UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-12-9654-MWF (AJWx) Date: April 8, 2013
Title: Magic Laundry Services, Inc. v. Workers United Service Employees International Union, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. DISTRICT JUDGE

Rita Sanchez	Not Reported	N/A
Deputy Clerk	Court Reporter/Recorder	Tape No.

Attorneys Present for Plaintiff:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings (In Chambers): ORDER GRANTING SPECIAL MOTION TO STRIKE [19] AND GRANTING MOTION TO DISMISS [28]

This matter is before the Court on Defendants' Special Motion to Strike (Docket No. 19) and Motion to Dismiss. (Docket No. 28). Having considered the parties' submissions, the Court GRANTS the Special Motion to Strike and GRANTS the Motion to Dismiss

All factual allegations in the First Amended Complaint ("FAC") concern Defendants' actions aimed at unionizing Magic Laundry's employees. Magic Laundry alleges that after lawful attempts at unionization failed, Defendants resorted to "improper" tactics aimed at extorting Magic Laundry's compliance with Defendants' campaign. Magic Laundry asserts four state law claims for relief and four federal Racketeer Influenced and Corrupt Organizations Act ("RICO") claims against Defendants. Defendants now move to strike the state law claims for relief – misappropriation of trade secrets, interference with contract, defamation, and trespass – pursuant to California's Anti-SLAPP statute and move to dismiss the RICO claims pursuant to Federal Rule of Civil Procedure 12(b)(6).

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I. REQUESTS FOR JUDICIAL NOTICE AND EVIDENTIARY OBJECTIONS

Defendants request judicial notice of public filings with the National Labor Relations Board. (Docket Nos. 24, 29). Judicial notice of these documents is proper because they are matters of public record not subject to reasonable dispute. Accordingly, the Court GRANTS the Requests.

The Court OVERRULES Magic Laundry and Defendants' Evidentiary Objections. (Docket Nos. 37, 46). The Court is satisfied that the declarations sufficiently demonstrate personal knowledge and competency to testify about the material considered by the Court. *See, e.g., Barthelemy v. Air Line Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) ("[R]equirements of personal knowledge and competence to testify . . . may be inferred from the affidavits themselves."). In general, the objections could also be overruled as moot, because in its ruling the Court did not rely on many of the challenged statements. To the extent that certain of the statements may be read as purporting to state legal conclusions, the Court considered only the lay sense of the legal terms of art.

II. SPECIAL MOTION TO STRIKE

The Anti-SLAPP statute, Cal. Civ. Code § 425.16, "was enacted to allow early dismissal of meritless first amendment cases aimed at chilling expression through costly, time-consuming litigation." *Metabolife Int'l v. Wornick*, 264 F.3d 832, 839 (9th Cir. 2001) (explaining relationship between Rule 56 and § 425.16). Anti-SLAPP motions are evaluated in two steps. First, a defendant must make a threshold showing that the act or acts giving rise to the claim were in furtherance of the right of petition or free speech, or in connection with a public issue. *See, e.g., Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2010) (applying Anti-SLAPP statute in a federal action).

Next, if the defendant meets its burden, the plaintiff must show a probability of prevailing on the challenged claim. *Id.* A plaintiff satisfies its burden by showing that

the claim is legally sufficient and supported by a *prima facie* showing of facts sufficient for a judgment in the plaintiff's favor if the evidence relied on is credited. *See Navellier v. Sletten*, 29 Cal. 4th 82, 88-89, 124 Cal. Rptr. 2d 530 (2002) ("[I]n order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have stated and substantiated a legally sufficient claim.") (citation and quotation omitted); *see also Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 699, 61 Cal. Rptr. 3d 29 (2007) (a plaintiff's burden in establishing a probability of prevailing is not onerous); *Gallagher v. Connell*, 123 Cal. App. 4th 1260, 1275, 20 Cal. Rptr. 3d 673 (2004) (a plaintiff need only make a minimal showing to withstand anti-SLAPP motion). A plaintiff's burden on an anti-SLAPP motion "is much like that used in determining a motion for nonsuit or directed verdict, which mandates dismissal when no reasonable jury could find for the plaintiff." *Metabolife*, 264 F.3d at 840 (citation and quotation omitted).

In support of their initial burden, Defendants argue that Magic Laundry's state law claims arise directly from protected speech activities. Specifically, Magic Laundry bases its state law claims on allegations that Defendants created flyers describing unsavory work conditions at Magic Laundry (FAC ¶¶ 24-30), spoke to Magic Laundry employees about unionization on Magic Laundry's property (FAC ¶ 31), organized demonstrations outside of Magic Laundry and its customers' facilities (FAC ¶¶ 23, 73), sent letters to Magic Laundry's customers regarding working conditions at Magic Laundry, effectively organizing a secondary boycott of Magic Laundry (FAC ¶¶ 56-69), and engaged in petitioning activity to local and national political entities regarding working conditions at Magic Laundry. (FAC ¶¶ 41-48, 64, 67-69). Because these allegations form the sole basis of Magic Laundry's state law claims, Defendants contend those claims arise directly from the activity, which Defendants characterize as protected.

Conduct in furtherance of the exercise of free speech in connection with a public issue or an issue of public importance qualifies as protected activity under the Anti-SLAPP statute. Cal. Civ. Code § 425.16(e)(4). Defendants need not show that their activities are protected as a matter of law to meet their initial burden; they must only make a *prima facie* showing of constitutional protection. *City of Los Angeles v.*

Animal Defense League, 135 Cal. App. 4th 606, 621, 37 Cal. Rptr. 3d 632 (2006) (unless defendant concedes illegality of conduct, "a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis.") (quotation and citation omitted). It is apparent that this particular labor organization effort is a matter of public interest in the subject community, and the challenged conduct is specifically alleged to be speech and petition activity in furtherance of unionization. *See, e.g.*, *Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees*, 69 Cal. App. 4th 1057, 1064, 82 Cal. Rptr. 2d 10 (1999) (protected speech under the Anti-SLAPP statute occurred during the course of a major labor dispute within the community). Accordingly, Defendants have met their initial burden on the Special Motion to Strike.

Magic Laundry must then show a probability of prevailing on its claims. Magic Laundry relies on *Rogers v. Home Shopping Network*, 57 F. Supp. 2d 973 (C.D. Cal. 1999), a district court decision that has since been clarified by the Ninth Circuit. This Court is not required to accept the reasoning of another district court and is bound to apply the Ninth Circuit's subsequent interpretation of the procedural standards applicable to an Anti-SLAPP motion. Therefore, the Court assesses Magic Laundry's burden as articulated by the Ninth Circuit in *Hilton*, 599 F.3d at 902 (second stage of Anti-SLAPP analysis is "similar to the one courts make on summary judgment, though not identical."). The Court does not assess the sufficiency of Magic Laundry's evidence prior to commencement of discovery, but instead looks to whether the claims are legally sufficient and are supported by a *prima facie* showing of facts to support a judgment in Magic Laundry's favor if its evidence is credited. *Id.* The Court may order additional discovery prior to deciding an Anti-SLAPP motion if good cause is shown. *See, e.g.*, *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1101-02 (C.D. Cal. 2004) (finding no "direct collision" between Rule 56 and section 425.16 in light of the provision allowing for additional discovery when necessary).

On the merits of the state law claims, both sides cite the *Noerr-Pennington* doctrine in support of their positions. "Under the *Noerr-Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct." *Sosa v. DIRECTV, Inc.*, 437 F.3d

923, 929 (9th Cir. 2006). Magic Laundry argues that the *Noerr-Pennington* doctrine facially protects its lawsuit – in other words, it argues that the *Noerr-Pennington* doctrine flatly bars application of California's Anti-SLAPP law. Given the dearth of authority for this position, the fact that Magic Laundry faces no liability in this lawsuit, and the Ninth Circuit's continued application of section 425.16, this argument is meritless.

Defendants argue that petitioning the NLRB (in addition to a subsequent publicity campaign) is protected by the *Noerr-Pennington* doctrine, insulating them from the present suit completely. But Defendants' alleged conduct goes beyond petitioning the government and the NLRB for redress. To the extent that Magic Laundry purports to establish its *prima facie* case for an individual claim ***only*** with reference to Defendants' NLRB petitions and related conduct, the Court will engage in *Noerr-Pennington* analysis to assess Defendants' arguments. *Id.* at 933 ("[W]e must consider whether the [challenged activities] constitute either protected petitioning activity or activity which must be protected to afford breathing space to the right of petition guaranteed by the First Amendment."); *see also Premier Med. Mgmt. Sys., Inc. v. California Ins.*, 136 Cal. App. 4th 464, 477, 39 Cal. Rptr. 3d 43 (2006) ("Although section 425.16 places on the plaintiff the burden of substantiating its claims, a defendant that advances an affirmative defense to such claims properly bears the burden of proof on the defense.") (alteration, quotation, citation omitted).

A. Misappropriation of Trade Secrets

"[A] prima facie claim for misappropriation of trade secrets requires the plaintiff to demonstrate: (1) the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the plaintiff's trade secret through improper means, and (3) the defendant's actions damaged the plaintiff." *Cytodyn, Inc. v. Amerimmune Pharmaceuticals, Inc.*, 160 Cal. App. 4th 288, 297, 72 Cal. Rptr. 3d 600 (2008) (quotation and citation omitted). A trade secret is defined as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its

disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3426.1.

Magic Laundry argues that its client list qualifies as a trade secret under California law and that Defendants acquired that list by improper means. Defendants maintain in response that Magic Laundry's client list is not a trade secret because its marked trucks deliver its goods publically to the locations of its clients, rendering its client list public knowledge. Moreover, Defendants contend that the list was not subject to security or obtained by improper means. Apparently conceding this point, Magic Laundry narrows its claim to information about prospective clients only. Yet Magic Laundry offers no evidence to support its contention that all Defendants knew or should have known that the potential client list was improperly disclosed or that defendant Saavedra disclosed the potential client list in violation of a duty to the contrary. Cal. Civ. Code § 3426.1(a), (b).

Damages is also an element of this claim, as set forth above in *Cytodyn, Inc.*, 160 Cal. App. 4th at 297. There is no admissible evidence that any such disclosure harmed Magic Laundry. Therefore, the misappropriation fails on this separate ground as well.

Accordingly, Magic Laundry fails show a *prima facie* case of misappropriation of trade secrets and the Special Motion to Strike must be granted as to that claim.

B. Interference with Contract

Magic Laundry offers a *prima facie* case for its interference with contract claim: Magic Laundry had contracts with third parties, Defendants were aware of the contracts, Defendants intended to disrupt those contracts, these disruptions made performance of the contracts difficult or costly, and Magic Laundry suffered harm as a result. *See Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126, 270 Cal. Rptr. 1 (1990) (listing elements).

The Court need not conduct an analysis under *Noerr-Pennington* because Magic Laundry offers facts to support its claim independent from the NLRB petitions and statements made with reference to those petitions. To the extent that Magic Laundry alleges interference with contract disconnected from Defendants' NLRB petitions and publicity campaigns arising therefrom, the claim survives. Conduct undertaken for publicity that is not connected to Defendants' petitioning activity is not barred by *Noerr-Pennington.*

Defendants further argue – correctly – that the interference with contract claim is preempted by Sections 7 and 8 of the NLRA. 29 U.S.C. § 151, *et seq*. Sections 7 and 8 of the NLRA concern employees' rights to organize as well as permissible conduct by unions in their efforts to organize labor forces. Section 8 of the NLRA specifically delineates lawful and unlawful conduct by unions. *See* Section 8(b) (addressing conduct of labor unions). "Generally, when the conduct at issue is arguably prohibited or protected by the N.L.R.A., otherwise applicable state law and procedures are preempted." *Adolph Coors Co. v. Sickler*, 608 F.Supp. 1417, 1422-23 (C.D. Cal. 1985) (concluding that allegations of threats of violence sufficiently distinguish conduct from that which is governed by the NLRA). An exception to this principle exists where the state law claim requires "something more" than peaceful (albeit coercive) labor organization activity, such as violence or threat of violence. *See id.*; *see also United Mine Workers of America v. Gibbs*, 383 U.S. 715, 729, 86 S.Ct. 1130, 16 L.Ed. 2d 218 (1966) (state remedies for "consequences resulting from associated peaceful picketing or other union activity" are preempted). The allegations in the FAC fall squarely within the purview of Section 8 of the NLRA and Magic Laundry does not allege that Defendants' conduct involved violence or threats of violence, or any other quality that would take their activity beyond the scope of federal labor regulations.

Accordingly, Magic Laundry has not shown a probability of prevailing on this claim and the Special Motion to Strike must be granted.

C. Defamation

In a labor suit of the type here, a claim for defamation requires a showing of actual malice. *See Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 273, 94 S.Ct. 2770, 41 L.Ed. 2d 745 (1974) ("[L]ibel actions under state law [are] preempted by the federal labor laws to the extent that the State [seeks] to make actionable defamatory statements in labor disputes which were published without knowledge of their falsity or reckless disregard for the truth."); *see also Hailstone v. Martinez*, 169 Cal. App. 4th 728, 741, 87 Cal. Rptr. d 347 (2008) ("[F]ederal labor law preempts state law to the extent that the state seeks to make such statements actionable unless the defendant made them either knowing they were false or in reckless disregard of their possible falsity.").

The Complaint alleges that Defendants made a number of false statements, including that Magic Laundry violated applicable labor laws, Magic Laundry runs a "sweatshop," and Magic Laundry fails to provide its workers with necessary safety and sanitation equipment. (Compl. ¶ 133). At the hearing, counsel for Magic Laundry clarified that the allegedly defamatory statements fall into two categories: statements regarding labor law violations and statements regarding safety and sanitation violations.

Magic Laundry offers evidence that certain of the statements were, in fact, false. For example, Magic Laundry provides some evidence that it equips its employees with suitable gloves and facemasks. (Kertenian Decl. at ¶ 12). Many of these statements are simply conclusory. Other statements are not verifiably false based on Magic Laundry's submissions. In fact, Magic Laundry apparently concedes that it does not have evidence to show that the statements regarding the Los Angeles Living Wage Ordinance were false. (Opp'n at 22). At the hearing, counsel debated this issue. But regardless of actual falsity, Magic Laundry does not provide any evidence that the statements at issue were knowingly false or made in reckless disregard for their falsity. Certainly, Magic Laundry presents ample evidence that tensions among the parties ran high. These tensions do not meet the legal requirement

of malice. Magic Laundry therefore fails to show a *prima facie* case of defamation and the Special Motion to Strike claim must be granted as to the defamation claim.

D. Trespass

Defendants argue that Magic Laundry lacks sufficient facts to support its trespass claim and assert that, regardless of the facts presented, the conduct alleged is specifically exempted from trespass liability under California law. The FAC directly ties the alleged trespass to Defendants' labor organization activity. (FAC ¶¶ 76, 144). Although the parties offer competing evidence regarding whether a trespass actually occurred, the Court will not weigh conflicting evidence on this Special Motion to Strike for the reasons discussed above.

However, Defendants have shown and Magic Laundry has not refuted that the alleged activity, specifically characterized as labor activity by Magic Laundry, is protected from liability. "Since at least 1964 . . . California law has protected the right to engage in labor speech – including picketing, distributing handbills, and other speech activities – on private land in front of a business that is the subject of a labor dispute." *Ralphs Grocery Co. v. United Food and Commercial Workers Union*, 55 Cal. 4th 1083, 1095-96, 150 Cal. Rptr. 3d (2012). To protect and encourage labor activities, California law exempts those engaging in lawful union organization activity from its trespass statutes. *See Banales v. Municipal Court*, 132 Cal. App. 3d 67, 71, 183 Cal. Rptr. 7 (1982) (holding that organizer who entered private property to communicate with non-union employees about a labor dispute did not illegally trespass).

In response to Defendants' allegations that defendant M. Vasquez only briefly entered Magic Laundry's driveway, Magic Laundry alleges that defendant M. Vasquez entered a back entrance of the facility and "proceeded to interact with Plaintiff's employees about Union issues." (Opp'n at 23). Magic Laundry also alleges that M. Vasquez entered through a usually locked doorway to "hand out coffee and Union flyers." (*Id.*). Although indisputably unauthorized, these entries are not alleged to have occurred for any purpose beyond union organization. *See* Miller &

Starr, 5 *California Real Estate Digest* 3d, § 5(2012) ("A union representative who remains on a jobsite to complete lawful union activity although requested to leave by the owner does not violate the criminal trespass provisions of Pen. Code, § 602, subd. (k)(1)."). Speaking to employees, handing out coffee, and disseminating flyers appears to be lawful union activity, and Magic Laundry does not point to any evidence or authority to the contrary. *See, e.g., In re Catalano*, 29 Cal. 3d 1, 4, 171 Cal. Rptr. 667 (1981) (indicating that union activity that does not harm the economic or property interests of the landowner is lawful).

Rather, Magic Laundry argues that California's trespass exemption is inapplicable to Defendants because they are not the official recognized bargaining representative of the employees at Magic Laundry. This distinction is unavailing since California law makes clear that labor speech may be subject to protection regardless of a union's recognition. *See Schwartz-Torrance Inv. Corp. v. Bakery and Confectionery Workers' Union, Local No. 31*, 61 Cal. 2d 766, 768, 40 Cal. Rptr. 233 (1964) (union seeking to organize employees could not be enjoined from picketing on employer's sidewalk). Nor does the nature of Magic Laundry's property make a difference in the application of this exemption. *See California Real Estate Digest* at § 5 ("Regardless of whether property is 'posted industrial property,' property subject to posting, or other, less sensitive property, trespass statutes do not apply to lawful union activity."). Thus, defendant M. Vasquez cannot be held liable for trespass under California law on the facts presented, and the Special Motion to Strike as to this claim must be granted.

Accordingly, ***each*** of Magic Laundry's state law claims must be stricken in light of Defendants' Special Motion to Strike.

California's Anti-SLAPP statute does not contemplate providing leave to amend following a successful motion, but federal procedure compels the Court to allow liberal amendment of pleadings. *Compare Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073, 112 Cal. Rptr. 2d 397 (2001) (leave to amend following successful Anti-SLAPP motion "would completely undermine the statute by providing the pleader a ready escape from section 425.16's quick dismissal remedy") *with*

Verizon Delaware, Inc. v. Covad Communications Co., 377 F.3d 1081, 1091 (9th Cir. 2004) ("[T]he purpose of the anti-SLAPP statute, the early dismissal of meritless claims, would still be served if plaintiffs eliminated the offending claims from their original complaint."). The Special Motion to Strike is therefore granted with leave to amend. As the Ninth Circuit has noted, Anti-SLAPP remedies remain available to Defendants in responding to future pleadings. *Id.* at 1091.

III. MOTION TO DISMISS

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (2007) (citations omitted). A legally sufficient RICO claim requires allegations of (1) employment by or association with (2) an enterprise (3) engaged in or affecting interstate commerce (4) the affairs of which the defendant conducts or participates in through a pattern of racketeering activity. 18 U.S.C. § 1961, *et seq*.

Defendants argue that Magic Laundry's FAC fails as a matter of law because it lacks a factual basis to support a finding that Defendants engaged in a pattern of racketeering activity. Specifically, Defendants argue that the FAC does not contain sufficient predicate acts to support RICO claims. (FAC ¶¶ 86-87). A "pattern of racketeering" must be made up of at least two acts of "racketeering activity" committed within ten years. 18 U.S.C. § 1961. "Racketeering activity" is defined as "any act or threat involving," among other things, certain criminal offenses under federal and state law. *Id.* In this case, Magic Laundry alleges predicate violations of the California Penal Code (extortion), and Title 18 of United States Code Sections 1341 and 1343 (mail and wire fraud).

With regard to extortion, the FAC does not sufficiently allege that Defendants obtained or attempted to obtain a property right from Magic Laundry. The Supreme Court has held that obtaining a property right is the defining characteristic of criminal

extortion, without which a defendant is only alleged to have committed coercion. *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 407-08, 123 S.Ct. 1057, 154 L.Ed. 2d 991 (2000) ("[W]hile coercion and extortion certainly overlap to the extent that extortion necessarily involves the use of coercive conduct to obtain property, there has been and continues to be a recognized difference between these two crimes."); *see also* Cal. Penal Code § 518 ("Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right"). Because coercion is not a predicate offense under RICO, the distinction is critical. *Scheidler*, 537 U.S. at 408.

Magic Laundry contends that Defendants sought to obtain an intangible property right to recognize or not recognize a union as a bargaining representative. But this argument effaces the distinction drawn in *Scheidler*, attempting to recast a case of coercion and call it extortion in order to extend RICO liability beyond Congressional intent. Here, Magic Laundry at most alleges that it faced a choice (whether or not to unionize its workforce) and that Defendants exerted coercive pressure to force its hand in that decision. If the Court were to recognize an attempt to influence this choice as sufficient for the purposes of criminal extortion, the distinction emphasized in *Scheidler* would be lost and Defendants could be held liable for extortion in spite of never having sought to acquire something. Simply, Defendants did not seek to exercise Magic Laundry's right as an employer to unionize or not to unionize. Defendants did not seek to infiltrate Magic Laundry and make the decision for it. Nor is the Court persuaded by Magic Laundry's citation to a district court decision originating in Virginia that holds otherwise. *Compare Smithfield Foods, Inc. v. United Food & Commer. Workers Int'l Union*, 585 F. Supp. 2d 789, 802 (E.D. Va. 2008) (allowing extortion claim to survive as RICO predicate where defendant sought not to obtain property but to force employer into a contracting relationship) *with Wackenhut Corp. v. Serv. Employees Int'l Union*, 593 F. Supp. 2d 1289, 1295 (S.D. Fla. 2009) (extortion requires both deprivation and acquisition of property). Having offered no other property right that Defendants attempted to obtain, the extortion claim fails as a RICO predicate.

With regard to mail and wire fraud, the FAC does not satisfy the requirement of particularity as to any element. Fed. R. Civ. P. 9(b). Magic Laundry does not allege facts to support the elements of a scheme of fraud, use of mail or wires in furtherance of that scheme, or an intent to defraud. *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 557-58 (9th Cir. 2010) (failure to identify specific mailings or misrepresentations does not satisfy Rule 9's pleading requirements).

Specifically, Magic Laundry again fails to allege that Defendants sought to obtain property from it. *See Monterey Plaza Ltd. Partnership v. Local 483 of Hotel Employees & Restaurant Employees Union, AFL-CIO*, 215 F.3d 923, 926 (9th Cir. 2000) (upholding district court's conclusion that employer did not sufficiently allege that union sought fraudulently to obtain employer's good will). As the Court explained above, Magic Laundry does not allege that Defendants sought to obtain (i.e. to exercise for themselves) Magic Laundry's choice to unionize its employees. Therefore, Magic Laundry has not alleged that Defendants used mail or wire to fraudulently obtain property from it. *See id.* at 927 ("The Union's conduct may have been vexatious or harassing, but it was not acquisitive. The purpose of the mail fraud and wire fraud proscriptions is to punish wrongful transfers of property from the victim to the wrongdoer, not to salve wounded feelings."). Nor does Magic Laundry allege a scheme for deprivation of the intangible right of honest services. 18 U.S.C. § 1346.

Because the FAC lacks allegations of a cognizable RICO violation, the claims for conspiracy to violate RICO also fail as a matter of law. *See Sanford*, 625 F.3d at 559 ("Plaintiffs cannot claim that a conspiracy to violate RICO existed if they do not adequately plead a substantive violation of RICO"). The Court need not address Defendants' remaining arguments as to the sufficiency of the FAC.

At the hearing, counsel for Magic Laundry requested leave to amend the FAC's RICO allegations to plead more clearly that Defendants sought to obtain specific property from Magic Laundry. Specifically, counsel suggested that Defendants sought to obtain "economic concessions" in addition to the right to organize its workforce. It appears from the FAC that these "economic concessions" are monetary

benefits gained by a union when it acquires members and accrues membership dues. (FAC ¶¶ 19, 22, 40, 105). The Court is dubious that Magic Laundry can allege a proper RICO claim on such a basis, including sufficiently detailed allegations of fraud. Fed. R. Civ. P. 9(b). Nonetheless, the Court grants Magic Laundry leave to amend its RICO claims, if that can be done consistent with Rule 11(b).

Perhaps there will be a Second Amended Complaint but there will be no Third. If Magic Laundry fails to allege neither proper RICO claims nor proper California claims not subject to the Anti-SLAAP statute, then any dismissal will be without leave to amend and the action will be dismissed. Magic Laundry may therefore file a Second Amended Complaint, if any, within 14 days of the date of this order. Failure to do so will result in dismissal of this action for failure to prosecute.

IT IS SO ORDERED.