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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SVITLANA E. SANGARY, Plaintiff and Appellant, v. JASMINE OHANIAN, Defendant and Respondent.	B234185 (Los Angeles County Super. Ct. No. LC092365)

APPEAL from an order of the Superior Court of Los Angeles County, Richard Adler, Judge. Affirmed.

Svitlana E. Sangary, in pro. per., for Plaintiff and Appellant.

Law Offices of Harvey L. Katzman and Harvey L. Katzman for Defendant and Respondent.

In a prior lawsuit, an attorney represented a client who was the defendant in a collection matter. The client's sister allegedly persuaded the client to discharge the attorney by falsely accusing the attorney of wrongdoing. The client also refused to pay the attorney the balance due for her services. In a subsequent suit against the client, the attorney recovered the unpaid balance. The attorney then filed the present action against the client's sister based on the accusations of wrongdoing, the attorney's discharge in the collection case, and the sister's alleged practice of law without a license by assisting her brother in defending the earlier cases.

In response to the complaint in this action, the sister filed a special motion to strike, contending the action was a strategic lawsuit against public participation (SLAPP) (Code Civ. Proc., § 425.16; undesignated statutory sections are to that code). In the motion, the sister asserted that her alleged statements and writings were made "before a . . . judicial proceeding" or "in connection with an issue under consideration or review by a . . . judicial body" (§ 425.16, subd. (e)(1), (2)) and that the attorney was unlikely to prevail on her causes of action (see *id.*, subd. (b)(1)). More specifically, the sister argued that her alleged statements and writings related to the prior collection case and the prior suit brought by the attorney against her brother. In opposing the motion, the attorney argued that the sister's statements and writings did not fall within the scope of the anti-SLAPP statute, but the attorney failed to address whether her causes of action had merit. The trial court granted the motion. This appeal followed.

We conclude that all of the attorney's causes of action arose out of written or oral statements or writings made before a judicial proceeding or in connection with an issue under consideration or review by a judicial body. (See § 425.16, subd. (e)(1), (2).) We do not reach the issue of whether the attorney was likely to prevail on all of her causes of action because (1) the attorney did not address that issue below, (2) her appellate brief does not provide any citations to the record, and (3) in arguing on appeal that she is likely to prevail on *all* of her causes of action, the attorney cites no supporting authority with the exception of two causes of action. Consequently, we will discuss only whether those two claims had sufficient merit under the anti-SLAPP statute.

I

BACKGROUND

The allegations and facts in this appeal are taken from the complaint, the evidence submitted in connection with the anti-SLAPP motion, and matters of which we may take judicial notice.

A. Complaint

The complaint in this action, filed on January 10, 2011, alleged as follows. Plaintiff, Svitlana E. Sangary, is licensed to practice law in California. On May 5, 2009, Sangary entered into a written agreement to represent and defend Arakel Ohanian (Arakel) in a collection case, *National Credit Acceptance, Inc. v. Ohanian* (Super. Ct. L.A. County, No. 07K18085) (*National Credit Acceptance*). At the same time, Sangary entered into an oral agreement to represent Arakel's wife although his wife was not sued in *National Credit Acceptance*. The complaint in *National Credit Acceptance* alleged that Arakel had failed to make the minimum monthly payments on his Circuit City credit card. National Credit Acceptance, Inc., was Circuit City's assignee.

At some point after May 5, 2009, Arakel's sister, Jasmine Ohanian (Jasmine), persuaded Arakel and his wife (collectively Ohanians) to breach their contracts with Sangary and to discharge her in *National Credit Acceptance*. Jasmine used her "family and friendly relationship with [the Ohanians]" and her "legal training" to convince them to breach the contracts. She told the Ohanians that Sangary "had been practicing law illegally and had been committing malpractice" in *National Credit Acceptance.* Jasmine also told the Ohanians that Sangary had billed Arakel for services not performed in that case.

On June 23, 2009, Arakel discharged Sangary in *National Credit Acceptance* and refused to pay the balance due for services she had provided. Arakel did not retain new counsel. His default was taken. A default judgment was entered against him in the amount of $14,505.60, consisting of: (1) principal ($11,501.51); (2) accrued interest ($1,999.05); (3) attorney fees ($735.04) due National Credit Acceptance, Inc., under a "prevailing party" clause in the credit card agreement; and (4) costs of suit ($270). According to the register of actions maintained by the Los Angeles County Superior Court, Arakel appeared

in propria persona throughout the *National Credit Acceptance* litigation. (See Superior Court of California, County of Los Angeles, Case Summary, Case No. 07K18085 <http://www.lasuperiorcourt.org/civilCaseSummary/index.asp?CaseType=Civil> [as of Aug. 28, 2012].)

On July 10, 2009, Sangary filed suit against the Ohanians (*Sangary v. Ohanian* (Super. Ct. L.A. County, No. 09E08176)) (*Sangary* case). The complaint alleged that the Ohanians owed Sangary $7,934.71 for legal services provided in *National Credit Acceptance*. The Ohanians did not retain counsel. Although Jasmine was not an attorney, she "render[ed] legal services to [the Ohanians] in furtherance of their defense . . . by helping [them] complete . . . their Answer to [the] complaint." Jasmine also engaged in the practice of law "by helping [the Ohanians] with all the preparation of all the papers, discussing all the papers, and going over the [*Sangary*] case."

At their depositions in the *Sangary* case, the Ohanians testified that Jasmine had drafted the answer to the complaint.

Jasmine advised the Ohanians that they did not have to attend the court-ordered mediation in the *Sangary* case because they "had such a strong defense that . . . Sangary [would] lose." The Ohanians did not appear at the mediation. They "testified to the foregoing on July 7, 2010, at the time of trial." On the same day, the superior court entered judgment against the Ohanians and awarded Sangary the unpaid balance due for services rendered in *National Credit Acceptance* as well as costs advanced in that litigation.

In the present action, Sangary alleged six causes of action against Jasmine: (1) defamation; (2) unauthorized practice of law in violation of Business and Professions Code sections 6125 and 6126;[1] (3) unlawful "practice of business" in violation of Business

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[1] Section 6125 provides: "No person shall practice law in California unless the person is an active member of the State Bar." Under section 6126, subdivision (a), "[a]ny person . . . practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor . . . ."

and Professions Code section 16240;[2] (4) intentional interference with contract; (5) intentional interference with prospective economic advantage; and (6) intentional infliction of emotional distress. Sangary alleged in conclusory fashion that Jasmine's actions were "malicious, oppressive and fraudulent," but the complaint did not allege any *facts* to support the use of those terms.

B. Anti-SLAPP Motion

On February 18, 2011, Jasmine filed an anti-SLAPP motion, arguing that all of the allegations of the complaint were based on statements or writings she made in furtherance of her right to free speech concerning litigation matters. The motion also addressed the merit of each cause of action, asserting: (1) the litigation privilege (Civ. Code, § 47, subd. (b)(2)) barred the causes of action for defamation, intentional interference with contract, and intentional interference with prospective economic advantage;[3] (2) the statute prohibiting the practice of law without a license authorized a private right of action only by a "person who obtained services . . . [rendered] in violation of [the licensing statute]" (Bus. & Prof. Code, § 6126.5, subd. (a)), and Sangary did not obtain any purported legal services from Jasmine; (3) the statute prohibiting the "practice of business" without a license where one was required did not authorize a private right of action by anyone; and (4) the cause of action for intentional infliction of emotional distress was not based on outrageous conduct. The anti-SLAPP motion was based solely on the allegations of the complaint; Jasmine did not submit any supporting evidence.

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[2] Section 16240 states: "Every person who practices . . . any business, trade, profession, occupation, or calling . . . for which a license . . . is required by any law of this state, without holding a current and valid license . . . as prescribed by law, is guilty of a misdemeanor."

[3] Under the litigation privilege, "[a] privileged publication . . . is one made: [¶] . . . [¶] . . . [i]n any . . . judicial proceeding." (Civ. Code, § 47, subd. (b)(2).)

In her opposition papers, Sangary argued the motion was procedurally defective because: (1) the hearing on the motion was not set within 30 days after it was served; (2) the motion was not supported by a declaration "stating the facts upon which the . . . defense is based" (§ 425.16, subd. (b)(2)); and (3) the first page of the motion did not indicate "[t]he date of filing of the action" or "[t]he trial date, if set," in violation of rule 3.1110(b) of the California Rules of Court. Sangary also asserted that none of her causes of action fell within the scope of the anti-SLAPP statute because Jasmine's statements and writings did not involve a public issue. The opposition did not address whether Sangary was likely to prevail on her causes of action. Sangary filed a declaration reiterating the allegations of the complaint.

The motion was heard on April 5, 2011, and was taken under submission. By minute order issued on the same day, the trial court granted the motion. The court rejected Sangary's contention that the motion should have been set for hearing within 30 days after it was served, stating: "[T]he Court's calendar . . . prevent[ed] this motion from being set within 30 days." The trial court also disagreed with Sangary's other procedural arguments, explaining: "The Court declines to exercise its discretion to refuse to consider this motion because [Jasmine] has not complied with [the California Rules of Court]. While the moving papers do not indicate the date this action was filed, [Sangary] is certainly aware of that date. Further, as no trial date has been set, there is no need to provide a trial date. [¶] . . . [Sangary] notes that [Jasmine] submits no declarations whatsoever in support of her motion, save a declaration from defense counsel stating his entitlement to attorney fees. . . . Where it appears that there are no facts, other than those already in the Complaint, which the Court must consider in order to rule on this motion, [the anti-SLAPP statute] does not logically require submission of declarations. [¶] . . . [¶] The Court has everything it needs to rule on the merits of this motion. [¶] The Court will thus proceed with the consideration of the motion based only on the allegations of the Complaint."

In granting the motion, the trial court reasoned that Sangary's causes of action were based on statements and writings made before a judicial proceeding or in connection with an issue under consideration or review by a judicial body (§ 425.16, subd. (e)(2)) and that

Sangary was not likely to prevail on her causes of action for the reasons stated in the motion (*id.*, subd. (b)(1)).

In accordance with the trial court's instructions, Jasmine drafted and filed a proposed order that incorporated the language of the minute order. On May 4, 2011, the trial court signed and filed the order as submitted. Sangary appealed.

II

DISCUSSION

Our review of an order granting an anti-SLAPP motion is de novo. (See *Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

On appeal, Sangary presents the same arguments she made in the trial court. For the first time, she contends that she was likely to prevail on her causes of action.

We conclude the trial court did not err in rejecting Sangary's procedural attacks on the anti-SLAPP motion, and all of Sangary's causes of action fall within the scope of the anti-SLAPP statute. We do not decide whether Sangary was likely to prevail on her causes of action because she did not raise that issue below, her appellate brief contains no citations to the record, and she cites no authority to support the contention that her causes of action had merit with the exception of two causes of action: (1) practicing law without a license and (2) practicing a business without a license. We will address whether Sangary was likely to prevail on those two claims.

A. Anti-SLAPP Law

"'The Legislature enacted the anti-SLAPP statute to protect defendants . . . from interference with the valid exercise of their constitutional rights, particularly the right of freedom of speech and the right to petition the government for the redress of grievances.'" (*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1052.)

The statute provides that "[a] cause of action against a person *arising from any act* of that person *in furtherance of* the person's right of petition or *free speech* under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

(§ 425.16, subd. (b)(1), italics added.) The statute is to "be broadly construed to encourage continued participation in free speech and petition activities." (*Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 22; accord, § 425.16, subd. (a).)

"[T]he statutory phrase 'cause of action . . . *arising from*' means simply that the *defendant's act* underlying the plaintiff's cause of action must *itself* have been *an act in furtherance of the right of petition or free speech*. . . . In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech. . . . 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e) . . . .'" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78, italics added, citations omitted; accord, *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734 ["arising from" encompasses any act "based on" speech or petitioning activity]; *Episcopal Church Cases* (2009) 45 Cal.4th 467, 477 [same]; *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 72 [same].)

Section 425.16, subdivision (e) states: "As used in [the anti-SLAPP statute,] '*act in furtherance of* a person's *right of* petition or *free speech* under the United States or California Constitution in connection with a public issue' includes: (1) *any written or oral statement or writing made before a* legislative, executive, or *judicial proceeding*, or any other official proceeding authorized by law, (2) *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, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other 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." (Italics added; see *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117–1118, 1123.)

"Clauses (3) and (4) of section 425.16, subdivision (e), concerning statements made in public fora and 'other conduct' implicating speech or petition rights, include an express

'issue of public interest' limitation; clauses (1) and (2), concerning statements made before or in connection with issues under review by official proceedings, contain no such limitation." (*Briggs v. Eden Council for Hope & Opportunity*, *supra*, 19 Cal.4th at p. 1117.) Thus, if a communication falls within either of the "official proceeding" clauses, the anti-SLAPP statute applies without a separate showing that a public issue or an issue of public interest is present. (See *Briggs*, at pp. 1117–1121, 1123; *Moore v. Shaw* (2004) 116 Cal.App.4th 182, 196.) In drafting the statute, the Legislature concluded that authorized official proceedings necessarily involve a public issue or an issue of public interest. (*Briggs*, at p. 1118.)

"The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability — and whether that activity constitutes protected speech or petitioning. Evidently, '[t]he Legislature recognized that "all kinds of claims could achieve the objective of a SLAPP suit — to interfere with and burden the defendant's exercise of his or her rights."' . . . 'Considering the purpose of the [anti-SLAPP] provision, . . . the nature or form of the action is not what is critical but rather that it is against a person who has exercised certain rights.'" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92–93, citation omitted.)

In ruling on an anti-SLAPP motion, a trial court "engage[s] in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) "The term 'probability [of prevailing]' is synonymous with

'reasonable probability.'" (*Schoendorf v. U.D. Registry, Inc.* (2002) 97 Cal.App.4th 227, 238.)

"The party making a special motion to strike must make a prima facie showing that the plaintiff's cause of action arises from the defendant's free speech or petition activity. . . . Once the defendant makes a prima facie showing, 'the burden shifts to the plaintiff to . . . "make a prima facie showing of *facts* which would, if proved at trial, support a judgment in plaintiff's favor."'" (*Rezec v. Sony Pictures Entertainment, Inc.* (2004) 116 Cal.App.4th 135, 139, citations omitted; accord, *Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 315–316; *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 108.)

"In order to establish a probability of prevailing on the claim . . . , a plaintiff responding to an anti-SLAPP motion must '"state[ ] and substantiate[ ] a legally sufficient claim."' . . . Put another way, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.'" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821, citation omitted.)

B. Protected Activity

Jasmine allegedly made false statements to the Ohanians concerning *National Credit Acceptance* and made additional statements to them concerning the *Sangary* case. As a matter of law, those statements were made "in connection with an issue under consideration or review by a . . . judicial body." (§ 425.16, subd. (e)(2).) "[A] statement is 'in connection with' litigation under [the anti-SLAPP statute] if it relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation." (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1266.) Jasmine's alleged statements addressed substantive issues in the prior cases: She allegedly told the Ohanians her opinions about (1) the quality of Sangary's legal representation of Arakel in *National Credit Acceptance* and (2) the most effective way to defend the *Sangary* case. In addition, Jasmine's statements were directed to persons who had "some interest in the litigation":

Arakel was the defendant in *National Credit Acceptance*, and the Ohanians were the defendants in the *Sangary* case.

To the extent Jasmine participated in the drafting of any documents filed or presented to the courts in the litigation against the Ohanians — for example, the answer in the *Sangary* case — those documents fall within the scope of the anti-SLAPP statute. (See § 425.16, subd. (e)(1); *Navellier v. Sletten*, *supra*, 29 Cal.4th at p. 90; *A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc.* (2006) 137 Cal.App.4th 1118, 1125.) If Jasmine prepared other legal documents in the prior litigation that were *not* filed or presented to a court, the anti-SLAPP statute would still apply. (See § 425.16, subd. (e)(2).)

Sangary argues that Jasmine's oral and written statements and writings did not fall within the scope of the anti-SLAPP statute because they did not involve an "issue of public interest." (§ 425.16, subd. (e)(3), (4).) But when a defendant's alleged statements and writings were made before a judicial proceeding or in connection with an issue under consideration or review by a judicial body (§ 425.16, subd. (e)(1), (2)), the anti-SLAPP statute does not require a separate showing of public interest. (*Bleavins v. Demarest* (2011) 196 Cal.App.4th 1533, 1540.) If statements fall within either of the "official proceeding" clauses (§ 425.16, subd. (e)(1), (2)) — as they do here — the anti-SLAPP statute conclusively assumes that the statements involve a public issue or an issue of public interest. (See *Briggs v. Eden Council for Hope & Opportunity*, *supra*, 19 Cal.4th at pp. 1117–1121, 1123; *Moore v. Shaw*, *supra*, 116 Cal.App.4th at p. 196.)

In sum, the anti-SLAPP statute applies to all of Sangary's causes of action because they are based on Jasmine's right to speak freely about litigation matters.

C. Probability of Prevailing on the Merits

In the trial court, Sangary did not address whether she was likely to prevail on her causes of action. As we now explain, we decline to address that issue for three alternative reasons, with the exception of two of her six causes of action.

1. Raised for First Time on Appeal

Sangary did not contend below that she was likely to prevail on her causes of action. She raises that issue for the first time on appeal. "'"'[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court.' Thus, 'we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived. . . . "Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. . . . In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack."'" (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564, citation omitted; accord, *Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591–592.) If we routinely allowed parties to raise an issue for the first time on appeal, the opposing party might suffer prejudice.

In this case, for example, had Sangary addressed below the likelihood of prevailing on her causes of actions, she might have argued that — contrary to what Jasmine asserted and what the trial court concluded — the litigation privilege does *not* bar the causes of action for (1) defamation, (2) intentional interference with contract, or (3) intentional interference with prospective business advantage. Jasmine's reliance on the litigation privilege is based on the assumption that "whether [a] defendant's [statements] are privileged under [the litigation privilege] appears to be determined under the test applicable to whether the statements are protected activity under [the anti-SLAPP statute]." (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 38; see *A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc*., *supra*, 137 Cal.App.4th at p. 1125.) In Jasmine's view, if a defendant's statements or writings fall within the scope of the anti-SLAPP statute — satisfying step one of the analysis — then the statements necessarily qualify for protection under the litigation privilege — for purposes of step two — requiring dismissal of the action. This theory may not be correct.

In comparing the anti-SLAPP statute (Code Civ. Proc., § 425.16) with the litigation privilege (Civ. Code, § 47, subd. (b)), our Supreme Court has stated, "the two statutes are not substantively the same" and they do not "serve the same purposes." (*Flatley v. Mauro*, *supra*, 39 Cal.4th at pp. 323–324.) Thus, the litigation privilege does not bar malicious prosecution claims; they are exempt from the absolute bar of the privilege. (*Albertson v. Raboff* (1956) 46 Cal.2d 375, 382; *Jarrow Formulas, Inc. v. LaMarche, supra*, 31 Cal.4th at pp. 736–738.) But such claims are not exempt from the anti-SLAPP statute and may be dismissed if the statutory requirements are met. (See *Jarrow Formulas*, at p. 741; see, e.g., *Johnson v. Ralphs Grocery Co*. (2012) 204 Cal.App.4th 1097, 1102–1106; *Summerfield v. Randolph* (2011) 201 Cal.App.4th 127, 135–137.)

We have concluded that Jasmine's alleged statements and writings fall within the scope of the anti-SLAPP statute (step one), but it does not follow that the litigation privilege bars any of Sangary's causes of action (step two). "The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) *by litigants or other participants authorized by law*; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212, italics added; accord, *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) "[N]onparticipants and nonlitigants [in] judicial proceedings are not protected from liability under the litigation privilege." (*Schoendorf v. U.D. Registry, Inc.*, *supra*, 97 Cal.App.4th at p. 243.) Because Jasmine may not have been a "participant" in *National Credit Acceptance* or the *Sangary* case, the litigation privilege may not have protected the statements and writings she made in connection with those cases.

If Sangary had argued below that the litigation privilege did not apply to Jasmine's statements or writings because she was not a participant in the earlier cases, Jasmine might have raised additional arguments and not relied solely on the litigation privilege. For example, Jasmine could have applied the factors set forth in *Rowland v. Christian* (1968) 69 Cal.2d 108, 112–113, to argue that, in light of her familial relationship with the Ohanians, she did not owe a duty to Sangary to refrain from making any of her alleged

statements or writings. As Jasmine asserted in a letter brief submitted at our request, she could have argued below that California law did not "impose a duty on a close family member, who possesses some legal training, to refrain from expressing his or her opinion to a loved one regarding perceived inadequacies in the service provided by a fiduciary retained by that loved one." "The social utility of family members speaking to one another regarding the malfeasance or negligence of professionals . . . and assisting one another in defending claims by those professionals to recover alleged fees . . . far outweighs any alleged harm to the professional."

With respect to the defamation claim in particular, Jasmine could have relied on the privilege that bars a defamation claim based on family communications. (See Rest.2d Torts, § 597(1), pp. 277–278.) The "family privilege" is conditional; it applies if the speaker reasonably believed that her statements were true. (*Id.*, coms. a & b, pp. 278–279.) Because the facts alleged in the complaint indicate that the privilege for family communications may be applicable, Sangary would have to allege malice or ill will by adding specific facts to support her use of those terms; a mere allegation that Jasmine acted with malice or ill will would not suffice — supporting *facts* are required. (See *Tschirky v. Superior Court* (1981) 124 Cal.App.3d 534, 538–539; *Lesperance v. North American Aviation, Inc.* (1963) 217 Cal.App.2d 336, 341–342.)

As to the cause of action for intentional interference with contract, Jasmine could have argued that her statements were legally justified based on the allegations of the complaint and a balancing of several established factors. (See *Herron v. State Farm Mutual Ins. Co.* (1961) 56 Cal.2d 202, 206–207; *Winn v. McCulloch Corp.* (1976) 60 Cal.App.3d 663, 672; *Environmental Planning & Information Council v. Superior Court* (1984) 36 Cal.3d 188, 193–194 & fn. 3; Rest.2d Torts, § 767, coms. c–*l*, pp. 26–39.)

And the cause of action for intentional interference with prospective economic advantage could have been challenged for failure to allege wrongful conduct independent of the interference itself. (See *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153–1154; *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 385, 392–393.) "[A]n act is independently wrongful if it is unlawful, that

is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply Co.*, at p. 1159; accord, *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1152–1153.)

In short, we conclude that, by failing to raise the issue below, Sangary waived any argument on appeal that she was likely to prevail on her causes of action. To conclude otherwise would result in prejudice to Jasmine, who had no reason to consider alternative arguments supporting her anti-SLAPP motion.

2. No Record References

In Sangary's appellate brief she devotes several pages to the allegations and facts in this action. She does not provide record references anywhere in the brief. "'"It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations."' . . . Because '[t]here is no duty on this court to search the record for evidence' . . . , an appellate court may disregard any factual contention not supported by a proper citation to the record." (*Grant-Burton v. Covenant Care, Inc*. (2002) 99 Cal.App.4th 1361, 1379, citations & italics omitted; accord, Cal. Rules of Court, rule 8.204(a)(1)(C).) "We disregard all factual and procedural assertions in the brief which are not supported by record citations." (*Warren-Guthrie v. Health Net* (2000) 84 Cal.App.4th 804, 808, fn. 4, disapproved on another point in *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393, fn. 8; accord, Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶¶ 9:36–9:37, pp. 9-12 to 9-13.)

"The [failure to cite the record] may result in the offending portions of the brief (or even the entire brief) being *disregarded*." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 9:36, p. 9-13, italics in original.) Here, we disregard all of Sangary's factual assertions regarding whether she was likely to prevail on her causes of action. (See *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Grant-Burton v. Covenant Care, Inc., supra*, 99 Cal.App.4th at p. 1379.) Because Sangary lacks factual support for her argument that she is likely to prevail, there is no basis for reversing the trial court's conclusion to the contrary.

3. No Authority Cited

In asserting that her six causes of action have sufficient merit to defeat the anti-SLAPP motion, Sangary fails to cite any authority with the exception of the causes of action for (1) practicing law without a license and (2) practicing business without a license where a license is required. We will address Sangary's likelihood of prevailing on those two claims.

"'[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's [contentions] as waived.' . . . 'We will not develop the appellant['s] arguments for [her].'" (*Schoendorf v. U.D. Registry, Inc.*, *supra*, 97 Cal.App.4th at p. 237, citation omitted; accord, *T.P. v. T.W.* (2011) 191 Cal.App.4th 1428, 1440, fn. 12; Cal. Rules of Court, rule 8.204(a)(1)(B).) "[I]t is established that 'an appellate brief "should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." . . . This court is not inclined to act as counsel for . . . appellant and furnish a legal argument as to how the trial court's rulings . . . constituted [error].'" (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546; accord, Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶¶ 8:17.1 to 8:17.2, pp. 8-6 to 8-7.)

"It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and '"'all intendments and presumptions are indulged in favor of its correctness.'" . . .' An appellant must provide an argument and legal authority to support [her] contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' . . . It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852, citations omitted.)

Because Sangary does not cite any authority in asserting on appeal that she is likely to prevail on four of her six her causes of action, "[t]he appeal from [the] judgment is deemed waived and abandoned [as to those four claims]." (*Mecchi v. Picchi* (1966) 245 Cal.App.2d 470, 475; accord, *Westside Center Associates v. Safeway Stores 23, Inc*. (1996) 42 Cal.App.4th 507, 519, fn. 14; *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 732.)

a. *Statutory Causes of Action*

Two statutes make it a misdemeanor (1) to practice law without a license and (2) to practice business without a license where one is required. (See Bus. & Prof. Code, §§ 6126, 16240.) Sangary merely cites the statutes on which those claims are based; she cites no authority for the proposition that a criminal statute may give rise to a private right of action. (See *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 379–380.) As a general rule, "[i]f the Legislature intended a private right of action, that usually ends the inquiry. If the Legislature intended there be no private right of action, that usually ends the inquiry. If we determine the Legislature expressed no intent on the matter either way, directly or impliedly, there is no private right of action . . . , with the possible exception that compelling reasons of public policy might require judicial recognition of such a right." (*Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 142; accord, *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 609–610.)

b. *Practicing Law Without a License*

The statutes that make it a misdemeanor to practice law without a license (see fn. 1, *ante*) authorize a civil recovery to a narrow class of persons: "In addition to any remedies and penalties available in any enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, *acting as a public prosecutor*, the court shall award relief *in the enforcement action for any person who obtained services offered or provided in violation of* [*the licensing law*]." (Bus. & Prof. Code, § 6126.5, italics added.) Thus, under the plain meaning rule (see *Raghavan v. Boeing Co*. (2005) 133 Cal.App.4th 1120, 1134–1135), if an enforcement action is brought

by a public prosecutor, the court will award "relief" to a person who used the services of someone who practiced law without a license. But the Legislature has not expressed an intention either way as to whether there should be a private right of action. Rather, it has authorized a civil remedy for the unlawful practice of law in only one situation — where a public prosecutor has brought an enforcement action. We see no compelling reasons of public policy to recognize an additional civil remedy by judicial decree when the Legislature has already considered that issue and provided a means to recover civil relief. (See *Animal Legal Defense Fund v. Mendes*, *supra*, 160 Cal.App.4th at p. 142.) Because an enforcement action has not been filed alleging that Jasmine practiced law without a license and because Sangary did not obtain services from Jasmine, the cause of action based on the unlawful practice of law has no merit.

c. ***Practicing a Business Without a License***

The statute that makes it unlawful to practice a business without a license where one is required (see fn. 2, *ante*) recognizes no private right of action. The cases annotated under Business & Professions Code section 16240 involve criminal prosecutions, habeas corpus proceedings, and other actions brought by the government. (See cases collected in Deering's Ann. Bus. & Prof. Code (2007 ed.) foll. § 16240, pp. 313–314.) Because section 16240 is silent as to whether a private right of action may be brought, we conclude that no such action is permitted. (See *Animal Legal Defense Fund v. Mendes*, *supra*, 160 Cal.App.4th at p. 142.) Consequently, Sangary could not have prevailed on this cause of action.

Sangary counters that, under the "tort in essence" doctrine, we should hold that she has a private right of action against Jasmine for practicing law or a business without a license. Under that doctrine, "'A tort in essence is the breach of a nonconsensual duty owed another. Violation of a *statutory duty* to another may therefore be a tort and violation of a *statute embodying a public policy* is generally actionable even though no specific civil remedy is provided in the statute itself. Any *injured member of the public for whose benefit the statute* was enacted may bring the action.'" (*South Bay Building Enterprises, Inc. v. Riviera Lend-Lease, Inc.* (1999) 72 Cal.App.4th 1111, 1123, italics

added.) As we have stated, the statutes prohibiting the practice of law or a business without a license are intended to protect persons who obtain services from the unlicensed practitioner. (See pt. II.C.3.b., *ante*.) Sangary did not obtain services from Jasmine, and, thus, Sangary was not a "member of the public for whose benefit the statute[s] [were] enacted." (*South Bay*, at p. 1123.) Further, we have already concluded that "public policy" does not authorize this court to recognize a private right of action. (See pt. II.C.3.b., *ante*.)

4. Argument on the Motion in the Trial Court

Notwithstanding that Sangary's opposition papers failed to address the likelihood that she would prevail on her causes of action, Sangary seems to contend that she adequately covered the issue at the hearing on the motion. This is what she said: "Your Honor, I submitted all of my arguments in my opposition. [¶] . . . [¶] However, if the Court wants to consider the probability of me prevailing on the merits, I would ask the Court to review my declaration and the exhibits in support of my complaint that clearly demonstrate [Jasmine] engaged in wrongful conduct." But this "invitation" did not come close to the argument required under step two of the anti-SLAPP analysis. Sangary did not provide the trial court with any authorities at the hearing, nor did she make an adequate argument. Indeed, Sangary did not present an argument at all, but merely asked the *trial court* to comb the record, construct arguments on her behalf, and then resolve them in her favor. In other words, Sangary expected the trial court to do the work *she* should have done but failed to do.

D. Sangary's Procedural Challenges

Sangary reargues that the anti-SLAPP motion should have been denied because of several procedural defects. We disagree.

Sangary argues that the anti-SLAPP motion had to heard within 30 days after it was served. The statute provides: "The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion s*hall be scheduled by the clerk of the court* for a hearing not more than 30 days after the service of the motion *unless the docket conditions of the court require a*

later hearing." (§ 425.16, subd. (f), italics added.) "The Legislature amended subdivision (f) in 2005, placing the burden on the court clerk, rather than the moving defendant, to schedule a hearing to occur within 30 days after service of the motion . . . ." (*Chitsazzadeh v. Kramer & Kaslow* (2011) 199 Cal.App.4th 676, 685, fn. 7; see Stats. 2005, ch. 535, § 1, p. 4120.) The purpose of the amendment was to abrogate Court of Appeal decisions holding that "the moving defendant's failure to schedule a timely hearing justified the denial of the motion." (*Chitsazzadeh*, at p. 685, fn. 7.) As the trial court explained, the clerk of court set the hearing after the 30-day period because of the court's calendar. Thus, Jasmine cannot be faulted for failing to schedule the hearing within 30 days after the anti-SLAPP motion was served.

Sangary also contends that Jasmine's special motion to strike failed to comply with the anti-SLAPP statute's "requirement" that the motion be supported by a declaration "stating the facts upon which the . . . defense is based." (See § 425.16, subd. (b)(2).) There is no such requirement. The statute simply obligates the trial court to "consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (*Ibid*.) In the present case, the complaint alleged sufficient facts to permit the application of the anti-SLAPP statute without any evidence from Jasmine. As we have already concluded, the complaint, on its face, fell within the scope of the anti-SLAPP statute. There was no need for Jasmine to submit evidence when, in the words of the trial court, the complaint contained "everything it need[ed] to rule on the merits of [the] motion."

Finally, Sangary asserts that the anti-SLAPP motion should have been denied because it failed to indicate on the first page the date the action was filed and the trial date, if any. (See Cal. Rules of Court, rule 3.1110(b).) The trial court did not abuse its discretion in ruling that it would hear the motion notwithstanding a violation of the rules. For one thing, Sangary knew when *she* filed the action. For another, no trial date had been set.

Accordingly, the trial court properly granted the anti-SLAPP motion.

III

DISPOSITION

The order of dismissal is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.