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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| PEACHES NONG JENSEN,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>HENRY J. JOSEFSBERG et al.,<br><br>Defendants and Appellants. | B286094<br><br>(Los Angeles County Super. Ct. No. BC640667) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Rita Miller, Judge. Affirmed in part, reversed in part.

Henry J. Josefsberg for Defendants and Appellants.

Yvonne M. Renfrew for Plaintiff and Respondent.

* * * * * *

After a jury awarded a plaintiff $1.5 million in damages for two defendants' malicious prosecution of a prior lawsuit, the plaintiff filed a declaratory relief action seeking a declaration that her judgment liens had priority over defendants' attorney's liens. The defendants filed a motion to strike the plaintiff's declaratory relief claim under our anti-SLAPP[1] law (Code Civ. Proc., § 425.16).[2] The trial court denied the motion on the ground that plaintiff's declaratory relief action did not constitute "protected activity" subject to the anti-SLAPP law. We agree that the plaintiff's primary declaratory relief claim was not protected activity but disagree that her subsidiary claim was either unprotected or meritorious. Accordingly, we affirm in part and reverse in part.

## FACTS AND PROCEDURAL BACKGROUND

### I. Facts

#### A. *Underlying Dispute*[3]

Plaintiff Peaches Nong Jensen (Jensen) and Defendant Perry Segal (Segal) were once friends. In 2000, they formed P&P Holdings, LLC (the LLC) to subdivide, develop, and sell a portion of a parcel of land owned by Jensen. Jensen and Segal each

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1 "SLAPP" is short for Strategic Lawsuit Against Public Participation.

2 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

3 These facts are drawn significantly from our prior, nonpublished opinion in *Jensen v. Charon Solutions, Inc.* (Dec. 20, 2017, B276050).

contributed approximately $21,000 in starting capital and did so through companies of their own: Jensen joined through Peachtree Financial Corporation (Peachtree) and Segal joined through defendant Charon Solutions, Inc. (Charon).

In 2004, Jensen sued the person who sold her the land the LLC was to develop; to finance that litigation, she took out a loan secured by the property itself. That lawsuit settled.

Upset that Jensen did not include him in the litigation and did not seek his permission before encumbering her property, Segal sent a letter to Jensen in December 2005 withdrawing Charon from the LLC, demanding a refund of his starting capital, and threatening to sue for $1.5 million in damages. Jensen offered to return Segal's starting capital, but Segal rejected her offer.

**B. *Lawsuit No. 1 (the Underlying Lawsuit)***

In 2008, Segal and Charon sued Jensen and Peachtree for the return of their starting capital; for the proceeds of the loan Jensen took out on the property; and for an order transferring half of Jensen's land to Charon. Jensen and Peachtree filed a cross-complaint. The trial court sustained demurrers to many of the claims in the complaint and cross-complaint. When Segal and Charon subsequently filed an amended complaint, they dropped Peachtree as a defendant. Of the initial claims and cross-claims, only three claims and one cross-claim went to trial. A jury rejected each and every one of the surviving claims and the cross-claim.

**C. *Lawsuit No. 2 (the Malicious Prosecution Lawsuit)***

1. *Filing*

In 2011, Jensen and Peachtree sued Segal and Charon for maliciously prosecuting the Underlying Lawsuit.

2. *Segal's and Charon's retention of attorney, creation of attorney's fees lien, and filing of cross-complaint*

On May 1, 2012, Segal and Charon retained defendant Henry Josefsberg (Josefsberg) to represent them in the Malicious Prosecution Lawsuit. In a written agreement, Segal and Charon generally "grant[ed]" Josefsberg "a lien on any and all claims or causes of action that are subject of [his] representation under" the agreement. The agreement went on to specify that the lien "will be in the full amount of any sums owing . . . as fees, costs, or expenses" and "will attach *to any recovery* [Segal and Charon] may obtain . . . ." (Italics added.)

Three days later, Segal and Charon filed a cross-complaint against Jensen and Peachtree for maliciously prosecuting their cross-claim in the Underlying Lawsuit. This cross-complaint was dismissed a few months later.

3. *Litigation, trial, and verdict*

Prior to trial, Segal and Charon filed an anti-SLAPP motion. The trial court denied the motion as to Jensen but granted it as to Peachtree (because the Underlying Lawsuit had not favorably terminated in Peachtree's favor due to Segal's and Charon's dismissal of Peachtree as a defendant prior to trial). We affirmed that ruling on appeal. (*Jensen v. Charon Solutions* (Oct. 10, 2013, B240651) [nonpub. opn.].)

Jensen proceeded to trial. She introduced evidence that she incurred $400,163.51 in attorney's fees in the Underlying Lawsuit and testified to suffering emotional distress. (*Jensen v. Charon Solutions, Inc.*, *supra*, B276050.) On April 5, 2016, a jury returned a verdict finding Segal and Charon liable for malicious prosecution and awarding Jensen $1 million in compensatory damages; the jury also awarded $500,000 in punitive damages—$250,000 against each defendant.

4. *Postverdict events*

One month after the jury returned its verdict, on May 5, 2016, Charon executed a two-sentence letter to Josefsberg that read: "This document serves as official confirmation that [Charon] grants you a security interest in all accounts receivable of [Charon]. This includes, but is not limited to all cash, checks, wires, negotiable instruments and any other monies—in any form—paid to Charon[]." Segal executed an identical letter granting Josefsberg a security interest in Segal's accounts receivable.

On May 6, 2016, Segal and Charon jointly executed and filed a UCC Financing Statement that named each of them as "Debtors"; named Josefsberg as the "Secured Party"; and, as "Collateral," listed "[a]ccounts receivable, cash, checks, wires, negotiable instruments and any other monies—in any form—paid to . . . Segal and/or Charon[]."

On April 21, 2016, the trial court entered judgment in the Malicious Prosecution Lawsuit. Charon and Segal were served with notice of entry of that judgment on May 10, 2016.

Jensen then began efforts to collect on the judgment. On May 25, 2016, she filed applications to have Charon and Segal appear for a debtor's examination (and the trial court granted those applications on June 3, 2016). In early June 2016, Jensen recorded abstracts of judgment—which create a judgment lien on a judgment debtor's real property for a money judgment (§ 697.310)—in Los Angeles, San Mateo, and Riverside Counties. In February 2017, she recorded two more abstracts of judgment in San Francisco and Orange Counties. And in May 2017, Jensen recorded a notice of judgment lien in the office of the Secretary of

State—which creates a judgment lien on a judgment debtor's personal property for a money judgment (§ 697.510).

5. *Appeal*

Segal and Charon appealed the judgment.

On December 20, 2017, we affirmed the jury's finding of liability, but "reversed and remanded for a new trial on compensatory damages" because the trial court's admission of Jensen's heavily redacted billing statements for attorney's fees was "fundamentally unfair" to Segal and Charon because it denied them the ability to "conduct[] any meaningful cross-examination" regarding those fees. (*Jensen v. Charon Solutions, Inc.*, *supra*, B276050.) We left the $500,000 punitive damages verdict intact in the event the compensatory damages award exceeded $25,000.

## II. Procedural Background

### A. *Complaint*

In November 2016, Jensen filed a declaratory relief lawsuit against Segal, Charon, and Josefsberg (collectively, defendants). In the operative second amended complaint, Jensen alleged two "actual" controversies: (1) whether her liens "are superior to, and have priority over, any and all of the Josefsberg Liens," which she defines as the liens Segal and Charon purported to create in May 2012 and May 2016; and, as a "subsidiary" matter, (2) whether the May 2012 attorney's fees lien is "lawful and enforceable" under rule 3-300 of the California State Bar Rules of Professional Conduct that governs transactions between attorneys and their clients. Jensen specifically sought and prayed for "[a] declaration of [her] rights with respect to the property, assets, and income of . . . Segal and Charon (and proceeds thereof) under the Jensen

Liens" and "[a] declaration that the Jensen Liens are superior to, and have priority over, the Josefsberg Liens."

**B. *Anti-SLAPP Motion***

In June 2017, defendants filed a motion to strike Jensen's complaint under the anti-SLAPP law, alleging that Josefsberg's assertion of an attorney's fees lien was litigation-related activity falling under the anti-SLAPP law and that Jensen's claim for lien priority lacked minimal merit.

Following full briefing and a hearing, the trial court denied the anti-SLAPP motion. The court ruled that Jensen's lawsuit did "not arise from protected activity." The court cited language from *Drell v. Cohen* (2014) 232 Cal.App.4th 24, 30 (*Drell*) that a lawsuit seeking "to declare the parties' respective rights to attorney fees" did not constitute protected activity as long as the lawsuit did not "seek to prevent defendants from exercising their right to assert [that attorney's fees] lien." Applying this rule, the court reasoned that Jensen's lawsuit did not arise from protected activity subject to the anti-SLAPP law because Jensen "asks solely for the Court to determine the scope and priority of the parties' respective liens" and, "[w]ith one arguable exception," at no point "alleges that Defendants are liable to her because they created an attorney's lien[,]" alleges that "Defendants violated her rights or breached any duty to her by creating an attorney's lien[,]" or alleges that "Defendants should be punished for creating an attorney's lien." The "arguable exception" the court referred to was Jensen's allegation that the May 2012 lien violated the Rules of Professional Conduct; however, the court found that this allegation was still not based upon protected activity or was "moot in light of" the court's earlier ruling that Jensen lacked standing to enforce that rule.

### C. *Appeal*

Defendants filed a timely notice of appeal.

## DISCUSSION

Defendants argue that the trial court erred in denying their anti-SLAPP motion. We independently review such denials. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-236.) As always, "our job is to review the trial court's ruling, not its reasoning." (*People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369, 386.) Before reaching the merits, however, we first address the mootness of this appeal.

### I. Mootness

Jensen's declaratory relief action seeking to establish the priority of her judgment liens over Josefsberg's lien is moot because we subsequently vacated the judgment to which Jensen's liens attach. (See *People v. J.S.* (2014) 229 Cal.App.4th 163, 170 ["as a general matter, an issue is moot if 'any ruling by [the] court can have no practical impact or provide the parties effectual relief'"].) We nevertheless have the "discretion [to] decide questions that have been rendered moot as a result of subsequent events . . . where the issues presented are of importance and 'are capable of repetition yet tend to evade review.'" (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 78, quoting *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 524, fn. 1.) Although we vacated the jury's damages award in the Malicious Prosecution Lawsuit due to an evidentiary error, we affirmed the jury's finding of liability. Further, in light of the prior jury's ostensible award of over $400,000 in attorney's fees and nearly $600,000 in emotional distress damages, there is at least some possibility that a future jury will award at least $25,000 in damages (thereby reinstating the $500,000 punitive damages

award). Should a jury so find, Jensen's declaratory judgment claim for a proclamation of lien priorities will again come alive and be subject to yet another anti-SLAPP motion (and yet another anti-SLAPP ruling, and yet another appeal of that ruling). Because the anti-SLAPP issue is fully briefed, we exercise our discretion to reach the merits of this issue now.

## II. Merits

### A. *The Anti-SLAPP Law, Generally*

The anti-SLAPP law "provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).) When a party moves to strike a cause of action (or portion thereof) under the anti-SLAPP law, a trial court must ask: (1) Has the moving party "made a threshold showing that the challenged cause of action arises from protected activity" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056 (*Rusheen*)), and if it has, (2) has the nonmoving party demonstrated that the challenged cause of action has "minimal merit" by making "a prima facie factual showing sufficient to sustain" a judgment in its favor? (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 93-94 (*Navellier*); *Baral*, at pp. 384-385; § 425.16, subd. (b)(1)).

In assessing whether the challenged cause of action constitutes protected activity (the first question), a court must ask "two subsidiary questions: (1) What conduct does the challenged cause of action 'arise[] from'; and (2) is that conduct 'protected activity' under the anti-SLAPP [law]?" (*Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 698.) In answering the first subsidiary question, a cause of action "arises from" protected activity when it is "*based on*" protected activity—that is, when the protected activity is the

"'"*principal thrust or gravamen*"'" or "'core injury-producing conduct'" warranting relief. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 (*City of Cotati*); *Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 134 (*Colyear*).) In evaluating the second subsidiary question, the anti-SLAPP law itself defines four categories of protected activity. (§ 425.16, subd. (e).) Two are pertinent here: (1) "[A]ny written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" (*id.*, subd. (e)(1)); and (2) "[A]ny 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" (*id.*, subd. (e)(2)).

**B. *Analysis***

In assessing whether a cause of action constitutes protected activity, what matters is "the defendant's *activity* that gives rise to his . . . asserted liability" rather than "the form of the plaintiff's cause of action." (*Navellier*, *supra*, 29 Cal.4th at p. 92.) Consequently, and contrary to what Jensen suggests, declaratory relief claims do not unilaterally fall outside the definition of protected activity. (*South Sutter, LLC v. LJ Sutter Partners, L.P.* (2011) 193 Cal.App.4th 634, 665 ["an anti-SLAPP motion may lie against a complaint for declaratory relief"]; see, e.g., *CKE Restaurants, Inc. v. Moore* (2008) 159 Cal.App.4th 262, 269-271 [holding that declaratory relief action constitutes "protected activity"]; *Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1257-1259 [same].) Instead, as our Supreme Court has instructed, courts must ask: "What activity or facts underlie the [nonmoving party's] cause of action for declaratory relief?" and

then assess whether those activities or facts constitute protected activity within the meaning of the anti-SLAPP law. (*City of Cotati*, *supra*, 29 Cal.4th at p. 79.)

In her claim for declaratory relief, Jensen seeks two declarations: (1) first and primarily, a declaration that her liens "are superior to, and have priority over, any and all of the Josefsberg Liens," (2) second and a subsidiary matter, a declaration as to whether Josefsberg's May 2012 attorney's fees lien is "lawful and enforceable" under California State Bar Rules of Professional Conduct, rule 3-300. Because the activities or facts underlying each claim differ, we will examine each separately.

1. *Declaration regarding priority of liens*

By its plain language, the anti-SLAPP law reaches not only oral and written statements "made *before* a . . . judicial proceeding," but also statements "made *in connection with* an issue under consideration or review by a . . . judicial body." (§ 425.16, subd. (e)(1) & (2), italics added.) As construed by the courts, these categories can include "communication[s] preparatory to or in anticipation of litigation" (*Gotterba v. Travolta* (2014) 228 Cal.App.4th 35, 41) as well as "postjudgment enforcement activities" (*Rusheen*, *supra*, 37 Cal.4th at p. 1063; see also *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 830-831 [filing of assessment lien falls within litigation privilege under Civil Code section 47]). (Accord, *Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 210 ["*all* communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP [law]" (italics added)].)

Notwithstanding the potential breadth of the anti-SLAPP law's reach when it comes to litigation-related conduct, a cause of action is still only based upon protected activity—and hence subject to the anti-SLAPP law—if the litigation-related conduct is "'the core injury-producing conduct'" underlying that cause of action. (*Colyear*, *supra*, 9 Cal.App.5th at p. 134; cf. *California Back Specialists Medical Group v. Rand* (2008) 160 Cal.App.4th 1032, 1037 (*California Back Specialists*) ["Not all attorney conduct in connection with litigation, or in the course of representing clients, is protected by section 425.16"]; *Optional Capital, Inc. v. Akin Gump Strauss Hauer & Feld LLP* (2018) 18 Cal.App.5th 95, 114 [cause of action is not "'automatically'" based upon protected activity "'merely because it is related to pending litigation'"].) Thus, where a client sues his attorney for malpractice or breach of fiduciary duty during litigation, that cause of action is not based upon protected activity because the core injury-producing conduct is the attorney's malfeasance, not what she said or did in court. (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1269, 1271-1273; *Yeager v. Holt* (2018) 23 Cal.App.5th 450, 457 ["we find it difficult to see how suing an attorney for malpractice . . . attacks expressive activity for anti-SLAPP purposes"].) Along the same lines, where a court reporter sues an attorney for not paying fees, that cause of action is also not based upon protected activity because the gravamen of that claim is breach of contract, not anything said or done in court. (*Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, 190-191.) In either instance, any effect on the attorney's in-court conduct is "only incidental" and not enough to convert the cause of action into one based on protected activity. (*Id.* at p. 191.)

When it comes to whether a cause of action relating to a lien on attorney's fees is based upon protected activity, the recent opinion in *Drell*, *supra*, 232 Cal.App.4th 24 is instructive. Implicitly acknowledging that a lien on attorney's fees is as a general matter part of an attorney's conduct during litigation, *Drell* drew a distinction between causes of action that, on the one hand, "allege [that an attorney] engaged in wrongdoing by asserting [his] lien" or "seek to prevent [the attorney] from exercising [his] right to assert [his] lien" and causes of action that, on the other hand, "ask[] the court to declare the parties' respective rights to attorney fees." (*Id.* at p. 30.) *Drell* held that the former are based upon protected activity while the latter are not. (*Ibid.*) Thus, when a client's current attorney sued a former attorney for a declaration of his rights to the proceeds of a settlement vis-à-vis the former attorney's fees lien, *Drell* held that the declaratory relief claim was not based upon protected activity because it sought merely to "declare the [attorneys'] respective rights to attorney fees." (*Ibid.*) In a similar vein, *California Back Specialists*, *supra*, 160 Cal.App.4th 1032 held that a medical provider's action for a declaration regarding its lien-based rights to a portion of a settlement vis-à-vis an attorney who also claimed a right to the settlement proceeds was not protected activity because it was "based on the underlying controversy between private parties about the validity and satisfaction of the liens" and not any litigation-related conduct. (*Id.* at pp. 1036-1037.)

These cases distinguish between causes of action that challenge the right to assert, or the validity of, a lien for attorney's fees (which, because they question an attorney's right to assert or to enforce such a lien as part of his representation in

a case, constitute protected activity), and those that seek a declaration of rights regarding the priority of such a lien vis-à-vis other liens (which, because they do not question the attorney's right to assert or to enforce such a lien, do not constitute protected activity). This distinction between the *validity* of a lien and its *priority* can sometimes be a blurry one (because an invalid lien is by definition entitled to *no* priority), but it is nevertheless a valid and long-standing distinction. (See, e.g., *Wells Fargo Bank v. PAL Investments, Inc.* (1979) 96 Cal.App.3d 431, 438 [drawing distinction between "the validity of a mortgage" and "its priority"].)

Applying this law, Jensen's chief claim for declaratory relief is not based upon protected activity. In that claim, Jensen seeks "[a] declaration of [her] rights with respect to the property, assets, and income of . . . Segal and Charon (and proceeds thereof) under the Jensen Liens" and, more specifically, "[a] declaration that the Jensen Liens are superior to, and have priority over, the Josefsberg Liens." Except for the "subsidiary" declaratory relief claim we discuss next, Jensen at no point questions Josefsberg's right to assert his liens for attorney's fees or questions the validity of those liens. Instead, she takes the validity of Josefsberg's liens as a given and asks the court to declare her liens to be ahead of Josefsberg's in line. This claim is functionally indistinguishable from the claims found to be based upon unprotected activity in *Drell*, *supra*, 232 Cal.App.4th at page 30 and *California Back Specialists*, *supra*, 160 Cal.App.4th at pages 1036 to 1037.

Defendants raise two categories of arguments in response.

First, they point us to two cases which, in their view, dictate a contrary result—namely, *Transamerica Life Ins. Co. v.*

*Rabadi* (C.D.Cal. May 17, 2016, No. CV 15-07623-RSWL-Ex) 2016 U.S.Dist. Lexis 65053 and *O'Neil-Rosales v. Citibank (South Dakota) N.A.* (2017) 11 Cal.App.5th Supp. 1. In *Transamerica*, a life insurance company filed an interpleader action for the proceeds of a life insurance policy that were sought by the policy's beneficiaries as well as attorneys who had a lien on property belonging to the beneficiaries' relatives. (*Id.* at pp. *9-*11.) The beneficiaries filed a cross-claim against the attorneys for declaratory relief and for intentional interference with contractual relations, and the attorneys filed a motion to dismiss the intentional interference claim under the anti-SLAPP law. (*Id.* at pp. *8-*9.) The federal district court in *Transamerica* ruled that the intentional interference claim was based upon protected activity—namely, the allegation that it was the attorneys' assertion of their lien (either in court during previous litigation or in a letter to the beneficiaries' counsel) that "interfered with" the beneficiaries' right to the proceeds under the life insurance contract. (*Id.* at pp. *8-*11 & fn. 2.) In *O'Neil-Rosales*, a bank recorded an abstract of judgment as a real property lien, and the judgment debtor filed a declaratory relief action seeking a declaration that the bank's recordation violated the federal and state statutes governing debt collection. (*O'Neil-Rosales*, at p. Supp. 6.) When the bank moved to dismiss the claim under the anti-SLAPP law, the superior court appellate division ruled that the declaratory relief action was based upon protected activity—namely, the allegation that the bank's assertion of its judgment lien was wrongful. (*Id.* at pp. Supp. 6-7.) Both *Transamerica* and *O'Neil-Rosales* dealt with claims that challenged the right to assert a litigation-related lien or its

validity; for the reasons noted above, Jensen's chief declaratory relief claim does not.

Second, defendants contend that Jensen's "subsidiary" claim challenges the validity of Josefsberg's May 2012 attorney's fees lien. We evaluate that claim next. However, it has no effect on whether Jensen's primary declaratory relief claim constitutes protected activity because the anti-SLAPP law requires us to take an allegation-by-allegation approach (*Baral*, *supra*, 1 Cal.5th at p. 393), such that Jensen's subsidiary declaratory relief claim cannot somehow infect her primary claim. Whether Jensen's primary declaratory relief claim is protected activity stands on its own.

Because Jensen's primary declaratory relief claim does not constitute protected activity, it falls outside the anti-SLAPP law, and the trial court properly denied defendants' motion to strike the allegations pertaining to that claim.

2. *Declaration regarding validity of May 2012 lien under California State Bar Rules of Professional Conduct*

Jensen's subsidiary claim for a declaration as to whether Josefsberg's May 2012 attorney's fees lien is "lawful and enforceable" under rule 3-300 of the California State Bar Rules of Professional Conduct is an assertion that Josefsberg "engaged in wrongdoing by asserting [his] lien" and "seek[s] to prevent [him] from exercising [his] right to assert [that] lien." (*Drell*, *supra*, 232 Cal.App.4th at p. 30.) Accordingly, under *Drell*, this declaration constitutes protected activity.

Where, as here, a cause of action is based upon protected activity, the nonmoving party—here, Jensen—must make "'"a sufficient prima facie showing of facts to sustain"'" a judgment in her favor. (*Navellier*, *supra*, 29 Cal.4th at pp. 93-94; § 425.16, subd. (b)(1).) This, she cannot do. That is because one litigant

has no standing to challenge a violation of rule 3-300 suffered by another litigant. (*In re Marriage of Murchison* (2016) 245 Cal.App.4th 847, 849, 851-852.)

Accordingly, the trial court erred in not striking the allegations pertinent to Jensen's subsidiary claim for declaratory relief.

**DISPOSITION**

We order that the allegations in the second amended complaint pertaining to the "subsidiary" claim for declaratory relief involving Josefsberg's alleged violation of California State Bar Rules of Professional Conduct, rule 3-300 be stricken. We otherwise affirm. Each party is to pay its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ