Case No.: S244148

IN THE SUPREME COURT OF CALIFORNIA

ARAM BONNI

Plaintiff and Appellant,

vs.

ST. JOSEPH HEALTH SYSTEM, et al.

Defendants and Respondents

REPLY BRIEF ON THE MERITS

After a Decision by the Court of Appeal,
Fourth Appellate District, Division Three
Case No. G052367

Appeal From The Superior Court Of Orange County
Case No. 30-2014-00758655
The Honorable Andrew P. Banks, Judge

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RESPONDENTS' REPLY BRIEF ON THE MERITS

I. INTRODUCTION

Speech and petitioning imbue every aspect of peer review. Peer review committees and medical staff leaders discuss and debate physician competence; unsafe or impaired physicians are counseled and coached. If necessary, the MEC[1] may petition the hospital board by recommending disciplinary actions that could include suspension of hospital privileges. If these actions are reportable to the Medical Board of California, the physician is entitled to a hearing before a jury-like JRC. The MEC submits written charges and has the burden of proof at the hearing. After the JRC issues a decision, the physician or the MEC may petition the hospital board to appeal the JRC findings. Either party may petition the Superior Court to overturn a board decision via writ. Medical Board reports—petitions to the government—are made throughout the process and are integral to patient protection.

In his FAC and declaration opposing the anti-SLAPP Motion filed in the trial court ("Declaration"), Plaintiff alleges that Defendants retaliated against him via at least 19 enumerated retaliatory acts spanning the scope of peer review. (1 AA 13–14, FAC ¶ 16; 1 AA 231–243.) Rather than admit that he alleges protected speech and petitioning activity, Plaintiff ignores his own averments. Plaintiff dedicates the majority of his Answer to arguing that various allegations in his FAC and Declaration

[1] All acronyms are defined in the Opening Brief.

either do not exist, or are merely "incidental" to the few acts he claims are unprotected.

But the FAC and Declaration speak for themselves. Plaintiff alleges retaliation via peer review statements and writings, including reports to the Medical Board. These are statements in connection with an official proceeding protected under anti-SLAPP subdivision (e)(2). The summary suspensions and reappointment denial, to which Plaintiff pivots in his Answer, are protected acts in furtherance of speech and petitioning rights under anti-SLAPP subdivision (e)(4). These disciplinary acts furthered protected Medical Board reporting. They also furthered hearing rights for all parties, as well as petitioning to the hospital board. Protected peer review activities are not merely "incidental" to Plaintiff's claims—they are his claims.

Protected speech and petitioning underlie every aspect of the medical staff peer review process. Nothing in Plaintiff's Answer compels a contrary finding. Every aspect of peer review deserves anti-SLAPP protection under prong one of the analysis.

II. FACTUAL BACKGROUND

Plaintiff's Answer devotes nearly a dozen pages to his myopic version of the facts. (Answer, pp. 9, 11–20.) Ironically, Plaintiff's Introduction begins by stating that Defendants misrepresented the JRC record. (Answer, p. 9.) Yet the record contradicts each of Plaintiff's statements.[2] Plaintiff's factual

[2] St. Joseph's JRC found that Plaintiff's poor surgical technique seriously injured the patient in each case it reviewed. (2 AA 437, 439, 440.) It also found that Plaintiff's surgery resembled

summary ignores nearly every negative finding by the Mission and St. Joseph JRCs, and there were many. (Answer, pp. 11–20; see 1 AA 95, 2 AA 437, 438, 440, 445; see also 3 AA 750–754 [Mission Appellate Committee's list of all the JRC's negative findings covers five pages].) However, the core questions before the Court are legal, not factual, so Defendants address those issues, rather than Plaintiff's factual misstatements.

ARGUMENT

I. PLAINTIFF IGNORES THAT HIS CLAIMS ARE BASED ON ALLEGED STATEMENTS PROTECTED BY ANTI-SLAPP SUBDIVISION (E)(2).

Throughout the Answer, Plaintiff tortures the facts he pled to attempt an analogy to *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057. (See, e.g., Answer, pp. 28–32.) In *Park*, the Court determined that the plaintiff's claim depended "only on the denial of tenure itself," which was not protected conduct. (*Id.* at p. 1068.) Attempting to square *Park*, Plaintiff urges the Court to discount his myriad allegations of retaliatory speech and petitioning, and focus only on conduct—the summary suspensions and denial of reappointment—both of which he claims are unprotected.[3] (Answer, p. 31.)

"gunshot wounds to the abdomen" and that he "almost caused the death of [a] patient." (2 AA 440.)

[3] These actions are protected under anti-SLAPP subdivision (e)(4), as conduct in furtherance of speech and petitioning rights. (See, *infra*, Part II.)

But this case is not *Park*. *Park* involved a different statute, with different legal elements. Under Health and Safety Code section 1278.5 ("Section 1278.5"), Plaintiff's allegations of retaliatory *speech* supply a necessary legal element of his claim. And contrary to Plaintiff's denials on appeal, statements and writings permeate his FAC and Declaration. Anti-SLAPP subdivision (e)(2) protects Defendants' communications in connection with an official peer review proceeding. Plaintiff's claims arise from these protected statements, and thus prong two is reached.

A. Plaintiff's Answer Ignores the Legal Elements of His Retaliation Claims.

On anti-SLAPP prong one, this Court must determine whether Plaintiff's claims "arise from" protected speech or if the speech is "merely incidental." (See *Baral v. Schnitt* (2016) 1 Cal.5th 376, 394 [incidental allegations "provide context, without supporting a claim for recovery"].) To do so, the Court first "consider[s] the elements of the challenged claim." (*Park*, 2 Cal.5th at p. 1063.) It then examines the complaint to see "what actions by the defendant supply those elements and consequently form the basis for liability." (*Ibid.*)

Plaintiff's Answer skips the first step entirely. Nowhere does Plaintiff examine his claim's legal elements. Instead, he relies on the inapposite Fair Employment and Housing Act (FEHA) statute at issue in *Park*. (Answer, p. 29.) Plaintiff's

allegations of retaliatory speech provide a necessary element of his legal claim and cannot be ignored.

Professor Park filed suit for FEHA discrimination. (*Park*, 2 Cal.5th at p. 1061.) FEHA requires the plaintiff to show that "he suffered an adverse employment *action*,[4] such as termination, demotion, or denial of an available job …." (*Id*. at pp. 1067–68, quoting *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355, emphasis added; see also Gov. Code, § 12940(a).) Thus, although Park alleged that a school dean made derogatory comments, those statements did not form the basis of liability. For that reason, "[t]he elements of Park's claim … depend[ed] not on the grievance proceeding, any statements, or any specific evaluations of him in the tenure process, but only on the denial of tenure itself …." (*Id.* at p. 1068.) Park's allegations of speech "provide[d] context, without supporting a claim for recovery." (See *Baral*, 1 Cal.5th at p. 394.) The anti-SLAPP statute does not apply to such incidental allegations. (*Ibid.*)

Plaintiff, on the other hand, sued under Section 1278.5 and sought damages based on speech. Section 1278.5 defines prohibited "discriminatory treatment" as including:

> discharge, demotion, suspension, or any unfavorable changes in, or breach of, the terms or conditions of a contract, employment, or privileges … **or the threat of any of these actions**.

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[4] The term "adverse employment action" itself makes little sense in the physician discipline context. No Defendant employed Dr. Bonni. With rare exceptions, California corporations may not employ physicians. (See, e.g., Bus. & Prof. Code, § 2400.)

(Health & Saf. Code, § 1278.5(d)(2), emphasis added.)

As part of their statutorily mandated peer review duties, hospitals, medical staffs, and peer review committee members *discuss* patient safety, *recommend* reportable discipline to their governing body, and *report* unsafe physicians to the Medical Board. They are routinely sued based on such peer review speech and activities alleged to be "threats" of more serious disciplinary action. (See, e.g., *Armin v. Riverside Community Hospital* (2016) 5 Cal.App.5th 810, 818, 831 [alleged retaliatory act was the "initiation" of peer review, which "threatened the possibility of summary suspension"]; *Melamed v. Cedars-Sinai Medical Center* (2017) 8 Cal.App.5th 1271, 1282 ["Plaintiff contended that the hospital initiated the peer review process based on his complaints"].)

Given Plaintiff's FAC, the Court must decide whether the allegations of peer review speech are merely "evidence of liability" or "the wrong complained of." (*Park*, 2 Cal.5th at p. 1060.) If the Court concludes that speech is "the wrong complained of"—and can form the basis for Section 1278.5 liability—the anti-SLAPP statute applies. That is because statements and writings in connection with an official peer review proceeding are protected conduct. (Code Civ. Proc., § 425.16, sub. (e)(2); *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 203.)

B. The FAC Alleges that Defendants Retaliated Via Peer Review Communications.

In addition to ignoring the legal elements of his claims, Plaintiff ignores most of his own factual allegations. In the Opening Brief, Defendants addressed three categories of alleged retaliatory speech alleged in Plaintiff's FAC: (1) peer review committee discussions; (2) MEC recommendations; and (3) hearing and appellate notices. (See Opening Brief, pp. 33–49.) Plaintiff's Answer does not contest that all three types of peer review communications are protected statements in connection with an official proceeding. (See Answer, pp. 33–38.)

Instead, Plaintiff attempts to erase these allegations from his FAC. But "ignoring the [protected activity] does not make that portion of the cross-complaint disappear." (*Takhar v. People ex rel. Feather River Air Quality Management Dist.* (2018) 27 Cal.App.5th 15, 30.) The FAC alleges retaliation via protected statements, so anti-SLAPP subdivision (e)(2) applies.

1. Plaintiff's Claims Are Based on Peer Review Committee Discussions.

In his Answer, Plaintiff argues that various communications he alleges as the basis of his Section 1278.5 claim have "no express connection to peer review," so are not protected under subdivision (e)(2). (Answer, pp. 32, fn. 4, 33, 34; e.g., 1 AA 14 ["Engaging in a campaign of character assassination …."].) The record belies Plaintiff's assertion. Plaintiff alleges no other

events, outside of peer review, to which these communications could possibly relate. (1 AA 6–20; 1 AA 227–244.)

Plaintiff also argues that "removal of all reference to these communications would not alter the nature of his claim" because the communications did not allegedly cause his "harm." (Answer, p. 34.) Once again, this ignores Plaintiff's own FAC, which reads:

> Defendants' retaliatory conduct … includes … (11) Engaging in a campaign of character assassination **which caused irreparable damage to Plaintiff's reputation**.

(1 AA 14, emphasis added; see also 1 AA 14–15 ["As a direct and proximate result of the aforesaid conduct of the defendants"—including "defamation"—"plaintiff has sustained a loss of earnings"].)

2. Plaintiff's Claims Are Based on MEC Recommendations.

Plaintiff similarly attempts to erase his allegations related to MEC recommendations. As described in the Opening Brief, and as Plaintiff does not contest, MEC "recommendations" are not disciplinary *actions*. (See Opening Brief, pp. 36–41.) They are petitions to the hospital board, in connection with an official peer review proceeding, and thus protected speech. (See Code Civ. Proc., § 425.16, subd. (e)(2); *Ellison v. Sequoia Health Services* (2010) 183 Cal.App.4th 1486, 1497; *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1142.)

Plaintiff does not deny that MEC recommendations are anti-SLAPP protected. (See Answer, pp. 34–35.) But he still asserts that this does not bring his retaliation claim within anti-SLAPP because:

> The leveling of these false accusation[s] is evidence of defendants' retaliatory animus and **is not itself an adverse employment action necessary to state a claim under section 1278.5.**

(*Ibid*, emphasis added.) For the reasons explained in Part I.A., this argument ignores the legal elements of Section 1278.5, which is not limited to employment *actions*.

Plaintiff next insists that any harm from the MEC recommendations arose only because they "were used to justify the summary suspension." (Answer, p. 35.) But that is not what he alleges: that St. Joseph's MEC retaliated against him when it "brought approximately 18 charges against me, and claimed that my privileges should be terminated." (1 AA 234.) Plaintiff claims he was damaged as a result of this "retaliatory conduct." (1 AA 243–244.) Nowhere in his FAC or Declaration does Plaintiff specify that he suffered damages only from the summary suspension. Rather, Plaintiff alleges that Defendants "subjected [him] to a continuous course of conduct … which was designed to harass, exclude, humiliate, intimidate and retaliate against Plaintiff, and cause damage to his reputation." (1 AA 10.)

3. Plaintiff's Claims Are Based on Hearing and Appellate Notices.

Plaintiff's approach to his allegations of retaliatory hearing and appellate notices is much the same: Pretend those allegations do not exist. Plaintiff argues that "there are no writings or statements which plaintiff alleges were the [*sic*] actionable." (Answer, p. 37.) And yet his Declaration states: "I then received Mission's Third and Final Amended Notice of Charges," which included "approximately 125 allegations against me …." (2 AA 239.) "I believe that these charges and allegations were brought against me in retaliation for my reports related to patient safety." (2 AA 240; see also 1 AA 233–234.) In his FAC, Plaintiff alleges that Defendants retaliated by "challenging the favorable findings of the [JRC] at a hearing" and "having an Appellate Committee recommend to the Board that it reverse the findings of the JRC." (1 AA 13, emphasis added.) These are all peer review statements and writings, which Plaintiff has claimed—at least until his Answer—were actionable.

In summary, despite his current position on appeal, Plaintiff's FAC and Declaration both aver that Defendants retaliated against him via peer review communications. (1 AA 12–15, 230, 235–236.) Because Plaintiff's claims "arise from" Defendants' protected statements and writings in connection with an official peer review proceeding, the anti-SLAPP statute applies. (Code Civil Proc., § 425.16, subd. (e)(2).)

C. Plaintiff's Retaliation Claims Arise from Defendants' Protected Medical Board and Data Bank Reporting.

Plaintiff's most tortured departure from his own allegations relates to Defendants' written reports to the Medical Board and National Practitioner Data Bank ("NPDB"), which are law enforcement agencies. (See *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 7.) Plaintiff's FAC, Declaration, and Answer each demonstrate that his central complaint arises from Defendants' privileged government reporting communications. Plaintiff's retaliation claims arise from protected activity under anti-SLAPP subdivision (e)(2).

1. Plaintiff's FAC Alleges Defendants' Liability is Based on Wrongful Medical Board Reporting.

To avoid anti-SLAPP, Plaintiff first argues that Mission's NPDB and Medical Board reports were merely "evidence of the hospitals [*sic*] alleged liability, they are not the basis for it." (Answer, p. 36.) He once again relies on *Park*, where the Court observed that a claim "may be struck only if the speech or petitioning activity *itself* is the wrong complained of …." (*Park*, 2 Cal.5th at p. 1060; Answer, p. 36.)

Here, however, the Medical Board and NPDB reports plainly *are themselves* the wrongs of which Plaintiff complains. Plaintiff alleges that "Defendants' retaliatory conduct … includes, but is not limited to: … Reporting Plaintiff's summary

suspensions to the Medical Board and [NPDB]." (1 AA 13, 242.) In addition, Defendants allegedly "engaged in further retaliatory conduct … by failing to use the specific language as agreed upon by the parties in reporting to the Medical Board." (1 AA 14, 243.) As a result, Plaintiff claims he was damaged because, for example, he lost an employment opportunity after the employer reviewed Defendants' NPDB reports, and he was subjected to a Medical Board investigation. (1 AA 243–244.)

Plaintiff's appellate argument that the reports are "not the basis" for liability (Answer, p. 36) defies not only his FAC, but also his own admissions throughout his Answer:

- "[P]laintiff alleges that reporting the summary suspension to the [NPDB] … was part of the retaliatory conduct that harmed him." (Answer, p. 36.)

- "[P]laintiff claims to have suffered damages as a result of those reports …." (*Ibid*.)

- "The summary suspension[s] were retaliatory in part because defendants knew that suspensions of a particular duration must be reported." (*Id.* at p. 43.)

Even in his Answer, Plaintiff cannot escape that his action arises from—more than anything else—the allegedly retaliatory Medical Board and NPDB reports. According to Plaintiff, even the summary suspensions were "significant" because they were "publicly reported to the Medical Board of California and to the [NPDB]." (Answer, p. 14.) Due to the Medical Board reports, "[e]very time [Plaintiff] appl[ies] for reappointment at any medical facility, [he] will have to explain why [he] was suspended at

Mission and St. Joseph." (1 AA 244; see also Bus. & Prof. Code, § 805.5(a) [requiring medical facilities to query applicants' Medical Board reports].) Plaintiff's retaliation cause of action arises from these reports.

2. Reporting Does Not Lose Anti-SLAPP Protection Merely Because It Follows Allegedly Unprotected Activity.

Plaintiff next argues that just because these reports were "part of the retaliatory conduct that harmed him," and just because "plaintiff claims to have suffered damages as a result of those reports, does not mean that his claims are based on those reports." (Answer, p. 36.) Plaintiff urges the Court instead to focus on the summary suspension, arguing that "those reports were the natural consequence of the length of the suspension." (*Id.* at p. 37.)

Claims based on protected communications are subject to anti-SLAPP, regardless of whether they allegedly *follow* separate, unprotected actions. (See *Baral*, 1 Cal.5th at 393 ["[C]ourts may rule on plaintiffs' specific claims of protected activity, rather than reward artful pleading by ignoring such claims if they are mixed with assertions of unprotected activity."]; see also, *infra*, Part III.) Even assuming the summary suspensions are unprotected, which is incorrect,[5] the reports are separate protected activities that form the basis of Plaintiff's claims. Plaintiff alleges that

[5] See, *infra*, Part II.B.; Opening Brief, pp. 52–57.

Defendants "*further* retaliated against [him] by *reporting* these summary suspensions." (1 AA 11, emphasis added.)

Plaintiff's argument is also legally unmoored. Plaintiff cites *Anderson v. Geist* (2015) 236 Cal.App.4th 79, to argue that because summary suspensions are supposedly unprotected, the reports must also be unprotected. (Answer, p. 37.) But Plaintiff confuses anti-SLAPP subdivisions (e)(2) and (e)(4). In *Anderson*, the Court held that executing a warrant was not an act "in furtherance" of petitioning rights under (e)(4). (*Anderson*, *supra*, at p. 87.) But *Anderson* was not examining (e)(2) statements. Here, Defendants contend that the NPDB and Medical Board reports are "written or oral statement[s] or writing[s] made in connection with an … official proceeding" under (e)(2). Plaintiff provides no response addressing anti-SLAPP subdivision (e)(2).

In *Anderson*, the court emphasized this very distinction. It distinguished *Schaffer v. City and County of San Francisco* (2008) 168 Cal.App.4th 992, on the basis that (e)(2) applied in that case, not (e)(4). (See *Anderson*, *supra*, at p. 88.) In *Schaffer*, the alleged retaliatory conduct was "a memorandum to the district attorney … urging that the plaintiff be prosecuted." (*Id.* at p. 88, citing *Schaffer*, *supra*, at p. 996.) This memorandum "constituted written statements made in connection with an issue under consideration by the district attorney," so was protected under anti-SLAPP subdivision (e)(2). (*Ibid.*) Similarly, Defendants' reports were statements made in connection with an issue under Medical Board consideration. Defendants' Medical Board and NPDB reports are thus protected statements in connection with

an official proceeding under (e)(2), regardless of whether the Court rules, as it should, that the summary suspensions are also protected acts in furtherance of speech and petitioning rights under (e)(4).

3. Plaintiff's Allegation That the Reports Violated a Settlement Agreement Does Not Remove Anti-SLAPP Protection.

Plaintiff attempts one more argument to avoid anti-SLAPP on his Medical Board allegations: He contends that Defendants' reports to the Medical Board violated a settlement agreement and thus cannot be protected speech. (Answer, pp. 36, 48–49.) That disregards California Supreme Court precedent.

As the Court has recognized, when breach of contract claims arise from protected activities, they are subject to anti-SLAPP. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92 ["[C]onduct alleged to constitute breach of contract may also come within constitutionally protected speech or petitioning."].) In *Navellier*, the defendant allegedly breached a contract by filing counterclaims in a court action. (*Id.* at p. 90.) But because filing legal claims is protected speech and petitioning activity, the anti-SLAPP statute applied. (*Ibid.*) Similarly, Defendants' Medical Board reports were protected speech and petitioning activity, even if allegedly in breach of contract, and so the anti-SLAPP applies.

Plaintiff does not cite the Court's on-point decision in *Navellier*, and instead relies on *Applied Business Software Inc. v. Pacific Mortgage Exchange Inc.* (2008) 164 Cal.App.4th 1108. In

Applied Business, the alleged contract breach was defendant's failure to return software. (*Id.* at p. 1117.) The court denied an anti-SLAPP motion, easily finding that software theft is not protected activity. (*Ibid.*) In contrast, communicating with the government—the alleged breach of contract here—is protected activity. (See *Midland Pacific Building Corp. v. King* (2007) 157 Cal.App.4th 264, 274 [violating a contract by submitting a different map than agreed to the city council was anti-SLAPP protected speech and petitioning to the government].) Plaintiff's argument that "violation of [an] agreement is not protected activity" has no legal basis. (See Answer, p. 36; see also *O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC* (2019) 42 Cal.App.5th 546, 568 ["the negotiation and execution of the settlement agreement … are protected activities under the anti-SLAPP statute"].)

II. SUMMARY SUSPENSIONS AND HOSPITAL BOARD DECISIONS ARE PROTECTED CONDUCT IN FURTHERANCE OF SPEECH AND PETITIONING UNDER ANTI-SLAPP SUBDIVISION (E)(4).

Plaintiff's Answer asks the Court to ignore all allegations of protected speech, and to focus instead only on conduct, specifically, the summary suspensions and hospital board disciplinary action at Mission. (See Answer, p. 31.) But for the reasons described in the Opening Brief, these acts are anti-SLAPP protected. Summary suspensions and hospital board disciplinary actions are "conduct in furtherance of" free speech and petitioning

rights "in connection with a public issue or an issue of public interest," under anti-SLAPP subdivision (e)(4). (Opening Brief, Section III.)

Speech and petitioning permeate the peer review process. When a MEC votes to discipline a physician, including by imposing a summary suspension, it is petitioning the hospital board to take action. If a physician challenges MEC disciplinary action, the MEC must defend its position as the petitioner in a hearing before the JRC. Either the physician or the MEC may challenge the JRC's decision by petitioning to the hospital board. The physician may further challenge the board's appellate decision by petitioning the Superior Court. Throughout this process, the hospital board petitions the Medical Board via statutorily-protected government reporting. Summary suspensions and hospital board decisions are two steps in this ongoing peer review petitioning process, and are protected activities under anti-SLAPP subdivision (e)(4), as conduct in furtherance of speech and petitioning. Plaintiff's Answer raises no viable challenges to this conclusion.

A. Whether a Physician Is Unsafe to Care for the Public Is an "Issue of Public Interest."

Anti-SLAPP subdivision (e)(4) protects conduct in furtherance of speech and petitioning "in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(4).) Plaintiff contends that "retaliation claim … concerns matters relating to him alone and not a broader discussion of

public interest." (Answer, p. 42.) On the contrary, whether a physician is an imminent danger to patients who arrive at a hospital open to the public is a critical "issue of public interest."

Before Plaintiff submitted his Answer, the Court of Appeal decided *Yang v. Tenet Healthcare Inc.* (2020) 48 Cal.App.5th 939. Plaintiff does not cite this case, which rejected his argument. In *Yang*, the Court of Appeal decided that in peer review, "the public issue implicated is the qualifications, competence, and professional ethics of a licensed physician." (*Id.* at p. 947.) "Whether or not a licensed physician is deficient in such characteristics is, we hold, a public issue." (*Ibid.*, citing *Kibler*, 39 Cal.4th at p. 201 [in exercising "primary responsibility for monitoring the professional conduct of physicians licensed in California," hospitals, through their peer review committees, "oversee 'matters of public significance,' as described in the anti-SLAPP statute"]; *Healthsmart Pacific, Inc. v. Kabateck* (2016) 7 Cal.App.5th 416, 429 ["members of the public, as consumers of medical services, have an interest in being informed of issues concerning particular doctors and health care facilities"].)

In *Wilson* and *FilmOn*, the Court explained that the defendant's speech and petitioning must not simply relate to a public issue, it should "contribute to the public debate." (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 150; *Wilson,* 7 Cal.5th at p. 903.) The *Yang* court found this requirement is met in the peer review context, "given that an individual's health and safety are … directly implicated with medical services." (*Yang*, *supra*, at p. 949.)

Here, Defendants concluded that Plaintiff presented "an imminent danger to the health" of patients, and thus prevented him from using hospitals' resources to treat unwitting members of the public. (See Bus. & Prof. Code, § 809.5 [standard for summary suspension].) These acts were directly "in connection with a public issue or an issue of public interest"—the safety of patients arriving at the hospital for treatment. (See Code Civ. Proc., § 425.16, subd. (e)(4); see, e.g., Bus. & Prof. Code, § 809, subd. (a)(5) [peer review "aids the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners"]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479 ["public interest" requirement met by "private conduct that … affects a community in a manner similar to that of a governmental entity"].) For those reasons, the "public interest" requirement for anti-SLAPP subdivision (e)(4) is met here.

B. Summary Suspensions Are Acts in Furtherance of Speech and Petitioning Rights Under Anti-SLAPP Subdivision (e)(4).

In the Opening Brief, Defendants describe how summary suspensions are "acts in furtherance of" speech and petitioning rights because they (a) further prompt and candid reporting to law enforcement, and (b) further the safe exercise of hearing rights. (Opening Brief, p. 54.) Plaintiff's Answer fails to challenge these conclusions.

1. Summary Suspensions Further Medical Board Reporting.

In another attempt to distance himself from the FAC, Plaintiff dismisses Defendants' Medical Board "reports [as] simply the required harmful byproduct of the suspensions." (Answer, p. 44.) Concluding that summary suspensions are "acts in furtherance" of Medical Board reporting under subdivision (e)(4), Plaintiff argues, "is the tail wagging the dog." (*Id.* at p. 43.)

Yet Plaintiff cannot help but highlight the importance of the Medical Board reporting to his own claims. Plaintiff writes, "The summary suspension[s] were retaliatory in part because defendants *knew* that suspensions of a particular duration *must be reported*." (*Id.* at p. 43, emphasis added.) As described in Part I.C., Plaintiff's damages allegations focus on the Medical Board reports. (See, e.g. 1 AA 244.) All other hospitals where Plaintiff applies are legally mandated to query and review all Medical Board and NPDB reports filed about him, in the interest of public safety. (Bus. & Prof. Code, § 805.5(a).) Here, the extensive hearing rights both Defendants and Plaintiff enjoyed were triggered by the very fact that any final adverse action against him would require Medical Board reporting. (Bus. & Prof. Code, § 809.1(a) [hearings provided where "a report is required"].)

Such reporting obligations are omnipresent in peer review proceedings. Every MEC member and disciplined physician knows that summary suspensions must be reported. (See, e.g., Answer, p. 43.) And they know that Medical Board reports may impact a physician's career. But patient safety demands that

MEC members not be chilled in taking appropriate disciplinary action against an unsafe physician because they fear lawsuits brought against them and the hospital as a result of the Medical Board reports. (See *Kibler*, 39 Cal.4th at p. 201.)

Plaintiff's attempt to distinguish *Takhar* on this point fails. (Answer, p. 44.) In *Takhar*, the Court held that the Air District's investigations prior to filing a civil action were protected as "acts in furtherance of the right of petition." (*Takhar*, 27 Cal.App.5th at p. 28.) Plaintiff argues that, unlike the investigative acts in *Takhar*, the summary suspensions "were the wrongful conduct in and of themselves …." (Answer, p. 44.) But in *Takhar*, too, the Air District's investigation was the allegedly wrongful conduct. (*Takhar*, *supra*, at pp. 28–32.) Even so, the allegedly "wasteful" and "illegal" investigation was "conduct in furtherance of the exercise of the constitutional right of petition," and thus anti-SLAPP subdivision (e)(4) applied. (*Id.* at p. 32.) Similarly, Defendants' allegedly "wrongful" summary suspensions were acts in furtherance of prompt and candid reporting to the Medical Board about a doctor who posed an imminent threat to the safety of others. (Bus. & Prof. Code, §§ 805, subd. (e), 809.5.) Subdivision (e)(4) applies.

2. Mandatory Government Reporting Is Protected Activity.

Next, Plaintiff argues that the summary suspensions were not in furtherance of *protected* petitioning activity because Defendants' reports were mandatory. (Answer, p. 43.) He is

wrong on the law. Communications with the government do not lose anti-SLAPP protections merely because they are mandatory. (See, e.g., *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 711 ["mandated report to child protective services" was protected under anti-SLAPP subdivision (e)(2)].)

In *Blue v. Office of Inspector General* (2018) 23 Cal.App.5th 138, 156, the court held that OIG's "mandatory" investigation of prison conditions was protected by the anti-SLAPP statute. The court distinguished *Anderson v. Geist* (2015) 236 Cal.App.4th 79—the sole case relied upon by Plaintiff in his Answer—by explaining that *Anderson* was decided on the basis that a warrant execution was not "an issue of public interest." (*Blue*, 23 Cal.App.5th at p. 156.) The court noted that, even though OIG's investigation was mandatory, denying anti-SLAPP protection "may well inhibit the manner in which such reviews are undertaken." (*Ibid.*) In the interest of public safety, anti-SLAPP protects government reports of all kinds, mandatory or not, to ensure their contents are not chilled.

3. Summary Suspensions Further the Exercise of Hearing Rights.

Summary suspensions are also acts in furtherance of free speech and petitioning rights under subdivision (e)(4) because they promote the exercise of important statutorily mandated hearing rights afforded to both the physician and the MEC. As described in the Opening Brief, acts that initiate judicial or quasi-judicial proceedings, including peer review, are protected under

(e)(4). (Opening Brief, pp. 57–59; see, e.g., *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) Summary suspensions "further" petitioning rights because they protect patient safety while the MEC and physician participate in the peer review hearing. (See Opening Brief, pp. 59–60.) Instead of forcing hospitals to seek injunctive relief from a court with no medical expertise, the Legislature has authorized summary suspensions as a means of protecting patients' lives while the parties exercise statutorily mandated hearing rights leading to a final decision by the hospital's board. (See Bus. & Prof. Code, § 809.5.) Summary suspensions are thus acts in furtherance of petitioning rights under anti-SLAPP subdivision (e)(4).

Plaintiff counters that anti-SLAPP only applies when "the defendant itself has engaged in protected petitioning activity." (Answer, p. 45, emphasis omitted.) Per Plaintiff, "defendants still do not explain how the peer review process represents a constitutional right to petition by defendants (as opposed to plaintiff)." (*Id.* at p. 46.) In a peer review hearing, the MEC exercises petitioning rights. Indeed, if the physician requests a hearing, it is the MEC that issues written charges and bears the burden of proof to demonstrate that its recommendations or actions are reasonable and necessary. As Business and Professions Code section 809 makes clear, "*both parties* shall have all the following rights" at the hearing, including rights to present evidence, question witnesses, and offer a closing statement. (See, e.g., Bus. & Prof. Code, § 809.3, emphasis added.) And however the JRC decides, both parties have the right to appeal those

findings to the hospital board. These are speech and petitioning rights in an official proceeding.

Even if Plaintiff's hearing rights were the only petitioning at issue, which is not the case, subdivision (e)(4) does not require defendants to act only in furtherance of their *own* petitioning rights. In *Vergos*, the Court of Appeal held that the defendant "acted in furtherance of the right to petition within the meaning of section 425.16, even though it was not her own right to petition at stake." (*Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1399.) This Court similarly held in *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1116, that anti-SLAPP does not require a defendant to "demonstrate that its protected statements or writings were made *on its own behalf* (rather than, for example, on behalf of its clients or the general public)." (Emphasis in original.)

Young v. Tri-City Healthcare Dist. (2012) 210 Cal.App.4th 35, relied upon by Plaintiff, does not suggest otherwise. (See Answer, p. 45.) In *Young*, the court held that the anti-SLAPP statute does not apply to petitions for a writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 ("1094.5"). (*Young*, 210 Cal.App.4th at p. 58.) The court explained that a 1094.5 writ proceeding does not arise from the defendants' exercise of constitutional rights, or even from peer review, but instead from the plaintiff's "statutory rights under section 1094.5." (*Ibid.*) Because this case is not a 1094.5 writ proceeding, *Young* is inapposite.

Summary suspensions are critical public safety acts that further early and accurate Medical Board reporting. (See Bus. & Prof. Code, § 805, subd. (e).) They also protect patients and the general public while both parties exercise their varied and numerous hearing rights. For those reasons, summary suspensions are acts in furtherance of speech and petitioning rights under anti-SLAPP subdivision (e)(4). Plaintiff has presented no viable argument to the contrary.

C. Hospital Board Decisions Are Acts in Furtherance of Speech and Petitioning Rights Under Anti-SLAPP Subdivision (e)(4).

As described in the Opening Brief, no peer review discipline becomes final unless and until the hospital board approves the discipline. (Opening Brief, pp. 37–38.) Hospital board disciplinary actions are conduct in furtherance of speech and petitioning rights under anti-SLAPP subdivision (e)(4) because they (a) further petitioning to law enforcement through Medical Board reporting; and (b) protect patients pending a physician's exercise of appellate rights in court. (*Id.* at pp. 61–66.)

Plaintiff relies on *Park*—an (e)(2) case—to argue that Hospital board disciplinary decisions are not protected activity under (e)(4). (Answer, p. 47.) In *Park*, the defendant university did not preserve an argument as to "how the choice of faculty involved conduct in furtherance of *University speech* on an identifiable matter of public interest." (*Park*, 2 Cal.5th at p. 1072.) This case is not similar. Here, the hospital's disciplinary

decisions furthered *hospital speech and petitioning* to the Medical Board and NPDB through reporting. (See Opening Brief, pp. 62–64; see, e.g., 45 C.F.R. §§ 60.6, 60.12 [hospital boards must report, regardless of whether they find in favor of the physician or the MEC].)

After quoting *Park*, Plaintiff nevertheless counters that "these reports which were automatically triggered when plaintiff was suspended for the prescribed period are the University's [*sic*] exercise of its constitutional right to petition and are not the basis for plaintiff's retaliation claim." (Answer, p. 47.) It is unclear what Plaintiff means. But if he meant to argue that the Medical Board reports are *not* the *hospital*'s exercise of its constitutional right to petition, he is mistaken.

In *Chabak*, the court squarely held that the defendant's "statement to the police arose from her right to petition the government and thus is protected activity." (*Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1512; accord *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 966; see also *Arnett*, 14 Cal.4th at p. 7 [Medical Board exercises police powers].) In reporting to the Medical Board, a law enforcement agency, a hospital exercises its constitutional petitioning rights.

Plaintiff next argues that even if Medical Board reporting is an exercise of the hospital's petitioning rights, "the reports [cannot] bootstrap the discipline into protected conduct." (Answer, p. 47.) Plaintiff misapplies anti-SLAPP subsection (e)(4). Under (e)(4), the conduct need not *itself* be speech or petitioning activity, so long as it furthers those rights. (*Wilson*, 7 Cal.5th at p. 893;

accord *Collier v. Harris* (2015) 240 Cal.App.4th 41, 53 ["The acts need not constitute speech; they merely need to help advance or facilitate the exercise of free speech rights."].) Thus even if the Court concludes that hospital disciplinary decisions are not themselves speech or petitioning, they are still protected because they *further* those rights.

Hospital disciplinary decisions further speech and petitioning rights because they are part and parcel of the Medical Board's licensing process. Hospitals report to the Medical Board, which then acts to investigate and further determine a physician's competence. The Legislature designed the process that way. It created peer review to "aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners." (Bus. & Prof. Code, § 809, subd. (a)(5).) "Because a hospital's disciplinary action may lead to restrictions on the disciplined physician's license to practice or to the loss of that license, its peer review procedure plays a significant role in protecting the public against incompetent, impaired, or negligent physicians." (*Kibler*, 39 Cal.4th at p. 200.)

Indeed, this is one of the many ways that the peer review process is entirely different than the tenure determination in *Park,* which involved only the employment relationship between a university and a professor. By legislative design, peer review plays a vital part of the larger goal of protecting California patients from unqualified physicians. Hospital reporting alerts the Medical Board that it should investigate and determine

whether to limit or terminate a physician's license to practice in this state.

Although the Legislature imposed this regulatory burden on hospitals, it also provided for protections. (See, e.g., Bus. & Prof. Code, § 805, subd. (j); Civ. Code, § 43.7.) Anti-SLAPP is one such protection.

Plaintiff makes no attempt to explain *why* he believes the hospitals' disciplinary decisions are not in furtherance of protected reporting; he merely declares it to be so. (Answer, p. 47.) For all the reasons in Defendants' Opening Brief, the hospitals' disciplinary decisions are protected acts in furtherance of speech and petitioning rights under anti-SLAPP subdivision (e)(4).

D. Defendants Did Not Waive Their Argument That the FAC Alleges Acts in Furtherance of Speech and Petitioning Rights.

Plaintiff seeks to avoid the (e)(4) issue altogether by claiming waiver. (Answer, pp. 38–40.) In their 2015 anti-SLAPP Motion, Defendants broadly argued—as they do now—that the FAC "arises from acts of Defendants in furtherance of their right to petition or free speech." (1 AA 29.) In the subsequent five years, however, the Court has issued critical decisions distinguishing anti-SLAPP subdivisions (e)(2) and (e)(4). In fairness to the parties, the Court should decide subdivision (e)(4)'s applicability to peer review now, rather await another perfect opportunity.

The Court decided *Kibler* in 2006. Dr. Kibler filed suit for "abuse of process" based on his summary suspension. (*Id.* at p. 196.) "The hospital argued, and the trial court agreed, that Kibler's lawsuit arose out of the hospital's peer review proceeding against Kibler …." (*Id.* at p. 197.)

On appeal, this Court held that "a hospital's peer review qualifies as 'any other official proceeding authorized by law' under subparagraph (2) of subdivision (e) and thus a lawsuit arising out of a peer review proceeding is subject to a special motion under section 425.16 to strike the SLAPP suit." (*Id.* at p. 198.) As a result, the Court did not "decide whether that remedy would likewise have been available under subdivision (e)(4) of section 425.16 …." (*Id.* at p. 203.)

Shortly thereafter, in *Nesson v. Northern Inyo County Local Hospital Dist.* (2012) 204 Cal.App.4th 65, 84,[6] the Court of Appeal relied on *Kibler* to hold that a summary suspension and termination were protected under subdivision (e)(2). It interpreted *Kibler* as holding "that lawsuits arising from a challenge to hospital peer review activities, *including the discipline imposed upon a physician*, constitute 'official proceeding[s] authorized by law.'" (*Id.* at p. 78, quoting *Kibler*, 39 Cal.4th at p. 198, emphasis added.)

Numerous subsequent Court of Appeal decisions agreed. (See, e.g., *Fahlen v. Sutter Central Valley Hospitals* (2012) 145 Cal.Rptr.3d 491, 501, 503 [holding that a hospital's final

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[6] As discussed below, this Court subsequently disapproved of *Nesson* and the several of the next cases.

termination decision is protected under (e)(2), per *Kibler*]; *DeCambre v. Rady Children's Hospital-San Diego* (2015) 235 Cal.App.4th 1, 15 [holding that anti-SLAPP applies to contract nonrenewals, per *Kibler*]; *Armin*, 5 Cal.App.5th at p. 820, fn. 10 [holding that anti-SLAPP applies to peer review initiation and summary suspensions, per *Kibler*]; *Melamed*, 8 Cal.App.5th at p. 1286 ["*Kibler* expressly held that the peer review summary suspension was protected conduct because it is a component of an official proceeding …."].) Thus, for over a decade, there was "no question" (*Armin*, *supra*, at p. 820, fn. 10), that peer review disciplinary actions were protected activities under anti-SLAPP subdivision (e)(2) and *Kibler*.[7]

That changed, however, in May 2017 when this Court decided a non-peer review case, *Park*. There, the Court commented in dicta that "*Kibler* does not stand for the proposition that disciplinary decisions reached in a peer review process, as opposed to statements in connection with that process, are protected." (*Park*, 2 Cal.5th at p. 1070.)

The instant case had been fully briefed and submitted to the Court of Appeal when the Court decided *Park*. Five days later, the *Bonni* Court of Appeal temporarily vacated the case submission and requested letters addressing *Park*. (May 9, 2017 Order.) The Court of Appeal ultimately decided this case on different grounds, holding that "defendants' [alleged] retaliatory

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[7] When the trial court granted the anti-SLAPP motion, in June 2015, it cited *Kibler* and *Decambre*, which controlled at the time. (4 AA 892.)

purpose or motive" removes anti-SLAPP protections. (*Bonni v. St. Joseph Health System* (2017) 13 Cal.App.5th 851, 864.)

This Court granted Defendants' petition for review, and ultimately disapproved *Bonni*'s holding in *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 892, which also explained how subdivision (e)(4) should apply. After deciding *Wilson*, this Court opted not to remand *Bonni* for further briefing. Instead, the Court agreed to consider the question: "In light of *Kibler* and *Park*, what stages of the official medical staff peer review process are within the protections of the anti-SLAPP statute?" Plaintiff did not oppose Defendants' request to set a briefing schedule on this question. (Plaintiff's Response to Defendants' Motion to Set Merits Briefing Schedule (Aug. 28, 2019) at p. 3.)

The Court should decide now the question on which it granted briefing, including the applicability of (e)(4). In *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, *aff'd* (1986) 475 U.S. 260, the Court agreed to decide a question, even though not raised on appeal, because the U.S. Supreme Court had rendered a key decision "[a]fter the case was fully briefed on the merits in the Court of Appeal, but before that court rendered its decision." (*Id.* at p. 654.) That is the same situation here with *Park* and *Wilson*.

The anti-SLAPP statute's application to summary suspensions and hospital board decisions is a critical legal issue for California hospitals and physicians, and confusion will persist until it is addressed. Indeed, the Court has already granted review on another case involving a summary suspension, *Melamed*, 8 Cal.App.5th at p. 1271, which is stayed pending this

case. As Plaintiff himself conceded, if the Court does not resolve this matter now, "a petition back in this Court is very likely asking the Court to resolve the same question which is now before the Court." (Plaintiff's Response to Defendants' Motion to Set Merits Briefing Schedule (Aug. 28, 2019) at p. 3.)

III. THE COURT SHOULD PROCEED TO PRONG TWO ON ALL VIABLE CLAIMS BASED ON PROTECTED ACTIVITY.

Under the anti-SLAPP statute, the Court proceeds to prong two of the analysis on any and all viable claims that arise from protected activity. (See Opening Brief, pp. 67–68; *Baral*, 1 Cal.5th at p. 396.) Thus, even if Plaintiff's retaliation cause of action is based in part on unprotected activity, the Court should proceed to prong two on all claims arising from protected activity, including the allegedly retaliatory Medical Board reporting.

Plaintiff disagrees, citing the Court's decision in *Baral*. According to Plaintiff, because the "gravamen" of his *cause of action* is supposedly unprotected activity, no *claims* of protected activity therein may be subject to anti-SLAPP. (See Answer, pp. 31–32.) That is not how the statute works, and it is not what *Baral* said.

A. Under *Baral*, Each of Plaintiff's Discrete Claims of Protected Activity Is Subject to Anti-SLAPP.

Baral was a prong two case. (*Baral*, 1 Cal.5th at p. 385.) But it contains two lessons for the prong one analysis. First, the

anti-SLAPP statute applies to "claims," not "causes of action." (*Id.* at p. 382.) Claims refer to "particular alleged *acts* giving rise to a claim for relief." (*Id.* at p. 395, emphasis added; accord *Navellier*, 29 Cal.4th at p. 92.) Here, Plaintiff's single cause of action for retaliation contains at least 19 alleged retaliatory acts or claims. (See, e.g., 1 AA 13–15.)

The second lesson from *Baral* is that the Court separately examines each viable claim—each alleged retaliatory act—regardless of whether Plaintiff lumps them together into a single cause of action.[8] Under *Baral*, "courts may rule on plaintiffs' specific claims of protected activity, rather than reward artful pleading by ignoring such claims if they are mixed with assertions of unprotected activity." (*Baral*, 1 Cal.5th at p. 393; see also *Cho v. Chang* (2013) 219 Cal.App.4th 521, 527.)

For example, in *Sheley*, the defendants moved to strike the entire complaint. (*Sheley v. Harrop* (2017) 9 Cal.App.5th 1147, 1155.) The court explained that "[a]fter *Baral*, … we do not look for an overall or gestalt … of the complaint or even a cause of action as pleaded." (*Id.* at p. 1169.) Rather, because each cause of action contained at least one viable claim arising from protected activity, prong two was reached. (*Id.* at p. 1160; accord *Laker v.*

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[8] *Baral* noted that anti-SLAPP does not apply to *nonviable* allegations that "merely provide context" and do not support liability. (*Baral*, 1 Cal.5th at p. 394.) That was the issue in *Park*. (See, *supra*, Part I.A.) *Baral* addressed a different question: What happens when a single cause of action alleges *viable* claims of protected conduct, mixed in with *viable* claims of unprotected conduct? The answer: Prong two is reached. (*Baral*, *supra*, at p. 396.)

Board of Trustees of California State University (2019) 32 Cal.App.5th 745, 772, fn. 19; *Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 946; see also *Area 51 Productions, Inc. v. City of Alameda* (2018) 20 Cal.App.5th 581, 598, 602 ["Under the rule in *Baral*, we must disregard the unprotected conduct and focus on whether *any* nonincidental protected conduct is charged, *even just in part*."], emphasis added.) Plaintiff relies on *Okorie*, which examined the plaintiff's cause of action as whole, instead of the individual claims therein. (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 590.) But *Okorie* drew a sharp dissent on exactly this point, citing *Baral*. (*Id*. at p. 601.)

Under this Court's precedents, it makes no difference whether Defendants moved to strike the entire complaint or just a few lines. The procedure is the same: On prong one, "[w]hen relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage." (*Baral*, 1 Cal.5th at p. 396.) "If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached." (*Ibid*.)

B. Under Plaintiff's Incorrect Gravamen Test, His Cause of Action Arises from Protected Activity.

Plaintiff's "gravamen" argument is ultimately a red herring. That is because even applying Plaintiff's incorrect "gravamen" test, the gravamen of Plaintiff's retaliation cause of action is protected conduct, and thus the anti-SLAPP statute applies.

The gravamen of Plaintiff's FAC is that Defendants "abus[ed] the powers of the peer review process and subject[ed] Plaintiff to a lengthy and humiliating peer review process for over two years …." (1 AA 13.) In his Answer, Plaintiff makes little effort to dispute that peer review proceedings and statements are anti-SLAPP protected. (See Answer, pp. 33–38.) These alleged communications constitute at least 17 of the 19 enumerated retaliatory acts in Plaintiff's FAC. (1 AA 13–14.)

Plaintiff nevertheless maintains that the remaining two of 19 acts, the summary suspensions and "termination," are the true "gist" of his complaint. But here—as in *Okorie* upon which Plaintiff relies—"the principal thrust or gravamen of Plaintiffs' complaint and its component causes of action is protected speech or communicative conduct." (*Okorie*, 14 Cal.App.5th at p. 595; see also *id*. at p. 592 ["[W]hile some of those adverse employment actions involve arguably unprotected decisions by LAUSD …. the bulk of those actions were statements or communicative conduct made by LAUSD personnel."].) Plaintiff's cause of action is thus subject to anti-SLAPP, and the Court should proceed to prong two.

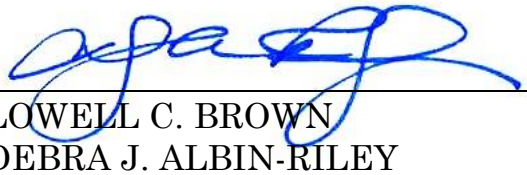
IV. CONCLUSION

Peer review is an ongoing process of inextricably intertwined speech and petitioning activity. Protecting peer review under anti-SLAPP prong one protects patients throughout California. For all these reasons, Defendants respectfully request that the Court hold that Defendants have met their burden on

prong one in all respects, and remand to the Court of Appeal for further proceedings on prong two.

Dated: July 8, 2020

ARENT FOX LLP

By: 

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.520(c)(1), the undersigned hereby certifies that this Reply Brief on the Merits contains 8,159 words, exclusive of the cover page, tables, statement of the issue for review, signature block, and this certification, as counted by the Microsoft Word word-processing program used to general it.

Dated: June 8, 2020

By: 

DEBRA J. ALBIN-RILEY

CERTIFICATE OF SERVICE

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Executed on July 8, 2020, at Oakland, California.

Kim Denison

Bonni vs. St. Joseph Health System, et al.

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