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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

SHUMIN ZHANG, Plaintiff and Appellant, v. PAUL P. CHENG et al., Defendants and Respondents.	B238290 (Los Angeles County Super. Ct. No. BC466079)

APPEAL from orders of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed.

Shumin Zhang, in pro. per.; Law Offices of Stefan R. Pancer and Stefan Robert Pancer for Plaintiff and Appellant.

Law Offices of Paul P. Cheng and Jie Lian for Defendants and Respondents.

In a prior action, two employees represented by successive attorneys sued their corporate employer and two managerial employees — a husband and wife — alleging violations of the Labor Code and other claims. At trial, the plaintiff-employees prevailed on their Labor Code claims against the corporate employer and the husband, who was found to be an alter ego of the corporation. The wife was exonerated on all claims.

The wife then filed the present action against one of the employees, his spouse, and all of his attorneys, alleging claims for malicious prosecution, abuse of process, and defamation, among others. The attorneys, the employee, and his spouse responded with special motions to strike, contending the action was a strategic lawsuit against public participation (SLAPP) (Code Civ. Proc., § 425.16; undesignated section references are to that code). The trial court granted the motions. This appeal followed.

We conclude the trial court properly found that all of the causes of action fall within the scope of the anti-SLAPP statute and that the wife did not demonstrate a reasonable likelihood of prevailing on her claims. We therefore affirm.

I

BACKGROUND

The facts and allegations in this appeal are taken from the pleadings and the exhibits submitted in connection with the anti-SLAPP motions.

A. Prior Lawsuits

On June 3, 2009, Attorney Paul P. Cheng filed suit on behalf of Jia Nong Guo against Guo's employer, Hong Yei Group, Inc. (*Guo v. Han* (Super. Ct. L.A. County, 2011, No. BC415219)). The corporation operated the Hong Yei Restaurant, where Guo worked. The complaint also named as defendants two managerial employees, Jungfeng Han and Shumin Zhang (husband and wife respectively), alleging they were alter egos of the corporate defendant. The complaint alleged that defendants had violated several provisions of the Labor Code; it also included common law claims and a claim under the "Unfair Competition Law" (Bus. & Prof. Code, §§ 17200–17210).

On July 2, 2009, Attorney Cheng filed a virtually identical suit on behalf of another employee, Jian Hui Han, against the same defendants (*Han v. Han* (Super. Ct.

L.A. County, 2011, No. BC417128)). The lawsuits were consolidated. (For convenience and clarity, we will refer to the consolidated lawsuits as the "prior action" and to the two plaintiffs in the consolidated action as the "employees.")

On or about January 27, 2010, Attorney Cheng substituted out of the case and was replaced by Attorney George L. Young. Bryan Y. Wong is an attorney who works for Young. On or about June 21, 2010, Attorney Young substituted out of the case and was replaced by Attorney Steven L. Sugars. Sugars represented the employees at trial.

Beginning on July 19, 2010, the prior action was tried to the court, Judge Robert L. Hess presiding. After a seven-day trial, the court found in favor of the employees on their Labor Code claims for the nonpayment of overtime compensation (see Lab. Code, § 1194), the failure to provide meal periods (see *id.*, § 226.7), and the failure to provide accurate wage statements (see *id.*, § 226, subd. (a)). The employees did not prevail on their other claims. On November 9, 2010, the trial court issued a statement of decision. On January 5, 2011, the trial court entered judgment in favor of Jia Nong Guo in the amount of $63,292.13 and in favor of Jian Hui Han in the amount of $53,785.02. The judgment stated that the employees were entitled to an award of costs and reasonable attorney fees. The trial court agreed with the employees that defendant Jungfeng Han (husband) was the alter ego of the corporate defendant and that he was liable for the corporation's debts. The court found that defendant Shumin Zhang (wife) was not an alter ego of the corporation and, thus, was not liable on any claim. The judgment incorporated the November 9, 2010 statement of decision.

Zhang filed a memorandum of costs, seeking filing fees and an award of $5,000 in attorney fees on the ground that the claims against her, including the assertion of the alter ego doctrine, were frivolous. The employees filed a motion to tax costs. At a hearing on or about July 7, 2011, the trial court granted the motion. The following colloquy took place between the trial court and Zhang:

"The Court: The motion to tax costs is granted. The costs allowed will be $470 for your filing fees. There is nothing else in this that is properly supported. In the face of an appropriate objection, I have to strike the costs filed.

"Zhang: Can I ask you one more question? Now the case is over I just want to ask you, I am entitled to recover my attorneys fees?

"The Court: I don't think you are, ma'am.

"Zhang: Why? How can they sue people frivolously and maliciously?

"The Court: It was not frivolous. You and your husband ran this restaurant. You got up and testified that it was really your husband's business. You were only an employee. Although there was some doubt about that, they did not persuade me that . . . you should be held liable. That doesn't make it frivolous. They didn't succeed, but it did not make it completely without merit."

B. Present Lawsuit

On July 25, 2011, Zhang, in propria persona, filed the present action against (1) Jian Hui Han (Han), one of the two employees who brought the prior action, (2) Han's wife, (3) all of the attorneys who had represented Han at any point in the prior action (Attorneys Cheng, Young, Wong, and Sugars), and (4) the attorneys' respective law offices (collectively defendants).

The complaint consisted of eight causes of action: malicious prosecution, abuse of process, conspiracy, defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, "intentional tort," and violation of the Unfair Competition Law. It also contained a request for punitive damages.

The material portion of the complaint began by quoting four paragraphs from the July 2, 2009 complaint Han had filed against Zhang. The quoted material alleged Zhang was the alter ego of Hong Yei Group, Inc., and she had violated the Unfair Competition Act and various provisions of the Labor Code in operating the Hong Yei Restaurant. The remaining allegations were based on what allegedly occurred in the prior action, as follows.

Attorney Cheng conspired with Han to obtain a fraudulent waiver of "court fees." An attorney representing Zhang offered to settle the prior action, but Cheng rejected the offer. Zhang filed an answer. Cheng filed a "notice of settlement of entire case" with respect to a "third party" in which he "declared that '[a] request for dismissal will be filed

no later than 3/22/10,'" and he thereafter substituted out of the case. Cheng was replaced by Attorney Young, who filed a notice stating that trial would commence on June 30, 2010. Cheng and Young "failed to keep their promises [to] dismiss[] [the] . . . complaint by 3/22/10." Young later substituted out and was replaced by Attorney Sugars, who failed to appear on the date set for trial. As a result, the trial court imposed monetary sanctions on Sugars and ordered Zhang's attorney to submit an "'Application for Sanctions, Attorney's fees, and [the] cost of [a] telephonic appearance.'" Zhang's attorney did so. Attorneys Young and Wong filed a trial brief, falsely alleging that Zhang was liable to Han. Subsequently, Wong and Sugars filed a "Trial Brief on the Issue of Alter Ego Liability," falsely accusing Zhang of "commingling . . . funds in the form of cash, . . . failing to pay taxes, . . . failing to maintain accounting record, and . . . using . . . the corporation as [a] subterfuge for illegal transactions." In the prior action, Han did not sign the verifications on his responses to Zhang's discovery but falsely stated his wife had forged his signature even though Cheng had forged Han's signature. Sugars and his client, Han, filed a frivolous motion for sanctions against Zhang, her husband, her attorney, and Hong Yei Group, Inc. The trial court denied the motion. The court also entered judgment in Zhang's favor.

C. Anti-SLAPP Motions

In response to Zhang's complaint, defendants filed anti-SLAPP motions, contending that all of her claims were based on statements or writings "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 she was unlikely to prevail on her claims (see *id.*, subd. (b)(1)). In addressing Zhang's likelihood of success, defendants argued that the malicious prosecution claim was meritless because they had probable cause to file the prior action. For that proposition, defendants relied on excerpts from the statement of decision in the prior action and the statements made by Judge Hess at the hearing on defendants' motion to tax costs. With respect to Zhang's other claims, defendants asserted they were barred by the litigation privilege (Civ. Code, § 47, subd. (b)).

In her opposition, Zhang argued (1) the motions should be denied because the hearing date was not within 30 days after the motions were served, (2) defendants had engaged in "abusive discovery," and (3) the litigation privilege did not apply. Zhang also submitted several exhibits, all of which — with the exception of a Chinese advertisement for the restaurant — were created in connection with the prior action.

On October 12, 2011, the trial court, Judge Malcolm H. Mackey presiding, heard argument on the motions and granted them. On November 4, 2011, the court entered a formal order to that effect. By minute order dated June 14, 2012, the trial court awarded defendants $13,300 in attorney fees and $1,975 in costs. Zhang 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, Zhang contends (1) the trial court should have denied the anti-SLAPP motions because they were not set for hearing within 30 days after they were served, (2) her claims did not fall within the scope of the anti-SLAPP statute, and (3) the evidence showed that defendants had committed extortion.

We agree with the arguments advanced by defendants: (1) the motions were timely set for hearing; (2) all of Zhang's claims fall within the scope of the anti-SLAPP statute; and (3) Zhang is not likely to prevail on any of her claims.

A. Timeliness of Hearing Date on Anti-SLAPP Motions

Zhang contends the anti-SLAPP motions should have been denied because the hearing date was not within 30 days after the motions were served. We disagree.

Former section 425.16, subdivision (f), stated: "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 *shall be noticed for hearing not more than 30 days after service* unless the docket conditions of the court require a later hearing." (Stats. 1999, ch. 960, § 1, italics added.)

On October 5, 2005, the Legislature amended section 425.16, subdivision (f), as an urgency statute effective on that date. (Stats. 2005, ch. 535, §§ 1, 4.) Subdivision (f), as amended, states: "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 *shall 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***." (Italics & boldface added.)

"Thus, the Legislature expressly abrogated the rule on which [Zhang] relies. Section 425.16, subdivision (f), as amended, requires the court clerk to schedule a special motion to strike for a hearing no more than 30 days after the motion is served if such a hearing date is available on the court's docket, but does not require the moving party to ensure that the hearing is so scheduled and does not justify the denial of a special motion to strike solely because the motion was not scheduled for a hearing within 30 days after the motion was served." (*Hall v. Time Warner, Inc*. (2007) 153 Cal.App.4th 1337, 1349.)

B. 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, some 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.)

An attorney who has made statements or writings on behalf of his or her client in connection with litigation is entitled to the protection of the anti-SLAPP statute to the same extent as the client. (See *Simpson Strong-Tie Company, Inc. v. Gore* (2010) 49 Cal.4th 12 [affirming judgment granting anti-SLAPP motion brought by attorney]; *Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 482, 485–489; *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 629; *White v. Lieberman* (2002) 103 Cal.App.4th 210, 220–221; Rylaarsdam et al., Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2012) ¶ 7:601, p. 7(II)-10.)

B. Protected Activity

For purposes of determining whether Zhang's claims are based on activity protected by the anti-SLAPP statute, we first examine the malicious prosecution claim and then turn our attention to the other claims.

1. Malicious Prosecution

Zhang's claim for malicious prosecution is based on defendants' filing and pursuit of civil litigation, that is, the prior action. Her malicious prosecution claim, by its very

nature, falls within the scope of the anti-SLAPP statute. (See *Jarrow Formulas, Inc. v. LaMarche*, *supra*, 31 Cal.4th 728, 736–741 & fn. 6; *Briggs v. Eden Council for Hope & Opportunity*, *supra*, 19 Cal.4th at p. 1115.)

Thus, Zhang has the burden — in the words of the statute — "[to] establish[ ] that there is a probability that [she] will prevail on [her] claim." (§ 425.16, subd. (b)(1).) "The plaintiff's showing of facts must consist of evidence that would be admissible at trial. . . . The court cannot weigh the evidence, but must determine whether the evidence is sufficient to support a judgment in the plaintiff's favor as a matter of law, as on a motion for summary judgment. . . . If the plaintiff presents a sufficient prima facie showing of facts, the moving defendant can defeat the plaintiff's evidentiary showing only if the defendant's evidence establishes as a matter of law that the plaintiff cannot prevail." (*Hall v. Time Warner, Inc.*, *supra*, 153 Cal.App.4th at p. 1346, citations omitted.) "[T]he court's responsibility is to accept as true the evidence favorable to the plaintiff." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)

To prevail on her cause of action for malicious prosecution, Zhang must prove she was previously sued on a claim brought without probable cause, initiated with malice, and pursued to a termination in her favor. (See *Slaney v. Ranger Ins. Co.* (2004) 115 Cal.App.4th 306, 318.) There is no dispute here that the prior action terminated in her favor.

"Probable cause is a low threshold designed to protect a litigant's right to assert arguable legal claims even if the claims are extremely unlikely to succeed. '[T]he standard of probable cause to bring a civil suit [is] equivalent to that for determining the frivolousness of an appeal . . . , i.e., probable cause exists if "any reasonable attorney would have thought the claim tenable." . . . This rather lenient standard for bringing a civil action reflects "the important public policy of avoiding the chilling of novel or debatable legal claims." . . . Attorneys and litigants . . . "'have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win . . . .'" . . . Only those actions that "'any reasonable attorney would agree [are] totally and completely without merit'" may form the basis for a malicious prosecution suit.'"

(*Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1047–1048, citations omitted; accord, *Wilson v. Parker, Covert & Chidester*, *supra*, 28 Cal.4th at p. 822.) "Malicious prosecution . . . includes continuing to prosecute a lawsuit discovered to lack probable cause." (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 973.)

"'Probable cause may be present even where a suit lacks merit. Favorable termination of the suit often establishes lack of merit, yet the plaintiff in a malicious prosecution action must *separately* show lack of probable cause. Reasonable lawyers can differ, some seeing as meritless suits which others believe have merit, and some seeing as totally and completely without merit suits which others see as only marginally meritless. Suits which *all* reasonable lawyers agree totally lack merit — that is, those which lack probable cause — are the least meritorious of all meritless suits. Only this subgroup of meritless suits present[s] no probable cause.'" (*Jarrow Formulas, Inc. v. LaMarche*, *supra*, 31 Cal.4th at p. 743, fn. 13.)

In asserting they had probable cause to file the prior action against Zhang, defendants point out they succeeded in establishing that her husband was an alter ego of the corporation and therefore liable under the judgment. Defendants also rely on excerpts from the statement of decision in the prior action, as follows: "Ms. Zhang testified she was one of the managers of [the] Hong Yei [Restaurant], and received salary checks twice a month. She stated she began work at the restaurant on June 24, 2007[, the day it opened for business]. Her duties may be summarized as partially waitress, partially cashier, partially bookkeeper, and partially on-site manager. Ms. Zhang was responsible for signing checks to pay for the routine bills, including checks for wages, and she delivered those pay checks to the employees. Ms. Zhang testified [that her husband] bought the food, which he paid for by credit card or checks she had signed. . . . [¶] . . . [¶]

"With respect to the alter ego issue, . . . [¶] . . . the evidence was not sufficient to persuade the Court that Ms. Zhang was . . . the alter ego of [the corporation]. While she had *significant responsibilities* for the operation of the restaurant, the evidence did not show that she had or claimed an ownership interest, or that she had a position as an officer or director of [the corporation]." (Italics added.)

And defendants emphasize that, in the prior action, when Judge Hess granted their motion to deny Zhang's request for attorney fees, he said their claims against her were "not frivolous" and "not . . . completely without merit." As Judge Hess explained, directing his comments to Zhang: "You and your husband ran this restaurant. You got up and testified that it was really your husband's business. You were only an employee. Although there was some doubt about that, they did not persuade me that . . . you should be held liable. That doesn't make it frivolous. They didn't succeed, but it did not make it completely without merit."

Nevertheless, as previously stated, under the anti-SLAPP statute, a malicious prosecution claim, by definition, is based on protected activity. Defendants' evidence on the issue of probable cause is considered only if Zhang first satisfies her burden of demonstrating she is likely to prevail on the claim.

In her opening brief — and only brief — Zhang cites the record with respect to only one factual assertion arguably regarding the merits of her claims: "In the instant case, as shown by [Zhang's] Exhibits, [on] pages 351, 363, 364 thru 367, 369, 382 thru 399 [of the record], [defendants], and each of them, were engaged in extortion. Thus, the trial court erred in granting [defendants'] meritless and untimely motions to strike . . . ."

For three reasons, we conclude Zhang did not """make a prima facie showing of *facts* which would, if proved at trial, support a judgment in [her] favor."""" (*Rezec v. Sony Pictures Entertainment, Inc.*, *supra*, 116 Cal.App.4th at p. 139.) First, we do not consider factual assertions in Zhang's appellate brief unless they were supported by a citation to the record. (See Cal. Rules of Court, rule 8.204(a)(1)(C); *Grant–Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379; *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.) Second, even if a factual assertion is supported by a citation to the record, its relevance must be explained in an adequately developed argument. (See *Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 865; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.) Here, Zhang flatly asserted, in a single sentence, that her claims were supported by

specified pages of the record. She did not provide an adequate argument as to *how* the evidence on those pages demonstrated she was likely to prevail on one or more of her claims, and our independent examination of those pages sheds no light on the issue. Third, assuming Zhang had presented an adequately developed argument that defendants engaged in "extortion," such an argument would have been irrelevant in determining whether defendants had probable cause to bring the prior action, which alleged she had violated the Unfair Competition Law and certain provisions of the Labor Code.

In sum, Zhang failed to establish a reasonable likelihood she would prevail on her malicious prosecution claim. We therefore do not consider any evidence submitted by defendants on that point. The trial court properly granted the anti-SLAPP motions as to the malicious prosecution claim.

2. Remaining Claims

Although a malicious prosecution claim is always based on activity protected by the anti-SLAPP statute, defendants must make an affirmative showing that Zhang's other claims are based on statements or writings protected by the statute.

We conclude defendants satisfied that requirement. We have already described the allegations in Zhang's complaint. (See pt. I.B., *ante*.) Her remaining claims are based on statements or writings "made [by defendants] before a . . . judicial proceeding . . . [or] in connection with an issue under consideration or review by a . . . judicial body." (§ 425.16, subd. (e)(1), (2).) In short, Zhang's claims are based on communications made by defendants in the prior action or in connection with it. Consequently, the burden shifts to Zhang to show she is likely to prevail on her remaining claims. She has failed in that respect because the claims are barred by the litigation privilege.

"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.) "Because the privilege applies without regard to malice or evil motives, it has been characterized as 'absolute.'" . . .

"The principal purpose of [the litigation privilege] is to afford litigants and witnesses . . . the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. . . . [¶] . . . [¶]

"[I]n immunizing participants from liability for torts arising from communications made during judicial proceedings, the law places upon litigants the burden of exposing during trial the bias of witnesses and the falsity of evidence, thereby enhancing the finality of judgments and avoiding an unending roundelay of litigation, an evil far worse than an occasional unfair result." (*Silberg v. Anderson*, *supra*, 50 Cal.3d at pp. 213–214, citations omitted.) "'In other words, the litigation privilege is intended to encourage parties to feel free to exercise their fundamental right of resort to the courts for assistance in the resolution of their disputes, without being chilled from exercising this right by the fear that they may subsequently be sued in a derivative tort action arising out of something said or done in the context of the litigation.'" (*Aronson v. Kinsella* (1997) 58 Cal.App.4th 254, 262.)

"In furtherance of the public policy purposes it is designed to serve, the privilege . . . has been given broad application. Although originally enacted with reference to defamation . . . , the privilege is now held applicable to any communication, whether or not it amounts to a publication . . . , and all torts except malicious prosecution. . . . Further, it applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved. . . ." (*Silberg v. Anderson*, *supra*, 50 Cal.3d at pp. 211–212, citations omitted.)

We acknowledge that in comparing the anti-SLAPP statute with the litigation privilege, our Supreme Court has stated, "[T]he 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.) Yet, in many cases, a defendant's communications will fall within the scope of the anti-SLAPP statute and will also be protected by the litigation privilege. (See, e.g., *Flatley*, at p. 323 ["The litigation privilege is also relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must

overcome to demonstrate a probability of prevailing."]; *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1520–1522; *Alpha & Omega Development, LP v. Whillock Contracting, Inc*. (2011) 200 Cal.App.4th 656, 663–667; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 781–785; Rylaarsdam et al., Cal. Practice Guide: Civil Procedure Before Trial, *supra,* ¶¶ 7:630 to 7:631, 7:1015, pp. 7(II)-13 to 7(II)-14, 7(II)-49 to 7(II)-50.)

Zhang's remaining claims are based on communications made by defendants in a prior judicial proceeding; defendants were participants in that proceeding; the communications were made to establish Zhang's liability; and the communications had some connection or logical relation to the action. (See *Silberg v. Anderson*, *supra*, 50 Cal.3d at p. 212.) The litigation privilege therefore applies and precludes liability as to all of defendants' alleged communications. (See Rylaarsdam et al., Cal. Practice Guide: Civil Procedure Before Trial, *supra*, ¶¶ 1:604 to 1:634, pp. 1-134 to 1-147.) Zhang's remaining claims are barred by the litigation privilege. And even if we assume otherwise, Zhang has failed to demonstrate a likelihood of prevailing on her remaining claims for the same reasons she failed in that respect on the malicious prosecution claim: The one sentence reference in her appellate brief to certain pages of the record for the proposition that defendants committed "extortion" is insufficient to """make a prima facie showing of *facts* which would, if proved at trial, support a judgment in [her] favor [on any of her claims]."""" (*Rezec v. Sony Pictures Entertainment, Inc.*, *supra*, 116 Cal.App.4th at p. 139; see pt. II.B.1, *ante*.)

Accordingly, the litigation privilege bars Zhang's remaining claims, and the trial court properly granted the anti-SLAPP motions as to those claims.

III

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.