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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ZULMAI NAZARZAI,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

G048675

(Super. Ct. No. 30-2012-00607657)

O P I N I O N

Appeal from a judgment and an order of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed. Request for judicial notice. Granted. Motion for sanctions. Denied.

Law Offices of Murphy & Eftekhari, Thomas Murphy and Afshin Eftekhari for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Kristin G. Hogue, Assistant Attorney General, Richard F. Wolfe and David F. Taglienti, Deputy Attorneys General, for Defendants and Respondents State of California, Kamala D. Harris and Sheldon H. Jaffe.

Pivo, Halbreich, Martin & Wilson, Scott A. Martin, and Bill H. Kollias for Defendants and Respondents County of Orange and Sandra Hutchens.

* * *

INTRODUCTION

Plaintiff Zulmai Nazarzai filed a complaint alleging false imprisonment and negligence against the County of Orange¹ and Sandra Hutchens, the Orange County Sheriff-Coroner (the County defendants), and the State of California, Kamala D. Harris, Attorney General for the State of California, and Sheldon H. Jaffe, deputy attorney general (the State defendants). Nazarzai's claims were based on allegations that his incarceration in the Orange County jail after being held in civil contempt was unlawful. He contends the trial court erred by sustaining the County defendants' demurrers to the complaint without leave to amend. He further contends the court erred by granting the State defendants' anti-SLAPP² motion to strike the complaint pursuant to Code of Civil Procedure section 425.16.

We affirm. The trial court did not err by sustaining the County defendants' demurrers without leave to amend because Nazarzai failed to allege facts supporting either a false imprisonment or negligence claim against them; he has not sought leave to amend in the trial court or in this appeal.

Nazarzai's claims against the State defendants were entirely based on allegations that their prosecution of claims against him, including his violation of the trial

¹ Nazarzai sued the County of Orange as vicariously liable for the acts of its employee, defendant Sheriff-Coroner Sandra Hutchens, not for the acts of the Orange County Superior Court. He did not sue the Orange County Superior Court in this action.

² "SLAPP is an acronym for 'strategic lawsuit against public participation.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

court's orders, resulted in his unlawful incarceration for civil contempt. As we explain, such conduct by the State defendants is protected conduct under Code of Civil Procedure section 425.16, subdivision (e)(1) and (2). Nazarzai failed to meet his burden of showing a probability of prevailing on his claims because they were based on conduct that is also protected by the litigation privilege.

BACKGROUND

I.

THE ATTORNEY GENERAL FILES A CIVIL ACTION AGAINST NAZARZAI AND OTHERS FOR VIOLATION OF THE UNFAIR COMPETITION LAW AND VIOLATION OF THE FALSE ADVERTISING LAW; AFTER NAZARZAI VIOLATES THE TRIAL COURT'S ORDERS, HE IS FOUND TO BE IN CIVIL CONTEMPT AND IS TAKEN INTO CUSTODY.

In July 2009, the Attorney General filed a complaint for civil penalties, a permanent injunction, and other equitable relief, alleging, inter alia, Nazarzai and his codefendants made untrue or misleading representations. The complaint alleged claims for violation of California's false advertising law (FAL) (Bus. & Prof. Code, § 17500 et seq.), violation of California's unfair competition law (UCL) (Bus. & Prof. Code, § 17200 et seq.), and violations of Civil Code sections 2945.4 and 2945.45. The same day as the complaint was filed, the trial court issued a temporary restraining order and order to show cause, pursuant to which, inter alia, Nazarzai was required to disclose to the Attorney General information regarding his assets, and was enjoined from "spending, transferring, disbursing, encumbering, or otherwise dissipating any real or personal property without prior Court approval."

Nazarzai was served with the temporary restraining order about 3:30 p.m. on July 14, 2009. About 5:27 p.m. that same day, Nazarzai withdrew \$426,318 from an undisclosed bank account.

In October 2009, the trial court issued a preliminary injunction in accordance with the temporary restraining order. On November 6, in response to the preliminary injunction's requirement that he disclose asset information, Nazarzai confirmed he had \$370,540 in cash assets, but he did not disclose the location of those funds.

On July 1, 2010, the trial court ordered Nazarzai to turn over \$360,540 of the \$370,540 in cash, which he disclosed on November 6, 2009, to the court no later than July 2, 2010 (the first turnover order). Nazarzai did not comply.

The trial court ordered Nazarzai to appear to show cause why he should not be held in contempt of certain orders of the court including (1) the July 13, 2009 temporary restraining order, by failing to timely provide the required asset information and comply with the order freezing assets; (2) the October 2009 preliminary injunction, by failing to timely provide asset information; and (3) the first turnover order, by failing to turn over to the court-appointed receiver, inter alia, \$360,540 in cash.

The court held a trial on the contempt charge against Nazarzai. On December 7, 2010, the court issued its order and judgment on the contempt issue, stating, inter alia, that the court "heard and considered the contemnor[']s evidence offered as an explanation for the conduct and rejected it because it is not credible. The contemnor's explanation would require me to find that a thief existed among one or more of the following persons: the good Samaritan who came to investigate Ms. Sheren's condition (witness David Legaspi); the paramedic, James August; Deputy James Gibson of the Los Angeles Sheriff's Department; employees of the towing Company who towed and stored the car in question and California Highway Patrol Officers Joe Dominguez and Toby Williams. [¶] I was able to observe and consider the demeanor of the witnesses described above and find them credible and do not believe any of them saw or took the black duffel

bag containing the \$360,540 in cash alleged to have been in the car. In fact, I find beyond a reasonable doubt that the cash was not in the car and never was placed into it for delivery to the Receiver. ¶ . . . After due consideration, I find, beyond a reasonable doubt that the contemnor is guilty of contempt of court in violation of the following subsection of section 1209(a) of the California Code of Civil Procedure: ¶
Subsection 5-Disobedience of any lawful judgment order or process of the court. ¶ . . . I further find, beyond a reasonable doubt that: ¶ (a) the contemnor had actual knowledge of my order, ¶ and ¶ (b) the contemnor had the ability to comply with my order, when it was given and continues to be able to comply with it, ¶ and ¶ (c) the contemnor has, and continues to, willfully disobey my order. ¶ . . . The contemnor is sentenced to pay a fine of \$1,000.00 and to be confined in the County Jail until the contemnor performs the following act, or until the conclusion of the underlying proceeding: Turn over to the Receiver . . . \$360,540.00 of the \$370,540 in cash disclosed by the contemnor on November 6, 2009. This sentence shall run consecutive to the contemnor being sentenced to a separate 5 days in the county jail for his willful disobedience of my order to turn over the cash by noon of 07/02/2010. ¶ Execution of the sentence of the Court is not stayed, and the contemnor is ordered to pay the fine and to be taken into custody forthwith.” Nazarzai was taken into custody.

II.

THE TRIAL COURT FINDS NAZARZAI AND HIS CODEFENDANTS LIABLE FOR VIOLATION OF THE UCL AND FAL; JUDGMENT IS ENTERED AGAINST NAZARZAI AND HIS CODEFENDANTS; THE ATTORNEY GENERAL ATTEMPTS TO EXECUTE ON THE JUDGMENT AGAINST NAZARZAI AND THE TRIAL COURT ISSUES A SECOND TURNOVER ORDER.

At the March 2012 bench trial on the complaint, the trial court found Nazarzai and his codefendants violated the UCL and FAL. On July 23, 2012, judgment was entered, stating, inter alia, that Nazarzai and his codefendants violated Business and

Professions Code sections 17200 and 17500; that “each and every customer, client, or person . . . who paid a fee for loan modification services to USHA [(US Homeowners Assistance)] and/or WeBeatAllRates.Com during the period January 1, 2008 to July 14, 2009, will be contacted and offered full restitution of all funds paid by” them; and that Nazarzai and his codefendants “shall make complete and full restitution to each Eligible Consumer who requests same, up to a total of \$2,047,041.86.” The judgment also stated that Nazarzai was jointly and severally liable with his codefendants to pay civil penalties in the amount of \$2,047,041 and jointly and severally liable to pay additional civil penalties in the amount of \$360,540.

On December 7, 2012, the Attorney General obtained a writ of execution on the money judgment which, as it pertained to Nazarzai, was for \$2,407,581 in civil penalties. The trial court denied Nazarzai’s motion to be released from custody. The court explained that pursuant to the court’s December 2010 order and judgment finding Nazarzai in contempt, inter alia, Nazarzai was to remain in jail until he turned over the funds required by the first turnover order or until the conclusion of the underlying proceeding. The court stated the proceeding had not yet concluded because Nazarzai’s codefendants had appealed from the judgment and their appeals were pending.

On the same date, the trial court also granted the Attorney General’s application for a second turnover order (the second turnover order) modifying the first turnover order in light of the judgment entered and the writ of execution of the money judgment that had been issued, and ordered as follows: “Defendant Zulmai Nazarzai shall turn over to the Sheriff of Orange County, as Levying Officer, no later than 12 noon on January 2, 2013 the \$360,540 in cash disclosed by Defendant on November 6, 2009. The receipt of these funds, as defined below, shall relieve Mr. Nazarzai of any further obligation to comply with the Court’s previous Order of July 1, 2010 directing him to

turn over these same funds to the Court. [¶] The funds may be provided in cash, certified check payable to the Attorney General of the State of California, or by any other means approved by the People.” The court further ordered, “[o]nce the funds are received by the Sheriff, Mr. Nazarzai shall no longer be in contempt of the July 1, 2010 order, provided, however, if the funds are in any form other than cash, they will not be ‘received’ until the funds are collected, verified, and secured by the financial institution into which they are deposited by the People.”

III.

NAZARZAI APPEALS FROM THE SECOND TURNOVER ORDER; A PANEL OF THIS COURT AFFIRMS THE SECOND TURNOVER ORDER.

Nazarzai appealed from the second turnover order, arguing that the trial court erred by issuing it because there was no “showing of need for the turnover order,” as required by Code of Civil Procedure section 699.040, subdivision (b). In November 2013, we affirmed the second turnover order, holding it was properly issued pursuant to the writ of execution on the judgment as authorized by section 699.040. (*People v. Nazarzai* (Nov. 26, 2013, G047866) [nonpub. opn.])

In November 2013, a panel of this court summarily denied Nazarzai’s petition for a writ of habeas corpus, which he brought on the ground his incarceration was in excess of one year in violation of Penal Code section 19.2. Nazarzai filed a petition for a writ of habeas corpus in the Supreme Court, which was denied in January 2014.

IV.

NAZARZAI FILES THE INSTANT LAWSUIT AGAINST THE STATE DEFENDANTS AND THE COUNTY DEFENDANTS FOR FALSE IMPRISONMENT AND NEGLIGENCE.

In October 2012, Nazarzai filed a complaint containing claims for damages for false imprisonment and negligence against the State defendants and the County defendants. The complaint alleged that on July 13, 2009, the State defendants

commenced a case against Nazarzai and others for “alleged consumer violations.” The complaint further alleged, “[a]s relief preliminary to final Judgment therein, [the State d]efendants sought and were granted injunctive and other relief, including an order that [Nazarzai] in this action turn over to a Court appointed receiver the sum of \$360,540.00 which sum alleged[ly] represented ill-gotten gains. When [Nazarzai] herein failed to turn over said sum or any sum, [the State d]efendants initiated and prosecuted to completion civil contempt proceedings against [Nazarzai] herein. Finding [Nazarzai] in civil contempt of Court, the Court in Case No. 30-2009-00125950 ordered that [Nazarzai] herein be confined in the Orange County Jail until such time as [Nazarzai] turned over to the receiver the sum of \$360,540.00 or until conclusion of the underlying proceeding.”

The complaint alleged that on December 7, 2010, Nazarzai was turned over to the custody of the County defendants who caused him to be incarcerated in the Orange County jail where he has remained. The complaint stated Nazarzai’s incarceration since December 7, 2011 exceeded the one-year limitation on incarceration for civil contempt imposed by Penal Code section 19.2. The complaint also stated Nazarzai’s incarceration was illegal for the additional reason that it continued after July 23, 2012, which was the date judgment was entered in the underlying action “bringing it once and for all final and complete as to [Nazarzai].” The complaint further alleged the State defendants and the County defendants, in violation of California law that they are duty bound to enforce and abide by, “have knowingly and willfully failed and refused to release [Nazarzai] from custody and have instead continued to incarcerate [him] to date and continuing in the Orange County Jail. [Nazarzai] has demanded on numerous occasions that Defendants release him from custody, citing the law of California, and said Defendants have continually failed and refused to do so, for the knowing and express purpose of

attempting to procure by unlawful coercion [Nazarzai]'s compliance with the underlying turnover order. By reason of same [Nazarzai] has been and is unlawfully incarcerated.”

In his complaint, Nazarzai prayed for general, special, and exemplary damages and costs of suit. Nazarzai did not seek an order releasing him from custody.

V.

THE TRIAL COURT SUSTAINED THE COUNTY DEFENDANTS' DEMURRERS TO THE COMPLAINT WITHOUT LEAVE TO AMEND AND GRANTED THE STATE DEFENDANTS' ANTI-SLAPP MOTION.

The County of Orange and the Orange County Sheriff-Coroner each filed a demurrer to the complaint on the grounds it failed to state facts sufficient to constitute a cause of action for either false imprisonment or negligence. In opposing the demurrers, Nazarzai did not seek leave to amend the complaint. The trial court sustained the demurrers without leave to amend; Nazarzai appealed from the trial court's signed order dismissing the County defendants from the action.³

The State defendants challenged the complaint by filing an anti-SLAPP motion. The trial court granted the State defendants' anti-SLAPP motion on the following grounds: “Because the moving defendants were at all relevant times engaged in ‘protected activity’ within the meaning of Code of Civil Procedure section 425.16, subdivisions (e)(1) and (e)(2), and because plaintiff cannot establish a probability of prevailing on the merits, the Special Motion to Strike the Complaint is GRANTED and the complaint ordered stricken as to the moving defendants. Further, as defendants are the ‘prevailing party’ on the motion, they are entitled to attorney fees and costs

³ A dismissal “in the form of a written order signed by the court and filed in the action” is considered a judgment (Code Civ. Proc., § 581d) and thus is appealable under Code of Civil Procedure section 904.1, subdivision (a)(1).

recoverable under Code of Civil Procedure section 425.16, subdivision (c).” Nazarzai appealed from the order granting the State defendants’ anti-SLAPP motion.

REQUEST FOR JUDICIAL NOTICE

The County defendants filed a request that this court take judicial notice of the following court records: (1) this court’s unpublished opinion in *People v. Nazarzai, supra*, G047866; (2) Nazarzai’s petition for a writ of habeas corpus or certiorari filed in this court on October 31, 2013, in case No. G049217; (3) this court’s order filed on November 14, 2013, denying Nazarzai’s petition for a writ of habeas corpus or certiorari in case No. G049217; (4) Nazarzai’s petition for a writ of habeas corpus or certiorari filed on December 11, 2013, in the California Supreme Court, case No. S215162; and (5) the California Supreme Court’s January 15, 2014 order, in case No. S215162, denying Nazarzai’s petition for a writ of habeas corpus or certiorari.⁴

The County defendants’ request is granted pursuant to Evidence Code section 452, subdivision (d), which provides that judicial notice may be taken of the “[r]ecords of . . . any court of record of the United States or of any state of the United States.” (See Evid. Code, § 459, subd. (a) [appellate court may take judicial notice of any matter specified in section 452].)

DISCUSSION

I.

THE COUNTY DEFENDANTS’ DEMURRERS TO THE COMPLAINT WERE PROPERLY SUSTAINED WITHOUT LEAVE TO AMEND.

Nazarzai contends the trial court erred by sustaining the County defendants’ demurrers to the complaint; he has not and does not seek leave to amend the complaint.

⁴ The State defendants filed a request that this court take judicial notice of certain trial court documents; Nazarzai did not oppose that request. On June 12, 2014, we granted the State defendants’ request for judicial notice.

For the reasons we explain, the trial court did not err because Nazarzai failed to allege sufficient facts to state a cause of action for false imprisonment or negligence against either of the County defendants.

A.

Standard of Review

A judgment following the sustaining of a demurrer is reviewed under the de novo standard. (*McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138, 1144; *Boccatto v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797, 1803-1804.) Accordingly, we treat the properly pleaded allegations of a challenged complaint as true, and liberally construe them to achieve ““substantial justice”” among the parties. (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1118.)

We consider only the allegations of a challenged complaint and matters subject to judicial notice to determine whether the facts alleged state a cause of action under any theory. (*American Airlines, Inc. v. County of San Mateo, supra*, 12 Cal.4th at p. 1118.) ““Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.]”” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

B.

False Imprisonment Claim

“The crime of false imprisonment is defined by Penal Code section 236 as the ‘unlawful violation of the personal liberty of another.’ The tort is identically defined.” (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 715.) The tort of false

imprisonment “consists of the “nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short.”” (*Ibid.*)

“Imprisonment based upon a lawful arrest is not false, and is not actionable in tort.” (*Lopez v. City of Oxnard* (1989) 207 Cal.App.3d 1, 10.) “Sheriffs are not absolutely immune from civil suits for false imprisonment. Sheriffs may be responsible in damages for false imprisonment if they know the imprisonment is unlawful or if they are put on official notice sufficient to require investigation of its validity.” (*Ibid.*) Code of Civil Procedure section 262.1, however, provides: “A sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.”

Here, Nazarzai did not allege in the complaint that the County defendants unlawfully incarcerated him based on the trial court’s order of civil contempt. He does not challenge the County defendants’ action of executing the first turnover order of the trial court, which on its face stated that he shall be taken into custody and remain incarcerated until he turns over the sum of \$360,540 of the \$370,540 in cash, which he disclosed on November 6, 2009, or “until the conclusion of the underlying proceeding.” He does not contend he turned over the specified sum.

Nazarzai alleged in the complaint that the underlying action concluded, within the meaning of the first turnover order, when judgment was entered against him on July 23, 2012, and he did not appeal. Nazarzai did not allege, however, that the judgment was final as to his codefendants with whom, the judgment provided, he is jointly and severally liable for various amounts of restitution and penalties. Thus, the underlying proceedings did not conclude on July 23, 2012, and the complaint did not contain any allegations regarding the status of any appeals filed by Nazarzai’s codefendants.

Even assuming, for the purpose of analysis only, that the underlying proceedings concluded with the entry of judgment against Nazarzai, there are no facts alleged showing the County defendants were ordered by the trial court to release Nazarzai or that they were otherwise put on “official notice” (*Lopez v. City of Oxnard, supra*, 207 Cal.App.3d at p. 10) he should be released from custody. Allegations that Nazarzai had “demanded on numerous occasions” that he be released from custody did not trigger the County defendants’ liability for false imprisonment if they did not release him upon those demands.

Nazarzai argued in opposition to the demurrers that he stated a claim for false imprisonment because he alleged the County defendants unlawfully failed to release him from custody on December 6, 2011—one year after he was initially incarcerated for civil contempt—in violation of Penal Code section 19.2.

Section 19.2 of the Penal Code provides: “In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, *or upon commitment for civil contempt*, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to subdivision (h) of Section 1170 or a conviction of more than one offense when consecutive sentences have been imposed, *be committed for a period in excess of one year*; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.” (Italics added.)

Nazarzai was not committed to a length of time in jail for civil contempt within the meaning of Penal Code section 19.2, but instead was incarcerated for an indefinite period until he complies with the trial court’s orders within the meaning of former section 1219, subdivision (a) of the Code of Civil Procedure, as follows: “Except as provided in subdivision (b),^[5] when the contempt consists of the omission to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it, and in that case the act shall be specified in the warrant of commitment.”

Interpreting Code of Civil Procedure former section 1219 as authorizing an indefinite period of incarceration to coerce compliance with a court order within the contemner’s ability is consistent with the following analysis in *In re Nolan W.* (2009) 45 Cal.4th 1217, 1236-1237, in which the California Supreme Court held: “Civil contempt is a forward-looking remedy imposed to coerce compliance with a lawful order of the court. . . . Civil contemnors hold the key to the jail cell in their own pocket, and can secure their release at any time by following the court’s order. (. . . *Morelli* [*v. Superior Court* (1969) 1 Cal.3d 328,] 332 [basis for civil contempt is ‘the omission to perform an act which is still within the person’s power to perform’]; see Code Civ. Proc., § 1219, subd. (a).) *Because the confinement imposed for civil contempt is conditional in nature,*

⁵ Subdivision (b) of former section 1219 of the Code of Civil Procedure provided: “Notwithstanding any other law, no court may imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt when the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime. Before finding a victim of a domestic violence crime in contempt as described in this section, the court may refer the victim for consultation with a domestic violence counselor. All communications between the victim and the domestic violence counselor that occur as a result of that referral shall remain confidential under Section 1037.2 of the Evidence Code.”

based on continuing conduct, the length of incarceration is indefinite, depending ‘entirely upon the contemnor’s continued defiance.’” (Some citations omitted, italics added.)

In any event, we do not need to decide whether Penal Code section 19.2 applies to incarceration under Code of Civil Procedure former section 1219, subdivision (a). Even if Penal Code section 19.2 applies to Nazarzai’s incarceration for civil contempt, Nazarzai failed to allege the County defendants were without lawful privilege to keep him in custody until they were directed to release him by further order of the court or through an official notice that he should be released. As discussed *ante*, Nazarzai did not allege any such order or notice existed much less was given to the County defendants.

This case, therefore, is distinguishable from *Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710, 714, in which the sheriff allegedly failed to release the plaintiff from custody after receiving an order from the municipal court to release the plaintiff immediately after the court dismissed the charge against him. Although no release order was issued after the charges were dismissed, the Supreme Court concluded the county was potentially liable for false imprisonment. (*Id.* at pp. 714-715, 722.) Here, no such order existed placing the County defendants on notice that Nazarzai should be released from custody.

The trial court therefore did not err by sustaining the County defendants’ demurrers to the complaint as to the false imprisonment claim.

C.

Negligence Claim

Nazarzai’s negligence claim was based on the same allegations asserted in support of the false imprisonment claim. The complaint stated the County defendants “so

negligently conducted themselves such as to incarcerate [Nazarzai] and to maintain [him] in custody beyond a period of one year for a commitment for civil contempt in violation of California law and in violation of the Order in the underlying action that he was to be released from custody upon conclusion of the underlying action.”

As discussed *ante*, the complaint did not allege the County defendants were directed by the trial court or officially notified that Nazarzai should be released from custody. Therefore, they had no duty to do so. To the contrary, it was their duty to abide by the orders of the court. As discussed *ante*, “[a] sheriff or other ministerial officer . . . shall execute . . . all . . . orders regular on their face and issued by competent authority.” (Code Civ. Proc., § 262.1.)

In *Lopez v. City of Oxnard*, *supra*, 207 Cal.App.3d at page 9, the appellate court stated, “[j]ail personnel may not be similarly situated to police officers on the street, but they, too, are entitled to rely on process and orders apparently valid on their face.” The court further stated, “[a]lthough a sheriff is ‘obliged to use reasonable diligence to perform the duties of his office in a lawful manner,’ he need not ordinarily search for facts not apparent on the face of a warrant.” (*Id.* at p. 10.)

In sum, the complaint did not allege the County defendants breached any duty owed to Nazarzai, and thus failed to state a claim for negligence against them.

II.

THE STATE DEFENDANTS’ ANTI-SLAPP MOTION WAS PROPERLY GRANTED.

Nazarzai contends the trial court erroneously granted the State defendants’ anti-SLAPP motion. As we will explain, the trial court did not err because Nazarzai’s false imprisonment and negligence claims against the State defendants were based on

conduct protected by Code of Civil Procedure section 425.16, subdivision (e)(1) and (2) as well as the litigation privilege.

A.

Standard of Review

Code of Civil Procedure section 425.16 provides for a special motion to strike “[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.” (Code Civ. Proc., § 425.16, subd. (b)(1).) “Section 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken ‘in furtherance of the [defendant]’s right of petition or free speech under the United States or California Constitution in connection with a public issue,’ as defined in the statute. [Citation.] If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers ‘the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.’” (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) “‘The defendant has the burden on the first issue, the threshold issue; the plaintiff has the burden on the second issue.’” (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 928.)

We independently review the trial court’s order granting the anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.) “‘We consider “the

pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.” [Citation.] However, we neither “weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant’s evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.” [Citation.]’ [Citation.]” (*Id.* at p. 326.) We further observe that the anti-SLAPP statute is to be broadly construed. (Code Civ. Proc., § 425.16, subd. (a).)

B.

*The Gravamen of the Complaint Arose from Protected Activity
Under Code of Civil Procedure Section 425.16, Subdivision (e)(1) and (2).*

A defendant can meet the burden of making a threshold showing that a cause of action is one arising from protected activity by demonstrating the act underlying the plaintiff’s cause of action falls within one of the four categories identified in Code of Civil Procedure section 425.16, subdivision (e). (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) Section 425.16 provides that an act “in furtherance of a person’s right of petition or free speech” includes “any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law” (Code Civ. Proc., § 425.16, subd. (e)(1)), and “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” (*id.*, § 425.16, subd. (e)(2)).

Nazarzai’s claims against the State defendants were entirely based on their direct participation in the litigation of the underlying action, the contempt proceedings against Nazarzai, and enforcement of the judgment against him. Such conduct falls

squarely within the meaning of Code of Civil Procedure section 425.16, subdivision (e)(1) and (2).

C.

Nazarzai Did Not Carry His Burden of Establishing the Probability He Would Prevail on the Complaint.

We now turn to review whether Nazarzai carried his burden of demonstrating a probability of prevailing on his claims. We conclude he failed to carry his burden because his claims are defeated by the litigation privilege.

The litigation privilege, codified at Civil Code section 47, subdivision (b), “applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. [Citations.]” (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege is not limited to statements made inside a courtroom, but “applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved.” (*Ibid.*) “[C]ommunications with “some relation” to judicial proceedings’ are ‘absolutely immune from tort liability’ by the litigation privilege [citation].” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.)⁶ “Any doubt as

⁶ “Both [Code of Civil Procedure] section 425.16 and Civil Code section 47 are construed broadly, to protect the right of litigants to “the utmost freedom of access to the courts without [the] fear of being harassed subsequently by derivative tort actions.” [Citations.] Thus, it has been established for well over a century that a communication is absolutely immune from any tort liability if it has “some relation” to judicial proceedings.” (*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1055.)

to whether the privilege applies is resolved in favor of applying it.’” (*Tom Jones Enterprises, Ltd. v. County of Los Angeles* (2013) 212 Cal.App.4th 1283, 1294.)

Nazarzai’s false imprisonment and negligence claims against the State defendants were entirely based on the State defendants’ conduct of prosecuting Nazarzai for, inter alia, his failure to comply with court orders that resulted in Nazarzai being found in civil contempt and incarcerated. The State defendants’ conduct was therefore protected by the litigation privilege because it constituted communicative conduct made by litigants in judicial or quasi-judicial proceedings to achieve the objects of the litigation with some connection or logical relation to the action.

As Nazarzai has failed to meet his burden of demonstrating a probability of prevailing on his claims against the State defendants, the trial court did not err by granting the State defendants’ anti-SLAPP motion.

III.

THE COUNTY DEFENDANTS’ MOTION FOR SANCTIONS IS DENIED.

The County defendants moved for sanctions against Nazarzai pursuant to section 907 of the Code of Civil Procedure and rule 8.276(a)(1) of the California Rules of Court on the ground the appeal is frivolous. Although we are affirming the trial court’s judgment after sustaining the County defendants’ demurrers without leave to amend, Nazarzai briefed the matter well and raised colorable arguments. We conclude the appeal was not prosecuted for an improper motive or indisputably without merit. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 646, 650.) The County defendants’ motion for sanctions is therefore denied.

DISPOSITION

The judgment entered in favor of the County defendants is affirmed. The order granting the State defendants' anti-SLAPP motion is affirmed. The County defendants' motion for sanctions is denied. All respondents shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.