

FILED
SAN MATEO COUNTY

MAY 27 2022

Clerk of the Superior Court
By  DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO
UNLIMITED JURISDICTION

JACLYN FOROUGH, derivatively on behalf of
Laurel School Parent Teacher Organization, a
nonprofit public benefit corporation,

Plaintiffs,

v.

LINDA CREIGHTON, an individual; JAMES
LOFTUS, an individual; CASSANDRA LOPEZ
LOFTUS, an individual; STEFANIE
CONNORS, an individual; ANJALI PATER, an
individual; KRISTA ROSA, an individual;
PATTY LOPEZ-JARAMILLO, an individual;
ASHLEE REA, an individual; and DOES 1-25,
inclusive,

Defendants;

And

LAUREL SCHOOL PARENT TEACHER
ORGANIZATION;

Nominal Defendant.

) Case No. 21-CIV-01197

) **ORDER GRANTING IN PART AND**
) **DENYING IN PART DEFENDANTS'**
) **ANTI-SLAPP SPECIAL MOTION**
) **TO STRIKE PLAINTIFF'S**
) **VERIFIED COMPLAINT (C.C.P. §**
) **425.16)**

) *Order from Anti-SLAPP Motion Heard:*

) Date: February 8, 2022

) Time: 2:00 p.m.

) Dept.: 4

) Judge: Hon. Nancy L. Fineman

1 On March 8, 2021, Plaintiff filed her verified complaint. On June 1, 2021, Defendant Linda
2 Creighton ("Creighton"), the principal, filed her SLAPP motion. On June 28, 2021, the Individual
3 Defendants, board members of the Laurel School PTO, filed their SLAPP motion.

4 Between the time that Defendants filed their motions and Plaintiff filed her oppositions, the
5 Supreme Court issued its opinion in *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995. On
6 November 8, 2021, the Court issued a tentative which requested supplemental briefing to address
7 both *Bonni* and *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057,
8 which were not cited in any brief. Each party thereafter filed supplemental briefs on an agreed
9 upon schedule and provided the Court with a total of four binders containing the relevant pleadings,
10 motion papers and opposition papers. The Court has now reviewed the Verified Complaint, the
11 parties briefing, and the applicable law, issued a tentative ruling on February 7, 2022, heard oral
12 argument on February 8, 2022, and issues the following ruling. The parties met-and-conferred
13 regarding the final order and submitted almost identical orders on May 17, 2022 (Plaintiff) May 26,
14 2022 (Defendants). The Court has adopted the addition suggested by Defendants and added back
15 part of the tentative ruling, which the parties had omitted.

16 As set forth below, the motions are **GRANTED** in part and **DENIED** in part:

17 **BACKGROUND**

18 Plaintiff was a volunteer on the Laurel School Parent Teacher Organization board who
19 believes that the school's principal and other PTO board members (the "Individual Defendants")¹
20 committed breach of fiduciary duty, her only cause of action.² Her verified complaint is 85 pages

21 ¹ In the complaint, Plaintiff refers to the principal, Creighton, and the other defendants who are the
22 board members of the PTO as the Individual Defendants. In their briefing, the other board
23 members refer to themselves as the Individual Defendants. The Court will refer to Creighton as
24 "the principal," the board members as the "Individual Defendants," and all the defendants
collectively as "Defendants."

25 ² Originally, Plaintiff alleged causes of action for abuse of control and corporate waste, but she
26 dismissed those other causes of action and this motion only relates to the breach of fiduciary duty
27 claim. See, Stipulation and Order re Plaintiff's First Amended Complaint & Defendants' Anti-
28 SLAPP Motions, filed July 21, 2021. The Court refers to the Complaint to encompass both the
Complaint and First Amended Complaint since the operative paragraphs in the Complaint and First
Amended Complaint are identical.

1 in length with 181 paragraphs before her causes of action. She styles the complaint as being
2 brought derivatively on behalf of the Laurel School Parent Teacher Organization. Her prayer for
3 relief states: “Plaintiff, on behalf of herself and the Laurel School PTO, prays for judgment as
4 follows: ...” (Complaint at 83.) Defendants break down Plaintiff’s alleged fiduciary claims as:
5 ultra vires activity; “ask” allegations; quid pro quo; bullying and intimidation; and cover-up. See,
6 Supplemental Brief by Individual Defendants on Motion to Strike Pursuant to CCP §425.16, filed
7 December 3, 2016 at 7:14-18 and its Table of Contents, Section VI.

8 The principal and Individual Defendants now seek to strike pursuant to *Code of Civil*
9 *Procedure* § 425.16 the complaint or various paragraphs claiming that these allegations are
10 protected speech or conduct pursuant to subsections (e)(3) and (e)(4). The principal’s notice of
11 motion specifies the specific paragraphs she seeks to strike and her supplemental brief discusses the
12 paragraphs that she seeks to strike within the context of specified categories. The Individual
13 Defendant’s notice of motion simply seeks to strike “all or part” of the verified Complaint, Notice
14 filed June 28, 2021, without specifying any part of the Complaint they seek to strike. Similarly,
15 their proposed order lodged June 28, 2021, does not identify any portions of the complaint that they
16 seek to strike. Their supplemental brief does not discuss each individual paragraph they seek to
17 strike or file a supplemental notice or order. Despite the Individual Defendants’ lack of specificity,
18 it appears that they seek to strike the same claims and paragraphs as the principal. They filed a
19 joinder to the principal’s motion, which request is **GRANTED**. The Court also **GRANTS**
20 Creighton’s joinder motion.

21 Defendants further contend that the Court must grant the motion because Plaintiff cannot
22 show a likelihood of success on the merits. Plaintiff opposes the motion on both grounds. She also
23 contends that the Court does not even need to reach the Section 425.16 analysis because the public
24 interest exception in *Code of Civil Procedure* § 425.17(b) applies to her derivative complaint.
(Hereafter, citations to a “Section” will refer to the *Code of Civil Procedure*.)

25 **SECTION 425.17(B) DOES NOT APPLY TO PLAINTIFF’S COMPLAINT**

26 Plaintiff claims that her action is brought solely in the public interest and, therefore, the
27 anti-SLAPP statute does not apply. Defendants disagree. In response to perceived abuses of the
28 anti-SLAPP statute, the Legislature enacted *Code of Civil Procedure* § 425.17 to exempt actions

1 brought solely for the public benefit. *Club Members for an Honest Election v. Sierra Club* (2008)
2 45 Cal.4th 309, 316; *Holbrook v City of Santa Monica* (2006) 144 Cal.App4th 1242, 1249-50,
3 citing Section 425.17(b). Section 425.17(b) provides:

4 (b) Section 425.16 does not apply to any action brought solely in the public interest
5 or on behalf of the general public if all of the following conditions exist:

6 (1) The plaintiff does not seek any relief greater than or different from the
7 relief sought for the general public or a class of which the plaintiff is a
8 member. A claim for attorney's fees, costs, or penalties does not constitute
9 greater or different relief for purposes of this subdivision.

10 (2) The action, if successful, would enforce an important right affecting the
11 public interest, and would confer a significant benefit, whether pecuniary or
12 nonpecuniary, on the general public or a large class of persons.

13 (3) Private enforcement is necessary and places a disproportionate financial
14 burden on the plaintiff in relation to the plaintiff's stake in the matter.

15 Plaintiff has the burden to demonstrate that each of the requirements of Section 425.17 are
16 met. *San Diegans for Open Government v. Har Construction, Inc.* (2015) 240 Cal.App.4th 611,
17 622.

18 The entire complaint is scrutinized to see if **any** portion includes relief personal to the
19 plaintiff, in which case the exemption does not apply. Burke, *Anti-SLAPP Litigation* § 6:15 (TRG
20 2021). "Use of the term 'solely' expressly conveys the Legislative intent that section 425.17(b) not
21 apply to an action that seeks a more narrow advantage for a particular plaintiff. Such an action
22 would not be brought 'solely' in the public's interest. The statutory language of 425.17(b) is
23 unambiguous and bars a litigant seeking 'any' personal relief from relying on the section 425.17(b)
24 exception." *Club Members*, 45 Cal.4th at 316–317. The Court makes this threshold determination
25 based upon the nature of the allegations of the complaint and scope of relief sought in the prayer.
26 *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1460.

27 Using this framework, courts have rejected the exemption when the complaint has sought
28 any personal advantage for the plaintiff. See, e.g., *Club Members*, 45 Cal.4th at 317 (plaintiff
sought a personal advantage in environmental group board of director's election); *Holbrook v. City
of Santa Monica*, 144 Cal. App. 4th 1242, 1249–1250 (city council members seeking to end council
meetings by 11:00 p.m. not "solely" in public interest because city council member plaintiffs had

1 preference for certain working hours); *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239, 249-
2 250 (relief arising from finding Brown Act violation would personally benefit plaintiffs); see *Anti-*
3 *SLAPP Litigation* at § 6:15 for further cases and analysis.

4 The Court determines that the exemption does not apply in this case because Plaintiff does
5 not satisfy the first requirement, and thus the Court does not analyze the second and third
6 requirements. While there are aspects of the Complaint that are in the public interest (see,
7 Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Opposition to
8 Defendant Creighton's Anti-SLAPP Motion to Strike Plaintiff's Verified Complaint filed October
9 26, 2021 at 3-4), those allegations do not establish the exemption. Plaintiff must show that she is
10 not seeking **any** personal advantage or relief. Under this exemption, it is irrelevant if the public
11 will benefit from some of the relief Plaintiff seeks; if she seeks any relief which is personal to her,
12 she has not met her burden. "[B]ecause section 425.17(b) is a statutory exception to section 425.16,
13 it should be narrowly construed." *Club Members*, 45 Cal.4th at 316 citing *City and County of San*
14 *Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 400.

15 The Court concludes that the action was not brought solely in the public interest as required
16 by Section 425.17(b). The March 8, 2021 Complaint's Prayer, p. 84, includes a request for
17 "appropriate equitable relief, including any injunctive or declaratory relief necessary to change
18 and/or reform the Laurel School PTO's corporate governance, policies and culture," which is
19 broadly worded. Other portions of the Complaint, as well as the parties' communications leading
20 to the Complaint, shed light on, specifically, what injunctive relief Plaintiff seeks. The Complaint
21 makes numerous references to the PTO's 2020 "Subcommittee Report," alleging it contained
22 several falsehoods that were defamatory of Plaintiff. See, Complaint, ¶¶ 107, 139, 159-162
23 (identifying alleged false/misleading statements in the report, and alleging they defamed Plaintiff).
24 The Complaint further alleges that prior to filing suit, Plaintiff demanded that Defendants
25 voluntarily take certain remedial actions, including retracting these alleged defamatory statements,
26 and that if Defendants fail to so, Plaintiff would initiate litigation to compel Defendants to do so.
27 The Complaint alleges:
28

1 On October 2, 2020, Plaintiff's counsel wrote the Laurel School PTO's counsel
2 again in yet another effort to have the Individual Defendants rectify their wrongs
3 [The letter stated] ... [W]hat [Plaintiff] demands, and what she will pursue legally if
4 the PTO Leadership does not take efforts to initiate for themselves, is (1) The
5 removal of Ms. Foroughi's name from the 2019/2020 Budget; (2) The correction of
6 the Report, which contains false information, i.e., (a) that Ms. Foroughi did not
7 record inbound payments to the PTO from the parents and corporate matching
8 programs in the Budget; and (b) that such payments were not reported to the PTO
9 Board (Ms. Foroughi did both); (3) The appointment of a mutually agreed to
10 independent investigator to investigate: (a) Ms. Foroughi's complaint of harassment
11 and bullying; and The PTO Leadership has until October 16, 2020 to indicate
12 that it will meet the aforementioned demands.

13 Paragraph 164; *see also*, Plaintiff's Ex. 2 (Plaintiff's 8-26-20 cease & desist letter to Defendants,
14 demanding correction/retraction of the alleged defamatory report, stating Defendants were seeking
15 to make Plaintiff the "fall person," which was causing damage to Ms. Foroughi's reputation).
16 Plaintiff's cease and desist letter further stated:

17 Such efforts will not be tolerated, and we are prepared to escalate this as necessary
18 to get the corrections made should our amicable efforts here prove unsuccessful.
19 Indeed, please be advised that if such efforts are required, we will also be widening
20 the focus of this matter to include individual actions.

21 Plaintiff's Ex. 2; *see also*, Complaint, ¶ 167 (stating Plaintiff tried to get the PTO to take remedial
22 action regarding the Subcommittee Report without filing suit, to no avail. "As a result, her only
23 recourse was to file the present Complaint.").

24 Based on the foregoing, the Court finds that Plaintiff's request for injunctive relief is, at
25 least in part, personal to Plaintiff, and, if ordered, would uniquely benefit her—i.e. Plaintiff seeks
26 relief that is "greater than or different from the relief sought for the general public or a class of
27 which the plaintiff is a member." These allegations render Section 425.17 inapplicable.

28 The cases cited by Plaintiff do not compel a different result. Plaintiff relies on *Tourgeman*
29 *v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, *People ex rel. Strathmann v. Acacia Research*
30 *Corp.* (2012) 210 Cal.App.4th 487 and *The Inland Oversight Committee v. County of San*
31 *Bernardino* (2015) 239 Cal.App.4th 671 as her best cases. Plaintiff's Supplemental Opposition to
32 Creighton's Supplemental Brief, filed December 30, 2021 at 20. The Court finds these cases
33 distinguishable.

1 In *Tourgeman*, plaintiff brought a putative class and representative action under Business &
2 Professions Code § 17200 seeking solely injunctive relief directed at stopping defendants’
3 “unlawful, unfair, and/or fraudulent debt collection actions in the future.” *Tourgeman*, 222
4 Cal.App.4th at 1460. The Court of Appeal explained the reason that § 425.17 applied: “[A]s the
5 trial court observed, ‘it is unlikely [Tourgeman] would have benefitted from the requested
6 injunction,’ since it is doubtful that Tourgeman will again be the subject of respondents’ debt
7 collection efforts. In sum, Tourgeman’s putative class and representative action was one seeking
8 injunctive relief to benefit the general public in the future by ensuring that respondents comply
9 with state and federal statutory law.” *Id.* at 1461 (bracketed material added and in original). In
10 contrast here, Plaintiff will benefit personally from the injunctive relief she seeks.

11 *Strathmann* was a qui tam action where the Court of Appeal found that: plaintiff stood in
12 the shoes of the government; plaintiff should be afforded the same protection as the attorney
13 general and not be subject to a SLAPP motion; and plaintiff did not seek personal relief but rather a
14 bounty. *Strathmann*, 210 Cal.App.4th at 501. The Court of Appeal distinguished the qui tam from a
15 “claim brought on behalf of the general public [which] might include some kind of individual
16 relief, in which case, it would have to be determined under section 425.17(b) whether that relief is
17 greater than or different from the relief sought for the general public.” *Id.* (bracketed material
18 added). In contrast, here, Plaintiff is not bringing the case on behalf of the government and the
19 relief she seeks will provide her with a personal benefit.

20 In *Inland Oversight*, the parties agreed that plaintiff did not seek any relief greater than or
21 different from the relief sought for the general public. *Inland Oversight*, 239 Cal.App.4th at 676.
22 The issue was whether the third requirement, focusing on the term “necessary” was satisfied. *Id.*
23 Accordingly, the case does not provide any analysis of the first factor, the factor the Court finds
24 determinative.

25 Plaintiff’s styling the complaint as a derivative complaint does not change this result
26 because the benefit to the Laurel School PTO provides the personal benefit to her. Accordingly,
27 her complaint is distinguishable from the complaint in *Northern Cal. Carpenters Regional Council*
28 *v. Warmington Hercules Associates* (2004) 124 Cal.App.4th 296. As the Court of Appeal
explained in finding that Section 425.17(b)’s exemption applied:

1 The complaint alleges that Plaintiffs brought the action ‘on behalf of themselves, on
2 behalf of the general public and on behalf of all others similarly situated,’ but it does
3 not in fact seek any monetary or injunctive relief directly benefiting the Plaintiffs.
4 The wronged class is alleged to be nonunion workers on the Defendants' projects
5 who were not paid the prevailing wage. The Carpenters Regional Council obviously
6 does not belong to the class of nonunion workers, and the complaint does not allege
7 that the individual Plaintiff, Cliff Drescher, belongs to this class. Instead, the
8 complaint seeks to vindicate public policy by assuring enforcement of the City's
Prevailing Wage Policy. Thus, the Plaintiffs bring the action ‘solely in the public
interest’ and do ‘not seek any relief greater than or different from the relief sought
for the general public ...’ within the meaning of the introductory language of
subdivision (b) and subdivision (b)(1) of the Code of Civil Procedure section
425.17.

9 *Id.* at 300; *see Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 914–915 (finding no
10 public benefit in Business & Professions Code § 17200 representative action). As discussed above,
11 here Plaintiff does seek greater relief than that which would be afforded the PTO.

12 Since the Court finds that the Section 425.17(b) exemption does not apply, the Court next
13 turns to the analysis under Section 425.16.

14 **ANALYSIS UNDER CODE OF CIVIL PROCEDURE § 425.16**

15 In *Bonni*, our Supreme Court recently reaffirmed the requirements to prevail on a SLAPP
16 motion:

17 Litigation of an anti-SLAPP motion involves a two-step process. First, ‘the moving
18 defendant bears the burden of establishing that the challenged allegations or claims
19 aris[e] from protected activity in which the defendant has engaged.’ (*Park, supra*, 2
20 Cal.5th at p. 1061) Second, for each claim that does arise from protected
activity, the plaintiff must show the claim has ‘at least minimal merit.’ (*Ibid.*) If the
plaintiff cannot make this showing, the court will strike the claim.

21 *Bonni*, 11 Cal.5th at 1009. “The defendant's burden is to identify what acts each challenged claim
22 rests on and to show how those acts are protected under a statutorily defined category of protected
23 activity.” *Id.* at 1009 citing *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884; *see*
24 *Park*, 2 Cal.5th at 1057. Specifically, as the Supreme Court in *Bonni* explained, the defendant
Hospital had to show that the various acts it sought to strike supply an element of a claim:

25 Here, too, we may consider whether Bonni's various allegations supply the elements
26 of a retaliation claim or merely provide context. But to the extent Bonni has alleged
27 various acts as a basis for relief and not merely as background, each act or set of acts
28 must be analyzed separately under the usual two-step anti-SLAPP framework. The
Hospitals bear the burden of showing that each allegation supporting Bonni's claim
of recovery is one that rests on protected activity. If the Hospitals carry that burden,

1 Bonni will then need to demonstrate some merit to his claim that those protected
2 acts were taken for impermissible retaliatory reasons; if he cannot, those particular
3 allegations will be stricken. Conversely, to the extent any acts are unprotected, the
claims based on those acts will survive.

4 *Id.* at 1012 (footnote omitted). “If a cause of action contains multiple claims and a moving party
5 fails to identify how the speech or conduct underlying some of those claims is protected activity,
6 it will not carry its first-step burden as to those claims.” *Id.* at 1011. Thus, the Supreme Court
7 found that since the defendant hospital failed to demonstrate how a handful certain specific
8 miscellaneous allegations each entailed protective activity, defendant did not carry its burden to
9 prove prong one for these allegations. *Id.* at 1023-24; *see also Park*, 2 Cal.5th at 1062-1064. “A
10 claim is not subject to a motion to strike simply because it contests an action or decision that was
11 arrived at following speech or petitioning activity, or that was thereafter communicated by means
12 of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning
13 activity itself is the wrong complained of, and not just evidence of liability or a step leading to
14 some different act for which liability is asserted.” *Park*, 2 Cal.5th at 1060. The mere fact that
15 evidence of defendant's misconduct is contained in writings or statements is irrelevant for purposes
of the anti-SLAPP analysis. *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621.

16 To satisfy the “arising from” requirement, Defendants must satisfy one of the four
17 categories set forth in section 425.16, subdivision (e). *Park*, 2 Cal.5th at 1063. Defendants’ anti-
18 SLAPP motions invoke two of the four categories of protected activity under Section 425.16,
19 subdivision (e): “ ‘(3) any written or oral statement or writing made in a place open to the public or
20 a public forum in connection with an issue of public interest, or (4) any other conduct in
21 furtherance of the exercise of the constitutional right of petition or the constitutional right of free
22 speech in connection with a public issue or an issue of public interest.’ ”

23 **ANALYSIS UNDER PRONG 1 OF CLAIM FOR BREACH OF FIDUCIARY DUTY**

24 The elements to prove a breach of duty are: a fiduciary duty; breach; and damages caused
25 by that breach. *IIG Wireless Inc. v. Yi* (2018) 22 Cal.App5th 630, 646; *Slovensky v. Friedman*
26 (2006) 142 Cal.App.4th 1518, 1534. Citing the Moving Parties’ Papers, pp. 7-18, the Individual
27 Defendants create four categories for Plaintiff’s allegations, as follows:

28 The allegations asserted by Plaintiff in support of her claim for breach of fiduciary
duty fall under 4 categories: (1) Ultra Vires (Participation in Fundraising); (2) Quid

1 Pro Quo (Misleading parents re “donations”); (3) Bullying/Intimidation (Board
2 Members/Votes); and (4) Falsification of Board Minutes and Subcommittee
3 Reports (Publications).

4 See, Supplemental Briefing by Individual Defendants on Motion to Strike Pursuant to CCP §
5 425.16, filed December 3, 2021 at 7:14-18; see Creighton’s Supplemental Memorandum of Points
6 and Authorities in Support of Anti-SLAPP Motion to Strike Plaintiff’s Verified Complaint filed
7 December 3, 2021 at 3:4-12; 11:4-25:25; Table of Contents Section II(B)(2). These categorizations
8 were also used in the Plaintiff’s and Defendants’ other arguments and during oral arguments for the
9 motions. These categorizations of the breaches of fiduciary duty assist in the analysis of Prong 1.

10 To summarize, a claim only arises from protected activity when that activity underlies or
11 forms the basis for the claim. *Park*, 2 Cal.5th at 1062. Defendants’ act must itself have been in
12 furtherance of the right of petition or free speech. *Id.* at 1062. The Court’s focus is on determining
13 what Defendants’ speech or activity was that gave rise to the asserted liability—and whether that
14 activity constitutes protected speech or petitioning. *Id.* at 1063.

15 The Individual Defendants make general arguments only and fail to specifically identify for
16 each of the individual board members how the speech or conduct underlying the claim is protected
17 activity and thus, they have not carried their first-step burden as to those claims. *Bonni*, 11 Cal.5th
18 at 1011. Their Opening Brief is devoid of this specificity. See Defendants’ Notice of Motion and
19 Anti-SLAPP Motion filed June 28, 2021 at 17-19. Even after being provided a chance to provide
20 this specificity, the Individual Defendants failed to do so. Specifically, in their supplemental
21 briefing filed December 3, 2021, their Section III(C) at pages 17-22, they do not discuss the
22 allegations of each of the four categories and demonstrate that they are protected activity. Compare
23 with their discussion of Prong 2 at 23-25 of their supplemental brief where they identify the four
24 categories and discuss evidence specific to each category. They also fail to discuss each Individual
25 Defendant separately and not all allegations pertain to all Individual Defendants. However, since
26 they have joined in the principal’s motion, the principal’s motion is more specific in identifying
27 speech and conduct and making arguments about protected activity, and many of the allegations
28 pertain to all Defendants, the Court’s analysis pertains to the Defendants.

Ultra Vires Activity

Plaintiff alleges that Laurel School PTO engages in fundraising, which exceeds the corporate charter of the PTO and is, therefore, ultra vires and a breach of fiduciary duty. Complaint ¶40. This allegation supports a breach of fiduciary duty. “Shareholders may bring a derivative suit to, for example, enjoin or recover damages for breaches of fiduciary duty directors and officers owe the corporation.” *Schuster v. Gardner* (2005) 127 Cal.App.4th 305, 313; *Wagg v. Toler* (1926) 80 Cal.App. 501, 510 (“The term ‘ultra vires’ simply refers to the power of a corporation. It simply refers to those powers which are not conferred upon a corporation by the act of its creation and are violations of the trust reposed in the managing board.”); *Corporations Code* § 20(a) (shareholders may seek to enjoin corporation or its officers from committing ultra vires acts).

The principal seeks to strike paragraph 40 at 14:12-15 and 16-23. The complaint references these statements and other communications as context and evidence of the breaches of fiduciary duty. This claim is not based on protected activity; the claim does not arise from any specific statements or writings, but rather from alleged acts contrary to the corporate charter. *Park* illustrates this distinction between incidental and protected speech arising from a claim. *Park* 2 Cal.5th 1057. There, a professor sued the university after it denied him tenure, alleging national origin discrimination. *Id.* at 1061. The university responded by filing an anti-SLAPP motion, which the trial court denied. *Ibid.* The court ruled, “the complaint was based on the University’s decision to deny tenure, rather than any communicative conduct in connection with that decision.” *Ibid.* The Court of Appeal reversed, opining a claim alleging a discriminatory decision is subject to an anti-SLAPP motion so long as the protected speech and activity contributed to that decision. *Id.* at 1061-1062. The Supreme Court reversed, holding a discrimination claim “may be struck only if the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.” *Id.* at 1060. *Park* explained while “[t]he tenure decision may have been communicated orally or in writing ... that communication does not convert Park’s suit to one arising from such speech.” *Id.* at 1068. The professor’s claim alleged the university’s denial of tenure was improper. Any other speech or writings were incidental or collateral to the plaintiff’s claim. *Ibid.*

1 The Supreme Court further explained, “The elements of Park's claim, however, depend not
2 on the grievance proceeding, any statements, or any specific evaluations of him in the tenure
3 process, but only on the denial of tenure itself and whether the motive for that action was
4 impermissible. The tenure decision may have been communicated orally or in writing, but that
5 communication does not convert Park's suit to one arising from such speech. The dean's alleged
6 comments may supply evidence of animus, but that does not convert the statements themselves into
7 the basis for liability. As the trial court correctly observed, Park's complaint is ‘based on the act of
8 denying plaintiff tenure based on national origin. Plaintiff could have omitted allegations regarding
9 communicative acts or filing a grievance and still state the same claims.’ [Citations.]” *Park*, 2
10 Cal.5th at 1068.

11 The principal relies on *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 539, a case that does not
12 involve ultra vires allegations. In *Lee*, plaintiffs sued for declaratory relief on the basis that the
13 defendant directors voting was the wrongful conduct. The Court of Appeal held that this “voting”
14 conduct was not “merely incidental” to the “wrongful conduct” and was therefore protected
15 conduct. *Id.* at 542-543. *Lee* distinguished *Talega Maintenance Corp. v. Standard Pacific Corp.*
16 (2014) 225 Cal.App.4th 722, a case relied upon by Plaintiff where the Court of Appeal held that the
17 allegations of fiduciary duty were based upon the wrongful spending of money, which was not a
18 protected activity. *Id.* at 729-730.

19 In this case, the gravamen of the ultra vires claim is that “Laurel School PTO is now
20 engaged in fundraising which exceeds the corporate charter of the PTO” and Defendants have
21 breached their fiduciary duties by allowing it. Complaint ¶ 40. The speech and conduct Defendants
22 claim is protected may contain evidence of Defendants’ breach of fiduciary duty or provide context
23 for the claim, but the claim is not based on protected activity necessary to prove the claim. *Park*, 2
24 Cal5th at 1060-62. The allegations in this category are similar to those in *Talega and Greco v.*
25 *Greco* (2016) 2 Cal.App.5th 810, 824–825 (breach of fiduciary claims against trustee based on
26 wrongful taking of money from trust and estates not protected) rather than *Lee*. None of the speech
27 or activity give rise to the protected activity. Accordingly, Defendants fail to show that any
28 protected speech or conduct which is protected by Section 425.16 is implicated by these allegations
and the motions to strike these allegations are **DENIED**.

The MOU “Ask” Allegations

The principal seeks to strike paragraphs 80 at 32:15-21, 81 at 32:22-28, 85 at 34:8-13 and 86 at 35:18-21. Some of these allegations do not pertain to statements or conduct by the principal. Paragraph 81 at 32:22-28, for example, pertains to defendant Parsi responding to Creighton’s actions. Paragraph 86 at 35:18-21 refers to Defendant Lopez Loftus. Since the Individual Defendants have joined in the principal’s motion, the Court addresses these allegations. Plaintiff contends that these allegations are evidence to support the breach of loyalty allegations relying on *Gaynor v. Bulen* (2018) 19 Cal.App.5th 864, 880–881. After discussing other SLAPP motions involving breach of loyalty allegations, the Court of Appeal in *Gaynor* affirmed the trial court’s denial of the SLAPP motion finding that the plaintiff sued the defendant “because he allegedly breached his duties of loyalty and fair treatment and not because he exercised his petitioning rights.” *Id.* Similarly in this case, the gravamen of the allegations is that the Defendants breached their duties of loyalty, see Complaint ¶¶ 6, 178, 183, and these allegations are thus evidence of the breach or incidental background evidence. *Park*, 2 Cal5th at 1060-62. Accordingly, Defendants fail to show that any protected speech or conduct which is protected by Code of Civil Procedure § 425.16 is implicated by these allegations and the motions to strike these allegations are **DENIED**.

Quid Pro Quo (Misleading Parents Re “Donations”)

The principal seek to strike paragraphs 44 at 16:4-8 and 16:4-14, 71 at 28:16-23 and 28:23-29:4, 74 at 29:26-30:5, 100 at 42:1-5. As framed by the principal, the wrongful conduct relates to: “fees paid by parents to the PTO for certain overnight trips, which were called ‘donations’ and in some instances matched by corporate sponsors to provide trip scholarships. Plaintiff assigned the moniker ‘quid pro quo’ to this practice and claims that it was ‘illegal’ and could jeopardize the Laurel School PTO’s 501(c)(3) tax-exempt status.” Creighton’s Supplemental Brief filed December 3, 2021 at 14:13-17 citing Complaint ¶¶ 44, 71, 87. While she characterizes the claims as related to statements, *id.*, the gravamen of the claim is illegal donations that could jeopardize the PTO’s tax-exempt status. Thus, the written statements and conduct are not the wrongful conduct which is an element of the claim, but evidence of the wrongfulness. *Park*, 2 Cal5th at 1060-62. Accordingly, Defendants fail to show that any protected speech or conduct which is protected by

1 Section 425.16 is implicated by these allegations and the motion to strike these allegations are
2 **DENIED.**

3 **Bullying/Intimidation (Board Members/Votes)**

4 Plaintiff alleges certain Defendants breached their fiduciary dut(ies) in part by “bullying” and/or
5 “intimidating” Plaintiff and other PTO Board members, and by failing to properly investigate the
6 alleged bullying and intimidation. Paragraphs 91, 92, 105-109, 123-26, 128-130, 137, 142, 144,
7 154, 159.

8 • Defendants’ alleged breach of fiduciary duty by failing to properly/adequately
9 investigate the alleged bullying/intimidation is not conduct that falls under Section 425.16.
10 To a large extent, Plaintiff’s allegations of bullying and intimidation center on certain Defendants
11 allegedly failing to properly or adequately investigate Plaintiff’s allegations of bullying and
12 intimidation, including Defendants’ alleged failure to appoint an outside/independent
13 investigator/consultant to look into the matter. These allegations do not target conduct that falls
14 within Section 425.16. At their core, such allegations do not target speech; they target
15 Defendants’ failure to act in the face of an alleged duty to act. Defendants cite no persuasive
16 authority suggesting Defendants’ alleged failure to sufficiently investigate Plaintiff’s allegations of
17 bullying and intimidation constitutes protected speech, or conduct in furtherance of protected
18 speech, under Section 425.16(e)(3) or (4) and the motions to strike these allegations are **DENIED.**

19 • Defendants’ alleged breach of fiduciary duty by verbally bullying/intimidating
20 Plaintiff and others, both during and following Board meetings, is conduct that falls within the
21 statute.

22 Plaintiff also alleges certain Defendants breached their fiduciary dut(ies) through
23 verbal/written remarks made to Plaintiff and others (Ms. Parisi), which allegedly began during a
24 12-9-19 meeting in which Plaintiff was verbally “attacked.” Complaint ¶¶ 90-92, 94, 96; Parisi
25 Decl., Par. 13-24 (stating Defendants, both during and after Board meetings, verbally
26 criticized/attacked Plaintiff and made comments that Parisi construed as intimidating her from
27 supporting Plaintiff’s position). These remarks, allegedly made during Board meetings and in
28 subsequent conversations, fall within Section 425.16(e)(3) and/or (4) (protected speech and
conduct related thereto). This targeted speech was made at a public school’s PTO Board meetings

1 (a “public forum”). *Lee v. Silveira*, 6 Cal.App.5th 527, 539–40 (2016) (meeting of HOA Board of
2 Directors is a public forum). A discussion of alleged bullying/wrongdoing by Board members is a
3 topic of interest to members of the public. *Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th
4 709, 716 (“issue of public interest” is broadly construed).

5 The cases Plaintiff cites involving speech that was merely “incidental to” an asserted cause
6 of action, but which did not form the basis for the asserted claim(s), are distinguishable. Here,
7 Plaintiff’s Complaint expressly alleges that certain Defendants breached their fiduciary dut(ies), at
8 least in part, by verbally bullying/intimidating Plaintiff and Ms. Parisi, beginning at the 12-9-21
9 Board meeting, and continuing with various remarks thereafter. Complaint ¶¶ 90-96; Parisi Decl.,
10 generally. Thus, such remarks are not mere “window dressing” or merely “incidental to” the
11 asserted claim; they form part of the basis for Plaintiff’s claim of breach of fiduciary duty.

12 The only paragraphs the principal seeks to strike related to this issue are paragraphs 91 and
13 92 and there are only statements by Lopez Loftus, Rosa, Patel, and Connors referenced therein in
14 paragraph 91. Therefore, the allegations in paragraph 91 are protected speech and/or conduct as to
15 Prong 1 as to Defendants Lopez, Loftus, Rosa, Patel, and Connors. The motion to strike paragraph
16 91 by the other Defendants is **DENIED** since there is no speech or conduct by them alleged in
17 paragraph 91, and the motion to strike paragraph 92 is **DENIED**.

18 **Falsification of Board Minutes and Subcommittee Reports (Publications)**

19 Plaintiff also alleges Defendants breached fiduciary dut(ies) by drafting/approving of/voting
20 for certain Board Minutes and Board Reports that Plaintiff contends were “false” and/or
21 “misleading.” Complaint ¶¶ 107-108 (Defendant Johnson breached her fiduciary duty by voting to
22 approve the Report); ¶ 144 (Rosa breached by keeping incorrect Minutes); ¶ 152 (Defendants knew
23 the Minutes were false/misleading); ¶ 159 (Defendants breached by “falsifying” Reports and
24 Minutes); ¶¶ 125; 150 (Defendants breached by creating, approving and voting for false Minutes &
25 Reports).

26 The Court finds that these allegations target conduct covered by Section 425.16(e)(3)-(4).
27 *Lee v. Silveira*, at 542-43 (“voting” conduct was not “merely incidental” to the “wrongful conduct”
28 and was therefore protected conduct).

1 Plaintiff's cited cases finding that voting/approval of corporate Minutes/Reports is not
2 necessarily conduct protected speech/activity under Sect. 425.16 are distinguishable. In *Talega*
3 *Maint. Corp. v. Standard Pac. Corp.*, 225 Cal.App.4th 722, for example, the plaintiff did not base
4 the breach of fiduciary duty claim on the HOA Board's act of voting—i.e. plaintiff did not allege
5 defendant(s) breach their fiduciary duty by voting a certain way) ("The allegations in the complaint
6 concerning the breach of fiduciary duty ... include no mention of voting."). Similarly, in *San*
7 *Ramon Valley Fire Prot. Dist. v. Contra Costa Cty. Employees' Ret. Assn.* (2004) 125 Cal.App.4th
8 343, although the plaintiff filed suit against Board members after a Board vote, defendant's votes
9 did not "give rise to" the asserted cause of action; the plaintiff did not allege that the act of voting
10 gave rise to, or was the basis for, liability). The *Talega* court expressly noted that "voting can
11 constitute protected activity." *Talega Maint. Corp.* at 729 (citing cases).

12 Here, Plaintiff has expressly targeted, *as part of the basis* for the alleged breach of fiduciary
13 duty claim, Defendants' approval of/voting for Board Minutes and Reports—that is, that the mere
14 act of voting a certain way and/or approving the alleged false "Minutes" constitutes a breach of
15 fiduciary duty. Thus, this targeted conduct falls within Section 425.16(e)(3) and/or (4) because
16 Plaintiff is "seeking to hold defendants liable for voting for/approving of the Board
17 Minutes/Report(s). And for the reasons stated *supra*, this targeted activity took place in a public
18 forum involving an issue of public interest and includes allegations against all Defendants.

18 PRONG 2

19 As to the allegations of ultra vires activity, the MOU "ask" allegations, and Quid Pro Quo,
20 the Court does not need to analyze Prong 2 because the Court has found that Defendants failed to
21 satisfy Prong 1.

22 As to the allegations that Defendants breached their fiduciary dut(ies) though verbal
23 bullying/intimidation in ¶ 91, and by approving/voting for alleged false/misleading corporate
24 Minutes/Reports in ¶¶ 107-108, 125, 144, 150, 152, 159, the burden shifts to the Plaintiff to
25 demonstrate the merit of the breach of fiduciary duty claim by establishing a probability of success.
26 *Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940. This
27 second step is a "summary-judgment-like procedure." *Id.* The court does not weigh evidence or
28 resolve conflicting factual claims. *Id.* Its inquiry is limited to whether the plaintiff has stated a

1 legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable
2 judgment. *Id.* The Court accepts the plaintiff's evidence as true, and evaluates the defendant's
3 showing only to determine if it defeats the plaintiff's claim as a matter of law. *Id.* "Claims with
4 the requisite minimal merit may proceed." Even if the evidence is not admissible, the evidentiary
5 showing may be satisfied "if it is reasonably possible the evidence... will be admissible at trial. *Id.*
6 at 947. As stated, to establish breach of fiduciary duty, Plaintiff must prove (1) the existence of a
7 fiduciary duty; (2) defendants' breach; and (3) resulting damage. *IIG Wireless, Inc. v. Yi*, at 646.

8 As to Defendants' alleged verbal bullying/intimidation of Plaintiff and/or Ms. Parisi during
9 Board meetings and elsewhere, Plaintiff has not proven a probability of establishing that such
10 verbal remarks, however unfriendly/caustic they may have been, constitute a breach of any
11 fiduciary duty. Plaintiff focuses largely (although not exclusively) on a verbal "attack" at a 12-9-
12 19 meeting, during which various Board member Defendants, some with raised voices, allegedly
13 told Plaintiff she "lacked human element," was "unemotional," had "sullied the name" of the PTO,
14 had no right to speak on behalf of the PTO, was "rude, toxic, and offensive," etc. Parisi Decl., Par.
15 13-15. Plaintiff points to no authority suggesting such a voicing of opinions, or even personal
16 criticisms, constitute a breach of any fiduciary, nor that the PTO was "damaged" by such verbal
17 exchanges. Accordingly, as to the FAC's allegations that Defendants breached a fiduciary duty by
18 virtue of verbal and/or written remarks made to Plaintiff (or other Board members) at Board
19 meetings or elsewhere, the motion to strike by Lopez Loftus, Rosa, Patel and Connors is
20 **GRANTED** as to ¶ 91.

21 As to Plaintiff's allegation that Defendants breached their fiduciary dut(ies) by
22 drafting/voting for and/or approving alleged false Meeting Minutes and Reports, Plaintiff has not
23 produced any evidence that shows that the minutes were false, that the business judgment rule does
24 not apply, and that Defendants did not have a good faith belief that they were taking the correct
25 actions. The Court can only find one reference to evidence regarding the false minutes on pages 25-
26 26 of Plaintiff's Opposition to Other Eight Individual Defendants' Anti-SLAPP Motion filed
27 October 25, 2021 citing Parisi Decl., ¶ 29-31 and Compendium of Exhibits, Exhibit 133
28 (Wasserstein, Depo. Trans., pp. 59:25-60:2). The Parisi Declaration provides her opinion that
Defendants drafted misleading minutes, which were adopted, after she said they were wrong, but

1 there are no facts demonstrating that they were wrong or that Defendants did not have an honest
2 good faith belief that they were correct in their beliefs. The Wasserstein transcript portion only
3 states that the witness expressed her concerns about the bullying/intimidation complaint and lack of
4 professional follow-up. There is nothing in Plaintiff's opposition to Creighton's SLAPP motion
5 regarding the minutes. This Court granted Plaintiff's motion to conduct limited discovery based
6 upon Plaintiff's contention that she needed evidence in Defendants' possession to rebut
7 Defendants' assertions in their SLAPP motion to the business judgment rule defense. However,
8 although Plaintiff had a chance to obtain the evidence, she fails to present it. Accordingly, she has
9 not met her evidentiary burden and the Defendants' motions to strike ¶¶ 107-108, 125, 144, 150,
10 152, 159 are **GRANTED**.

11 The Court **DENIES** the motions to dismiss the Complaint in its entirety. As to the specific
12 paragraphs, the Court **GRANTS** and **DENIES** the motion as set forth above. At the Court's
13 request, Defendants reviewed their objections to the original motion and submitted supplemental
14 objections. The Court only rules on the objections regarding the evidence it considered for the
15 Prong 2 analysis. As to Creighton's objections, the Court **OVERRULES** Supplemental Objection
16 No. 52. However, the Court only considers the evidence for Parisi's belief that the minutes were
17 misleading because there is no foundation and no personal knowledge demonstrated for those
18 statements. The evidence does not demonstrate that the Defendants knew that the minutes were
19 misleading. As to the Individual Defendants' Supplemental Objections, the Court finds that the
20 objections to the Declaration of Peter McMahon are **MOOT** because the Court allowed limited
21 discovery. The Court **OVERRULES** Supplemental Objections Nos. 27, 28 and 20 on the same
22 basis for its ruling on Creighton's Supplemental Objection No. 52.

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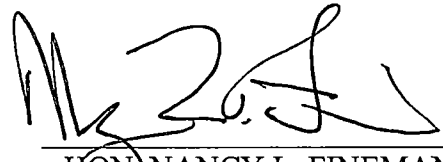
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1 Plaintiff's request for judicial notice is **GRANTED**.

2 Plaintiff's motion to strike the Individual Defendants' discussion regarding Prong 2 in their
3 supplemental brief is **GRANTED** even though it is procedurally improper because it is not brought
4 as a separate motion. The Court did not consider those arguments.

5
6 **IT IS SO ORDERED.**

7 Dated: May 27, 2022

8 
9 HON. NANCY L. FINEMAN
Judge of the Superior Court