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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

NEIL GOODHUE,
Plaintiff, Cross-defendant and
Appellant,
v.
DIANE GOODHUE,
Defendant, Cross-complainant
and Appellant.

A169395
(Alameda County
Super. Ct. No. 22CV007980)

Two feuding spouses sued each other in the midst of their divorce, alleging claims based on a wide range of behavior fueled by bitterness and acrimony. The husband filed a special motion to strike the wife's cross-complaint under the anti-SLAPP statute (Code Civ. Proc., § 425.16) (section 425.16), which the trial court largely denied but for striking two of eleven causes of action. Both parties now appeal the trial court's ruling.

We affirm in full.

BACKGROUND

A. The Pleadings

In March 2022, appellant Neil Goodhue commenced this case by filing a lawsuit against his then-wife Diane Goodhue arising from an angry altercation in front of their Piedmont, California home on May 16, 2021,

when she allegedly attacked him. He alleges that Diane, who was angry, tried to stop him from driving away in his car, knocked his nearby motorcycle to the ground, blocked him from leaving and repeatedly rammed his car while he was inside it with her own vehicle in a manner sufficient to cause great bodily injury and causing \$70,000 in damages. Attached to the complaint is a redacted police report reflecting that Diane was arrested at the scene for assault with a deadly weapon. According to the police report, Neil had called police but at the scene did not want to provide any statement, and Diane confessed to having intentionally rammed Neil's car because she was upset after confronting him about a suspected affair.

Diane subsequently filed a cross-complaint. She alleges that Neil's report to police that she had rammed him with her car was false. She also alleges that at 2:06 p.m. on the day of the incident, she received an email signed by Neil from his gmail.com account in which he confessed to damaging the car himself and lying to the police. She alleges the metadata showed that the message did in fact come from Neil's account, and that she was in police custody at the time it was sent and received and thus could not herself have generated it. The email allegedly said, "I'm going to admit that I lied this morning when I called the police department. I'm going to admit that I was hitting the Escalade and tried to blame everything on you. This is why I refused to give the police a formal statement. It's one thing to lie in calling; I didn't want to commit perjury in an actual complaint."

She also alleges that Neil sent a letter to friends and neighbors making negative statements about her character and attaching a copy of the false police report. The letter, dated May 17, 2022, and attached to the cross-complaint, is a bitter narrative about the couple's wealth that is addressed to "[f]ormer 'Friend[s]' " in attempt to "correct[]" "Diane's recent fiction" that

Neil had married Diane for her family's wealth (her "snake-oil version" of the truth). The letter touts details of Neil's personal fortune, his professional accomplishments and his efforts to help Diane's family address some debts and pending litigation. It asserts that by the time Diane came into her inheritance in 2009, the couple's own personal fortune had a net worth of 95 million dollars whereas her family's fortune was only 25 million dollars. It concludes: "I'm happy to share tax returns with any of you. I have no interest in speaking with you otherwise. While the past eleven months have been difficult, it [*sic*] has provided me the opportunity to learn who my friends are, and none of you are friends. I am only sending this letter at the suggestion of a counselor so that perhaps someone might wonder why Diane has such fragile ego. I personally learned over the years that I never took sides in a divorce because I never knew what went on in someone's home or within a relationship so I never became so personally involved. [¶] Apparently all of you are wiser sages than myself, good for you."

Diane also alleges that Neil had been engaging in a pattern of erratic behavior for a year. He allegedly had been lashing out at Diane's friends, neighbors, family members and business associates due to their connections with her. After their divorce became final, he also allegedly had Diane's mail illegally forwarded to him, stole her mail and cashed a check made out to her personally for some clothing she had sold to a consignment shop either by forging her signature or lying that they were still married. He also wrote an angry letter to her on February 24, 2022, accusing her of pushing him to the brink of suicide and threatening to sue her, a copy of which is attached to the cross-complaint. The letter, which is filled with insults and nasty criticism, states in relevant part: "And while you write insulting little notes on the OUTSIDE of envelopes you mail to me (perhaps since you are seeing two

counselors, you should hire a third and ask [if] such immature behavior is necessary my [sic] a woman with a Masters in counseling; [I] am now happy you have actually wasted our time and money dragging the case out. It has given me lots of time to surf the web and look at case law. I think I'm going to pursue an interesting theory against you after the divorce action—a wife who uses her extensive background in counseling against a husband without a strong educational background with severe health issues (depression and pituitary deficiency) to exacerbate the depression and attempt to cause suicide by the husband and cause other health issues. There is actual case law. And even better, because it is an intentional act, homeowners insurance will not provide a defense, so a plaintiffs attorney will represent me on a contingency basis, and you will pay a fortune for defense. A win-lose proposition. Everyone, well, most everyone wins at the end of the day. [¶] In the meantime, stop sending me shit. Find a different hobby. And save your money, you are going to need it. I feel energized, and since you decided to start the shitstorm, be ready, because I'm coming for you. And you said you didn't care how long this lasted, neither do I.”

According to Diane's cross-complaint, Neil allegedly threatened to sue, and then did sue, their homeowner's insurer, Safeco, for paying out all of the insurance proceeds on a claim under their policy to Diane alone due to a “computer glitch” rather than send him his one-half share of the proceeds. He allegedly threatened to sue, and refused to pay, tax experts retained in their divorce and threatened to sue the asset manager the tax experts had hired. Corroborating emails attached to the complaint reflect that these were court-appointed financial experts, retained jointly by both parties.

Diane alleges that when she requested quotes for a new homeowner's policy when hers was set to expire, her insurance broker told her that several

insurers refused to extend coverage to her due to her arrest record and the litigation Neil initiated.

She asserts 11 causes of action against Neil.

Her first cause of action is for intentional infliction of emotional distress. It alleges Neil staged a car accident, made a false report to police, “framed” her for a felony and then sued her over the fabricated incident all in order to hurt her. In addition, she alleges he sent a defamatory letter to her friends and neighbors in an attempt to turn them against her. And he filed multiple related lawsuits to harass her, including one against her homeowner’s insurer and another against the consignment store that bought some of his clothing that he had authorized her to sell.

The second and third causes of action are for defamation and defamation per se, based upon Neil’s allegedly false statements to police and dissemination of the police report to friends and neighbors.

The fourth cause of action is for stalking in violation of Civil Code section 1708.7. It alleges Diane fears for her safety because Neil is a long-term and heavy user of illegal street drugs including cocaine, ketamine and methamphetamine, has mental health issues including suicide ideation, engages in erratic behavior, has ties to dangerous criminals who may be willing to act at his behest, has engaged in surveillance of her by illegally requesting seven times that her mail be forwarded from her home in Piedmont to his home in Pebble Beach, California, and on July 24, 2023, violated a mutual restraining order by slowly circling her Piedmont home on his motorcycle.

The fifth cause of action is for conversion, premised on allegations about the consignment store check made out to Diane that Neil allegedly cashed. She alleges that after the couple separated, Neil told her she could

do whatever she wished with the clothes he left behind at their Piedmont residence which she then sold at a consignment shop, but he then illegally forwarded Diane's mail to his home in Pebble Beach, intercepted the check made out to her for the proceeds and cashed it. The cause of action also alleges he initiated a frivolous small claims lawsuit against the consignment shop for accepting and selling the clothing.

The sixth cause of action is for intentional interference with contractual relations. It alleges Neil has damaged Diane's relationship with their homeowner's insurer, Safeco, by filing suit against Safeco even though he had been advised by their insurance broker that doing so could jeopardize Diane's homeowner's insurance on the Piedmont property that was awarded to her in the divorce. She fears that, due to the litigation, the policy could be canceled.

The seventh cause of action is for intentional interference with prospective economic advantage, premised on similar allegations about the potential disruption of Diane's relationship with Safeco due to Neil's threats of litigation and his filing of a lawsuit against Safeco.

The eighth cause of action is for assault. It alleges Neil confessed to having rammed Diane's car while she and her dogs were inside it. It also alleges she was handcuffed, arrested and "assaulted" by police due to his having "incit[ed] a police response."

The ninth cause of action is for battery, premised on similar allegations about Neil crashing his car into Diane's and also "inciting a police response that led to her being handcuffed and arrested."

The tenth cause of action is for violation of the Bane Act (Civ. Code, § 52.1). It alleges Neil interfered with Diane's constitutional rights by using the police to intimidate her and "temporarily deprive her of her freedom" and interfered with her right to privacy by intercepting her mail, surveilling her

in violation of a no-contact order and broadcasting personal information about her in a letter to friends and neighbors.

The eleventh cause of action is for false light, based on the letter Neil sent to friends and family and dissemination of the police report. She alleges the letter publicized intimate details of her private life, including misleadingly implying he “saved” Diane and her family from financial trouble and that she may have married him for his money, and the police report implies she had assaulted him. He also has likely disseminated other misleading and private information about her because he intends to humiliate her and damage her reputation.

B. The Anti-SLAPP Motion

Neil filed an anti-SLAPP motion, targeting every cause of action in the cross-complaint. In it, he asked the court both to strike every cause of action in its entirety and to strike particular allegations he contended arose from protected activity.

In opposition, Diane filed a six-page declaration in which she denied that she had rammed Neil’s car, explained why she had told police that she had done so, described the circumstances that led to police involvement at their home and her subsequent filing for divorce and provided other details of Neil’s erratic behavior.¹

¹ Her declaration attached multiple exhibits but none have been included in the copy of her declaration contained in volume one of the clerk’s transcript. It appears, however, that the missing exhibits have been copied and mistakenly embedded in the middle of a document comprising volume three of the clerk’s transcript that is identified in the index as a declaration her attorney filed in support of a motion to allow limited discovery.

According to Diane's declaration, in the spring of 2021, Neil began displaying concerning behavior and staying at another home they owned, and she encouraged him to seek professional help to no avail. Then she discovered sexually explicit content on his computer. On May 15, she tried to ask him about this discovery over dinner in Pebble Beach, California where they owned a home, but he refused to talk, abruptly left and returned to their home in Piedmont without her. She drove back to Piedmont the following morning (May 16), and upon trying to enter the driveway through the gate saw Neil trying to leave. She was upset and confused but not angry, stopped her car, got out and tried to talk to him but he refused to speak to her and seemed "intent on fleeing our home" and "desperate to leave the property to avoid having a conversation with me." Once she got back in her car, "he intentionally rammed his vehicle into mine as he attempted to exit the gate" while she and her dogs were inside the car, which was both "physically and emotionally jarring." Neither she nor Neal were visibly injured.

When police arrived to take statements, "I took responsibility for the car crash even though it was caused by Neil. I did not initially anticipate that I would actually be arrested given our lack of injuries. I felt sorry for Neil given his unstable mental state and I was also afraid of what he might do if I was truthful and blamed him for the car crash." She remained calm and did not resist arrest. Neil, though, "became very upset when he found out I was being arrested and demanded that the police release me instead. He told them he did not want me arrested and he yelled at the police, threatened to sue the police officers for wrongful arrest, threatened to sue the mayor, and demanded to speak with the Chief of Police. He also denied that he was injured and refused medical attention and further police assistance.

One of the police officers asked me what was ‘wrong’ with my husband because of the erratic way he was behaving.”

Diane denied having anything to do with creating the email she received from Neil’s email account later that day while in police custody, “and to the best of my knowledge this is a genuine email, which came from Neil’s account and was signed by Neil.”² In full, the email, time-stamped at 2:06 p.m., states:

“Diane, [¶] I saw I missed your call; I’m so sorry, I’ve been speaking to Brian. You don’t have to worry about anything. Bruce is going to get a lawyer for me and I’m going to admit that I lied this morning when I called the police department. I’m going to admit that I was hitting the Escalade and tried to blame everything on you. This is why I refused to give the police a formal statement. It’s one thing to lie in calling; I didn’t want to commit perjury in an actual complaint. I did my best to prevent your arrest and still can’t believe what assholes and losers to [sic] do this. I’m sure you will never want to see me or speak to me again; and I don’t blame you.

“You should proceed with the Macomber house—you, Brian and Locke deserve this! I’ll make it happen as my last contribution to the family and then I’ll stay away other than holidays so I stop fucking up everyone’s lives.”

Diane states in her declaration that no charges were brought against her and her arrest was later re-classified as a “detainment,” but that getting

² She does not state in her declaration when she read the email, only that she was in police custody at the time it was received by her email account. A printed copy of the email reflects that she replied to the 2:06 p.m. email later that night, at 7:44 p.m., “Please call me . . . I need to speak to you its [sic] extremely urgent.”

arrested was “very traumatic” because she is in her 70s and has been a law-abiding citizen all her life.

Diane also states that Neil’s attitude toward her changed when she “later” filed for divorce, “which upset him greatly and caused him to further turn against me.” The remainder of her declaration addressed ways in which his behavior became “extremely erratic” and her fear of enduring further physical and emotional abuse. She described details of him twice stalking her home in violation of a no-contact order; disseminating the police report and his angry letter to neighbors that implies she married him for his money; illegally intercepting her mail; cashing a check for the proceeds of some clothing he left behind in their Piedmont home that she eventually sold to a consignment store with his permission after he told her didn’t want any of it and then filing suit against the consignment store owner in small claims court for \$10,000; suing her homeowner’s insurance company in small claims court for \$2,300 in attorney fees he paid to his divorce lawyer regarding the insurance check made payable only to Diane, even though the insurer had told him this had been due to a simple computer error which was being corrected and had told Diane her policy would likely be canceled if it were sued; and her inability to get coverage quotes from several other insurance underwriters due to the litigation Neil commenced and her arrest record.

Diane filed three other declarations in opposition to the motion. One was from her attorney, who accessed Diane’s email account, viewed and screenshotted the raw data and raw message contained within what appeared to be Neil’s email message in which he confessed to having lied to police. Her attorney opined that, “I am not a data recovery expert, but there was nothing apparent in the email to lead me to believe that it was not

genuine.”³ The other two declarations were from percipient witnesses: a neighbor who recounted his reaction to receiving Neil’s May 2022 “former Friends” letter⁴, and Diane’s live-in gardener who, in the summer of 2022, twice observed Neil slowly driving by Diane’s Piedmont home on one of his motorcycles.⁵

Neil submitted two declarations with his reply papers, including one from a forensic analyst.⁶ The trial court excluded all of that evidence on the ground it was untimely. Neil does not challenge that ruling on appeal, and we refrain from discussing or considering it.

The trial court largely denied Neil’s anti-SLAPP motion. It struck only Diane’s six and seventh causes of action for intentional interference with

³ Like Diane’s declaration, her attorney’s declaration attached multiple exhibits that are not included in the copy of the declaration included in volume one of the clerk’s transcript. Again, some if not all of the missing exhibits appear to have been copied and mistakenly embedded in the middle of volume three of the clerk’s transcript.

⁴ The neighbor expressed bewilderment at receiving the letter—both because the neighbor was merely a casual acquaintance of the couple not a friend, and because the letter was “inappropriate,” “very strange” and “embarrassing.” He also was “shock[ed]” to read the police report about Diane.

⁵ By this time, Diane had been awarded exclusive use and possession of the Piedmont home where she was living, and Neil had been awarded exclusive use and possession of the Pebble Beach residence where he was living. The record does not otherwise reflect the status of their divorce proceedings.

⁶ The analyst examined a pdf copy of the alleged confession email, not the original electronic copy, but did not opine that the email was a fake. Rather, based on some formatting details that “may indicate the document was created in a word processing program, such as Microsoft Word,” as well as a 38-minute delay between the time the email was created and received that cast some doubt on its authenticity, he was unable to conclusively validate the email’s authenticity.

contractual relations and interference with prospective economic advantage. It denied the motion as to the nine other causes of action on various grounds.

Both parties then timely appealed.

DISCUSSION

We presume the parties' familiarity with the anti-SLAPP framework and the parties' respective burdens in connection with a special motion to strike. (See generally *Osborne v. Pleasanton Automotive Co., LP* (2024) 106 Cal.App.5th 361, 374-375, 382 (*Osborne*).) We review the court's ruling de novo, engaging in the same two-step process as the trial court. (*Id.* at p. 375.)

De novo review does not mean we begin with a clean slate. “Among the most basic principles of appellate review are that a trial court’s decision is presumed correct, and the appellant bears the burden of presenting argument and legal authority to demonstrate error thereby overcoming the presumption.” (*Osborne, supra*, 106 Cal.App.5th at pp. 380-381.) To do this, “‘an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.’” (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 164.) We disregard all factual statements in the parties’ appellate briefs that are unsupported by a citation to the record (and here there are many). (*Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385, 408, fn. 14; see also *East Oakland Stadium Alliance v. City of Oakland* (2023) 89 Cal.App.5th 1226, 1240, fn. 5.) In addition, “[m]ere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.” (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1078.) “The reviewing court is not required to develop the parties’ arguments” for

them. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 684.) When an appellant fails to “convince us, by developing his arguments, stating the law, and calling out relevant portions of the record, that the trial court committed reversible error,” the appellant has not demonstrated error. (See *Bishop v. The Bishop’s School* (2022) 86 Cal.App.5th 893, 910.) Furthermore, the only issues we are required to consider are those clearly identified in an argument heading of a party’s appellate brief. Any other arguments, wherever they may be located within a brief, are forfeited. (See *United Grand Corp.*, at p. 153; *Tsakopoulos Investments, LLC v. County of Sacramento* (2023) 95 Cal.App.5th 280, 309-310.)

I.

Neil’s Appeal

On appeal, Neil challenges the trial court’s refusal to strike virtually all of the causes of action but for portions of the conversion claim, the assault claim and the battery claim. Most of his arguments are directed to whether Diane’s allegations are based on activity that is protected by the anti-SLAPP suit, which is the first step in the court’s two-step analysis. It is unnecessary to consider those questions, however, because even if we assume (without deciding) that her causes of action are based on protected activity (prong one), Neil has not demonstrated that she failed to make a sufficient showing under the second prong of the anti-SLAPP statute to allow her claims to proceed on the merits.

In his opening brief, Neil asserts conclusorily that Diane “did not even attempt to make a prong 2 showing” (bolding and capitalization omitted) and characterizes her declaration as “an obviously fraudulent narrative of the auto assault” and “simply personal complaints and the normal rough edges of 92.3% of all divorces.” We disregard such conclusory assertions and factual

characterizations. (See *Osborne*, *supra*, 106 Cal.App.5th at p. 381.) The only two discernable arguments he makes concerning the merits of Diane's claims are: (1) that his communications with police about the car incident are protected by the litigation privilege; and (2) so is the letter he sent to "former Friends." So, he implicitly contends, Diane cannot prevail on the merits of those causes of action that he says are based on such conduct. We are not persuaded.⁷

Diane has carried her burden to demonstrate Neil's allegedly false communications with police are not privileged (and therefore can properly be the basis of suit). The litigation privilege, when it applies, "is an absolute privilege and bars all tort causes of action except a claim of malicious prosecution." (*Geragos v. Abelyan* (2023) 88 Cal.App.5th 1005, 1031.) As Diane points out, however, the litigation privilege does not apply to making a knowingly false police report. Under recent amendments to Civil Code section 47, the litigation privilege does not apply to "any communication between a person and a law enforcement agency in which the person makes a false report that another person has committed, or is in the act of committing, a criminal act or is engaged in an activity requiring law enforcement intervention, knowing that the report is false, or with reckless disregard for the truth or falsity of the report." (Civ. Code, § 47, subd. (b)(5),

⁷ For the first time in his reply brief, Neil discusses the elements of Diane's stalking claim and attacks the sufficiency of her showing on the merits of this cause of action on various grounds. This point is forfeited, and we will not consider it, because the argument was not made in the opening brief. (See *Herrera v. Doctors Medical Center of Modesto, Inc.* (2021) 67 Cal.App.5th 538, 548 ["It is elementary that points raised for the first time in a reply brief are not considered by the court"].)

added by Stats. 2020, ch. 327, § 2.)⁸ Here, Diane introduced sufficient evidence that Neil knowingly and intentionally filed a false report to police about the car accident sufficient to overcome Neil’s claim of privilege for purposes of the anti-SLAPP motion. There is evidence of his puzzling conduct at the scene of the accident—urging police not to arrest her and exploding in anger at police with a torrent of threats; his confession to her in an email to her shortly afterwards, the authenticity of which he introduced no evidence to challenge (such evidence having been excluded as untimely); and Diane’s plausible explanation for having initially told police she herself had been the aggressor. Accepting all of that evidence as true, as we must (see *Osborne, supra*, 106 Cal.App.5th at p. 375), Diane made “ ‘a sufficient *prima facie* showing of facts to sustain a favorable judgment’ ” for her concerning Neil’s defense of privilege (*id.* at p. 382). She thus demonstrated for purposes of the second prong that all her cross-claims based on his filing a false police report against her may proceed.

We also reject Neil’s argument that his angry letter to “Former Friends” is protected by the litigation privilege and thus cannot be the basis of suit. “ ‘To be protected by the litigation privilege, a communication must be “in furtherance of the objects of the litigation.” [Citation.] This is “part of the requirement that the communication be connected with, or have some logical relation to, the action, i.e., that it not be extraneous to the action.” ’ ”

⁸ The authorities Neil cites in his opening brief holding allegedly false police reports absolutely privileged pre-date this enactment and thus are no longer good law. (See *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 971; *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1506-1507, 1519.) The authority he cites in his reply brief, *Geragos v. Abelyan, supra*, 88 Cal.App.5th 1005, does not address this issue.

(*Osborne, supra*, 106 Cal.App.5th at p. 383; Civ. Code, § 47, subd. (b).) Citing only abstract principles of law concerning the litigation privilege without explaining how they apply here, Neil asserts that his angry “[f]ormer Friends” letter is protected because it is “directly related to the [parties’] divorce.” But the cases he cites addressing the litigation privilege have nothing to do with its application to divorce proceedings. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728; *Rubin v. Green* (1993) 4 Cal.4th 1187; *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255; *Kashian v. Harriman* (2002) 98 Cal.App.4th 892; *Ascherman v. Natanson* (1972) 23 Cal.App.3d 861.) Apart from a passing reference to the fact that the parties were *getting* divorced, the “former Friends” letter does not mention the divorce proceedings or any aspect of them (even indirectly), nor does Neil contend that it does. Nor is there any indication (neither in the letter itself nor in the evidence) that it was sent to achieve some purpose connected to the divorce. On its face, Neil’s letter is nothing more than a spouse’s unsolicited rant airing private details of a marital spat to mutual acquaintances. In relation to the actual divorce proceedings, it is, in a word, extraneous.

Finally, Neil asserts that several causes of action can survive the anti-SLAPP motion but contain allegations of protected activity that nonetheless should be stricken. (See generally *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009-1012 [framework for addressing mixed causes of action containing allegations of both protected and unprotected activity].) Specifically, he argues that allegations about the allegedly false police report should be struck from the eighth cause of action for battery and the ninth cause of action for assault, but, as we have explained, Diane met her burden to show “at least some ‘minimal merit’ ” (*id.* at p. 1019) to her contention that his police report is not privileged.

Next, he asserts that allegations that he filed a small claims suit against the consignment store owner should be struck from Diane's fifth cause of action for conversion, because the filing of a lawsuit and threats of litigation are all protected activities. We decline to strike such allegations from this cause of action, however, or allegations about other lawsuits or threats of lawsuits from any other cause of action to the extent that he is asking us to do so. The burden is on the moving party not just to demonstrate that the complaint *contains* allegations of protected activity but to explain how they furnish a basis for liability. (*Littlefield v. Littlefield* (2024) 106 Cal.App.5th 815, 826-827.) To do this, the moving party must identify “‘the elements of the challenged claim’” and “‘demonstrate that the [protected] activity supplies one or more elements of a plaintiff’s claims.’” (*Id.* at pp. 826, 827; see also *Sandoval v. Pali Institute, Inc.* (2025) 113 Cal.App.5th 616, 764 [“Identifying the act or set of acts which supply a basis for relief, meaning the acts from which a claim arises, involves looking to the legally required elements of a cause of action”].) “‘Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.’” (*Bonni v. St. Joseph Health System, supra*, 11 Cal.5th at p. 1012.) Neil has made no effort to demonstrate, by cause of action, that allegations of any protected activity supply one or more elements of Diane’s various causes of action (as opposed to merely comprising background context), and courts are under no obligation to conduct that inquiry independently. (See *Littlefield*, at pp. 826-827 [affirming order denying anti-SLAPP motion].) “Appellants may not enlist the court as their legal assistant to develop arguments they merely suggest.” (*Paglia & Associates Construction, Inc. v. Hamilton* (2023) 98 Cal.App.5th 318, 327 [on appeal from order denying anti-SLAPP motion, plaintiff forfeited

request that specific portions of complaint be stricken due to “lack of individualized argumentation” on each].)

II.

Diane’s Appeal

Having rejected Neil’s arguments that the court erred by declining to strike most of Diane’s causes of action, this leaves only Diane’s appeal from the court’s decision not to strike the two interference causes of action.

Diane argues, first, that none of her cross-claims are subject to the anti-SLAPP statute because none are based on Neil’s filing of the original complaint. She asserts that cross-claims are subject to an anti-SLAPP motion only “if they actually arise out of the plaintiff’s act of filing the original lawsuit (as opposed to potentially protected conduct unrelated to the complaint).”

She cites no authority supporting that proposition. Although Diane cites two cases containing some broad language that, read in isolation, imply such a limitation (see *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 651 (*Church of Scientology*); *Third Laguna Hills Mutual v. Joslin* (2020) 49 Cal.App.5th 366, 371-372 (*Joslin*)), those cases addressed completely different issues, and “[i]t is axiomatic that an unnecessarily broad holding is “informed and limited by the fact[s]” of the case in which it is articulated.’” (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1153.)

Church of Scientology did not involve a cross-complaint. It held that a lawsuit that attacked the validity of a judgment entered in a *prior* action arose from the defendant’s valid exercise of his petitioning rights and thus was subject to a special motion to strike. (*Church of Scientology, supra*, 42 Cal.App.4th at p. 647.) The court held the statute “literally applies to any

direct attack on the *judgment* in the prior action, which resulted from [defendant's] petition activity." (*Id.* at p. 648.)

In a portion of the opinion relied on by Diane, the appellate court concluded that applying the statute to any action arising from a defendant's litigation activities would not subject all *counterclaims* to a special motion to strike. It reasoned that "[o]nly those cross-complaints alleging a cause of action *arising* from the plaintiff's act of filing the complaint against the defendant and the subsequent litigation would potentially qualify as a SLAPP action." (*Church of Scientology, supra*, 42 Cal.App.4th at p. 651.) By contrast, it observed, "[a] compulsory cross-complaint on a 'related cause of action' against the plaintiff [citation] would rarely, if ever, qualify as a SLAPP suit arising from petition activity" because "[b]y definition" such a cause of action must arise out of the same underlying transaction or events as alleged in the complaint, whereas a SLAPP suit based on petitioning activity "arises out of the litigation process itself." (*Ibid.*) The court did not say that if a cross-complaint alleges claims based on protected activity *other than* the filing of the complaint it cannot be subject to an anti-SLAPP motion. It simply recognized that "[a]lthough a cross-complaint may be subject to a section 425.16 motion, not all cross-complaints would qualify as SLAPP suits." (*Ibid.*)

Likewise, the question in *Joslin* was *when* cross-claims may be deemed to be based on the filing of the complaint itself (and thus based on the plaintiff's petitioning activity), not *whether* a retaliatory cross-claim of that nature is the only situation in which a cross-claim may be subject to an anti-SLAPP motion. *Joslin* held that a homeowner's cross-complaint alleging claims based on decisions by its homeowner's association that prevented him from renting out his home did not arise from protected activity and rejected

the association's argument that it did arise from protected activity simply because it was filed in response to the association filing its complaint. (See *Joslin*, *supra*, 49 Cal.App.5th at pp. 368-369, 373-374.) *Joslin* explained that the fact that the homeowner's complaint triggered the cross-claims did not mean that the causes of action themselves arose from protected activity. (*Id.* at p. 373.) The homeowner was challenging the association's underlying actions not the filing of the complaint, and so it did not arise from protected activity. (See *id.* at pp. 368-369, 374.) It was in that context *Joslin* observed that “[a] cross-complaint may be subject to anti-SLAPP motion based on the plaintiff's right to petition” but “such a cross-complaint must allege a cause of action arising from the plaintiff's act of filing the complaint itself.” (*Id.* at pp. 371-372.) The court did not say that all cross-complaints are outside the scope of the anti-SLAPP statute unless they arise from filing the complaint. Indeed, in *Joslin*, the only claim of protected activity was the filing of the complaint itself.

Diane cites no authority holding that cross-claims that *are* based upon allegations of protected activity other than the plaintiff's initiation of suit are not subject to section 425.16. Here, Neil is asserting that her cross-claims are based on multiple types of protected activity listed in section 425.16 (see § 425.16, subd. (e)). Diane offers no reason the literal terms of the statute do not apply to those contentions. On the contrary, the statute “shall be construed broadly” (*id.*, subd. (a)), applies to “[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 federal or state constitution (*id.*, subd. (b)(1), *italics added*) and expressly applies to cross-complaints (see *id.*, subd. (h) [“For purposes of this section, ‘complaint’ includes ‘cross-complaint’ . . . ‘plaintiff’ includes ‘cross-complainant’ . . . , and ‘defendant’

includes ‘cross-defendant . . .’”].) Accordingly, we reject her argument that the trial court erred by entertaining Neil’s motion at all.

Diane also argues that her two interference causes of action, which are based on Neal’s threats of suing her insurance carrier and then doing so, should not have been struck because she adduced evidence that the lawsuit against Safeco was not brought in good faith. Construing this as an argument that she carried her burden under prong two of the anti-SLAPP framework to demonstrate those claims had minimal merit, we find this argument too undeveloped to consider.

Diane cites the principle that “for a prelitigation statement to be privileged under the litigation privilege, it must relate to litigation that is contemplated in good faith and under serious consideration.” (*Pech v. Doniger* (2022) 75 Cal.App.5th 443, 465.) As explained in authority cited by Neil, this standard does not examine a person’s subjective motivations for threatening litigation. It is irrelevant whether litigation is threatened for a legitimate purpose—that is, without malice (meaning, an intent to vex, annoy or injure). (See *Aronson v. Kinsella* (1997) 58 Cal.App.4th 254, 261-266.) “[I]f the statement is made with a good faith belief in a legally viable claim and in serious contemplation of litigation, then the statement is sufficiently connected to litigation and will be protected by the litigation privilege. The privilege then applied is absolute.’” (*Id.* at p. 266.) Diane also cites the principle that, “[w]hile not dispositive, whether a lawsuit was ultimately brought is relevant to the determination of whether one was contemplated in good faith at the time of the [threat of litigation].” (*Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 683.) Here, Diane asserts she introduced sufficient evidence to meet this standard because she introduced evidence that there was no factual basis for Neil’s threatened lawsuit against Safeco. That is, she

introduced evidence the carrier had admitted its mistake and was in the process of fixing it when Neil threatened it with suit.

Assuming without deciding that such evidence sufficed (see *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1251 (“[w]hether a prelitigation communication relates to litigation that is contemplated in good faith and under serious consideration is an issue of fact”)), the problem with Diane’s analysis is that it is limited to case law addressing how the litigation privilege applies to Neil’s *threats* of litigation against Safeco. Diane does not address the viability of her interference claims insofar as they are based Neil’s *actually filing suit* against Safeco. The trial court ruled that “[t]he filing of the litigation is absolutely privileged and prefiling threats are covered by the privilege as the Court finds that the filing of the litigation indicates that the threats were not idle but made with the intent to file the litigation. [Citation.] Litigation privilege thus applies, and the privilege is absolute. [Citation.] Thus, Diane cannot establish the probable validity of these causes of action.” (Italics added.) Because we presume the court correctly ruled that the filing of the lawsuit itself is absolutely “privileged” and cannot be the basis of an interference claim, Diane has not demonstrated it erred in granting Neil’s motion to strike the two interference causes of action.

III.

Appellate Attorney Fees

Finally, both parties ask for an award of attorney fees on appeal pursuant to section 425.16, which states in relevant part: “in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant’s attorney’s fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to

cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5." (Code Civ. Proc., § 425.16, subd. (c)(1).)

We deny both requests. Neil claims them as a defendant prevailing on an anti-SLAPP motion on appeal (see *Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1499), but we are affirming the trial court's ruling in full, and he has made no effort to demonstrate that he prevailed solely by striking two of eleven causes of action. Diane claims them on the ground Neil's motion was "frivolous or . . . solely intended to cause unnecessary delay," but she has made no attempt to show his appellate arguments meet the standard for imposing sanctions pursuant to section 128.5. We decline to reach out ourselves to decide either issue.

DISPOSITION

The order granting in part and denying in part the anti-SLAPP motion is affirmed. The parties shall bear their respective appellate costs.

STEWART, P. J.

We concur.

RICHMAN, J.

DESAUTELS, J.

Goodhue v. Goodhue (A169395)