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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 FELIX SALCIDO,

15 Plaintiff,

16 v.

17 CITY OF MOUNTAIN VIEW, et al.

18 Defendants.

19 **Case No.: 5:24-CV-08833-NC**

20 **DEFENDANT ELLEN KAMEI'S NOTICE**
21 **OF MOTION AND SPECIAL MOTION TO**
22 **STRIKE PLAINTIFF'S FIRST AMENDED**
23 **COMPLAINT PURSUANT TO CAL. CODE**
24 **CIV. PRO. §425.16**

25 **DATE: April 2nd, 2025**

26 **TIME: 11:00 a.m.**

27 **COURTROOM: Courtroom 5-4th Floor**

28 **Hon. Nathanael M. Cousins**

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NOTICE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on April 2nd, 2025, at 11:00 a.m. or as soon thereafter as can be heard, in Courtroom 5, 4th Floor, located at 280 South 1st Street, San Jose, California, Defendant ELLEN KAMEI (“Ms. Kamei”) will move the court for an order striking Plaintiff FELIX SALCIDO’S (“Plaintiff”) First Amended Complaint (“FAC”) as it applies to him under California Code of Civil Procedure § 425.16.

As set forth more fully in the memorandum of points and authorities filed herewith, this motion is brought on the grounds that Plaintiff’s suit arises from Ms. Kamei’s protected activities under the anti-SLAPP statute. This motion is made upon the further grounds that Plaintiff cannot demonstrate the probability of prevailing on the merits of any causes of action against Ms. Kamei.

If the motion is successful, Ms. Kamei intends to file a separate motion for attorney’s fees and costs pursuant to California Code of Civil Procedure § 425.16(c.)

In accordance with Code of Civil Procedure 425.16(j), a copy of this motion will be transmitted by email to the Judicial Council.

This motion is based upon this Notice, the following Memorandum of Points and Authorities, the Request for Judicial Notice filed herewith, the pleadings filed herein, and all other matters and arguments of counsel received by this court prior to and at the hearing on the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT AND STATEMENT OF ISSUES TO BE DECIDED

Plaintiff FELIX SALCIDO (hereinafter, “Plaintiff”) filed a FAC against Defendants CITY OF MOUNTAIN VIEW, CHRISTOPHER GOFF, ELLEN KAMEI, and CHRISTOPHER TAKEUCHI. As to Ms. Kamei, Plaintiff has alleged two causes of action: a cause of action for a violation of California Civil Code § 52.1 (Bane Act) and a second cause of action for “Fourth Amendment (42 U.S.C. § 1983)” arising out of an alleged incident that occurred on April 13, 2023. Plaintiff’s claims all arise out of Ms. Kamei allegedly notifying the police that her vehicle had been towed. Plaintiff’s FAC fails to allege facts sufficient to state a cognizable right to relief on any of his claims against Ms. Kamei and, accordingly, Plaintiff’s FAC should be stricken *in toto*. Such an action is proper because:

1 1) Accepting the allegations of the FAC as true, Plaintiff has brought suit against Ms. Kamei for
2 activities protected by the anti-SLAPP statute; and

3 2) Plaintiff cannot demonstrate a probability of prevailing on the merits against Ms. Kamei.

4 Notably, Plaintiff has stipulated to an extension of time such this this motion is timely and the court
5 has ordered the same. (Ex. C to Request for Judicial Notice (“RJN”).)

6 **II. STATEMENT OF FACTS ALLEGED BY PLAINTIFF**

7 Notably, since the filing of the FAC, Plaintiff has stipulated that Ms. Kamei is being sued “in her
8 individual capacity as someone acting under color law only.” (Ex. C to RJN)

9 Plaintiff alleges that he was working as a tow truck drive for Ed’s Tow & Cradle in Mountain
10 View, CA on April 12, 2023 and that Ed’s Tow & Cradle had a contract for towing with an entity at 745
11 Evelyn Ave. Mountain View, CA. (FAC ¶¶ 12-14,) Plaintiff further alleges that Ms. Kamei and Mr.
12 Takeuchi disregarded certain warning signs and parked in a reserved parking spot improperly. (FAC ¶¶
13 16-18.) Plaintiff further alleges that he came across Mr. Takeuchi and his wife’s vehicle and towed it per
14 the agreement. (FAC ¶¶ 19.) Plaintiff also towed two other vehicles from the same lot. (FAC ¶ 21.)

15 Plaintiff further alleges that Ms. Kamei and Mr. Takeuchi became “infuriated” upon learning the
16 car had been towed and went to the tow shop to pick up their vehicle, arriving around 8:45 p.m. (FAC ¶
17 24.) Plaintiff further alleges that when Mr. Takeuchi appeared at the tow yard, Mr. Takeuchi tried to use
18 his own driver’s license to obtain the vehicle but that the vehicle was not registered in his name. (FAC ¶
19 25.) Plaintiff additionally alleges that after learning the vehicle could not be released using his driver’s
20 license he became “even more enraged” and that his “aggressive demeanors” made Plaintiff
21 uncomfortable and fearful for his safety. (FAC ¶ 26.) Plaintiff also alleges that Mr. Takeuchi then
22 repeatedly asked Ms. Kamei to “call the captain.” (FAC ¶ 27.) Notably, Plaintiff does not allege that Mr.
23 Takeuchi said “police captain.” Plaintiff further alleges that Mr. Takeuchi’s demands that a captain be
24 called and not a general 9-1-1 operator further frightened, intimidated, and scared him. (FAC ¶¶ 28, 29.)

25 Plaintiff further alleges that Ms. Kamei was the registered owner of the vehicle and showed her ID
26 to pick up the car. (FAC ¶ 30.) Plaintiff also alleges that Ms. Kamei asked why she was towed and stated,
27 “I looked up that company, that’s not even a real company, you can’t even find them online.” (FAC ¶ 32.)
28

1 Plaintiff goes on to allege that Ms. Kamei and Mr. Takeuchi paid their tow bill and left with their vehicle.
2 (FAC ¶ 35.)

3 Plaintiff additionally alleges that Ms. Kamei and Mr. Takeuchi “jointly reached out to Kamei’s
4 contacts at the Mountain View Police Department to complain about the tow and specially to get back at
5 Mr. Salcido.” (FAC ¶ 36.) The FAC contains no allegation as to when this alleged contact took place or
6 who these contacts were. Plaintiff also alleges that Defendant Kamei used her position, status, and access
7 as a city council member to make such contact. (¶ 37.) Plaintiff also alleges that “the average private
8 citizen does not have the ability to easily contact high ranking police department officials in the middle of
9 the night” but Plaintiff provides no specific allegation as to any specific law enforcement official that Mr.
10 Takeuchi allegedly “reached out to.” (FAC ¶¶ 38) Plaintiff alleges “upon information and belief” Mr.
11 Takeuchi falsely claimed his wife’s vehicle had been illegally towed. (FAC ¶ 39.) Plaintiff also alleges
12 Ms. Kamei falsely alleged that “they [sic] were illegally towed” (FAC 16:18) but does not include
13 anywhere in the FAC an allegation as to who such a statement was made.

14 Plaintiff further alleges that a City of Mountain View law enforcement officer, Defendant Sgt.
15 CHRISTOPHER GOFF (“Goff”), was notified of *potential* unlawful towing that had been occurring at
16 745 Evelyn Ave at 6:45 a.m. (assumedly, though not alleged, the next morning.) (FAC ¶ 40.) Plaintiff
17 goes on to allege that the “initial notification to the police department” came from Ms. Kamei and Mr.
18 Takeuchi and that they did not use “normal channels” to report their complaints. (FAC ¶¶ 42, 43.) Plaintiff
19 goes on to allege that Ms. Kamei and Mr. Takeuchi reported their “demands and complaints” to a high
20 ranking official at the Mountain View Police Department and had Goff assigned to the case with directives
21 not to include Ms. Kamei and Mr. Takeuchi as part of the “official paper trail investigation.” (FAC ¶ 45.)

22 Plaintiff then alleges that Goff, not Ms. Kamei, investigated the issues. (FAC ¶¶ 48-58.) Plaintiff
23 further alleges that Goff, not Ms. Kamei, then contacted Plaintiff, interrogated him, and accused him of
24 performing improper tows. (FAC ¶ 56.) Plaintiff further alleges that Goff, not Ms. Kamei, then contacted
25 other vehicle owners other than Ms. Kamei or Mr. Takeuchi, to claim that their vehicles had been subject
26 to an illegal tow. (FAC ¶ 62.) Plaintiff further alleges that Goff encouraged the owner of a Tesla that was
27 towed on 4/12/23 to “press charges” against Mr. Salcido. (FAC ¶ 66.) Plaintiff does not allege that he was
28

1 prosecuted for towing the vehicle Ms. Kamei owned. Plaintiff further alleges that he was “subject to
2 arrest” and charged with a violation of CVC 10851(a.) (FAC ¶ 78.)

3 Plaintiff further alleges Ms. Kamei and Mr. Takeuchi used their “own channels and maneuvers” to
4 have Goff assigned to the case and that Goff used intimidation to prevent Plaintiff from insisting on his
5 rights and behaved in other ways that intimidated him. (FAC ¶ 46.) Plaintiff further alleges that Goff, not
6 Ms. Kamei, detained him in violation of his Fourth Amendment rights. (FAC ¶ 47.) Finally, Plaintiff
7 alleges that Ms. Kamei and Mr. Takeuchi somehow interfered with his Fourth Amendment right to be free
8 of unreasonable searches and seizures by using their “political connections” with the “captain” to pursue
9 a criminal investigation against him. (FAC ¶ 48.)

10 Plaintiff does not allege that Ms. Kamei contacted Goff at any time or that Defendant Goff
11 contacted Mr. Takeuchi at any time. Plaintiff does not allege that Ms. Kamei ever gave any statements
12 with regard to Goff’s investigation of the alleged improper towing. Plaintiff does not allege that Ms.
13 Kamei made any untrue statements to Goff. Plaintiff does not allege that Ms. Kamei initiated or procured
14 the arrest. Plaintiff does not allege that Ms. Kamei initiated or procured Plaintiff’s prosecution.

15 III. LEGAL ARGUMENT

16 A. Nature of the anti-SLAPP Statute (CCP §425.16.)

17 The underlying objective of Plaintiff’s suit is to threaten, intimidate, suppress, and punish Mr.
18 Takeuchi for reporting potentially unlawful tow activity to the Mountain View Police Department.

19 A motion to strike under California’s anti-SLAPP (strategic lawsuit against public participation)
20 statute is available to defendants in federal court. *Graham-Sult v. Clainos*, C.A.9 (Cal.)2014, 756 F.3d
21 724.

22 California’s anti-SLAPP statute requires a trial court to undertake a two-step process. First, the
23 court decides whether the defendant can meet his burden of demonstrating a threshold showing that the
24 defendants’ acts were taken in furtherance of the Student Defendants’ constitutional rights of petition or
25 free speech in connection with a public issue; and second, if the court finds that the defendants have made
26 the requisite showing, the burden then shifts to the plaintiff to establish a “probability” of prevailing on the
27 claims by making a prima facie showing of facts that would, if proved, support a judgment in the
28 plaintiff’s favor. *Kashian v. Harriman* (2002) 98 Cal.App.4th 892; *ComputerXpress, Inc. v. Jackson*

1 (2001) 93 Cal.App.4th 993, 999. “In assessing the probability of prevailing, a court looks to the evidence
 2 that would be presented at trial, similar to reviewing a motion for summary judgment; a plaintiff cannot
 3 simply rely on its pleadings, even if verified, but must adduce competent, admissible evidence.” *Roberts v.*
 4 *Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 613–14.

5 Plaintiff’s causes of action against Ms. Kamei should be stricken pursuant to CCP §425.16 (e)(1)
 6 and (e)(2.)

7 **B. Plaintiff’s causes of action are based on activities protected by the anti-SLAPP statute.**

8 Communications to the police are protected under the anti-SLAPP statute:

9 The law is that communications to the police are within SLAPP. (Walker
 10 v. Kiouis (2001) 93 Cal.App.4th 1432, 1439, 114 Cal.Rptr.2d 69 [FAC to
 11 police is “made in connection with an official proceeding *942 authorized
 12 by law”]; Chabak v. Monroy (2007) 154 Cal.App.4th 1502, 1511, 65
 13 Cal.Rptr.3d 641 [in action by physical therapist against client alleging
 14 false report of child abuse, client’s “statements to the police clearly arose
 15 from protected activity”]; see generally *ComputerXpress, Inc. v. Jackson*
 16 (2001) 93 Cal.App.4th 993, 1009, 113 Cal.Rptr.2d 625 [filing FAC with a
 17 government agency constitutes a “statement before an official proceeding”
 18 within section 425.16, subdivision (e)(1)]; *Lee v. Fick* (2005) 135
 19 Cal.App.4th 89, 97, 37 Cal.Rptr.3d 375 [FAC to the government is itself
 20 “part of the official proceedings”].)

21 *Comstock v. Aber*, (2012) 212 Cal. App. 4th 931, 941–42

22 When evaluating an anti-SLAPP motion, “the question is what is pled—not what is proven.”
 23 *Comstock v. Aber*, (2012) 212 Cal. App. 4th 931, 942. In *Comstock*, it was the cross-complainant’s
 24 allegation that the defendant complained to the police that brought the cross-FAC within the anti-SLAPP
 25 statute. *Id.* An action that helps brings about a criminal prosecution is protected activity under the anti-
 26 SLAPP statute. *Lugo v. Pixior, LLC*, 101 Cal. App. 5th 511, 514, 320 Cal. Rptr. 3d 285, 287 (2024) (See
 27 also *Dickens v. Provident Life & Accidents Ins. Co.* (2004) 117 Cal.App.4th 705, 707, 713–717, 11
 28 Cal.Rptr.3d 877.)

“When the FAC itself alleges protected activity, a moving party may rely on the plaintiff’s
 allegations alone in arguing that the plaintiff’s claims arise from an act ‘in furtherance of the person’s right
 of petition or free speech.’ [citation omitted] While section 425.16 requires a court to consider both the
 ‘pleadings’ and the ‘supporting and opposing’ affidavits stating the facts which the liability or defense is

1 based' [citation omitted] it does not require a moving party to submit declarations concerning the factual
2 basis for the plaintiff's claims. [emphasis in original] Otherwise, a defendant who disputes the plaintiff's
3 allegations ... might be precluded from bringing an anti-SLAPP motion. That would have the perverse
4 effect of making anti-SLAPP relief unavailable when a plaintiff alleges a baseless claim, which is
5 precisely the kind of claim that section 425.16 was intended to address.” *Bel Air Internet, LLC v. Morales*,
6 20 Cal. App. 5th 924, 928–929, 935–939, 230 Cal. Rptr. 3d 71 (2d Dist. 2018); *Abir Cohen Treyzon Salo*,
7 *LLP v. Lahiji*, 40 Cal. App. 5th 882, 887–888, 254 Cal. Rptr. 3d 1 (2d Dist. 2019) (citing to *Bel Air*
8 *Internet* and noting that defendant denied authoring the challenged Yelp reviews).

9 Whether a cause of action arises from protected activity depends upon its principal thrust or
10 gravamen. *Drawsand v. F.F. Properties, L.L.P.*, 866 F. Supp. 2d 1110, 1128 (N.D. Cal. 2011) citing *In re*
11 *Episcopal Church Cases*, 45 Cal.4th 467, 477, 87 Cal.Rptr.3d 275, 198 P.3d 66 (2009). Here, Plaintiff has
12 clearly alleged that Ms. Kamei “reached out to their contacts at the Mountain View Police Department to
13 complain about the tow....” (FAC ¶ 36.) The gravamen of Plaintiff’s causes of action is quite clear:
14 Plaintiff alleges that Ms. Kamei contacted the Mountain View Police Department to report the towing
15 activity which is patently protected activity under the Anti-SLAPP statute. Consequently, the threshold
16 requirement of an Anti-SLAPP test is met.

17 **C. Plaintiff cannot demonstrate a probability of prevailing on the merits.**

18 Plaintiff cannot demonstrate a probability of prevailing on the merits of his Civil Code §52.1 cause
19 of action because he can not satisfy the requirements of Civil Code § 52.1 as he has not alleged that Ms.
20 Kamei was a state actor engaged in any threats, intimidation, or coercion that interfered with a
21 constitutional right and he has failed to include allegations sufficient to trigger the exception codified in §
22 52.1 (k.)

23 Plaintiff cannot demonstrate a probability of prevailing on the merits of his § 1983 cause of action
24 because he has not alleged sufficient facts to show that Ms. Kamei acted under color of law to violate his
25 constitutional rights.

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1 **a. Plaintiff cannot demonstrate a probability of prevailing on the merits with regard to**
 2 **his California Civil Code § 52.1 (Bane Act) cause of action.)**

3 Plaintiff’s first cause of action is for a violation of the “Bane Act.” The Bane Act allows a plaintiff
 4 to bring a claim “‘for interference 'by threats, intimidation, or coercion' or attempted interference, 'with the
 5 exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the
 6 United States, or of the rights secured by the Constitution or laws of this state.' ” *Rodriguez v. City of*
 7 *Fresno*, 26 819 F. Supp. 2d 937,953 (E.D. Cal. 2011) (quoting Cal. Civ. Code§ 52.1(a)).” A cause of action
 8 under the act requires a predicate -- the application of a threat, intimidation, or coercion – and an object –
 9 interference with a constitutional or statutory right.” *Id.* “Whether there was a violation of a right and
 10 whether that violation was accomplished by threat, intimidation or coercion are separate analytical
 11 inquiries.” *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1118 (E.D. Cal. 2012). “For the purposes of
 12 the Bane Act, the term 'threat' means an expression of an intent to inflict evil, injury, or damage to
 13 another.” *McCue v. S. Fork Union Elementary Sch.*, 766 F. Supp. 2d 1003, 1011 (E.D. Cal. 2011) (citation
 14 omitted). Moreover, “in a search-and-seizure case, the plaintiff must allege threats or coercion beyond
 15 the coercion inherent in a detention or search in order to recover under § 52.1 .” *McFarland v. City of*
 16 *Clovis*, 163 F.Supp.3d 798, 806-07 (E.D. Cal. Feb. 17, 2016) (quoting *Lyll v. City of Los Angeles*, 807
 17 F.3d 1178, 1196 (9th Cir. 2015)).

18 California Civil Code 52.1 (k) clearly states:

19
 20 Speech alone is not sufficient to support an action brought pursuant to
 21 subdivision (b) or (c), except upon a showing that the speech itself
 22 threatens violence against a specific person or group of persons; and the
 23 person or group of persons against whom the threat is directed reasonably
 24 fears that, because of the speech, violence will be committed against them
 25 or their property and that the person threatening violence had the apparent
 26 ability to carry out the threat.

27 *Cal. Civ. Code § 52.1 (k)*

28 Plaintiff provides nothing other than conclusory allegations regarding Ms. Kamei’s alleged threats
 against Plaintiff. In fact, the FAC does not include any allegations that Ms. Kamei made any threats
 directed at Plaintiff *at all*. The FAC does not allege that Ms. Kamei threatened to call the police in front of
 Plaintiff. The FAC does not allege that Plaintiff called the police in front of Plaintiff. The FAC does not

1 allege that Ms. Kamei arrested Plaintiff. The FAC does not allege that Ms. Kamei had the power to or
 2 ordered that Plaintiff be arrested and/or prosecuted. While in Plaintiff's presence, it is alleged *only* that
 3 Ms. Kamei angrily asked why she was towed and "defiantly" claimed that some unidentified company
 4 was not real. (FAC ¶¶ 31, 32.) Such speech is patently and woefully insufficient to meet the exception in §
 5 52.1(k) for speech that threatens violence against a specific person, that the person against whom the
 6 threat is directed reasonable fears that because of the speech violence will be committed against them, and
 7 that the person threatening violence had the apparent ability to carry out the threat. This, alone and on its
 8 face, means Plaintiff cannot meet the first prong of the 52.1(k) exception as it is not a threat of violence.

9 Plaintiff also alleges that Ms. Kamei used her status as a councilmember and political connections
 10 to cause the "captain" to pursue a criminal investigation. Again, there is no allegation in the FAC that this
 11 occurred in Plaintiff's presence and there is no allegation that Ms. Kamei agreed to call the police or a
 12 "captain" in Plaintiff's presence. Clearly, these allegations fail to meet the "threat, intimidation, or
 13 coercion" standard required for a violation of the Bane Act.

14 Additionally, Plaintiff provides nothing but conclusory statements in support of the allegation that
 15 Ms. Kamei violated his Fourth Amendment rights. The FAC does not include any facts showing Ms.
 16 Kamei interfered with a constitutionally protected right. Plaintiff's sole allegation regarding
 17 constitutionally protected rights relates to his Fourth Amendment right against unreasonable search and
 18 seizure and his rights under the California Constitution to be free from unreasonable searches and seizures.
 19 However, the only factual allegations regarding this alleged violation relate to *Goff* "unreasonably"
 20 detaining Plaintiff, *not Ms. Kamei*. There is no factual allegation that Ms. Kamei played any role in any
 21 detention, arrest, or prosecution of Plaintiff other than reporting the incident to the police.

22 Accordingly, even accepting Plaintiff's allegations as true, he cannot establish a likelihood of
 23 prevailing on the merits.

24 **b. Plaintiff cannot demonstrate a probability of prevailing on the merits with regard to**
 25 **his Fourth Amendment (4 U.S. Code § 1983) cause of action.**

26 Plaintiff claims that Ms. Kamei was acting in her individual capacity under color of law as a
 27 councilmember. (Ex. C to RJN.) In order to succeed on such a cause of action, Plaintiff would have to
 28 show that Ms. Kamei was acting "under color of statute, ordinance, regulation, custom, or usage" of any

1 state. 42 U.S.C.A. § 1983. In general, “a state employee who is on duty, or otherwise exercises his
2 official responsibilities in an off-duty encounter, typically acts under color of state law.” *Naffe v. Frey*,
3 789 F.3d 1030, 1037-1038 (9th Cir. 2015) (finding a district attorney did not act under color of state law
4 when his derogatory articles about a political activist were written in a private capacity); *Hyun Ju Park*
5 *v. City & Cnty. of Honolulu*, 952 F.3d 1136, 1140 (9th Cir. 2020) (police officers did not act under color
6 of law where they were off-duty, socialized as private citizens, and never associated their actions with
7 law enforcement duties).

8 It has further been held that § 1983 causes of action for malicious prosecution must further
9 prove: 1) the malicious prosecution resulted in seizure of a plaintiff; 2) the suit or proceeding was
10 instituted without any probable cause; 3) the motive in instituting the suit was "malicious," often defined
11 in this context as for a purpose other than bringing a defendant to justice; and 4) the prosecution
12 "terminated in the acquittal or discharge of the accused." *Thompson v. Clark*, 596 U.S. 36, 43-44, 44 n.2
13 (2022); *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995). The alleged conduct by the
14 state actor must have caused 16 the deprivation of the federal right, and an underlying act that is too
15 remote will bar liability. *See, e.g., Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981), ("Filing of a
16 criminal complaint immunizes investigating officers such as the appellants from damages suffered
17 thereafter because it is presumed that the prosecutor filing the complaint exercised independent
18 judgment in determining that probable cause for an accused's arrest exists at that time."), *overruled on*
19 *other grounds by Beck v. City of Upland*, 527 F.3d 853 (9th Cir. 2008); *Martinez v. State of Cal.*, 444
20 U.S. 277, 285 (1980) (parole board releasing inmate is too remote to be cause of inmate committing
21 further injury).

22 Primarily, Plaintiff has failed to allege sufficient facts to show that Ms. Kamei acted under color
23 of law. The sole allegation as to Ms. Kamei is that she reported the incident to the police and that
24 resulted in an investigation of Plaintiff's towing behavior. Mountain View City Councilmembers' duties
25 and powers do not include the power of arrest or investigating crimes. (RJN Ex B.) Plaintiff additionally
26 alleges that Ms. Kamei reported the towing activity to get back at Plaintiff but such conclusory
27 statements fall far short of the required pleading standards. *See Iqbal*, 556 U.S. at 678. An allegation that
28 an elected official informed the police of towing activity or even an alleged crime does not, by itself,

1 qualify as an act under color of law and Plaintiff has failed to provide any facts showing that Ms. Kamei
 2 acted in her official capacity or using her powers as a councilmember when she reported the incident to
 3 the police. There are no allegations that Ms. Kamei has the power to arrest or investigate crimes and, in
 4 fact, City of Mountain View councilmembers have no authority over police department personnel. (Ex B
 5 to RJN.)

6 There is no allegation that Ms. Kamei did anything other than report towing activity or, at best
 7 for Plaintiff, a suspected crime, to the police. Accordingly, Plaintiff's § 1983 cause of action fails on its
 8 face. *See Eclectic Properties East, LLC, 751 F.3d at 996-997; Nafie, 789 F.3d at 1037-1038.*

9 The FAC also does not state sufficient facts to meet other requirements of § 1983. The FAC makes only
 10 conclusory statements regarding a lack of probable cause. To the contrary, what is pleaded shows the
 11 existence of probable cause. To wit, Plaintiff alleges that Goff questioned him and spoke with owners of
 12 other vehicles that were towed. Additionally, a warrant was issued by a superior court judge. (Ex. A to
 13 RJN.) The FAC alleges that a *third party*, the District Attorney, then brought charges against Plaintiff.
 14 (FAC ¶ 77.) An underling act that is too remote will bar liability under § 1983. *See, e.g., Smiddy v.*
 15 *Varney, 665 F.2d 261, 266 (9th Cir. 1981), ("Filing of a criminal complaint immunizes investigating*
 16 *officers such as the appellants from damages suffered thereafter because it is presumed that the*
 17 *prosecutor filing the complaint exercised independent judgment in determining that probable cause for*
 18 *an accused's arrest exists at that time."), overruled on other grounds by Beck v. City of Upland, 527 F.3d*
 19 *853 (9th Cir. 2008); Martinez v. State of Cal., 444 U.S. 277, 285 (1980) (parole board releasing inmate*
 20 *is too remote to be cause of inmate committing further injury). Here, Ms. Kamei's alleged report of the*
 21 *towing incident was far too remote to be actionable.*

22 Finally, even if Plaintiff had pleaded sufficient facts to show Ms. Kamei was somehow wielding
 23 her councilmember powers by making a report to the police, she would be entitled to qualified immunity
 24 as to the § 1983 cause of action. "Qualified immunity shields federal and state officials from money
 25 damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional
 26 right, and (2) that the right was "clearly established" at the time of the challenged conduct. *Harlow v.*
 27 *Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).* We recently reaffirmed that
 28 lower courts have discretion to decide which of the two prongs of qualified-immunity analysis to tackle

1 first. See *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009).” *Ashcroft v.*
2 *al-Kidd*, 563 U.S. 731, 735 (2011.) Under the doctrine of qualified immunity, “[g]overnment officials
3 performing discretionary functions generally are shielded from liability for civil damages insofar as their
4 conduct does not violate clearly established statutory or constitutional rights of which a reasonable
5 person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

6 Ms. Kamei is not a law enforcement official nor does the FAC allege that she is. The FAC,
7 likewise, does not allege that Ms. Kamei had any role in investigating or arresting Plaintiff other than
8 reporting the towing activity to the police. Even if reporting an incident to the police were part of Ms.
9 Kamei’s councilmember duties, reporting an incident to the police is not a violation of someone’s
10 statutory or constitutional right. Therefore, Ms. Kamei is entitled to qualified immunity and the § 1983
11 claim fails.

12 Furthermore, the FAC fails to meet the required bar to meet other requirements of a § 1983 claim
13 against Ms. Kamei. The FAC does not include any allegation that Ms. Kamei did or could compel the
14 police to arrest Plaintiff. The FAC does not include any allegation that Ms. Kamei communicated with
15 the police at all other than reporting the incident. The FAC does not allege that Ms. Kamei carried out
16 the arrest or prosecution of Plaintiff.

17 Additionally, the FAC fails to sufficiently provide facts detailing how Plaintiff was unreasonably
18 delayed. While the FAC makes conclusory statements about a “prolonged period” of detention, there
19 are no specific facts alleged regarding the length and nature of such detention (especially in light of
20 Goff’s investigation.)

21 Even if Plaintiff could prove the allegations in the FAC, he could not succeed at trial on his §
22 1983 cause of action and, accordingly, it should be stricken.

23 //

24 IV. CONCLUSION

25 The gravamen of the FAC is that Ms. Kamei engaged in activity protected under the anti-
26 SLAPP statute: complaining to the police about towing activity. This is undisputable. Accordingly, the
27 burden falls to Plaintiff to show that he is likely to prevail on the merits of his claims.

28 Plaintiff has failed to allege that facts showing that Ms. Kamei engaged in threats, intimidation,

1 or coercion or tried to prevent Plaintiff from doing something he had the legal right to do. Accordingly,
2 even if he could prove what he has alleged, he could not show a likelihood of prevailing on the merits of
3 his Bane Act cause of action.


4 Plaintiff has further failed to allege facts sufficient to show Ms. Kamei acted under color of law
5 and has failed to allege facts sufficient to show Ms. Kamei violated his Fourth Amendment rights.

6 Based on the foregoing points and authorities, and each of them, Ms. Kamei respectfully requests
7 the court grant this special motion to strike and award her attorney fees as allowed by the anti-SLAPP
8 statute.

9 //

10 Dated: February 21, 2025

GOETHALS & STONE, PC

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