticed fact must be one not subject to
4 reasonable dispute in that it is either (1) generally known within the
5 territorial jurisdiction of the trial court or (2) capable of accurate
6 and ready determination by resort to sources whose accuracy cannot
7 reasonably be questioned. Fed. R. Evid. 201(b). "The existence and
8 authenticity of a document which is a matter of public record is
9 judicially noticeable such as the authenticity and existence of a
10 particular order, pleading, public proceeding, which are matters of
11 public record, but the veracity and validity of their contents (the
12 underlying arguments made by the parties, disputed facts, and
13 conclusions of fact) are not." Cactus Corner, LLC v. United States
14 Dep't of Agric., 346 F. Supp. 2d 1075, 1099 (E.D. Cal. 2004)
15 (citations omitted) (taking judicial notice of the existence and
16 authenticity of data report created and published by the Department of
17 Agriculture but not the accuracy or validity of the contents of the
18 report which were disputed).

19 Since the Hearing Officer's Findings and Recommendation and
20 the WPUSD Minutes are matters of public record, they may be judicially
21 noticed. However, judicial notice is limited to the existence of
22 these documents and recognition that the opinions contained therein
23 have been stated. See id. at 1000. Therefore, neither the Hearing
24 Officer's Findings and Recommendation nor the WPUSD Minutes are
25 "dispositive of any issue in th[is] case." Transmission Agency of N.
26 Cal. v. Sierra Pacific Power Co., 295 F.3d 918, 924 n.3 (9th Cir.
27 2002) (finding opinion of administrative judge could be judicially
28

1 noticed even where opinion was subject to further administrative and
2 judicial review).

3 **B. Motion to Strike Under Cal. Civ. Proc. Code § 425.16**

4 California Civil Procedure Code section 425.16 ("section
5 425.16"), known as the "anti-SLAPP statute," "provide[s] a procedural
6 remedy to dispose of lawsuits that are brought to chill the valid
7 exercise of constitutional rights." Rusheen v. Cohen, 37 Cal. 4th
8 1048, 1055-56 (2006). Specifically, section 425.16(b)(1) provides:

9 A cause of action against a person arising from any
10 act of that person's right of petition or free
11 speech under the United States Constitution in
12 connection with a public issue shall be subject to
13 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.

14 The Ninth Circuit explained the process for evaluating an
15 anti-SLAPP motion in Hilton v. Hallmark Cards:

16 California courts evaluate a defendant's anti-SLAPP
17 motion in two steps. First, the defendant moving
18 to strike must make a threshold showing that the
19 act or acts of which the plaintiff complains were
20 taken in furtherance of the defendant's right of
petition or free speech under the United States or
California Constitution in connection with a public
issue as defined in . . . the statute. Second, if
the court finds that such a showing has been made,
it must then determine whether the plaintiff has
demonstrated a probability of prevailing on the
claim. Put another way, the 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.

25 599 F.3d 894, 903 (9th Cir. 2010) (quotations and citations omitted).

26 However, "[s]pecial procedural rules apply where an anti-
27 SLAPP motion is brought in federal court." Lauter v. Anoufrieve, 642
28 F. Supp. 2d 1060, 1109 (C.D. Cal. 2009) (citing Bulletin Displays, LLC

1 v. Regency Outdoor Advertising, Inc., 448 F. Supp. 2d 1172, 1180 (C.D.
2 Cal. 2006)); see also Verizon Delaware, Inc. v. Covad Commc'ns Co.,
3 377 F.3d 1081, 1091 (9th Cir. 2004) (stating that "procedural state
4 laws are not used in federal court if to do so would result in a
5 direct collision with a Federal Rule of Civil Procedure . . .").

6 If a defendant makes an anti-SLAPP motion based on
7 the plaintiff's failure to submit evidence to
8 substantiate its claims, the motion is treated as a
9 motion for summary judgment, and discovery must be
10 developed sufficiently to permit summary judgment
11 under Rule 56. This is because to permit a
12 defendant to invoke the Anti-SLAPP statute to
13 require a plaintiff to present evidence to support
his claims before an opportunity for discovery
would directly conflict with Federal Rule of Civil
Procedure 56. If an anti-SLAPP motion is based on
legal deficiencies in the complaint, a federal
court must determine the motion in a manner that
complies with the standards set by Federal Rules 8
and 12.

14 Lauter, 642 F. Supp. 2d at 1109 (quotation and citations omitted)
15 (denying anti-SLAPP motion without prejudice because discovery had not
16 closed).

17 In this case, Girard's anti-SLAPP motion challenges both the
18 legal sufficiency of Plaintiff's allegations as well as Plaintiff's
19 failure to substantiate his claims with evidentiary support. However,
20 since this action is still in its infancy, requiring Plaintiff to
21 present evidence to support his claims without the opportunity for
22 discovery would directly conflict with Federal Rule of Civil Procedure
23 56. See Rogers v. Home Shopping Network, Inc., 57 F. Supp. 2d 973,
24 980 (C.D. Cal. 1999) (stating that "[i]f a defendant desires to make a
25 special motion to strike [under section 425.16] based on the
26 plaintiff's lack of evidence, the defendant may not do so until
27 discovery has been developed sufficiently to permit summary judgment
28 under Rule 56.") Therefore, only Defendant Girard's arguments

1 challenging the legal sufficiency of Plaintiff's complaint under
2 Federal Rules 8 and 12 will be considered.

3 Defendant Girard filed a Supplemental Request for Judicial
4 Notice with his reply brief supporting his anti-SLAPP motion to
5 strike, in which he requests the court take judicial notice of the
6 April 28, 2009 Decision of the WPUSD Governing Board, Resolution No.
7 08/09.19, adopting the Hearing Officer's Findings and Recommendation
8 to the Board of Trustees to terminate the employment of Plaintiff.
9 Since this document is a matter of public record, the existence of the
10 Resolution may be judicially noticed.

11 **II. BACKGROUND**

12 **A. Plaintiff's Allegations**

13 The WPUSD hired Plaintiff on July 8, 1997 as a maintenance
14 worker. (First Amended Compl. ("FAC") ¶ 1.) Plaintiff was eventually
15 promoted to the position of Assistant Director of Maintenance, which
16 is the position he held during the time period at issue. (Id. ¶ 1.)
17 The WPUSD, however, terminated Plaintiff effective April 29, 2009,
18 after an administrative hearing. (Id. ¶ 25.) Plaintiff's claims stem
19 from his allegations that defendants improperly initiated
20 administrative proceedings against him based on false charges, and
21 wrongfully terminated him in retaliation for his reporting of improper
22 spending and mismanagement within the WPUSD. (Id. ¶ 1.)

23 Plaintiff alleges that at some time prior to 2006, he
24 discovered as he worked that a construction contractor hired by the
25 WPUSD "was omitting higher quality materials and substituting
26 materials of lesser quality and lower cost without passing on the cost
27 savings to WPUSD." (Id. ¶ 14.) Plaintiff alleges that he
28 "communicated with [incoming WPUSD Superintendent] Leaman about the

1 construction cost problems, as well as [the outgoing Superintendent's]
2 . . . failure to adequately address" the issue. (Id. ¶ 15.)
3 Defendant Leaman allegedly requested that Plaintiff "give him a year
4 to address [Plaintiff's] concerns." (Id.)

5 Plaintiff alleges Defendant Leaman suspended him in April
6 2007 "in retaliation" for Plaintiff's "prior complaints of
7 mispending, mismanagement . . . and inefficiency;" and, that Leaman
8 "had Superintendent Robert Noyes initiate administrative termination
9 proceedings against [Plaintiff] based on false accusations and without
10 good cause." (Id. ¶ 16.) More specifically, Plaintiff alleges
11 Defendants Leaman, Noyes and Girard "conspired and agreed to falsely
12 claim that [Plaintiff had] violated California's Fair Employment and
13 Housing Act . . . and WPUSD's sexual harassment policies." (Id. ¶
14 17.) Plaintiff alleges "[t]he claim of sexual harassment was based
15 solely on a report of a singular incident [in which Plaintiff]
16 purportedly commented privately to two male co-workers [about] a
17 female co-worker's breasts." (Id.) Defendant Girard allegedly
18 "drafted" "[t]he charges of sexual harassment" against Plaintiff.
19 (Id.) These allegedly "false charges" "were eventually resolved by
20 settlement." (Id.)

21 After the settlement of the "false charges," Plaintiff
22 alleges he took further actions to alert the WPUSD to problems within
23 the school district. (Id. ¶¶ 18-24.) For example, on August 15,
24 2007, Plaintiff sent a binder entitled "Questions Regarding District
25 Construction Projects" to members of the WPUSD Board of Trustees.
26 (Id. ¶ 18.) A copy of the August 2007 binder was also delivered to
27 the Placer County grand jury as well as the editor of a local
28 newspaper. (Id.) Plaintiff also allegedly wrote a letter to

1 Assistant Superintendent Kathy Allen in December 2007, in which he
2 complained about "a change in purchase order procedures" within the
3 school district. (Id. ¶ 20.) Further, Plaintiff alleges he also
4 "sent a letter to Leaman, asking for an update on the issues reported
5 to the WPUSD Board" in the August 2007 binder. (Id. ¶ 21.)

6 After Plaintiff received no response from the WPUSD Board or
7 Defendants Leaman or Allen, Plaintiff allegedly sent another letter to
8 the WPUSD Board of Trustees on April 23, 2008, in which he "advised
9 the Board of allegations that WPUSD had been presented with a forged
10 contract from the Wausau Paper Company"; that an employee "had been
11 participating in kick boxing while he was on restricted duty for an
12 alleged on the job injury[;]" and that another employee had made
13 incorrect entries in her husband's time records. (Id. ¶ 22.)

14 Plaintiff also alleges that on May 22, 2008, he sent a letter to the
15 Placer County grand jury and to the WPUSD Board of Trustees,
16 "notifying them that the Board and administration had failed to
17 respond to the reports of fraud, misconduct, and inefficiency [and
18 that] . . . the WPUSD administration was wasting WPUSD funds and
19 ignoring complaints of criminal activity." (Id. ¶ 23.)

20 Plaintiff further alleges that in response to these reports,
21 Defendant Allen "issued a reprimand of [Plaintiff], and Leaman
22 executed a Statement of Charges and Recommendation for Dismissal of
23 [Plaintiff] that was drafted by Girard," which initiated
24 administrative termination proceedings. (Id. ¶ 24.) An
25 administrative hearing was held before a hearing officer selected by
26 WPUSD. (Id. ¶ 25.) The hearing officer issued his Findings and
27 Recommendation on April 26, 2009, recommending that the Governing
28 Board of the WPUSD terminate Plaintiff from employment. (RJN Ex. A.)

1 The hearing officer's Findings and Recommendation were adopted by the
2 WPUSD Board on April 28, 2009 and Plaintiff was terminated. (RJN Ex.
3 B.)

4 **B. Procedural Background**

5 Plaintiff filed his original complaint in this federal court
6 on September 17, 2009, in which he alleged eleven claims under federal
7 and state law against Defendants Leaman, Girard, Allen, Noyes and the
8 WPUSD. Defendant Girard filed a motion to dismiss that complaint on
9 November 12, 2009 under Federal Rule of Civil Procedure 12(b)(6), and
10 an anti-SLAPP motion to strike Plaintiff's state law claims.
11 Defendant Girard's Rule 12(b)(6) dismissal motion was granted and his
12 anti-SLAPP motion was denied as moot in an order filed on December 29,
13 2009; that order granted Plaintiff leave to amend his complaint.
14 Plaintiff filed his now operative, first amended complaint on January
15 12, 2010, and Defendants subsequently filed their pending motions.

16 **III. DISCUSSION**

17 **A. Defendant Girard's Motion to Dismiss**

18 Girard argues Plaintiff has failed to cure the deficiencies
19 identified in the prior dismissal order and Plaintiff's claims remain
20 legally deficient. Plaintiff opposes the dismissal motion.

21 **1. Plaintiff's Federal Claims Alleged Against Girard**

22 **a. First and Sixth Claims Brought Under 42 U.S.C. § 1983**

23 Girard argues Plaintiff's first and sixth claims should be
24 dismissed since Plaintiff has not sufficiently alleged that Girard was
25 "acting under color of state law." (Girard Mot. to Dismiss 6:13-
26 8:24.) Girard further argues "it is established that private
27 attorneys, such as [himself], are simply not state actors within the
28 purview of § 1983." (Id. 7:27-28.) Plaintiff rejoins that his first

1 amended complaint "adequately alleges state action that is legally
2 attributable to defendant Girard because he acted jointly with . . .
3 Leaman to violate [P]laintiff's rights." (Opp'n to Girard's Mot. to
4 Dismiss 9:4-7.)

5 Plaintiff's first and sixth claims allege violations of 42
6 U.S.C. § 1983 ("section 1983"). Plaintiff alleges in his first claim
7 that "Defendants' charges, the initiation of administrative
8 proceedings and the termination of [Plaintiff] were in retaliation for
9 [Plaintiff's] exercise of rights secured by the First Amendment of the
10 Constitution." (FAC ¶ 28.) Plaintiff alleges in his sixth claim that
11 "Defendants . . . initiated retaliatory and frivolous administrative
12 proceedings and actions against [him]" and "[t]hese actions . . . were
13 . . . done to retaliate against Plaintiff . . . in violation of his
14 Constitutional Rights under 42 U.S.C. § 1983 (Fourteenth Amendment)
15 and other Constitutional Rights." (Id. ¶ 55.)

16 "Section 1983 imposes civil liability upon an individual who
17 under color of state law subjects or causes, any citizen of the United
18 States to the deprivation of any rights, privileges or immunities
19 secured by the Constitution and laws." Franklin v. Fox, 312 F.3d 423,
20 444 (9th Cir. 2002) (citing 42 U.S.C. § 1983). Therefore, a plaintiff
21 "suing a private individual under § 1983 must demonstrate that the
22 private individual acted under color of state law Section
23 1983 liability attaches only to individuals who carry a badge of
24 authority of a State and represent it in some capacity." Id.
25 (quotations and citations omitted). Therefore, section 1983 "excludes
26 from its reach merely private conduct, no matter how discriminatory or
27 wrongful." Am. Mrfs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50
28 (1999) (quotations and citation omitted). However, "[a] private

1 individual may be liable under § 1983 if she conspired or [engaged in]
2 joint action with a state actor." Franklin, 312 F.3d at 441 (citation
3 omitted).

4 Plaintiff alleges Girard was "an attorney at law, the
5 District's legal advisor for personnel matters and was responsible for
6 investigating personnel matters within WPUSD, advising and directing
7 WPUSD and its administrators and drafting charges for disciplinary
8 matters when deemed appropriate." (FAC ¶ 11.) Plaintiff further
9 alleges Girard "conspired" with the other defendants to bring false
10 charges against him. (FAC ¶ 17.)

11 These allegations, however, are insufficient to show that
12 Girard acted under the color of state law as required to allege a
13 section 1983 claim against Girard. "Plaintiff's conclusory
14 allegations that [Girard] was conspiring with state officers . . . are
15 insufficient" to show that Girard was engaged in any joint action with
16 state actors. Simmons v. Sacramento County Superior Court, 318 F.3d
17 1156, 1161 (9th Cir. 2003) (quotations and citations omitted);
18 Degrassi v. City of Glendora, 207 F.3d 636, 647 (9th Cir. 2000)
19 (stating that "a bare allegation of . . . joint action will not
20 overcome a motion to dismiss" (quotation and citations omitted)); see
21 also Samad v. Adraktas, No. S-09-2425-GEB-EFB, 2010 WL 235101, at *1
22 (E.D. Cal. Jan. 20, 2010) (stating that "[a]ttorneys in private
23 practice are not state actors, and therefore do not act under color of
24 state law"). Since Plaintiff has not alleged facts demonstrating that
25 Girard acted under color of state law, Plaintiff's first and sixth
26 claims against Girard are dismissed.

27 //

28 //

b. Third Claim Under 42 U.S.C. § 1985(2)

Girard further argues Plaintiff's third claim alleged under 42 U.S.C. § 1985(2) should be dismissed since Plaintiff has not alleged a conspiracy motivated by racial or other class-based animus. (Girard Mot. to Dismiss 2:20-23.) In his opposition brief, Plaintiff "concedes that [his] Third Cause of Action should be dismissed with prejudice." (Opp'n to Girard Mot. to Dismiss 13:22-23.) Therefore, this claim is dismissed.

c. The Noerr-Pennington Doctrine

Girard alternatively argues all of Plaintiff's federal claims should be dismissed under the Noerr-Pennington doctrine. However, since Plaintiff's federal claims have been dismissed on other grounds, the applicability of this doctrine need not be reached.

2. Plaintiff's State Law Claims Alleged Against Girard

a. Second Claim for Violation of the Free Speech Clause of the California Constitution

Girard argues Plaintiff's second claim, alleged under the free speech clause of the California constitution, should be dismissed since Plaintiff's first amended complaint fails to sufficiently allege that Girard is a state actor. (Girard Mot. to Dismiss 2:9-13.) Plaintiff responds that his allegations demonstrating that Girard acted under color of law for purposes of section 1983 and are sufficient to show that Girard was a state actor. (Opp'n to Girard Mot. to Dismiss 12:23-25.)

California's free speech clause predicates a violation upon state action. See Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n, 26 Cal. 4th 1013, 1023 (2001). Therefore, "proper constitutional analysis [of a claim under this clause] requires . . .

1 first address[ing] the threshold issue of whether . . . [the] state
2 action requirement" had been satisfied. Id. (quotations and citation
3 omitted). Since Plaintiff has not alleged that Girard's conduct
4 constitutes state action, this claim is dismissed.

5 **b. Eighth Claim for Violations of California Education Code**
6 **section 44114**

7 Girard also argues Plaintiff's claim alleged under section
8 44114 of the California Education Code ("section 44114") should be
9 dismissed since Plaintiff has not complied with the prerequisites for
10 bringing suit and Girard is not exposed to "aider and abettor
11 liability." (Girard Mot. to Dismiss 14:18-25.) Plaintiff responds
12 that he need not plead that a complaint was filed with local law
13 enforcement and that Girard "is liable for retaliating against the
14 [P]laintiff and for aiding and abetting others in that retaliation
15 whether or not their actions resulted in a wrongful termination."
16 (Opp'n to Girard Mot. to Dismiss 23:23-28.)

17 California Education Code section 44114 provides in
18 pertinent part:

19 (b) A person who intentionally engages in acts of
20 reprisal, retaliation, threats, coercion or similar
21 acts against a public school employee . . . for
22 having made a protected disclosure is subject to a
fine not to exceed ten thousand dollars (\$10,000)
and imprisonment in the county jail for a period
not to exceed one year

23 (c) In addition to all other penalties provided by
24 law, a person who intentionally engages in acts of
25 reprisal, retaliation, threats, coercion, or
26 similar acts against a public school employee . . .
27 for having made a protected disclosure shall be
liable in an action for damages brought against him
or her by the injured party. However, an action
for damages shall not be available unless the
injured party has first filed a complaint with the
local law enforcement agency.

1 Plaintiff alleges that "Defendants intentionally engaged in
2 acts of reprisal, retaliation, threats, coercion and similar acts
3 against [Plaintiff], a public school employee, for having made
4 protected disclosures of unlawful practices engaged in at WPUSD . . .
5 ." (FAC ¶ 65.) Plaintiff further alleges "Defendant [Girard] aided
6 and abetted the remaining Defendants to assist their acts of reprisal,
7 retaliation, threats, coercion and similar acts against [Plaintiff] by
8 drafting accusations against [Plaintiff] that [Girard] knew were false
9 and prepared in bad faith" (Id.) Plaintiff also alleges that
10 he "notified the Placer County Sheriff of these facts within twelve
11 months of his termination." (Id. ¶ 66.)

12 Plaintiff's claim under section 44114 fails for two reasons.
13 First, section 44114(c), which provides "an action for damages,"
14 states that no action is available "unless the injured party has first
15 filed a complaint with the local law enforcement agency." Plaintiff's
16 allegations are insufficient as he has not alleged that he filed a
17 complaint with the local law enforcement agency. Cf. Duarte v.
18 Freeland, No. C05-02780 MJJ, 2007 WL 2790591, at *11 (N.D. Cal. Sept.
19 24, 2007) (denying motion to dismiss section 44114 claim where
20 plaintiff alleged that he had filed a complaint with the police
21 department regarding the alleged statutory violation). Second,
22 Plaintiff has cited no authority suggesting that section 44144(c)
23 contemplates "aider and abettor" liability. Therefore, Plaintiff's
24 claim under section 44114 against Girard cannot be maintained and is
25 dismissed.

26 **c. Fourth Claim for Intentional Infliction of Emotional**
27 **Distress**
28

1 Girard also argues Plaintiff's intentional infliction of
2 emotional distress claim should be dismissed since Plaintiff's
3 allegations do not allege outrageous conduct and do not satisfy
4 the requisite severe distress element of the claim. Plaintiff
5 counters his allegations are sufficient since "defendant's conduct
6 specifically violated constitutional and statutory law." (Opp'n to
7 Girard Mot. to Dismiss 14:24.)

8 Under California law, "[a] cause of action for intentional
9 infliction of emotional distress exists when there is (1) extreme and
10 outrageous conduct by the defendant with the intention of causing, or
11 reckless disregard of the probability of causing, emotional distress;
12 (2) the plaintiff's suffering severe or extreme emotional distress;
13 and (3) actual and proximate causation of the emotional distress by
14 the defendant's outrageous conduct." Hughes v. Pair, 46 Cal.4th 1035,
15 1050 (2009) (quotations and citations omitted). "A defendant's
16 conduct is outrageous when it is so extreme as to exceed all bounds of
17 that usually tolerated in a civilized community." Id. at 1050-51.

18 Plaintiff alleges "[t]he conduct of Defendants in acting in
19 concert to make false accusations of sexual harassment against
20 [Plaintiff] in pursuit of his termination through disciplinary
21 proceedings . . . and in retaliation for his reports to the Placer
22 County Grand Jury and to the WPUSD Board . . . was unlawful, extreme
23 and outrageous and was undertaken intentionally or in reckless
24 disregard of the probability of causing emotional distress to
25 Plaintiff." (FAC ¶ 46.) Further, Plaintiff alleges that defendants
26 conduct "did in fact cause Plaintiff to suffer extreme emotional
27 distress" including "embarrassment, anxiety, humiliation, and
28 emotional distress, and [he] will continue to suffer said emotional

1 distress in the future" (Id. ¶ 48.) Plaintiff specifically
2 alleges that Girard "draft[ed] false charges of sexual harassment
3 against [Plaintiff]" and drafted charges against Plaintiff for
4 "reporting misuse of public funds and criminal activity" within the
5 WPUSD. (Id. ¶ 9.)

6 Plaintiff, however, has cited no authority suggesting that
7 even if his allegations concerning Girard's conduct are true, they are
8 sufficiently "outrageous" to give rise to an intentional infliction of
9 emotional distress claim. "*Tortious* or even criminal conduct that
10 would give rise to punitive damages for another tort, will not
11 necessarily be sufficient to give rise to a claim for intentional
12 infliction of emotional distress." Cantu v. Resolution Trust Corp., 4
13 Cal. App. 857, 888 n.14 (1992). In Cantu, the California Appellate
14 Court upheld the trial court's dismissal of the plaintiff's
15 intentional infliction of emotional distress claim under which
16 plaintiff alleged that "[d]efendants [had] maliciously named [him] as
17 a party to their litigation" and had filed false declarations and
18 pleadings. Id. The court held that the plaintiff could "state no
19 cause of action for intentional infliction of emotional distress, even
20 if defendants submitted perjurious and malicious declarations or
21 pleadings." Id. Therefore, even if Plaintiff's allegations against
22 Girard are true, Girard's alleged conduct is not sufficiently
23 outrageous to give rise to a claim of intentional infliction of
24 emotional distress. Accordingly, this claim is also dismissed.

25 **d. Fifth Claim for Negligence**

26 Girard further argues Plaintiff's fifth claim alleging
27 negligence should also be dismissed since Plaintiff has not pled facts
28 sufficient to establish that Girard, as WPUSD's legal counsel, owed

1 him a duty of care. Plaintiff responds: "Each of the defendants had a
2 duty to comply with the law and [D]efendant Girard's violations of the
3 constitutional standards and statutory requirements were breaches of
4 those duties." (Opp'n to Girard's Mot. to Dismiss 22:10-12.)
5 Plaintiff further argues, Girard "had a duty to conduct an appropriate
6 investigation and to proceed on allegations that were honest and not
7 arbitrary or pretextual." (Id. 22:13-17.)

8 "The elements of a cause of action for negligence are: the
9 defendant had a duty to use due care, . . . he or she breached that
10 duty, and . . . the breach was the proximate or legal cause of the
11 [plaintiff's] resulting injury." Vasquez v. Residential Invs., Inc.,
12 118 Cal. App. 4th 269, 278 (2004). "[T]he threshold element of a
13 cause of action for negligence is the existence of a duty to use due
14 care toward an interest of another Whether this essential
15 prerequisite has been satisfied in a particular case is a question of
16 law." Glenn K. Jackson, Inc. v. Roe, 273 F.3d 1198, 1196-97 (9th Cir.
17 2001) (quotations and citations omitted) (applying California law).

18 Plaintiff alleges "Defendants owed a duty to act reasonably,
19 to fairly and in good faith investigate the 2007 claim of sexual
20 harassment against [Plaintiff], to fairly and in good faith review
21 [Plaintiff's] service to WPUUSD, and to prevent violation of
22 [Plaintiff's] property rights and Constitutional Rights" and "[t]hey
23 breached this duty" as otherwise alleged in the complaint. (FAC ¶
24 50.)

25 Plaintiff has provided no authority suggesting that as the
26 WPUUSD's lawyer, Girard owed a duty of care to Plaintiff which could
27 give rise to a claim of negligence. Further, under California law, an
28 opposing party's counsel owes no duty of professional care to non-

clients. Fox v. Pollack, 181 Cal. App.3d 954, 962 (1986). Therefore, Plaintiff's negligence claim is dismissed.

//

e. Compliance with California Civil Code section 1714.10 and the Litigation Privilege

Girard alternatively argues all of Plaintiff's state law claims should be dismissed because Plaintiff has failed to comply with California Civil Code section 1714.10 and that all of his claims are barred by the "litigation privilege" provided in California Civil Code section 47(b). However, since all of Plaintiff's state law claims have been dismissed on other grounds, these arguments are not reached.

3. Leave to Amend

Girard requests that dismissal of Plaintiff's claims be with prejudice. "The power to grant leave to amend . . . is entrusted to the discretion of the district court, which determines the propriety [of allowing amendment] . . . by ascertaining the presence of any of four factors: bad faith, undue delay, prejudice to the opposing party, and/or futility." Serra v. Lappin, 600 F.3d 1191, 1200 (9th Cir. 2010) (citing William O. Gilley Enters. v. Atl. Richfield Co., 588 F.3d 659, 669 n.8 (9th Cir. 2009)). Plaintiff has already amended his claims against Girard and yet has been unable to cure the deficiencies identified in the prior dismissal order. Plaintiff "presented no new facts . . . and provided no satisfactory explanation for his failure to fully develop his contentions" William O. Gilley Enters., 588 F.3d at 669 n.8 (quotations and citations omitted). Therefore, amendment would be futile and Plaintiff's claims alleged against Girard are dismissed with prejudice.

B. Girard's Rule 12(f) Motion to Strike

1 Since all of Plaintiff's claims alleged against Girard are
 2 dismissed with prejudice, Girard's Rule 12(f) motion to strike certain
 3 portions of Plaintiff's first amended complaint is denied as moot.

4 //

5 **C. Girard's Anti-SLAPP Motion**

6 Girard also filed a motion under California's anti-SLAPP
 7 statute to strike Plaintiff's second, fourth, fifth and eighth claims,
 8 all alleged under California law. Since a defendant who prevails on
 9 an anti-SLAPP motion is entitled to recover mandatory attorney's fees,
 10 the dismissal of Plaintiff's claims against Girard does not moot
 11 Girard's anti-SLAPP motion. Bhambra v. True, No. C 09-4685 CRB, 2010
 12 WL 1758895, at *1 (N.D. Cal. Apr. 30, 2010) (stating that a "12(b)(6)
 13 dismissal does not moot a[n] [anti-SLAPP] motion to strike"); White v.
 14 Lieberman, 103 Cal. App. 4th 210, 220 (2002) (holding that trial
 15 court's demurrer without leave to amend did not moot anti-SLAPP motion
 16 since a defendant who prevails on an anti-SLAPP motion is entitled to
 17 mandatory attorney's fees); cf. Pandora Jewelry, LLC v. Bello
 18 Paradiso, LLC, No. CIV S-08-3108, 2009 WL 1953468, at *3 (E.D. Cal.
 19 July 1, 2009) (finding that plaintiff's voluntary dismissal of state
 20 law claims did not moot anti-SLAPP motion).

21 **1. Protected Activity**

22 Girard argues all of Plaintiff's "allegations against [him]
 23 . . . are based on the legal services [he] provided to WPUSD as [its]
 24 outside legal counsel to handle the administrative process that
 25 eventually resulted in [Plaintiff's] termination." (Girard's anti-
 26 SLAPP Motion to Strike 17:12-17.) Girard further contends that
 27 "[t]his conduct qualifies as a matter related to, or in anticipation
 28 of, official proceedings, satisfying the first prong of the anti-SLAPP

1 test [under California Civil Procedure Code 425.16(e)(2)]." (Id.
2 17:12-17.) Plaintiff counters since Girard's alleged conduct is
3 illegal as a matter of law, it is not protected by the anti-SLAPP
4 statute.

5 To prevail on his anti-SLAPP motion, Girard "must make a
6 threshold showing that the challenged cause[s] of action . . . aris[e]
7 from protected activity, i.e., that the act or acts of which the
8 [plaintiff] complains were taken in furtherance of the [defendant's]
9 right of petition or free speech under the United States or California
10 Constitution in connection with a public issue as defined in the
11 statute." Pandora Jewelry, 2009 WL 1953468, at *2 (quoting Equilon
12 Enterprises v. Consumer Cause, Inc., 29 Cal. 4th 53, 67 (2002)). "A
13 defendant meets this burden by demonstrating that the act underlying
14 the plaintiff's cause [of action] fits one of the categories spelled
15 out in section [425.16(e)]." Navellier v. Sletten, 29 Cal. 4th 82, 88
16 (2002) (quotations and citations omitted); see also Governor Gray
17 Davis Comm. v. Am. Taxpayers Alliance, 102 Cal. App. 4th 449, 458
18 (2002) (stating that "the critical point is whether the plaintiff's
19 cause of action itself was based on an act in furtherance of the
20 defendant's right of petition or free speech" (emphasis in original)).
21 Specifically at issue is section 425.16(e)(2), which protects "any
22 written or oral statement or writing made in connection with an issue
23 under consideration or review by a legislative, executive, or judicial
24 body, or any other official proceeding authorized by law."

25 However, the anti-SLAPP statute "cannot be invoked by a
26 defendant whose assertedly protected activity is illegal as a matter
27 of law and, for that reason, not protected by constitutional
28 guarantees of speech and petition." Flatley v. Mauro, 29 Cal. 4th

1 299, 317 (2006). An act is "illegal" if it is "forbidden by law."
2 Soukup v. Law Offices of Herbert Hafif, 39 Cal. 4th 260, 283 (2006)
3 (quotations and citations omitted). "[W]hether the defendant's
4 underlying conduct [is] illegal as a matter of law is preliminary, and
5 unrelated to the second prong question of whether the plaintiff has
6 demonstrated a probability of prevailing" Flatley, 29 Cal.
7 4th at 320.

8 Girard seeks to strike Plaintiff's state law claims,
9 including Plaintiff's claims of negligence, intentional infliction of
10 emotional distress, and for violation of the California constitution
11 and California Education Code section 44114. Plaintiff's state claims
12 against Girard arise from Girard's alleged drafting of false and
13 unsupported charges against Plaintiff for the purpose of initiating
14 administrative proceedings that ultimately resulted in Plaintiff's
15 termination. (FAC ¶¶ 9, 11, 24, 65.)

16 Girard argues what he is alleged to have done constitutes
17 protected activity since the charges were drafted in connection with
18 an official proceeding required by law. Plaintiff does not dispute
19 that Girard's actions occurred in connection with an official
20 proceeding. Rather, Plaintiff contends Girard's actions are not
21 protected because they are illegal as a matter of law under 42 U.S.C.
22 § 1983, California Education Code section 44114 and California Civil
23 Code section 52.1(b). Further, Plaintiff contends that under the Rule
24 12(b)(6) standard, "the court must accept as true the plaintiff's
25 allegations that defendant['s] conduct was illegal." (Opp'n to anti-
26 SLAPP 7:21-22.)

27 Since "[s]tatutory hearing procedures qualify as official
28 proceedings authorised by law for section 425.16 purposes[,]" Girard's

1 drafting of charges was in connection with an official proceeding and
2 protected under section 425.16(e)(2). Vergos v. McNeal, 146 Cal. App.
3 4th 1387, 1396 (2007) (holding that statements and conduct of a
4 hearing officer denying plaintiff's grievances were protected by
5 section 425.16(e)(2)). Further, Girard's action does not lose its
6 protected status due to Plaintiff's allegations that his conduct was
7 illegal. Even when Plaintiff's allegations are assumed to be true,
8 they do not constitute illegal conduct under the statutory and
9 constitutional provisions on which Plaintiff relies. See also
10 Bulletin Displays, LLC v. Regency Outdoor Advertising, Inc., 448 F.
11 Supp. 2d 1172, 1185 (C.D. Cal. 2006) (stating that "[w]here the
12 parties to an anti-SLAPP motion dispute the legality of the
13 defendant's [alleged] actions, and the plaintiff cannot establish as a
14 matter of law that the actions were illegal, then the claimed
15 illegitimacy of the defendant's acts is an issue which the plaintiff
16 must raise and support in the context of the . . . discharge of the
17 plaintiff's burden to provide a prima facie showing of the merits of
18 the plaintiff's case." (quoting Paul for Council v. Ricki Hanyecz, 85
19 Cal. App. 4th 1356, 1366-67 (2001), overruled on other grounds by
20 Equilon Enters. v. Consumer Cause, Inc., 29 Cal. 4th 53 (2002))).
21 Therefore, Plaintiff has not shown that Girard's alleged activities
22 were illegal as a matter of law. Accordingly, Girard has made the
23 required threshold showing that his action constitutes protected
24 activity.

25 **2. Probability of Prevailing**

26 Under the second prong of the anti-SLAPP analysis, Plaintiff
27 bears the burden of showing a minimal probability of success on his
28 claims against Girard. However, since Plaintiff's claims against

1 Girard have "already been dismissed . . . with prejudice," "Plaintiff
 2 does not enjoy a probability of success. On the contrary, as
 3 Plaintiff's [claims against Girard] have been dismissed with
 4 prejudice, Plaintiff has by definition failed." Bhambra, 2010 WL
 5 1758895, at *2. Therefore, Girard's anti-SLAPP motion to strike is
 6 granted.

7 **D. Defendants Leaman, Allen, Noyes and the WPUSD's Motion to Dismiss**

8 The School District Defendants also seek dismissal of
 9 Plaintiff's first amended complaint under Federal Rule of Civil
 10 Procedure 12(b)(6).

11 **1. Claims Against the Individual Defendants**

12 The School District Defendants first argue California
 13 Government Code sections 820.2 and 821.6 bar Plaintiff's claims
 14 alleged against Defendants Leaman, Allen and Noyes. (School District
 15 Defs.' Mot. to Dismiss 10:10-11:12; Reply 5:7-10.) Plaintiff rejoins
 16 statutory immunity does not attach where public employees have pursued
 17 administrative action in retaliation for whistle-blowing activity.
 18 (Opp'n to School District Defs.' Mot. to Dismiss 11:19-26.)

19 California Government Code section 821.6 provides that "[a]
 20 public employee is not liable for injury caused by his instituting or
 21 prosecuting any judicial or administrative proceeding within the scope
 22 of his employment, even if he acts maliciously and without probable
 23 cause." "The immunity conferred by section 821.6 is not limited to
 24 peace officers and prosecutors but has been extended to public school
 25 officials" Stamas v. County of Madera, No. CV F 09-0753 LJO
 26 SMS, 2010 WL 289310, at *8 (E.D. Cal. Jan. 15, 2010) (quoting Javor v.
 27 Taggart, 98 Cal. App. 4th 795, 808 (2002)). California Government
 28 Code section 820.2 "provides a more general immunity from liability

1 for acts of public employees in the exercise of discretion vested in
2 them. It follows that if section 821.6 applies, so does section
3 820.2." County of Los Angeles v. Superior Court, 181 Cal. App. 4th
4 218, 228 (2009); see also Cal. Gov't Code § 820.2 (stating that
5 "[e]xcept as otherwise provided by statute, a public employee is not
6 liable for an injury resulting from his act or omission where the act
7 or omission was the result of the exercise of the discretion vested in
8 him, whether or not such discretion be abused.")

9 Plaintiff alleges that Defendant Leaman was "the
10 Superintendent of WPUSD"; Defendant Allen was "the Assistant
11 Superintendent of WPUSD"; and Defendant Noyes was "the Assistant
12 Superintendent of WPUSD." (FAC ¶¶ 9, 10, 12.) Further, "[t]he
13 gravamen of [Plaintiff's] claims is that, acting out of discriminatory
14 and retaliatory motives, [these individual Defendants] . . . initiated
15 and prosecuted administrative proceedings to discipline or discharge
16 [Plaintiff] based on accusations they knew to be false. Such acts by
17 [public school officials] are immune from liability under section
18 821.6" Ross v. San Francisco Bay Area Rapid Transit. Dist.,
19 146 Cal. App. 4th 1507, 1516 (2007) (holding that section 821.6 barred
20 plaintiff's common law claim for wrongful termination in violation of
21 public policy); see also Hansen v. Cal. Dep't of Corr. & Rehab., 171
22 Cal. App. 4th 1537, 1547 (2008) (stating that under section 821.6,
23 "public employees, acting within the scope of their employment, and
24 the public entity, are immune from tort liability for any acts done by
25 the employees in preparation for formal judicial or administrative
26 proceedings, including investigation of alleged wrongdoing, and for
27 any acts done to institute and prosecute such formal proceedings");
28 Kemmerer v. County of Fresno, 200 Cal. App. 3d 1426 (1988) (finding

1 that public employees who initiated and prosecuted administrative
2 proceedings that resulted in plaintiff's termination were immune from
3 tort liability under section 821.6). Therefore, Defendants Leaman,
4 Allen and Noyes are immune from Plaintiff's state tort claims under
5 California Government Code section 821.6, and those claims are
6 dismissed with prejudice. However, the School District Defendants
7 have not shown that either sections 821.6 or 820.2 warrant dismissal
8 of Plaintiff's claims against the individual defendants alleged under
9 statute or the state or federal constitution.

10 **2. Plaintiff's First, Second, Sixth, Seventh, Eighth and Ninth**
11 **Claims**

12 The School District Defendants also argue Plaintiff's first,
13 second, sixth, seventh, eighth and ninth claims should be dismissed
14 since the WPUSD had legitimate, non-retaliatory grounds for
15 terminating Plaintiff. The School District Defendants rely upon the
16 Hearing Officer's Modified Findings and Recommendation to the Board of
17 Trustees as support for the motion. Plaintiff counters the Hearing
18 Officer's report is not entitled to a conclusive presumption of truth
19 since Plaintiff has filed a petition for a writ of mandate in the
20 Placer County Superior Court challenging his termination and the
21 Hearing Officer's findings. (Opp'n to WPUSD Mot. to Dismiss 9:9-23.)
22 The School District Defendants reply that "the Federal Action [should
23 be stayed] pending the ruling on the Writ of Mandate as it may be
24 determinative of both actions." (School District Defs.' Reply 3:23-
25 42.)

26 Since the Hearing Officer's Findings and Recommendation are
27 not yet binding on this court, the report does not provide a basis for
28 dismissing Plaintiffs' first, second, sixth, seventh, eighth or ninth

1 claims alleged against the School District Defendants. Therefore, the
2 School District Defendants' motion to dismiss these claims is denied.
3 Further, since the School District Defendants' request for a stay was
4 raised for the first time in their reply brief, that issue is not
5 reached.

6
7 **3. Plaintiff's Third Claim Under 42 U.S.C. § 1985(2)**

8 The School District Defendants also argue Plaintiff's third
9 claim for conspiracy to violate Plaintiff's civil rights should be
10 dismissed because, as employees of WPUSD, Defendants could not
11 conspire with each other under state law. Plaintiff "concedes" that
12 he cannot maintain this claim and it is accordingly dismissed with
13 prejudice. (Opp'n to School District Defs.' Mot. to Dismiss 13:18-22.)

14 **4. Plaintiff's Fourth Claim for Intentional Infliction of Emotional**
15 **Distress and Fifth Claim for Negligence**

16 The School District Defendants further argue Plaintiff's
17 intentional infliction of emotional distress and negligence claims
18 alleged against the WPUSD should be dismissed since the WPUSD cannot
19 be held vicariously liable where its employees are immune from
20 liability. Plaintiff disputes that the individual defendants are
21 immune from liability.

22 California Government Code section 815.2(b) provides:
23 "[e]xcept as otherwise provided by statute, a public entity is not
24 liable for an injury resulting from an act or omission of an employee
25 of the public entity where the employee is immune from liability."
26 Therefore, under California Government Code section 815.2(b), the
27 WPUSD cannot be held vicariously liable "if [its] employee[s] [are]
28 immune from liability." Richards v. Dep't of Alcoholic Beverages

Control, 139 Cal. App. 4th 304, 317 (2006) (holding that Department of Alcoholic Beverages Control could not be held liable for plaintiff's claims, in part, because individual employees were immune); see also Jacqueline T. v. Alameda County Child Protective Servs., 155 Cal. App. 4th 456, 469 (2007) ("Though sections 821.6 and 820.2 expressly immunize only the employee, if the employee is immune, so too is the [employer]."). Since the individual Defendants are immune from state tort liability under section 821.6, WPUSD cannot be held vicariously liable for Plaintiff's state negligence or intentional infliction of emotional distress claims. See Hansen, 171 Cal. App. 4th at 1547 (holding that public entity could not be held liable for intentional infliction of emotional distress where employees were immune under section 821.6). Therefore, Plaintiff's intentional infliction of emotional distress and negligence claims alleged against the WPUSD are dismissed with prejudice.

5. Plaintiff's Tenth and Eleventh Claims for Violations of the California Labor Code Sections 1102.5(a), (b) & (e)

The School District Defendants lastly argue Plaintiff's California Labor Code claims alleged against the WPUSD should be dismissed under Lloyd v. County of Los Angeles, 172 Cal. App. 4th 320 (2009), since these claims are barred by California Government Code section 815(a). (School District Defs.' Mot. to Dismiss 17-19.) Plaintiff counters Lloyd and section 815(a) are inapplicable since Plaintiff's claims are brought under statute and not common law.

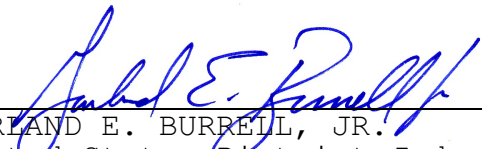
California Government Code section 815(a) provides that "[a] public entity is not liable for an injury" "[e]xcept as otherwise provided by statute." Section 815(a), therefore, "abolishes common law tort liability for public entities." Lloyd, 172 Cal. App. 4th at

1 329. In Lloyd, the California Appellate Court held that California
2 Government Code section 815(a) barred the plaintiff's "common law
3 claims . . . for retaliation in violation of public policy"
4 Id. at 329. Lloyd, however, did not hold that California Government
5 Code section 815(a) confers immunity on public entities for statutory
6 claims brought under the California Labor Code. Cf. Chapin v.
7 Aquirre, No. 05CV1906 R(POR), 2007 WL 1660740, at *8 (S.D. Cal. June
8 7, 2007) (finding that a similar governmental immunity provision does
9 not bar claims alleged under California Labor Code § 1102.5). The
10 School District Defendants, therefore, have not shown that any
11 governmental immunity provision bars Plaintiff's California Labor Code
12 claims alleged against the WPUSD and this portion of their dismissal
13 motion is denied.

14 IV. CONCLUSION

15 For the reasons stated above, Defendant Girard's 12(b)(6)
16 dismissal motion is granted, his Rule 12(f) motion to strike is denied
17 as moot and his anti-SLAPP motion to strike is granted. The School
18 District Defendants' motion to dismiss is granted and denied in part.

19 Dated: May 27, 2010

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22 _____
GARLAND E. BURRELL, JR.
United States District Judge
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