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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION TWO

IN CHUN LEE,
Plaintiff and Appellant,

vs.

NOUROLLAH ELGHANAYAN,
Defendant and Respondent.

APPEAL FROM THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
IRVING S. FEFFER, JUDGE • BC275388

RESPONDENT'S BRIEF

[SUBMITTED CONCURRENTLY WITH MOTION TO AUGMENT AND SEPARATELY BOUND AUGMENTED CLERK'S TRANSCRIPT]

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INTRODUCTION

Plaintiff In Chun Lee once ran a restaurant in the penthouse of the Hollywood Panorama Tower pursuant to his sublease with Samson Marian. In December 2001, an electrical fire led to the evacuation of the Tower. The Los Angeles Fire Department then refused to allow any tenants to return to the Tower to operate their businesses.

In June 2002, Lee brought this action seeking damages for the harm Lee allegedly suffered when he was unable to reopen his penthouse restaurant. In doing so, he named as a defendant Nourollah Elghanayan—who is now more than 93-years old, in failing health, and

merely one of several individuals that owned stock in Hollywood Panorama Tower, Inc., the company which owned the Tower and leased the penthouse to Marian (who in turn subleased the penthouse to Lee).

Lee waited *four and a half years* to serve Elghanayan with any summons, complaint, or other trial court documents in this case, first serving Elghanayan with a summons and complaint (in particular, Lee's third amended complaint) in December 2006. In short, Lee did not bring Elghanayan into this lawsuit until nearly five years after Lee initiated this action.

Lee's third amended complaint asserted claims against Elghanayan for filing a lawsuit in Los Angeles in 2003 to confirm an arbitration award that allocated numerous properties among various family members to resolve a dispute arising out of nearly two decades of unsuccessful real estate ventures. Lee alleged that Elghanayan filed his action to confirm the arbitration award without filing a notice identifying that lawsuit as related to this case in violation of a former California Rule of Court that governed the procedure for notices of related cases. Lee maintains that, by acting to confirm the arbitration award, Elghanayan cut short the term of Lee's sublease with Marian and thus reduced the amount of money Lee believes he was entitled to recover after Lee could not reopen his penthouse restaurant.

Elghanayan moved to strike Lee's claims against him as a strategic lawsuit against public participation (anti-SLAPP motion). The trial court granted the anti-SLAPP motion, striking Lee's claims. Lee

appealed. This court should affirm because the anti-SLAPP statute protects Elghanayan from causes of action that are based on his acts in furtherance of his constitutional right to petition—i.e., Elghanayan's filing of a lawsuit to confirm the New York arbitration award and his arbitration activities—and Lee did not (and cannot) show he has any probability of prevailing on his claims.

STATEMENT OF THE CASE

A. Lee subleases the penthouse in the Hollywood Panorama Tower for a restaurant.

In September 1996, Hollywood Panorama Tower, Inc. (HPT), owned the Hollywood Panorama Tower (Tower) located at 6290 Sunset Boulevard in Los Angeles. (See 3 CT 448, 453, 553.) According to Lee, several individuals owned stock in HPT, including Nourollah Elghanayan (Elghanayan), Moussa Mehdizadeh (Elghanayan's son-in-law), Roohallah Mehdizadeh (Moussa's older brother), and Samson Marian (Roohallah's son, also known as Samson Mehdizadeh). (See 3 CT 437, 448, 516, 538.)

Samson Marian (Marian) and his management company, Insight, were responsible for the day-to-day management and operation of the Tower. (See 3 CT 438-439, 442, 444.) In September 1996, HPT leased the Tower's penthouse to Marian. (See 1 CT 129; 3 CT 453, 518.) That same month, Marian subleased the penthouse to In Chun Lee (Lee) and

Kee Hee Enterprise (of which Lee was the president) until October 2006, although the sublease provided that its term could end before then if, for example, certain Tower premises were to suffer particular damage. (See 1 CT 116, 119-120; 3 CT 453, 533.) The sublease allowed Lee and Kee Hee to operate a restaurant in the penthouse, and was "subject and subordinate" to Marian's master lease with HPT. (See 1 CT 116, 129; 3 CT 439, 533.)

B. An electrical fire results in the evacuation of the Tower.

On December 6, 2001, two transformers in the basement of the Tower exploded and began an electrical fire. (See 3 CT 440, 445, 546; Augmented Clerk's Transcript (ACT) 23.) As a result, all of the Tower's tenants were evacuated. (See 3 CT 445.) The Los Angeles Fire Department then refused to allow any tenants to return to the Tower to reopen their businesses. (See AOB 4; 2 CT 367; 3 CT 440, 446.)

C. Lee files this lawsuit. However, Lee does not serve Elghanayan with a summons, complaint, or other trial court documents.

On June 7, 2002, Lee and Kee Hee filed this action against Marian, Insight, HPT, Roohallah, and Elghanayan, among others. (See 1 CT 11; 3 CT 446.) On September 25, 2002, Lee and Kee Hee filed a first amended complaint. (See 1 CT 11; ACT 19.) In doing so, Lee and

Kee Hee asserted contract and tort claims against Marian and Insight, alleging they (1) failed to repair, operate, maintain, manage, and monitor the Tower and (2) misrepresented that they would maintain the Tower. (ACT 23-29.) Lee and Kee Hee also brought claims against, among others, HPT, Roohallah Mehdizadeh, and Elghanayan, alleging they possessed an ownership interest in the Tower and failed to repair, manage, maintain, and operate the Tower. (See ACT 22, 25-27, 29-30.) Finally, Lee and Kee Hee asserted a cause of action against all defendants under Business and Professions Code section 17200, alleging their conduct constituted unfair and deceptive business practices. (See ACT 30-31.) Lee and Kee Hee sought damages and restitution for the harm they allegedly suffered when their penthouse restaurant did not reopen. (See ACT 23-32.) They did not seek any specific contractual performance. (See ACT 20-32.)[1/]

While Lee and Kee Hee named Elghanayan in both the initial and first amended complaints, there is no evidence they served Elghanayan with a summons, complaint, or other trial court documents in this case until December 2006. (See ACT 1-10 [the plaintiffs' proofs of service for the summons and initial complaint, none of which list Elghanayan], 33 [proof of service for the plaintiffs' first amended complaint, serving only counsel for HPT and "Rohollah" Mehdizadeh], 76-77 [December 2006 proof of service for summons and third amended

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1/ Lee's now-operative third amended complaint no longer contends that Elghanayan (1) owed any duty to repair, maintain, manage, operate, or monitor the Tower or (2) violated Business and Professions Code section 17200. (See 3 CT 437-455.)

complaint]; 1 CT 83; 2 CT 217, 236, 380 [plaintiffs' proofs of service for other documents filed with the trial court in this case, not one of which lists service on Elghanayan]; see also ACT 17-18, 42-43, 46-47, 51-52, 56-57, 62-63, 65-66, 70-71, 74-75 [proofs of service for documents filed with the trial court in this case by other defendants, cross-defendants, or proposed defendants, not one of which list service on Elghanayan]; 1 CT 207; 2 CT 222, 359, 392 [same]; accord, 3 CT 475.) Accordingly, Lee and Kee Hee did not bring Elghanayan into this lawsuit until nearly five years after they initiated this action.

D. Elghanayan is involved in an arbitration of a family dispute over numerous real estate ventures.

For nearly two decades, Elghanayan was involved in various real estate investments with his daughter Mahnaz Mehdizadeh (Mahnaz), his son-in-law Moussa Mehdizadeh (Moussa), Roohallah (Moussa's brother), and Marian (Roohallah's son). (See 1 CT 162-163; 3 CT 516, 538.) Poor financial performance led to heightened family tensions. (See 1 CT 164.) Accordingly, on October 23, 2002, Elghanayan, Marian, Mahnaz, Moussa, and Roohallah executed a written arbitration agreement (1 CT 174; 3 CT 538), and three arbitrators (Aaron Seligson, Albert Monasebian, and Carmel Levy) were tasked with arranging for a fair and equitable termination of these ventures—including the allocation and distribution of various properties (see 1 CT 163-164, 174; 3 CT 535, 538).

The arbitrators issued an award (the New York arbitration award) resolving the distribution of various interests in nine different properties or entities. (1 CT 167-173, 176-177; 3 CT 535-537.) The arbitrators concluded that Marian owed Elghanayan at least $1,042,000 as a result of personal loans Elghanayan made to Marian and the arbitrators' award primarily directed Marian to transfer his interests in numerous properties to Elghanayan, Mahnaz, and Moussa. (See 1 CT 166, 168-171.) As part of this distribution, the arbitration award ordered Marian to convey his interest in HPT to Elghanayan, Mahnaz, and Moussa and determined that Marian's "restaurant lease in the fire damaged and vacant" Tower was "deemed cancelled . . . ." (1 CT 169-171; 3 CT 536-537.)

E. The trial court stays this action after the Tower's tenants commence a bankruptcy proceeding against HPT.

On July 2, 2003, various Tower tenants (but not Lee) initiated an involuntary bankruptcy proceeding against HPT. (See AOB 5; 3 CT 447.) The trial court here, upon learning of the pending bankruptcy action, stayed this case on July 9, 2003. (See 1 CT 25, 34-36, 42; 3 CT 448.)

F. A California trial court confirms the New York arbitration award.

In October 2003, Elghanayan, Mahnaz, and Moussa—represented by David Van Etten and George Rosenstock of Van Etten Suzumoto & Becket LLP (the Van Etten firm)—petitioned a California trial court to confirm the New York arbitration award in *Elghanayan v. Mehdizadeh* (Los Angeles County Case Number BS 086157) (the Arbitration Confirmation Lawsuit). (See AOB 9; 1 CT 179-180; 3 CT 449, 541-542.) The Van Etten firm did not file a notice identifying Lee's case here as a proceeding allegedly related to the Arbitration Confirmation Lawsuit. (See AOB 18; 3 CT 449.) On January 6, 2004, the court filed a judgment confirming the arbitration award. (See AOB 9; 1 CT 179-182; 3 CT 541-544.)

G. Lee initiates an adversary proceeding against HPT in the bankruptcy court, which dismisses his case.

On March 10, 2004, Lee and Kee Hee brought an action, known as an adversary proceeding, seeking declaratory and injunctive relief against HPT in HPT's bankruptcy case. (See 3 CT 450, 453, 517, 545-549.) Lee did so to prevent HPT from "terminating [Lee's] sublease agreement by declaring that [HPT's] property was totally destroyed." (AOB 9; see also 3 CT 545-549.)

HPT, represented by Daniel Goodkin, Susan Germaise, and Andrew Khansari of the Van Etten firm in Lee's adversary bankruptcy proceeding, moved to dismiss these injunctive and declaratory relief claims. (3 CT 517, 550.) In July 2004, the bankruptcy court granted HPT's motion on the grounds that: (1) the sublease between Marian, Lee, and Kee Hee "was terminated by operation of law pursuant to a confirmed arbitration award, which terminated the master lease as between HPT and Samson Marian," and Lee and Kee Hee "no longer ha[d] a right to possession" of their subleased premises; (2) Lee and Kee Hee "lacked standing . . . under the Master Lease" to pursue the relief they sought because "no privity of contract exists between" them and HPT; and (3) injunctive relief could not be "alleged as a stand alone cause of action." (3 CT 517-518.)

Lee contends that he first learned of the New York arbitration award and Arbitration Confirmation Lawsuit on April 12, 2004, when HPT moved to dismiss Lee's adversary bankruptcy action. (See AOB 9-10; 3 CT 453.) Lee asserts that the confirmation of the New York arbitration award was related to Lee's case here and that Elghanayan violated former rule 804 of the California Rules of Court by not filing a notice of related cases. (See AOB 18, 22.) However, Lee did not address this alleged violation with the trial court shortly upon learning of the New York arbitration award or the Arbitration Confirmation Lawsuit in April 2004—despite the fact that Lee was able to file materials with the trial court after the court stayed the case in July 2003 (see 1 CT 37-41 [substitution of counsel filed by Lee in April 2005], 44-

54 [ex parte application filed by Lee in May 2005]; see also ACT 64-66 [notice filed in this case in 2004]). For example, Lee did not seek sanctions under former rule 227 (renumbered as rule 2.30 as of January 1, 2007) for the alleged violation of a rule of court. (See 1 CT 2-14.)

H. The trial court lifts its 2003 stay in this case. The court grants Lee leave to file a third amended complaint. Four years after commencing this lawsuit, Lee finally serves Elghanayan with a complaint asserting claims against Elghanayan for his litigation activity.

In May 2005, Lee and Kee Hee asked the trial court to lift its July 2003 stay in this case so that they could proceed against defendants other than HPT. (See 1 CT 44-46.) The trial court lifted the stay on January 25, 2006. (1 CT 65; 3 CT 448.)

On August 31, 2006—after two unsuccessful attempts to amend their first amended complaint (see 2 CT 219-220, 360; RT 11-12, 29-31)—the trial court granted Lee and Kee Hee leave to file a third amended complaint (TAC) (RT 42-43).[2/] However, shortly thereafter,

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2/ Lee never filed a second amended complaint. Since Lee's proposed second amended complaint improperly included certain defendants in several claims, the trial court ordered Lee to file a corrected third amended complaint instead. (See RT 40-43.)

Kee Hee dismissed its claims against all defendants with prejudice, leaving Lee as the only remaining plaintiff. (See AOB 1; 3 CT 417-418.) Nearly two months later, Lee filed his TAC. (3 CT 435.)

The TAC asserted three causes of action against Elghanayan, Moussa, Roohallah, and HPT, among others: the seventh cause of action for fraudulent conveyance, the eighth cause of action for conspiracy to interfere with and interference with contract, and the ninth cause of action for conspiracy to interfere with and interference with prospective economic advantage. (3 CT 445-455.) These three causes of action alleged that these defendants acted wrongfully by "entering into" the New York arbitration and filing the Arbitration Confirmation Lawsuit. (See 3 CT 450-455; see also AOB 13.)

Subsequently, in December 2006—four and a half years after filing his initial complaint on June 7, 2002 (1 CT 11; 3 CT 446)—Lee finally served Elghanayan with a summons and complaint (ACT 76-77). Having waited nearly five years to bring Elghanayan into this lawsuit, Lee now insisted "time" was "of the essence" (3 CT 430) because his earlier settlement discussions with HPT, undertaken shortly after the trial court granted him leave to file the TAC, had broken down and Lee needed to file the TAC and serve it on Elghanayan so that he could try to force Elghanayan to attend a mediation (see 3 CT 430; AOB 2).

I. Elghanayan moves to strike Lee's claims against him on the ground they are a SLAPP lawsuit. Lee withdraws one of his three causes of action against Elghanayan. The trial court grants Elghanayan's anti-SLAPP motion.

After Lee brought Elghanayan into this lawsuit by serving him with the summons and TAC, Elghanayan demurred to Lee's three causes of action. (3 CT 463-486.) Elghanayan also filed an anti-SLAPP motion to strike those claims on the ground that they arose from activities protected by the anti-SLAPP statute (i.e., Elghanayan's acts in furtherance of his right of petition). (3 CT 489-497.) In doing so, Elghanayan pointed out that Lee had no probability of prevailing on his claims, both for the reasons set out in the anti-SLAPP motion and those discussed in the demurrer (which the anti-SLAPP motion incorporated by reference). (See *ibid*.) Thus, for example, Elghanayan explained that Lee's claims seeking to impose liability for Elghanayan's litigation activities were barred by both the litigation privilege and the *Noerr-Pennington* doctrine and that Lee could not satisfy the elements of any of his claims. (See 3 CT 474-476, 478-485, 496, 583-584, 599-603, 605-606.)

In opposing the demurrer and at the hearing on the anti-SLAPP motion, Lee withdrew his seventh cause of action against Elghanayan for fraudulent conveyance. (See RT 47.)

The trial court granted Elghanayan's anti-SLAPP motion, holding that Lee's claims against Elghanayan arose from activities

protected by the anti-SLAPP statute and that Lee had not shown he had any probability of prevailing on the merits of his claims. (See 3 CT 614; RT 48, 50-51.) Lee appealed. (3 CT 616.)

STANDARD OF REVIEW

This court reviews an order granting an anti-SLAPP motion "'de novo.'" (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flatley*).) Such orders are affirmed "if [they are] correct on any legal ground, whether or not the trial court relied on that ground." (*Walker v. Kiousis* (2001) 93 Cal.App.4th 1432, 1439.)

LEGAL ARGUMENT

I.

LEE'S CLAIMS AGAINST ELGHANAYAN ARE SUBJECT TO THE ANTI-SLAPP STATUTE BECAUSE THEY ARISE FROM ELGHANAYAN'S ACTIVITIES IN FURTHERANCE OF HIS RIGHT OF PETITION.

A. The anti-SLAPP statute applies to claims arising from a defendant's acts in furtherance of his right of petition.

California's anti-SLAPP statute, Code of Civil Procedure section 425.16, provides that a cause of action "arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue" is subject to a special motion to strike unless the plaintiff establishes a probability of prevailing on the claim. (Code Civ. Proc., § 425.16, subd. (b)(1).) The critical question in determining if the anti-SLAPP statute applies "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." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 (*Cotati*).)[3/]

3/ In the trial court, Lee appeared to argue that the anti-SLAPP statute applies only to claims that chill the right to free speech or petition. (RT 57.) He is wrong. A defendant need not "'demonstrate that the plaintiff's subjective intent was to chill the exercise of

(continued...)

Activities are protected by the anti-SLAPP statute if they "'fit[] one of the categories spelled out in section 425.16, subdivision (e) . . . .'" (*Cotati*, *supra*, 29 Cal.4th at p. 78.) As relevant here, that subdivision protects activities that include: "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; [] 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; . . . or 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." (Code Civ. Proc., § 425.16, subd. (e).) Hence, the anti-SLAPP statute protects conduct as well as communications. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056 (*Rusheen*) [the anti-SLAPP statute applies to "communicative conduct"]; *Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537 (*Kolar*) [the anti-SLAPP statute protects "conduct that relates to . . . litigation"]; see also *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 672 (*Peregrine*).)

3/ (...continued)
constitutional speech or p[e]tition rights, or that the action had the effect of chilling such rights.'" (*Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050, 1062; see also *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*).)

B. Lee challenges Elghanayan's acts in furtherance of his right of petition by seeking to impose liability for Elghanayan's filing of a lawsuit to confirm the New York arbitration award.

"[T]he filing . . . and prosecution of a civil action" is communicative conduct protected by the anti-SLAPP statute. (*Rusheen*, *supra*, 37 Cal.4th at p. 1056; see also *Navellier*, *supra*, 29 Cal.4th at p. 90 ["The constitutional right of petition [protected by the anti-SLAPP statute] encompasses '"'the basic act of filing litigation'"'"]; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 (*Briggs*) [same].)

As Lee acknowledges, all of his claims against Elghanayan are based on Elghanayan's filing of a petition to confirm the New York arbitration award in the Arbitration Confirmation Lawsuit. (See AOB 13 ["'[D]efendants fail to grasp the essence of plaintiff's complaint. . . . [¶] [It is] about his subsequent filing of the Petition [to confirm the award] in October 2003 and the Hearing for the Judgment Confirming the New York Award . . ."]; 3 CT 508 [same], 510 ["[I]t is the subsequent filing of the Petition and Hearing for a Judgment Confirming the New York Award that is . . . at issue here"]; RT 54 [Lee's counsel explaining that the gravamen of Lee's claims is that Elghanayan filed the Arbitration Confirmation Lawsuit]; accord, 3 CT 450-451, 453, 455.) A petition to confirm an arbitration award "is in the

nature of a complaint in a civil action" and commences the action. (*Walter v. National Indem. Co.* (1970) 3 Cal.App.3d 630, 634 (*Walter*).)

Since Lee's claims are based on the "filing" of the Arbitration Confirmation Lawsuit (AOB 13), the trial court properly found that Lee's claims against Elghanayn were subject to the anti-SLAPP statute. We now explain why Lee is wrong to argue that a narrow exception to the anti-SLAPP statute for illegal activities applies here.

C. Elghanayan's filing of the Arbitration Confirmation Lawsuit does not fall within the narrowly construed illegality exception to the anti-SLAPP statute.

1. To invoke the illegality exception, a plaintiff must conclusively demonstrate that a protected activity is illegal as a matter of law.

Lee contends that Elghanayan's filing of the Arbitration Confirmation Lawsuit was "illegal as a matter of law" and thus falls outside the protection of the anti-SLAPP statute because Elghanayan brought his lawsuit without filing a notice of related cases in alleged violation of then-operative former rule 804 of the California Rules of Court. (AOB 17-22.) "Mere allegations that [a] defendant[] acted illegally, however, do not render the anti-SLAPP statute inapplicable." (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1245-1246 (*Huntingdon*).) The anti-

SLAPP statute applies unless the "'defendant concedes, or *the evidence conclusively establishes*, that the assertedly protected speech or petition activity was illegal as a matter of law.'" (*Birkner v. Lam* (2007) 156 Cal.App.4th 275, 285, italics added.) Where, as here, a defendant does not concede he acted illegally, Lee bears the burden of demonstrating that petitioning activity was illegal as a matter of law. (See *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1367 (*Paul for Council*), disapproved on another ground by *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5 (*Equilon*).)

2. Elghanayan did not illegally file the Arbitration Confirmation Lawsuit because a party need not file a notice of related cases to commence a lawsuit.

To file a lawsuit, a party need only file a complaint. (See *Safeco Surplus Lines Co. v. Employer's Reinsurance Corp.* (1992) 11 Cal.App.4th 1403, 1408 ["'the "bringing" of a lawsuit . . . *only requires the filing of a complaint*'"]; *Employers Reinurance Corp. v. Phoenix Ins. Co.* (1986) 186 Cal.App.3d 545, 555 [same]; see also Code Civ. Proc., §§ 350, 411.10].) Accordingly, since a petition to confirm an arbitration award is "in the nature of a complaint," the filing of such a petition without more "commence[s] the action for confirmation of the arbitration award." (*Walter, supra*, 3 Cal.App.3d at p. 634.)

When Elghanayan filed the Arbitration Confirmation Lawsuit in October 2003 (AOB 9), former rule 804 provided that, "[w]henever counsel in a civil action knows or learns that the action or proceeding is related to another action or proceeding pending in any state or federal court in California, counsel shall promptly file and serve a Notice of Related Case" (former Cal. Rules of Court, rule 804(a)). Former rule 804 did not condition the filing of a lawsuit on the submission of a notice of related cases or invalidate the filing of a civil action where an attorney did not submit this notice. (See former Cal. Rules of Court, rule 804(a).) Lee acknowledges that Elghanayan filed a petition to confirm the New York arbitration award (AOB 9), and this petitioning activity sufficed to properly commence the Arbitration Confirmation Lawsuit. Thus, Lee errs when he contends Elghanayan illegally filed that lawsuit.

In any event, claims like those brought by Lee "'arising from a defendant's alleged improper filing of a lawsuit'" are subject to the anti-SLAPP statute. (*Mattel, Inc. v. Luce, Forward, Hamilton & Scripps* (2002) 99 Cal.App.4th 1179, 1188 (*Mattel*); *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087-1088 (*Chavez*).)

3. The failure to follow a court rule is not the type of activity that falls within the scope of the illegality exception to the anti-SLAPP statute.

A defendant's "protected speech or petitioning activity" will be found illegal as a matter of law only in "rare cases." (*Flatley*, *supra*, 39 Cal.4th at p. 320; see also *id.* at p. 315 ["protected activity could be found to be illegal as a matter of law" in "narrow circumstance[s]"].) Significantly, California courts have applied the illegality exception to the anti-SLAPP statute only under exceptional circumstances far different than those alleged here. (See, e.g., *id.* at pp. 326-333 [act constituting extortion in violation of the Penal Code was unprotected by the anti-SLAPP statute]; *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th 1284, 1289-1291, 1296 [actions of protestors who broke windows, vandalized cars, set off ear-piercing alarms in private yards, left excrement on doorsteps, and published personal information about employees and their families were not protected by the anti-SLAPP statute]; *Paul for Council*, *supra*, 85 Cal.App.4th at pp. 1363, 1365-1367 [the anti-SLAPP statute did not apply where defendants conceded their campaign finance activity was illegal money laundering]; *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 820, disapproved on another ground by *Equilon*, *supra*, 29 Cal.4th at p. 68, fn. 5 [the anti-SLAPP statute would not protect arson committed as a political protest].)

In sharp contrast, violating a court rule (like former rule 804) is far different than engaging in extortion, money laundering, violence, arson, or extremely abusive harassment. Petitioning activities do not fall outside the anti-SLAPP statute where, as here, they involve an alleged failure to comply with a legal procedure. (See, e.g., *Briggs*, *supra*, 19 Cal.4th at p. 1115 [claims arose from activities protected by the anti-SLAPP statute where they were based in part on a defendant's "failure to comply with a deposition subpoena" in a civil lawsuit]; *Miller v. Filter* (2007) 150 Cal.App.4th 652, 659, 661-662 [defendants who prosecuted an action as deputy district attorneys did not act illegally and were not "undeserving of anti-SLAPP statute protection simply because" the district attorney neglected to file their written appointments with the county clerk as required by statute].) *Ludwig v. Superior Court* (1993) 37 Cal.App.4th 8, 18-20 (*Ludwig*) [defendant's petitioning activities were protected by the anti-SLAPP statute even where he refused to comply with discovery requests].)[4/]

Cases applying California's litigation privilege further demonstrate that Elghanayan's filing of the Arbitration Confirmation Lawsuit is protected by the anti-SLAPP statute because the anti-SLAPP

4/ Lee cites *Cotati* and *Paul v. Friedman* (2002) 95 Cal.App.4th 853 (*Paul*) for the unremarkable proposition that the anti-SLAPP statute does not apply to all activities. (See AOB 11-13.) *Cotati* and *Paul* confirm that acts in furtherance of petitioning activities are protected by the anti-SLAPP statute (see *Cotati*, *supra*, 29 Cal.4th at pp. 73, 76-78; *Paul*, at p. 862), and do not address whether the alleged violation of a rule of court is illegal as a matter of law.

statute generally applies to communications and conduct protected by the litigation privilege. (See *Briggs*, *supra*, 19 Cal.4th at p. 1115 [activities protected by litigation privilege "'are equally entitled to the benefits of'" the anti-SLAPP statute]; *Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 482, 489 ["litigation privilege clearly 'informs interpretation of the "arising from" prong of the anti-SLAPP statute'"]; *Gallanis-Politis v. Medina* (2007) 152 Cal.App.4th 600, 617 (*Gallanis*) ["congruity [exists] between protected activity within the meaning of the anti-SLAPP statute and the communicative conduct that is protected by the litigation privilege"]; see also *Flatley*, *supra*, 39 Cal.4th at pp. 322-325 [scope of the anti-SLAPP statute and litigation privilege are not "identical in every respect"—and thus the anti-SLAPP statute, unlike the privilege, does not protect illegal acts—but the California Supreme Court and "Court of Appeal have looked to the litigation privilege as an aid in construing the scope of" the anti-SLAPP statute].)

"[N]o communication . . . is more clearly protected by the litigation privilege than the filing of a legal action." (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1249; see also *Rusheen*, *supra*, 37 Cal.4th at p. 1058 [litigation privilege protects "filing of pleadings in the litigation"].) This protection bars claims that attack a person for filing a lawsuit in violation of legal requirements or are premised on a person's failure to provide notice during litigation. (See, e.g., *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 917-921 (*Kashian*) [litigation privilege protects a party who files lawsuits in alleged violation of statute which prohibits certain misconduct]; *Pollock v.*

Superior Court (1991) 229 Cal.App.3d 26, 28-30 (*Pollock*) [litigation privilege protects omissions made during the course of litigation, such as a failure to notify];[5/] see also *Ludwig*, *supra*, 37 Cal.App.4th at pp. 18-20 [party's failure to perform discovery obligations could not be the subject of a tort claim]; *Agnew v. Parks* (1959) 172 Cal.App.2d 756, 765-766 (*Agnew*) [civil action could not be based on the concealment of evidence during trial, even though the Penal Code made concealing and withholding evidence a felony].)

This court should decline to expand the illegality exception beyond the rare cases contemplated by the California Supreme Court when it recognized the exception. (See *Flatley*, *supra*, 39 Cal.4th at pp. 315, 320.) To do otherwise would contravene the Legislature's intent "broadly to protect . . . direct petitioning of the government and petition-related" activities (*Briggs*, *supra*, 19 Cal.4th at p. 1120) because people could refrain from exercising their constitutional right to file

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5/ Lee contends *Pollock* is distinguishable because the court there applied the litigation privilege to protect an attorney's failure to notify where the failure did not violate a court rule. (See AOB 18-19.) Lee misconstrues the scope of *Pollock*, which determined that *all* omissions—like a failure to notify—made during the course of litigation were protected by the privilege. (See *Pollock*, *supra*, 229 Cal.App.3d at pp. 28-30.) Lee also argues that *Pollock* is distinguishable because the failure to notify there did not occur in a related case. (AOB 19.) However, Lee offers no legitimate rationale for why he believes the privilege should not protect an omission simply because it took place in a related case. There is no reason to afford any less protection to a failure to notify in a related case.

lawsuits for fear that some subsequent violation of a court rule will expose them to liability.

4. Elghanayan was not required to file a notice of related cases and thus did not violate former rule 804 of the California Rules of Court.

Elghanayan did not "illegally" file his Arbitration Confirmation Lawsuit for the additional reason that former rule 804 did not require Elghanayan to file a notice of related cases.

Former rule 804 of the California Rules of Court applied only to counsel rather than parties: Unlike rule 3.300 of the California Rules of Court, which went into effect on January 1, 2007 (Historical Notes, 23 pt. 1A West's Ann. Code, Rules (2006 ed.) foll. rule 3.300, p. 285) and now sets the procedure for when a "party" should file a notice of related cases (Cal. Rules of Court, rule 3.300), former rule 804—the operative rule in effect when the Arbitration Confirmation Lawsuit was filed in October 2003 (see AOB 9, 18)—exclusively governed whether "*counsel* in a civil action" should file a notice of related cases (former Cal. Rules of Court, rule 804(a), italics added; see also 4 Witkin, Cal. Procedure (4th ed. 1997) Pleadings § 336, p. 433).

Lee does not explain, let alone cite any legal authority to support, why he believes Elghanayan, rather than the Van Etten firm (which represented Elghanayan in the Arbitration Confirmation Lawsuit (see 3 CT 541)), owed any duty under former rule 804 to file a notice of

related cases notwithstanding that the former rule expressly addressed only the "[d]uty of [a] counsel" (former Cal. Rules of Court, rule 804(a), boldface omitted). Accordingly, Lee has waived the argument that former rule 804 could somehow apply to Elghanayan despite its plain language (*People v. Taylor* (2004) 119 Cal.App.4th 628, 644 (*Taylor*) ["[l]egal contentions unsupported by apposite authority are waived"]) and failed to show that the former rule imposed any duty to file a notice of related cases on a party like Elghanayan in the Arbitration Confirmation Lawsuit.

Lee's lawsuit here and the Arbitration Confirmation Lawsuit were not related cases: Under former rule 804, an action was "'related' to another when both: [¶] (1) involve[d] the same parties and [were] based on the same or similar claims; or [¶] (2) involve[d] the same property, transaction, or event; or [¶] (3) involve[d] substantially the same facts and the same questions of law." (Former Cal. Rules of Court, rule 804(b).)

The Arbitration Confirmation Lawsuit, filed in October 2003 (see AOB 9), was not related under any of these criteria to the claims in Lee's then-operative first amended complaint. The Arbitration Confirmation Lawsuit sought to confirm an arbitration award that resolved a family dispute arising out of nearly two decades of unsuccessful real estate ventures by allocating and redistributing various interests in many different properties and entities. (See 1 CT 162-172.) In contrast, the first amended complaint in this lawsuit sought damages and restitution for the harm Lee and Kee Hee

allegedly suffered when their restaurant business remained closed after an electrical fire led to the evacuation of the Tower. (See ACT 20-32.) Thus, these two lawsuits were not based on the same or similar claims, did not involve the same property, transaction, or event, and did not involve substantially the same facts and questions of law.

There is no evidence Elghanayan knew of Lee's lawsuit here: Even had Lee shown that former rule 804 applied to Elghanayan notwithstanding that it imposed a duty solely on "counsel," that rule calls for a notice of related cases only where a person "knows or learns that the action or proceeding is related to another action or proceeding . . . ." (Former Cal. Rules of Court, rule 804(a).) Lee has not established that Elghanayan knew or learned of the lawsuit here before or during the Arbitration Confirmation Lawsuit.

Lee brought Elghanayan into this case when Lee first served him with a summons and complaint in December 2006—about three years *after* Elghanayan filed the Arbitration Confirmation Lawsuit in October 2003 and a court confirmed the arbitration award in January 2004. (See *ante*, pp. 5-6, 8, 11.) There is no evidence in the record that Elghanayan knew or learned of Lee's lawsuit here before December 2006. Nonetheless, Lee assumes Elghanayan must have known of this case during the Arbitration Confirmation Lawsuit because Elghanayan owned HPT stock and HPT was a party here. (See AOB 20.) Lee never raised this argument in his opposition to the anti-SLAPP motion (see 3 CT 503-513), and has therefore waived it (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11 (*Newton*) ["issues raised for the first time on

appeal . . . are waived"]). Lee also waived this argument by not citing any legal authority to support his assertion that HPT's knowledge may be imputed to Elghanayan. (*Taylor*, *supra*, 119 Cal.App.4th at p. 644.)

In any event, Lee's argument is without merit. The mere connection between Elghanayan and HPT did not, as a matter of law, impute full knowledge of HPT's affairs to Elghanayan. (See *Berg v. King-Cola, Inc.* (1964) 227 Cal.App.2d 338, 340-341, 344-345 [holding that the mere fact plaintiff was a director and officer of a corporation did not impute that corporation's full knowledge to her].)

Lee also contends Elghanayan knew of the lawsuit here because the Van Etten firm represented both HPT in Lee's adversary bankruptcy proceeding and Elghanayan in the Arbitration Confirmation Lawsuit. (See AOB 20.) Again, however, Lee fails to cite any legal authority to support his legal assertion that the Van Etten Firm's knowledge can be imputed to Elghanayan and has therefore waived this argument. (See *Taylor*, *supra*, 119 Cal.App.4th at p. 644.)

Moreover, this argument is also without merit. First, the materials from the adversary bankruptcy proceeding that Lee filed with his opposition to the anti-SLAPP motion never mention the lawsuit here and do not indicate that the Van Etten firm knew anything about this case. (See 3 CT 517-518; accord, 3 CT 539-540, 545-553 [bankruptcy documents from 2004 that Lee submitted with his opposition to Elghanayan's demurrer do not mention Lee's lawsuit here or indicate the Van Etten firm knew about this case].) Indeed, Lee initiated his adversary bankruptcy proceeding in March 2004 and the

bankruptcy court dismissed Lee's claims there in July 2004 (see AOB 9-10; 3 CT 517-518)—all of which occurred *months after* the Van Etten firm filed Elghanayan's petition to confirm the New York arbitration award in October 2003 and the trial court in the Arbitration Confirmation Lawsuit filed a judgment on January 6, 2004 (see AOB 9; 3 CT 541).[6/] Lee cites no legal authority for how any knowledge the Van Etten firm supposedly learned about the case here between March and July 2004 (and Lee filed no evidence with his opposition to the anti-SLAPP motion to show the firm even possessed such knowledge) can be attributed back in time to Elghanayan so that Elghanayan would have known the same information during the Arbitration Confirmation Lawsuit between October 2003 and January 2004.

Second, an attorney's client can ordinarily be charged with constructive notice of what his attorney knew "'only where the knowledge of the attorney has been gained in the course of the particular transaction in which he has been employed by that [client].'"[7/] (*Zirbes v. Stratton* (1986) 187 Cal.App.3d 1407, 1413, quoting

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6/ Additionally, the lawyers from the Van Etten firm who represented Elghanayan in the Arbitration Confirmation Lawsuit were different from the Van Etten attorneys who represented HPT in the adversary bankruptcy proceeding. (See 3 CT 517, 541.)

7/ In fact, Lee does not argue and cites no legal authority to show that Elghanayan could have violated former rule 804 had he merely received constructive rather than actual notice of this case from the Van Etten firm, thereby waiving any argument that constructive notice sufficed to violate former rule 804. (See *Taylor*, *supra*, 119 Cal.App.4th

(continued...)

Otis v. Zeiss (1917) 175 Cal. 192, 195-196.) Lee provided no evidence that the Van Etten firm learned any knowledge about this case in the course of representing Elghanayan *in the Arbitration Confirmation Lawsuit*.[8/]

D. The anti-SLAPP statute would apply to Lee's claims even if they were based on the failure to file a notice of related cases because the failure to perform an action is protected by the anti-SLAPP statute.

In the course of arguing that the anti-SLAPP statute does not protect Elghanayan's petitioning activities, Lee contends that the *litigation privilege* does not apply where a party has failed to file a notice of related cases because, according to Lee, the failure to do so is non-communicative conduct. (See AOB 18.) We have shown above why Lee's claims against Elghanayan are subject to the anti-SLAPP statute.

7/ (...continued)
at p. 644; *Newton*, *supra*, 110 Cal.App.4th at p. 11.)

8/ Furthermore, even if whatever knowledge HPT or the Van Etten firm allegedly possessed about Lee's lawsuit here could somehow be imputed to Elghanayan notwithstanding California law to the contrary, the facts in this case would not justify such imputation: there is no evidence in the record that Elghanayan was even involved in the management or operation of the Tower (which should come as no surprise since Elghanayan is more than 93-years old, in failing health, and lives in New York, thousands of miles from the Tower (see 3 CT 437, 597; ACT 76; Lee's Motion for Expedited Appeal, p. 4, filed in December 2007)).

(See *ante*, pp. 16-29.) If Lee means to argue that his claims are based on Elghanayan's failure to perform an act and that a person's failure to act is not protected by the anti-SLAPP statute, he is wrong.[9/]

First, the anti-SLAPP statute applies as long as a cause of action alleges protected activities that are not incidental to the cause of action. (See *post*, pp. 39-40.) Here, Lee acknowledges that his claims are based on Elghanayan's "filing" of the Arbitration Confirmation Lawsuit. (AOB 13, 18.) As Lee has explained, none of what Elghanayan allegedly did "would have mattered" to Lee had Elghanayan not filed a lawsuit to confirm the New York arbitration award. (3 CT 508; see also RT 54.) Thus, Elghanayan's initiation of the Arbitration Confirmation Lawsuit is not incidental to Lee's claims. A party's filing of a lawsuit is affirmative petitioning activity protected by the anti-SLAPP statute. (See *ante*, p. 16.)

Second, even if Lee's claims were based on Elghanayan's failure to file a notice of related cases, the California Supreme Court and the Courts of Appeal have held that the failure to perform an action is an activity protected by the anti-SLAPP statute. (See, e.g., *Navellier*, *supra*, 29 Cal.4th at pp. 89-90 [fraud claim based on a defendant's failure to disclose information fell "squarely within the plain language of the anti-SLAPP statute"]; *Briggs*, *supra*, 19 Cal.4th at p. 1115 [claims based

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9/ If Lee means to argue that the anti-SLAPP statute does not apply to *any* conduct (see AOB 18), he is mistaken because the California Supreme Court and Courts of Appeal have held that the statute protects conduct (see *ante*, p. 15).

on a defendant's "alleged 'failure to comply with a deposition subpoena'" in a civil action were subject to the anti-SLAPP statute]; *Mattel*, *supra*, 99 Cal.App.4th at p. 1188 [alleged failure to properly file lawsuit is protected by the anti-SLAPP statute]; *Chavez*, *supra*, 94 Cal.App.4th at p. 1087 [same]; *Ludwig*, *supra*, 37 Cal.App.4th at pp. 18-20 [defendant's "failure to perform discovery obligations" was communicative conduct protected by the anti-SLAPP statute].)

Significantly, the litigation privilege bars claims that are based on a person's failure to provide notice during litigation. (*Pollock*, *supra*, 229 Cal.App.3d at pp. 28-30 [defendant's failure to notify the court of a settlement—like all omissions made during litigation—is protected by the litigation privilege]; see also *Moore v. Conliffe* (1994) 7 Cal.4th 634, 638-640 (*Moore*) [litigation privilege protects a witness who fails to disclose information during a deposition in an arbitration]; *Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1140, fn. 8 (*Lambert*) [litigation privilege protects a party's failure to explain the meaning of a term at an appraisal hearing]; *Ludwig*, *supra*, 37 Cal.App.4th at pp. 18-20 [defendant's failure to perform discovery obligations could not be the subject of a tort claim]; *Agnew*, *supra*, 172 Cal.App.2d at pp. 765-766 [civil action could not be based on the concealment of evidence during

trial].) This further confirms that the failure to file a notice of related cases is protected by the anti-SLAPP statute. (*See ante*, pp. 21-22.)[10/]

10/ While certain Courts of Appeal have decided that a client's claims against his attorney are not subject to the anti-SLAPP statute where the attorney failed to (1) protect the client's rights, (2) provide competent representation, or (3) maintain loyalty to the client, they have done so on the narrow ground that the statute does not apply to *malpractice* claims. (See, e.g., *Kolar*, *supra*, 145 Cal.App.4th at pp. 1539-1540; *Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179, 1181, 1189 (*Benasra*); *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 627 (*Jespersen*).) Cases like *Kolar, Benasra*, and *Jespersen* are distinguishable from this case because Lee has not brought any malpractice claims against Elghanayan. Rather, Lee contends that Elghanayan's attorneys did not file a notice of related cases as a *litigation tactic* on Elghanayan's behalf. (See AOB 20 [arguing that Elghanayan intentionally failed to file a notice of related cases because Elghanayan did not want Lee to know about the New York arbitration or the Arbitration Confirmation Lawsuit].) Litigation tactics, as conduct related to litigation, are protected by the anti-SLAPP statute. (See *Peregrine*, *supra*, 133 Cal.App.4th at pp. 670-672; see also *Rusheen*, *supra*, 37 Cal.4th at p. 1056 [anti-SLAPP statute protects "acts committed by attorneys in representing clients in litigation"]; *Wang v. Wal-Mart Real Estate Business Trust* (2007) 153 Cal.App.4th 790, 804 ["[a] classic example of protected petitioning activity would be the actions performed by counsel in conducting legal representation of a client in court . . ."]; *Kolar*, *supra*, 145 Cal.App.4th at p. 1537 [anti-SLAPP statute protects "conduct that relates to . . . litigation"].) Similarly, the litigation privilege bars tort claims based on such alleged litigation tactics. (See *Pollock*, *supra*, 229 Cal.App.3d at pp. 29-30.) Moreover, the approach in *Kolar*, *Benasra,* and *Jespersen* cannot be reconciled with the California Supreme Court's decisions in *Briggs* and *Navellier*, which recognize that the failure to perform an action is an activity protected by the anti-SLAPP statute. (See *Navellier*, *supra*, 29 Cal.4th at pp. 89-90; *Briggs*, *supra*, 19 Cal.4th at p. 1115.) Their overly cramped view of the (continued...)

E. The Arbitration Confirmation Lawsuit aside, the anti-SLAPP statute independently applies to protect Elghanayan's involvement in the New York arbitration.

1. Arbitration activities are acts in furtherance of the right of petition.

Lee contends that his claims against Elghanayan are also based on "[]arbitration[] actions in New York . . . ." (AOB 13.) Lee's TAC alleged that Elghanayan acted wrongfully by "enter[ing] into the New York arbitration." (See 3 CT 450, 452, 454.)

Elghanayan's involvement in the New York arbitration is protected by the anti-SLAPP statute. (*Freeman v. Schack* (2007) 154 Cal.App.4th 719, 730 ["[P]ursuit of arbitration proceedings is a protected activity . . ."]; *Kolar*, *supra*, 145 Cal.App.4th at p. 1538 [same]; see also *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 358 [initiation of arbitration is protected by the anti-SLAPP statute].)

Notably, in *Moore v. Conliffe*, the California Supreme Court held that activities undertaken "in the course of a private, contractual arbitration proceeding are protected by the litigation privilege." (*Moore*, *supra*, 7 Cal.4th at p. 638; see also *Ribas v. Clark* (1985) 38 Cal.3d

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10/ (...continued)
anti-SLAPP statue also contravenes the Legislature's express command "that courts 'broadly' construe the anti-SLAPP statute . . . ." (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199.)

355, 364 ["[A]n arbitration hearing falls within the scope of [the litigation] privilege because of its analogy to a judicial proceeding"].) The protection the California Supreme Court has extended to arbitration activities based on the litigation privilege confirms that the anti-SLAPP statute also protects a person's initiation of and participation in private, contractual arbitrations since the activities immunized by the litigation privilege "are equally entitled to the benefits of" the anti-SLAPP statute. (*Briggs*, *supra*, 19 Cal.4th at p. 1115; see also *ante*, pp. 21-22.)

2. The arbitration was properly conducted. Moreover, the anti-SLAPP statute protects arbitration activities even where the arbitration is held in an improper manner.

Lee argues that the anti-SLAPP statute should not apply to the New York arbitration because, according to Lee, the arbitrators were "family friends and business associates who had no training or background as arbitrators . . . ." (AOB 14.) Even if this were true, the anti-SLAPP statute would still protect Elghanayan's involvement in the arbitration.[11/]

11/ Lee's assertion about the arbitrators' relationships is based on a declaration Lee filed conclusorily describing the alleged relationships between Monasebian, Levy, and the arbitrating parties. (See 3 CT 513-514.) Lee's declaration never laid the foundation for how Lee (continued...)

"Arbitration . . . is a matter of contract . . . [¶] . . . [¶] [and] [t]here is no statutory requirement that the arbitrators appointed by the parties must be neutral or impartial." (*Tipton v. Systron Donner Corp.* (1979) 99 Cal.App.3d 501, 505.) "Nothing in the Arbitration Act prohibits parties to a contract of arbitration from selecting an arbitrator 'who by reason of relationship to a party or similar factor, can be expected to adopt something other than a "neutral" stance in determining disputes.'" (*Dinong v. Superior Court* (1981) 120 Cal.App.3d 300, 303.)[12/] Indeed, "where 'the arbitration agreement provides a method of appointing an arbitrator, such method shall be followed.'" (*Id.* at p. 302, quoting Code Civ. Proc., § 1281.6.) Thus, when arbitration agreements "give[] each party an unqualified right to nominate *anyone* as an arbitrator," California courts enforce those provisions. (See *id.* at pp. 302-303, italics added [trial court abused its discretion by disqualifying arbitrators on the ground they lacked impartiality since "[t]he contract between the

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11/ (...continued)
supposedly knew about those purported relationships and must be disregarded. (See *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26 ["[D]eclarations that lack foundation or personal knowledge, or that are . . . conclusory are to be disregarded"].) And Lee provided *no* evidence that Seligson was a family friend or business associate of the arbitrating parties. (See 3 CT 513-515.)

12/ The same is true under New York law. (See *Siegel v. Lewis* (1976) 40 N.Y.2d 687, 690 [389 N.Y.S.2d 800, 358 N.E.2d 484] ["'[I]f the parties so agree, the relationship of an arbitrator to the party selecting him or to the matters in dispute will not disqualify him' . . . [¶] . . . [Thus,] a fully known relationship between an arbitrator and a party . . . will not in and of it itself disqualify the designee"].)

parties . . . include[d] no requirement of neutrality or impartiality"].) And courts do so regardless of whether the designated arbitrators possess legal training. (See, e.g., *Gear v. Webster* (1968) 258 Cal.App.2d 57, 60, 63.)

Here, all the parties who participated in the New York arbitration did so pursuant to a written arbitration agreement. (1 CT 174; 3 CT 538.) This agreement provided that the arbitrators' decision could be submitted to a California court in Los Angeles for confirmation of the award, and the arbitration award sought to adhere to California law. (See 1 CT 173-174; 3 CT 538.) The agreement did not state that the designated arbitrators must be neutral or impartial, nor did it require the arbitrators to possess any particular training. (1 CT 174; 3 CT 538.) Rather, the arbitration agreement specifically designated Levy, Monasebian, and Seligson as the arbitrators and this procedure was followed since they served as the arbitrators and executed the arbitration award. (1 CT 172-173, 176-177.) Thus, Levy, Monasebian, and Seligson were proper arbitrators under the law.[13/]

13/ Lee also appears to attack the New York arbitration on the ground that the arbitrating parties were family members. (See AOB 14.) However, Lee cites no authority for the assertion that family members cannot resolve their disputes in a private, contractual arbitration, thereby waiving that argument. (See *Taylor*, *supra*, 119 Cal.App.4th at p. 644.) Moreover, his attack is without merit because California courts enforce private contractual arbitration agreements between family members. (See, e.g., *Larian v. Larian* (2004) 123 Cal.App.4th 751, 754, 756, 765-766 [directing trial court to compel brothers to arbitrate their dispute with each other in accordance with

(continued...)

Lee also contends the anti-SLAPP statute should not apply to the New York arbitration because the arbitration award there was supposedly prepared prior to the arbitration by the Van Etten firm rather than by the arbitrators. (See AOB 14-15.) This argument fails. First, the materials from the record which Lee cites to allege that the Van Etten firm prepared the award—i.e., Lee's own declaration, the declaration of his counsel, and the arbitration award itself (see AOB 7-8, 14-15)—never mention the Van Etten firm and do not indicate that firm played *any* role in the New York arbitration (see 1 CT 162-178; 2 CT 321-332; 3 CT 513-515). Accordingly, Lee's unsupported factual assertion about the Van Etten firm must be disregarded. (See *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 927 (*Stolman*) ["'[S]tatements of fact contained in the briefs which are not supported by the evidence in the record must be disregarded'"].)[14/] Second, Lee cites no legal authority to support his implicit legal contention that an arbitration award must be drafted by the arbitrators themselves (see AOB 14-15), thereby waiving this contention (see *Taylor*, *supra*, 119 Cal.App.4th at p. 644). Finally, Code of Civil Procedure section 1283.4

13/ (...continued)
their arbitration agreement].)

14/ For the same reason, Lee's unsupported assertion that the Van Etten firm "orchestrated" the New York arbitration (AOB 7, capitalization omitted) must be disregarded. Lee advances this factual contention in his "Statement of the Case," citing a single page from Elghanayan's anti-SLAPP motion. (AOB 7, capitalization omitted, citing 3 CT 491.) The cited page from Elghanayan's motion never mentions the Van Etten firm. (3 CT 491.)

simply requires that an arbitration award "be in writing and signed by the arbitrators . . . ." (Code Civ. Proc., § 1283.4.) The arbitrators complied with this procedure, signing a written arbitration award. (See 1 CT 172-173, 176-177.)[15/]

In any event, even had the parties to the New York arbitration engaged in an improperly conducted arbitration, their arbitration activities would still be protected by the anti-SLAPP statute. (Cf. *Mattel*, *supra*, 99 Cal.App.4th at p. 1188 [improper filing of a lawsuit is protected by the anti-SLAPP statute]; *Chavez*, *supra*, 94 Cal.App.4th at p. 1087 [same].)[16/]

15/ Relying on *Moore v. Shaw* (2004) 116 Cal.App.4th 182 (*Shaw*), Lee argues that the anti-SLAPP statute does not protect Elghanayan's arbitration activities because Elghanayan and his counsel supposedly drafted an arbitration award and this was a "wholly private matter." (AOB 15.) *Shaw* is inapposite because *Shaw* declined to apply the anti-SLAPP statute where a plaintiff's claims arose from an attorney's preparation of an agreement terminating a trust "well before the inception of any judicial proceedings." (*Shaw*, at pp. 187-188, 195-197.) Here, Lee produced no evidence the arbitration award was drafted long before the New York arbitration was contemplated. And even had the award been drafted before the arbitration, the award would clearly have been prepared in contemplation of arbitration since it sought to resolve an arbitration dispute. (See 1 CT 163-164, 166, 174.) Communications prepared in anticipation of the initiation of a protected activity are protected by the anti-SLAPP statute. (*Briggs*, *supra*, 19 Cal.4th at p. 1115.)

16/ Lee devotes nearly two pages of his opening brief to complaining exclusively about the alleged results of the New York arbitration. (See AOB 15-17.) However, Lee does not explain how these alleged results are relevant to the question of whether Elghanayan's arbitration (continued...)

F. At a minimum, Lee's claims against Elghanayan are mixed causes of action subject to the anti-SLAPP statute.

Even if this court were to conclude that some of the allegations in Lee's claims against Elghanayan did not implicate activities protected by the anti-SLAPP statute while other allegations against Elghanayan were based on protected acts, the anti-SLAPP statute would still apply to Lee's claims because "a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action.'" (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 308.)

"The apparently unanimous conclusion of published appellate cases is that 'where a cause of action alleges both protected and unprotected activity, the cause of action will be subject to section 425.16 unless the protected conduct is "*merely incidental*" to the unprotected conduct.' . . . '[I]f the allegations concerning protected activity are more

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16/ (...continued)
activities are protected by the anti-SLAPP statute. And while Lee asserts that Elghanayan took and kept a security deposit Lee apparently paid to Marian as part of his sublease (AOB 16-17), Lee provided no evidence that Elghanayan took Lee's deposit away from Marian or did not give the deposit back. Indeed, there is no evidence in the record that Elghanayan was even involved in the management or operation of the Tower. Thus, the outrageous accusation that *Elghanayan* took Lee's security deposit, for which there is no evidentiary support in the record, must be disregarded as well. (See *Stolman*, *supra*, 114 Cal.App.4th at p. 927.)

than 'merely incidental' or 'collateral,' the cause of action is subject to [an anti-SLAPP motion]." (*Peregrine*, *supra*, 133 Cal.App.4th at p. 672, italics added; *Huntingdon*, *supra*, 129 Cal.App.4th at p. 1245 [same].) Here, Lee correctly acknowledges that the filing of the Arbitration Confirmation Lawsuit and the New York arbitration were *not* incidental to one another, both because (1) the lawsuit could not have been brought had the New York arbitration not produced the award and (2) Lee maintains that the New York arbitration would not have mattered to him had Elghanayan not filed the Arbitration Confirmation Lawsuit. (See 3 CT 508 [none of what Elghanayan allegedly did "would have mattered" to Lee had Elghanayan not filed a lawsuit to confirm the New York arbitration award], 512 ["[The] events leading to the January 6, 2004 Judgment Confirming the New York Award . . . could not have occurred but for the New York [arbitration], and thus cannot be separated from defendant Elghanayan's . . . actions there"]; see also RT 54.)

II.

LEE CANNOT ESTABLISH A PROBABILITY OF SUCCESS FOR ANY OF HIS CLAIMS.

A. Lee bears the burden of demonstrating that there is a probability he would prevail on his claims.

Where, as here, the anti-SLAPP statute applies to a plaintiff's claims, the plaintiff bears the burden of establishing "a 'probability' of prevailing on" the merits of his claims. (*Kashian*, *supra*, 98 Cal.App.4th at p. 906.) To do so, a plaintiff "'"must provide the court with sufficient *evidence* to permit the court to determine whether 'there is a probability that the plaintiff will prevail on the claim.'"'" (*Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398 (*Traditional*).) Moreover, a plaintiff cannot show that he has a probability of prevailing where an affirmative defense would bar his claims. (See *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 477-479 (*Premier*); *Peregrine*, *supra*, 133 Cal.App.4th at p. 676 & fn. 11; *Traditional,* at pp. 398-399.)

B. Lee has waived the argument that he established a probability of prevailing on his two causes of action against Elghanayan.[17/]

In the second-to-last sentence of his opening brief, Lee argues for the first time in the brief that: "[I]t is appellant's position that the factual and legal rendition above is one and the same as that which he would cite to, in order to demonstrate that 'there is a probability of his prevailing on the merits.'" (AOB 22.) Lee has waived this argument because this single "conclusory statement at the end of [Lee's] opening brief does not preserve . . . for appeal" Lee's argument that he has established a probability of prevailing on his two causes of action against Elghanayan. (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [deeming appellant to have abandoned a challenge to an order granting an anti-SLAPP motion where the appellant merely stated he "'met his burden to show a prima [facie] case'" for his claims at the end of his opening brief].)

17/ Lee's TAC initially asserted a third claim against Elghanayan—the seventh cause of action for fraudulent conveyance. (3 CT 445-452.) However, this court need not examine whether Lee has established a probability of prevailing on that third claim because Lee withdrew the seventh cause of action against Elghanayan. (See RT 47; see also *ante*, p. 12.) Lee also never discusses the merits of his former fraudulent conveyance claim in his opening brief, thereby waiving any argument that Lee could prevail on it. (*Katelaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216, fn. 4 (*Katelaris*).)

C. Waiver aside, both of Lee's causes of action against Elghanayan are barred by the litigation privilege.

1. The litigation privilege provides absolute protection to communications and communicative conduct related to judicial proceedings and arbitrations as well as to noncommunicative acts necessarily related to the communicative conduct.

The litigation privilege, codified in Civil Code section 47, subdivision (b), provides litigants with absolute immunity from liability for all claims (other than those for malicious prosecution) which arise from communications or communicative conduct with some relation to judicial proceedings and quasi-judicial proceedings like private, contractual arbitrations. (See *Rusheen*, *supra*, 37 Cal.4th at pp. 1057-1058; *Moore*, *supra*, 7 Cal.4th at p. 658; *Lambert*, *supra*, 158 Cal.App.4th at p. 1140, fn. 8; *Gallanis*, *supra*, 152 Cal.App.4th at pp. 615-617; *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770; *Kashian*, *supra*, 98 Cal.App.4th at pp. 912-913, 915-916.) "[T]he key to determining whether the privilege applies is whether the injury allegedly resulted from an act that was communicative in its essential nature." (*Rusheen*, at p. 1058.) "[The] privilege [also] extends to noncommunicative acts that are necessarily related to the communicative conduct . . . ." (*Id.* at p. 1065.) "Any doubt about whether the privilege applies is resolved

in favor of applying it." (*Kashian*, at p. 913; *Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.)

2. Lee's claims against Elghanayan are based on Elghanayan's litigation activities and are thus barred by the litigation privilege.

As we explained above, Lee's two claims against Elghanayan for tortious interference with and conspiracy to interfere with a contract and prospective economic advantage are based on Elghanayan's filing of the Arbitration Confirmation Lawsuit, a communication clearly protected by the litigation privilege. (See *ante*, pp. 16-17, 22-23, 31-32.) Moreover, as also explained above, to the extent that Lee's claims against Elghanayan were based on Elghanayan's involvement in the New York arbitration, Elghanayan's arbitration activities were equally protected by the litigation privilege. (See *ante*, pp. 33-38).

The purpose of the litigation privilege "is to afford litigants and witnesses [citation] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 213.) Since "the evils inherent in permitting derivative tort actions based" on activities protected by the litigation privilege are "far more destructive to the administration of justice than an occasional 'unfair' result," courts disallow such derivative tort actions other than malicious prosecution claims. (*Id.* at pp. 213, 218.) Thus, the litigation privilege bars even tort actions based

on a litigant's criminal conduct, like perjury or subornation of perjury (see *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 960; *Doctors' Co. Ins. Services v. Superior Court* (1990) 225 Cal.App.3d 1284, 1300), applying regardless of whether the protected activity is "fraudulent, perjurious, unethical, or even illegal" (*Kashian*, *supra*, 98 Cal.App.4th at p. 920). It would make no sense to apply the litigation privilege to bar claims for egregiously illegal activities that occur during litigation (like perjury) while refusing to apply the privilege to bar derivative tort claims for the violation of a procedural rule of court.

Although Lee complains that applying the litigation privilege where a party files a lawsuit without complying with former rule 804 would allow parties and their counsel to violate the notice of related cases procedure without consequence (see AOB 19-20), Lee is wrong because courts can sanction parties and their counsel for violations of court rules by requiring them to pay monetary sanctions to the court or the person aggrieved by the violation (see Cal. Rules of Court, rule 2.30(a), (b); *Tiffany v. State Farm Mut. Auto. Ins. Co.* (1993) 14 Cal.App.4th 1763, 1768). The availability of sanctions under rule 2.30 for violations of the California Rules of Court is consistent with "established precedent in this state[, which] has consistently held that resorting to tort remedies is not the proper means to correct misconduct arising during litigation." (*De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 921; see also *Temple Community Hospital v. Superior Court* (1999) 20 Cal.4th 464, 471; *Cedars-Sinai Medical Center v. Superior*

Court (1998) 18 Cal.4th 1, 8-9 (*Cedars-Sinai*).)[18/] Sanctions, rather than tort claims, are the proper method for remedying litigation-related misconduct. (See *Rusheen*, *supra*, 37 Cal.4th at p. 1063; *Cedars-Sinai*, at pp. 8-9; *Pollock*, *supra*, 229 Cal.App.3d at p. 30.)

Accordingly, this court should hold that the litigation privilege bars Lee's claims against Elghanayan for his filing of the Arbitration Confirmation Lawsuit and his arbitration activities.

D. Lee cannot prevail on his claims against Elghanayan because the *Noerr-Pennington* doctrine bars these claims.

Under the "*Noerr-Pennington*" doctrine, "'[t]hose who petition the government are generally immune from . . . liability.'" (*Ludwig*, *supra*, 37 Cal.App.4th at p. 21.) The doctrine bars "virtually all civil liability" for a defendant's exercise of his right of petition before the courts. (*People ex rel. Gallegos v. Pacific Lumber Co.* (2008) 158 Cal.App.4th 950, 964-965; *Premier*, *supra*, 136 Cal.App.4th at p. 478.) This immunity "applies to virtually any tort," including interference

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18/ Notably, rule 2.30 provides that a *party* should not be penalized for the violation of a rule of court where the "failure to comply with an applicable rule is the responsibility of counsel and not of the party." (Cal. Rules of Court, rule 2.30(b); see also Code Civ. Proc., § 575.2, subd. (b).) Thus, permitting litigants like Lee to sidestep rule 2.30 in favor of a derivative tort action for the violation of a court rule would improperly allow plaintiffs to seek damages against defendants for rule violations the trial court may have refused to attribute directly to the defendants.

claims like those alleged by Lee against Elghanayan here. (*Ludwig*, at p. 21, fn. 17.)

In particular, the *Noerr-Pennington* doctrine immunizes defendants from claims whose gravamen is petitioning conduct undertaken during or in anticipation of court proceedings. (See *Premier*, *supra*, 136 Cal.App.4th at pp. 478-479.) The doctrine affords "broader" protection than the litigation privilege, applying to all "conduct in exercise of the right to petition . . . ." (*Ibid.*; see also *Ludwig*, *supra*, 37 Cal.App.4th at p. 23, fn. 22 ["*Noerr-Pennington* applies to all facets of the exercise of the right of petition"].) Here, the doctrine bars Lee's claims against Elghanayan because, as we explained above (see *ante*, pp. 16-17, 30, 33-34), Lee's claims are based on Elghanayan's petitioning activities in filing the Arbitration Confirmation Lawsuit with a California trial court and pursuing arbitration (which is "functionally equivalent to [a] court proceeding[]" (*Moore*, *supra*, 7 Cal.4th at p. 645)).

Elghanayan's anti-SLAPP motion explained that the *Noerr-Pennington* doctrine bars Lee's claims against Elghanayan. (See 3 CT 496.) However, Lee never addressed the doctrine when he opposed the anti-SLAPP motion. (See 3 CT 503-518.) Nor does he discuss the doctrine on appeal. (See generally AOB 1-22.) Thus, Lee has waived any argument that the doctrine does not bar all of his claims against Elghanayan. (See *Newton*, *supra*, 110 Cal.App.4th at p. 11; *Katelaris*, *supra*, 92 Cal.App.4th at p. 1216, fn. 4.)

E. Lee also fails to show that he can prove the elements of his claims against Elghanayan and therefore cannot demonstrate a probability of prevailing on those claims.

On appeal and in his opposition to the anti-SLAPP motion, Lee does not explain how he supposedly satisfies each element of his causes of action against Elghanayan for interference with and conspiracy to interfere with a contract and prospective economic advantage, let alone address whether any evidence (especially the meager, fragmented materials he filed with his opposition brief in the trial court) supports his claims—even though Lee bears the burden of doing so. (See *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1239 ["it was not [defendants'] burden to show [plaintiff] *could not* demonstrate a probability of prevailing on its claim"; rather, the plaintiff must explain how his evidence substantiates the elements of his claim]; see also *Navellier*, *supra*, 29 Cal.4th at pp. 88-89.) Accordingly, Lee has waived any argument that he can prevail on the merits of his claims against Elghanayan. (See *Taylor*, *supra*, 119 Cal.App.4th at p. 644; *Katelaris*, *supra*, 92 Cal.App.4th at p. 1216, fn. 4.)

Although it is unnecessary for us to do so in light of Lee's waiver of the argument, we now discuss several reasons why Lee cannot demonstrate that he could prevail on his claims for interference with and conspiracy to interfere with a contract and prospective economic advantage.

Interference claims: To prevail on his tortious interference with a contract claim, Lee would need to "prove the existence of a valid contract; that defendant[] had knowledge of the existence of the contract and intended to induce a breach thereof; that the contract was in fact breached resulting in injury to plaintiff; and that the breach and resulting damage were proximately caused by defendant['s] unjustified or wrongful conduct." (*Pacific Auto. Ins. Co. v. Superior Court* (1969) 273 Cal.App.2d 61, 67-68.) Similarly, to succeed on his claim for intentional interference with a prospective economic advantage, Lee must establish: (1) an existing "'economic relationship between the plaintiff and some third party with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.'" (*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521-522, 524-527; see also *Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 546.) In doing so, Lee is required to show that "the conduct alleged to constitute the interference was independently wrongful, i.e., unlawful for reasons other than that it interfered with a prospective economic advantage." (*Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1224.)

Lee cannot satisfy the elements of his tortious interference claims against Elghanayan. For example, Lee contends Elghanayan

wrongfully "enter[ed]" into the New York arbitration in 2002 and filed the Arbitration Confirmation Lawsuit in 2003 (see 3 CT 452-455), but Lee cannot prove that a valid contract existed or that Lee had an existing economic relationship with Marian or HPT during that time period. According to Lee, "Marian breached" his sublease with Lee in December 2001, thereby allegedly evicting Lee from the Tower's penthouse (3 CT 440). A contract ceases to exist once it is completely breached. (See *McManus v. Bendlage* (1947) 82 Cal.App.2d 916, 924.) Since Lee maintains that Marian completely breached his contract with Lee in December 2001, no contract or economic relationship existed in 2002 and 2003 with which Elghanayan could have interfered. Similarly, Lee cannot show that Elghanayan's alleged activities in 2002 and 2003 led Marian to breach the sublease with Lee—and thus could not satisfy the causation elements of his interference claims—since Lee maintains that Marian completely breached the sublease in December 2001. (See *Dryden v. Tri-Valley Growers* (1977) 65 Cal.App.3d 990, 997-998 [plaintiffs could not establish interference with contractual relations since they could not show proximate cause where the disputed contracts had been abandoned and discontinued months before the defendant acted].) Additionally, Lee cannot establish that Elghanayan's activities were wrongful, since, as we have already shown, Elghanayan did not illegally file the Arbitration Confirmation Lawsuit, violate former rule 804 of the California Rules of Court, or participate in an improperly held arbitration. (See *ante*, pp. 18-29, 34-39.)

Conspiracy allegations: Lee's conspiracy allegations would "not give rise to a cause of action unless an independent civil wrong has been committed." (*Rusheen*, *supra*, 37 Cal.4th at p. 1062.) Thus, to establish a conspiracy, Lee must "prove commission of the torts" he has alleged. (*Moran v. Endres* (2006) 135 Cal.App.4th 952, 955.) Lee cannot do so, both because (1) his underlying tort claims for interference with a contract and prospective economic advantage are based on litigation and petitioning activities and are thus barred by the litigation privilege and the *Noerr-Pennington* doctrine and (2) Lee is unable to satisfy the elements of his interference claims. (See *ante*, pp. 44-50.) Accordingly, Lee cannot prevail on his conspiracy allegations against Elghanayan.[19/]

19/ While Lee asserts in his brief that Elghanayan took Lee's property in violation of the due process clause in the federal and California constitutions (see, e.g., AOB 20), Lee's claims against Elghanayan never mention either the federal or state constitution or "due process" (see 3 CT 445-455). Also, Lee did not bring a cause of action against Elghanayan under 42 U.S.C.A. § 1983 for a violation of a federal constitutional right. (See 3 CT 437-456.) Nor could Lee do so: section 1983 applies only to state (rather than private) action (see *American Mfrs. Mut. Ins. Co. v. Sullivan* (1999) 526 U.S. 40, 50 [119 S.Ct. 977, 143 L.Ed.2d 130]), and Lee cannot show Elghanayan is a state actor (see *Dennis v. Sparks* (1980) 449 U.S. 24, 28 [101 S.Ct. 183, 66 L.Ed.2d 185] ["merely resorting to the courts and being on the winning side of a lawsuit" does not amount to state action]; *Gueson v. Feldman* (E.D.Pa. Nov. 30, 2001) 2001 WL 34355662, at p. *10 ["Filing a lawsuit in state court[] . . . does [not] turn a private citizen into a state actor"]). In addition, "[i]t is beyond question that a plaintiff" cannot bring a damages claim "for a violation of the due process . . . clause of [California's] Constitution." (*Javor v. Taggart* (2002) 98 Cal.App.4th 795, 807.)

CONCLUSION

For the foregoing reasons, this court should affirm the trial court's order granting Elghanayan's anti-SLAPP motion.

Dated: April 25, 2008

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c)(1).)

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Felix Shafir