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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JILL MEONI,

Plaintiff and Appellant,

v.

LAURA A. VLEUGELS et al.,

Defendants and Respondents.

D058306

(Super. Ct. No.  
37-2009-00089655-CU-MM-CTL )

APPEAL from a judgment of the Superior Court of San Diego County, Linda B. Quinn, Judge. Reversed.

I.

INTRODUCTION

Plaintiff Jill Meoni appeals from a judgment entered after the trial court granted defendants Laura A. Vleugels and Richard Buccigross's special motions to strike, filed pursuant to Code of Civil Procedure section 425.16.<sup>1</sup>

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<sup>1</sup> Further statutory references are to the Code of Civil Procedure, unless otherwise indicated. Section 425.16 is commonly referred to as the anti-SLAPP (strategic lawsuit against public participation) statute. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

Meoni, a licensed radiologist, filed an action against the defendants alleging causes of action for breach of fiduciary duty, professional negligence, statutory violations relating to the unauthorized release of medical information and failure to release medical records, fraud and deceit, intentional infliction of emotional distress, and breach of contract. Meoni alleged that Vleugels, a psychiatrist, continued to provide psychiatric treatment to Meoni after Vleugels made a potentially damaging report about Meoni to the California Medical Board (CMB) and concealed that fact from Meoni, and that Buccigross, also a psychiatrist, supervised Vleugels during her treatment of Meoni and counseled Vleugels with respect to her report to the CMB.

Both defendants filed special motions to strike Meoni's second amended complaint. The trial court granted the motions in full on the ground that Meoni's causes of action stemmed from protected activity under section 425.16, subdivision (e), i.e., Vleugels's report to the CMB. The trial court also concluded that Meoni had not demonstrated a probability of prevailing on her causes of action.

On appeal, Meoni contends that the trial court erred in granting the defendants' special motions to strike because the defendants failed to meet their burden to demonstrate that her causes of action arose from conduct that is identified as protected activity in section 425.16, subdivision (e). Meoni contends, in the alternative, that even if the defendants did make the requisite showing that the causes of action arose from protected activity, she has demonstrated a probability of prevailing on the merits of her claims. Meoni also challenges the trial court's sustaining of an objection to a paragraph

in Meoni's declaration on the ground that the paragraph constituted improper conclusions of fact and law.

We conclude that the trial court erred in sustaining Vleugels's objection to the *entire* paragraph of Meoni's declaration. Although the court could have reasonably sustained the objection as to one sentence of the paragraph, the remaining statements of the paragraph did not constitute improper conclusions of law or fact.

We further conclude that the trial court erred in granting the defendants' anti-SLAPP motions because Meoni's causes of action do not arise from protected activity under section 425.16, subdivision (e). The trial court thus erred in entering judgment in favor of the defendants on the basis of their anti-SLAPP motions. Further, even if Meoni's claims could be deemed to be "mixed" causes of action, we would conclude that Meoni's complaint is not subject to striking under section 425.16 because she has demonstrated a probability of prevailing on her causes of action. We therefore reverse the judgment with directions that the trial court deny the defendants' special motions to strike.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

#### A. *Factual background*

Vleugels, who is a psychiatrist, began treating Meoni in January 2007. Vleugels had completed her residency in 2006 and was trying to establish a practice.

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<sup>2</sup> We take these facts from the allegations of Meoni's second amended complaint, which was the operative complaint at the time the defendants filed their anti-SLAPP motions, as well as from several evidentiary exhibits in the record.

On August 8, 2007, Vleugels reported Meoni to the CMB. Vleugels faxed her report to the CMB, using only her first name, and requested that the report be "confidential."

Meoni learned from the CMB in November 2007 that someone had made an anonymous report about her.

Vleugels continued to treat Meoni, despite having made an anonymous report about Meoni to the CMB. Unaware that Vleugels was the person who had made the report, Meoni confided in Vleugels about receiving a letter from the CMB regarding a report. Rather than acknowledging that she was the person who made the report, Vleugels responded, "that's horrible," and suggested to Meoni that someone at Balboa Naval Medical Center may have reported Meoni to the CMB.

After Vleugels made the report, she continued to secretly provide the deputy attorney general with confidential information and documents that she obtained from Meoni during their therapy sessions.

Buccigross was Vleugels's supervisor before, during, and after the time that Vleugels treated Meoni. Buccigross had been Vleugels's supervisor during her medical residency. After Vleugels completed her residency, she contracted with Buccigross to continue to supervise her in the treatment of her patients. Vleugels paid Buccigross for his services. Buccigross supervised Vleugels's ongoing treatment of Meoni.

Vleugels discussed Meoni's treatment with Buccigross, including the fact that Vleugels had decided to keep secret from Meoni the fact that she was the person who had reported Meoni to the CMB. Buccigross knew that Vleugels had not told Meoni that she

was the source of the CMB report, and he agreed with Vleugels that she should keep her role as the reporter secret, and continue to treat Meoni.

Vleugels continued to treat Meoni until October 2008, when Vleugels finally revealed the truth about her role in making the report to the CMB. Vleugels made this disclosure only after she learned that the CMB did not intend to continue to keep her role as the reporter confidential. In addition, Vleugels had been advised by a patient safety specialist that she was required to disclose to Meoni the fact that she had made the report to the CMB. Meoni was shocked when she learned this information. She began crying, left Vleugels's office, and became physically ill after she left Vleugels's office.

Meoni requested a copy of her records from Vleugels in January 2009. Vleugels instructed her administrative contractor not to provide the records to Meoni.

In late February 2009, Meoni's attorney made a second request for records, including "treatment records, billing records, invoices, statements, informed consent documents, contracts, questionnaires, e-mails, notes, telephone messages, tape recordings and any communications [Vleugels] had with the California Medical Board." In early March, Vleugels provided Meoni with a "medical chart," but withheld numerous other records, including the report to the CMB, communications between Vleugels and a deputy attorney general, and drafts of letters regarding Meoni.

Meoni alleged that Vleugels improperly disclosed confidential medical information concerning her treatment of Meoni to various persons. Specifically, Meoni alleged that Vleugels disclosed Meoni's medical information to Leslie Schroeder, Vleugels's administrative contractor, who worked out of her own home and used her

personal computer to provide administrative services to a number of psychiatrists on a contract basis. Meoni did not sign a release authorizing Schroeder to have access to Meoni's medical information.

In addition, Vleugels discussed the situation involving Meoni with Lois Kemp, a "patient safety interventionist" employed by The Doctors' Company, her malpractice insurer.

Vleugels also discussed her treatment of Meoni with Buccigross. She did not obtain written authorization from Meoni to disclose Meoni's medical information to Buccigross.

Finally, Vleugels discussed Meoni with Meoni's husband, Mark Meoni. Vleugels did not obtain Meoni's consent to discuss her treatment with Mark Meoni, and Meoni did not become aware of the conversation between Vleugels and Mark Meoni until September 2008.

After Meoni found out about the report to the CMB, but before she learned that Vleugels was the reporting party, Vleugels made a number of representations to Meoni, including telling Meoni that Vleugels would act as Meoni's advocate in relation to any proceedings before the CMB, and specifically, that Vleugels would speak with the investigating physicians, provide supportive records, and write a supportive letter. Vleugels never did any of these things. Vleugels also falsely told Meoni that she had sent two positive letters to the CMB on Meoni's behalf.

B. *Procedural background*

Meoni filed the operative complaint, the second amended complaint (SAC), on April 12, 2010.<sup>3</sup> In the SAC, Meoni alleged causes of action for breach of fiduciary duty, professional negligence, statutory violations concerning the unauthorized release of medical information and the failure to release to Meoni all of the documents that Meoni requested from her medical file, fraud and deceit (based on concealment as to both defendants), fraud and deceit (based on misrepresentation as to Vleugels only), intentional infliction of emotional distress (as to Vleugels only), and breach of contract (as to Buccigross only).<sup>4</sup>

Vleugels and Buccigross filed separate anti-SLAPP motions pertaining to Meoni's SAC.

The trial court heard the defendants' anti-SLAPP motions jointly at a hearing on September 3, 2010, and took the matter under submission. On September 8, the trial court served an order in which it granted both defendants' anti-SLAPP motions in their entirety.<sup>5</sup> Vleugels served a notice of entry of judgment on October 5, 2010.

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<sup>3</sup> The record does not contain the original complaint or the first amended complaint.

<sup>4</sup> Meoni had also alleged two additional causes of action, one for interference with a contract and one for interference with prospective economic advantage, but she voluntarily dismissed those claims on May 11, 2010.

<sup>5</sup> Vleugels subsequently submitted a proposed order to the court, which the court signed on September 24, 2010.

Meoni filed a timely notice of appeal from the trial court's September 8 order. After the court signed the subsequent order that Vleugels had submitted and entered judgment, Meoni amended the notice of appeal to include the subsequent order of September 24, as well as the October 5 judgment.

### III.

#### DISCUSSION

Meoni contends that the trial court erred in granting the defendants' anti-SLAPP motions. She argues that the causes of action that she states in her complaint do not arise from protected activity, and that even if they do, she has demonstrated a probability of prevailing on those causes of action. Meoni also challenges an evidentiary ruling that the trial court made, arguing that the court erroneously sustained an objection to one paragraph of her declaration.

A. *The trial court erred in sustaining Vleugels's objection to an entire paragraph in Meoni's declaration*

Vleugels objected to paragraph 16 from Meoni's declaration, which stated:

"Dr. Vleugels told me on multiple occasions during my treatment, 'I am your advocate.' She also would say that she would 'advocate for me.' I now know that this was a misrepresentation that I relied upon at the time which ended up injur[ing] me in many ways. This included a time in June of 2008 when Dr. Vleugels told me that she would tell Dr. Botello how well I was doing and repeated that she was my 'advocate.' "

Vleugels objected to this paragraph on the ground that it contained "inadmissible conclusions of law and fact, in particular the contentions regarding alleged

misrepresentations and false statements by Dr. Vleugels." The trial court sustained the objection as to the *entire* paragraph.

Conceding that a witness declaration must be limited to evidentiary facts, and "not legal conclusions or 'ultimate' facts" (*Hayman v. Block* (1986) 176 Cal.App.3d 629, 639), Meoni contends that the trial court erred in sustaining Vleugels's objection to this paragraph because the statements at issue contain evidentiary facts, as opposed to legal conclusions. We agree with Meoni that the majority of the statements in the paragraph to which the court sustained Vleugels's objection are simply evidentiary facts. The statements concerning what Vleugels told Meoni with respect to being her "advocate" or "advocating" for her are party admissions, and as such, are clearly evidentiary facts. (See Evid. Code, § 1220.) The only portion of Meoni's statement to which an objection could reasonably be sustained is the sentence, "I now know that this was a misrepresentation that I relied upon at the time which ended up injur[ing] me in many ways."

We reverse in part the trial court's evidentiary ruling with respect to paragraph 16 of Meoni's declaration; the trial court should not have sustained the objection with respect to the following statements in paragraph 16: "Dr. Vleugels told me on multiple occasions during my treatment, 'I am your advocate' "; "She also would say that she would 'advocate for me' "; and "This included a time in June of 2008 when Dr. Vleugels told me that she would tell Dr. Botello how well I was doing and repeated that she was my 'advocate.' "

B. *The trial court erred in granting the defendants' anti-SLAPP motions*

1. *The law governing anti-SLAPP motions*

"Section 425.16, subdivision (b)(1), provides: 'A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.' " (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819 (*Oasis West*)). "The analysis of an anti-SLAPP motion thus involves two steps. 'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.' [Citation.]" (*Id.* at pp. 819-820.) " 'Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.' [Citation.]" (*Id.* at p. 820.)

As used in section 425.16, an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official

proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

The Supreme Court has explained that "the statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action *must itself have been an act in furtherance of the right of petition or free speech*. [Citation.] . . . [T]he critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech. [Citations.] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e) . . . .' [Citations.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78, italics added.)

"We review an order granting or denying a motion to strike under section 425.16 de novo. [Citation.]" (*Oasis West, supra*, 51 Cal.4th at p. 820.)

2. *Meoni's causes of action do not arise from protected activity*

The defendants maintain that all of Meoni's causes of action arose from Vleugels's protected activity in making a report to the CMB, which, they contend, constitutes "a written or oral statement made in connection with an issue under review by a judicial body," and could also be considered to be "conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public

interest." (§ 425.16, subd. (e)(2) & (e)(4).) Because Meoni does not contend that Vleugels's report to the CMB is not "a written or oral statement . . . made in connection with an issue under . . . review by a legislative, executive, or judicial body, or any other official proceeding authorized by law" (§ 425.16, subd. (e)(2)), we assume for purposes of this appeal that Vleugels's report to the CMB does constitute protected activity for purposes of section 425.16. We therefore must determine whether Meoni's causes of action *arise from* Vleugels's act of making a report to the CMB.

The trial court concluded that Meoni's "entire second amended complaint action [*sic*] against defendant Dr. Vleugels stems from protected activity under Code of Civil Procedure [section] 425.16, i.e., defendant Dr. Vleugels's California Medical Board Report regarding plaintiff that is integral to each cause of action in plaintiff's second amended complaint." The court cited to a particular portion of paragraph 6 of the SAC as the basis for this conclusion. The relevant portion of paragraph 6 of the SAC states:

"[O]n or about August 1, 2007<sup>6</sup>, while continuing the therapeutic relationship with a continuing conflict of interest [created after Vleugels allegedly disclosed confidential information about Meoni to several individuals without Meoni's consent or knowledge], VLEUGELS contacted the California Medical Board without Plaintiff's knowledge, consent or authorization with the intent of disclosing confidential medical information which VLEUGELS previously convinced MEONI to reveal to VLEUGELS."

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<sup>6</sup> Although the SAC alleged that Vleugels made a report to the CMB "on or about August 1, 2007," it appears from the evidence that Meoni obtained in discovery that Vleugels's report to CMB occurred on August 8, 2007.

Defendants contend that "[t]his allegation, in which Appellant alleged the CMB report was the centerpiece of her entire suit, is incorporated into every cause of action against Dr. Vleugels and is the foundation on which liability is based." We disagree with this contention.

The "foundation" on which the defendants' alleged liability is based is conduct *separate and apart* from Vleugels's report to the CMB. Although Meoni's causes of action for breach of fiduciary duty, professional negligence, fraud and deceit, intentional infliction of emotional distress, and breach of contract are *related to* the fact that Vleugels made that report in the sense that if Vleugels had never made the report to the CMB most of the facts underlying the causes of action that Meoni raised in the SAC would not have occurred, the causes of action do not *arise from* Vleugels's report to the CMB. The fact that the causes of action are related to Vleugels's having made a report to the CMB concerning Meoni does not mean that those causes of action seek to impose liability on Vleugels for her conduct in making that CMB report. " [T]hat a cause of action arguably may have been "triggered" by protected activity does not entail that it is one arising from such. [Citation.] In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity.' [Citation.]" (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477, italics omitted.)

A cause of action is one "arising from" protected activity within the meaning of section 425.16, subdivision (b)(1) only if the defendant's act *on which the cause of action is based* was an act in furtherance of the defendant's constitutional right of petition or free speech in connection with a public issue. (*City of Cotati v. Cashman, supra*, 29 Cal.4th at p. 78.) Whether the "arising from" requirement is satisfied depends on the "'gravamen or principal thrust'" of the claim. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 477, quoting *Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 193.) A cause of action does not arise from protected activity for purposes of the anti-SLAPP statute if the protected activity is incidental to the cause of action. (*Martinez, supra*, at p. 188.)

In this case, it is Vleugels's conduct *after* she made the report to the CMB—predominantly her continuing to treat Meoni without disclosing the significant conflict of interest that was created when she made the CMB report—that is the "'the gravamen or principal thrust'" (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 477-478) of Meoni's allegations against Vleugels. Meoni's contentions hinge on the fact that Vleugels *failed to disclose* the significant conflict of interest that Vleugels created when she made the report concerning Meoni to the CMB, and *continued to treat* Meoni—and be paid by Meoni for this treatment—after the conflict of interest arose. For example, in the cause of action for breach of fiduciary duty, Meoni alleges that Vleugels owed her a fiduciary duty to resolve or disclose to Meoni any potential or actual conflict of interests that she had with Meoni and that Vleugels breached this duty by continuing to treat Meoni after a conflict of interest had arisen, and by failing to disclose to Meoni the fact that a conflict

of interest had arisen. Similarly, the cause of action for professional negligence is based on the allegation that Vleugels "failed to exercise due care" primarily by "the continuation of the therapeutic relationship under a conflict of interest and the failure to recognize the conflict of interest and subsequent misuse of the psychotherapeutic relationship."

Meoni's fourth cause of action for fraud and deceit arises from the fact that Vleugels "concealed the fact that she . . . obtained confidential medical information while there existed a conflict of interest, concealed the fact that she was providing therapy and counseling while a conflict of interest existed, concealed the fact that she was taking actions which were adverse to Meoni while there was a conflict of interest, concealed the fact that she was obtaining information from Meoni [that] she was using against Meoni while there existed a conflict of interest, concealed the fact that she disclosed confidential and/or misleading patient information to the [CMB] and other third parties while a conflict of interest existed, and concealed the fact that a conflict of interest required a termination of the relationship." Similarly, Meoni's fraud and deceit claim alleged in the fifth cause of action seeks to hold Vleugels liable for falsely representing to Meoni that she was acting as Meoni's "advocate," for lying to Meoni by suggesting that someone other than Vleugels had made the report to the CMB, for repeatedly telling Meoni falsehoods to the effect that Vleugels had sent "positive" letters about Meoni to the CMB, for lying about her reason for reporting Meoni to the CMB after she had revealed her identity as the reporter, for falsely telling Meoni that she would call Meoni's boss and report that Meoni was doing well, and for directing Leslie Schroeder to give Meoni false

reasons for the failure to provide Meoni with the medical records that she requested. In the sixth cause of action for intentional infliction of emotional distress, Meoni alleges that Vleugels's continued treatment of Meoni while a conflict of interest existed and while Vleugels took affirmative steps that were adverse to Meoni, constituted outrageous conduct that caused Meoni emotional distress.

Meoni *does not allege* in her SAC that Vleugels is liable to Meoni as a result of her conduct in making the report to the CMB. Rather, Meoni seeks to hold Vleugels liable for how she handled her relationship with Meoni *after* making the report to the CMB. "The additional fact that protected activity may lurk in the background—and may explain why the rift between the parties arose in the first place—does not transform [a dispute over conduct other than the protected activity] into a SLAPP suit." (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 478.)

The fact that Meoni's claims are related to Vleugels's CMB reporting activities is not sufficient to establish that the claims are subject to the anti-SLAPP statute. In *Freeman v. Schack* (2007) 154 Cal.App.4th 719 (*Freeman*), the plaintiffs alleged causes of action for breach of contract, negligence, and breach of fiduciary duty against Schack, whom plaintiffs alleged had assumed attorney-client duties to the plaintiffs and had pledged to use his best efforts to obtain full recovery of damages to the class of plaintiffs, but who ultimately filed a new lawsuit on behalf of a different plaintiff and settled that litigation in secret. (*Id.* at p. 725.)

In determining that the trial court had erred in granting Schack's anti-SLAPP motion, the *Freeman* court commented that there was "no doubt plaintiffs' causes of action have as a major focus Schack's actions in representing [the new plaintiff] in [the separate case], filing a new action on [the new plaintiff's] behalf and settling [the new plaintiff's] action." (*Freeman, supra*, 154 Cal.App.4th at p. 729.) The court proceeded to conclude, however, that "the fact plaintiffs' claims are related to or associated with Schack's litigation activities is not enough." (*Ibid.*) " 'Although a party's litigation-related activities constitute "act[s] in furtherance of a person's right of petition or free speech," it does not follow that any claims associated with those activities are subject to the anti-SLAPP statute. . . . A claim "arises from" an act when the act " ' "forms the basis for the plaintiff's cause of action" . . . . [Citation.]' [Citation.]" (*Id.* at pp. 729-730.) *The "principal thrust of the conduct underlying" the plaintiffs' causes of action against Schack was not his filing or settlement of the other litigation, but was, rather, "his undertaking to represent a party with interests adverse to plaintiffs, in violation of the duty of loyalty he assertedly owed them . . . ."* (*Id.* at p. 732, italics added.)

Similarly, in this case, the principal thrust of the conduct for which Meoni is seeking redress *is not* Vleugels's act of making a report to the CMB, but, rather, Vleugels's continuing to treat Meoni and never informing Meoni of the conflict of interest that arose when Vleugels made the report regarding Meoni to the CMB. Vleugels's report to the CMB is merely incidental to the allegations that Meoni raises in her SAC.

Further, it is clear that at least one cause of action that Meoni alleges against Vleugels is based on conduct that is unrelated to Vleugels's making a CMB report. Specifically, in the third cause of action, which alleges violations regarding the release of medical information, Meoni claims that she requested her medical records from Vleugels and that Vleugels refused to provide the medical file that Meoni was statutorily entitled to receive. Meoni further alleges that Vleugels disclosed private medical information to a number of third parties without Meoni's consent, including Buccigross, Leslie Schroeder, Lois Kemp, and Mark Meoni, and that this conduct violated a number of California statutes. Neither the alleged failure to release medical information, nor the alleged disclosure of private medical information to any of these parties, has anything to do with Vleugels's report to the CMB.

With regard to Buccigross, the allegations against him cannot possibly have arisen from "an act in furtherance of [Buccigross's] right of petition or free speech under the United States or California Constitution in connection with a public issue," since it is undisputed that Buccigross never made any report to the CMB. It was error for the trial court to grant Buccigross's anti-SLAPP motion, given that the allegations against him are clearly not based on protected conduct on his part.

The causes of action in the SAC are not based on, and do not arise from, Vleugels's exercise of defendants' constitutional rights of petition or free speech, as described in section 425.16, subdivision (3). Meoni thus bore no burden to demonstrate a probability of prevailing on the merits of her claims against the defendants.

3. *Alternatively, Meoni has demonstrated a probability of prevailing on the merits on parts of her claims*

Even if we were to conclude that some of Meoni's claims might be so-called "mixed" causes of action, i.e., causes of action that allege injury based on both protected and unprotected activity, we would nevertheless conclude that Meoni's complaint is not subject to striking under section 425.16. "Where a cause of action refers to both protected and unprotected activity and a plaintiff can show a probability of prevailing on any part of its claim, the cause of action is not meritless and will not be subject to the anti-SLAPP procedure." (*Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 106, italics omitted (*Mann*)). "[O]nce a plaintiff shows a probability of prevailing *on any part of its claim*, the plaintiff has established that its cause of action has some merit and the entire cause of action stands. Thus, a court need not engage in the time-consuming task of determining whether the plaintiff can substantiate all theories." (*Ibid.*, italics added.)

"A plaintiff is not required 'to *prove* the specified claim to the trial court'; rather, so as to not deprive the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim. [Citation.]" (*Mann, supra*, 120 Cal.App.4th at p. 105.) "[T]he court considers whether the plaintiff has made a prima facie showing of facts based on competent admissible evidence that would, if proved, support a judgment in the plaintiff's favor. [Citations.] The court may also consider the defendant's opposing evidence, but only to determine if it defeats the plaintiff's showing as a matter of law. [Citations.]" (*Id.* at pp. 105-106.)

Meoni has alleged abundant nonprotected activity that, if true, substantiates legally sufficient causes of action for breach of fiduciary duty, professional negligence, statutory violations related to the release of medical information (against Vleugels only), fraudulent concealment, intentional misrepresentation (against Vleugels only), intentional infliction of emotional distress (against Vleugels only), and breach of contract (against Buccigross only). The vast majority of the conduct that Meoni alleges in her complaint, and that she substantiates through her declaration and the admissions of the defendants, is not protected conduct under the anti-SLAPP statute, and, if true, clearly justifies Meoni's claims against the defendants.

Because Meoni has demonstrated a probability of prevailing on her causes of action, none of Meoni's claims should be stricken pursuant to the anti-SLAPP statute on the ground that they may refer to some protected conduct along with unprotected conduct.

V.

DISPOSITION

The judgment is reversed and the trial court is directed to enter an order denying the defendants' Code of Civil Procedure section 425.16 special motions to strike. Meoni shall recover costs on appeal.

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AARON, J.

I CONCUR:

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NARES, Acting P. J.

HALLER, J., Concurring:

In my view, several of appellant's causes of action are "mixed" claims within the meaning of Code of Civil Procedure section 425.16 because they arise out of both protected conducted and unprotected conduct. However, applying our court's opinion in *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, I agree appellant has shown a probability of prevailing on the "mixed" causes of action. Thus, I concur with the result the majority reaches in this appeal.

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HALLER, J.