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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAMES CAIRNS,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B331127

(Los Angeles County
Super. Ct. No. 21STCV25046)

APPEAL from an order of the Superior Court of
Los Angeles County, Kevin C. Brazile, Judge. Reversed.

Yoosefian Law Firm, Ronald Yoosefian and Noah W.
Kanter for Plaintiff and Appellant.

Hydee Feldstein Soto, City Attorney, Denise C. Mills, Chief
Deputy City Attorney, Kathleen A. Kenealy, Chief Assistant City
Attorney, Shaun Dabby Jacobs and Sara Ugaz, Deputy City
Attorneys, for Defendant and Respondent.

Plaintiff and appellant James Cairns, a former police officer, filed suit against his employer, the City of Los Angeles (the City), alleging violations of the Fair Employment and Housing Act, Government Code section 12900 et seq. (FEHA) and the California Labor Code. The City filed a special motion to strike Cairns's complaint pursuant to California's anti-SLAPP statute (Code Civ. Proc., § 425.16),¹ which the trial court partially granted.

Cairns appeals, arguing, among other things, that the trial court erred in granting the motion as to only portions of several causes of action since the City did not request that relief in the initial motion. We conclude that while the trial court was permitted to grant the anti-SLAPP motion as to only portions of the complaint, the court's order did not strike claims consistent with California Supreme Court guidance regarding mixed causes of action. We therefore reverse.²

FACTUAL AND PROCEDURAL BACKGROUND

Cairns is a former Los Angeles Police Department (LAPD) officer. In August 2018, Cairns and his partner were in a car accident while on duty. Cairns was injured and took medical leave.

¹ All subsequent undesignated statutory references are to the Code of Civil Procedure.

² Because we reverse, we do not address Cairns's remaining arguments regarding the timeliness of the anti-SLAPP motion, the second step of the anti-SLAPP analysis, or the trial court's failure to rule on his evidentiary objections.

In October 2019, the Special Operations Division notified Cairns that he was under investigation for workers' compensation fraud. While the investigation did not uncover workers' compensation fraud, it found that Cairns had engaged in six other types of misconduct. The misconduct concerned Cairns's romantic relationship with a convicted felon, which he carried out while on and off duty; Cairns's use of the LAPD's computer system to inquire about this individual; and an incident of unauthorized travel. Based on the results of the workers' compensation fraud investigation, the LAPD ordered a supplemental investigation.

The investigations concluded Cairns had engaged in inappropriate behavior with a convicted felon while on duty, showing poor judgment. In July 2020, after several levels of administrative review, the LAPD determined it would pursue a Board of Rights hearing with a recommendation of termination. In August 2020, the LAPD filed Board of Rights charges.

In July 2021, Cairns filed this action against the City, the LAPD, the County of Los Angeles, and several individuals.³

After a six-day hearing held in October 2021, November 2021, and January 2022, the Board of Rights recommended Cairns's termination. Cairns resigned in lieu of termination.

In September 2022, Cairns filed his operative second amended complaint (SAC) against the City. The SAC asserts eight causes of action:⁴ (1) disability discrimination under FEHA (Gov. Code, § 12940, subd. (a)); (2) failure to accommodate under FEHA (*id.*, § 12940, subd. (m)); (3) failure to engage in the

³ Cairns later dismissed all defendants except the City.

⁴ Cairns dismissed his ninth and tenth causes of action.

interactive process under FEHA (*id.*, § 12940, subd. (n)); (4) harassment/hostile work environment under FEHA (*id.*, § 12940, subd. (j)(1)); (5) race and national origin discrimination under FEHA (*id.*, § 12940, subd. (a)); (6) retaliation under FEHA (*id.*, § 12940, subd. (h)); (7) failure to prevent discrimination, harassment, and retaliation under FEHA (*id.*, § 12940, subd. (k)); and (8) violations of whistleblower protections under the California Labor Code (Lab. Code, §§ 98.6, 132a, 232.5, 1102.5).

The general gist of the 68-page SAC is that LAPD supervisors harassed, discriminated, and retaliated against Cairns based on race or for other reasons and, after the 2018 accident, when he failed to return to work because of his injuries and resulting disability. The SAC includes numerous allegations regarding the internal investigations. Some relate to investigative reports, oral and written statements, and other communications made during the investigations. For example, the SAC alleges: “initial investigative documents . . . involved ‘criminal allegations’ . . .” Cairns’s supervisor contacted the District Attorney regarding filing criminal charges. A report contained “false, misleading, and biased statements.” The “sham investigation” accused Cairns of using LAPD equipment to run his romantic partner’s name in a criminal records database. This accusation was based solely on “hearsay testimony” of an undercover officer.

Other allegations concerning the investigations do not appear to be based on oral or written communications. The SAC repeatedly alleges that the investigations themselves constituted retaliation and harassment. The SAC asserts, for example, that the investigations were a “retaliatory attempt by [Cairns’s] superiors . . . to pin anything on him to get him terminated.”

There are also allegations relating to LAPD's surveillance of Cairns as part of the investigations. Other allegations state that the City both rushed and intentionally prolonged the investigations to harm Cairns.

The allegations regarding the Board of Rights hearing similarly concern a mix of conduct based on communications and the decision that came out of the hearing. The SAC alleges the Board of Rights charges referenced "falsehoods" from the investigations. It asserts the City's witnesses presented false testimony at the hearing. But the SAC also alleges Cairns wrongfully faced "terminating prosecution" at the hearing, and the LAPD and City intentionally dragged out the hearing to punish him.

Other allegations in the SAC relate to alleged disability discrimination, the City's failure to engage in the interactive process, harassment, and race discrimination. For example, the SAC states that a supervisor told Cairns that his captain wanted him back at work, so he needed to notify his doctor that he was feeling better and could return to work. The "next weeks and days, every single email or every single text contained a similar message of – 'when are you coming back to work?' " According to the SAC, Cairns's supervisors made fun of his injuries, asked if he was Hispanic and could speak Spanish, said " 'you guys are not allowed to speak Spanish in the station,' " and made various statements about Cairns's refusal to return to work.

In places, however, Cairns appears to allege the workers' compensation investigation, and statements made during the investigation, were acts of disability or race-based discrimination or harassment. For example, in the context of describing the messages asking when he would return to work, the SAC alleges

that Cairns’s supervisors also “threatened [him] with prosecution or discipline” for workers’ compensation fraud. The harassment cause of action later alleges that while on leave, Cairns received persistent “threats from his superiors, or those that they directed,” and when he complained, was subjected to a “biased investigation that presented false statements”

In the first cause of action for discrimination based on disability in violation of FEHA, the SAC specifically alleges the following harms and adverse actions: “[Cairns] has been harassed, retaliated against, discriminated [against] on the basis of disability and race, [defendant] ignored Plaintiff’s complaints of retaliation and harassment, denied accommodations and/or proper return to work, failed to remedy or take any reasonable actions to prevent harassment, retaliation or discrimination, passed [him] over for job assignments, denied commendations, investigated with false and unlawful intent, made and directed others to make false statements against Plaintiff, suspended [him], completely relieved [him] of duties, endangered [him] by the words and actions of his superiors, and ultimately slated [him] for termination in a disciplinary hearing that Defendants have dragged out in order to punish Plaintiff further.

Additionally, . . . Plaintiff was recommended to be removed (terminated) by the [Board of Rights] after his [Board of Rights] hearing that contained the same dubious investigations, charges, and bias that the actions before the hearing contained. Plaintiff was forced to resign, in lieu of termination/removal based on this on or about January 18, 2022. Defendants’ conduct [a]mounts to several alleged adverse employment actions Plaintiff endured.” Each subsequent cause of action incorporates every preceding paragraph in the complaint.

In December 2022, the City filed a special motion to strike Cairns's complaint pursuant to section 425.16. The City contended the entire suit was based on the City's internal investigations of Cairns and actions related to Cairns's Board of Rights proceeding, all of which were protected conduct under section 425.16, subdivision (e)(1) and (2). The City further asserted Cairns could not establish a probability of prevailing on the merits of his claims because the City was entitled to absolute immunity under Government Code section 815.2, subdivision (b) and the litigation privilege under Civil Code section 47, subdivision (b) applied.

In May 2023, Cairns opposed the motion. He contended the motion was untimely and the City failed to establish that any of his claims arose from protected activity. He further asserted that section 425.16 only permitted the striking of entire causes of action, not specific allegations, and the City's motion challenged allegations that constituted only portions of each cause of action. Finally, he maintained that he had a probability of prevailing on his claims because the City was not entitled to immunity or the application of the litigation privilege.

In the City's reply brief, it emphasized that the SAC's alleged core injury for which Cairns sought relief was the Board of Rights proceeding and decision recommending termination, which was privileged and subjected all of Cairns's claims to the anti-SLAPP statute. The City also asserted that the workers' compensation investigations were protected by the litigation privilege. Finally, the City addressed each of the SAC's causes of action and argued they were based on protected conduct.

The trial court issued a tentative decision granting the City's motion in part. The court indicated it would strike only

allegations relating to the internal investigations and Board of Rights hearing, in six of the eight causes of action. The tentative ruling did not specifically identify or enumerate the allegations or claims to be stricken. At the May 19 hearing, Cairns argued that section 425.16 did not permit the trial court to strike specific allegations, and the court should instead deny the City's motion in full. The trial court ordered supplemental briefing on whether it could strike specific allegations rather than entire causes of action and set a hearing for June 2.

The City's supplemental brief contended the trial court could strike specific allegations in the SAC. It also argued that the trial court's tentative ruling was correct that the allegations based on the internal investigations and Board of Rights proceeding should be stricken for six of the causes of action. However, the City continued to assert the six causes of action all related to the Board of Rights decision to recommend termination, and maintained the trial court should dismiss the six causes of action in their entirety.

Cairns's supplemental brief argued that there was unprotected conduct underlying each of the SAC's causes of action. The brief maintained that since the City's anti-SLAPP motion moved only to strike the entire complaint, the trial court should not strike particular allegations.

At the June hearing, the trial court granted the City's motion in part. Regarding the first prong of the anti-SLAPP analysis, it concluded that the City had carried its burden "as to all but the causes of action for failure to provide accommodations and engage in the interactive process, and only as to the allegations that Plaintiff suffered the adverse employment action of an unwarranted investigation and [Board of Rights] hearing

containing false and dubious evidence. Defendant has failed to carry its burden as to the remaining allegations presented by Plaintiff, including the causes of action for failure to provide accommodations and engage in the interactive process for which the allegations of Plaintiff's investigation/[Board of Rights] hearing are incidental because such claims do not require an adverse action."

Regarding the second prong of the anti-SLAPP analysis, the trial court rejected the City's arguments that it was immune from liability and the SAC's allegations were not properly pleaded. However, it found that the Civil Code section 47, subdivision (b) litigation privilege applied to the "allegations as to the Plaintiff's investigation and [Board of Rights] hearing . . . because they relate to speech before and during an official proceeding by Plaintiff's employer that was used for determining whether Plaintiff should be disciplined."

The order summarized the court's ruling: "Specifically, the Court strikes only the allegations as to Plaintiff suffering the adverse employment action of a sham or unfair investigation and [Board of Rights] hearing for all but Plaintiff's causes of action for failure to provide reasonable accommodations and engage in the interactive process."

Cairns filed a timely notice of appeal.

DISCUSSION

Relying on *Park v. Nazari* (2023) 93 Cal.App.5th 1099 (*Nazari*), Cairns contends the trial court erred because the City moved only to strike the entire SAC, yet the court granted the motion in part rather than denying it in its entirety. Cairns asserts that in the absence of a request from the City, the trial court had no authority to strike only portions of the complaint.

We disagree that the trial court was prohibited from recognizing that the complaint presented mixed causes of action and striking only those portions that arose from protected activity and lacked minimal merit. Nonetheless, we conclude the trial court's order impermissibly struck claims arising from both protected and unprotected activity and must therefore be reversed.

I. Applicable Legal Principles of Anti-SLAPP

The anti-SLAPP statute, section 425.16, subdivision (b)(1) provides: "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 has established that there is a probability that the plaintiff will prevail on the claim."

Conduct protected by the anti-SLAPP statute includes, as relevant here, "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" and "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (§ 425.16, subd. (e)(1) & (2).)

Our consideration of a special motion to strike under section 425.16 involves two steps. "Initially, the moving defendant bears the burden of establishing that the challenged allegations or claims 'aris[e] from' protected activity in which the defendant has engaged." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061 (*Park*).) If the

defendant carries its burden to demonstrate the plaintiff's claims arise from protected activity at the first step, the plaintiff must demonstrate the claims have minimal merit at the second step. (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884 (*Wilson*).) Our review is de novo. (*Park*, at p. 1067.)

II. Mixed Causes of Action

A claim arises from protected activity “when that activity underlies or forms the basis for the claim.” (*Park, supra*, 2 Cal.5th at p. 1062.) In some cases, a cause of action is “ ‘ ‘mixed,’ ’ ” such that it “rests on allegations of multiple acts, some of which constitute protected activity and some of which do not.” (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1010 (*Bonni*).) In *Baral v. Schnitt* (2016) 1 Cal.5th 376, 393 (*Baral*), the California Supreme Court held that “an anti-SLAPP motion, like a conventional motion to strike, may be used to attack parts of a count as pleaded.” Within a single cause of action, “allegations of protected activity that are asserted as grounds for relief” may be stricken unless the plaintiff shows a probability of prevailing. (*Id.* at p. 395, italics omitted; see *id.* at p. 393.)

In *Bonni, supra*, 11 Cal.5th 995, our high court further instructed that when presented with a mixed cause of action, “courts should analyze each claim for relief—each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action—to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion.” (*Id.* at p. 1010.) *Bonni* also clarified that courts must undertake this analysis—rather than resorting to analyzing the “gravamen” of a claim—even where a defendant has moved to strike entire causes

of action rather than individual claims. (*Id.* at p. 1011.) However, “[i]f a cause of action contains multiple claims and a moving party fails to identify how the speech or conduct underlying some of those claims is protected activity, it will not carry its first-step burden as to those claims. [Citation.] The nonmovant is not faced with the burden of having to make the moving party’s case for it.” (*Ibid.*)

The plaintiff in *Bonni*, a physician, sued the defendant hospitals and members of the medical staff, alleging they retaliated against him for raising concerns about patient care. The plaintiff alleged the retaliation led to the termination of his staff privileges following a peer review process. The defendant hospitals moved to strike the retaliation claims, asserting they arose from protected speech or petitioning activity related to the peer review process. (*Bonni, supra*, 11 Cal.5th at p. 1004.)

The *Bonni* court ultimately concluded that “[w]hile some of the forms of retaliation alleged in the complaint—including statements made during and in connection with peer review proceedings and disciplinary reports filed with official bodies—do qualify as protected activity, the discipline imposed through the peer review process does not.” (*Bonni, supra*, 11 Cal.5th at p. 1004.) The defendant hospitals were not entitled to “wholesale dismissal” of those claims, but could seek to strike some of the plaintiff’s retaliation claims. (*Ibid.*)

To reach that conclusion, the court evaluated several categories of allegations in the complaint and determined they were protected under the anti-SLAPP statute. This included the plaintiff’s allegations that the defendants retaliated against him through “defamation and ‘character assassination,’ ” “quintessential speech activities” that were protected under the

anti-SLAPP statute “to the extent the speech was made in connection with peer review.” (*Bonni*, *supra*, 11 Cal.5th at p. 1016.) The court rejected the defendants’ argument that the disciplinary decisions underlying the plaintiff’s retaliation claims were entitled to protection under the anti-SLAPP statute. (*Id.* at p. 1023.) But claims arising out of settlement negotiations were based on protected activity, as was a claim that one of the defendants retaliated by breaching a settlement agreement when it communicated with the Medical Board using unauthorized language. (*Id.* at pp. 1025–1026.)

As to “a handful of miscellaneous retaliatory conduct not explicitly tied to any specific event or action,” the court considered the relevant burden of proof. (*Bonni*, *supra*, 11 Cal.5th at p. 1023.) The court explained the burden was on the defendant hospitals “to demonstrate that each of these allegations entails protected activity. [Citation.] In the trial court, the Hospitals did not address Bonni’s allegations individually. In this court, they offer no argument directed at these allegations and do not explain how they arise from peer review proceedings or any other protected activity. Accordingly, they have not carried their burden.” (*Id.* at p. 1024.) The *Bonni* court summarized its conclusions, identifying by paragraph and subparagraph exactly which of the many retaliation claims were protected. (*Id.* at p. 1026.)

Following *Bonni*, appellate courts have further described the allegation-specific approach necessary to resolve an anti-SLAPP motion challenging a complaint with mixed causes of action.

For example, *Young v. Midland Funding LLC* (2023) 91 Cal.App.5th 63 (*Young*), also involved mixed causes of action and

an anti-SLAPP motion that “failed to dissect each of the eight legal theories presented, element-by-element, so that Young was on notice of exactly what elements of which legal theories the Midland parties claimed were based on protected conduct” (*Id.* at p. 97.) In *Young*, the court identified three main categories of factual allegations in the complaint, and then indicated, “We can surmise how these factual allegations probably align, element-by-element, with the legal theories Young is pursuing, but we have no obligation to do so on appeal.” (*Id.* at pp. 98, 97, *see also* pp. 99–100.) To assist the parties in undertaking the correct approach in the future, the court noted:

“There is no question that, procedurally, *Baral* was a watershed decision all litigants must be familiar with when making and opposing anti-SLAPP motions. . . . So that courts may scrutinize whether ‘[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 . . . shall be subject to a special motion to strike’ (Code Civ. Proc., § 425.16, subd. (b)(1)) at the level of granularity *Baral* contemplates, we take this opportunity to suggest that any litigant seeking *Baral*-style, allegation-by-allegation relief should (1) make clear in its notice of motion that it seeks an order striking discrete allegations within a cause of action or within causes of action, and (2) set forth plainly and concisely in its moving papers exactly what factual allegations it wishes to have stricken, in a table or chart showing exactly how each such allegation aligns with elements of the cause of action or causes of action the motion attacks.” (*Young, supra*, 91 Cal.App.5th at p. 100,

fn. 15; accord, *Littlefield v. Littlefield* (2024) 106 Cal.App.5th 815, 827.)

Likewise, in *Nazari*, *supra*, 93 Cal.App.5th 1099, the defendants filed an anti-SLAPP motion to strike an entire complaint. (*Id.* at p. 1102.) At the hearing, the defendants’ attorney suggested that the trial court strike some of the plaintiffs’ allegations, even if it did not strike the entire complaint. (*Id.* at p. 1105.) The trial court refused to do so, stating it had no duty “ ‘to cure defects in an overbroad motion.’ ” (*Id.* at p. 1106.) The Court of Appeal agreed. (*Id.* at p. 1108.) The court explained “that while courts may strike less than the entirety of a complaint or pleaded cause of action, the trial court is not required to take on the burden of identifying the allegations susceptible to a special motion to strike. If a defendant wants the trial court to take a surgical approach, whether in the alternative or not, the defendant must propose where to make the incisions. This is done by identifying, in the initial motion, each numbered paragraph or sentence in the complaint that comprises a challenged claim and explaining ‘the claim’s elements, the actions alleged to establish those elements, and wh[y] those actions are protected.’ ” (*Id.* at p. 1109, quoting *Bonni*, *supra*, 11 Cal.5th at p. 1015.)

III. The Trial Court’s Order is Inconsistent with *Baral* and *Bonni*

On appeal, Cairns relies on *Nazari* to assert that the trial court erred when it struck only portions of causes of action because the City did not request that relief. Yet, neither *Nazari* nor any other court has limited the trial court’s authority in the manner Cairns suggests. Indeed, the *Nazari* court expressly noted that “a trial court *may* parse the claims in a complaint even

when an anti-SLAPP movant does not discharge his or her burden to, as *Baral* says, ‘identify[] all allegations of protected activity, and the claims for relief supported by them’” (*Nazari, supra*, 93 Cal.App.5th at p. 1108, fn. 5.) While the trial court was not required to parse the claims in the complaint on its own motion, it was permitted to do so. (*Bonni, supra*, 11 Cal.5th at p. 1011; *Nazari*, at p. 1109.) The court further informed the parties of its inclination to partially grant the motion and allowed them an opportunity to be heard—both in writing and orally—before it ruled.

Moreover, the trial court correctly determined that the SAC’s allegations relating to the internal investigations and Board of Rights proceeding could potentially constitute protected conduct. Communications made in an internal investigation by a government entity are protected by section 425.16, subdivision (e). (*Hansen v. Department of Corrections & Rehabilitation* (2008) 171 Cal.App.4th 1537, 1544 [statements and writings pertaining to internal government investigation protected under (e)(1)].) Communications made in the Board of Rights proceeding are also protected. Section 425.6, subdivision (e)(1), protects “any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.” A Board of Rights hearing is a quasi-judicial administrative proceeding whose rules and procedures are established by law, specifically the Los Angeles City Charter, section 1070. (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 317; *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 100.)

However, under *Baral*, *Bonni*, and similar authorities, specificity in striking only a portion of a mixed cause of action is

required. In general, the anti-SLAPP statute protects speech or petitioning activity in connection with an official proceeding, “but not necessarily the decisions made or actions taken as a result of those proceedings.” (*Bonni, supra*, 11 Cal.5th at p. 1014.) In addition, the analysis of a mixed cause of action requires the identification of “what acts each challenged claim rests on” and a showing of “how those acts are protected under a statutorily defined category of protected activity.” (*Id.* at p. 1009.) This is because “‘a claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.’ [Citation.]” (*Id.* at p. 1014.)

The SAC in this matter is a sprawling document that resists easy categorization. While some of the SAC’s allegations relating to the investigations and Board of Rights proceeding concern oral or written statements, some do not. For example, the SAC alleges the workers’ compensation investigation “was a retaliatory attempt” to terminate him. It also alleges that as part of the investigations, Cairns’s superiors conducted surveillance into his relationship with a convicted felon and went undercover to investigate him. The SAC further alleged that the City both rushed and prolonged the investigations to harm him, and delayed the retaliatory Board of Rights hearing. These allegations do not appear to concern written or oral statements or writings.

On the other hand, other allegations appear to charge that it was the statements in the ultimate investigative report—and their falsity—that constituted a separate act of retaliation or harassment. The SAC also alleges that not only was the delay of the Board of Rights hearing further discrimination, harassment, or retaliation, the “[Board of Rights] hearing that contained the same dubious investigations, charges, and bias that the actions before the hearing contained,” was itself an adverse action.

Under these circumstances, the trial court’s ultimate order purporting to strike “only the allegations as to [Cairns] suffering the adverse employment action of a sham or unfair investigation and [Board of Rights] hearing” did not sufficiently distinguish between protected and unprotected activity. The order was not limited to claims based on written or oral communications. Further, it did not identify which allegations remained because they challenged the investigations themselves, or the decision that flowed from the Board of Rights hearing, and those which were stricken because they were based on protected written or oral statements.

Neither the City nor the court adopted the granular or surgical approach described in *Nazari* and *Young*. In the City’s supplemental brief, it contended that the trial court could strike specific allegations under *Baral*. However, it still maintained that all six causes of action identified in the trial court’s tentative ruling concerned protected conduct—without identifying any specific allegations or paragraphs of the SAC to be stricken. The trial court’s order provided only an overbroad description of the allegations to be stricken. A more surgical approach was necessary in this case given the nature of the complaint, and the

requirement that the court strike only those claims in each cause of action arising from protected activity.

Verceles v. Los Angeles Unified School District (2021) 63 Cal.App.5th 776 (*Verceles*), is instructive. In *Verceles*, a school district removed a teacher from his position based on misconduct allegations. (*Id.* at p. 780.) The teacher’s complaint alleged that the school district’s investigation was insufficient and, had it been conducted properly, the teacher would have been exonerated. (*Ibid.*) He sued, asserting discrimination and retaliation claims under FEHA. The school district filed an anti-SLAPP motion, arguing each cause of action arose from protected activity, namely the investigation into the teacher’s alleged misconduct. (*Id.* at p. 781.) The trial court granted the anti-SLAPP motion, finding the teacher’s causes of action arose from the investigation process and the “ ‘acts alleged to constitute the discrimination and retaliation are all part of the proceeding, from the initial investigation to plaintiff’s termination.’ ” (*Ibid.*)

The Court of Appeal reversed the trial court order. The court reasoned that the plaintiff’s claims depended on the decisions to reassign him and terminate his employment, not “on any communications made during the investigation or the investigation as a whole.” (*Verceles, supra*, 63 Cal.App.5th at p. 786.) “In the absence of any oral or written statements from which [the plaintiff’s] claims arise, the [school district’s] decisions to place [him] on leave and terminate his employment are not protected activity within the meaning of section 425.16, subdivision (e)(2), even if those decisions were made in conjunction with an official investigation.” (*Id.* at p. 788.) The court relied on *Park* for the proposition that there is a distinction between “activities that form the basis for a claim and those that

merely lead to the liability-creating activity or provide evidentiary support for the claim” (*Park, supra*, 2 Cal.5th at p. 1064), and *Wilson* for the proposition that “[a] ‘claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of’” (*Wilson, supra*, 7 Cal.5th at p. 884.)

Similarly, in *Laker v. Board of Trustees of California State University* (2019) 32 Cal.App.5th 745, 759 (*Laker*), the Court of Appeal reversed, in part, a trial court order granting an anti-SLAPP motion that challenged a complaint based on an alleged retaliatory investigation of the plaintiff’s conduct. The reviewing court held that to “the extent that Laker’s retaliation claim arises from the University’s decision to pursue investigations into Laker’s own conduct, Laker’s claim does not rest on protected conduct. However, Laker’s allegation that the University retaliated by publishing false and defamatory statements about him is not merely incidental to his retaliation claim and arises from protected activity.” (*Ibid.*) The *Laker* court looked to *Park* and reasoned that *Park* did not “suggest that all aspects of internal investigations arise out of protected ‘petitioning activity’ for the purpose of the anti-SLAPP statute.” (*Laker*, at p. 773.) *Laker* thus rejected the defendant’s argument “that its decision to pursue the investigations (rather than any communicative conduct of individual employees)—arises from protected activity.” (*Id.* at p. 774.)

Likewise, in this case, in striking all allegations “as to Plaintiff suffering the adverse employment action of a sham or unfair investigation and [Board of Rights] hearing,” the trial court struck allegations or claims not arising from protected activity. It may be that, if carefully parsed, the SAC’s claims arising from the internal investigations and Board of Rights

hearing could have been separated into claims based on protected speech and properly subject to anti-SLAPP protection, and those reflecting only unprotected activity. But, despite the trial court's analysis and discussion of *Bonni* and relevant authorities, no such parsing took place. Although the City had multiple opportunities to address Cairns's allegations individually and to provide argument to explain how specific allegations arise from protected activity, it failed to do so.⁵ The City did not carry its burden, the trial court's order did not overcome the City's failure, and we do not find it appropriate on appeal to take on the task of attempting to parse the SAC's specific allegations in the first instance. (*Young, supra*, 91 Cal.App.5th at p. 100.) As in *Verceles* and *Laker*, the order must be reversed.

⁵ The closest the City has come to identifying specific allegations to be stricken is in the respondent's brief on appeal. The brief identifies several categories of speech related to the investigations and Board of Rights hearing and provides paragraph numbers where the relevant allegations appear in the complaint. However, many of the paragraphs identified contain multiple allegations and, since this list was not presented in the trial court, the parties had no opportunity to litigate whether particular allegations reflected protected activity that formed the basis of one of Cairns's claims.

DISPOSITION

The order on the special motion to strike is reversed.
Cairns is awarded his costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

ADAMS, J.

We concur:

EDMON, P. J.

EGERTON, J.