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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

JOSE MONTERROSA, Plaintiff and Appellant, v. HILA ELIMELECH et al., Defendants and Respondents.	B278380 (c/w B279713) (Los Angeles County Super. Ct. No. BC624522)

APPEALS from orders of the Superior Court of Los Angeles County. Daniel S. Murphy, Judge. Affirmed.

Dumont Law Offices and Mary Theresa Dumont for Plaintiff and Appellant.

Rostow & Auster and Reza I. Gharakhani for Defendants and Respondents.

Appellant Jose Monterrosa (Monterrosa) appeals from the trial court's orders granting special motions to strike his malicious prosecution complaint under Code of Civil Procedure section 425.16, the "anti-SLAPP statute."[1] We conclude that the instant malicious prosecution complaint arose from the filing of an earlier malicious prosecution complaint, which is protected activity under the statute, and that Monterrosa failed to show a probability of prevailing. Accordingly, we affirm the orders granting the anti-SLAPP motions. We also affirm the order awarding costs and attorney fees to two of the three defendants.

BACKGROUND

The procedural history of this case is convoluted. We do our best to simplify it.

The First Lawsuit (Wage and Hour Complaint)

In early 2013, Monterrosa and several coworkers filed a complaint for recovery of unpaid wages against their former employer, Sonic Towing, Inc. (Sonic), as well as its owner, respondent Eli Elimelech (Eli), and his wife, respondent Hila Elimelech (Hila) (the wage and hour complaint). The wage and hour complaint was amended twice. Hila's demurrer to the second amended complaint was sustained without leave to amend, and she was dismissed as a defendant in July 2013. Monterrosa was the only plaintiff who did not settle with the

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[1] SLAPP is an acronym for strategic lawsuits against public participation. An order granting or denying a special motion to strike under section 425.16 is directly appealable. (§§ 425.16, subd. (i), 904.1, subd. (a)(13).)

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

remaining defendants. His case went to trial in 2014; he prevailed and recovered $26,000. His attorney, Mary T. Dumont (Dumont), was awarded $217,091 in attorney fees.

The Underlying Lawsuit (Hila's Complaint)

On December 30, 2013, Hila sued Monterrosa and Dumont for malicious prosecution (Hila's complaint).[2] Hila alleged that Monterrosa and Dumont had no probable cause to name her as a defendant in the wage and hour complaint, because she was not an officer, director, employee or shareholder of Sonic and had never employed or supervised appellant. Monterrosa and Dumont filed a joint anti-SLAPP motion to the Hila complaint. The Honorable Ernest M. Hiroshige denied their anti-SLAPP motion in 2014. Thereafter, Dumont, Eli and Sonic entered into a settlement agreement "in full and complete settlement of Dumont's claims" arising from the attorney fees awarded to her in the wage and hour lawsuit. As part of the settlement agreement, Eli agreed that he would cause Hila's malicious prosecution complaint to be dismissed. On May 27, 2015, Hila dismissed her malicious prosecution complaint with prejudice.

Monterrosa's Instant Lawsuit (the Instant Complaint)

On June 20, 2016, Monterrosa sued Hila, Eli and their attorney, respondent Reza Gharakhani (Gharakhani), for malicious prosecution (the instant complaint). Monterrosa alleged that Eli, at the advice of Gharakhani, filed in Hila's name the underlying malicious prosecution complaint against him and the other nonsettling employees in the wage and hour action. Monterrosa also alleged that "[t]he Elimelech Malicious

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[2] Hila also named as defendants in her malicious prosecution complaint other Sonic employees who had not settled their claims in the wage and hour complaint, as well as their attorney.

Prosecution Action was filed without probable cause and for the purpose of coercing Mr. Monterrosa to settle his claims against the Elimelechs and Sonic Towing."

Hila, Eli and Gharakhani each filed separate anti-SLAPP motions. The trial court granted all three motions. Hila and Eli were awarded costs and attorney fees of $35,878.06. Monterrosa's appeals from the orders granting the motions and awarding costs and attorney fees have been consolidated by this court.[3]

DISCUSSION

I. Anti-SLAPP Statute

Section 425.16, subdivision (b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Thus, "[r]esolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).) An appellate court reviews de novo an order denying an anti-SLAPP motion. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flately*).)

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[3] Respondents' request that we take judicial notice of documents in an unrelated case (*Dumont v. Elimelech*, L.A. Super. Ct. No. BC606429) is denied.

Section 425.16, subdivision (e) provides: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, ..."

II. First Prong

A. Protected Activity

In granting respondents' anti-SLAPP motions, the trial court found as follows: "'It is settled that an action for malicious prosecution arises from protected speech.' (*Ross v. Kish* (2006) 145 Cal.App.4th 188, 189.) Plaintiff argues that his malicious prosecution claim does not arise from a protected activity because the alleged malicious prosecution [by Hila] was part of a scheme to pressure Plaintiff into releasing his wage and hour claims in the Sonic Action. The Court finds this argument unconvincing. Plaintiff's arguments speak more to the merits of his malicious prosecution claim, particularly in proving the 'malice' element. Plaintiff's argument [does] not change the fact his malicious prosecution claim arises out of [Hila's] filing of a malicious prosecution claim in the Underlying Action—a protected activity under the anti-SLAPP statute."

Monterrosa contends the trial court erred in finding protected activity. He argues that while Hila's complaint "'triggered'" his instant complaint, "it was the decision to file" the "baseless" Hila complaint and "the host of unlawful acts that preceded that decision that gave rise" to the instant complaint. Monterrosa proceeds to argue that Hila's complaint was a "mixed cause of action" and that he prevailed in the underlying action.

His focus is misplaced. It is not the allegations of Hila's underlying complaint that matter here; rather, it is the allegations of Monterrosa's instant complaint that are the subject of respondents' special motions to strike under review.[4]

Though Monterrosa does not focus on his own allegations, we note the instant complaint alleges the following:[5]

At paragraph 8: "Mr. Monterrosa was one of ten former employees of [Eli] and [Sonic Towing] . . . who filed an action to recover unpaid wages ('Wage and Hour Action'). Gharakhani represented [Eli] and Sonic Towing. [Eli] with the assistance of Gharakhani intimidated multiple Wage and Hour Plaintiffs into signing settlement agreements prepared by Gharakhani. Hila . . . was named in the Wage and Hour complaint . . . . "

At paragraph 9: "Five plaintiffs in the Wage and Hour matter refused to settle their claims. On the advice of Gharakhani, [Eli] filed in Hila's name a malicious prosecution action against non-settling claimants and their counsel. The theory of the action was that Wage and Hour Plaintiffs and their counsel lacked probable cause to name [Hila] as an employer . . . . All Wage and Hour Plaintiffs other than Mr. Monterrosa settled their claims with the Elimelechs."

At paragraph 10: "Judge Hiroshige of this Court in response to an anti-SLAPP motion brought by Mr. Monterrosa ruled that [Hila] lacked probable cause to assert that the

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[4] Monterrosa's conflation of the instant malicious prosecution complaint with Hila's underlying malicious prosecution complaint, as well as the anti-SLAPP motions in the two lawsuits, makes his brief difficult to follow.

[5] In quoting the instant complaint, we omit first and last names to be consistent with the rest of our opinion.

Elimelech Malicious Prosecution Defendants did not have probable cause to name her as an employer in the Wage and Hour Action."

At paragraph 11: "Despite this ruling, Gharakhani continued to litigate the matter including seeking Mr. Monterrosa's deposition. After [Eli] fired Gharakhani, [Eli] dismissed the Elimelech Malicious Prosecution Action . . . with prejudice."

At paragraph 12: "[Eli] provided Mr. Monterrosa's counsel a sworn declaration stating that he filed the Elimelech Malicious Prosecution Action at the suggestion of Gharakhani."

At paragraph 14: "The Elimelech Malicious Prosecution Action was filed without probable cause and for the purpose of coercing Mr. Monterrosa to settle his claims against the Elimelechs and Sonic Towing."

These allegations make clear that the act which forms the basis of Monterrosa's instant malicious prosecution complaint is the filing of Hila's underlying malicious prosecution complaint. This is a constitutionally protected act. "By definition, a malicious prosecution suit alleges that the defendant committed a tort by filing a lawsuit. [Citation.] Accordingly, every Court of Appeal that has addressed the question has concluded that malicious prosecution causes of action fall within the purview of the anti-SLAPP statute." (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735, fn. omitted.)

Monterrosa's reliance on the recent Supreme Court case of *Baral, supra*, 1 Cal.5th 376 does not assist him. *Baral,* which did not involve a claim for malicious prosecution, addressed the question: "How does the special motion to strike operate against a so-called 'mixed cause of action' that combines allegations of

activity protected by the statute with allegations of unprotected activity?" (*Id*. at p. 381.) *Baral* concluded that that when the Legislature used the term "cause of action" in the anti-SLAPP statute, "it had in mind *allegations of protected activity that are asserted as grounds for relief*." (*Id*. at p. 395.) Therefore, an anti-SLAPP motion need not be directed to an entire cause of action but may directed to "*particular* alleged acts giving rise to a claim for relief." (*Ibid*.) While the question arose at the second step of the anti-SLAPP analysis, *Baral* noted: "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. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. 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. 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. 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." (*Id*. at p. 396.)

Monterrosa argues that "[t]he *Baral* Court was explicit in the application of the anti-SLAPP statute to mixed causes of action, *such as the Hila Action* . . . . Mrs. Elimelech's allegations that she was not a proper defendant in an unlawful wage scheme *should have been stricken*." (Italics added.) There are two

problems with this argument. First, Monterrosa again mistakenly focuses on the allegations of the underlying Hila complaint instead of the allegations in his own complaint. We cannot emphasize enough that it is the allegations in Monterrosa's instant complaint that are the subject of the anti-SLAPP motions under review here. It is these allegations, and no one else's, that must be reviewed to determine whether Monterrosa has alleged protected activity. Second, Monterrosa's argument that allegations in the underlying Hila complaint "should have been stricken" is an improper attempt to reargue issues from another case. Judge Hiroshige's order denying Monterrosa's anti-SLAPP motion in the underlying Hila case is final. No appeal was taken in that case.

To the extent Monterrosa argues that the instant complaint contains allegations of unprotected activity that are not subject to an anti-SLAPP motion, this argument is without merit. Monterrosa, who has the burden on appeal of demonstrating trial court error, points to no specific allegations in the instant complaint that he claims show unprotected activity. We note that while the instant complaint does allege that Eli and Gharakhani "intimidated multiple Wage and Hour Plaintiffs into signing settlement agreements," the complaint also alleges that Monterrosa himself never signed such an agreement. Moreover, Monterrosa does not identify any distinct claim for which he seeks relief separate and apart from malicious prosecution. As *Baral* noted, "[t]he targeted claim must amount to a 'cause of action' in the sense that it is alleged to justify a remedy." (*Baral, supra,* 1 Cal.5th at p. 395.) For this reason, the trial court here correctly found that any allegations of intimidation in the instant

complaint speak to the malice element of Monterrosa's malicious prosecution claim, rather than stating an independent tort.

Monterrosa ignores what he asserted in his own opposition to Hila's anti-SLAPP motion: the Hila complaint "was filed for the purpose of pressuring him to settle a release of his wage claims"; the Hila complaint "was a weapon in pursuit of an unlawful goal"; and the allegation that "The Elimelech Malicious Prosecution [Action] was filed without probable cause and for the purpose of coercing [appellant] to settle his claims against the Elimelechs and Sonic Towing" is "*the gravamen*" of his instant complaint.[6] (Italics added.) (See *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087–1088 ["The essence of the Chavezes' malicious prosecution claim is that the plaintiff in the underlying action (Mendoza) filed litigation that was improper because it was allegedly filed with a malicious motive and without probable cause. This claim 'aris[es] from' the defendant's constitutionally protected petitioning activity, and therefore is subject to the anti-SLAPP statute. (§ 425.16, subd. (b)(1).)"]; *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1521 ["The subjective intent of a party in filing a complaint is irrelevant in determining whether it falls within the ambit of section 425.16"].)

The instant malicious prosecution complaint was based on the filing of Hila's underlying malicious prosecution complaint. The instant complaint therefore arose from protected activity under the anti-SLAPP statue.

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[6] In his oppositions to Eli's and Gharakhani's anti-SLAPP motions, Monterrosa inconsistently argued that "the gravamen" of his instant complaint is "extortion." In his opening appellate brief, he shifts again to argue that "the gravamen" of his instant complaint is Gharakhani's breach of ethical duties.

B. SLAPPback and Illegal Conduct

Monterrosa next argues that respondents' "conduct was illegal as a matter of law and they are barred from bringing a SLAPPback motion." He is incorrect.

First, the instant case is not a SLAPPback. Section 425.18, subdivision (b)(1) defines a "SLAPPback" as: "'SLAPPback' means any cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action *that has been dismissed* pursuant to a special motion to strike under Section 425.16." (Italics added.) The single cause of action for malicious prosecution in the underlying Hila complaint was *not* dismissed pursuant to Monterrosa's anti-SLAPP motion in that case, nor were any allegations stricken. Monterrosa's anti-SLAPP motion in the underlying case was denied. The Hila complaint was dismissed pursuant to a settlement agreement. Indeed, if the instant case was a SLAPPback, Monterrosa would have been required to seek review of the order at issue here by peremptory writ, not a direct appeal. (*West v. Arent* Fox LLP (2015) 237 Cal.App.4th 1065, 1072.)

Second, there is no merit to Monterrosa's argument that "[t]he filing of the Hila Action was illegal as a matter of law." Monterrosa argues that the scheme by respondents to obtain unlawful releases of wage claims constituted extortion[7] and

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[7] Penal Code section 518 defines "extortion" as "the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right."

violated Labor Code section 206.5,[8] and that Gharakhani breached his professional ethical duties (Cal. Rules of Prof. Conduct 3-200 [prohibiting bringing an action without probable cause and for the purpose of harassing] and 2-100 [communicating with a represented client]).

Our Supreme Court clarified recently: "The first step of the anti-SLAPP analysis is limited to whether a claim arises from protected activity. We made it clear in *Flatley* [,*supra*, 39 Cal.4th 299] that conduct must be illegal *as a matter of law* to defeat a defendant's showing of protected activity. The defendant must concede the point, or the evidence conclusively demonstrate it, for a claim of illegality to defeat an anti-SLAPP motion at the first step." (*City of Montebello* v. *Vasquez* (2016) 1 Cal.5th 409, 424.)

In support of their anti-SLAPP motions, respondents filed declarations denying they engaged in any illegal conduct. Indeed, respondents accused Monterrosa and Dumont of engaging in harassment. Monterrosa's argument that—because Hila did not join Eli's supplemental declaration in which he explicitly denied engaging in extortion—Hila therefore conceded unlawful conduct is meritless. Hila denied any wrongdoing in her own declaration.

Because respondents did not concede illegal conduct, it was incumbent on Monterrosa to produce evidence conclusively

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[8] Labor Code section 206.5, subdivision (a) provides: " An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor."

establishing illegal conduct. He failed to do so. Monterrosa relied on a declaration signed by Eli that Dumont had prepared in connection with the settlement agreement in the underlying action. Contrary to Monterrosa's interpretation, the declaration does not establish illegal conduct. The declaration states: "In December 2013, [Gharakhani] advised me [Eli] to file a malicious prosecution action against Ms. Mary Dumont, Sergio Benedetto and all plaintiffs who had not signed releases." As the trial court noted, "Eli's declaration only states that Gharakhani had directed him to file the malicious prosecution action, but makes no mention of the reasons for filing the malicious prosecution action." Monterrosa also relied on Dumont's declaration. She declared that "Eli's campaigned [*sic*] to coerce the Wage and Hour Plaintiffs to drop their claims. [*sic*] included visits to their homes, pressuring family members and bringing down religious curses on the plaintiffs and their families." But these statements, even assuming they are admissible, do not establish illegal conduct as a matter of law. Nor do they necessarily apply to Monterrosa. Monterrosa's own declaration only states that Eli repeatedly approached him and asked him to drop his claims for unpaid wages. Finally, Dumont's declaration states that she filed two disciplinary complaints with the State Bar of California because Gharakhani prepared releases that Eli used with the wage and hour plaintiffs to drop their claims. Again, these allegations do not establish illegal conduct as a matter of law, and Monterrosa himself never signed any release.

Not giving up, Monterrosa argues Judge Hiroshige's ruling in the underlying action denying his anti-SLAPP motion to the Hila complaint establishes both illegality as a matter of law and that Hila conceded unlawful conduct. Not so. Initially,

Monterrosa relies on a tentative ruling by Judge Hiroshige that was presented to the instant trial court by way of request for judicial notice. Judicial notice can only be taken of the fact that findings were made, not that the findings are indisputably true. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564–1565.) It appears that the instant trial court—correctly—placed no importance on Judge Hiroshige's ruling.

While any factual findings by Judge Hiroshige could not be considered by the instant trial court for their truth, we nevertheless briefly discuss Judge Hiroshige's ruling. We do so only because Monterrosa's reliance on Judge Hiroshige's ruling is a theme that runs throughout his pleadings below and in his appellate briefs, and we wish to put an end to this line of argument.

In his ruling, Judge Hiroshige noted that in Monterrosa's and Dumont's joint anti-SLAPP motion to Hila's single-cause malicious prosecution complaint, Monterrosa and Dumont "argued that they had probable cause to name [Hila] individually [in the wage and hour complaint] on the grounds that she participated in an illegal wage scheme. . . . [¶] [Hila] has not responded to this argument in the opposition brief. *Based on the non-opposition to this issue*, the Court finds that [Monterrosa and Dumont] had probable cause to assert the theory that [Hila] participated in an illegal wage scheme." (Italics added.) Judge Hiroshige, however, went on to find that Monterrosa and Dumont lacked probable cause to name Hila in the eighth cause of action for intentional interference with contract in the wage and hour complaint, and he therefore denied their anti-SLAPP motion.

Contrary to Monterrosa's argument, Judge Hiroshige did not find illegal conduct as a matter of law. He simply noted that

Hila did not address the theory of an illegal wage scheme in her opposition and therefore Monterrosa had probable cause to *assert* the theory; there was no finding that Hila actually *engaged* in illegal activity as a matter of law. Hila was not required to address each theory of the wage and hour complaint if there was any merit to her single cause of action for malicious prosecution, as that was the state of the law as it existed at the time of Judge Hiroshige's ruling in 2014. (See *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 106 ["once a plaintiff shows a probability of prevailing on any part of its claim, the plaintiff *has established* that its cause of action has some merit and the entire cause of action stands"], overruled by *Baral*, *supra*, 1 Cal.5th at p. 396, fn. 11.) By the same token, Hila's failure to address this theory is not the equivalent of a concession of unlawful conduct.

Monterrosa relies on *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696, 703, which found the filing of a false police report by a wife against her former husband was not constitutionally protected activity under the anti-SLAPP statute. Monterrosa seizes on the reviewing court's statement that "[b]ecause [the wife] does not contest that she submitted an illegal, false criminal report, '[w]e end our review here. . . .'" (*Id.* at p. 705.) But the trial court in that case found the record "'conclusively'" established that the wife's statements to the police were illegal (*id.* at p. 701), the husband was acquitted in the criminal trial, and there was an express finding by the criminal court of factual innocence (*id.* at p. 700). Here, in the instant case, Hila denied wrongdoing. Once again, Monterrosa conflates the underlying action with the instant action.

As respondents note, "Our Supreme Court has emphasized that the exception for illegal activity is very narrow and applies only in undisputed cases of illegality. 'If . . . a factual dispute exists about the legitimacy of the defendant's conduct, it cannot be resolved within the first step but must be raised by the plaintiff in connection with the plaintiff's burden to show a probability of prevailing on the merits.' (*Flatley, supra*, 39 Cal.4th at p. 316.) '. . . Applying *Flatley*, subsequent courts have reiterated that it is only in '*rare cases* in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law.' [Citation.]" (*Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1478.)

This is not the rare case in which there is uncontroverted evidence of illegality as a matter of law.

III. Second Prong

Although not discussed by Monterrosa, we note that to establish a cause of action for malicious prosecution, Monterrosa must show that the underlying action was: (1) terminated in his favor, (2) was filed without probable cause, and (3) was initiated by Hila with malice. (*Bertero v. National General Corp*. (1974) 13 Cal.3d 43, 51.) "If a plaintiff cannot establish any one of these three elements, its malicious prosecution action will fail." (*StaffPro, Inc. v. Elite Show Services, Inc.* (2006) 136 Cal.App.4th 1392, 1398.)

The trial court found that Monterrosa failed to show that the underlying action terminated in his favor, and therefore he failed to meet his burden on the second prong of the anti-SLAPP procedure of demonstrating a probability of prevailing. Monterrosa's opening brief only addresses the second prong in a short paragraph at the end of his brief. Under the heading, "The

Trial Court Incorrectly Ruled That Mr. Monterrosa Could Not Establish the Underlying Action Terminated in His Favor," Monterrosa states: "Judge Hiroshige ruled that as to claims of an unlawful wage scheme, which underpin the Monterrosa action, Mrs. Elimelech lacked probable cause. Following *Baral*, these allegations should have been stricken and as to those claims, Jose Monterrosa was the prevailing party: the termination reflects on the merits: the claims had no merit." These are the same arguments he makes throughout his brief and, for the same reasons discussed above, they are without merit.

IV. Award of Costs and Attorney Fees

In his consolidated appeal from the trial court's award of costs and attorney fees to Eli and Hila pursuant to section 425.16, subdivision (c), Monterrosa repeats the arguments he made in his appeal from the order granting respondents' anti-SLAPP motions. He simply concludes "the Elimelechs should not have prevailed in their motions and related fees should not have been awarded." He makes no other arguments regarding the award. Indeed, he does not even identify the amount of the award. Accordingly, Monterrosa has failed to establish a basis for reversal.

DISPOSITION

The orders granting respondents' anti-SLAPP motions and awarding costs and attorney fees are affirmed. Respondents to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.