500 F.Supp.3d 1104 (2020)

DIAMOND RESORTS U.S. COLLECTION DEVELOPMENT, LLC, et al., Plaintiffs,

v.

PANDORA MARKETING, LLC d/b/a Timeshare Compliance, et al., Defendants.

CV 20-5486 DSF (ADSx).

United States District Court, C.D. California.

Signed November 13, 2020.

1107 *1107 Lindy Kathryn Keown, Pro Hac Vice, Brandon T. Crossland, Pro Hac Vice, Baker and Hostetler LLP, Orlando, FL, Albert G. Lin, Pro Hac Vice, Douglas A. Vonderhaar, Pro Hac Vice, Marissa A. Peirsol, Pro Hac Vice, Baker and Hostetler LLP, Columbus, OH, Caroline Dettmer Slye, Pro Hac Vice, Baker and Hostetler LLP, Cincinnati, OH, Elizabeth M. Treckler, Teresa C. Chow, Baker and Hostetler LLP, Los Angeles, CA, Emily B. Thomas, Pro Hac Vice, Baker and Hostetler LLP, Houston, TX, for Plaintiff.

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1108 Moskowitz *1108 Edelman and Dicker, Orlando, FL, Jacob Brian Post, Smgq Law, Miami, FL, Johnny Lee Antwiler, II, Samuel Y Edgerton, III, O'Hagan Meyer LLC, Newport Beach, CA, for Defendants.

Order DENYING Defendants' Motions to Strike (Dkts. 190, 195)

DALE S. FISCHER, United States District Judge.

Defendants Miranda McCroskey, McCroskey Legal, and Unlock Legal (collectively, McCrosky Defendants) and Defendants Slattery Sobel & Decamp, LLP; Del Mar Law Group, LLP; Carlsbad Law Group, LLP; and JL "Sean" Slattery (collectively, Slattery Defendants, and, all collectively, Lawyer Defendants) move, pursuant to California's anti-SLAPP statute, to strike the Second Amended Complaint's (SAC) eighth claim for tortious interference, tenth claim for civil conspiracy, and twelfth claim for unfair competition as to them. Dkt. 190 (Slattery Mot.), 195 (McCroskey Mot.). Defendant Pandora Marketing, LLC (Pandora) joins the McCroskey Defendants' motion to strike to the extent Plaintiffs Diamond Resorts U.S. Collection Development, LLC and Diamond Resorts Hawaii Collection Development, LLC (collectively, Diamond) seek to hold Pandora vicariously liable for the conduct of the Lawyer Defendants, for aiding and assisting the Lawyer Defendants, and for conspiring with the Lawyer Defendants. Dkt. 198. Diamond opposes. Dkt. 228-1 (Opp'n).[1] The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing scheduled for November 9, 2020 is removed from the Court's calendar. For the reasons stated below, the motions to strike are DENIED.

I. BACKGROUND

Diamond owns, operates, and manages timeshare resorts. Dkt. 184 (SAC) ¶ 57. Diamond offers its owners and members the ability to reserve and use vacation interests at different resorts with multi-site timeshare

plans called "Collections." Id. ¶ 58. To become a member of a "Collection," individuals enter a contract to purchase and finance the membership (Timeshare Contracts). Id. ¶ 59. The purchaser (Diamond Owner or Owner) can either pay in full at the time of purchase or make an upfront payment and finance the remaining amount. Id. Diamond Owners are also required to pay annual maintenance fees. Id. Once a statutory rescission period expires, Timeshare Contracts cannot be rescinded by only one party. Id.

Defendants are part of the "timeshare exit industry" and advertise their services helping timeshare owners cancel or terminate their timeshare contracts. Id. ¶¶ 65-66, 68. Pandora and Defendant Intermarketing Media, LLC, dba Resort Advisory Group (RAG and, collectively, Exit Defendants) state on their websites that they help those who engage their services to remove all liability from their timeshare contracts so owners "will no longer be responsible for maintenance fees, assessment fees, or payments on debts." Id. ¶ 68. Pandora finds Diamond Owners by obtaining property records and then using research databases to identify contact information for the Owners. Id. ¶ 73. Pandora analysts then call the Diamond Owners in an attempt to solicit information on the size of the Timeshare Contract and loan balance. Id. The analysts suggest that the Owner has been tricked or defrauded by the timeshare developer. Id. Sometimes, the
1109 analysts obtain information under the *1109 guise of a third party conducting an independent timeshare satisfaction survey. Id.

Pandora also uses "false, misleading, and disparaging advertising to lure consumers," including claiming it has a legal method to cancel timeshare obligations, timeshare developers frequently cancel timeshare contracts, results are guaranteed, heirs of timeshare owners will be financially obligated to continue paying on timeshare interests, and timeshare developers use high-pressure sales tactics and dishonest agents. Id. ¶ 79. However, there is no legal method for a third party to "cancel" the timeshare interest of an owner and Pandora has no program or proven method to terminate the contracts. Id. ¶ 81. Furthermore, heirs of Owners are not financially obligated to take on timeshare interests. Id. RAG uses the same or similar advertising tactics. Id. ¶¶ 84-91.

Pandora charges the Diamond Owners money to "exit" their timeshare. Id. ¶ 77. Pandora uses information about how much the Owner is currently paying for the timeshare to determine how much to charge for the "exit." Id. Once engaged, Pandora and RAG refer Diamond Owners to the Lawyer Defendants. Id. ¶ 15. The Lawyer Defendants instruct the Owners to refrain from paying anything owed under their Timeshare Contracts, and to change their address on file with Diamond to the address of a Lawyer Defendant. Id. ¶¶ 99-100. However, though the Lawyer Defendants "purport to be able to eliminate the owners' contractual obligations to Plaintiffs[,]... there is no legal or viable method to assist the Diamond Owners in exiting the Timeshare Contracts." Id. ¶ 112. In exchange for a flat fee from the Exit Defendants, the Lawyer Defendants send "exit letters" demanding that Diamond cease and desist from communicating with the timeshare owner. Id. ¶¶ 116-117. As a result, the Owners do not receive billing statements, late payment notices, default notices, and other correspondence. Id. ¶ 119. The Owners do not know when their accounts are headed for default. Id. The Lawyer Defendants also send letters demanding that Diamond cancel accounts. Id. ¶ 120. Some letters include an explanation of why cancellation is appropriate; others do not. Id. ¶¶ 121-122. The Lawyer Defendants do not take further action, nor do they tell their clients that ceasing to pay will result in an unlawful breach of the Timeshare Contracts. Id. ¶¶ 123, 125. The McCroskey Defendants have yet to appear in any arbitration or case on behalf of a Diamond Owner. Id. ¶ 135. The Slattery Defendants have represented twelve Diamond Owners in arbitration. Id. ¶ 134.

II. DISCUSSION

A. Choice of Law

Diamond argues that Florida — rather than California — law should apply to this dispute because Diamond has more contacts in Florida than in California. Opp'n at 15. Because Florida does not have the same anti-SLAPP statute as California, Lawyer Defendants' motions to strike would be moot should Florida law apply.

The "choice of law inquiry has two levels": "First, [the court] must determine whose choice of law rules govern. Second, applying those rules, [the court] determine[s] whose law applies." Sarver v. Chartier, 813 F.3d 891, 897 (9th Cir. 2016) (quoting Schoenberg v. Exportadora de Sal, S.A. de C.V., 930 F.2d 777, 782 (9th Cir. 1991)). "[A]fter a transfer under 28 U.S.C. § 1404, the choice-of-law rules of the transferor court apply." Id. Because this case was transferred from the Southern District of Florida, Florida choice of law rules govern.

"Florida resolves conflict-of-laws questions according to the `most significant relationship' test outlined in
1110 the Restatement *1110 (Second) of Conflict of Laws." Grupo Televisa, S.A. v. Telemundo Commc'ns Grp., Inc., 485 F.3d 1233, 1240 (11th Cir. 2007). Under this test, a court considers four "contacts": (1) "the place where the injury occurred;" (2) "the place where the conduct causing the injury occurred;" (3) "the domicil, residence, nationality, place of incorporation and place of business of the parties;" and (4) "the place where the relationship, if any, between the parties is centered." Id.

Diamond argues Florida law should apply because it "operates a regional corporate office and five sales centers in Florida" while it only "maintains limited corporate operations in California." Opp'n at 15. Because of this, it asserts that "Defendants' conduct alleged in the SAC caused more significant harm to Plaintiffs in Florida than in California." Id. But both Diamond entities are organized in Delaware with their principal place of business in Nevada. SAC ¶¶ 35-36. Plaintiffs do not explain how or why the harm impacts them at their sales centers or "regional corporate office" as opposed to their principal place of business. And any injury clearly was not specific to Florida.

On the other hand, Defendants Pandora and RAG are organized in Wyoming with their principal place of business in California. Id. ¶¶ 37-38. The Slattery Defendants and McCroskey Defendants are all either individual citizens of California or organized under the laws of California and headquartered in the state. Id. ¶¶ 39-45. The alleged conduct all presumably took place at the Defendants' principal places of business in California.

The Court finds that, as to these tort claims, the "`principal location of the defendant's conduct' is the single most important contact." See Grupo Televisa, 485 F.3d at 1241; see also Restatement (Second) of Conflict of Laws § 145(2) cmt. f (Am. Law Inst. 1971). None of the other three factors suggests that it is more appropriate to apply Florida law. The Court therefore finds that under the Florida choice-of-law test, California law applies.[2]

B. Anti-SLAPP

Anti-SLAPP motions are subject to a two-step analysis with shifting burdens. First, the moving Defendants must make a prima facie showing that Diamond's claims arise from an "act in furtherance of [their] right of petition or free speech." Cal. Civ. Proc. Code § 425.16(e); Mindys Cosmetics, Inc. v. Dakar, 611 F.3d 590, 595 (9th Cir. 2010). Diamond must meet its burden by demonstrating that the act underlying the challenged claims fits into one of the four categories of California Code of Civil Procedure section 425.16(e). If

Diamond makes this prima facie showing, the burden shifts to the Moving Defendants to demonstrate "a probability of prevailing on the challenged claims." Mindys Cosmetics, 611 F.3d at 595 (quoting Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1110 (9th Cir. 2003)). "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute — i.e., that arises from protected speech or petitioning *and* lacks even minimal merit — is a SLAPP, subject to being stricken under the statute." Oasis W. Realty, LLC v. Goldman, 1111 51 Cal. 4th 811, 820, 124 Cal.Rptr.3d 256, 250 P.3d 1115 (2011) *1111 (quoting Navellier v. Sletten, 29 Cal. 4th 82, 89, 124 Cal.Rptr.2d 530, 52 P.3d 703 (2002)).

"The California Court of Appeal has interpreted the anti-SLAPP statute's `arising from' language to mean that a claim is based on whatever conduct constitutes the `specific act[] of wrongdoing' that gives rise to the claim." Jordan-Benel v. Universal City Studios, Inc., 859 F.3d 1184, 1190 (9th Cir. 2017) (alteration in original) (quoting Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP, 133 Cal. App. 4th 658, 671, 35 Cal. Rptr.3d 31 (2005)). "Put another way, a court focuses its anti-SLAPP analysis on the specific conduct that the claim is challenging." Id. (citing Wang v. Wal-Mart Real Estate Bus. Trust, 153 Cal. App. 4th 790, 809, 63 Cal.Rptr.3d 575 (2007)).

To determine the gravamen of Diamond's claims, the Court "must examine the allegedly wrongful conduct itself, without particular heed to the form of action within which it has been framed." Peregrine Funding, 133 Cal. App. 4th at 671, 35 Cal.Rptr.3d 31. "The first prong of the anti-SLAPP analysis involves two related inquiries: (1) whether the Complaint alleges activity protected by section 425.16 and (2) whether the cause or causes of action alleged arise from those activities." Contreras v. Dowling, 5 Cal. App. 5th 394, 408, 208 Cal.Rptr.3d 707 (2016). In making this determination, "the court is not limited to examining the allegations of the complaint alone but rather considers the pleadings and the factual material submitted in connection with the [] motion to strike." Id.

The Lawyer Defendants argue that the gravamen of the claims — the prelitigation demand letters and negotiations with Diamond[3] — arose from activity protected under two different categories of the anti-SLAPP statute. Slattery Mot. at 7-10; McCroskey Mot. at 7-8.

1. Speech Made in Connection with a Legislative, Executive, or Judicial Proceeding

Statements made in ligation, or in connection with litigation, are protected by the anti-SLAPP statute. Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1115, 81 Cal.Rptr.2d 471, 969 P.2d 564 (1999). Section 425.16(e) states that protected speech includes "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." Cal. Civ. Proc. Code § 425.16(e). Even when litigation "may not have commenced, if a statement `concern[s] the subject of the dispute' and is made `in anticipation of litigation contemplated in good faith and under serious consideration,' then the statement may be petitioning activity protected by section 425.16." Neville v. Chudacoff, 160 Cal. App. 4th 1255, 1268, 73 Cal.Rptr.3d 383 (2008) (alteration in original) (citations and internal quotation marks omitted) (quoting Rohde v. Wolf, 154 Cal. App. 4th 28, 36, 64 Cal.Rptr.3d 348 (2007)).

In determining whether speech is protected, courts look to the litigation privilege as an aid in construing the scope of section 425.16(e)(2) because "the two statutes serve similar policy interests." Neville, 160 Cal. App. 4th at 1263, 73 Cal.Rptr.3d 383. The litigation privilege attaches to prelitigation statements when

1112 "imminent access to the courts is *seriously proposed* by a party in good faith for the *1112 purpose of resolving a dispute, and not when a threat of litigation is made merely as a means of obtaining a settlement." Edwards v. Centex Real Estate Corp., 53 Cal. App. 4th 15, 36, 61 Cal.Rptr.2d 518 (1997) (emphasis added). In Edwards, the court held that the statements were not privileged because the defendants had failed to establish "anything more than the mere *possibility* that appellants might consider litigation." Id. at 39, 61 Cal.Rptr.2d 518.

"Whether a prelitigation communication relates to litigation that is contemplated in good faith and under serious consideration is an issue of fact." Action Apartment Ass'n, Inc. v. City of Santa Monica, 41 Cal. 4th 1232, 1251, 63 Cal. Rptr.3d 398, 163 P.3d 89 (2007). Federal courts ruling on California anti-SLAPP motions where the motion "challenges the factual sufficiency of a claim," apply the Federal Rule of Civil Procedure Rule 56 standard. Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress, 890 F.3d 828, 834 (9th Cir. 2018). When a factual sufficiency challenge is made, "discovery must be allowed, with opportunities to supplement evidence based on the factual challenges, before any decision is made by the court." Id.

Diamond argues that the Lawyer Defendants' alleged conduct is not protected prelitigation activity because litigation was not under serious consideration. This is repeatedly alleged in the SAC. See SAC ¶¶ 20 ("[U]pon information and belief, after issuance of the `exit' letters, the Lawyer Defendants rarely take further steps on the Diamond Owner's behalf."), 24 ("Critically, the Lawyer Defendants' `exit' services, including the issuance of the `exit' letters, are not the beginning of any litigation process to provide relief to Diamond Owners, but rather are the end of the `exit' scheme to collect thousands of dollars of fees from Diamond Owners based on a false promise."), 25 ("Upon information and belief, the Lawyer Defendants are not engaged by the [Exit] Defendants to provide any subsequent litigation services to the timeshare owners. Because of the small amounts paid by the [Exit] Defendants to the Lawyer Defendants, such representation would not be economically feasible."), 27 ("Upon information and belief, the McCroskey Defendants have not filed any cases against Diamond arising out of `exit' services, nor have they defended any `exit' cases against Diamond."), 28 ("Similarly, upon information and belief, the [Slattery] Defendants have not filed any litigation against Diamond on behalf of Diamond Owners."), 30 ("Upon information and belief, subsequent legal representation is not within the scope of the engagement between the [Exit] Defendants and Lawyer Defendants"), 31 ("Publicly available information establishes that the [Exit] Defendants do not retain the Lawyer Defendants to litigate cases on behalf of Diamond Owners that seek `exit' services.").

To refute these allegations, Miranda McCroskey and Sean Slattery each submit declarations. McCroskey avers that McCroskey Legal assists timeshare clients by reviewing timeshare purchase agreements, assessing the validity of Timeshare Contracts, sending demand letters, negotiating offers, and finalizing settlement terms. Dkt. 195-2 (McCroskey Decl.) ¶ 5. While she states these actions are "performed in contemplation of future litigation," id., she does not say any resulted in litigation or even arbitration. She also states that she has "personally assisted with the preparation of matters for litigation against Diamond" including the case Harding, et al. v. Diamond Resorts Holding, LLC, et al., Case No. 2:17-cv-00248 (D. Nev.). Id. ¶ 6. However, neither she or any other individual associated with Unlock Legal or McCroskey Legal is listed as an attorney of record in that case.

1113 *1113 Slattery too submits a declaration in which he states that the Slattery Defendants "charge[] timeshare owners a flat rate (between $600 and $750 per timeshare contract) to draft written correspondence to the respective timeshare company," and that the retainer agreement clients sign "informs the Diamond Owners that [Slattery Defendants] will draft a cease and desist letter, a detailed demand letter, and use their best efforts to negotiate a resolution with the developer to the extent possible." Dkt. 190-1 (Slattery Decl.) ¶¶ 11-

12. Carlsbad Law Group in particular has filed a lawsuit against Diamond on behalf of a Diamond Owner and is defending ten arbitrations filed by Diamond against Diamond Owners.[4] Id. ¶ 22. He does not state, however, that the arbitrations he represents Diamond Owners in were a result of the alleged scheme — in other words that they are individuals he was originally referred to by Pandora or RAG and hired to write an initial demand letter for.

In Dickinson v. Cosby, 17 Cal. App. 5th 655, 684, 225 Cal.Rptr.3d 430 (2017), the court held that a demand letter written by an attorney did not fall within the litigation privilege. There, Cosby's attorney sent a letter, captioned as a confidential demand letter, to media outlets stating that Dickinson's allegations were a defamatory lie and threatening litigation if the outlets went ahead with their coverage of the allegations. Id. at 683-84, 225 Cal. Rptr.3d 430. In reaching its decision, the court relied on the fact that, at the time of its decision, Cosby had not sued any of the media outlets he threatened. Id. at 684, 225 Cal.Rptr.3d 430. Here, too, it is alleged that the Lawyer Defendants sent hundreds of exit letters, SAC ¶ 26, yet neither McCroskey nor Slattery states that any letter resulted in subsequent litigation. Further, a significant aspect of Diamond's allegations against the Lawyer Defendants is that the Lawyer Defendants never intended to represent Diamond Owners in any actual litigation. The Court therefore finds that the Lawyer Defendants' conduct was not in fact protected speech under this prong of the anti-SLAPP statute.

2. Speech Made in Connection with a Public Issue

The Lawyer Defendants also argue their conduct is protected speech under section 425.16(e)(4), which protects "any [] 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." Cal. Civ. Proc. Code § 425.16(e).

"The definition of `public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a government entity." Damon v. Ocean Hills Journalism Club, 85 Cal. App. 4th 468, 479, 102 Cal.Rptr.2d 205 (2000). California courts have not articulated a single test for or definition of "public interest." In Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913, 924, 130 Cal.Rptr.2d 81 (2003), the court identified three non-exclusive categories of cases *1114 that would fall within the public interest catchall provision: (1) statements that "concerned a person or entity in the public eye"; (2) "conduct that could directly affect a large number of people beyond the direct participants"; and (3) "a topic of widespread, public interest."

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Determining whether a communication was made in the public interest is a two-step process. "First, we ask what `public issue or [] issue of public interest' the speech in question implicates — a question we answer by looking to the content of the speech. Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest." FilmOn.com Inc. v. DoubleVerify Inc., 7 Cal. 5th 133, 149-50, 246 Cal.Rptr.3d 591, 439 P.3d 1156 (2019) (alteration in original) (citation omitted) (quoting Cal. Civ. Proc. Code § 425.16(e)(4)). There must be "`some degree of closeness' between the challenged statements and the asserted public interest." Id. at 150, 246 Cal.Rptr.3d 591, 439 P.3d 1156 (quoting Weinberg v. Feisel, 110 Cal. App. 4th 1122, 1132, 2 Cal.Rptr.3d 385 (2003)). "[I]t is not enough that the statement refer to a subject of widespread public interest; the statement must in some manner itself contribute to the public debate." Id. (quoting Wilbanks v. Wolk, 121 Cal. App. 4th 883, 898, 17 Cal.Rptr.3d 497 (2004)).

Lawyer Defendants assert that their activities were related to a public interest — "whether timeshare owners who were victims of high-pressure and fraudulent business practices can legally exit their timeshare contracts." Dkt. 219 (Slattery Reply) at 9. They identify a number of indications that this is an issue of public interest: California has enacted a law that mandates timeshare companies provide timeshare owners a certain amount of time to terminate or cancel their timeshares, county and state attorneys general have entered into agreements with timeshare companies related to fraudulent timeshare sales practices, and numerous class action lawsuits have been filed against Diamond alleging fraudulent sales practices. Slattery Mot. at 10; McCroskey Mot. at 5-6. The Court concludes that this is a matter of public interest.

What is less clear is the second part of the test — examining whether the context of the Lawyer Defendant's conduct "qualifies for statutory protection by furthering the public conversation on an issue of public interest." FilmOn.com, 7 Cal. 5th at 153, 246 Cal.Rptr.3d 591, 439 P.3d 1156. In FilmOn.com, DoubleVerify distributed confidential reports to its clients classifying FilmOn websites as "copyright infringement file-sharing" and containing "adult content." Id. at 141-42, 246 Cal.Rptr.3d 591, 439 P.3d 1156. It argued that its actions were protected conduct under the anti-SLAPP statute because it concerned topics of widespread public interest: "the presence of adult content on the internet, generally, and the presence of copyrightinfringing content on FilmOn's websites, specifically." Id. at 150, 246 Cal.Rptr.3d 591, 439 P.3d 1156. The California Supreme Court assumed these were topics of public interest within the meaning of subdivision (e)(4), but noted that "the focus of [the] inquiry must be on `the specific nature of the speech.'" Id. at 152, 246 Cal. Rptr.3d 591, 439 P.3d 1156. It then found the reports themselves did not contribute to the public debate on the matter. Id. at 152-54, 246 Cal.Rptr.3d 591, 439 P.3d 1156. The court relied on the fact that DoubleVerify issued its reports "privately, to a coterie of paying clients" rather than the public, the clients used the information for their business purposes alone, and the information never entered the public sphere nor did the parties intend it to. Id.

1115 *1115 The Lawyer Defendants rely on a pre-FilmOn case, Ruiz v. Harbor View Community Association, 134 Cal. App. 4th 1456, 1462-70, 37 Cal.Rptr.3d 133 (2005) in which a California appellate court held that two letters sent by a homeowners' association's lawyer to a resident about the architectural guidelines in the housing development were protected speech under the public interest prong of the anti-SLAPP statute. The court found the letters were part of ongoing disputes that were of interest to the members of the homeowners' association because they would be affected by the outcome of the disputes and would have a stake in the association's governance. Id. at 1468, 37 Cal.Rptr.3d 133. Because the letters were written in the context of the dispute and were part of the ongoing discussion, they contributed to the public debate. Id. at 1468-70, 37 Cal.Rptr.3d 133 ("The focus and primary purpose of the letters concerned HVCA governance and enforcement of its architectural guidelines, issues of concern to the many HVCA members.").

The Court relies on the California Supreme Court's controlling holding in FilmOn.com. As in that case, the communications here — though regarding an issue of public concern — were not made to further public discussion. They were letters from the Lawyer Defendants to Diamond that were not intended to and did not enter the public sphere. Many of the letters had boilerplate language. Unlike Ruiz, the letters did not advocate for a change in general policies that would affect other Diamond owners. Instead, the letters requested only the cancellation or termination of individual contracts. See dkts. 184-7, 184-8, 184-9. Nothing about the letters indicates that the Lawyer Defendants sent them in furtherance of free speech in connection with an issue of public interest.

The Court therefore finds that the letters are not protected communications under the California anti-SLAPP statute.

III. CONCLUSION

Because the Lawyer Defendants have not satisfied their burden of showing that their conduct falls into one of the four section 425.16(e) categories of protected conduct, the Court DENIES the motions to strike.

IT IS SO ORDERED.

[1] Because the Court denied Diamond's application to seal, dkt. 215, it relies on the unredacted opposition.

[2] Diamond argues that because Defendants have engaged in forum shopping by failing to disclose all of their Florida contacts when requesting a transfer, "little deference" should be given to their choice of forum. Opp'n at 17 (citing Vivendi SA v. T-Mobile USA Inc., 586 F.3d 689, 695 (9th Cir. 2009)). The Court has not given deference to Defendants' choice of forum and applied the Florida choice-of-law test as required by Florida law. The Court cautions Defendants that it will not take lightly future instances in which they are not candid with the Court.

[3] Diamond disputes that the challenged claims arise solely from the prelitigation exit letters and negotiations with Diamond. Opp'n at 34-36. Because the Court finds even these communications are not protected speech, it does not consider this argument.

[4] Speech in connection with arbitrations is not given the same protection. For instance, the initiation of arbitration and conduct that leads up to arbitration are not subject to the anti-SLAPP law. Century 21 Chamberlain & Assocs. v. Haberman, 173 Cal. App. 4th 1, 5, 92 Cal.Rptr.3d 249 (2009) ("[W]e hold the anti-SLAPP statute does not protect the act of initiating private contractual arbitration."); Zhang v. Jenevein, 31 Cal. App. 5th 585, 593-94, 242 Cal.Rptr.3d 800 (2019) ("[P]rivate contractual arbitration is not a judicial proceeding under section 425.16.").