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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

JAMES BURTON, Plaintiff and Respondent, v. IRENE BERRYHILL et al., Defendants and Appellants.	B265009 (Los Angeles County Super. Ct. No. BC571473)

APPEAL from an order of the Superior Court of Los Angeles County, William Fahey, Judge. Reversed and remanded with directions.

LA Superlawyers, William W. Bloch, Klapach & Klapach, Joseph S. Klapach for Defendants and Appellants.

Kirkland & Ellis, Sierra Elizabeth for Plaintiff and Respondent.

INTRODUCTION

Defendants and appellants Irene Berryhill and her daughter, Aneka Braxton (collectively, Berryhill) appeal from the trial court's order denying their special motion to strike the complaint filed by plaintiff and respondent James Burton under Code of Civil Procedure section 425.16, the anti-SLAPP statute.[1] This is the second lawsuit and second appeal arising out of a dispute between Berryhill and Burton, former friends and members of a large Bible study group. Litigation began when a property purchase agreement between Berryhill as the seller and Burton as the buyer fell apart. In the first lawsuit, Berryhill sued Burton, among others, based on the property dispute and a cease and desist letter sent by Burton. Burton filed an anti-SLAPP motion related to the cease and desist letter, which the trial court denied. That decision was affirmed in an unpublished opinion by Division Five of this district.

In the meantime, Burton filed the instant lawsuit, alleging that Berryhill made false and defamatory statements about him and the status of the first lawsuit to fellow Bible study group members who were also Burton's co-workers, ultimately resulting in the termination of his employment. Berryhill filed the anti-SLAPP motion at issue here, contending her statements were made in connection with the first lawsuit and were therefore protected under section 425.16, subdivision (e)(2) (section 425.16(e)(2)). The trial court denied the motion.

We conclude Berryhill has made a prima facie showing that Burton's complaint is based on statements protected under the

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[1] SLAPP is an acronym for Strategic Lawsuit Against Public Participation. All further statutory references are to the Code of Civil Procedure unless stated otherwise.

anti-SLAPP statute. Further, Burton, who dismissed his complaint during the pendency of this appeal, cannot show any probability of success on the merits. We therefore reverse the trial court's decision and remand for a determination of the award of fees under section 425.16, subdivision (c).

FACTUAL AND PROCEDURAL HISTORY

A. *Property Dispute and Lawsuit*

Burton and his wife are former friends of Berryhill; they became close as members of a large, tightly-knit Bible study group, also referred to as a "Bible class" or "Bible school" by the parties. In March 2014, Berryhill informed Burton she was planning to sell a residential property she owned in Inglewood, California. Burton expressed an interest in purchasing the property, and the parties began discussing terms. The parties disagree as to the terms of the agreement and the extent of their performance in compliance with those terms, but agree that Berryhill signed a quitclaim deed to the property on May 12, 2014. Berryhill contends the quitclaim deed was not notarized and was intended as a temporary "good faith act" in case of an accident while she was away on a trip. However, according to Berryhill, Burton began construction and partial demolition on the property in late May, had the deed notarized in July, and then recorded it on July 15, 2014, all without her knowledge or permission and in an attempt to fraudulently gain ownership of the property. Conversely, Burton contends he became the rightful owner and that Berryhill was attempting to extort more money from him if he did not return the property.

The parties then exchanged various text messages and letters threatening litigation over the ownership of the property. For example, Berryhill sent a letter to Burton on July 19, 2014

demanding that he stop all work on the property and stating if Burton attempted to move into the house without agreeing to her terms, her "next step" would be contacting the police department and hiring an attorney. Similarly, in a text message on July 20, 2014, Berryhill told Burton if he "file[d] the deed" she would "slap you with a Federal Charges [sic] for Fraudulent Activity against a Disabled Senior Citizen," and stated that she was "going to do what is legally the next step," if Burton refused to comply with her demands regarding the property. Burton sent a letter to Berryhill on or about July 27, 2014, claiming that he had met with law enforcement officials and would "press charges" against Berryhill if she did not "stop extorting, harassing, threatening, libeling, slandering" Burton and others and interfering with the work being done on the property.

On August 5, 2014, Berryhill filed a complaint against Burton and others for quiet title and related claims arising out of Burton's alleged conduct regarding the property (the Property Lawsuit). The complaint also alleged a cause of action for civil extortion based on the cease and desist letter sent by Burton on July 27, 2014. Berryhill attached a copy of the quitclaim deed and Burton's letter to the complaint.

Burton filed a motion to strike the extortion cause of action pursuant to the anti-SLAPP statute. The trial court denied the motion. In an unpublished opinion, *Berryhill v. Burton* (Nov. 5, 2015, B260683) (nonpub. opn.), Division Five concluded Burton established that the letter was protected activity under section 425.16(e)(2) because it "clearly concerns the subject of the dispute" and was written "in anticipation of litigation contemplated in good faith and under consideration." However, because Berryhill established a probability of prevailing on the

merits of the claim, the court affirmed the denial of the motion to strike. (*Id*. at p. 4.)

B. *Burton Complaint*

Burton filed the complaint in the instant action on February 5, 2015, alleging claims against Berryhill for intentional interference with contractual relations, slander, and intentional interference with prospective economic advantage. In support of all three causes of action, Burton alleged that after he refused to return the property to Berryhill and/or pay her additional money, Berryhill made false statements about Burton to other members of their Bible class. Specifically, Burton identified the following categories of statements: (1) "Between July 2014 and the present," Berryhill "regularly contacted" other Bible group members and "repeatedly told them that the Burtons stole the Property and committed fraud, in addition to various personal attacks about Burton's character and reputation;" and (2) beginning in October 2014, Berryhill made numerous false statements to other Bible group members about the status of the Property Lawsuit, including that "the Court had already ruled in favor of [Berryhill's] civil extortion claim" and that Berryhill "had already prevailed" in that action "because the Burtons were in default."

Burton further alleged that Berryhill made these statements to Bible group members with whom Burton worked because she knew these individuals would relay the information to Burton's employer. Burton claimed he was fired from his job on January 19, 2015 as a result of Berryhill's "repeated attempts to spread rumors about Burton and disparage him."

C. *Berryhill's Anti-SLAPP Motion*

Berryhill filed a special motion to strike the complaint pursuant to section 425.16, attaching declarations of Berryhill, Braxton, and their counsel. Berryhill argued that Burton's complaint arose out of statements protected under section 425.16(e)(2), as they were made in connection with issues under consideration in the Property Lawsuit. Further, she asserted that Burton could not establish a probability of success on his claims because her statements were protected by the litigation privilege (Civ. Code, § 47, subd. (b)).

In her declaration, Berryhill stated that the Bible group "includes over 500 persons who regularly attend services and meetings," including many members who are friends or relatives of the parties and many who have "business and personal relationships with each other." She acknowledged that fellow members "inevitably have asked me things like 'How is the lawsuit going?' [and] 'Has James given the property back yet?,'" that she had "advised members that Burton's challenge to our extortion claim was meritless," and had shown "several persons" the July 27, 2014 letter sent by Burton and "expressed my belief . . . that he did engage in extortion in writing" that letter. She also stated she had provided a copy of the Property Lawsuit complaint to certain board members for the Bible group and responded to questions from members regarding that lawsuit. Berryhill stated she had "only spoken to a small number of Bible School members about this lawsuit, but between [Burton] and all his friends and [Burton's wife's] huge group of family members in class it is impossible to stop members from knowing about this case." Berryhill denied contacting Burton's employer or trying to have him fired.

Berryhill also filed a request for judicial notice, attaching, among other things, copies of the Property Lawsuit, Burton's cross-complaint, and exhibits thereto, including the escalating July 2014 correspondence between the parties.

Burton opposed the motion to strike, arguing that Berryhill's statements were not protected under the anti-SLAPP statute, as they were only "incidentally related to the ownership dispute." In his accompanying declaration, Burton claimed that "in furtherance of her singular mission to ruin my life, Berryhill approached members of our bible class . . . falsely representing to them that I 'stole' the Property and committed fraud." Without further elaboration, he claimed these statements by Berryhill were "unsolicited" and were made "between July 2014 and the present." Burton also stated that Berryhill had made "unsolicited" misstatements about the Property Lawsuit to Bible group members and attached a purported copy of a text message Berryhill sent to another member.

Both parties filed numerous objections to the evidence. The trial court sustained the majority of these objections, including the portions of Burton's declaration purporting to recite what Berryhill told other Bible group members and attempting to authenticate and attach the text allegedly sent by Berryhill to another member.[2] The court then denied the motion to strike, finding that Berryhill's statements were "made in a social setting to respond to mere curiosity." Citing *Paul v Friedman* (2002) 95 Cal.App.4th 853, 865 (*Paul*), the court noted that "the mere existence of litigation between parties does not give carte blanche to 'any and all conduct' in connection with the proceeding," and

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[2] Neither party challenges these evidentiary rulings on appeal.

concluded that Berryhill had failed to provide evidence "that the persons with whom defendants spoke had any real interest in the parties' dispute," such as potential witnesses.

Berryhill timely appealed the denial of the motion to strike.[3]

DISCUSSION

I. *Section 425.16 and Standard of Review*

"A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so. '"While SLAPP suits masquerade as ordinary lawsuits such as defamation and interference with prospective economic advantage, they are generally meritless suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe economic sanctions against the defendant, and not to vindicate a legally cognizable right."' [Citations.]" (*Simpson Strong–Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21 (*Simpson*).)

The Legislature has declared that "it is in the public interest to encourage continued participation in matters of public significance, and . . . this participation should not be chilled through abuse of the judicial process." (§ 425.16, subd. (a).) To this end, the Legislature enacted section 425.16, subdivision (b)(1), which authorizes the filing of a special motion to strike for "[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." "The Legislature expressly provided that the anti-SLAPP statute 'shall be

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[3] An order denying a section 425.16 motion is immediately appealable. (§ 425.16, subd. (i);§ 904.1, subd. (a)(13).)

construed broadly.' (§ 425.16, subd. (a).)" (*Simpson, supra*, 49 Cal.4th at p. 21.)

Analysis of a motion to strike pursuant to section 425.16 involves a two-step process. (*Simpson, supra*, 49 Cal.4th at p. 21.) "First, the defendant must make a prima facie showing that the plaintiff's 'cause of action . . . aris[es] from' an act by the defendant 'in furtherance of the [defendant's] right of petition or free speech . . . in connection with a public issue.' (§ 425.16, subd. (b)(1).) If a defendant meets this threshold showing, the cause of action shall be stricken unless the plaintiff can establish 'a probability that the plaintiff will prevail on the claim.' [*Ibid*.]" (*Simpson, supra*, 49 Cal.4th at p. 21, fn. omitted.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to be stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

We review the denial of a special motion to strike de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flatley*).) In engaging in the two-step process, we consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) "However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.' [Citation.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).)

II. *Burton's Claims Arise From Protected Activity*

Under the first prong of a motion to strike under section 425.16, the moving party has the burden of showing that the cause of action arises from an act in furtherance of the right of free speech or petition—i.e., that it arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) Thus, the moving party must establish both (1) that its act constituted protected activity; and (2) the opposing party's cause of action arose from that protected activity.

A. *Protected Activity*

First, we must determine whether Berryhill's statements were protected conduct. To meet this burden, Berryhill must demonstrate that her statements "'fit[] one of the categories spelled out in section 425.16, subdivision (e). . . .' [Citations.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) As pertinent here, section 425.16(e)(2) protects "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body, or any other official proceeding authorized by law." Berryhill contends her statements are protected because they were "made in connection with an issue under consideration" in the Property Lawsuit. We agree.

Burton focuses on language used by a number of courts interpreting the statutory language to conclude "that a statement is 'in connection with' litigation under section 425.16, subdivision (e)(2) if it relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation." (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1266 (*Neville*).) He suggests that we apply this language to exclude Berryhill's statements from protection, because they "were not connected to a substantive issue being litigated" and were made

to individuals who were neither parties nor potential witnesses. However, we conclude that such a limited application of the statute would be inconsistent with prior decisions and with the statutory language itself, both of which mandate a broad construction. (See, e.g., *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908 [courts have adopted "a fairly expansive view of what constitutes litigation-related activities within the scope of section 425.16"]; *Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5 (*Healy*) ["[I]t has been established for well over a century that a communication is absolutely immune from any tort liability if it has "'some relation"' to judicial proceedings. [Citation]."].)

For example, the requirement that a statement must be related to the substantive issues in the litigation has allowed protection over a letter sent by a homeowners' association to members of the association, informing them of a pending lawsuit against another member and claiming that member was acting improperly. (*Healy, supra,* 137 Cal.App.4th at pp. 5-6.) Similarly, a company's email to customers, informing them of the court's rulings and favorable imposition of sanctions in litigation against the company's competitor fell within the scope of protected activity in section 425.16, subdivision (e)(2) as statements made "'in connection with an issue under consideration or review by a . . . judicial body.'" (*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1050–1051, 1055–1056 (*CSC*); see also *Neville, supra*, 160 Cal.App.4th at pp. 1267-1268 [protecting letter sent by company to current and former customers, which accused former employee of breach of contract and misappropriation of trade secrets and suggested that customers should not do business with former

employee to avoid potential involvement in any ensuing litigation].)

By contrast, the cases cited by the trial court and Burton found the conduct at issue was not protected under the anti-SLAPP statute because that conduct was completely unrelated to the issues relevant to the pending (or contemplated) litigation. In *Paul, supra*, 95 Cal.App.4th at pp. 857-858, a securities broker sued his former clients and their attorney, based on an investigation conducted by the attorney during a prior arbitration of securities fraud claims. The broker alleged that the attorney's investigation was highly intrusive and well outside the scope of the issues relevant to the arbitration, including investigating the broker's personal life and disclosing to the broker's clients and others details about the broker's financial affairs, spending habits, tax liabilities, and close personal relationships. (*Ibid*.) The court denied the attorney's motion to strike, finding that the attorney's statements, although conducted under the guise of the arbitration, bore "no relationship" and had "nothing to do with the claims under consideration" in the arbitration and therefore were not protected conduct. (*Id* at p. 866.) Similarly, in *McConnell v. Innovative Artists Talent and Literary Agency, Inc.* (2009) 175 Cal.App.4th 169 (*McConnell*), two talent agents sued their former employer, challenging the legality of provisions in their employment contract. The employer responded with a letter "temporarily" modifying their job duties and instructing them not to come to the office, use company email, or engage with the company or clients in any way. (*Id*. at p. 173.) The plaintiffs added claims for retaliation and wrongful termination, which the employer moved to strike. The court found the anti-SLAPP statute did not apply because, among other reasons, the

employer's letter "reflect[s] no relationship to the substantive issues" in the plaintiffs' original lawsuits regarding terms in their employment contracts. (*Id.* at p. 179.)

Here, Burton alleged that Berryhill made statements accusing him of misdeeds in connection with his acquisition of the property—the same conduct alleged by Berryhill in the Property Lawsuit—as well as informing Bible group members about the status of the Property Lawsuit.[4] These statements were sufficiently connected to the substantive issues under consideration in the Property Lawsuit to qualify as "in connection with litigation" under section 425.16(e)(2). Similarly, Burton cites no case supporting his suggestion that a person "having some interest in the litigation" must be a witness or a party. The recipients of the statements here were fellow Bible group members, business associates, and co-workers. They meet the requirement that they have "some interest" in the pending litigation between three of their members, similar to fellow homeowners in a homeowners' association or former customers receiving a "litigation update." (*Healy, supra,* 137 Cal.App.4th at pp. 5-6; *CSC, supra,* 152 Cal.App.4th at pp. 1055; see also *Neville, supra*, 160 Cal.App.4th at p. 1270 [section 425.16(e)(2) "has been held to protect statements to persons who are not parties or

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[4] Burton's contention that these statements were untrue is irrelevant at this stage. (See *Flatley, supra*, 39 Cal.4th at p. 319 [To prevail on [the first] prong, the defendant does not have to prove the validity of his or her petitioning or speech activity.]; *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1549 ["whether or not his statements were false does not determine whether they constitute protected activity for purposes of the SLAPP statute"] (*Haight Ashbury*).)

potential parties to litigation, provided such statements are made 'in connection with' pending or anticipated litigation"].)[5]

Burton also argues that some of Berryhill's statements were allegedly made prior to the filing of the Property Lawsuit on August 5, 2014, and therefore do not qualify as protected conduct under 425.16(e)(2). We disagree. "There is no question that 'a prelitigation statement falls within [425.16(e)(2)] if the statement "'concern[s] the subject of the dispute' and is made 'in anticipation of litigation "contemplated in good faith and under serious consideration[.]"'"'" (*Aguilar v. Goldstein* (2012) 207 Cal.App.4th 1152, 1162; see also *Neville, supra*, 160 Cal.App.4th at p.1268.) Here, the only suggestion of such pre-lawsuit statements comes from Burton's vague allegations in the complaint that Berryhill's statements about him were made "regularly" starting in July 2014. Further, the evidence presented by both parties suggests that the situation did not

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[5] Moreover, many courts have analyzed and broadly applied section 425.16(e)(2) without any reference to the degree of "interest" of the listener. (See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1114-1115 [protecting statements about landlord made by tenant assistance organization, including alleged "defamatory statements . . . made to a HUD investigator and other unknown persons" in connection with a tenant's legal action, and statements made to other tenants]; *Haight Ashbury, supra,* 184 Cal.App.4th at p. 1549 [protecting letter sent by defendant to newspaper allegedly "misrepresenting facts surrounding the claims" in a prior lawsuit]; *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 821–822 [protecting statements to nonparties describing litigation and soliciting contributions to litigation fund], disapproved on another ground in *Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.)

escalate until mid-July, when Burton recorded the quitclaim deed. Thus, at the earliest, Berryhill began making the alleged statements a few weeks prior to filing the Property Lawsuit. Moreover, at the same time, the parties were exchanging correspondence threatening legal action against each other, including letters from Berryhill in mid-July stating that her "next step" would be to hire a lawyer and initiate legal claims against Burton. Under these circumstances, we conclude Berryhill made a prima facie showing that the alleged pre-lawsuit statements were made in anticipation of litigation and are therefore protected conduct under the anti-SLAPP statute.

Even if these statements were not protected, the majority of the conduct alleged by Burton as giving rise to his claims occurred after the Property Lawsuit was filed. Where a cause of action is based on both protected and unprotected conduct, defendant has satisfied the first prong of the anti-SLAPP inquiry and we move to the second prong. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*); see also *Haight Ashbury, supra,* 184 Cal.App.4th at p. 1551 [mixed claims are "subject to section 425.16 '"unless the protected conduct is 'merely incidental' to the unprotected conduct."' [Citation.]"].) Burton does not contend otherwise.

B. *Claims Arose From Protected Activity*

We also find Berryhill established that Burton's claims arose out of the protected activity. The gravamen of each of his claims is that he was terminated from his job as a result of the statements made by Berryhill to other Bible group members/co-workers. Burton's suggestion that his complaint sought redress for Berryhill's conduct "unrelated" to the Property Lawsuit ignores the proper focus of our inquiry. In considering whether a

complaint arises from protected activity, we disregard the labeling of the claim and instead "examine the principal thrust or gravamen of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies." (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510,519-520.) We assess the principal thrust by identifying "[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 189.) Thus, because Burton claims his injury, his termination, was caused by Berryhill's statements to his co-workers, his lawsuit arises out of her protected activity.

In sum, we conclude that Berryhill met her burden on the first prong of the anti-SLAPP motion to strike. Because the trial court reached the contrary conclusion, it did not address the second prong, i.e., whether Burton met his burden to demonstrate a probability of prevailing on his claims against them. We therefore turn to that analysis.

III. *Burton Cannot Demonstrate a Probability of Prevailing*

Once defendant satisfies the first prong of the anti-SLAPP analysis, "the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken." (*Baral, supra,* 1 Cal.5th at p. 396.) "In making this assessment it is 'the court's responsibility . . . to accept as true the evidence favorable to the plaintiff. . . .' [Citation.] The plaintiff need only establish that his or her claim has 'minimal

merit' [citation] to avoid being stricken as a SLAPP." (*Soukup, supra*, 39 Cal.4th at p. 291.) Here, Burton has not made even the minimal showing of evidentiary merit necessary to demonstrate a probability of success on his claims. As an initial matter, Burton dismissed his complaint on May 27, 2016, during the pendency of this appeal.

Moreover, Burton has presented no admissible evidence establishing that Berryhill made any statements about him to anyone connected to his employment, much less that Berryhill engaged in any conduct that resulted in his termination. (See *Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1497-1498 [plaintiff's showing requires admissible evidence].) Berryhill's purported threat to Burton that his "job will be fair game," without more, does not constitute evidence of affirmative conduct by Berryhill connected to his termination. Each of Burton's three causes of action requires such evidence. (See, e.g., *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 [intentional interference claims require proof of "defendant's intentional acts designed to induce a breach or disruption of the contractual [or economic] relationship," and "actual breach or disruption" of that relationship]; *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 106, disapproved on other grounds by *Baral, supra*, 1 Cal.5th at pp. 392-393.) ["To establish a prima facie case for slander, a plaintiff must demonstrate an oral publication to third persons of specified false matter that has a natural tendency to injure or that causes special damage"]; Burton's attempt to provide evidence to support his claims in opposition to Berryhill's motion to strike consisted only of his own declaration averring that he had learned from other individuals about what Berryhill said and purporting to attach a text

message Berryhill sent to another member. The trial court granted Berryhill's objections and struck this evidence. As a result, Burton has provided no admissible evidence of the purported statements made by Berryhill to his co-workers or connected any such statements to his termination. Accordingly, Burton has not demonstrated he would be likely to succeed on his now-dismissed claims.

DISPOSITION

The order denying defendants' motions to strike pursuant to section 425.16 is reversed. The matter is remanded to the trial court with directions to determine the appropriate award of attorney's fees and costs pursuant to section 425.16, subdivision (c). Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.