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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

KOVAC MEDIA GROUP INC. et al., Plaintiffs-Appellants-Cross-Respondents, v. DINA LAPOLT et al., Defendants-Respondents-Cross-Appellants.	B247579 (Los Angeles County Super. Ct. No. BC493706)

APPEAL from orders of the Superior Court of Los Angeles County, Joseph R. Kalin, Judge. Affirmed in part and reversed in part.

Miller Barondess, Louis R. Miller, Alexander Sasha Frid and Mira Hashmall for Plaintiffs-Appellants-Cross-Respondents.

Mitchell Silberberg & Knupp, Valentine A. Shalamitski, Christine Lepera and Bradley J. Mullins; Glaser Weil Fink Howard Avchen & Shapiro, Patricia L. Glaser and Craig H. Marcus for Defendants-Respondents-Cross-Appellants.

INTRODUCTION

This case arises out of a dispute between a talent manager and an entertainment lawyer over common clients. The manager alleges, among other things, that the lawyer interfered with his attempts to negotiate a lucrative contract for Aerosmith lead singer Steven Tyler to appear on the popular show *American Idol*, and disrupted the manager's relationship with the band Mötley Crüe. The manager sued the lawyer, contending that her actions gave rise to multiple causes of action, including for breach of fiduciary duty, breach of the duty of confidence, intentional interference with contract, and intentional interference with prospective economic advantage.

The lawyer filed a special motion to strike the complaint under the anti-SLAPP statute, Code of Civil Procedure section 425.16.[1] She contended the complaint arose out of (1) 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" (§ 425.16, subd. (e)(4)) because there was broad public interest in Tyler and his appearance on *American Idol*, and (2) statements "made in connection with an issue under consideration or review by a . . . judicial body" (§ 425.16, subd. (e)(2)) because the alleged statements pertained to existing or future litigation between the manager, the lawyer, and one of the manager's employees. The trial court granted the motion as to three of the six causes of action and awarded the lawyer prevailing party attorney fees. Both sides appealed.

We affirm in part and reverse in part, concluding that the anti-SLAPP motion should not have been granted as to any of the six causes of action. Although there was evidence of public interest in Tyler and his appearance on *American Idol*, there was no evidence of any public interest in the specific communications at issue in this case. Further, although the manager has filed two suits pertaining to the management of Tyler and Mötley Crüe, the claims at issue here were not made "in connection with" those suits

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[1] SLAPP is an acronym for "strategic lawsuits against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1.) All subsequent statutory references are to the Code of Civil Procedure.

within the meaning of the anti-SLAPP statute. Accordingly, none of the causes of action arose from acts in furtherance of the rights of petition or free speech in connection with an issue of public interest, and thus none was subject to the anti-SLAPP statute.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Complaint

Kovac Media Group, Inc., doing business as Tenth Street Entertainment (TSE), and 11-7 Recording Corp. (11-7) filed the present action against Dina LaPolt and LaPolt Law, P.C. on October 11, 2012.[2] The operative first amended complaint (complaint), filed December 12, 2012, alleges that Allen Kovac (Kovac) is the principal of TSE, a marketing and management company, and 11-7 is a record label. LaPolt is an entertainment lawyer who practices through her law firm, LaPolt Law. The complaint further alleges as follows:

Allegations regarding management of Steven Tyler: In early 2010, TSE began managing "a famous musical artist and television personality," identified in later pleadings as Steven Tyler, lead singer of the rock band Aerosmith. TSE referred Tyler to LaPolt, who "advised [Tyler] and the management team, including TSE and its principal, Allen Kovac. . . . She provided legal advice to both [Tyler] and TSE on negotiations, deal points, agreements, and various other matters." In 2011, Tyler's contract on the television show *American Idol* was up for renegotiation, and TSE and LaPolt were responsible for renegotiating the contract. TSE advised LaPolt that he wanted to employ an aggressive strategy to get a more lucrative contract for Tyler, but instead of supporting TSE's efforts, LaPolt "directed communications to an agent for *American Idol* (the other side) in which she bad-mouthed, disparaged and undermined Kovac (her client) and his negotiation strategy and tactics. LaPolt undercut TSE's strategy to leverage [Tyler's] popularity for a more lucrative deal. She told *American Idol*'s agent that Kovac 'overplayed his hand with his aggressive behavior' and that *American Idol* could get the

[2] Where appropriate, we refer to plaintiffs collectively as TSE, and to defendants collectively as LaPolt.

artist for cheap, thereby undermining and negating Kovac's/[Tyler's] position in the negotiations." TSE alleged that LaPolt's conduct gave rise to three causes of action: (1) breach of fiduciary duty (first cause of action); (2) breach of the duty of confidence (second cause of action); and (3) intentional interference with prospective economic advantage (fourth cause of action).[3]

Allegations regarding Eric Sherman's departure from TSE: In 2011, LaPolt "surreptitiously bad-mouthed Kovac" to a TSE executive, subsequently identified as TSE president Eric Sherman. In August 2011, Sherman left TSE and joined another management company, where he took over Tyler's management pursuant to agreements between TSE, Sherman, and Tyler. In 2012, LaPolt took a share of the commission to which TSE was entitled under these agreements. TSE alleged that this conduct gave rise a cause of action for intentional interference with contract (third cause of action).

Allegations regarding Mötley Crüe and Mick Mars: The complaint alleges that LaPolt disrupted the relationship between TSE and a member of a "world-famous rock band," identified in later pleadings as Mick Mars and Mötley Crüe. Specifically, LaPolt conspired with others to oust TSE and set up a competing management company to represent the band. The complaint alleges that this conduct gave rise to causes of action for intentional interference with contract (fifth cause of action) and breach of fiduciary duty (sixth cause of action).

II. The Anti-SLAPP Motion

LaPolt filed a special motion to strike the complaint pursuant to the anti-SLAPP statute, section 425.16, subdivisions (e)(2) and (4). She contended that: (1) all of TSE's claims arose from protected litigation-related activity; (2) the first through fourth causes of action arose from speech in connection with a public issue—i.e., Steven Tyler's anticipated return to *American Idol*; and (3) none of TSE's causes of action had merit. Concurrently, LaPolt demurred to all six causes of action.

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[3] The first cause of action is asserted by both TSE and 11-7; all of the other causes of action are asserted by TSE only.

TSE opposed the anti-SLAPP motion and demurrer. As relevant to the anti-SLAPP motion, TSE contended that none of the claims arose from protected litigation-related activity or protected speech, and substantial evidence supported all of plaintiff's claims.

On February 1, 2013, the trial court granted the anti-SLAPP motion as to the first, second, and fourth causes of action, and sustained demurrers to the third, fifth, and sixth causes of action.[4] As relevant here, the court concluded that the first, second, and fourth causes of action arose out of issues of public interest, and TSE did not demonstrate a likelihood of prevailing. On February 12, 2013, the trial court awarded LaPolt prevailing party attorney fees of $39,246.

TSE appealed and LaPolt cross-appealed from the orders.

ANTI-SLAPP STATUTE AND STANDARD OF REVIEW

A special motion to strike is a procedural remedy to dispose of a lawsuit brought to chill the valid exercise of a party's constitutional right of petition or free speech. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) A cause of action is subject to a special motion to strike if the defendant shows that the cause of action arises from an act in furtherance of the defendant's constitutional right of petition or free speech in connection with a public issue, and the plaintiff fails to demonstrate a probability of prevailing on the claim. (§ 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc*. (2002) 29 Cal.4th 53, 67.) In determining whether a cause of action is subject to the anti-SLAPP statute, the court "shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) On appeal, we independently review both of these determinations. (*Hall v. Time Warner, Inc*. (2007) 153 Cal.App.4th 1337, 1345-1346.)

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[4] The trial court did not expressly deny the anti-SLAPP motion as to the third, fifth, and sixth causes of action. However, because a trial court must rule on an anti-SLAPP motion before ruling on a pending demurrer (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 629), the court's sustaining of the demurrer as to the third, fifth, and sixth causes of action was an implicit denial of the anti-SLAPP motion as to these claims.

An " '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' " is defined by statute to include "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

TSE'S APPEAL

TSE appeals from the grant of the anti-SLAPP motion as to the first, second, and fourth causes of action. The parties agree that these causes of action, for breach of fiduciary duty, breach of the duty of confidence, and interference with prospective economic advantage, have a common factual predicate—two June 29, 2011 emails from LaPolt to Jeff Frasco and Eric Sherman.[5] Because the emails are central to our analysis of the anti-SLAPP motion, we quote them in full:

(1) "Just saw Suzanne [Somers] in the airport with her husband and I had to giggle. He was her 'manager' in the 90's—who over negotiated her option on Three's Company and they ended up throwing her off the show even though the show was top 10 at the time. The show then went on without her for 4 more seasons, ratings barely dropped. It's a well[-]known story and what a gift for us. We get to learn from other people's mistakes.

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[5] Eric Sherman was TSE's president and is referred to in the complaint as the "TSE executive." The parties disagree about Jeff Frasco's role: TSE contends he was the agent for Simon Fuller, the producer of *American Idol*, while LaPolt contends he was Tyler's agent. The dispute about Frasco's role does not impact our analysis of whether the emails constitute protected conduct under the anti-SLAPP statute.

"I believe this sighting was God's subtle little way of tapping me on the shoulder and saying 'Listen to the advice, counsel and experience of Frasco, Steve Lafferty and Bruce Ramer.'

"Suzanne's 'manager' obviously did not understand the TV business and over played his hand with his aggressive behavior and ignorance. Sound familiar?"

(2) "If AK [Kovac] gets to ST [Tyler] somehow on all of this then [it's] Suzanne [Somers's] story we tell him. THEN we all send ST [Tyler] letters telling him, as professionals, we do not agree with Allen's [Kovac's] proposed suggestions and that if he decides to follow his advice then we do not take any responsibility for the result."

As we now discuss, LaPolt contended that the June 29 emails are protected by section 425.16, subdivisions (e)(4) and (e)(2)—i.e., they are both (1) 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" (subd. (e)(4)); and (2) statements "made in connection with an issue under consideration or review by a legislative, executive, or judicial body" (subd. (e)(2)). For the reasons that follow, we conclude that the emails were not protected conduct or speech and, thus, the anti-SLAPP motion should not have been granted.

I. The June 29 Emails Do Not Constitute Conduct "In Furtherance of the Exercise of . . . the Constitutional Right of Free Speech in Connection With a Public Issue or an Issue of Public Interest"

Section 425.16, subdivision (e)(4) protects oral or written statements made "in furtherance of the exercise of . . . the constitutional right of free speech *in connection with a public issue or an issue of public interest*." (Italics added.) LaPolt contends the June 29 emails are protected speech within the meaning of this section because they addressed "an issue of public interest"—i.e., whether Tyler would return to *American Idol*. LaPolt urges: "There can be no question that LaPolt's conduct and communications upon which The Kovac Companies' claims are based – i.e., the June 29 Emails – relate to 'the creation, casting, and broadcasting of . . . a popular television show . . . . Indeed, the Kovac Companies specifically alleged below that *Idol* is [a]

'popular television show,' and that the show's 'ratings were soaring' as a result of Tyler's role as a judge." Thus, LaPolt says, because there was broad public interest in Tyler's return to *American Idol*, the emails necessarily concerned an issue of public interest and were protected by the anti-SLAPP statute.

TSE disagrees. It urges that "the fact that Tyler is a celebrity and that *American Idol* is a popular show does not convert LaPolt's private email communications into protected conduct under section 425.16, subd. (e)(4)." Further, TSE says, "If LaPolt's communications could fall within the protections of the anti-SLAPP statute, so would every private communication that relates to a celebrity or popular program. That stretches the statute too far."

As we now discuss, TSE is correct that the emails are not protected by the anti-SLAPP statute. Notwithstanding Tyler's celebrity and the public interest in his return to *American Idol*, the specific content of the emails—a dispute among Tyler's representatives about how best to negotiate his contract extension—is not a matter of public interest. The trial court erred in concluding otherwise.

A. Relevant Case Law

Although the statute does not define what constitutes a public issue or an issue of public interest, "[a] few guiding principles can be gleaned from decisional authorities. . . . [T]he matter should be something of concern to a substantial number of people. Accordingly, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. Additionally, there should be a degree of closeness between the challenged statements and the asserted public interest. The assertion of a broad and amorphous public interest is not sufficient. Moreover, the focus of the speaker's conduct should be the public interest, not a private controversy. . . . (*Weinberg v. Feisel* [(2003)] 110 Cal.App.4th [1122,] 1132-1133.)" (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736.)

The Court of Appeal applied this standard to hold that a magazine article addressed an issue of public interest in *Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027 (*Nygård*). There, after leaving his employment with an

international company with more than 12,000 employees, Timo Uusi-Kerttula (Timo) gave an interview to a Finnish magazine about his experiences with the company's chairman and founder, Peter Nygård. In that interview, "Timo claimed that while working for the company, he ' "slaved . . . without a break," ' endured ' "pestering/taunting round the clock," ' had to ' "slave/drudge almost without a break the whole time," ' and felt himself ' "used." ' Further, he said, Nygård "wanted him to ' "work round the clock," ' ' "keeps an eye on his workers like a hawk," ' and ' "didn't want to let his employees to even go and see a doctor" ' when injured." (*Id.* at p. 1033.) Finally, Timo revealed that a well-known celebrity was a Christmas guest in Nygård's home in the Cayman Islands. The magazine published an article based on the interview, and the company sued Timo, the magazine, and its publisher for a variety of torts. Defendants filed anti-SLAPP motions, which the trial court granted. Defendants appealed. (*Id*. at pp. 1033-1034.)

The Court of Appeal affirmed. It noted that case law and legislative history suggest that " 'an issue of public interest' " within the meaning of section 425.16 is "any issue in which the public is interested. In other words, the issue need not be 'significant' to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest." (*Nygård*, *supra*, 159 Cal.App.4th at p. 1042, italics omitted.) Judged by this standard, the court said, the trial court correctly concluded that Timo's statements concerned an issue of public interest. It explained: "According to evidence introduced by defendants in support of their motions to strike, there is 'extensive interest' in Nygård—'a prominent businessman and celebrity of Finnish extraction'—among the Finnish public. Further, defendants' evidence suggests that there is particular interest among the magazine's readership in 'information having to do with Mr. Nygård's famous Bahamas residence which has been the subject of much publicity in Finland.' The June 2005 article was intended to satisfy that interest." (*Id*. at p. 1042.)

The same court reached a contrary result in *Albanese v. Menounos* (2013) 218 Cal.App.4th 923 (*Albanese*). In that case, Albanese, a celebrity stylist, alleged that she had worked with Menounos, a television personality, on the *Access Hollywood* set.

She subsequently saw Menounos at an industry event, where Menounos " 'loudly accused [Albanese] of stealing by claiming, "Dolce and Gabbana won't lend to me anymore because they said you never returned anything." ' " (*Id*. at p. 926.) Albanese sued Menounos for defamation and related torts, and Menounos filed an anti-SLAPP motion, urging that the complaint arose from conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest. (*Id*. at p. 927.) The trial court denied the motion, and Menounos appealed.

The Court of Appeal affirmed. Although it acknowledged some public interest in Albanese based on her work as a celebrity stylist and style expert, it found there was "no evidence of a *public* controversy concerning Albanese, Menounos, or Dolce and Gabbana." The court explained: "Even if Albanese is rather well known in some circles for her work as a celebrity stylist and fashion expert, there is no evidence that the public is interested in this private dispute concerning her alleged theft of unknown items from Menounos or Dolce and Gabbana. In short, there is no evidence that any of the disputed remarks were topics of public interest." (*Albanese*, *supra*, 218 Cal.App.4th at p. 936.)

The court further rejected Menounos's contention that *Nygård* created a rule that a statement about *any* person in the public eye is a matter of public interest. It explained: "*Nygård* did not redefine what constitutes a matter of public interest. *Nygård* must be read in the context of the evidence, which showed there was an ' "extensive interest" in Nygård—"a prominent businessman and celebrity of Finnish extraction"—among the Finnish public,' as well as a 'particular interest among the magazine's readership in "information having to do with Mr. Nygård's famous Bahamas residence which has been the subject of much publicity in Finland." ' [Citation.] *Nygård* does not stand for the proposition that any statement about a person in the public eye is a matter of public interest." (*Albanese*, *supra*, 218 Cal.App.4th at p. at pp. 935-936.) The court continued: "If we were to adopt Menounos's overly broad definition of a public issue, we would obliterate the requirement that 'there should be a degree of closeness between the challenged statements and the asserted public interest. The assertion of a broad and

amorphous public interest is not sufficient. Moreover, the focus of the speaker's conduct should be the public interest, not a private controversy.' [Citation.]" (*Ibid*.)

The Court of Appeal similarly concluded in *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561 (*World Financial Group*). There, plaintiff WFG alleged that defendants HBW and its agents used plaintiff's confidential information and trade secrets to solicit plaintiff's agents to leave plaintiff and join HBW. (*Id*. at pp. 1565-1566.) Among other things, the complaint referred to a conference call during which an employee of HBW invited several of plaintiff's associates to join HBW, and alleged that another of HBW's employees attempted to recruit four of plaintiff's associates. (*Ibid*.) Defendants filed an anti-SLAPP motion, urging that the speech and conduct giving rise to WFG's claims were protected activity because " 'the pursuit of lawful employment pursuant to Bus. & Prof. § 16600' " and 'workforce mobility and free competition' are matters 'of public interest and protected public policy.' " (*Id*. at p. 1569.) The trial court denied the motion, and defendants appealed. (*Id*. at pp. 1566-1567.)

The Court of Appeal affirmed. It explained that while employee mobility and competition "are undoubtedly issues of public interest when considered in the abstract," the fact that " ' "a broad and amorphous public interest" can be connected to a specific dispute is not sufficient to meet the statutory requirements' of the anti-SLAPP statute." (*World Financial Group, supra*, 172 Cal.App.4th at p. 1570.) The court continued: "By focusing on society's general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is considered] synonymous with the greater whole.' (*Commonwealth Energy Corp. v. Investor Data Exchange, Inc*. (2003) 110 Cal.App.4th 26, 34 (*Commonwealth*).) In evaluating the first prong of the anti-SLAPP statute, we must focus on 'the specific nature of the speech rather than the generalities that might be abstracted from it. [Citation.]' (*Ibid*.)" (*Ibid*., italics added.)

"Defendants' attempt to frame the subject of their communications as involving 'the pursuit of lawful employment pursuant to Bus. & Prof. § 16600' and 'workforce mobility and free competition' is similarly infirm. Though couched in noble language, defendants' communications were not 'about' these broad topics, nor were they designed to inform the public of an issue of public interest. They were merely solicitations of a competitor's employees and customers undertaken for the sole purpose of furthering a business interest. While we do not dispute that employee mobility and competition are issues of public interest and importance, 'the focus of the anti-SLAPP statute must be on the *specific nature of the speech* rather than on generalities that might be abstracted from it. [Citation.]' (*Mann* [*v. Quality Old Time Service, Inc*. (2004)] 120 Cal.App.4th [90], 111.)" (*World Financial Group, supra,* 172 Cal.App.4th at p. 1572, italics added.)

B. Analysis

Taken together, the cases discussed above suggest that under appropriate circumstances, written and oral statements about celebrities can constitute protected conduct under the anti-SLAPP statute. In the words of *Nygård*, "the issue need not be 'significant' to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest." (*Nygård*, *supra*, 159 Cal.App.4th at p. 1042.) However, a statement is not protected merely because it concerns a celebrity in whom the public is interested. Instead, to be entitled to protection under the anti-SLAPP statute, the statement *itself* must concern a topic of public interest. In determining whether a statement is subject to the anti-SLAPP statute, therefore, we must examine the " 'specific nature of the speech,' " not the " 'generalities that might be abstracted from it.' " (*World Financial Group, supra,* 172 Cal.App.4th at p. 1572.) Only if there is " 'a degree of closeness between the challenged statements and the asserted public interest' " are the statements protected under the statute. (*Albanese, supra,* 218 Cal.App.4th at p. 936.)

In the present case, although LaPolt demonstrated broad public interest in Steven Tyler and his appearance on *American Idol*, she did *not* demonstrate public interest in the subject matter of the June 29 emails. The first of the two emails recounts LaPolt's airport sighting of Suzanne Somers, as well as LaPolt's opinion that Somers's contract with

Three's Company was not renewed because Somers's husband/manager "over-negotiated" Somers's option. The email does not mention Tyler or *American Idol*, and it would not have been obvious to anyone other than a small number of people intimately involved with Tyler's *American Idol* negotiations that the email had anything to do with him or those negotiations. Because nothing submitted in support of the anti-SLAPP motion suggests a public interest in LaPolt's analysis of Somers's television career—or, more specifically, of the manner in which Somers's husband negotiated her *Three's Company* option some 30 years earlier—we cannot conclude that the first of the June 29 emails is protected by the anti-SLAPP statute.

We reach the same conclusion with regard to the second June 29 email. The second email is less oblique than the first, proposing a particular course of action—i.e., relating the "Suzanne [Somers] story" to "ST" and telling him that "if he decides to follow [Allen's] advice then we do not take any responsibility for the result." The email does not refer to Tyler by name, however, and it does not identify the "proposed suggestions" with which LaPolt does not agree. It therefore is difficult for us to imagine that there is any public interest in this email as we do not believe the public could have known *who*—or *what*—was being discussed. Moreover, even it were obvious that Tyler was the subject of the email, his celebrity status would not be enough to make the email a matter of public interest. As we have said, a statement is entitled to anti-SLAPP protection only if there is a degree of closeness between the challenged statements and the asserted public interest. As relevant here, there is absolutely no evidence of a public interest in either Tyler's negotiating strategy or the methods Tyler's representatives intended to use to persuade him to adopt one strategy and reject another. Accordingly, the email does not concern statements on issues of public interest.

LaPolt contends that the email nonetheless concerns an issue of public interest because " 'public interest' attaches to private individuals 'who by their accomplishments or mode of living create a bona fide attention to their activities.' " To the extent that LaPolt is suggesting that *every* statement concerning a celebrity is a matter of public interest, we disagree. Indeed, to paraphrase the *Albanese* court, "[i]f we were to adopt

[LaPolt's] overly broad definition of a public issue, we would obliterate the requirement that 'there should be a degree of closeness between the challenged statements and the asserted public interest. The assertion of a broad and amorphous public interest is not sufficient. Moreover, the focus of the speaker's conduct should be the public interest, not a private controversy.' [Citation.]" (*Albanese*, *supra*, 218 Cal.App.4th at p. 936.)

LaPolt also contends that the email concerns an issue of public interest because it relates to the "creation, casting, and broadcasting of . . . a popular television show." Not so. While a communication about Tyler's return to *American Idol* might fairly be characterized as something about which the public is interested, the same cannot be said of a communication about how best to persuade Tyler to adopt a particular negotiating strategy. For this reason, the present case is not analogous to *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456 (*Ruiz*), on which LaPolt relies. In *Ruiz*, the court concluded that two letters written by a homeowners association concerning a homeowner's request for approval of architectural plans was a matter of public interest because "[t]he focus and primary purpose of the letters concerned HVCA [homeowners association] governance and enforcement of its architectural guidelines, issues of concern to the many HVCA members." (*Id.* at p. 1470.) The same cannot be said here: As we have discussed, the emails concern private negotiation strategy and cannot have been of interest to anyone outside of Tyler's inner circle.

II. The June 29 Emails Do Not Constitute "Written or Oral Statement[s] . . . Made in Connection With an Issue Under Consideration or Review by a . . . Judicial Body"

Section 425.16, subdivision (e)(2) extends anti-SLAPP protection to "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body." LaPolt contends that this subdivision applies to the first, second, and fourth causes of action because the June 29 emails were sent immediately before, and in anticipation of, litigation. Specifically, she urges that "the fight TSE commenced in mid-2011 regarding how Tyler's *American Idol* negotiations should be pursued on Tyler's behalf, and LaPolt's communications in that regard, are at the core of

the Kovac Companies' First, Second and Fourth Causes of Action. The very real threat of litigation on that subject materialized when TSE sued Sherman in July 2011 in New York over those negotiations. With this spectre of litigation, and then the actual litigation involving Tyler's rights under the PMA and his *Idol* contract, at hand, LaPolt's communications were protected speech, dedicated to protecting Tyler's interests, and preventing the litigious Kovac from interfering with the *Idol* contract and other business, in derogation of Tyler's interests and in violation of the PMA."

We do not agree that the June 29 emails were protected speech under subdivision (e)(2). To come within subdivision (e)(2), the first, second, and fourth causes of action must assert claims "*against a person* arising from any act of *that person* in furtherance of *the person's* right of petition . . . ." (Italics added.) In other words, the causes of action against LaPolt must arise from acts by LaPolt in furtherance of *her own* (or her client, Tyler's) right of petition. LaPolt has made no showing that the June 29 emails were in any sense in furtherance of her (or Tyler's) right of petition. To the contrary, she says that the emails immediately preceded *Kovac's* exercise of *his* right of petition. Such a showing does not bring the causes of action within the anti-SLAPP statute.[6]

Further, the California Supreme Court has held that where there are multiple lawsuits arising out of a common set of facts, the second suit does not "aris[e] from" the first merely because both suits have a common factual predicate. In *City of Cotati v. Cashman* (2002) 29 Cal.4th 69 (*Cotati*), mobilehome park owners brought a federal court action seeking a declaratory judgment that a mobilehome park rent stabilization ordinance constituted an unlawful regulatory taking. (*Id.* at p. 72.) The City then brought a state court action seeking a declaration that the ordinance was lawful. The owners moved to strike the City's suit under the anti-SLAPP statute, contending that the

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[6] LaPolt suggests in a declaration that when she sent the June 29 emails, she knew that Kovac "was preparing a lawsuit against Sherman to stop Sherman from negotiating the Tyler *Idol* deal without him." Whatever the merits of this assertion, LaPolt's knowledge that Kovac intended to file suit does not transform her emails into acts in furtherance of *her* right of petition.

City's state court action arose out of the earlier federal suit. The trial court agreed and granted the motion. (*Id.* at pp. 72-73.)

The Supreme Court reversed. Although noting that the City's action was filed shortly after the owners filed their claim in federal court, the court said that "the mere fact an action was filed after protected activity took place does not mean it arose from that activity." (*Cotati*, *supra*, 29 Cal.4th at pp. 76-77.) It explained: "The anti-SLAPP statute cannot be read to mean that 'any claim asserted in an action which arguably was filed in retaliation for the exercise of speech or petition rights falls under section 425.16, whether or not the claim is *based on* conduct in exercise of those rights.' [Citations.] [¶] . . . California courts rightly have rejected the notion 'that a lawsuit is adequately shown to be one "arising from" an act in furtherance of the rights of petition or free speech as long as suit was brought after the defendant engaged in such an act." (*Id.* at p. 77.) Indeed, the court noted, "To construe 'arising from' in section 425.16, subdivision (b)(1) as meaning 'in response to,' as [defendants] have urged, would in effect render all cross-actions potential SLAPP's. We presume the Legislature did not intend such an absurd result." (*Ibid*.) In short, the court said, "the statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the *defendant's* right of petition or free speech. [Citations.]" (*Id.* at p. 78, some italics added.)

In the case before it, the court said, the City's declaratory relief action was not "based on" the first-filed federal suit; instead, it was "based on" the underlying controversy respecting the City's ordinance. (*Cotati*, *supra*, 29 Cal.4th at p. 80.) The court explained: "The distinction City invokes between Owners' federal court action on the one hand and the controversy underlying that action (as well as City's own action) on the other is not an ephemeral or merely formalistic one. . . . [¶] In this case, as the Court of Appeal stated, a dispute exists between the parties over the constitutionality of Cotati

Ordinance No. 680. And just as Owners' lawsuit itself was not the actual controversy underlying Owners' request for declaratory relief in federal court, neither was that lawsuit the actual controversy underlying City's state court request for declaratory relief. Rather, the actual controversy giving rise to both actions—the fundamental basis of each request for declaratory relief—was the same underlying controversy respecting City's ordinance. [Footnote omitted.] City's cause of action therefore was not one arising from Owners' federal suit. Accordingly, City's action was not subject to a special motion to strike." (*Ibid*.)

The present case is analogous. Although the emails and the subsequent litigation both concerned the disputes among Kovac, Sherman, and LaPolt about how Tyler's career should be managed, no persuasive argument can be made that the emails concerned the litigation. At best, LaPolt suggests that the emails concern a dispute about which litigation was on the horizon—but as we have said, the fact that a communication concerns a dispute over which litigation subsequently is filed does not automatically bring the communication within the anti-SLAPP statute. Nor is it sufficient that the communication and subsequently-filed litigation are based on the same facts. As the court explained in *Cotati*, the fact that a dispute is the basis for both litigation and other conduct (in *Cotati*, the state court action; here, the June 29 emails) does not mean that the other conduct "arose out of" the litigation. Thus, the first, second, and fourth causes of action do not arise from LaPolt's petitioning activity and are not subject to subdivision (e)(2).[7]

LAPOLT'S CROSS-APPEAL

I. Third Cause of Action—Intentional Interference With Contract

The third cause of action is for intentional interference with contract. It alleges that in August 2011, Sherman left TSE to join another management company. TSE and

[7] Because we conclude that the conduct alleged in the first, second, and fourth causes of action is not protected by the anti-SLAPP statute, we do not reach TSE's alternative contentions that LaPolt was TSE's lawyer. (See *Copenbarger v. Morris Cerullo World Evangelism* (2013) 215 Cal.App.4th 1237, 1250.)

Sherman subsequently entered into a "Termination and Release Agreement" (release) that provided that in exchange for TSE's assignment to Sherman of Tyler's management agreement, Sherman would pay TSE a portion of Tyler's commissions for two years. Simultaneously, TSE, Sherman, and Tyler entered into an "Assignment and Release Agreement" (assignment) that provided that Tyler would pay a portion of his management commissions directly to TSE. LaPolt "had knowledge of the [release] and [assignment] because LaPolt negotiated the agreements on behalf of her client, [Tyler]." Nonetheless, she "deliberately interfered with the [release] and [assignment] by unlawfully taking a portion of [Tyler's] band touring commission that TSE was legally entitled to under the agreements. [LaPolt] caused, instructed, advised, counseled, or persuaded [Sherman] to alter the agreed-upon commission distributions, therefore depriving TSE of monies and benefits it was entitled to under the agreements."

LaPolt contends that the intentional interference with contract alleged in the third cause of action "is premised entirely upon TSE's allegation that LaPolt interfered with the TSE/Sherman Termination Agreement by counseling Tyler regarding the percentage of Tyler's band touring income that Tyler should pay to Sherman under the new management agreement between Tyler and Sherman's new employer, XIX. Her legal advice to Tyler, LaPolt asserts, "directly related to Tyler's rights and obligations flowing from the settlement of the TSE/Sherman Litigation. This type of advice by an attorney to its client in connection with such a settlement constitutes protected litigation-related activity pursuant to [section] 425.16(e)(2)."

There are at least two problems with LaPolt's suggestion that the third cause of action falls within subdivision (e)(2). First, to come within subdivision (e)(2), a cause of action must arise from a "*written or oral statement or writing* made in connection with an issue under consideration or review by a . . . judicial body." (§ 425.16, italics added.) The third cause of action does not allege any written or oral statement; it alleges only that LaPolt interfered with the release by "*taking a portion* of [Tyler's] band touring commission." (Italics added.) LaPolt cites no authority for the proposition that taking a

portion of TSE's commissions constitutes a "statement" within the meaning of the anti-SLAPP statute.

Second, nothing on the face of the release allows us to conclude that it was executed in connection with an issue "under consideration or review by a . . . judicial body." Although LaPolt contends that the release was entered into in settlement of litigation, the release says otherwise: Its stated purpose is to "provide for an assignment of [Tyler's] management agreement to Sherman" following the termination of the relationship between Sherman and TSE. For both of these reasons, we conclude that the third cause of action does not fall within the terms of section 425.16, subdivision (e)(2).

We also reject LaPolt's suggestion that the third cause of action is within section 425.16, subdivision (e)(4)—i.e., that it arises from 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." Even if we were to conclude, as LaPolt suggests, that the third cause of action concerns an issue of public interest because of Tyler's "fame and renown," we could find it subject to subdivision (e)(4) only if we *also* concluded that it arises from conduct in furtherance of the exercise of the rights of petition or free speech. The only conduct alleged in the third cause of action—"unlawfully taking a portion of [Tyler's] touring band commission"—is neither. And, while there may be public interest in Tyler, there is no demonstrated public interest in a financial dispute between his lawyer and manager. The trial court did not err in so concluding.

II. The Fifth and Sixth Causes of Action

The fifth and sixth causes of action are for intentional interference with contract and breach of fiduciary duty. The complaint alleges that TSE managed, and LaPolt represented, Mötley Crüe, and that LaPolt represented one of Mötley Crüe's members, Mick Mars. The complaint further alleges that LaPolt used her relationships with Mötley Crüe and Mars to further a personal vendetta against Kovac by "caus[ing] [Mars] to terminate his business manager, Pam Malek," referring Mars to an attorney LaPolt had previously disparaged, "advising her client, [Mars], to align himself with the band's

drummer . . . [to] help her disrupt TSE's management of the band," "using other professionals who she has previously disparaged to go against TSE and the band," "conspiring with . . . other professional[s] to oust TSE and set up a competing management company to represent the band," and failing to fully account for the band's Canadian record sales. Through this conduct, LaPolt is alleged to have "interfer[ed] with and disrupt[ed] TSE's contractual relationship with the band" (fifth cause of action) and "breach[ed] [her] fiduciary duty owed to TSE and the band by acting in the manner herein alleged" (sixth cause of action).

LaPolt contends that the fifth and sixth causes of action are subject to the anti-SLAPP statute because they are based on statements LaPolt made about this litigation—i.e., "in connection with an issue under consideration or review by a . . . judicial body." (§ 425.16, subd. (e)(2).) We do not agree. Although LaPolt is correct that communications about litigation, even to nonlitigants, can constitute conduct protected by subdivision (e)(2),[8] the complaint does not allege that any of the allegedly tortious communications concerned the ongoing litigation. That is, although LaPolt suggests that the communications at issue necessarily consisted of advising Mars and others about the lawsuit, that is not what the complaint says. To the contrary, the fifth and sixth causes of action nowhere allege that the actionable communications addressed the litigation. Rather, as we have said, the complaint alleges communications concerning Mars's professional representation that resulted in ousting TSE from the band's management. Accordingly, we cannot conclude that they are based on conduct protected by subdivision (e)(2).[9]

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[8] See, e.g., *Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1055 [litigant's email to actual or potential customers about ongoing litigation with business competitor came within the parameters of subdivision (e)(2)]; *Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5-6 [homeowner's association's letter describing litigation with resident held within subdivision (e)(2) because it was "in connection with" judicial proceedings].

[9] LaPolt suggests that the trial court erred because it "made no findings regarding whether TSE's Mötley Crüe-related claims were subject to the anti-SLAPP statute." As

III. Probability of Prevailing and Attorney Fees

We need not consider whether LaPolt demonstrated she is likely to succeed on the merits of the challenged causes of action because LaPolt did not meet her threshold burden of showing the complaint was based on protected activity. The trial court therefore erred in granting the anti-SLAPP motion. For the same reason, LaPolt is not entitled to attorney fees under section 425.16, subdivision (c). (*Copenbarger v. Morris Cerullo World Evangelism*, *supra*, 215 Cal.App.4th at p. 1250.)

DISPOSITION

We reverse the orders (1) granting the special motion to strike the first, second, and fourth causes of action, and (2) granting attorney fees. TSE is awarded its appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.

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we have said, LaPolt is correct that the trial court did not make any express findings regarding these causes of action. (See fn. 4, *ante*.) However, because a trial court must rule on an anti-SLAPP motion before ruling on a pending demurrer (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 629)—and because the court sustained LaPolt's demurrers to the fifth and sixth causes of action—the trial court necessarily denied the anti-SLAPP motion as to these claims.