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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

EARL CARTER,

Cross-defendant and Appellant,

v.

CHRISTOPHER FISHER,

Cross-complainant and Respondent.

E053222

(Super.Ct.No. RIC10011277)

OPINION

APPEAL from the Superior Court of Riverside County. Paulette Durand-Barkley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Offices of Christopher P. Ruiz and Christopher P. Ruiz for Cross-defendant and Appellant.

Law Offices of Joseph M. Lovretovich, Joseph M. Lovretovich, Christopher W. Taylor and Joseph M. Levy for Cross-complainant and Respondent.

Cross-complainant and respondent Christopher Fisher filed a cross-complaint against cross-defendant and appellant Earl Carter, and others, for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory fraud,

intentional and negligent misrepresentation, and intentional and negligent interference with a prospective economic advantage. The only causes of action directed at Carter were those for interference. In response to the cross-complaint, Carter filed an anti-SLAPP motion. (Code Civ. Proc., § 425.16.)<sup>1</sup> The trial court found Carter did not satisfy the “protected activity” prong, and denied the motion. On appeal, Carter contends the trial court erred by denying his anti-SLAPP motion because (1) he satisfied the protected activity prong; and (2) Fisher failed to show a probability of prevailing on the merits of the interference causes of action. We affirm the judgment.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. CROSS-COMPLAINT**

The facts in this section are taken from Fisher’s cross-complaint. The cross-complaint named the following cross-defendants: (1) Carter; (2) Earl Carter & Associates (ECA); (3) Legal Management Services, Inc. (LMS); and (4) Christian Schank (Schank).

Fisher was employed by LMS. Schank owned LMS, and was Fisher’s direct supervisor. Carter owned ECA. All the staff at ECA was employed by LMS. Fisher began working for LMS in October 2003. The employment agreement provided that Fisher would only be terminated for good cause, so his job was secure as long as his job performance was satisfactory. Fisher was hired to develop business for LMS, which meant working in sales and marketing.

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

LMS had an office on the second floor of the Mexican Consulate building in San Bernardino, which was not retaining many clients. In order to develop business for this LMS office, Fisher started a company known as ““Latino Legal Services.”” Fisher created marketing materials reflecting the business offered services to people seeking immigration aid. Fisher was successful in creating this business as a record number of clients were retained; however, in January 2004, Fisher recommended the immigration division of LMS be shutdown “due to the financial model” being followed by LMS.

LMS shut down its immigration division in January 2004, but transferred Fisher to its criminal law department. Fisher worked in the criminal law division as a sales representative with some management responsibilities and the primary task of retaining clients. In August 2005, Fisher informed Schank that he planned to quit LMS, in order to move to Colorado. Schank offered to assist Fisher in buying a house in California if Fisher would stay at LMS. Schank said that if Fisher paid 20 percent down, and did not exceed \$600,000, then Schank would ““take care of the rest.”” Fisher stayed in California and purchased a house.

In September and/or October 2005, Schank requested that Fisher start his own company, which LMS would hire as an independent contractor. At the same time, Fisher would still be an employee of LMS. So, Fisher would be working for LMS as a direct employee, but also as an independent contractor, through the company he started. Fisher started Beacon Company (Beacon), which worked for LMS as an independent contractor. Beacon designed and developed proprietary web-based applications for case

management. As an employee, Fisher was working on developing LMS's internet presence.

In September and/or October 2005, Fisher told Schank he wanted to attend law school, and the schooling would impact his schedule at LMS. Schank asked Fisher to delay law school for two years; Fisher agreed. Two and a half years later, in May 2008, Schank learned Fisher enrolled in an LSAT preparation course, and instructed Fisher to train Mr. Westbrook (Westbrook), a law student, "in everything." In September 2008, Westbrook informed Fisher that (1) Westbrook was taking over the sales management role, and Fisher was being demoted to a regular sales representative; (2) the housing deal between Schank and Fisher "was off"; and (3) beginning in 2009, LMS would stop paying Beacon. Fisher accepted the demotion and continued working at LMS.

In January 2009, Fisher spoke to Schank. Schank agreed to continue the housing deal for two to three more months, but wanted to know if Fisher was staying at LMS or leaving. LMS stopped paying Beacon in April 2009. In July 2009, Fisher resigned from LMS "due to irreconcilable differences over their present financial arrangement." The day after tendering his resignation, a human resources representative instructed Fisher to return to the LMS office to pick up his final paycheck and participate in an exit interview.

Fisher went to the exit interview, which was conducted by Schank and Carter. In addition to the business relationship between LMS and ECA, Carter is Schank's father-in-law. Schank and Carter asked Fisher about his future plans, his relationship with Wayne Tucker (Tucker), and about Tucker's legal experience. Fisher responded that

Tucker was his friend from church, and he believed Tucker was a civil attorney. At some point after the exit interview, Fisher met with Tucker and they discussed Tucker retiring from Farmer's Insurance and starting his own law firm. Ultimately, Tucker started his own law firm, focusing on civil law and mediation.

Fisher began focusing on Beacon. Four law firms and one bail bonds company hired Beacon. In August 2009, Tucker's law firm hired Beacon for business development services. At some point, Tucker decided to add criminal law to his firm's practice areas.<sup>2</sup> In December 2009, Carter asked Tucker if he was working with Fisher. Tucker told Carter he hired Fisher or Beacon as an independent contractor to provide business development services. During the December conversation, Carter told Tucker he had a copy of Tucker's marketing letter, and he wanted it changed, because it was similar to Carter's letter. Tucker changed the marketing letter.

Shortly thereafter, on December 18, 2009, Tucker received a letter from LMS's attorneys reflecting that Carter had claims against Tucker and Fisher for misappropriation of trade secrets and interference with Carter's business practices. Carter and Schank told Tucker their marketing strategies were a protected trade secret. Westbrook told Fisher that Fisher could not "use [his] knowledge and experience for someone else," which we infer means Fisher could not use the knowledge he gained at LMS, when not working for LMS. Schank and Carter told Tucker "they would leave

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<sup>2</sup> Carter is a criminal defense attorney.

him alone if he would sever all contact with Mr. Fisher and that if he did not, they are considering reporting him to the California State Bar.”

Mr. Lopez, a sales employee at ECA, told Fisher the ECA sales staff was instructed to ask all potential ECA clients if they had spoken to anyone at Tucker’s law firm, and if the potential clients had, then ECA could represent the potential client for free. The ECA sales staff was told to do this in order to prevent potential clients from hiring Tucker’s law firm, which would in turn hurt Beacon. ECA also began handing potential clients a “Beware of Imposters” letter, which warned clients some attorneys’ advertisements made claims about the attorneys having criminal law experience, when they really had civil experience.

Fisher alleged Beacon lost retained clients who (1) were given the “Beware of Imposters” letter, and then (2) “began asking questions off of the flier.” Further, Tucker terminated his business association with Fisher effective August 2010, due to the economic loss caused by ECA, Carter, and Schank.

Fisher asserted two causes of action against Carter. The first cause of action was for intentional interference with a prospective economic advantage. Fisher asserted he had a reasonable probability of receiving economic benefits from his clients and/or potential clients, which was maliciously ruined by Carter. The second cause of action was for negligent interference with a prospective economic advantage. Fisher asserted he had a reasonable probability of receiving economic benefits from his clients and/or potential clients, which was negligently interfered with by Carter. Fisher sought a variety of damages, such as lost earnings and punitive damages.

B. ORIGINAL COMPLAINT

Carter filed a complaint against Tucker and Fisher on June 7, 2010. The complaint alleged causes of action for (1) intentional and negligent interference with prospective economic advantage; (2) unfair competition; (3) misappropriation of trade secrets; and (4) negligence. In the unfair competition cause of action, Carter alleged Tucker and Fisher were improperly using Carter's work product, which he spent substantial time and money creating. In the misappropriation cause of action, Carter asserted Tucker and Fisher were using Carter's trade secrets without authorization.

C. ANTI-SLAPP MOTION

On September 24, 2010, Carter filed an anti-SLAPP motion in response to Fisher's cross-complaint. Carter's motion provided his version of the facts, which are as follows: ECA is a law firm. LMS managed all the physical and human resources for ECA. Fisher, as an employee of LMS, provided services for ECA. While working for LMS, Fisher became privy to confidential information and documents at ECA. Fisher also became familiar with ECA's proprietary information, which had taken a substantial amount of time to create.

In 2009, Fisher was having financial difficulty and feared losing his home to foreclosure. In order to obtain money, and unbeknownst to Carter, Fisher began contacting attorneys telling them he had full knowledge of Carter's confidential business practices and documents, and he could make the other attorneys "like Carter." While working with ECA, Fisher registered an internet domain for Tucker, waynetuckerlaw.com. Tucker had no previous experience in criminal law, but shortly

after starting work with Fisher, Tucker began practicing criminal law.<sup>3</sup> Fisher mailed a marketing letter on behalf of Tucker's law firm that contained false statements, such as Tucker being an established criminal defense attorney with 28 years of experience defending criminal cases.

In the anti-SLAPP motion, Carter argued Fisher's cross-complaint related to protected activity. Specifically, Carter asserted the following were protected activities: (1) requesting a change to Tucker's marketing letter; (2) LMS's lawyer sending a letter to Tucker informing him Carter had claims against Tucker and Fisher for misappropriating trade secrets, Carter asserted the letter was meant to discuss a prelitigation resolution to the dispute; (3) comments from Westbrook to Fisher about Fisher not being allowed to use his LMS skills and knowledge for other employment; (4) ECA's attorney threatening Fisher and Tucker that they would not be able to find another legal job once the lawsuit was over; (5) Carter's refusal of Fisher and Tucker's invitation to Carter to inspect their office for trade secrets; (6) Carter's statements to Tucker that (a) he would leave Tucker alone if he stopped working with Fisher, (b) he was considering reporting Tucker to the state bar, and (c) his marketing concept was a protected secret; (7) Lopez's statement that ECA sales staff were instructed to offer free legal services to any potential clients that had contacted Tucker's law firm; and (8) ECA's distribution of the "Beware of Imposters" letter.

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<sup>3</sup> In Carter's complaint, he asserted he is a criminal defense attorney, who has spent 30 years gradually building his practice and reputation.

Carter contends the foregoing communications were protected because they either (1) were made in connection with litigation; (2) were made in the public interest, to protect the public from unscrupulous lawyers; and/or (3) involved communication between a lawyer and prospective clients concerning pending judicial proceedings. Carter contended Fisher could not prove a probability of prevailing, because Carter could assert (1) the litigation privilege (Civ. Code, § 47, subd. (b)); (2) a mediation confidentiality agreement; and (3) attorney-client privilege against most of the evidence Fisher would rely upon.

D. OPPOSITION TO THE ANTI-SLAPP MOTION

Fisher opposed Carter's anti-SLAPP motion. Fisher argued Carter's communications did not involve protected activity under the anti-SLAPP laws because (1) they were not made in an official proceeding, or in connection with a public issue or issue of public interest; and (2) the communications were made with an improper motive, i.e., they were wrongful acts, such as threats. Alternatively, Fisher asserted that if protected activity were involved, then it was only incidentally related to the causes of action, and thus the claims did not arise out of protected activity. Further, Fisher asserted he was likely to prevail on the merits of his two causes of action because none of Carter's communications were protected by anti-SLAPP laws.<sup>4</sup> Fisher attached his declaration to his opposition. The declaration essentially recounted the facts alleged in the cross-complaint.

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<sup>4</sup> The two prongs appear to have been blended together.

E. REPLY TO FISHER’S OPPOSITION

Carter filed a reply to Fisher’s opposition. Carter argued protected activity was a major part of the two causes of action against Carter, and thus, the two causes of action were not incidentally related to protected activity, rather, they arose out of protected activity. Carter also argued that having an improper motive for communicating is not relevant when determining whether activity is protected. Further, Carter asserted Fisher failed to provide evidence establishing a prima facie case. Carter argued Fisher’s declaration was inadmissible because it was filled with hearsay, speculation, and statements made on information and belief.

F. HEARING

The trial court held a hearing on Carter’s anti-SLAPP motion on March 7, 2011. At the hearing, the trial court said its tentative decision was to deny the motion, because Carter did not meet the “burden of showing the principal structure of the cross-complaint arises from protected speech, as contemplated by [section] 425.[1]6(c).” Carter argued the court should consider only whether the two causes of action arose out of protected activity, as opposed to whether the entire cross-complaint was focused on protected activity. Carter asserted the two causes of action alleged against him were focused on (1) the December 18th settlement letter, and (2) a mediation that took place after December 18. Carter asserted both communications were protected under the anti-SLAPP laws, and stressed that he was only focusing on two causes of action—not the whole cross-complaint.

Fisher argued: (1) the anti-SLAPP laws were not designed for a dispute between two business people; (2) threats were not protected under the anti-SLAPP laws; and (3) the mediation agreement did not involve Carter. Fisher asserted, “This is a garden-variety business dispute where threats near extortion is made [*sic*], they carry through, and it ends up in litigation.” Carter asserted anti-SLAPP motions are commonly brought in cases involving intentional interference with prospective economic advantage.

The trial court found the crux of the interference causes of action was “improper in[ter]ference with Tucker’s law practice.” The trial court explained, “It’s not really focusing on, [t]hey made these statements and I’ve been damaged. That’s where I have to tell you, the principal crux isn’t the protected speech issue. Your princip[al] crux is that they improperly interfered. If I had every interference claim become a SLAPP motion—I just don’t believe the statutes say that.”

Carter argued the interference causes of action arose from the letter, which was protected communication, and therefore the protected activity was not incidental to the two causes of action. Fisher argued the communication was not the crux of the cause of action. Fisher said, “I would imagine we’d get through an entire trial without bringing up any of the speech that’s claimed to be protected here. It’s not necessary. It’s not an element to the claim, certainly, and it’s certainly not necessary to prove the claim.” The trial court said to Carter’s attorney, “All right. Sir, again, this might be something else, but I don’t believe it’s a SLAPP motion.” The court took the matter under submission.

## G. RULING

In its ruling, the trial court wrote, “Carter has not met his burden of making a prima facie showing that the principal thrust or gravamen of the Cross-Complaint arises from protected activity as contemplated by [section] 4[2]5.16(e). Even if the Court agrees with [Carter] that the statements made in pre litigation negotiations are privileged . . . the statements identified by [Carter] do not form the “principal thrust” of the allegations in Mr. Fisher’s cross-complaint. Mr. Fisher’s claims for interference are based on the allegedly improper interference with Tucker’s law practice, resulting in Fisher losing business.” Thus, the court denied the anti-SLAPP motion. Since the court decided the issue on the “protected activity” prong, it declined to address the “probability of prevailing” prong.

## DISCUSSION

### A. CONTENTION

Carter contends the trial court erred by denying the anti-SLAPP motion, because Fisher’s economic interference claims arise from protected activity. We conclude the two causes of action incidentally involve protected activity, but the gravamen of the interference causes of action does not concern protected activity.

### B. ANTI-SLAPP LAW AND STANDARD OF REVIEW

“In 1992, the Legislature enacted section 425.16, the anti-SLAPP statute, to provide for the early dismissal of unmeritorious claims filed to interfere with the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. [Citation.]” (*Club Members for an Honest Election v. Sierra Club* (2008))

45 Cal.4th 309, 315.) Anti-SLAPP motions involve a two-step process. First, a defendant must make a prima facie showing that a plaintiff's causes of action arise from actions by the defendant that were in furtherance of the defendant's right of petition or free speech in connection with a public issue. If the defendant satisfies this threshold burden, then the plaintiff must establish a probability of prevailing on his claims.

(§ 425.16, subd. (b)(1); *Club Members*, at pp. 315-316.)

“We independently determine whether a cause of action is based upon activity protected under the statute, and if so, whether the plaintiff has established a reasonable probability of prevailing. [Citation.]” (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1056.)

### C. PROTECTED ACTIVITY

#### 1. *LAW*

A cross-defendant can show claims relate to acts in furtherance of his right of petition or free speech in connection with a public issue ““by demonstrating that the act underlying the [cross-]plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e) . . . .” [Citations.]” (*Bleavins v. Demarest* (2011) 196 Cal.App.4th 1533, 1539-1540.) Section 425.16, subdivision (e), defines an “act in furtherance of a person's right of petition or free speech . . . in connection with a public issue” as including “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.” (See also *Birkner v. Lam* (2007) 156

Cal.App.4th 275, 281 [“The constitutional right to petition . . . includes the basic act of filing litigation or otherwise seeking administrative action.”].)

The anti-SLAPP statute also protects (1) “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 [(2)] 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).)

“[A]lthough litigation may not have commenced, if a statement “concern[s] the subject of the dispute” and is made “in anticipation of litigation ‘contemplated in good faith and under serious consideration’” [citation] then the statement may be petitioning activity protected by section 425.16.’ [Citation.]” (*Bailey v. Brewer* (2011) 197 Cal.App.4th 781, 789-790.) Most anti-SLAPP cases involving prelitigation communications “concern demand letters or other statements to adverse parties or potential adverse parties.” (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1270.)

## 2. INCIDENTAL PROTECTED ACTIVITY

Some of the statements attributed to Carter and his attorney, Christopher Ruiz (Ruiz), fall within the protected petitioning activity of the anti-SLAPP statute. For example, LMS’s law firm, which appears to be the same law firm used by Carter and ECA, sent a letter to Tucker informing him that Carter had claims against Tucker and Fisher for misappropriation. This letter falls within the protected prelitigation activities because Tucker is being warned that if he does not cease and desist from allegedly using

Carter's trade secrets, then he will be sued. This is a normal prelitigation activity used by attorneys when contemplating a lawsuit.

Additionally, Ruiz made statements to Fisher such as, “[W]e are going to take you down,” and “Carter and Schank aren't going to give up unless you quit working with Mr. Tucker.” The foregoing statements can be interpreted as “cease and desist from using Carter's marketing strategies or you will be sued.” While Ruiz may have used rougher wording, the message is essentially that of a prelitigation warning—stop what you are doing or you will face a lawsuit.

Similarly, Schank and Carter told Tucker “they would leave him alone if he would sever all contact with Mr. Fisher and that if he did not, they [would] consider[] reporting him to the California State Bar.” This statement can also be interpreted as a general prelitigation cease and desist request—stop using our marketing materials or we will sue you and also report you to the state bar.

The foregoing is all protected activity, as it falls within the petitioning activity category of the anti-SLAPP laws. Carter and Ruiz made most of the foregoing statements within the seven months prior to Carter's complaint being filed. While the language used was perhaps rougher than necessary, the meaning of most of the statements was “cease and desist from using my marketing strategies or you will be sued.” Thus, the communications can be classified as being made in anticipation of litigation contemplated in good faith and under serious consideration. (See *Rhode v. Wolf* (2007) 154 Cal.App.4th 28, 36 [threatening to take “appropriate action” was a protected activity].)

### 3. “ARISING FROM”

The trial court found that even if some of the allegations in the cross-complaint involved protected activity, the two causes of action did not arise from that activity. In other words, the protected activity was only incidental to the interference claims, and thus not protected by anti-SLAPP laws. Carter contends the trial court’s decision was incorrect because the two causes of action arise from protected activity. We disagree with Carter’s contention.

“[S]ection 425.16 requires every defendant seeking its protection to demonstrate that the subject cause of action is in fact one ‘arising from’ the defendant’s protected speech or petitioning activity. (§ 425.16, subd. (b).)” (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66.) Thus, the question presented is “whether the gravamen of the cause of action targets protected activity. [Citation.] If liability is not based on protected activity, the cause of action does not target the protected activity and is therefore not subject to the SLAPP statute. [Citations.]” (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1550.) Stated differently, the question is whether the protected activity is merely an incidental part of the cause of action. (*Id.* at p. 1551.)

The fourth cause of action alleges an intentional interference with prospective economic advantage. In particular, Fisher asserts “there existed a prospective business relationship between him and various clients and/or potential clients” and the cross-defendants “knew that their interference was certain, or substantially certain, to occur as a result of their conduct.” The cause of action does not provide details about which

parts of the cross-defendants' conduct forms the basis of liability. The fifth cause of action is substantially similar to the fourth, but involves negligent interference as opposed to intentional interference.

Complaints are broadly construed. (*Northland Ins. Co. v. Briones* (2000) 81 Cal.App.4th 796, 812 [Fourth Dist., Div. Two] [allegations are broadly construed]; see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 [anti-SLAPP review of a complaint is no more stringent than a typical review].) In Fisher's complaint, it can be inferred that he is accusing Carter, among others, of directing that the "Beware of Imposters" letter be distributed and that ECA staff offer free services to anyone who spoke to Taylor's law firm, so as to disrupt business for Taylor and thereby interfere with Taylor's and Fisher's business relationship. It is these two acts that form the crux of the two causes of action. The various protected prelitigation statements, discussed *ante*, were not made to potential clients; whereas the letter and free services offer were given to potential clients—people who could have hired Taylor. It is this conduct involving clients that forms the thrust or gravamen of the two causes of action. Thus, we agree with the trial court that the two causes of action do not arise from protected activity.

The letter is not protected activity because it was given to potential clients at ECA; it was not a prelitigation document. Further, the letter does not pertain to a matter of public importance. "The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that

affects a community in a manner similar to that of a governmental entity. [Citations.]” [Citations.] “Although matters of public interest include legislative and governmental activities, they may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals.” [Citations.]’ [Citation.]” (*Kurwa v. Harrington, Foxx, Dubrow & Canter, LLP* (2007) 146 Cal.App.4th 841, 846 (*Kurwa*).

The letter is alleged to have included the following wording, “[M]any of the advertisements you received are from inexperienced attorneys . . . some have not practiced criminal defense for even a few years . . . the worst deception: attorneys with over 20 years civil law experience (who have little or no criminal defense experience.)” There is nothing indicating these letters impacted a broad segment of society, or that they encouraged people to contact the state bar and somehow become involved in matters of public significance. (See *Kurwa, supra*, 146 Cal.App.4th at p. 849 [encouraging public participation].) Thus, given the limited audience and private business nature of the parties’ dispute, the letter is not protected under the public issue prong of the anti-SLAPP statute.

The offer to provide free legal services to anyone who had contacted Taylor’s law firm is also not protected activity, because it does not relate to litigation—it is merely a price quote by a sales representative—and is not an issue of public importance. It appears the statements were made to a limited audience of potential clients, and the issue is a private one involving a business dispute between ECA, Carter, LMS, Schank, Beacon, Fisher, Tucker, and Tucker’s law firm. In sum, the heart of the interference

causes of action are the letter and the offer of free services, which do not involve protected activity. As a result, we conclude the trial court did not err in denying the anti-SLAPP motion.

Carter asserts the “Beware of Imposters” letter cannot be the basis for denying the anti-SLAPP motion, because Fisher failed to discuss the letter in the trial court. Carter’s argument is perplexing, since Carter discussed the letter in his anti-SLAPP motion, and Fisher asserted below that the causes of action did not arise from protected activity—the same issue we are discussing. Since the letter was part of Carter’s anti-SLAPP motion, we are not persuaded that it is improper to discuss it on appeal.

Alternatively, Carter asserts the “Beware of Imposters” letter is protected activity. Carter asserts the letter is protected because he was counseling prospective clients of his law firm, and that is petitioning activity. The flaw in this reasoning is that the anti-SLAPP statute protects against causes of action that arise from “any act of that person in furtherance of *the person’s* right of petition or free speech . . . shall be subject to a special motion to strike.” (§ 425.16, subd. (b)(1).) Carter appears to be asserting that counseling potential clients about criminal cases was in furtherance of *his* right to petition, and therefore he cannot be sued. Contrary to this position, Carter was advancing the *potential clients’* rights to petition, so it does not appear that the letter would fall within Carter’s protected activity as contemplated by the anti-SLAPP statute.

Moreover, we are not persuaded that a letter warning potential clients about misleading advertising falls within the protected activity of advising clients. Communications between a lawyer and a potential client about pending lawsuits are

protected under the anti-SLAPP statute. (*Taheri Law Group. v. Evans* (2008) 160 Cal.App.4th 482, 489.) The issue here is that the letter did not relate to a pending lawsuit; rather, it was a letter about lawyers who use misleading advertising. The letter could have been given to anyone—it was not specific to a case nor did it need to be given to people with pending cases. Since the letter was more generic than relating to pending lawsuits, we are not persuaded that it was protected activity.

Next, Carter asserts the letter was a protected activity because it involved an exercise of his free speech in connection with a public issue or issue of public interest. Carter asserts that false advertising by attorneys is an issue of public interest. While we agree that false advertising is a public issue, the letter alleged to have been distributed was limited in scope—it was given to a discreet audience, and it is alleged to have been targeted at a particular attorney who had 20 years civil experience but who was now practicing criminal law. While the letter may have a slight connection to an overall issue of public interest, that does not equate with the letter falling within the public interest exception. For example, by way of contrast, the letter was not suggesting new regulations on attorney advertising, it was only alleged to have warned a limited audience of people about particular problematic ads, such as civil lawyers with 20 years experience claiming to have criminal law backgrounds.

Carter asserts the price quote made by members of ECA's sales staff were statements made to potential legal clients, and therefore, they are protected. Communications between a lawyer and a potential client about pending lawsuits are protected under the anti-SLAPP statute. (*Taheri Law Group. v. Evans, supra*, 160

Cal.App.4th at p. 489.) A price quote from a sales associate does not equate with a lawyer and potential client communicating about a case. The price quote had no relation to the issues involved in the case or the difficulty of the case, it was merely a quote based on whether the potential client had spoken to Tucker. There is nothing indicating that the price quote was case specific, thus, we are not persuaded that the price quote was protected activity.

Carter contends the price quotes are protected because “there is no admissible evidence that any such statements occurred.” Carter argues the price quote allegations involve “multiple levels of hearsay.” Carter’s argument is misplaced, as it appears to relate to the “probability of prevailing” prong of the anti-SLAPP analysis, which we do not need to reach here since the thrust of the interference causes of action do not involve protected activity.

**DISPOSITION**

The judgment is affirmed. Respondent, Christopher Fisher, is awarded his costs on appeal.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

CODRINGTON  
J.