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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MICKEY BEARMAN COMPANY, et al. Cross-complainants and Appellants, v. LATASHA GEORGE, Cross-defendant and Respondent.	B298219 (Los Angeles County Super. Ct. No. BC701303)

APPEAL from an order of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Affirmed.

Kulik Gottesman Siegel & Ware and Glen Kulik, for Cross-complainants and Appellants Mickey Bearman Company and Michael Bearman.

Latasha George, in pro. per., for Cross-defendant and Respondent.

INTRODUCTION

Latasha George, while represented by counsel, filed this action against her former employer, Mickey Bearman Company (MBC), and its owner, Michael Bearman (Bearman), alleging that MBC and Bearman harassed and discriminated against her and that they wrongfully terminated her employment when she complained. After MBC and Bearman filed a cross-complaint asserting extortion and other causes of action, George filed a special motion to strike under Code of Civil Procedure section 425.16, arguing some of MBC and Bearman's claims arose from George's efforts, while she was still employed, to settle her harassment claims. The trial court granted the special motion to strike, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *George Sues MBC and Bearman for Discrimination and Harassment, and MBC and Bearman Cross-complain for Extortion and Elder Abuse*

According to the allegations of her complaint, George is an African American Air Force veteran with post-traumatic stress disorder and traumatic brain injury who began working at MBC, a meat supplier, as a sales representative in July 2013. George alleged that, throughout her employment, Bearman made unwanted, demeaning, and offensive comments to her or in her presence. For example, George alleged Bearman commented on her body and appearance, "frequently requested sexual favors," made sexually suggestive comments about her in the presence of customers, "suggested that she perform sexual acts for customers

to get business," used racial slurs in her presence, and disparaged her mental and physical condition. On one occasion Bearman allegedly asked George "if she had a 'boob job,' and then proceeded to reach under her sweater and grab her breast." George alleged that, after she complained about Bearman's conduct, MBC and Bearman fired her. George asserted 11 causes of action, including for harassment, discrimination, wrongful termination, retaliation, assault, battery, and intentional and negligent infliction of emotional distress.

MBC and Bearman filed a cross-complaint disputing George's account of the events prior to the termination of her employment. MBC and Bearman alleged that in 2011, over a year before George began working at MBC, she and Bearman began a "very close and at times physically intimate relationship." MBC and Bearman alleged that Bearman paid for airfare, meals, and entertainment for George and her daughter and that George convinced Bearman to be the guardian of George's daughter in the event "anything ever happened to her."

MBC and Bearman alleged that, after Bearman hired George, George was disrespectful to other employees, including by "scream[ing] profanities" at them and threatening "to go to Bearman and have them fired" if they did anything she did not like. MBC and Bearman also alleged George was "rude," "insubordinate, and threatening" to Bearman, made demeaning comments about Jews (Bearman is Jewish), and called Bearman vulgar names. They alleged that George eventually stopped coming into the office regularly and that she continued to demand the salary of a full-time employee even though she did not work full time. MBC and Bearman alleged that, when Bearman told George she had to come into the office, George

physically threatened Bearman and "began a deliberate campaign of sending Bearman letters and other written communications in which she falsely complained that he was harassing her . . . as a tactic to prevent him from firing her." MBC and Bearman asserted causes of action for extortion, elder abuse, intentional and negligent infliction of emotional distress, violation of Penal Code section 632 for electronically recording private conversations, and interference with contractual relations.

B. *The Trial Court Grants George's Special Motion To Strike Under Code of Civil Procedure Section 425.16*

George, still represented by counsel, filed a special motion to strike under Code of Civil Procedure section 425.16,[1] seeking to strike certain sentences or clauses from five paragraphs in MBC and Bearman's cross-complaint: two paragraphs in the factual background section of the cross-complaint and three paragraphs in the extortion cause of action. The sentences and clauses George sought to strike from three of the paragraphs (including the two in the factual background) were essentially identical—that George falsely accused Bearman and MBC of discrimination and harassment.[2] The other two allegations George sought to

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[1] Undesignated statutory references are to the Code of Civil Procedure.

[2] These allegations were: (1) "In retaliation, George began a deliberate campaign of sending Bearman letters and other written communications in which she falsely complained that he was harassing her. She did this as a tactic to prevent him from firing her." (2) "In retaliation, she resumed her threats and false

strike related to her discussions with Bearman about ending her employment with the company in exchange for a severance payment. In particular, George moved to strike the allegations that Bearman, "distressed by George's harassing telephone calls and falsely accusatory letters, . . . offered to pay [George] one year's severance if she would leave" and that "George laughed at Bearman's offer and taunted him by saying it would cost him a lot more than that to get her to go away."

George argued that MBC and Bearman were seeking "to impose liability" on George for complaining about Bearman's conduct and trying to obtain a severance payment and that George's complaints and settlement negotiations were subject to section 425.16 because they were statements "made in anticipation of litigation contemplated in good faith." George also argued Bearman could not show a probability of prevailing because the litigation privilege in Civil Code section 47 protected George from liability based on making the statements. MBC and Bearman argued in opposition to the motion that George's accusations and the settlement negotiations were not subject to section 425.16 because they were "false allegations" made "to extort Bearman." MBC and Bearman also argued the litigation privilege did not apply because, at the time George made the

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accusations, creating a false written record of harassment so Bearman would be afraid to fire her." (3) "[George began] making false accusations against him. . . . She also began to send Bearman letters without any context that seemed to implicate Bearman [in] discrimination and sexual harassment. George's behavior suggested to Bearman that she was indeed intent on shutting down his business, accusing him of committing a crime, or harming his reputation if he did not concede to her demands."

accusations and attempted to obtain a severance payment, she did not believe litigation was imminent.

The trial court granted the special motion to strike. The court ruled that George's accusations and the settlement negotiations were "litigation-related activities within the scope of section 425.16" and that the exception to section 425.16 for conduct that constituted criminal extortion as a matter of law did not apply. The court ruled MBC and Bearman did not show a probability of prevailing because they did not attempt to show their causes of action were legally sufficient or factually supported. The court also ruled MBC and Bearman's claims were barred by the litigation privilege in Civil Code section 47 because the evidence "contradicted" MBC and Bearman's assertion George was not contemplating litigation in good faith when she made the statements. MBC and Bearman timely appealed.

DISCUSSION

A. *This Court Has Jurisdiction To Hear the Appeal*

George, representing herself on appeal, does not argue the trial court properly granted her special motion to strike, nor does she respond to the merits of any arguments in MBC and Bearman's opening brief. George argues only that this court lacks jurisdiction to hear MBC and Bearman's appeal because they did not pay their filing fee on time. George's jurisdiction argument lacks merit.

MBC and Bearman timely filed their notice of appeal 57 days after the trial court granted George's special motion to strike. (See Cal. Rules of Court, rule 8.104(a)(1).)[3] George is

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[3] References to rules are to the California Rules of Court.

correct MBC and Bearman did not timely pay the filing fee required by rule 8.100(b)(1). This failure, however, did not affect the timeliness of the appeal. (See *Rapp v. Golden Eagle Ins. Co.* (1994) 24 Cal.App.4th 1167, 1172 ["[t]he act of delivering the [notice of appeal] to the deputy clerk at the court during office hours constituted the act of filing," and the "absence of a proper filing fee was not a lawful basis for refusing to file the notice of appeal"]; *Pacific Southwest Airlines v. Dowty-Rotol, LTD* (1983) 144 Cal.App.3d 491, 493 [appellant's payment of the filing fee in the wrong court "did not in any way affect the time[lines] of the filing of the notice of appeal"].)

The failure by MBC and Bearman to pay their filing fee on time did have procedural consequences. On June 11, 2019 the clerk of this court notified counsel for MBC and Bearman that they had not paid the filing fee and that the court would dismiss the appeal if they did not pay the fee by a certain date. On July 9, 2019, after MBC and Bearman failed to meet the deadline for paying the fee, this court dismissed the appeal under rule 8.100(c)(3). The next day MBC and Bearman filed a motion to set aside the dismissal, explaining that an error by counsel for MBC and Bearman caused counsel inadvertently not to pay the fee. After issuing the remittitur following the dismissal, this court on November 15, 2019 granted a motion by MBC and Bearman to recall the remittitur and reinstate the appeal and ordered MBC and Bearman to pay the filing fee within five days. Three days later MBC and Bearman paid the filing fee.

But those procedural consequences did not, contrary to George's assertion, deprive this court of jurisdiction to recall the remittitur and reinstate the appeal. Under rule 8.272(c)(2) this court may "[o]n a party's or its own motion . . . and for good

cause" recall the remittitur. This court recalled the remittitur because, at the time the clerk's office issued the remittitur, a motion by MBC and Bearman to set aside the dismissal was pending. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 166 ["order recalling the remittitur was the appropriate procedural mechanism" where the court issued the remittitur while a motion for fees was pending, and "the recall of the remittitur had the effect of reinstating the court's jurisdiction over the appeal"].)

This court also had jurisdiction to vacate its prior order dismissing the appeal. Under rule 8.100(c)(3) the court "for good cause" may vacate an order of dismissal entered after an appellant fails to timely pay the filing fee. MBC and Bearman filed their motion to set aside the dismissal immediately after dismissal of the appeal, explained they had intended to pay the fees and why they failed to do so, and represented they would pay the fee if the dismissal were vacated. George did not file a formal opposition to the motion by MBC and Bearman to set aside the dismissal (nor to their motion to recall the remittitur), and George does not explain if or how she suffered prejudice (other than a short delay that did not materially affect her) as a result of the reinstatement of the appeal. (See *K.J. v. Los Angeles Unified School Dist.* (2020) 8 Cal.5th 875, 882 [rule 8.100 "is intended to 'implement the strong public policy favoring the hearing of appeals on the merits'"]; *People v. Chapman* (1971) 5 Cal.3d 218, 225 ["it is the policy of the appellate courts to hear appeals on the merits, and avoid, wherever possible, forfeitures of substantial rights on technical grounds"]; *Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 853-854 ["This state has a 'strong public policy in favor of hearing appeals on their merits and of

not depriving a party of his right to appeal because of technical noncompliance where he is attempting to perfect his appeal in good faith.'"].)

B. *The Trial Court Did Not Err in Granting George's Special Motion To Strike*

1. *Applicable Law and Standard of Review*

Section 425.16, subdivision (b)(1), provides that 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 [or cross-complainant] has established that there is a probability that the plaintiff [or cross-complainant] will prevail on the claim." Courts evaluate special motions to strike under section 425.16 "through a two-step process. Initially, the moving defendant [or cross-defendant] bears the burden of establishing that the challenged allegations or claims 'aris[e] from' protected activity in which the defendant has engaged. [Citations.] If the defendant [or cross-defendant] carries its burden, the plaintiff [or cross-complainant] must then demonstrate its claims have at least 'minimal merit.'" (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061 (*Park*); see *Zhang v. Jenevein* (2019) 31 Cal.App.5th 585, 592.) "'We review de novo the grant or denial of'" a special motion to strike under section 425.16. (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940; see *Park*, at p. 1067.)

2. *MBC and Bearman's Claims Arose in Part from George's Protected Activity*

As discussed, George did not move to strike the entire complaint or an entire cause of action. Instead, George sought to strike the allegations that she made false accusations against Bearman and that Bearman offered, and George rejected, a settlement that would have included a severance payment. (See *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*) [where "relief is sought based on allegations of both protected and unprotected activity," a defendant or a cross-defendant may move to strike the allegations of protected activity, and "the unprotected activity is disregarded at [the first] stage"]; *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1251-1252 [same].)

To show a plaintiff's or cross-complainant's claim arises from protected activity, the defendant or cross-defendant "must make two related showings. Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection. [Citation.] And comparing that protected activity against the complaint, it must also demonstrate that the activity supplies one or more elements of a plaintiff's claims." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887 (*Wilson*); accord, *Park*, *supra*, 2 Cal.5th at p. 1063; see *Jackson v. Mayweather*, *supra*, 10 Cal.App.5th at p. 1251 [""[a] defendant meets [its] burden by demonstrating that the act underlying the plaintiff's cause [of action] fits one of the categories spelled out in section 425.16, subdivision (e)""].) "A defendant's burden on the first [step] is not an onerous one." (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 590.) "[T]he question is only whether a defendant has made

out a prima facie case that activity underlying a plaintiff's claims is statutorily protected." (*Wilson*, at p. 888.)

"[C]ommunications that are "'preparatory to or in anticipation of the bringing of an action or other official proceeding'" are within the scope of protected conduct under Code of Civil Procedure section 425.16[, subdivision (e)] . . . ." (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 940; see *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; *ValueRock TN Properties, LLC v. PK II Larwin Square SC LP* (2019) 36 Cal.App.5th 1037, 1046.) George met her burden to show her allegedly false accusations about Bearman's conduct and the subsequent settlement discussions described in the cross-complaint were statements preparatory to, or in anticipation of, litigation. George stated in her declaration that she complained to Bearman about his harassment and discrimination, that she "tried negotiating a severance" with MBC and Bearman "on multiple occasions," and that, understanding "litigation was an option," proposed "negotiat[ing] through legal counsel if [MBC and Bearman] preferred to do so." (See *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79 ["In deciding whether the 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'"].) George also submitted text messages she sent to Bearman complaining about his conduct and attempting to resolve her claims. In a January 2018 text message she asked Bearman whether he "would like a mediator to discuss this matter," and in an August 2018 text message she stated that she would "be seeking a severance settlement" and that "[w]e can either come to an agreement amongst ourselves [and] then have

it drawn up by an attorney [or] we can just use attorneys to negotiate."

George also showed MBC and Bearman's cause of action for extortion arose, at least in part, from George's accusations and the settlement negotiations because the accusations and negotiations supplied an element of the extortion cause of action. (See *Park*, *supra*, 2 Cal.5th at p. 1063 [to determine whether a claim arises from protected activity, courts "consider the elements of the challenged claim" and whether the defendant's actions "supply those elements"]; see, e.g., *Wilson*, *supra*, 7 Cal.5th at p. 892 [plaintiff's claims arose, at least in part, from the termination of the plaintiff's employment because the "firing supplies an element of [those] six claims"]; *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 626 ["[b]ecause [counsel for the defendant's] promise supplies an element of the promissory fraud claim [citation], it properly arises from speech that might be protected under section 425.16"].) A civil cause of action for extortion "is essentially a cause of action for moneys [or other consideration] obtained by duress . . . ." (*Fuhrman v. California Satellite Systems* (1986) 179 Cal.App.3d 408, 426, disapproved on another ground in *Silberg v. Anderson* (1990) 50 Cal.3d 205, 266; see *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 207.) The doctrine "'may come into play upon the doing of a wrongful act which is sufficiently coercive to cause a reasonably prudent person . . . to succumb to the perpetrator's pressure." (*Rich & Whillock, Inc. v. Ashton Development, Inc.* (1984) 157 Cal.App.3d 1154, 1158; accord, *Uniwill v. City of Los Angeles* (2004) 124 Cal.App.4th 537, 545; see *Steinman v. Malamed* (2010) 185 Cal.App.4th 1550, 1559 ["the party insisting on payment must act wrongfully"].)

MBC and Bearman's allegations George made "false accusations against" Bearman and sent letters that "seemed to implicate Bearman of discrimination and sexual harassment" supply the coercive, "wrongful act" element of the extortion cause of action. MBC and Bearman alleged George made these accusations and sent these letters to force Bearman to "concede to [George's] demands." And Bearman's alleged offer to pay George a severance to drop her claims during the parties' settlement discussions supplies the element of his "succumb[ing]" to George's allegedly extortionate conduct.

MBC and Bearman argue the trial court should have denied George's special motion to strike because George "made no effort to establish that any claim in the Cross-Complaint 'arises from'" the allegations of her accusations and settlement negotiations and because George did not discuss the elements of, or even mention, MBC and Bearman's causes of action. The record, however, is to the contrary. In her motion George argued each cause of action in the cross-complaint, including extortion, sought "to impose liability based on" the targeted allegations of George's accusations and settlement negotiations. In particular, of the six paragraphs from which George sought to strike allegations, three of those paragraphs supported the cause of action for extortion.[4] After MBC and Bearman argued in opposition to the motion that none of their claims arose from George's accusations and the settlement negotiations, George argued in her reply the extortion claim arose from these

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[4] MBC and Bearman also incorporated the other two paragraphs, contained in the background allegations, into the extortion cause of action.

allegations because, "[i]n support of [the] extortion claim," MBC and Bearman alleged George sent letters that "seemed to implicate Bearman of discrimination and sexual harassment" to encourage MBC and Bearman to "concede to her demands." This was sufficient for George to meet her burden to show the cause of action for extortion arose, at least in part, from the targeted allegations.[5]

MBC and Bearman also argue George's accusations and the settlement negotiations were not protected activity under section 425.16 because George did not make those statements in connection with a public issue. Section 425.16 applies to the alleged statements, however, even if George did not make the statements in connection with a public issue. Section 425.16, subdivision (e), identifies four categories of protected petitioning and speech activity. A defendant or cross-defendant moving to strike allegations of speech or petitioning activity described in subdivision (e)(3) or (e)(4) must show the speech or activity was "in connection with a public issue or an issue of public interest." But a defendant or cross-defendant moving to strike allegations of speech described in subdivision (e)(1) or (e)(2) "need *not* separately demonstrate that the statement concerned an issue of public significance." (*Briggs v. Eden Council for Hope & Opportunity, supra*, 19 Cal.4th at p. 1123; accord, *Laker v. Board of Trustees of California State University* (2019) 32 Cal.App.5th

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[5] MBC and Bearman do not argue the trial court could only grant George's special motion to strike if George showed that each of MBC and Bearman's causes of action arose from the targeted allegations. Nor, as we will discuss, do MBC and Bearman argue that any of their causes of action other than extortion have minimal merit.

745, 764.) Because "statements, writings, and pleadings in connection with civil litigation or in contemplation of civil litigation are covered by" subdivision (e)(2), a special motion to strike such allegations "does not require any showing that the litigated matter concerns a matter of public interest." (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 472; see *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 965; *Bailey v. Brewer* (2011) 197 Cal.App.4th 781, 789.)

3. *George's Accusations and Settlement Discussions Were Not Extortion as a Matter of Law*

MBC and Bearman also argue the allegations concerning George's accusations and the settlement negotiations were not subject to section 425.16 because they constituted criminal extortion. "[W]here a defendant brings a motion to strike under section 425.16 . . . but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using [section 425.16] to strike the plaintiff's action." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 320 (*Flatley*).) This exception, however, is limited. For conduct to "be illegal *as a matter of law* to defeat a defendant's showing of protected activity . . . [t]he defendant must concede the point, or the evidence conclusively demonstrate it . . . ." (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 424.)

Criminal extortion "is the obtaining of property or other consideration from another . . . induced by a wrongful use of force or fear . . . ." (Pen. Code, § 518; see *id.*, § 524 [criminalizing attempted extortion].) Penal Code section 519 identifies five

types of threats that may constitute the wrongful use of fear for purposes of extortion. MBC and Bearman argue George made two types of such threats: threatening "[t]o accuse" Bearman "of a crime" and threatening "[t]o expose, or to impute to" Bearman a "disgrace" or "crime." (*See id.*, § 519.) However, there is no "uncontroverted" or "conclusive" evidence George's conduct constituted extortion under Penal Code section 519, nor has George conceded the point. (See *Flatley*, *supra*, 39 Cal.4th at p. 320.)

In her declaration George described negotiating with MBC and Bearman a settlement that included a severance and suggesting the parties use legal counsel. There was no express extortionate threat. And even if George impliedly threatened to file a lawsuit against MBC and Bearman by suggesting the parties negotiate through attorneys, a threat to initiate a civil action to recover damages to which a party in good faith believes he or she is entitled is not extortion "as a matter of law" for purposes of section 425.16.

Malin v. Singer (2013) 217 Cal.App.4th 1283 (*Malin*) demonstrates this point. In *Malin* an attorney sent a demand letter to the plaintiff on behalf of his client accusing the plaintiff of misappropriating company assets, including using company resources "to arrange sexual liaisons with older men." (*Id.* at p. 1288.) The attorney included a draft complaint with the letter and said he would file the complaint if the parties did not settle. (*Id.* at pp. 1288-1289.) The court held the attorney's conduct was not extortion as a matter of law because "the 'secret' that would allegedly expose [the plaintiff] to disgrace was inextricably tied to [the client's] pending complaint." (*Id.* at p. 1299.) The court in *Malin* distinguished *Flatley* and *Mendoza v. Hamzeh* (2013) 215

Cal.App.4th 799, 806—two cases where an attorney's prelitigation demand letter constituted extortion as a matter of law (see *Flatley*, *supra*, 39 Cal.4th at p. 330; *Mendoza*, at p. 807)—because the attorney's letter "did not expressly threaten to disclose [the plaintiff's] alleged wrongdoings to a prosecuting agency or the public at large." (*Malin*, at p. 1298.) In contrast, courts have held a defendant's prelitigation threat to disclose information can be extortionate where the information is unrelated to the injury for which the defendant sought compensation. (See *Flatley*, *supra*, 39 Cal.4th at p. 330 [attorney threatened to disclose "criminal activity entirely unrelated to any alleged injury suffered by [the attorney's] client," which the Supreme Court characterized as "'exceed[ing] the limits of [the attorney's] representation of his client'"]; *Stenehjem v. Sareen* (2014) 226 Cal.App.4th 1405, 1423 [employee threatened to expose the defendant's "alleged violations of the False Claims Act" in a qui tam action that was "'entirely unrelated to any alleged injury suffered by' [the plaintiff] as alleged" in the claims for which he sought relief].)

George's reference to lawyers during her settlement negotiations was, at most, a "threat" to file a lawsuit or other proceeding related to MBC's and Bearman's alleged wrongdoing, just like the attorney's "threat" in *Malin* was only a threat to file the complaint exposing the plaintiff's unlawful conduct. (See 18A Cal.Jur.3d (2017) Criminal Law: Crimes Against Property, § 462 ["a mere threat that a person will invoke the law in a civil action to enforce his or her rights is not a threat to accuse one of crime within the meaning of the extortion statute, even if criminal proceedings might follow as a result of the suit"]; see also *Leeper v. Beltrami*, *supra*, 53 Cal.2d at p. 204 ["the taking of legal action

or the threat to take such action cannot constitute duress"]; *Louisville Title Ins. Co. v. Surety Title & Guar. Co.* (1976) 60 Cal.App.3d 781, 801 [same]). George did not threaten to disclose alleged wrongdoing by MBC or Bearman to a prosecuting agency or the public. (See *Malin*, *supra*, 217 Cal.App.4th at p. 1298.) Nor did she threaten to disclose wrongful conduct unrelated to the injury for which she sought compensation. (See *Flatley*, *supra*, 39 Cal.4th at p. 330.)

George also stated in her declaration that she "repeatedly told Bearman to stop his inappropriate behavior" and that she told him she would report his "unlawful discriminatory and harassing comments" "to the state." While "[t]he threat to report a crime may constitute extortion" when "coupled with a demand for money" (*Mendoza v. Hamzeh*, *supra*, 215 Cal.App.4th at p. 805), an employee does not commit extortion simply by "threaten[ing] to report the illegal conduct of his or her employer unless the employer desists from that conduct." (*Flatley*, *supra*, 39 Cal.4th at p. 332, fn. 16; see *id.* p. 327 ["'in many blackmail cases the threat is to do something in itself perfectly legal, but that threat nevertheless becomes illegal when coupled with a demand for money'"].) Threatening to report Bearman "to the state" if he did not stop harassing George was not extortion.

To be sure, George's attempts to obtain a severance payment, coupled with her threat to go to the state if Bearman did not stop harassing her, could rise to the level of extortion if George had implied she would report Bearman to law enforcement or other state agency unless he agreed to pay her a severance. (See, e.g., *People v. Bollaert* (2016) 248 Cal.App.4th 699, 725 [""[t]hreats can be made by innuendo and the circumstances under which the threat is uttered and the

relations between [the defendant] and the [target of the threats] may be taken into consideration""]; *Stenehjem v. Sareen*, *supra*, 226 Cal.App.4th at p. 1424 ["a threat need not be overt or explicit to constitute attempted extortion"].) But there was no uncontroverted or conclusive evidence this is what George did. George stated that she threatened to report Bearman because she "simply wanted Mr. Bearman to stop his abuse and harassment" and that she "never made a demand for money in exchange for not reporting Mr. Bearman to the authorities." (Cf. *Flatley*, *supra*, 39 Cal.4th at pp. 328-329 [attorney committed extortion as a matter of law where there was uncontroverted evidence the attorney sent a letter demanding money, threatened to publicly accuse the plaintiff of rape and other crimes, and implied the attorney was "prepared to disclose th[e] information to the 'worldwide' media"]; *Mendoza v. Hamzeh*, *supra*, 215 Cal.App.4th at p. 806 & fn.3 [attorney committed extortion where it was uncontroverted he sent a letter threatening to report the employee "'to the California Attorney General, the Los Angeles District Attorney, the Internal Revenue Service regarding tax fraud, [and] the Better Business Bureau'" if the employee did not pay damages].)[6]

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[6] MBC and Bearman alleged George made several other threats, such as statements that she would physically harm Bearman, that "she had connections in the CIA that could come after Bearman's two daughters and shut down his business," and that she would go to work with a competitor of MBC. George, however, did not move to strike these allegations. MBC and Bearman cannot show the alleged statements George moved to strike—George's accusations about Bearman's conduct and the parties' settlement discussions—were extortionate threats by

4. *MBC and Bearman Failed To Show the Claims Arising from George's Protected Activity Had Minimal Merit*

At the second step of the section 425.16 analysis, "the burden shifts to the plaintiff [or cross-complainant] to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Baral*, *supra*, 1 Cal.5th at p. 396; see *Serova v. Sony Music Entertainment* (2020) 44 Cal.App.5th 103, 110.) The Supreme Court has "'described this second step as a "summary-judgment-like procedure." [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law.'" (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788; see *Wilson*, *supra*, 7 Cal.5th at p. 891.) Where, as here, "the defendant seeks to strike particular claims supported by allegations of protected activity that appear alongside other claims within a single cause of action, the motion cannot be defeated by showing a likelihood of success on the claims arising from unprotected activity." (*Baral*, at p. 392; see *Kettler v. Gould* (2018) 22 Cal.App.5th 593,

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pointing to allegations George made other extortionate threats. Moreover, George denied making these other statements and stated she never threatened Bearman to obtain money, so that the evidence of her other allegedly extortionate conduct was not also uncontroverted or conclusive.

600.) "'[C]laims with the requisite minimal merit may proceed.'" (*Baral*, at p. 385.)

The trial court ruled MBC and Bearman did not show their claims had minimal merit because they did "not make any effort to show that George's complaints can support a claim for relief." The trial court was correct. In opposition to George's special motion to strike, MBC and Bearman submitted declarations by Bearman and several other witnesses and argued that, because the declarations "refute[d] the testimony of George" and the witnesses who submitted declarations in support of George's motion, MBC and Bearman "raise[d] a triable issue of fact." MBC and Bearman, however, had the burden to show their claims were both "legally sufficient" and supported by "'a prima facie factual showing sufficient to sustain a favorable judgment.'" (*Monster Energy Co. v. Schechter*, *supra*, 7 Cal.5th at p. 788.) Simply contending they had refuted George's evidence, without addressing any of their claims or explaining how the facts in the declarations they submitted supported their claims, did not meet that burden. (See, e.g., *Takhar v. People ex rel. Feather River Air Quality Management Dist.* (2018) 27 Cal.App.5th 15, 34 [plaintiff failed to show a probability of prevailing on a claim that a government agency wrongfully enforced a law against him despite a purported exemption where the plaintiff "include[d] no argument on" the exemption issue either "in his briefing on appeal" or in trial court]; *State Farm Mutual Automobile Ins. Co. v. Lee* (2011) 193 Cal.App.4th 34, 41 [cross-complainant failed to show "the trial court erred by concluding that he did not have a probability of prevailing on the merits" of his claims where he "fail[ed] to cite authority or tender a reasoned legal argument that [the cross-defendant's protected activity] was wrongful"];

Roberts v. Los Angeles County Bar Assn. (2003) 105 Cal.App.4th 604, 616 [plaintiff provided "almost no discussion of the allegations of her complaint or the evidence accompanying her opposition to the [section 425.16] motion other tha[n] to state that her declarations support her allegations"].)

MBC and Bearman argue they made a prima facie showing of extortion.[7] To the extent they did not forfeit this argument by failing to argue in the trial court they had satisfied their burden under the second step of the analysis (see *Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 137, fn. 5), the argument fails. As stated, George's attempts to obtain a severance, coupled with her demands to "go to the state" if Bearman did not stop harassing her, arguably constituted extortion under Penal Code section 519. But to maintain a cause of action for civil extortion it is not enough to simply show the defendant (or cross-defendant) made an extortionate threat. The plaintiff (or cross-complainant) must also show the wrongful use of force or fear caused the plaintiff to surrender money or other consideration to the defendant. (See *Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1171 ["'the wrongful use of force or fear must be the operating or controlling cause compelling the victim's consent to surrender the thing to the extortionist'"]; *Perez v. Uline, Inc.* (2007) 157 Cal.App.4th 953, 959 [economic duress requires "'the doing of a wrongful act which is sufficiently coercive to cause a reasonably prudent person . . . to succumb to the perpetrator's pressure'"]; *Rich & Whillock, Inc.*

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[7] MBC and Bearman do not argue they submitted evidence sufficient to make a prima facie showing on any other cause of action.

v. Ashton Development, Inc., *supra*, 157 Cal.App.3d at p. 1158 [same].)

MBC and Bearman did not allege George's accusations about Bearman's conduct and the statements during settlement discussions caused them to surrender anything of value. While MBC and Bearman alleged that, as a result of George's threats, Bearman offered to pay George one year's salary as a severance if she agreed to quit, Bearman never made this payment or gave George anything else of value, as required for a cause of action for civil extortion. Instead, MBC and Bearman alleged that George "laughed at Bearman's offer" and rejected it and that MBC and Bearman, rather than "succumb" to George's demands, fired her. Thus, because MBC and Bearman did not allege they surrendered anything of value, their extortion claim was not legally sufficient. (See *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 31 ["If the pleadings are not adequate to support a cause of action, the plaintiff has failed to carry his burden in resisting the motion."]; see also *Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 643 [plaintiff failed to meet its burden on step two by failing to plead special damages as required].)

MBC and Bearman also argue that, by making the alleged threats, George "obtained or intended to obtain . . . her continued six-figure salary." To the extent MBC and Bearman are arguing George successfully maintained her six-figure salary as a result of the extortionate conduct—i.e., but for George's extortion, MBC and Bearman would have either fired George earlier or reduced her salary—MBC and Bearman forfeited the argument by failing to make it in the trial court. (See *Quiles v. Parent* (2018) 28 Cal.App.5th 1000, 1013 ["'Failure to raise specific challenges in

the trial court forfeits the claim on appeal.'"]; *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 [same].) MBC and Bearman also did not submit admissible evidence supporting this claim. (See *Monster Energy Co. v. Schechter*, *supra*, 7 Cal.5th at p. 788 ["a plaintiff seeking to demonstrate the merit of the claim[s]" must submit "'competent admissible evidence'"].) Nowhere did Bearman state in his declaration he intended to fire George or cut her pay before she threatened to sue him or "go to the state." In fact, Bearman's declaration refuted this claim: Bearman stated he "did not think [George] was going to sue," "[e]ven after [he] fired her."

DISPOSITION

The order granting the special motion to strike is affirmed. George is to recover her costs on appeal.

SEGAL, Acting P. J.

We concur:

FEUER, J. DILLON, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.