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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MIRIAM MOTTA,

Plaintiff and Appellant,

v.

ESTRELLA RADIO  
BROADCASTING OF  
CALIFORNIA LLC et al.,

Defendants and Respondents.

B339485

Los Angeles County  
Super. Ct. No.  
23STCV31619

APPEAL from orders of the Superior Court of Los Angeles County, Daniel M. Crowley, Judge. Reversed with directions.

ACLIENT, Ruben D. Escalante and Robert A. Escalante for Plaintiff and Appellant.

O'Hagan Meyer, Angeli C. Aragon, Clint D. Robison and Nicole Burgos Romero for Defendants and Respondents.

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Plaintiff Miriam Motta is employed as a Local Sales Manager for defendants Estrella Radio Broadcasting of California LLC and Estrella Media, Inc. (collectively, Estrella). She sued Estrella for violation of the California Equal Pay Act (Lab. Code, § 1197.5), sex discrimination under the Fair Employment and Housing Act (FEHA, Gov. Code, § 12940), retaliation under FEHA, and other employment claims. She alleges that Estrella has been paying her less than at least one male employee for substantially similar work and that her employer retaliated against her for complaining about discrimination. Estrella moved to strike the retaliation cause of action and discrete supporting allegations under our state’s anti-SLAPP statute (Code Civ. Proc., § 425.16), arguing the challenged claim and allegations arose from protected prelitigation settlement communications.<sup>1</sup> The trial court granted the motion in part, striking some of the allegations but concluding Motta had otherwise established a probability of prevailing on her retaliation claim. Motta appeals this ruling and a subsequent order awarding Estrella its attorney fees.

We conclude the trial court erred. Under controlling Supreme Court authority, a claim is subject to the anti-SLAPP statute “only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.” (*Park v. Board of Trustees of California State University* (2017))

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<sup>1</sup> Statutory references are to the Code of Civil Procedure, unless otherwise designated. SLAPP is an acronym for “strategic lawsuit against public participation.” (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1 (*Equilon*).)

2 Cal.5th 1057, 1060 (*Park*); accord, *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884 (*Wilson*).) As we will explain, Motta’s retaliation claim is not based on the settlement communications; rather, those communications serve only as *evidence* that Estrella took the alleged retaliatory action in response to her complaints about unlawful discrimination. But the alleged retaliatory action—i.e., the wrong complained of—is Estrella’s alleged refusal to equalize her pay with that of her male counterpart. Because Estrella failed to carry its burden to show Motta’s claim arose from protected activity, the trial court erred in partially granting the anti-SLAPP motion. Accordingly, we reverse with directions to vacate the challenged orders and to enter a new order denying the special motion to strike.

### **BACKGROUND<sup>2</sup>**

Motta has been employed as a Local Sales Manager with Estrella for several years. She was originally responsible for managing a team that sold radio airtime to advertisers. At some point, her job duties were merged with those of a male Local Sales Manager, who had been responsible for selling television airtime. After the realignment, both teams sold radio and television airtime, such that Motta’s and her male counterpart’s responsibilities were basically identical.

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<sup>2</sup> We draw the relevant facts from Motta’s operative pleading and the parties’ evidentiary submissions in connection with the anti-SLAPP motion. (See *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79 (*City of Cotati*); *Park, supra*, 2 Cal.5th at p. 1067.) Consistent with our standard of review, we “accept [Motta’s] submissions as true and consider only whether any contrary evidence from [Estrella] establishes its entitlement to prevail as a matter of law.” (*Park*, at p. 1067.)

In August 2022, Motta learned that, despite performing the same work as her male counterpart, she was paid at least \$30,000 less per year than he was. Motta complained to her supervisor, who agreed the pay disparity was not justified and Motta was entitled to equal pay. However, Estrella did not increase Motta's compensation.

In July 2023, Motta directed her attorney to send a letter to Estrella. The letter explained that Motta believed the pay inequality may be based on her sex and that she intended to raise her concerns with the appropriate government agencies if discussions failed to yield an acceptable resolution. The letter also directed Estrella to preserve and retain all relevant records.

In August 2023, Estrella responded with a letter from its general counsel, explaining that any discrepancy in compensation was justified by differences in skill, education, and experience between Motta and her male counterpart.

On September 8, 2023, Motta's attorney responded with a monetary demand letter, stating Motta would "waive her unequal pay based claims" in exchange for a compensation package equal to her male counterpart's and a onetime payment of \$150,000. Estrella rejected the demand, but made a counterproposal to increase Motta's base salary by \$10,000 a year.

On September 22, 2023, Motta filed discrimination and equal-pay complaints with the relevant government agencies. After receiving notice of the complaints, Estrella's management contacted Motta directly to discuss her claims without her counsel's involvement. According to Motta, management pressured her to sign a release in exchange for the pay raise she requested, advising her that she "needed to sign a release

because [she] raised claims against Estrella and [she] would not get the pay raise otherwise.”

Eventually, Estrella offered Motta a pay raise, but only if she signed a settlement agreement containing a general release of all claims. The agreement also would have required Motta “expressly [to] den[y] that she suffered any violations under the Labor Code in connection with her employment at Estrella.” Motta refused the offer.

On December 27, 2023, Motta amended her administrative complaints to allege Estrella retaliated against her by denying her a pay increase because she engaged in protected activity. The same day, she filed her complaint in this action.

Estrella filed a special motion to strike the retaliation claim in its entirety and, alternatively, the following allegations supporting the claim:

“Plaintiff engaged in protected activity preceding Defendant Employers taking adverse employment action against her. Specifically, Plaintiff made protected complaints of discrimination to Defendant Employers. Following making such complaints and rather than take legitimate steps toward correcting the disparity in Plaintiff’s and other women’s pay, Defendant Employers including members of management, expressed to Plaintiff that it knew Plaintiff was not properly paid, expressed that Defendant Employer’s response to her raising her concerns was deficient, discouraged her from seeking counsel from her attorney and exercising her rights, insulted her, and

pressured her to sign a release in exchange for the requested pay raise. Notably, when Plaintiff protested that she should not be forced to sign a release in exchange for the pay raise, she was told that she needed to sign a release because she raised claims against Defendant Employer and she would not get the pay raise otherwise.”

Estrella argued these allegations (and the retaliation claim they supported) arose from prelitigation settlement negotiations protected under the official proceedings clause of the anti-SLAPP statute. (See § 425.16, subdivision (e)(2).) And, it argued Motta could not demonstrate the legal or factual sufficiency of her claim because the settlement negotiations were protected under the litigation privilege codified in Civil Code section 47.

The trial court granted the motion in part and denied it in part. With respect to the first prong of the anti-SLAPP analysis, the court concluded the first two sentences of the challenged allegations—that “Plaintiff engaged in protected activity preceding Defendant Employers taking adverse employment action against her”; and “Specifically, Plaintiff made protected complaints of discrimination to Defendant Employers”—did not concern conduct or communications protected under the statute. And, because those allegations coupled with an unchallenged allegation—that “a substantial motivating reason for Defendant Employers’ decision not to increase Plaintiff’s pay [was] because she raised her concern regarding discrimination and her pay disparity”—supported a claim for retaliation under FEHA, the court denied the motion to strike the retaliation cause of action.

As for the remainder of the challenged allegations, the court concluded Estrella's prelitigation settlement communications were protected under the anti-SLAPP statute. Because Motta had "amended her administrative charges" to include a claim for retaliation only after "several months of settlement negotiations," the court reasoned part of the retaliation claim must have arisen from this protected conduct. Finally, the court concluded Motta had failed to establish a probability of prevailing on this part of her retaliation claim because the litigation privilege afforded Estrella "absolute" protection from liability for this conduct.

Having won a partial victory on its anti-SLAPP motion, Estrella moved for an award of more than \$110,000 in attorney fees and costs.

The trial court granted Estrella's motion, but reduced the award to \$39,000. The court found Estrella's "litigation posture was not advanced by the [anti-SLAPP] motion and there was no meaningful change to the legal landscape," as the motion "merely struck a portion of the FEHA retaliation claim"; Motta's "possible recovery" against Estrella "did not change"; Estrella's fee request was "exorbitant" and "grossly inflated"; and the attorneys' "billing records [were] excessively redacted," rendering them "worthy of little credence."

Motta filed timely notices of appeal from the order partially granting the special motion to strike and the attorney fee award.

## DISCUSSION

### 1. *The Anti-SLAPP Statute and Standard of Review*

Our state anti-SLAPP statute establishes a procedure for expeditiously resolving “nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue.” (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235.) “When served with a SLAPP suit, the defendant may immediately move to strike the complaint under section 425.16. To determine whether this motion should be granted, the trial court must engage in a two-step process.” (*Hansen v. Department of Corrections & Rehabilitation* (2008) 171 Cal.App.4th 1537, 1543; *Equilon, supra*, 29 Cal.4th at p. 67.)

“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*); accord, *Park, supra*, 2 Cal.5th at p. 1061.) “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 being stricken under the statute.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, italics omitted (*Navellier*); accord, *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) “If the moving party fails to demonstrate that any of the challenged claims for relief arise from protected activity, the court properly denies the motion to strike without addressing the second step (probability of success).” (*Verceles v. Los Angeles Unified*



*School Dist.* (2021) 63 Cal.App.5th 776, 784 (*Verceles*), citing *City of Cotati*, *supra*, 29 Cal.4th at pp. 80–81.)

“A claim arises from protected activity when that activity underlies or forms the basis for the claim.” (*Park*, *supra*, 2 Cal.5th at pp. 1062–1063.) Thus, “[t]he defendant’s first-step burden is to identify the activity each challenged claim rests on and demonstrate that that activity is protected by the anti-SLAPP statute. A ‘claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.’” (*Wilson*, *supra*, 7 Cal.5th at p. 884; accord, *Park*, at p. 1060.) “[T]he mere fact that an action [or claim] was filed after protected activity took place does not mean the action [or claim] arose from that activity for the purposes of the anti-SLAPP statute.” (*Park*, at p. 1063.) Nor is a claim subject to a special motion to strike “when protected activity merely provides evidentiary support or context for the claim.” (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621 (*Rand*).) “To determine whether a claim arises from protected activity, courts must ‘consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.’” (*Wilson*, at p. 884; accord, *Park*, at p. 1063; *Verceles*, *supra*, 63 Cal.App.5th at p. 784.)

The same rules apply when an anti-SLAPP motion challenges discrete allegations in a “‘mixed cause of action.’” (*Baral*, *supra*, 1 Cal.5th at p. 381.) “When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded” in conducting the first-prong analysis, and the trial court then must determine whether

“relief is sought based on allegations arising from activity protected by the statute.” (*Id.* at p. 396.) “Assertions that are ‘merely incidental’ or ‘collateral’ are not subject to section 425.16,” and allegations of “protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.” (*Id.* at p. 394.) It is only if the targeted allegations “amount to a ‘cause of action’ in the sense that [they are] alleged to justify a remedy” that those allegations are properly subject to a special motion to strike. (*Id.* at p. 395.) The critical question is whether “allegations of protected activity . . . are asserted as grounds for relief.” (*Ibid.*, italics omitted.) Again, to answer this question, the court must “consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.” (*Park, supra*, 2 Cal.5th at p. 1063.)

We review the trial court’s ruling on an anti-SLAPP motion under the de novo standard. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) “We exercise independent judgment in determining whether, based on our own review of the record, the challenged claims arise from protected activity. [Citations.] In addition to the pleadings, we may consider affidavits concerning the facts upon which liability is based. [Citations.] We do not, however, weigh the evidence, but accept plaintiff’s submissions as true and consider only whether any contrary evidence from the defendant establishes its entitlement to prevail as a matter of law.” (*Park, supra*, 2 Cal.5th at p. 1067.)

**2. *Estrella Failed to Carry Its Burden under the First Prong; The Challenged Allegations Do Not Supply an Element of Motta’s Retaliation Claim***

In accordance with our Supreme Court’s directive, we begin our first-prong analysis with the elements of a claim for retaliation under FEHA in order to determine what actions by Estrella supply those elements and consequently form the basis for the company’s alleged liability. (*Park, supra*, 2 Cal.5th at p. 1063.) “[T]o establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a ‘protected activity,’ (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer’s action.” (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042; *Verceles, supra*, 63 Cal.App.5th at p. 785.)

Here, the trial court partially granted Estrella’s special motion to strike with respect to discrete allegations in Motta’s complaint but denied the motion to the extent it sought to strike the entire retaliation claim. In arriving at the latter ruling, the court reasoned that Motta had stated a viable claim for retaliation under FEHA even without the allegations that referenced settlement communications. This ruling was correct. Consistent with the “elements” analysis articulated in *Park*, the trial court recognized that Motta’s retaliation claim did not arise from protected activity because the charging allegations—(a) that “Plaintiff engaged in protected activity [by complaining about discrimination and unequal pay] preceding Defendant Employers taking adverse employment action against her,” and (b) that “a substantial motivating reason for Defendant Employers’ decision not to increase Plaintiff’s pay [was] because she raised

her concern regarding discrimination and her pay disparity”—supplied the necessary elements to state a prima facie case for retaliation and did not implicate conduct protected under the anti-SLAPP statute. (See, e.g., *Park, supra*, 2 Cal.5th at p. 1068 [discrimination claims did not arise from protected activity where plaintiff “‘could have omitted allegations regarding communicative acts or filing a grievance and still state[d] the same claims’ ”].)

The court erred, however, in its analysis of the discrete allegations that arguably do implicate protected settlement communications.<sup>3</sup> As discussed, under *Baral*, when presented with a mixed cause of action that alleges “both protected and unprotected activity,” the court must “disregard[ ]” the “unprotected activity” and determine whether “relief is sought based on allegations arising from activity protected by the

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<sup>3</sup> Motta argues the alleged settlement communications were not protected under the anti-SLAPP statute because, in her telling, Estrella’s settlement offer was illegal under Labor Code sections 206 and 206.5. (See *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320 [holding that where “either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff’s action”].) We need not reach this issue and make no judgment on it. Even assuming the alleged communications were protected under section 425.16, subdivision (e)(2) as statements made in connection with an anticipated judicial proceeding, we conclude they were not properly subject to a special motion to strike because Motta’s retaliation claim did not arise from these communications, as we explain above.

statute.” (*Baral, supra*, 1 Cal.5th at p. 396.) Here, when the unprotected activity is disregarded, what is left are the allegations that Estrella “pressured [Motta] to sign a release in exchange for the requested pay raise,” and “told [her] that she needed to sign a release because she raised claims against Defendant Employer and she would not get the pay raise otherwise.” The dispositive question is whether these allegations supply an “element” of Motta’s cause of action for retaliation and “consequently form the basis for liability.” (*Park, supra*, 2 Cal.5th at p. 1063.) Plainly they do not. As the trial court correctly recognized, Motta had stated all necessary elements of her retaliation claim by alleging she complained of prohibited sex discrimination (protected activity) and was denied a pay increase (adverse action) because of her complaint (causal link). At most, the discrete allegations serve as *evidence* of the causal link between Motta’s protected activity and the adverse action inasmuch as they purport to show Estrella would not equalize Motta’s pay with that of her male counterpart because she filed administrative complaints against the company that she refused to release.<sup>4</sup> Allegations that merely provide “evidentiary support or context for the claim” do not satisfy the arising-from requirement of the anti-SLAPP statute. (*Rand, supra*, 6 Cal.5th at p. 621.)

*Park* is controlling. The plaintiff in *Park* alleged discrimination based on national origin after his employer denied

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<sup>4</sup> We make no judgment about whether the evidence supporting these allegations would be sufficient to establish the causal link element of Motta’s claim or whether any privilege would bar admission of this evidence at trial.

his application for tenure. (*Park, supra*, 2 Cal.5th at p. 1061.) The employer argued the cause of action “arose from its decision to deny [the plaintiff] tenure and the numerous communications that led up to and followed that decision.” (*Ibid.*) Our Supreme Court rejected this characterization, cautioning it was necessary “to respect the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim.” (*Id.* at p. 1064.) Applying this distinction, the court held the plaintiff’s claim did not depend on “any statements, or any specific evaluations of him in the tenure process, but only on the denial of tenure itself and whether the motive for that action was impermissible.” (*Id.* at p. 1068.) While communications made during the tenure review process may have supplied evidence of liability, this “[did] not convert the statements themselves into the basis for liability.” (*Ibid.*)

As in *Park*, Motta’s retaliation claim does not arise from protected conduct because it does not “depend” on the allegations regarding settlement communications that occurred after she made her complaints. (*Park, supra*, 2 Cal.5th at p. 1068.) Those communications are merely collateral to the allegedly liability-creating activity—i.e., the decision to deny and to continue to deny Motta equal pay because of her complaints about sex discrimination. (See *Baral, supra*, 1 Cal.5th at p. 394.) And, although the statements by Estrella management may supply evidence of retaliatory motive, this “does not convert the statements themselves into the basis for liability.” (*Park*, at p. 1068.)

At Estrella’s urging, the trial court concluded the sequence of events—specifically, the fact that Motta amended

her administrative complaints to include retaliation allegations after the settlement communications—proved the retaliation claim must have arisen from those communications. Estrella advances the same argument on appeal. There are at least two related problems with it.

First, as a practical matter, because Motta alleges the relevant communications as *evidence* of Estrella’s retaliatory motive, it is no surprise that she amended her administrative complaints only after this evidence materialized to substantiate her retaliation claim. Second, and perhaps because of the practical need for proof before bringing a claim, our Supreme Court has expressly held that “a claim does *not* ‘arise from’ protected activity *simply because it was filed after, or because of, protected activity*, or when protected activity merely provides evidentiary support or context for the claim.” (*Rand, supra*, 6 Cal.5th at p. 621, italics added; *Navellier, supra*, 29 Cal.4th at p. 89 [“[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.”]; accord, *Park, supra*, 2 Cal.5th at p. 1063; see also *City of Cotati, supra*, 29 Cal.4th at p. 78 [suit may be in “response to, or in retaliation for,” protected activity without necessarily arising from it].) The trial court erred by basing its first-prong determination on the fact that Motta added her retaliation claim after settlement communications had taken place.

Finally, Estrella argues it carried its burden under the first prong because, in its telling, Motta has alleged “the settlement communications were an extension of [Estrella’s] retaliatory actions.” In support of this contention, Estrella cites Motta’s declaration in opposition to the anti-SLAPP motion and asserts

she “admitted” the settlement communications “caused her economic and non-economic harm.” According to Estrella, this supposed admission proves that, “without [its] protected speech, [Motta] cannot maintain her retaliation claim.” We disagree.

With respect to economic damages, Motta’s declaration refers to lost compensation following her “complaints about unequal pay and Estrella denying [her] request for a pay increase.” These damages are plainly tied to the allegedly liability-creating activity—i.e., the decision to deny Motta equal pay because of her complaints—which, as we have discussed, does not depend on any settlement communications.

As for noneconomic damages, Motta’s declaration refers to “emotional distress,” which she “associate[s] with Estrella’s conduct” after she “raised complaints about unequal pay.” Even if we assume this broad reference to “Estrella’s conduct” includes the settlement talks, the declaration does not convert those communications into a basis for liability. Motta explains in her declaration that she “believed that Estrella was retaliating against [her] *by refusing to raise [her] pay because [she] complained,*” and she had come to believe this based on “things that happened before, during, and outside of any settlement negotiations.” (Italics added.) Thus, like her complaint, Motta’s declaration presents Estrella’s settlement communications merely as *evidence* to substantiate her belief about the company’s retaliatory motive, but it is the retaliatory act itself that gives rise to her claim for economic and noneconomic relief. (See, e.g., *Park, supra*, 2 Cal.5th at p. 1068.)

Because Estrella failed to carry its burden under the first prong of the anti-SLAPP statute, we need not consider whether Motta established the minimal merit of her claim under the



second prong. (See *Navellier, supra*, 29 Cal.4th at p. 89 [“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 being stricken under the statute.” (Italics omitted.)]; *Verceles, supra*, 63 Cal.App.5th at p. 784.) And, because we conclude Estrella’s motion should have been denied, we must also reverse the order awarding Estrella attorney fees under section 425.16, subdivision (c).

### **DISPOSITION**

The orders granting the special motion to strike and awarding attorney fees are reversed. The trial court is directed to vacate those orders and to enter a new order denying the special motion to strike. Plaintiff Miriam Motta is entitled to her costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EGERTON, J.

We concur:

EDMON, P. J.

ADAMS, J.