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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

A.C.A. LLC et al., Plaintiffs, Cross-defendants and Appellants, v. PAOLA CALDERA et al., Defendants, Cross-complainants and Respondents.	B291651 (Los Angeles County Super. Ct. No. BC643861)

APPEAL from an order of the Superior Court of Los Angeles County, Randolph M. Hammock, Judge. Affirmed.

Wagstaffe, Von Loewenfeldt, Busch & Radwick and Michael Von Loewenfeldt; M.K. Hagemann and Michael K. Hagemann for Plaintiffs, Cross-defendants and Appellants.

Mesisca Riley & Kreitenberg, Dennis P. Riley and Rena E. Kreitenberg for Defendants, Cross-complainants and Respondents.

INTRODUCTION

Appellants A.C.A., LLC (ACA) and Damian Akhavi appeal from the denial of a motion filed under Code of Civil Procedure section 425.16, commonly known as the anti-SLAPP statute. (See *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 615 (*Rand Resources*).) ACA owns two adjacent apartment buildings on Glenrock Avenue and Landfair Avenue in Los Angeles (collectively, the Property), which Akhavi manages. Respondents Paola Caldera, Mian Guo, Jia Shen, Yunying Li, and Min Zhou are residents of the Property who began residing there before ACA purchased it. One week after purchasing the Property, ACA filed a complaint against respondents and others, alleging, inter alia, that respondents should be ejected because they had conspired with the Property's former resident manager to defraud the former owner of rent. Respondents cross-complained against ACA and Akhavi, bringing causes of action for (1) unlawful influence to vacate; (2) retaliatory eviction; (3) termination of utility services (respondent Caldera only); and (4) demands for rent in

violation of the Rent Stabilization Ordinance of the City of Los Angeles (LARSO).

Appellants filed a motion under the anti-SLAPP statute to strike the cross-complaint in its entirety. After the trial court announced a tentative decision to deny the motion, appellants requested and received permission to file a supplemental brief seeking, in the alternative, to strike only specified portions of the cross-complaint. The court denied the motion to strike the cross-complaint in its entirety and to strike portions thereof, finding appellants had failed to meet their burden to demonstrate that any of respondents' claims for relief arose from activity protected by the anti-SLAPP statute.

On appeal from the trial court's order, appellants do not challenge the court's denial of their motion to strike the cross-complaint in its entirety. Nor do they challenge each portion of the cross-complaint they challenged in their supplemental brief. Rather, they contend the court erred by failing to strike a narrower set of allegations. We affirm.

PROCEEDINGS BELOW

A. *ACA's Complaint*

ACA owns the Property. Akhavi, one of ACA's managing members, is the Property's sole manager. Respondents are residents of the Property.

ACA purchased the Property from Rita Seifer on December 8, 2016, and received an assignment of her claims against respondents. At the time, Seifer had recently fired

Myron Holmstrom as the Property's resident manager. One week after purchasing the Property, ACA filed a complaint against Holmstrom and unidentified residents, some of whom it later identified as respondents. ACA alleged that respondents knowingly conspired with Holmstrom in a scheme whereby Holmstrom agreed to charge respondents rent below market rates, and respondents agreed to pay half the agreed-upon rent in cash, which Holmstrom kept for himself. ACA further alleged that in light of their participation in the scheme, respondents never had a right to occupy the property. ACA pleaded the following causes of action against respondents: (1) declaratory relief (seeking a declaration that respondents had no right to possession); (2) rescission of any putative tenancy, with restitution; (3) ejectment; (4) trespass; (5) breach of fiduciary duty; (6) "false promise"; (7) "concealment"; (8) intentional misrepresentation; (9) intentional interference with contractual relations; (9) professional negligence; and (10) violation of the Unfair Competition Law, Business and Professions Code sections 17200 et seq. In addition to nonmonetary relief that would remove respondents from the property, the complaint sought $1,500,000 in compensatory damages or restitution against all respondents, jointly and severally, and punitive damages.

B. *Respondents' Cross-Complaint*

Respondents filed a motion for leave to file a cross-complaint, attaching a proposed cross-complaint as an

exhibit. Respondents proposed to plead four causes of action: (1) unlawful influence to vacate; (2) retaliatory eviction; (3) termination of utility services (respondent Caldera only); and (4) violation of LARSO.[1] Respondents' proposed cause of action for retaliatory eviction was premised in part on ACA's "bringing and pursuing" its complaint. The other proposed causes of action did not mention ACA's complaint.

One day after receiving leave of court and filing a cross-complaint against appellants, respondents filed the operative, first amended cross-complaint (FACC). Neither the original cross-complaint nor the FACC made any reference to ACA's complaint.[2] In both, respondents alleged that appellants schemed to remove respondents, whom appellants lacked valid grounds to evict, for the purpose of

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[1] The fourth cause of action was added in an amended version of the proposed cross-complaint, which respondents attached to a notice of errata.

[2] The original cross-complaint and the FACC omitted the following allegations respondents had included in their proposed cross-complaints: (1) ACA brought its complaint in violation of LARSO; (2) Akhavi, "[a]rmed with" the complaint, attempted to force respondents and other tenants out of the property "under threat of inclusion" in the complaint, including by telling tenants about the complaint and its allegations concerning the invalidity of their tenancies; (3) appellants began naming tenants as defendants when they failed to leave voluntarily; and (4) Akhavi told tenants, after they were served with the complaint, that the complaint would be dismissed if they moved out.

charging new tenants higher rents. In paragraph 18, respondents further alleged that Akhavi "attempted to systematically force [respondents] from their units," including by doing the following: (a) "Refusing to deposit payment of rent and at the same time holding onto the rent payments, causing uncertainty and fear about when or if the payments would be negotiated;" (b) "Withdrawing services including but not limited to parking and the services of an onsite manager;" (c) "Failing to pay utilities as agreed by the landlord resulting in the cut-off of such utilities;" (d) "Repeatedly entering units with or without notice to harass the tenants;" (e) "Raising the rents without proper notice and/or threatening the raising of rent if the tenants did not leave;" (f) "Telling tenants that the tenancies at the Property were invalid and asking the [respondents] when they would leave;" (g) "Stating that the former property manager was 'going to jail' and implying that if [respondents] did not vacate their apartments they could face similar consequences;" (h) "Telling tenants not to talk to the other tenants;" (i) "Intruding on the Tenants' privacy by watching/surveilling/following them;" and (j) "Reducing and/or eliminating waste services."

Respondents' FACC included four causes of action, each of which incorporated all prior allegations by reference: (1) unlawful influence to vacate, in violation of Civil Code section 1940.2; (2) retaliatory eviction, in violation of the common law and Civil Code section 1942.5; (3) termination of utility services, in violation of Civil Code section 789.3

(respondent Caldera only); and (4) violation of LARSO. In their cause of action for unlawful influence to vacate, respondents alleged that appellants, "[a]s set forth in Paragraph 18 and through other actions," engaged in a course of conduct intended to force respondents out of the property, including by improperly entering respondents' units and implying respondents would be incarcerated if they did not vacate. In their retaliatory eviction cause of action, respondents alleged that in retaliation for respondents' exercise of legal rights, appellants took or threatened to take "the actions described above[,] including but not limited to increasing rents, decreasing services and threatening [respondents] with ejectment from the PROPERTY and possible incarceration . . . ." In their cause of action for violation of LARSO, respondents alleged that appellants demanded rent in excess of the amount allowed under LARSO, without providing the required written justification for such demands. Respondents sought compensatory, "[g]eneral," and punitive damages; damages under LARSO equaling three times the amount of excess rent demanded; and statutory penalties.

C. *Appellants' Anti-SLAPP Motion and Respondents' Opposition*

Appellants filed an anti-SLAPP motion, seeking to strike the FACC in its entirety. They contended respondents' claims arose from appellants' pursuit of ACA's complaint, arguing respondents had judicially admitted as

much in their proposed cross-complaints' allegations concerning the complaint. In the alternative, appellants argued that the activity from which appellants' claims arose was protected under the anti-SLAPP statute because it was privileged under Civil Code section 47 (the litigation privilege).

In a supporting declaration, Akhavi denied taking or authorizing any action intended to remove respondents from the Property, or to influence them to vacate it, other than authorizing their inclusion as defendants in ACA's complaint. He denied surveilling respondents or suggesting that respondents would be incarcerated. Confirming that he had refused to accept respondents' tendered rent payments, he claimed to have done so "on advice of counsel in relation to [ACA's] pending Action . . . ." He denied demanding rent from respondents or even discussing rent with them, aside from notifying them that he would not be accepting their tendered rent payments because he believed they did not have valid tenancies. He confirmed that he had asked respondents if they would be willing to vacate the Property, but claimed to have done so only as a settlement proposal, in settlement discussions that "arose organically while [they] were making small talk during repairs."

In opposition to the anti-SLAPP motion, respondents argued appellants had failed to meet their burden to demonstrate that the FACC's claims arose from activity protected by the anti-SLAPP statute. They argued the claims did not arise from protected litigation or litigation-

related conduct, but instead from appellants' decision to terminate their tenancies and related pressure tactics, which were not protected. They faulted appellants for failing to address the elements of respondents' causes of action and "numerous reported opinions that involve landlord-tenant litigation where the courts have found the tenant's complaint did not arise from protected activity . . . ." They emphasized that the FACC made no reference to ACA's complaint, and argued that it was irrelevant that they had referenced the complaint in proposed pleadings that were "neither filed nor operative . . . ."[3] In the alternative, respondents argued that even if the court found that any claims arose from protected activity, they had demonstrated a sufficient probability of success to warrant denial of the motion. With respect to their probability of success on their LARSO claim for demanding excessive rent, respondents argued, inter alia, that appellants had refused to deposit their tendered rent payments and that "refusing [to deposit] rent controlled rents is in essence demanding higher rents[.]"

Respondents submitted declarations from respondents Caldera, Zhou, and Shen, as well as from Caldera's father and several other residents of the Property. Caldera's father

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[3] Respondents further argued that even if the court considered the proposed cross-complaints' references to ACA's complaint, those references would not affect the analysis, as the complaint was referred to merely as evidence of appellants' intent to unlawfully replace tenants for the purpose of charging higher rent.

declared that he had negotiated Caldera's lease with Seifer (the prior Property owner), whom he had known for decades. After ACA's purchase of the Property, he began tendering Caldera's rent to ACA, which took the checks but neither cashed nor returned them. He alleged Akhavi had claimed Holmstrom would be going to jail and had expressed an intent to remove the Property's tenants in the same manner he had removed Holmstrom. Akhavi had often asked when Caldera would move out, and had complained that she was not paying enough rent. In her own declaration, Caldera claimed that although Seifer had provided her with a parking spot and paid for her utilities, appellants had threatened to tow her car if she parked in the spot and had refused to pay for her gas and electricity services, which had been shut off for nonpayment. She further alleged that for "a couple of months," Akhavi and his employees had given her near-daily notices of entry into her apartment, which she believed to have been harassment intended to influence her to vacate. She further believed that Akhavi and his employees sometimes entered her apartment without notice, explaining that they did so once when she was present, and that items within her apartment had been "completely moved around" while she was gone. She felt she was being watched.

Respondent Zhou declared that ACA had not been cashing or returning her tendered rent payments. She had received "numerous" notices of entry into her apartment, purportedly for the purpose of doing work, but had rarely

seen any work being done. Akhavi had told her she was living in the apartment illegally because she was renting it below the market rate, and had informed her that a pair of former residents -- whom she did not know -- had moved out of the Property because they were committing immigration fraud and did not want to be reported. She interpreted the latter comment as a threat to report her for alleged immigration fraud if she did not vacate. She believed Akhavi and his employees had been watching her, explaining that during her deposition in ACA's complaint, Akhavi's counsel had asked her about specific visitors to her apartment and about furniture she had been moving on a specific occasion.

Respondent Shen declared that ACA had not been cashing or returning her tendered rent payments. When she asked Akhavi about the payments, he claimed to have 20 attorneys working on the issue of the residents' rent. On one occasion, Akhavi contacted her while she was traveling abroad and asked her if she had abandoned her apartment, though he knew she had not. She had seen Akhavi and his employees watching residents and monitoring their movements.

Several other residents of the Property -- Yavuz Ertas, Paul Luigi, Nima Razfar, and Nadia Saban -- all declared that ACA had not been cashing or returning their tendered rent payments. Additionally, Ertas declared that Akhavi had often visited his apartment, without prior notice, after 9:00 p.m. and pressured him to identify a date when he

would move out. Razfar declared that appellants had conducted an "unprecedented level of inspections, including entry into [his] unit without notice . . . ." Similarly, Saban declared that for "a couple of months," Akhavi and his employees had given her near-daily notices of entry into her apartment, which she believed to have been harassment intended to influence her to vacate. She believed that Akhavi and his employees sometimes entered her apartment without notice, explaining that she had once placed a plank in front of her door when she left, and had returned home to find the plank had been removed. She further alleged that Akhavi and his employees were "constantly" watching residents at the Property, even when not working. On one occasion, an employee pretended to sweep her patio -- which no employee had done before -- and left soon after she asked if she could help him.

D. *The Trial Court's Denial of the Motion*

The trial court held a hearing on appellants' anti-SLAPP motion on June 19, 2018, and informed counsel of its tentative decision to deny the motion because (1) the FACC's claims did not arise from protected activity; and (2) even if they did, respondents had met their burden to demonstrate a probability of success. With respect to the first conclusion, the court explained, "What [respondents are] complaining about is -- really has nothing to do with [ACA's] lawsuit; it just has to do with the things that [appellants are] allegedly doing: harassing them, you know, showing up at 11:00

o'clock at night, trying to intimidate them, trying to say, 'Get out of here.' . . . [T]hat's what it's about, which is not protected." Appellants' counsel argued the court was required to parse the allegations in the FACC and, even if it did not strike the FACC in its entirety, strike individual allegations of protected activity. The court agreed to consider doing so if appellants submitted a supplemental brief specifying the targeted allegations.

Appellants' supplemental brief asked the court to strike all the allegations at issue in this appeal, and some that are not.[4] Respondents' opposition argued, inter alia,

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[4] On appeal, appellants target only (1) respondents' LARSO cause of action; (2) their allegation that appellants "threaten[ed] [respondents] with ejectment from the PROPERTY and possible incarceration"; and (3) their allegations that Akhavi attempted to force respondents out of the Property by (a) "[r]efusing to deposit payment of rent and at the same time holding onto the rent payments, causing uncertainty and fear about when or if the payments would be negotiated;" (b) "[r]aising the rents without proper notice and/or threatening the raising of rent if the tenants did not leave"; (c) "[t]elling tenants that the tenancies at the Property were invalid and asking the [respondents] when they would leave"; (d) "[s]tating that the former property manager was 'going to jail' and implying that if [respondents] did not vacate their apartments they could face similar consequences"; and (e) "[i]ntruding on the Tenants' privacy by watching/surveilling/ following them . . . ."

In their supplemental brief below, appellants additionally targeted (1) respondents' first, second, and third causes of action; (2) the allegation that "[d]uring the purchase and sale of the PROPERTY from Ms. Seifer, [appellants] came up with a scheme to rid the PROPERTY of the LARSO protected tenants with the

that most of the targeted allegations concerned conduct -- including appellants' refusal to deposit respondents' tendered rent payments -- that was "not in itself the wrong complained of" in the FACC, but instead evidence of liability.

On July 17, 2018, the court held a second hearing and denied both the motion to strike the FACC in its entirety and the request to strike portions thereof. The court ruled that the allegations in the proposed (but never filed) cross-complaints did not constitute judicial admissions, and that the only relevant allegations were those in the operative

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intent of charging much higher rents for the units"; (3) the allegation that appellants' actions caused all tenants fear and distress; (4) the allegation that appellants, "with the intent to force [respondent] CALDERA and her family members to leave the PROPERTY involuntarily, caused directly and/or indirectly the utilities to [Caldera's] unit to be cancelled or reduced including the gas, waste services and parking availability"; (5) the allegation that appellants, "with the intent to force [respondents] to leave the PROPERTY involuntarily, demanded payment by tenants of rent in excess of the then maximum rent and maximum adjusted rent permitted under [LARSO] and without compliance with the provisions thereof that require a landlord to provide written justification for the demand of such higher rent"; and (6) the allegations that Akhavi attempted to force respondents out of the Property by (a) "[w]ithdrawing services including but not limited to parking and the services of an onsite manager;" (b) "[f]ailing to pay utilities as agreed by the landlord resulting in the cut-off of such utilities;" (c) "[r]epeatedly entering units with or without notice to harass the tenants;" (d) "[t]elling tenants not to talk to the other tenants"; and (e) "[r]educing and/or eliminating waste services." On appeal, appellants have abandoned their contention that these allegations encompass protected activity.

FACC. The court ruled that the activity from which respondents' claims arose was not protected. The court further ruled that even if any of respondents' claims arose from protected activity, respondents had demonstrated a sufficient probability of prevailing to warrant denial of the motion.

Appellants timely appealed.

DISCUSSION

Appellants contend the trial court erred by failing to strike portions of the FACC under the anti-SLAPP statute. We review de novo a trial court's decision on an anti-SLAPP motion. (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788.) Our Supreme Court has summarized the two-step analysis required by the anti-SLAPP statute as follows: "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. . . . If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. . . . If [the plaintiff fails to satisfy this burden], the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has

shown a probability of prevailing." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.)

A. *Appellants' Burden to Identify Claims Arising from Protected Activity*

Appellants contend specified portions of the FACC, including the entire fourth cause of action, arise from activity that is protected in light of its asserted relation to ACA's complaint.

1. *Governing Principles*

"At the first step of the [anti-SLAPP] analysis, the defendant must make two related showings. Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection. [Citation.] And comparing that protected activity against the complaint, it must also demonstrate that the activity supplies one or more elements of a plaintiff's claims." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887 (*Wilson*).) As relevant here, protected activity includes (1) "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"; and (2) "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." (Code Civ. Proc., § 425.16, subd. (e)(2) & (4).)[5]

As noted, the defendant must show that protected activity supplies an element of a claim -- in other words, that the claim arises from protected activity. (See *Wilson*, *supra*, 7 Cal.5th at pp. 887-888.) "[A] claim does not 'arise from' protected activity simply because it was filed after, or because of, protected activity, or when protected activity merely provides evidentiary support or context for the claim." (*Rand Resources*, *supra*, 6 Cal.5th at p. 621; accord, *Wilson*, at p. 884 ["A 'claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.' [Citation.]"].)

The parties rely on anti-SLAPP case law concerning unlawful detainer litigation to analyze the relation between respondents' claims and ACA's complaint, which included a claim for ejectment. We do the same. A tenant's complaint against a landlord does not arise from protected activity, even if triggered by the landlord's filing of an unlawful detainer complaint, "if the gravamen of the tenant's

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[5] The anti-SLAPP statute also protects the following: (1) "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law"; and (2) "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 . . . ." (Code Civ. Proc., § 425.16, subd. (e)(1) & (3).) Appellants rely on neither of these categories of protected activity.

complaint challenges the decision to terminate the tenancy or other conduct in connection with the termination apart from the . . . filing of an unlawful detainer complaint."[6] (*Ulkarim v. Westfield LLC* (2014) 227 Cal.App.4th 1266, 1279 (*Ulkarim*); see also *id.* at pp. 1276-1279 [summarizing line of authority supporting this rule].) We join the *Ulkarim* court in declining to follow *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467 (*Feldman*), on which appellants rely, to the extent *Feldman* suggests a different rule. (See *Ulkarim*, at pp. 1279-1281.)

2. *Statements Asserted to Be Protected Under Subdivision (e)(2)*

On appeal, appellants contend the following portions of respondents' FACC are subject to the anti-SLAPP statute because they arise from statements made in connection with an issue under consideration or review by a judicial body: (1) respondents' fourth cause of action, for demanding rent higher than the LARSO allows; and (2) allegations that Akhavi pressured respondents to vacate the Property through harassing or otherwise unwelcome communications. (See Code Civ. Proc., § 425.16, subd. (e)(2).) Mere connection

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[6] "The 'principal thrust' or 'gravamen' is a shorthand way of describing the need to show -- with respect to each targeted claim -- that the alleged wrongful and injury-producing conduct was not incidental and fell within one of the four categories enumerated in [Code of Civil Procedure] section 425.16, subdivision (e)." (*Gaynor v. Bulen* (2018) 19 Cal.App.5th 864, 886 (*Gaynor*).)

with litigation is insufficient to establish protection under this category; the activity must be connected with an issue under review in the litigation. (See *Rand Resources*, *supra*, 6 Cal.5th at p. 620; *id.* at p. 623 [statements reflecting or concealing city's breach of contract's exclusivity provision were not made in connection with issue under City Council's review, viz., contract's renewal].)

Appellants fail to meet their first-step burden with respect to respondents' fourth cause of action. By appellants' own admission, the fourth cause of action is "based on the allegation that Appellants demanded payment of higher rents . . . ." A demand for higher rent is not protected activity under the anti-SLAPP statute. (See *Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 109-110 [raising rent was not protected activity, and thus LARSO cause of action against landlords for demanding excess rent did not arise from protected activity, despite being filed after landlords' unlawful detainer action for failure to pay increased rent].)

Appellants also fail to meet their first-step burden with respect to Akhavi's alleged statements pressuring respondents to leave the property.[7] The statements

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[7] Specifically, appellants target respondents' allegations that Akhavi (1) attempted to force respondents out of the Property by "[r]aising the rents without proper notice and/or threatening the raising of rent if the tenants did not leave"; (2) attempted the same by "[t]elling tenants that the tenancies at the Property were invalid and asking the [respondents] when they would leave"; (3) attempted the same by "[s]tating that the former property

concerned issues not presented by ACA's complaint, including respondents' threatened incarceration, respondents' willingness to leave the Property voluntarily, and the amount of rent appellants would be willing to accept from respondents. To the extent Akhavi touched on issues presented by ACA's complaint -- whether respondents were valid tenants or were subject to ejection -- appellants have not demonstrated that any claim for relief arose from those statements. Indeed, appellants make no attempt to explain how respondents rely on those statements to establish an element of their claims. (See *Wilson*, *supra*, 7 Cal.5th at p. 887.) At most, the statements are alleged as evidence of an extrajudicial campaign to oust respondents, which is not protected activity. (See *Winslett v. 1811 27th Avenue LLC* (2018) 26 Cal.App.5th 239, 259-261 (*Winslett*) [pressure tactics from which unlawful eviction cause of action arose, including attempt to trick tenant into moving out, were not protected activity]; *Moriarty v. Laramar Management Corp.* (2014) 224 Cal.App.4th 125, 133-135, 139-140 (*Moriarty*) [harassment intended to recover possession was not protected activity]; cf. *Ulkarim*, *supra*, 227 Cal.App.4th at p. 1282 [acts of interference with commercial tenant's business, including statements informing tenant's employees

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manager was 'going to jail' and implying that if [respondents] did not vacate their apartments they could face similar consequences"; and (4) "threaten[ed] [respondents] with ejectment from the PROPERTY and possible incarceration . . . ."

and other businesses of tenant's expected replacement, were not protected activity].)

We reject appellants' contention that Akhavi's statements were protected attempts to settle ACA's complaint. They were not alleged as such; on the contrary, the FACC makes no mention of ACA's complaint. (See *Moriarty*, *supra*, 224 Cal.App.4th at pp. 135, 139 [rejecting defendant's reading of complaint as arising from unlawful detainer action mentioned nowhere within it]; cf. *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 475-477 [confining first-step review to conduct alleged in complaint, and rejecting plaintiffs' contention that their complaint was based on activity alleged only in declarations].) Appellants cite no evidence that the statements on which respondents rely were accompanied by offers to release ACA's claims against respondents in its complaint. (See *ValueRock TN Properties, LLC v. PK II Larwin Square SC LP* (2019) 36 Cal.App.5th 1037, 1048-1049 [landlord's rejection of amended request to consent to assignment was not protected settlement communication, despite its relation to pending litigation over landlord's rejection of earlier request, where landlord's acceptance would not have resolved pending claims]; *McConnell v. Innovative Artists Talent & Literary Agency, Inc.* (2009) 175 Cal.App.4th 169, 178 [anti-SLAPP statute did not protect defendant's letters to plaintiffs, even though letters were written immediately after plaintiffs filed earlier suits and for ostensible purpose of preparing for their

resolution, where letters did not mention the suits or resolution thereof].)

We also reject appellants' reliance on the proposed cross-complaints' references to ACA's complaint. The authority on which appellants rely, *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, is inapposite. There, the plaintiff filed a complaint alleging that certain defendants were advised by a codefendant, in his capacity as their attorney, to unlawfully enter the plaintiff's apartment. (*Id.* at p. 411.) The plaintiff revised her language in subsequent complaints, alleging that the defendants were aided and abetted by the attorney. (*Ibid.*) The Court of Appeal held that the plaintiff's cause of action against the attorney for aiding and abetting tenant harassment arose from the attorney's advice, relying in part on the earlier complaint's explicit reference to the advice. (See *id.* at pp. 409, 411-412.) In support of its reliance on the earlier complaint, the court cited no authority other than the provision of the anti-SLAPP statute requiring courts to consider the pleadings. (*Id.* at p. 412, citing Code Civ. Proc., § 425.16, subd. (b)(2).) Here, the proposed cross-complaints were not pleadings; indeed, they were never filed. (See Code Civ. Proc., § 420 ["The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court"]; cf. *People v. Vallejos* (1967) 251 Cal.App.2d 414, 416 [pleading was never amended, where no amended pleading was filed; trial court's order granting leave to amend was insufficient].) Moreover, the challenged portions of the FACC allege

conduct that could have taken place even if ACA had never filed its complaint, rather than merely reiterating, in more abstract language, the proposed cross-complaints' references to ACA's complaint.[8]

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[8] Appellants' reliance on *Feldman*, *supra*, 160 Cal.App.4th 1467 is misplaced. There, the "'threats'" held to be protected included the landlord's agent's statements that he knew the landlord would win in litigation against the plaintiffs, that the plaintiffs would not be able to rent another apartment in the area regardless of the outcome of the litigation, that he had discussed the litigation with a judge, and that the plaintiffs could not successfully countersue. (See *id.* at pp. 1474-1475, 1481.) Here, appellants have not demonstrated that any of respondents' claims arose from references to ACA's litigation.

Even had we found that such references formed the basis for respondents' allegation that ACA threatened them with ejectment, we would find no basis for striking that allegation. The allegation is pleaded within respondents' cause of action for retaliatory eviction under Civil Code section 1942.5, which falls within an exception to the litigation privilege. (See *Winslett*, *supra*, 26 Cal.App.5th at p. 254.) Aside from asserting the litigation privilege (which appellants acknowledge has been held inapplicable to retaliatory eviction claims), appellants do not challenge respondents' second-step showing on the retaliatory eviction claim. Thus, regardless of our conclusion at the first step, appellants fail to identify a basis for striking the threat-of-ejectment allegation.

3. *Conduct Asserted to Be Protected Under Subdivision (e)(4)*

Appellants contend the following portions of the FACC are subject to the anti-SLAPP statute because they arise from conduct in furtherance of appellants' exercise of petitioning rights in connection with an issue of public interest: (1) respondents' allegation that Akhavi attempted to force them out of their apartments by "[i]ntruding on the Tenants' privacy by watching/surveilling/following them"; and (2) respondents' allegation that Akhavi attempted the same by "[r]efusing to deposit payment of rent and at the same time holding onto the rent payments, causing uncertainty and fear about when or if the payments would be negotiated . . . ." (See Code Civ. Proc., § 425.16, subd. (e)(4).) Contrary to appellants' suggestion, not all conduct that furthers litigation falls within this category of protected activity; the defendant must show the conduct's connection with an issue of public interest. (See *Greco v. Greco* (2016) 2 Cal.App.5th 810, 814-815, 824, 826 [anti-SLAPP statute did not protect trustee's and administrator's withdrawal of trust and estate funds to fund litigation, where litigation was only "a private matter among a small group of people involving a family trust and estates"]; *Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 870-878 [rejecting contention that public interest requirement is inapplicable to conduct in furtherance of petitioning].)

Appellants present no argument regarding their challenged conduct's connection with an issue of public interest. Indeed, they do not even acknowledge the public interest requirement, instead omitting it each time they quote subdivision (e)(4) of the anti-SLAPP statute. They have therefore failed to demonstrate that any of their challenged conduct falls within this category of protected activity. (See *Anderson v. Geist* (2015) 236 Cal.App.4th 79, 87 [defendants failed to demonstrate their execution of bench warrant was protected, where they made no argument on public interest requirement]; cf. *Rand Resources*, *supra*, 6 Cal.5th at pp. 623-626 [misrepresentations of city agent's identity were not protected, where defendants "failed to suggest anything more than the most attenuated connection between the identity of the City's agent and a matter of public importance"].)

Even had we found appellants' petitioning activity to be connected with an issue of public interest, we would not find their first-step burden satisfied. The anti-SLAPP statute does not categorically protect surveillance of a litigation opponent. (See *Paul v. Friedman* (2002) 95 Cal.App.4th 853, 857-858, 865-866 [tort claims based on defendant's unreasonably intrusive investigation of arbitration opponent, which included surveillance, did not arise from protected activity, where investigation was allegedly directed to matters unrelated to arbitration claims].) We are unpersuaded by appellants' bare assertion, unsupported by authority, that "surveillance of an adverse

party is a normal and appropriate way of collecting information in connection with a lawsuit . . . ." Moreover, appellants' characterization of the surveillance lacks evidentiary support: rather than claiming to have surveilled respondents to gather evidence for ACA's complaint, Akhavi denied surveilling them at all. Appellants have failed to establish that the alleged surveillance is protected.

Appellants also have failed to meet their first-step burden with respect to their refusal to deposit respondents' tendered rent. Even if this activity is protected (which we need not decide), appellants have failed to demonstrate that respondents rely on it to supply an element of a claim. (See *Wilson*, *supra*, 7 Cal.5th at p. 887.) No such reliance appears on the face of the FACC, in which respondents alleged appellants' refusal to deposit rent only in the "Common Facts" section. Respondents did not allege it within any of the four causes of action or the prayer for relief.[9] Nor have respondents argued, on appeal or in the trial court, that

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[9] Contrary to appellants' suggestion, they cannot meet their first-step burden merely by pointing out that each cause of action incorporates all prior allegations by reference. (See *Newport Harbor Offices & Marina, LLC v. Morris Cerullo World Evangelism* (2018) 23 Cal.App.5th 28, 45 [distinguishing allegations "pleaded within" causes of action from allegations merely incorporated therein, and holding claims for relief did not arise from the incorporated allegations]; *Moriarty*, *supra*, 224 Cal.App.4th at p. 139 [holding causes of action did not arise from alleged eviction, despite their incorporation of all prior allegations by reference].)

appellants' refusal to deposit rent, in itself, supplies any element of their claims. In their opposition to the anti-SLAPP motion, respondents argued that "refusing [to deposit] rent controlled rents is in essence demanding higher rents," and therefore evidence of appellants' liability under LARSO for demanding excessive rent. In their supplemental brief, respondents argued that appellants' refusal to deposit rent is "'simply evidence of liability,'" and "not in itself the wrong complained of . . . ." Appellants have failed to demonstrate otherwise, and have therefore failed to establish a basis for striking the allegation. (See *Wilson, supra*, 7 Cal.5th at p. 884; cf. *Gaynor*, *supra*, 19 Cal.App.5th at pp. 869-870, 879-880, 887 [defendant failed to meet first-step burden, despite identifying allegations of protected litigation activity, where defendant failed to demonstrate any claim arose from those allegations].)

4. *Conclusion*

Because appellants have failed to meet their first-step burden with respect to each portion of the FACC they challenge on appeal, we affirm the trial court's denial of the anti-SLAPP motion. We need not review the court's conclusion that the second step of the anti-SLAPP analysis, too, warranted the motion's denial.

B. *Respondents' Request for Attorney's Fees as Sanctions*

In their appellate brief, respondents request that we sanction appellants for pursuing this appeal, which respondents characterize as frivolous and dilatory, by remanding to the trial court for an award of attorney's fees. Where, as here, we decline to impose sanctions on our own motion, we may impose sanctions for a frivolous or dilatory appeal only on a party's motion. (Cal. Rules of Court, rule 8.276, (a)(1); see also *id.*, (b)(1) [requiring movant to file supporting declaration].) "Sanctions cannot be sought [only] in the respondent's brief." (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919.) Because respondents request sanctions only in their brief, and not in a procedurally proper motion, we deny their request. (See *ibid.*; *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 858-859.)

DISPOSITION

The order denying appellants' anti-SLAPP motion is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICAL REPORTS

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.