48 Cal.App.5th 484 (2020)
261 Cal.Rptr.3d 829

BALUBHAI PATEL et al., Plaintiffs and Appellants,

v.

MANUEL CHAVEZ, Defendant and Respondent.

No. B291695.

Court of Appeals of California, Second District, Division One.

April 30, 2020.

APPEAL from a judgment of the Superior Court of Los Angeles County, Super. Ct. No. BC681074, Maureen Duffy-Lewis, Judge. Affirmed.

485 *485 Frank A. Weiser for Plaintiffs and Appellants.

Law Office of Eugene Lee and Eugene D. Lee for Defendant and Respondent.

486 *486 **[CERTIFIED FOR PARTIAL PUBLICATION[*]]**

OPINION

ROTHSCHILD, P. J.—

Plaintiffs and appellants Balubhai Patel, DTWO & E, Inc., and Stuart Union, LLC (collectively, plaintiffs), appeal from the trial court's order granting defendant and respondent Manuel Chavez's motion to strike plaintiffs' complaint against Chavez, pursuant to the anti-SLAPP statute, Code of Civil Procedure section 425.16. Plaintiffs' complaint alleges that Chavez, plaintiffs' former employee, falsely testified at a Labor Commissioner's hearing on wage claims Chavez filed against plaintiffs, which the Labor Commissioner ultimately decided in Chavez's favor. On this basis, plaintiffs' complaint asserts a federal civil rights cause of action against all defendants under section 1983 of title 42 of the United States Code (section 1983). The complaint also contains a petition for writ of mandate addressed to all defendants seeking reversal of the Labor Commissioner's award.[1]

On appeal, plaintiffs argue that the anti-SLAPP statute does not apply to federal causes of action, and that even if it did apply, plaintiffs met their burden of establishing a probability of success. We disagree on both points and affirm the trial court's order granting defendant's motion to strike the complaint to the extent it asserts causes of action against Chavez.

FACTUAL AND PROCEDURAL SUMMARY[*]

DISCUSSION

Plaintiffs argue that the trial court erred in granting Chavez's anti-SLAPP motion because the statute does not apply to federal causes of action brought in state court. In the alternative, plaintiffs argue that the trial court incorrectly concluded that plaintiffs failed to show a probability of success on their writ of mandate and section 1983 claims against Chavez, as is required under the applicable anti-SLAPP analysis. We disagree with both arguments.

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A. *Anti-SLAPP Analytical Framework*

In ruling on an anti-SLAPP motion, a court is required to engage in a two-pronged analysis. First, a court must determine whether the complaint alleges protected free speech or petitioning activity, and whether the claims the movant seeks to strike "aris[e] from" such protected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 [205 Cal.Rptr.3d 475, 376 P.3d 604]; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [124 Cal.Rptr.2d 530, 52 P.3d 703].) If so, the burden shifts to the plaintiff to establish a prima facie showing of merit in "`a summary-judgment-like procedure.'" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278, 291 [46 Cal.Rptr.3d 638, 139 P.3d 30].) Any claims and/or allegations as to which the plaintiff fails to make such a prima facie showing must be stricken. (*Baral, supra,* 1 Cal.5th at p. 396.)

On appeal, we review a trial court's decision regarding an anti-SLAPP motion de novo, "engaging in the same two-step process." (*Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257, 266-267 [131 Cal.Rptr.3d 63], disapproved on another point in *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1071 [217 Cal.Rptr.3d 130, 393 P.3d 905].) In so doing, we consider "the pleadings, and supporting and opposing affidavits ... upon which the liability or defense is based." (Code Civ. Proc., § 425.16, subd. (b)(2).)

B. *The Anti-SLAPP Statute Applies to Section 1983 Claims Brought in State Court*

Plaintiffs argue that "[i]t is well established, and undisputed, that federal claims are not subject to California's Anti[-SLAPP] statute." We disagree. The cases plaintiffs cite for this proposition address "the applicability of the anti-SLAPP statute to claims *filed in federal court,"* not state court. (E.g., *Globetrotter Software v. Elan Computer Group* (N.D.Cal. 1999) 63 F.Supp.2d 1127, 1129, italics added.)

An analysis of whether to apply the anti-SLAPP statute to a federal claim in *state* court begins with the observations that the anti-SLAPP statute is a procedural law, rather than a substantive immunity (see *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1121 [81 Cal.Rptr.2d 471, 969 P.2d 564] [anti-SLAPP statute affords "procedural protections"]; *San Diegans for Open Government v. San Diego State University Research Foundation* (2017) 13 Cal.App.5th 76, 95 [218 Cal.Rptr.3d 160] ["the anti-SLAPP statute does not immunize or insulate defendants from any liability ... [i]t only provides a procedure for weeding out, at an early stage, such claims that are meritless" (italics omitted)]), and that a forum
488 generally *488 applies its own procedural law to cases before it. (See *Felder v. Casey* (1988) 487 U.S. 131, 138 [101 L.Ed.2d 123, 108 S.Ct. 2302] (*Felder*).) As such, the anti-SLAPP statute will apply to adjudication of a federal claim in state court unless either (1) "the federal statute provides otherwise" (*Chavez v. Keat* (1995) 34 Cal.App.4th 1406, 1413-1414 [41 Cal.Rptr.2d 72] (*Chavez*)), or (2) the anti-SLAPP statute "affect[s] plaintiffs' substantive federal rights," and is thus preempted. (*County of Los Angeles v. Superior*

Court (2006) 139 Cal.App.4th 8, 17 [42 Cal.Rptr.3d 390] (*County of Los Angeles*), citing *Felder, supra,* 487 U.S. at p. 138.) Neither is the case here.

As to the first possibility, "[n]othing in section 1983 imposes federal procedural law upon state courts trying civil rights actions." (*Chavez, supra,* 34 Cal.App.4th at p. 1414.) On this basis, California courts have held that the anti-SLAPP statute *does* apply to federal section 1983 claims a plaintiff chooses to file in California state court. (See *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1117-1118 [57 Cal.Rptr.2d 207] (*Bradbury*); *Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1392, fn. 4 [53 Cal.Rptr.3d 647] (*Vergos*).)

Published cases do not appear to have fully analyzed the second possibility, however. In *Bradbury,* for example, the court rejected a claim that it would "violate[] federal substantive law" to apply the anti-SLAPP statute to a federal civil rights action brought in state court, but relied only on the procedural versus substantive distinction in *Chavez, supra,* 34 Cal.App.4th at pages 1413-1414. (*Bradbury, supra,* 49 Cal.App.4th at pp. 1117-1118; see also *Vergos, supra,* 146 Cal.App.4th at p. 1392, fn. 4 [relying on *Bradbury*]; *Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1055-1056 [99 Cal.Rptr.3d 661] [relying on *Bradbury* and *Vergos*].) We analyze the second possibility now and conclude that section 1983 does not preempt application of the anti-SLAPP statute to section 1983 claims in state court.

When a plaintiff chooses to bring a federal claim in state court, "state rules of evidence and procedure apply unless application of those rules would affect plaintiffs' substantive federal rights" (*County of Los Angeles, supra,* 139 Cal.App.4th at p. 17), and thereby "`"stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"'" in enacting the underlying federal statute. (*Felder, supra,* 487 U.S. at p. 138, quoting *Perez v. Campbell* (1971) 402 U.S. 637, 649 [29 L.Ed.2d 233, 91 S.Ct. 1704].) This is not the case with our state's anti-SLAPP statute and section 1983. Code of Civil Procedure section 425.16 applies neutrally to all types of causes of action and does not specifically target government conduct. (See *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 652 [49 Cal.Rptr.2d 620] ["all kinds of claims could achieve the objective of a SLAPP suit"]; cf. *Felder, supra,* 487 U.S. at pp. 144-145 [state notice-of-claim statutes applying only to state government action preempted by § 1983, *489 because government defendants are "the very persons and entities Congress intended to subject to liability" via § 1983].) The purpose of section 1983 claims is to "serve as an antidote to discriminatory state laws, to protect federal rights where state law is inadequate, and to protect federal rights where state processes are available in theory but not in practice." (*Williams v. Horvath* (1976) 16 Cal.3d 834, 841 [129 Cal.Rptr. 453, 548 P.2d 1125].) Plaintiffs have identified no basis on which we might conclude that the expedited summary-judgment-like procedure created by the anti-SLAPP statute might "`"stan[d] as an obstacle to the accomplishment and execution of"'" this purpose. (*Felder, supra,* at p. 141.)

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Of course, because an anti-SLAPP motion automatically stays discovery, a plaintiff may not have had the benefit of full discovery when defending the merits of his section 1983 claim under this expedited procedure. (See Code Civ. Proc., § 425.16, subd. (g).) But a court may permit discovery during the pendency of an anti-SLAPP motion when the court deems it necessary: "Courts deciding anti-SLAPP motions ... are empowered to mitigate their impact by ordering, where appropriate, `that specified discovery be conducted notwithstanding' the motion's pendency." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66 [124 Cal.Rptr.2d 507, 52 P.3d 685], quoting Code Civ. Proc., § 425.16, subd. (g).) More importantly, the "second-step burden" a plaintiff may be forced to meet without the benefit of full discovery "is a limited one.... [T]he bar sits low[], at a demonstration of `minimal merit' [citation]. At this stage, "`[t]he court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's

showing only to determine if it defeats the plaintiff's claim as a matter of law."'" (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 891 [249 Cal.Rptr.3d 569, 444 P.3d 706].) Moreover, a court will require a plaintiff to make this minimal showing only *after* the defendant has established under the first prong that the plaintiff's lawsuit arises from protected activity. Finally, unlike many of the procedural statutes courts have concluded are preempted, the anti-SLAPP statute does not "`condition ...' [citation] [¶] ... plaintiff's right of recovery under ... section 1983'" upon whether he complied with *the anti-SLAPP statute* (*County of Los Angeles, supra,* 139 Cal.App.4th at p. 18), but rather, on whether the plaintiff has established some probability that he has a right to recovery at all *under section 1983.* (Cf. *Felder, supra,* 487 U.S. at p. 144 [state notice-of-claim statute effectively created a "condition precedent" to bringing a federal claim that was
490 unrelated to the merits of *490 the claim].) Thus, the enforcement of anti-SLAPP discovery restrictions in section 1983 actions will not "frequently and predictably produce different outcomes ... based solely on whether the claim is asserted in state or federal court." (*Felder, supra,* at p. 141.)

We must further consider whether the anti-SLAPP law's mandatory attorney fee shifting provisions (Code Civ. Proc., § 425.16, subd. (c))—either individually or considered together with the discovery restrictions noted above—unduly burden a substantive federal right when applied to 42 United States Code section 1983 claims. We conclude they do not. These fee shifting provisions provide that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion...." (Code Civ. Proc., § 425.16, subd. (c)(1).) Although the potential for such fee-shifting might discourage some plaintiffs from pursuing section 1983 claims, that possibility does not rise to the level of defeating a plaintiff's ability to vindicate his federal rights through a section 1983 claim, particularly in light of the low bar plaintiffs must meet in order to save such claims and avoid attorney fees under the anti-SLAPP statute. The anti-SLAPP fee-shifting provisions are also partially reciprocal, such that defendants may be wary of bringing anti-SLAPP motions for the same reasons plaintiffs may be wary of filing lawsuits potentially subject to such motions. (See Code Civ. Proc., § 425.16, subd. (c)(1).) Plaintiffs have cited no authority suggesting that federal law preempts every state procedure that may place some additional burden on a plaintiff who chooses to vindicate a federal right in state court. The procedural devices in the anti-SLAPP statute do not rise to the level necessary for them to "defeat" a "federal right."

The trial court therefore correctly applied the anti-SLAPP statute to plaintiffs' section 1983 claim.

C., D.[*]

491 *491 **DISPOSITION**

The order is affirmed. Respondent is awarded his costs on appeal.

Chaney, J., and White, J.,[*] concurred.

A petition for a rehearing was denied May 15, 2020, and appellants' petition for review by the Supreme Court was denied August 12, 2020, S262418.

[*] Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of the Factual and Procedural Summary and the Discussion. parts C. and D.

[1] The complaint also named two Labor Commissioner officials as defendants to all causes of action. Chavez's anti-SLAPP motion seeks to strike "the complaint," not just the causes of action alleged against Chavez, and the language of the court's order grants the motion without caveat. (Capitalization & boldface omitted.) But the Labor Commissioner officials named as defendants did not join Chavez's anti-SLAPP motion, and the court has since sustained their demurrer to a first amended complaint filed while Chavez's motion to strike was pending, leading the parties to stipulate to dismissing them as incorrectly named parties to this appeal. Thus, the record is inconsistent with reading the order on appeal literally, and we instead construe it as striking the complaint only to the extent it alleges causes of action against Chavez.

[*] See footnote, *ante,* page 484.

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[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.