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Court of Appeal, Second District, Division 1, California.

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS et al., Plaintiffs and Appellants,
v.
COUNTY OF LOS ANGELES et al., Defendants and Respondents.

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APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Johnson, Judge. Reversed. (Los Angeles County Super. Ct. No. BC543199)

**Attorneys and Law Firms**

Green & Shinee, Richard A. Shinee, Elizaeth J. Gibbons; Benedon & Serlin, Gerald M. Serlin, and Melinda W. Ebelhar for Plaintiffs and Appellants.

Hausman & Sosa, Jeffrey M. Hausman, and Larry D. Stratton for Defendants and Respondents.

**Opinion**

ROTHSCHILD, P.J.

***1** A Los Angeles County Sheriff's Deputy (identified as John Doe) and the Association for Los Angeles Deputy Sheriffs (ALADS) filed a complaint against the County of Los Angeles (the County) and other parties alleging, inter alia, that the defendants unlawfully accessed Doe's medical information, and later discriminated and retaliated against him for asserting his right to keep that information confidential. The defendants filed a special motion to strike the complaint under Code of Civil Procedure section 425.16,[1] commonly referred to as an anti–SLAPP motion. The trial court granted the motion and awarded $ 10,230 in attorneys' fees to the defendants. Doe and ALADS appealed. We review the matter de novo, and agree with Doe and ALADS that the defendants failed to make a prima facie showing that the plaintiffs' causes of action arose out of activity protected by the anti–SLAPP statute. We therefore reverse the order granting the anti–SLAPP motion and the award of attorneys' fees.

## FACTUAL AND PROCEDURAL SUMMARY[2]

Doe has been a Los Angeles County Sheriff's Deputy since 1997. In 2009, he suffered a work-related injury to his back for which a physician prescribed narcotic pain medication. Doe became physically dependent on the medication. He received workers' compensation benefits for both the back injury and his dependency.

In May 2011, Doe entered a drug dependency treatment program. He completed the program successfully in June and was released to return to full time, unrestricted duty.

From June 2011 until February 2012, Doe worked full time as a deputy sheriff. He had back surgery in February, then took a leave of absence until July 6, 2012. In May 2012, while on leave, Doe filled several prescriptions he obtained from different physicians for pain medications.

In August 2012, the County's workers' compensation administrator reviewed Doe's requests for reimbursement for the costs of the prescriptions he filled in May and noticed that the number of prescriptions was "unusual" and included a prescription from a physician whom the administrator had not authorized to prescribe medicine for Doe. The administrator informed the sheriff's department about the prescriptions. When confronted about the prescriptions, Doe stated that he had decided to quit taking the medication and destroyed the remaining pills. The last time he took narcotic pain medication was in June 2012.

From August 6, 2012 until June 13, 2013, Doe worked full time without medical restrictions or performance problems. The sheriff's department nevertheless placed him on a performance mentoring program. Under the mentoring program, Doe was required to attend quarterly performance reviews and submit to drug tests. From August 2012 until June 2013, Doe provided the required information, including

monthly reports showing that he took and passed all drug tests.

***2** On December 6, 2012, someone in the sheriff's department accessed Doe's records within the County's Prescription Medication Drug Database (PMDD) for the purpose of discovering the medications Doe had been prescribed. Employees of the County and the sheriff's department reviewed the information. Doe had not authorized such access or review, and did not learn of it until November 2013.

The same day that defendants accessed Doe's PMDD records, Doe attended a quarterly performance mentoring meeting before three of his supervisors, who found Doe's performance satisfactory and acceptable.

On February 20, 2013, Doe attended a second performance mentoring meeting, where he again received satisfactory and acceptable reviews. At the conclusion of the meeting, one of his supervisors asked Doe for consent to access his prescription information on the PMDD, which Doe declined. Thereafter, five supervisors attempted to get Doe to authorize access to his prescription information, telling him that it would "save [his] job." Each time, Doe declined.

On May 7, 2013, three sheriff's department officers met with Doe and asked him to voluntarily submit to a psychological fitness for duty evaluation. Again, Doe declined.

Defendant Sepideh Souris is the Chief of Psychological Services for the County's Occupational Health Programs (OHP), a division of the County's chief executive office, risk management branch. On May 23, 2013, a sheriff's department employee sent a letter to Dr. Souris requesting that the OHP conduct a fitness for duty evaluation of Doe. Souris responded in a letter the same day, stating, "we concur with your ordering [Doe] to be re-evaluated." Souris based his approval of the order in part upon the fact that Doe refused to provide access to his prescription medical information.

The next day, the sheriff's department sent a letter to Doe informing him that he had been "ordered to engage in a fitness for duty psychological re-evaluation," with the date, time, and location for the fitness for duty evaluation. The letter did not include any reason for the evaluation or refer to any evidence to support the need for the evaluation.

Plaintiffs alleged that the County ordered the evaluation to retaliate against him for refusing to authorize the release of his medical information. The defendants were allegedly aware that Doe would be required to release this information as part of the fitness for duty evaluation. Ordering the fitness for duty evaluation was thus a way of circumventing, or attempting to circumvent, the requirement that they obtain Doe's permission to access the information.

On June 12, 2013, Doe met with Dr. Larry Ball, a psychologist with the OHP, for the fitness for duty evaluation. Doe consented to the evaluation, but refused to authorize the release of his medical records for any time prior to June 2012. Consequently, Dr. Ball did not conduct the evaluation and OHP declared that it was unable to determine whether Doe could safely carry out his duties as a peace officer.

The next day, a sheriff's department officer ordered Doe to take a medical leave of absence. Doe complied, even though he was ready, willing, and able to perform his duties. He has been on leave of absence since that time and, in November 2013, he exhausted his leave credits. Defendants have refused to allow Doe to return to work.

Doe and ALADS commenced this action by filing a complaint against the County, the Los Angeles County Sheriff's Department, Richard Barrantes, OHP, Steve Nyblom, Richard L. Golberg, M.D., Souris, and Dr. Ball. The complaint alleged nine causes of action: (1) violation of privacy and unauthorized access of medical information; (2) violation of privacy—retaliation; (3) discrimination for exercise of rights; (4) violation of civil rights; (5) "*Monell* Claim; 42 U.S.C. § 1983"; (6) violation of Government Code section 3304, subdivision (b); (7) violation of Government Code sections 3305 and 3306; (8) civil penalty under Government Code section 3309.5; and (9) declaratory relief. In addition to damages and other relief, Doe sought an order compelling defendants to return him to full duty with back pay and restoration of the benefits he had lost.

***3** The defendants filed a motion to strike the complaint or, alternatively, to strike each cause of action asserted in the complaint pursuant to the anti–SLAPP statute. Defendants argued that the process by which the OHP approved of the sheriff's department's order that Doe submit to a fitness for duty evaluation constitutes an " 'official proceeding authorized by law' " for purposes of the anti–SLAPP statute, and that the plaintiffs' causes of action arise out of writings or statements made in connection with that proceeding.

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In opposition to the motion, plaintiffs argued that the fitness for duty evaluation process is nothing more than an "internal request" between two County departments, without any public announcement, and "dealing solely with Deputy Doe's personal medical condition." As such, they argued, it is not an official proceeding under the anti–SLAPP statute. Moreover, plaintiffs' claims, they asserted, arose not from the fitness for duty evaluation process, but from "defendants' unlawful summary separation of Deputy Doe from his position as a deputy sheriff, without cause, and without due process."

In granting the motion, the trial court agreed with defendants that the fitness for duty evaluation was an official proceeding under the anti–SLAPP statute and that plaintiffs' claims arose out of that proceeding. The court awarded defendants their attorneys' fees in the amount of $ 10,230. This appeal followed.

## DISCUSSION

"A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so.... ' "[T]hey are generally meritless suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe economic sanctions against the defendant, and not to vindicate a legally cognizable right." ' [Citation.]" (*Simpson Strong–Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21.) In order to prevent the chilling effect of such lawsuits and to encourage participation in matters of public significance, the Legislature enacted the anti–SLAPP statute, which allows a defendant to file a motion "to expedite the early dismissal of" a SLAPP suit. (*Ibid.*) "The statute is to 'be broadly construed to encourage continued participation in free speech and petition activities.' [Citations.]" (*Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1216 (*Graffiti Protective Coatings*).)

Resolving an anti–SLAPP motion involves a two-part inquiry. First, the defendants must make a prima facie showing that the challenged cause of action arises from activity protected by the anti–SLAPP statute. (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1477 (*Feldman*); § 425.16, subd. (b)(1).) Activity protected by the anti–SLAPP statute is statutorily defined as "any act of [a] 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."[3] (§ 425.16, subd. (b)(1).) This definition "includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, [and] (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law...." (§ 425.16, subd. (e).) Our Supreme Court has synthesized these two definitions into one: "any statement or writing made in, or in connection with an issue under consideration or review by, an official proceeding or body." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1113 (*Briggs*).)

***4** In determining whether a cause of action arises from protected activity, the court determines the "*principal thrust or gravamen* of the plaintiff's cause of action." (*Martinez v. Metabolife Intern., Inc.* (2003) 113 Cal.App.4th 181, 188.) "In the context of the anti–SLAPP statute, the 'gravamen is defined by the *acts on which liability is based.*' [Citation.] The 'focus is on ... *the allegedly wrongful and injury-producing conduct* that provides the foundation for the claims. [Citations.]' [Citation.]" (*Renewable Resources Coalition, Inc. v. Pebble Mines Corp.* (2013) 218 Cal.App.4th 384, 396.)

If the defendants satisfy their burden of showing that the cause of action arises from protected activity, the burden shifts to the plaintiffs to make a prima facie showing of facts demonstrating a probability of prevailing on their claim. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*); *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999 (*ComputerXpress*).) Plaintiffs must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. (*Feldman, supra*, 160 Cal.App.4th at pp. 1477–1478.)

In making these determinations, the trial court considers " 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' " (*Navellier, supra*, 29 Cal.4th at p. 89.) The court does not weigh credibility or compare the weight of the evidence. It

must accept as true the evidence favorable to the plaintiff, and evaluates the defendant's evidence only to determine if it has defeated the plaintiff's evidence as a matter of law. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

We review de novo the trial court's ruling. (*Flatley v. Mauro, supra*, 39 Cal.4th at p. 325.) As to whether the plaintiff's causes of action arose from acts by the defendant in furtherance of the defendant's right of petition or free speech, we apply our independent judgment. (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 624 (*Martin*).)

In their anti–SLAPP motion, defendants argued that plaintiffs' causes of action arise from protected activity because the "factual basis for this action" is the "Sheriff's protected referral" of Doe to the OHP for the fitness for duty evaluation. This appears to refer to the May 23, 2013 request from the sheriff's department to the OHP to approve of a fitness for duty evaluation for Doe. In their brief on appeal, they broaden this somewhat by asserting that the "core 'injury' producing conduct in this case is the statutory [fitness for duty evaluation] process." This appears to encompass the process authorized by the County's Civil Service Rules by which one arm of the County (the Los Angeles County Sheriff's Department) requests from a division of another arm of the County (the OHP) approval of an order that a County employee (here, Doe) submit to a fitness for duty evaluation.[4] This process may also include the OHP's consideration of the request and its response, the physician's examination of the employee, and the ultimate determination of fitness for duty.

***5** The parties dispute whether the County's fitness for duty evaluation process constitutes " 'official proceedings' authorized by law," a phrase the Legislature did not define and which continues to elude definitive judicial construction.[5] Although it generally encompasses proceedings in a "governmental forum" (*Olaes v. Nationwide Mutual Ins. Co.* (2006) 135 Cal.App.4th 1501, 1507), our Supreme Court has suggested that it may be limited to proceedings that have a "public nature" (*Briggs, supra*, 19 Cal.4th at p. 1118). The fitness for duty evaluation process described by defendants, by contrast, appears to involve, as plaintiffs assert, an "internal" matter involving one employee's fitness for duty. We need not decide this question because even if the County's fitness for duty evaluation process is an "official proceeding," defendants have not made a sufficient prima facie showing that plaintiffs' causes of action arise out of that process.

In his first cause of action—for violation of privacy and unauthorized access of medical information—Doe alleges that the County accessed and reviewed Doe's medical information in violation of California statutes that require patient authorization prior to such access. (See, e.g., Civ. Code, §§ 56.10, 56.11.)[6] The alleged unlawful access occurred in December 2012, five months before anyone requested or ordered a fitness for duty evaluation of Doe. Even if the fitness for duty evaluation process is an "official proceeding," defendants have offered no evidence to support a finding that their allegedly unlawful access of Doe's medical records involved any statement or writing made in connection with that or any other official proceeding.

Defendants point out that Doe alleged that in deciding to order him to submit to the fitness for duty evaluation in May 2013, defendants relied on the information they unlawfully obtained in December 2012. Such reliance, however, is neither the thrust of Doe's first cause of action nor constitutes any "statement or writing," as required by the anti–SLAPP statute.

The second cause of action, for "Violation of Privacy —Retaliation" (capitalization omitted), is based upon the County's May 2013 order that Doe submit to a fitness for duty evaluation. According to plaintiffs, this order was made in retaliation for Doe's refusal to release his confidential medical information, and therefore unlawful. Furthermore, the order was allegedly made as a way "to circumvent the legal requirement that [defendants] obtain a lawful written authorization or release."

***6** In analyzing anti–SLAPP motions, courts have drawn a distinction between a cause of action arising from statements made in connection with an official proceeding and a cause of action challenging the legality of decisions resulting from an official proceeding. (See, e.g., *San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal.App.4th 343 (*San Ramon*); *Graffiti Protective Coatings, supra*, 181 Cal.App.4th 1207.) In *San Ramon*, the board of a public employee retirement association voted to require increased contributions from the plaintiff, a fire protection district. The vote took place at a public meeting following a presentation

and discussion regarding the matter. (*San Ramon, supra*, 125 Cal.App.4th at p. 348.) The district filed a lawsuit challenging the board's decision, and the board responded by filing an anti–SLAPP motion. (*Id.* at pp. 348–349.) The Court of Appeal affirmed the denial of the motion. Although statements made by board members or others during the public meeting that preceded the board's vote might constitute protected activity, the court explained that "there is nothing about [the board's] decision, qua governmental action, that implicates the exercise of free speech or petition." (*Id.* at p. 355; see also *Young v. Tri–City Healthcare Dist.* (2012) 210 Cal.App.4th 35, 59 [action challenging an administrative body's denial of hearing did not arise from protected activity].)

We followed *San Ramon* in *Graffiti Protective Coatings, supra*, 181 Cal.App.4th 1207. In that case, the City of Pico Rivera allegedly failed to undertake a statutorily required competitive bidding process when it decided to award a bus stop maintenance contract. When a party that sought the maintenance contract sued the city to compel that process, the city responded with an anti–SLAPP motion. The city asserted, and we assumed, that the decisions regarding the maintenance contract were considered or reviewed in an official proceeding. (*Id.* at p. 1218.) The contractor's claims, however, were not based on any statement or writing made during or in connection with the proceeding, but on the alleged violation of laws requiring the city to award contracts through competitive bidding. (*Id.* at pp. 1218, 1225.) We also agreed with the observation in *San Ramon* that a contrary holding—that such activity was protected and subject to an anti–SLAPP motion—" 'would significantly burden the petition rights of those seeking [relief] for most types of governmental action' " and " 'ironically impose an undue burden upon the very right of petition for those seeking [relief] in a manner squarely contrary to the underlying legislative intent behind [the anti–SLAPP statute].' [Citation.]" (*Id.* at pp. 1224–1225.)

Here, the sheriff's department may have made its request for the OHP's approval of the fitness for duty evaluation, and the OHP may have given its approval, based on writing or statements. Assuming the fitness for duty evaluation process is an official proceeding, such statements, like the statements made at the public board meeting in *San Ramon*, might constitute protected activity. If Doe had sued those who made such statements for defamation, for example, the action might have been subject to an anti–SLAPP motion. (See, e.g., *ComputerXpress, supra*, 93 Cal.App.4th at pp. 1008–1009 [defamatory statements made in complaint filed with Securities Exchange Commission was protected activity].) Doe, however, is not suing anyone based upon statements made in connection with the "proceeding"; he is suing the County because the order itself is an allegedly unlawful act of retaliation for Doe's refusal to release his confidential medical information. That act, like the decisions challenged in *San Ramon* and *Graffiti Protective Coatings*, was not an act in furtherance of the County's right of petition or free speech.

The third and fourth causes of action (for "Discrimination for Exercise of Rights" and "Violation of Civil Rights") arise from defendants' June 2013 order that Doe take a medical leave of absence and that he be required to use his accumulated leave credits. The order was made after Doe refused to authorize the release of his medical information during the fitness for duty evaluation, which caused Dr. Bell to refuse to conduct the evaluation. Plaintiffs alleged that the order was made in retaliation for Doe's exercise of his statutory right to maintain the confidentiality of his medical records. (See Civ. Code, § 56.20, subd. (b).)[7] The same order allegedly deprived him "of a vested property interest ... protected by the 14th Amendment to the United States Constitution" without notice and a hearing.

***7** Our analysis of the second cause of action applies equally here: The third and fourth causes of action challenge the County's June 2013 order itself; they are not based upon any statements or writings made in connection with an official proceeding. In addition to *San Ramon* and *Graffiti Protective Coatings*, discussed above, *Martin, supra*, 198 Cal.App.4th 611, is instructive. In *Martin*, an employee filed a complaint against his former employer, a utilities agency, alleging causes of action for retaliation, racial discrimination, racial harassment, defamation, and wrongful termination. (*Id.* at p. 617.) The employee alleged numerous wrongful statements and actions by the agency's chief executive officer (CEO) leading up to a meeting of the agency's board. At that meeting, the board directed that the employee report to the offensive CEO, which led to the employee's constructive termination. (*Id.* at p. 618.) The employer filed an anti–SLAPP motion on the ground that the employee's causes of action arose from statements made during the board meeting, an official proceeding. To the extent the causes of action

were based on statements made outside the board meeting, the agency asserted that they were subject to the anti–SLAPP statute "because they were made in connection with an issue under consideration by a government entity, i.e., plaintiff's performance as an employee." (*Id.* at p. 619.) The Court of Appeal rejected the agency's argument, and held that the plaintiff's action was directed at the defendants' retaliatory and discriminatory decisions, not "their evaluations of plaintiff's performance as an employee." (*Id.* at p. 625.) Notwithstanding the factual allegations regarding the board meeting, the court explained that the employee's "action does not arise from any purported exercise of defendants' privileged governmental acts, which would be covered by the statute." (*Ibid.*) Here, to the extent Doe makes any allegations regarding statements made by defendants concerning events leading up to the June 2013 order, the allegations are, like the allegations concerning the plaintiff's performance evaluations at the board meeting in *Martin*, minimal and incidental to allegations of discrimination and retaliation.

The fifth cause of action, styled as "*Monell* Claim; 42 U.S.C. § 1983," is based upon the alleged policy and practice of the County, the sheriff's department, and the OHP to punish sheriff's department employees who exercise their rights to refuse to disclose their medical records. It thus arises from the defendants' allegedly unlawful policies and practices, not from any particular writings or statements made in connection with any official proceeding.

The sixth and seventh causes of action allege violations of the Public Safety Officers Procedural Bill of Rights Act (POBRA). (Gov. Code, § 3300 et seq.) POBRA provides public safety officers with the right to contest a punitive action at an administrative hearing and to receive a copy of any comments adverse to the officer that have been entered in the officer's personnel file. (See Gov. Code, §§ 3304–3305.) The officer is also allowed to file a written response to any adverse comment, and have that response attached to the adverse comment. (Gov. Code, § 3306.) Plaintiffs alleged that the order placing Doe on medical leave constituted a punitive action, which entitled Doe to an administrative hearing. Defendants, however, allegedly never provided Doe with an opportunity for a hearing. (See Gov. Code, § 3304, subd. (b).) Plaintiffs further allege that Doe's requests to review and respond to adverse comments in his personnel file have been unlawfully refused. The eighth cause of action alleges a claim for a civil penalty based on the violations of POBRA.

To the extent the POBRA causes of action are based on the May 2013 order requiring Doe to take a leave of absence, our analysis regarding the third and fourth causes of action applies here as well; the plaintiffs challenge the order itself, not statements made in any official proceeding. The POBRA violations arising from the denials of Doe's requests to review and respond to adverse comments are not based on the alleged adverse comments or any other writings or statements made in connection with an official proceeding, but on the refusal to review and respond to the comments. Such refusal does not implicate any defendant's right to petition or free speech.

Finally, in the ninth cause of action, plaintiffs seek a judicial declaration that defendants cannot order ALADS members placed on medical leave, and cannot deprive such persons of their right to a hearing to contest such an order, based on the person's refusal to authorize review of his or her medical records. The cause of action is not based on any writing or statement made during or in connection with any official proceeding and is not, therefore, subject to being stricken under the anti–SLAPP statute.

Because the plaintiff's causes of action do not arise from activity protected under the anti–SLAPP statute, the trial court erred in granting defendants' special motion to strike the complaint and in awarding defendants' their attorneys' fees. [8]

## DISPOSITION

***8** The order granting the defendants' special motion to strike the complaint and the award of attorneys' fees are reversed. Appellants are awarded their costs on appeal.

NOT TO BE PUBLISHED.

We concur:

CHANEY, J.

LUI, J.

**All Citations**

Not Reported in Cal.Rptr., 2016 WL 6072336

## Footnotes

1 Unless indicated otherwise, all statutory references are to the Code of Civil Procedure.

2 In accordance with our standard of review, our statement of facts is based upon the allegations of the complaint and the evidence submitted in support of and in opposition to the anti–SLAPP motion. (See *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3; *Nesson v. Northern Inyo County Local Hospital Dist.* (2012) 204 Cal.App.4th 65, 72, disapproved on another point in *Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 660.)

3 Public officials and government bodies are persons for purposes of the anti–SLAPP statute. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 17.)

4 The County's fitness for duty evaluation procedure is governed by rule 9 of the Los Angeles County's Civil Service Rules. These rules allow the County's director of personnel to "require a reasonable medical reevaluation at the time of promotion, demotion, reassignment, or other changes of status of an employee." "An employee may request, or an appointing authority may, with the consent of the director of personnel, require an employee to have a medical reevaluation. The purpose of such reevaluation must be to determine the capacities of the employee to perform the duties of the employee's job satisfactorily and without undue hazard to the employee or others. Accordingly, such reevaluation shall be concerned only with the medical condition related to the satisfactory performance of the required duties or to the protection of the health, safety and welfare of the employee or others."

5 Both sides discuss the Supreme Court decision in *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, which held that a hospital's peer review process was an official procedure for purposes of the anti–SLAPP statute because (1) the Legislature mandated and heavily regulates such proceedings, (2) hospitals are required to report the results of peer review proceedings to the Medical Board of California, and (3) the decisions resulting from the peer review process are subject to judicial review by administrative mandate. (*Id.* at pp. 199–200.) The court also noted that the members of a hospital's peer review committee are unpaid volunteers who might be discouraged from participating if they were not protected by the anti–SLAPP statute from "harassing lawsuits." (*Id.* at p. 201.) Although *Kibler* is significant for its holding that an "official proceeding" can encompass proceedings by nongovernmental entities, its fact-specific application provides little guidance in the present case.

6 Under Civil Code section 56.10, subdivision (a), subject to exceptions not applicable here, "[a] provider of health care, health care service plan, or contractor shall not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization."

Under Civil Code section 56.11, "[a]ny person or entity that wishes to obtain medical information" must, except as provided in the statute, "obtain a valid authorization for the release of this information."

7 Civil Code section 56.20, subdivision (b) provides: "No employee shall be discriminated against in terms or conditions of employment due to that employee's refusal to sign an authorization under this part. However, nothing in this section shall prohibit an employer from taking such action as is necessary in the absence of medical information due to an employee's refusal to sign an authorization under this part."

8 During oral argument, defendants asserted for the first time that plaintiffs failed to exhaust their available administrative remedies with the Los Angeles County Civil Service Commission (LACCSC). We requested

the parties submit supplemental briefs on that issue, which we have received and considered. Because we conclude that defendants failed to show that the plaintiffs' causes of action arise out of protected activity, we do not reach or address arguments concerning plaintiffs' probability of prevailing, including whether they have exhausted their administrative remedies.

In support of their supplemental brief on the exhaustion of administrative remedies issue, defendants requested that we take judicial notice of four documents that the LACCSC either received or issued concerning unrelated matters before the LACCSC, and of certain rules of the LACCSC. Because we do not address the arguments concerning the exhaustion issue, we deny the request as irrelevant.

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