In the

Court of Appeal

of the

State of California

FIRST APPELLATE DISTRICT
DIVISION TWO

A175747

AARON GREENSPAN,
Plaintiff-Appellant/Cross-Respondent,

v.

ELON MUSK, *et al.*,
Defendants-Respondents,

– and –

OMAR QAZI, *et al.*,
Defendants-Respondents/Cross-Appellants.

ON APPEAL FROM THE SUPERIOR COURT OF SAN FRANCISCO COUNTY,
HONORABLE JOSEPH M. QUINN · NO. CGC-24-615352

RESPONDENTS' BRIEF

ANTHONY P. ALDEN* (STATE BAR NO. 232220)
DANIELLE SHRADER-FRECHETTE (STATE BAR NO. 300842)
DYLAN C. BONFIGLI (STATE BAR NO. 317185)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
(213) 443-3000 Telephone
anthonyalden@quinnemanuel.com
daniellefrechette@quinnemanuel.com
dylanbonfigli@quinnemanuel.com

Attorneys for Defendants-Respondents
Elon Musk, Tesla, Inc., The Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, Singer Cashman, LLP, Jared Birchall, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(Cal. Rules of Court, rule 8.208)

Defendants-Respondents Elon Musk, Tesla, Inc., The Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, Singer Cashman, LLP, Jared Birchall, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro (collectively, "Defendants") are not aware of any person or entity other than the parties themselves and the parties' counsel with a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves.

DATED: Sept. 15, 2026

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Anthony P. Alden
Anthony P. Alden
Danielle Shrader-Frechette
Dylan C. Bonfigli

Attorneys for Defendants-Respondents Elon Musk, Tesla, Inc., The Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, Singer Cashman, LLP, Jared Birchall, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro

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INTRODUCTION

This appeal is the latest chapter in Aaron Greenspan's years-long litigation campaign against Elon Musk, Tesla, and those associated with them. After Greenspan's prior federal action culminated in dismissal with prejudice of his federal claims—a judgment the Ninth Circuit affirmed—Greenspan filed this second action and expanded his grievances into a 155-page, 20-count complaint against Musk, Tesla, their attorneys, and others. (1AA156-2AA316.) Many of those claims sought to impose liability for quintessentially protected activity: Musk's public statements about Tesla and its products, and Defendants' legal pleadings, communications, and other conduct in prior judicial and regulatory proceedings.[1] The trial court correctly struck those claims under California's anti-SLAPP statute.

Greenspan's appeal focuses on procedural objections, but none provides a basis for reversal. After the federal court remanded Greenspan's state-law claims on July 17, 2025, Defendants filed their anti-SLAPP motion on September 10—within the 60-day period that began upon remand. (1AA86; 2AA403; see *Morin v. Rosenthal* (2004) 122 Cal.App.4th 673, 682.) And even if the motion had been untimely, Code of Civil Procedure section 425.16(f) expressly authorized the trial court to consider the motion in its discretion. Given the unusual

[1] For purposes of this brief, "Defendants" refers to all defendants other than Omar Qazi and Smick Enterprises: Elon Musk, Tesla, Inc., The Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, Singer Cashman, LLP, Jared Birchall, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro.

procedural history, the absence of discovery, and the fact that the case remained at the pleading stage, the trial court acted well within that discretion. (4AA1041.)

Nor did Greenspan deprive the court of authority to decide the motion through his last-minute voluntary dismissals. Greenspan never dismissed several Defendants or Counts IV-VIII against Musk and Tesla. As to other claims against Musk and Tesla, Greenspan's September 10 request for dismissal was defective and rejected by the clerk. He did not file a proper request until September 12, two days after Musk and Tesla filed their anti-SLAPP motion. (1AA86, 118; 4AA878, 879, 1042.) And as to the Attorney Defendants,[2] substantial evidence supports the trial court's finding that Greenspan dismissed them to avoid the imminent anti-SLAPP ruling. Greenspan himself warned Defendants that, if he dismissed them "without prejudice for now," they would "still have no anti-SLAPP motion," while threatening less favorable settlement terms later. (4AA877 ¶ 14.) California law does not permit voluntary dismissal to be used in that manner to manipulate the judicial process or evade an impending adverse ruling.

The merits are even more straightforward. At the first anti-SLAPP step, the challenged claims arise from two core categories of protected activity: (1) public speech concerning Tesla's performance, products, stock, and technology, and (2) petitioning activity undertaken in litigation and regulatory proceedings.

[2] The Attorney Defendants are Singer Cashman, LLP, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro.

(4AA1042-43.) Greenspan largely does not challenge those conclusions on appeal.

Instead, Greenspan attempts to squeeze his claims within two of the anti-SLAPP statute's exemptions. But the commercial-speech exemption does not apply because the challenged statements principally concern opinions and predictions about Tesla's future—not representations of existing fact—and several challenged claims arise from litigation or third-party speech, rather than commercial advertising. (4AA1042-43; *Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 26, 30-31.) And *Flatley v. Mauro* (2006) 39 Cal.4th 299, does not apply because Defendants did not concede illegality, nor does the evidence conclusively establish it. (4AA1043-44.)

At the second step, Greenspan cannot establish even the "minimal merit" required for any of the stricken claims. Greenspan's securities, fraud, negligent-misrepresentation, defamation, and negligent-infliction claims are barred in whole or substantial part by claim preclusion arising from his earlier federal action, *Greenspan I*. Greenspan's fraud and negligence theories targeting litigation filings are independently barred by California's litigation privilege. (Civ. Code § 47(b).) Greenspan's defamation theory depends on treating Qazi as Musk's or Tesla's agent even though Greenspan identifies no evidence that Musk or Tesla controlled Qazi's statements about him.

Greenspan's negligent-infliction claim is untimely, and he alleges no negligent conduct or cognizable duty. Greenspan's malicious-prosecution claim likewise fails because the Alameda indemnity action was supported by probable cause, Greenspan produced no evidence of malice, and Musk's dismissal following settlement of the underlying *Hothi* action was not a favorable termination on the merits. Similarly, Greenspan's negligence claim fails because litigation adversaries and opposing counsel owed him no duty of care. And Greenspan's derivative UCL claim necessarily falls with the underlying claims. Several of these independent grounds for the trial court's ruling are not meaningfully challenged on appeal.

Finally, Greenspan's attacks on the wording and preparation of the trial court's order cannot carry his burden on appeal. This Court reviews the anti-SLAPP ruling *de novo* and must affirm if the result is correct on any applicable theory. Whatever imperfections Greenspan attributes to the trial court's written explanation, he cannot show prejudice where the record independently establishes both that his claims arise from protected activity and that they fail as a matter of law. The Court should affirm the order granting Defendants' anti-SLAPP motion.

STATEMENT OF FACTS

A. The Parties

Aaron Greenspan. Greenspan is a serial *pro se* litigant. His own website admits that his "litigation history might seem a bit extreme," while insisting "there is a method to the madness."[3] Greenspan has filed dozens of lawsuits, either personally or through organizations he controls, against an eclectic array of

[3] https://www.aarongreenspan.com/about/index.html.

defendants, including Kamala Harris, Random House, Coinbase, Stanford, Sequoia Capital, Square, and Stripe. (1AA96.)

Greenspan's disputes follow a recurring pattern: When others reject his theories or criticize him, he threatens or initiates litigation. For example, Greenspan has long maintained that he invented Facebook and that Mark Zuckerberg appropriated his idea. When the book and film *The Social Network* omitted him from their account of Facebook's origins, Greenspan sued the book's publishers and the film's producers, alleging that he had been "defam[ed] by omission." (*Greenspan v. Random House, Inc.* (D. Mass. filed Nov. 18, 2011) Case No. 1:11-cv-12000-RBC, Dkt. 1 at 28-29.) Greenspan's claims were dismissed with prejudice, and the dismissal was affirmed on appeal. (*Greenspan v. Random House, Inc.* (D. Mass. 2012) 859 F.Supp.2d 206, *aff'd* (1st Cir. Oct. 16, 2012) No. 12-1594, 2012 WL 5188792.)

Greenspan's feud with Musk and Tesla follows a similar pattern. From September 2018 through March 2020, Greenspan purchased Tesla put options that would profit if Tesla's stock declined; instead, Greenspan admits that he lost money as Tesla's share price "skyrocketed" through June 2020. (1AA172-73 ¶ 53.) Rather than reconsider his investment thesis, Greenspan intensified his attacks on Tesla, Musk, and their supporters through his website, social media, and a succession of increasingly sprawling lawsuits. (1AA95-96; 1AA166-67 ¶¶ 19-24; 1AA169 ¶ 37.)

Elon Musk and Tesla. Elon Musk is an officer, director, and employee of Tesla, Inc., whose publicly traded shares bear the ticker symbol "TSLA." (1AA175 ¶ 59.) Greenspan alleges that Musk is a "public figure" who controls numerous companies, including Tesla (1AA173 ¶ 56), and Greenspan has repeatedly characterized Musk as the "Co-President" of the United States. (Appellant's Opening Brief ["AOB"] 13; 1AA53.)

Other Musk-affiliated parties are the Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, and Jared Birchall. (1AA176-77 ¶¶ 61-63.) Greenspan alleges that the Trust holds Musk's Tesla shares, that Excession serves as Musk's family office, and that Birchall heads Excession and manages Musk's wealth. (*Ibid.*)

The Attorney Defendants. Singer Cashman, LLP, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro are attorneys whom Greenspan sued based on their representation of Musk and Tesla. (1AA178-79 ¶¶ 67-71.) Singer Cashman represented Musk in a prior Alameda County action, and Cashman signed the complaint filed there. (RA659.) Huebert and Mehes were in-house attorneys for Tesla who also represented Musk in that action. (*Ibid.*) Spiro is an attorney with Quinn Emanuel who has represented Musk and Tesla. (1AA179-80 ¶ 71.) Greenspan's claims against these Defendants arise principally from pleadings, subpoenas, communications, and other litigation activity undertaken in representing Musk and Tesla. (1AA178-80 ¶¶ 67-71; 1AA295-2AA307 ¶¶ 588-647.)

Omar Qazi and Smick Enterprises. Qazi is a Tesla customer and shareholder who engages in social-media commentary about Tesla. (1AA177-78 ¶ 65; 3AA599 ¶ 3; 3AA601

¶ 11.) After purchasing a Tesla Model 3 in 2018, Qazi began posting publicly about his experience with the vehicle and created the account "@tesla_truth" to respond to claims made by Tesla short sellers, including Greenspan. (3AA599 ¶ 3; 3AA600 ¶ 7; 3AA601 ¶¶ 11-16.) Qazi states that he has never worked for Tesla or Musk and has never had any contract or business dealing with Greenspan. (3AA599 ¶ 2; 3AA607 ¶ 43.) Smick Enterprises, Inc. is a Delaware corporation of which Qazi is the CEO. (1AA178 ¶ 66.)

Qazi allegedly participated in a Tesla Early Access Program ("EAP") to test Tesla's Full Self-Driving ("FSD") software. (1AA189 ¶ 115.) According to Greenspan, Qazi signed Tesla's EAP Agreement. (1AA190 ¶ 119.) But, as Greenspan acknowledges, the EAP Agreement "disclaim[s] any agency relationship." (*Ibid.*)

B. The Prior Federal Action (*Greenspan I*)

This dispute follows years of prior litigation. In May 2020, Greenspan sued Tesla, Musk, Qazi, and Smick Enterprises for defamation and various other claims. (*Greenspan v. Qazi* (N.D. Cal. filed May 20, 2020) Case No. 3:20-cv-03426-JD, Dkt. 1.)

Greenspan's final complaint in that action, his "Third Supplemental and Amended Complaint," asserted claims for (1) defamation *per se*, (2) violation of the anti-stalking statute, Civil Code § 1708.7 *et seq.*, (3) copyright infringement, (4) violation of the Digital Millennium Copyright Act, and (5) violation of federal securities laws. (RA175.) The district court described Greenspan's pleadings as "a significant challenge," noting he had filed "over 4,000 pages of pleadings." (RA605.)

The district court dismissed Greenspan's federal claims with prejudice. (RA627-30.) The court explained that Greenspan had been afforded "every consideration as a *pro se* litigant," including the "extraordinary opportunity of filing five massive complaints," and that further amendment would be futile. (RA628.) The court declined to exercise jurisdiction over the remaining state-law claims and dismissed them without prejudice. (RA628.) Greenspan appealed, but the Ninth Circuit affirmed on April 4, 2024. (RA632-35.)

C. The *Hothi* Action And The Indemnity Action

A separate action relevant to Greenspan's claims involved Randeep Hothi, another Tesla short-seller. In August 2020, Hothi sued Musk for defamation in Alameda Superior Court, alleging that Musk had falsely accused Hothi of endangering Tesla employees. (*Hothi v. Musk* (Alameda Sup. Ct. Aug. 4, 2020) Case No. RG20069852; RA637-49.) Hothi's complaint alleged that Greenspan had exchanged emails with Musk in August 2019, that Musk made the alleged defamatory statements in those emails, and that Greenspan then published the correspondence online. (RA642-43.)

Musk later filed a separate Alameda County action against Greenspan and Greenspan's company, Think Computer Corp., seeking equitable indemnification and contribution in connection with the *Hothi* action (the "Alameda indemnity action"). (RA651-60.) Musk alleged that Greenspan had publicized Musk's email correspondence—after communicating with Hothi's counsel—and Greenspan had thus generated the alleged reputational harm claimed by Hothi. (RA656.)

On May 1, 2023, Hothi dismissed his action against Musk with prejudice based on a $10,000.01 settlement made pursuant to Code of Civil Procedure section 998. (RA874; RA899-901.) Musk likewise dismissed his indemnity action against Greenspan with prejudice. (4AA1116.) After Greenspan attempted to pursue a cross-complaint in that dismissed action, the Alameda court confirmed that the dismissal took immediate effect and deprived the court of jurisdiction over Greenspan's later-filed cross-complaint. (4AA1126-27.)

D. The Current Action (*Greenspan II)*

After the Ninth Circuit issued its mandate in *Greenspan I*, Greenspan filed this action in San Francisco Superior Court. (RA6-67.) Greenspan's original complaint asserted nine counts against 14 defendants. (RA6.) Three defendants (Tesla, Excession, and Huebert) removed the case to federal court. (RA68-82.)

After removal, Greenspan filed a 155-page first amended complaint. (1AA156-2AA316.) It attempted to combine virtually every grievance that Greenspan had against Musk, Tesla, Qazi, and their attorneys into a single, 20-count conspiracy. (1AA156-159; 1AA256-2AA316.) Greenspan's central theory was that Defendants belonged to an "Atlanteca Enterprise" that supposedly defrauded customers and regulators about Tesla's Autopilot and FSD products, inflated Tesla's stock price through false financial and product statements, concealed information from litigants, used Qazi to disseminate pro-Tesla "propaganda" and attack critics, and deployed Musk's so-called "Hardcore Litigation Department" to punish Greenspan through litigation, even though Greenspan initiated each lawsuit. (1AA160-65 ¶¶ 3-16; 1AA175 ¶ 58; 1AA254-55 ¶¶ 405-10.)

On that basis, Greenspan asserted federal RICO and RICO-conspiracy claims; state securities-fraud and aiding-and-abetting claims; fraud and negligent-misrepresentation claims; three defamation claims; civil-stalking and negligent-infliction-of-emotional-distress claims; malicious-prosecution and professional-negligence claims arising from prior litigation; and claims for unjust enrichment, unfair competition, false advertising, and declaratory relief. (1AA158-59; 1AA256-2AA316.)

In federal court, Defendants moved to dismiss and filed anti-SLAPP motions. (RA680.) On July 17, 2025, the district court issued an order dismissing Counts I-III and Count XX of Greenspan's amended complaint. (RA677-92.) Counts I-III were Greenspan's federal RICO claims, and Count XX sought declaratory relief. (RA692.)

The district court declined to exercise supplemental jurisdiction over Greenspan's remaining state-law claims—Counts IV-XIX—and therefore remanded those claims to state court. (RA690-92.) As a result, the court denied Defendants' then-pending anti-SLAPP motions as moot and without prejudice. (RA691 n.17.)

E. The Settlement Negotiations

Following remand, on September 8, 2025, Defendants told Greenspan that they would "be filing their anti-SLAPP motions" that day. (4AA953.) In response, Greenspan threatened to "move for sanctions." (*Ibid.*)

Less than an hour later, Greenspan sent another email that proposed a settlement. The email stated: "Before you file your anti-SLAPP motion(s), I am prepared to voluntarily dismiss all claims against [Defendants] **except for** Elon Musk and Tesla, Inc. … provided that they agree not to pursue fees, costs or sanctions and release all purported claims against me going forward." (4AA952.)

Defense counsel proposed the following terms:

1. "A mutual release of claims that were known or that could have been known at the time of execution of the settlement, including those asserted in your complaints."

2. "Voluntary dismissal with prejudice of all claims against the QE clients except Tesla and Musk."

3. "Each party to the settlement to bear its own costs and expenses."

4. "Mr. Musk's and Tesla's pending motion for sanctions to be unaffected by the Settlement."

(4AA954.) Greenspan responded: "We have an agreement in principle based on the below terms." (*Ibid.*)

The next day, September 9, 2025, defense counsel sent a draft settlement agreement. (4AA955.) Greenspan and defense counsel then exchanged multiple emails regarding the terms of the draft settlement agreement. (4AA962-82.)

On September 10, Greenspan sent an email stating: "If your clients decide that they can not stomach these extremely generous terms … then I will voluntarily dismiss them without prejudice for now, you will still have no anti-SLAPP motion, and my terms will be significantly less generous if they want dismissal with prejudice one day." (4AA964.)

Two hours later, Greenspan, in his words, "issued a final warning" by sending an email that attached "copies of the … unsigned Forms CIV-110 [requests for dismissal]" that he "was about to file." (4AA877 ¶ 15.) Defense counsel responded: "I honestly don't follow you." (4AA877 ¶ 16.) Greenspan "interpreted this statement as … Defendants having walked away from the negotiating table." (*Ibid.*)

F. The Voluntary Dismissals And The Anti-SLAPP Motion

Greenspan attempted to file two sets of requests for dismissal on September 9 and 10, 2025. The first set of requests for dismissal, which the clerk accepted, dismissed without prejudice "ONLY Defendants Singer Cashman LLP, Adam S. Cashman, Adam G. Mehes, and Alex Spiro" and "ONLY Defendant Allison Huebert." (1AA82, 1AA84.)

According to Greenspan, the second request for dismissal would have dismissed without prejudice "ONLY First Amended Complaint Counts X, XIII-XV, XVIII, and XIX as to Elon Musk and Tesla, Inc." (4AA876 ¶ 11.) But Greenspan—by his own admission—did not check the box in section 1(a) of the form (CIV-110) to indicate that the dismissal was "Without prejudice." (*Ibid.*) As a result, the clerk of the court rejected the filing and instructed Greenspan: "Please mark something for item 1a if this dismissal is with or without prejudice." (4AA879 ¶ 24.)

On September 10, 2025, before Greenspan had remedied the defective request for dismissal, Defendants filed their anti-

SLAPP motion. (1AA86.) Defendants moved to strike the remaining claims against them:

1. Count IV (securities fraud under Corporations Code sections 25400 and 25500);
2. Count V (securities fraud under Corporations Code sections 25401 and 25501);
3. Count VI (assistance in committing securities fraud);
4. Count VII (fraud);
5. Count VIII (negligent misrepresentation);
6. Count X (defamation per se);
7. Count XIII (negligent infliction of emotional distress);
8. Count XIV (fraud on the court/malicious prosecution);
9. Count XV (professional negligence); and
10. Count XVIII (violation of the UCL).

(1AA93.)

On September 12, 2025, Greenspan filed a new request for dismissal as to Musk and Tesla. (1AA118.) This time, Greenspan completed the form to indicate that the dismissal was without prejudice. (*Ibid.*) As to Musk and Tesla, Greenspan dismissed "ONLY First Amended Complaint Counts X, XIII-XV, XVIII, and XIX." (*Ibid.*)

Also on September 12, 2025, Defendants filed an amended anti-SLAPP motion. (1AA122.) The notice of motion was substantively identical to the notice accompanying the prior motion. (1AA93-94; 1AA129-30.) Defendants reduced the page length of the supporting memorandum because Greenspan had argued that the initial memorandum was overlength. (2AA536 n.2; 3AA855.)

Greenspan opposed the anti-SLAPP motion. (2AA345.) Defendants filed a reply. (2AA526.) And the trial court issued an order granting Defendants' anti-SLAPP motion on November 13, 2025. (4AA1023-36.)

Greenspan moved for reconsideration, and the trial court issued an amended order granting Defendants' anti-SLAPP motion on November 24, 2025. (4AA1038-50.) The trial court corrected several of the typographical and citation errors in the initial order. But, as in its initial order, the trial court ultimately ruled that the challenged claims arose from protected activity and that Greenspan had not shown a reasonable probability of prevailing on the merits. (4AA1042-50.)

The trial court rejected Greenspan's argument that the anti-SLAPP motion was untimely. The trial court ruled that "when a case is remanded from federal court to state court, defendants receive a new 60-day window to file an anti-SLAPP motion, measured from the date of remand." (4AA1041, citing *Morin*, 122 Cal.App.4th at p. 682.) Defendants had filed their motion before that deadline. (*Ibid.*)

The trial court also acknowledged that, even if the 60-day window had not restarted upon remand, "an anti-SLAPP motion may be filed 'in the court's discretion at any later time upon terms it deems proper.'" (*Ibid.*, quoting Civ. Proc. Code § 425.16(f).) The court ruled that, even if Defendants had not filed within the 60-day remand window, their motion was "timely and properly before [the court]" "[g]iven the complex procedural history." (*Ibid.*)

The trial court also rejected Greenspan's argument that his requests for dismissal prevented the trial court from ruling on aspects of the anti-SLAPP motion. Specifically, the trial court ruled that Greenspan never attempted to dismiss certain claims, and he "did not properly move to dismiss Counts X, XIII-XV, XVIII, and XIX until two days after Defendants filed [their] motion." (4AA1042.) Defendants' amended anti-SLAPP motion was "substantially identical to the initial motion," and the amended motion was "filed only to reduce the page length of the [memorandum], which was done at [Greenspan's] urging." (*Ibid.*) As to the Attorney Defendants, whom Greenspan had dismissed before Defendants' anti-SLAPP motion, the trial court ruled that Greenspan "did not dismiss [them] in good faith since the circumstances demonstrate he was motivated to avoid an adverse ruling." (*Ibid.*)

On December 3, 2025, Greenspan filed a second motion for reconsideration. (3AA840-61.) The trial court denied the motion on January 23, 2026. (6AA1505-08.) Greenspan filed a notice of appeal on February 13, 2026. (6AA1534.)

STANDARD OF REVIEW

This Court reviews a trial court's decision to entertain an allegedly untimely anti-SLAPP motion for an abuse of discretion. (*Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 782; *Hoang v. Tran* (2021) 60 Cal.App.5th 513, 526.) This Court also reviews a trial court's decision to vacate or disregard a voluntary dismissal for an abuse of discretion. (*Tire Distribs., Inc. v. Cobrae*

(2005) 132 Cal.App.4th 538, 544; *Mesa Shopping Ctr.-E., LLC v. O Hill* (2014) 232 Cal.App.4th 890, 899-900.)

"The burden is on the party complaining to establish an abuse of discretion." (*Hoang*, 60 Cal.App.5th at p. 526, quotation omitted.) "A trial court's exercise of discretion is abused only when its ruling 'exceeds the bounds of reason.'" (*Ibid.*, quotation omitted.)

This Court "review[s] de novo the grant or denial of an anti-SLAPP motion." (*Park v. Bd. of Trs. of Cal. State Univ.* (2017) 2 Cal.5th 1057, 1067.) "If the trial court's decision is correct on any theory applicable to the case, [this Court will] affirm the order regardless of the correctness of the grounds on which the lower court reached its conclusion." (*Young v. Midland Funding LLC* (2023) 91 Cal.App.5th 63, 80, quotation omitted.)

ARGUMENT

The trial court did not abuse its discretion in entertaining Defendants' anti-SLAPP motion, and the court properly granted the motion on the merits.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ENTERTAINING DEFENDANTS' ANTI-SLAPP MOTION

Greenspan makes a series of procedural arguments as to why the trial court should not have considered Defendants' anti-SLAPP motion. Each lacks merit.

A. Greenspan's Voluntary Dismissals Did Not Deprive The Trial Court Of Authority To Rule On The Anti-SLAPP Motion

Greenspan argues that his voluntary dismissals deprived the trial court of authority to rule on aspects of Defendants' anti-

SLAPP motion. (AOB 27-31.) Greenspan's argument fails because (1) he never dismissed certain Defendants; (2) he never dismissed certain claims as to Musk and Tesla; (3) Musk and Tesla filed their anti-SLAPP motion as to the other claims against them before Greenspan dismissed those claims; and (4) Greenspan's dismissal as to the Attorney Defendants was not in good faith.

1. Greenspan Never Dismissed The Elon Musk Revocable Trust Dated July 22, 2003, Excession, LLC, Or Jared Birchall

Greenspan never dismissed The Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, or Jared Birchall. The trial court therefore had authority to rule on those Defendants' anti-SLAPP arguments. Greenspan does not argue otherwise.

2. Greenspan Never Dismissed Counts IV-VIII As To Musk And Tesla

Greenspan never dismissed Counts IV-VIII as to Musk and Tesla. Greenspan's corrected request for dismissal, entered on September 12, 2025, dismissed without prejudice "ONLY First Amended Complaint Counts X, XIII-XV, XVIII, and XIX as to Elon Musk and Tesla, Inc." (1AA118.) The trial court therefore had authority to rule on Musk and Tesla's anti-SLAPP arguments as to Counts IV-VIII. Greenspan does not argue otherwise.

3. Musk And Tesla Filed Their Anti-SLAPP Motion Before Greenspan Filed A Proper Request For Dismissal As To Counts X, XIII-XV, XVIII, And XIX

A voluntary dismissal is "effective immediately" only if it is "in proper form." (*S. B. Beach Props. v. Berti* (2006) 39 Cal.4th

374, 380, quotation omitted.) But "a defendant who is voluntarily dismissed, with or without prejudice, ***after*** filing a section 425.16 motion to strike, is nevertheless entitled to have the merits of such motion heard as a predicate to a determination of the defendant's motion for attorney's fees and costs under subdivision (c) of that section." (*Liu v. Moore* (1999) 69 Cal.App.4th 745, 751, emphasis added.)

That is the situation here as to Musk and Tesla. When they filed their anti-SLAPP motion on September 10, 2025 (1AA86), Greenspan had ***not*** filed—as to Musk and Tesla—a request for dismissal "in proper form" (*S. B.*, 39 Cal.4th at p. 380). When Musk and Tesla filed their anti-SLAPP motion on September 10, ***all*** of Greenspan's claims against them were still pending. Thus, even though Greenspan voluntarily dismissed some of those claims later, on September 12 (1AA118), Musk and Tesla were "nevertheless entitled to have the merits of [their anti-SLAPP] motion heard" (*Liu*, 69 Cal.App.4th at p. 751)—including as to the claims that Greenspan subsequently voluntarily dismissed on September 12.

The request for dismissal that Greenspan attempted to file on September 10, 2025, is a legal nullity because it was not "in proper form." (*S. B.*, 39 Cal.4th at p. 380.) Greenspan needed to indicate, in section 1(a) of the form (CIV-110), whether the dismissal was with or without prejudice. By Greenspan's own admission, he failed to do so, so the clerk of the court rejected the filing. (4AA879 ¶ 24.) The trial court agreed: "[Greenspan] did not properly move to dismiss Counts X, XIII-XV, XVIII, and XIX until two days after Defendants filed [their anti-SLAPP motion].” (4AA1042.) Thus, when Musk and Tesla filed their anti-SLAPP motion on September 10, ***all*** claims against them were still live. The trial court therefore had authority to rule on Musk and Tesla’s anti-SLAPP arguments as to all claims.

Defendants’ later amendment of their anti-SLAPP motion does not change that conclusion. On September 11, 2025, the day after Defendants filed their anti-SLAPP motion, Greenspan “sent counsel for Moving Defendants several e-mails, pointing out … that it did not comply with the California Rule of Court 3.1113(d) page limit.” (4AA878 ¶ 20.)

The next day, September 12, Defendants filed an amended anti-SLAPP motion that complied with Rule 3.1113(d)’s page limitation. (1AA122.) As the trial court found, the notices of motion were “substantially identical” and the amended motion “was filed only to reduce the page length of the [memorandum of points and authorities], which was done at Plaintiff’s urging.” (4AA1042.) The trial court thus did not abuse its discretion in entertaining Musk and Tesla’s motion as to Counts X, XIII-XV, XVIII, and XIX.

4. Greenspan’s Dismissal As To The Attorney Defendants Was Not In Good Faith

Before Defendants filed their anti-SLAPP motion on September 10, 2025, Greenspan had filed, that same day, requests for dismissal as to the Attorney Defendants—Singer Cashman LLP, Adam S. Cashman, Adam G. Mehes, Alex Spiro, and Allison Huebert. (1AA82; 1AA84.) But the trial court found that these requests for dismissal were not in good faith because their "apparent purpose" was to "avoid an imminent adverse ruling." (4AA1042.) That ruling was not an abuse of discretion.

Although a plaintiff generally has a broad right to voluntarily dismiss claims before trial, courts do not permit dismissals to be used as a procedural device to avoid an imminent adverse ruling or to manipulate the judicial process. (See, e.g., *Mary Morgan, Inc. v. Melzark* (1996) 49 Cal.App.4th 765, 770-71; *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 175-76, citing *M & R Props. v. Thomson* (1992) 11 Cal.App.4th 899; *Tire Distribs.*, 132 Cal.App.4th at p. 546.) "[T]he common thread running through all these decisions is the notion of fairness, which in turn depends on the plaintiff's motivation and intent in dismissing his complaint." (*Tire Distribs.*, 132 Cal.App.4th at p. 546.)

Here, the record supports the trial court's finding of bad faith. Defendants told Greenspan, on September 8, 2025, that they planned to file an anti-SLAPP motion. (2AA470.) In response, Greenspan proposed dismissing the Attorney Defendants in exchange for releases and a waiver of fees, costs, or sanctions. (2AA469.) The parties then reached an agreement in principle to settle Greenspan's claims against the Attorney Defendants, including Greenspan's dismissal of the Attorney Defendants with prejudice. (2AA471.) The parties agreed on each material term of that settlement. But rather than finish formalizing the settlement in a long-form agreement, Greenspan instead rushed to dismiss the Attorney Defendants without prejudice on September 10. (1AA82, 84.)

Greenspan did not simply file the dismissals to narrow the litigation. Before filing them, he sent defense counsel unsigned CIV-110 forms and stated that whether he filed "none," "one," or "both" was "up to you and your clients," while demanding that Defendants accept his proposed settlement terms. (4AA972-73.) In Greenspan's words, sending the unsigned forms was a "final warning." (4AA877 ¶ 15.) He separately warned that, if he dismissed the Attorney Defendants "without prejudice for now," they would "still have no anti-SLAPP motion," and his terms would become "significantly less generous" if they later wanted a dismissal with prejudice. (4AA877 ¶ 14.) The trial court was not required to ignore that record and treat the dismissals as ordinary, good-faith narrowing of the case.

This result—and any accompanying attorneys' fees—may be inconvenient for Greenspan, but it was the predictable consequence of his own litigation tactics. Greenspan elected to plead a sprawling 20-count complaint against numerous defendants and then attempted to make last-minute, claim-by-claim and party-by-party dismissals—after Defendants had already incurred substantial fees preparing their anti-SLAPP motion. If Greenspan's effort to avoid an adverse anti-SLAPP ruling backfired, it did so because he failed to file a non-defective dismissal and because he tried to use voluntary dismissals for settlement leverage—not because the trial court committed any error.

B. Defendants Timely Filed Their Anti-SLAPP Motion

Greenspan makes two principal timeliness arguments. First, he argues that the anti-SLAPP motion was barred because Defendants did not file it at an "early stage" of the proceedings. (AOB 37.) Second, he argues that Defendants could not move to strike Counts IV-VIII because they had prior chances to do so. (AOB 39-40.) Both arguments fail, as shown below.

1. Defendants Timely Filed Their Anti-SLAPP Motion Within 60 Days Of Remand

Code of Civil Procedure section 425.16(f) provides: "The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." As the trial court recognized, when, as here, "a case is remanded from federal court to state court, defendants receive a new 60-day window to file an anti-SLAPP motion, measured from the date of remand." (4AA1041, citing *Morin*, 122 Cal.App.4th at p. 682.)

Defendants complied with that deadline by filing their anti-SLAPP motion within 60 days of the remand. The case was remanded on July 17, 2025 (2AA403), so Defendants had until September 15, 2025, to file their anti-SLAPP motion. Defendants filed their initial anti-SLAPP motion on September 10, 2025 (1AA86), and their amended motion on September 12, 2025 (1AA122)—three days before the deadline. Thus, even setting aside the September 10 motion, Defendants' amended motion was timely, as the trial court recognized. (4AA1041.)

In any event, even if the anti-SLAPP motion were deemed technically untimely, reversal still would not follow because the trial court had broad discretion to consider the motion. Section 425.16(f) permits a special motion to strike to be filed "at any later time" in the trial court's discretion, and appellate courts review that decision only for abuse of discretion (supra p. 25). In exercising that discretion, courts consider whether hearing the motion would further the anti-SLAPP statute's purpose of early dismissal of meritless claims arising from protected activity, including the reason for delay, the stage of the litigation, and any prejudice to the plaintiff. (See, e.g., *Olsen v. Harbison* (2005) 134 Cal.App.4th 278, 286-87.)

Those factors favored consideration here. Any supposed delay resulted from removal and remand, not gamesmanship by Defendants; Greenspan should have expected Defendants to file the motion because they had already done so before remand; Defendants filed days before the remand-triggered deadline; no discovery had occurred; the case remained at the pleading stage; and Greenspan filed a full opposition and supporting declarations. (2AA345; 2AA415; 2AA495.) On this record, the trial court acted well within its discretion in reaching the merits of the anti-SLAPP motion "[g]iven the complex procedural history." (4AA1041.)

2. Defendants Did Not Forfeit Their Right To Move To Strike Counts IV-VIII

Greenspan erroneously argues, based on *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637 (AOB 39-40), that Defendants forfeited their right to move to strike Counts IV-VIII by not doing so when the case was in federal court. That argument overreads *Newport Harbor*.

Newport Harbor held that an amended complaint restarts the 60-day period for filing an anti-SLAPP motion—as of right—only as to newly pleaded claims. (*Id.* at pp. 641, 645.) But a belated anti-SLAPP motion attacking previously pleaded claims is still "subject to the trial court's discretion." (*Id.* at p. 645.) Thus, in *Newport Harbor*, the trial court had discretion to deny as untimely an anti-SLAPP challenge as to claims that had been included in earlier complaints. (*Id.* at pp. 640-41.) The trial court did so, and the Supreme Court affirmed. (*Id.* at p. 646.)

This case is not *Newport Harbor*. Certain Defendants removed the case to federal court (RA68-82), and Defendants filed anti-SLAPP motions in federal court (see RA677). But the district court denied the motions without prejudice and remanded the case to state court. (RA691.)

That remand is significant. As discussed above (supra p. 32), it gave Defendants a new 60-day window to file an anti-SLAPP motion as of right, and Defendants complied with that deadline. Defendants were therefore within their rights to move to strike Counts IV-VIII, even if they had not moved to dismiss those counts in an earlier federal-court motion. (See AOB 39, citing *Greenspan v. Musk* (N.D. Cal. filed Sept. 30, 2024) Case No. 3:24-cv-04647-MMC, Dkt. 82.) *Newport Harbor* does not address that situation.

In any event, even if Defendants' anti-SLAPP challenge to Counts IV-VI, VII, and VIII were technically untimely under

Newport Harbor, the trial court had discretion to consider the challenge—as *Newport Harbor* itself recognizes. (4 Cal.5th at p. 645; see Civ. Proc. Code § 425.16(f).) The trial court did not abuse that discretion "[g]iven the complex procedural history." (4AA1041.) Greenspan does not argue otherwise. (AOB 39-40.) He has therefore forfeited the issue. (See, e.g., *Goncharov v. Uber Techs., Inc.* (2018) 19 Cal.App.5th 1157, 1167 n.8 [issue not briefed is forfeited].)

Greenspan also suggests that Musk and Tesla forfeited their right to move to strike Counts IV-VIII by not filing a motion in *Greenspan I* because, in his view, the securities claims asserted there rested on the "same" facts as Counts IV-VIII in this later action. (AOB 40.) But neither *Newport Harbor* nor section 425.16(f) adopts anything like that cross-action forfeiture rule.

Greenspan's rule would also undermine the anti-SLAPP statute's purpose. A defendant might have many sound reasons not to file an anti-SLAPP motion in an earlier federal case, including pending Rule 12 motions, federal-law claims, jurisdictional issues, or the possibility that the federal court will dispose of the case on other grounds. Section 425.16 does not punish that choice by stripping the defendant of anti-SLAPP protection in a later state action. That rule makes particular sense where developments in the earlier action—such as a final judgment dismissing related claims with prejudice—may themselves furnish a prong-two defense in the later action, such as claim preclusion.

The relevant question here is whether Defendants timely moved against the operative pleading in this action, or whether the trial court properly exercised discretion to consider the motion. As explained above, Defendants timely moved, and *Newport Harbor* provides no basis for reversal.

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For all these reasons, the trial court did not abuse its discretion in reaching the merits of Defendants' anti-SLAPP motion.

II. THE TRIAL COURT PROPERLY GRANTED DEFENDANTS' ANTI-SLAPP MOTION

Section 425.16(b)(1) provides an early screening mechanism for claims that target protected speech or petitioning: "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 plaintiff establishes "a probability that the plaintiff will prevail on the claim." The Legislature directed that this statute "shall be construed broadly." (Civ. Proc. Code § 425.16(a).)

The statute "requires the court to engage in a two-step process." (*Equilon Enters., LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." (*Ibid.*) "If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Ibid.*)

The two-step inquiry is objective. The defendant need not prove the plaintiff's subjective intent to chill speech: "Section 425.16 nowhere states that, in order to prevail on an anti-SLAPP motion, a defendant must demonstrate that the plaintiff brought the cause of action complained of with the intent of chilling the defendant's exercise of speech or petition rights." (*Id.* at p. 58.) Nor is there anything "in the statute requiring the court to engage in an inquiry as to the plaintiff's subjective motivations before it may determine [whether] the anti-SLAPP statute is applicable." (*Id.* at p. 58, quotation omitted.) Instead, the Legislature chose a "two-pronged test ('arising from' and minimal merit)" and did not add any "intent-to-chill or similar proof requirement." (*Id.* at pp. 66-67.)

At step one, the focus is the defendant's challenged activity, not the plaintiff's label for the claim. "In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) The statute's "definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Id.* at p. 92.) "In deciding whether the initial 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (*Id.* at p. 89, quoting Civ. Proc. Code § 425.16(b).)

The statutory definition of protected activity is broad. It includes "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." (Civ. Proc. Code § 425.16(e)(1)-(2).) It also includes statements made "in a place open to the public or a public forum in connection with an issue of public interest," and "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (*Id.* § 425.16(e)(3)-(4).) "[P]lainly read, section 425.16 encompasses any cause of action against a person arising from any statement or writing made in, or in connection with an issue under consideration or review by, an official proceeding or body." (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734.)

Nor can a plaintiff defeat the statute through artful pleading that combines protected and unprotected allegations in the same count. "[T]he application of section 425.16 cannot reasonably turn on how the challenged pleading is organized." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 392.) "Section 425.16 is not concerned with how a complaint is framed"; an anti-SLAPP motion may challenge "any claim for relief founded on allegations of protected activity." (*Id.* at p. 382.) In cases involving both protected and unprotected activity, "*particular* alleged acts giving rise to a claim for relief may be the object of an anti-SLAPP motion." (*Id.* at p. 395.) The plaintiff then must establish a probability of prevailing on each claim for relief based on protected activity; "[u]nless the plaintiff can do so, the claim and its corresponding allegations must be stricken." (*Ibid.*)

At step two, the burden shifts to the plaintiff to substantiate the challenged claim. The statute directs the court to consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Civ. Proc. Code § 425.16(b)(2).) To satisfy this burden, the plaintiff must "state[] and substantiate[] a legally sufficient claim." (*Jarrow*, 31 Cal.4th at p. 741, quotation omitted.) That is, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Ibid.*, quotation omitted.) Although the court does not weigh credibility, it "should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." (*Id.* at p. 741 n.10, quotation omitted.)

A. The Challenged Counts Arise From Protected Activity

The trial court correctly ruled that Defendants had carried their burden at prong one as to the challenged counts: Counts IV-VIII, X, XIII-XV, and XVIII. (4AA1042-44.) Each count rested on one or both of two categories of protected activity: (1) public statements by Musk and Tesla about matters of public interest (see Civ. Proc. Code § 425.16(e)(3), (4)); or (2) statements and conduct in judicial and regulatory proceedings, including *Greenspan I*, the Alameda indemnity action, and proceedings before the DMV and SEC (see *id.* § 425.16(e)(1)). Moreover, as the trial court recognized, neither the commercial-speech exemption nor the illegality exception from *Flatley v. Mauro* (2006) 39 Cal.4th 299, applied to the challenged counts. (4AA1043-44.)

1. Counts Based On Public Statements By Musk About Tesla's Performance And Technology Involve Issues Of Public Interest (Counts IV-VIII, X, XVIII)

Section 425.16(e)(3) and (4) protect "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest" and "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

The trial court concluded that Counts IV-VIII, X, and portions of Count XVIII arose from Musk's public statements—on social media and at media events later posted to YouTube—concerning Tesla's stock performance, vehicle safety, production numbers, and business prospects.[4] As the trial court explained: "As framed by Plaintiff, Musk was engaged in speech in a public forum in connection with Tesla's performance and new technology." (4AA1043.)

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[4] 4AA1042, citing 1AA181 ¶ 79; 1AA185 ¶ 98; 1AA209 ¶¶ 189-90; 1AA225-26 ¶¶ 263, 266; 1AA228 ¶¶ 272, 274.

Greenspan does not directly challenge that conclusion on appeal. (See AOB 45-54.) And as the trial court recognized, Greenspan did "not contest" these issues in the trial court. (4AA1042-43.) Thus, the Court can treat as forfeited any challenge to the trial court's conclusion that the challenged claims arose from Musk's protected activity. (See, e.g., *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

Regardless, the trial court was correct. First, the relevant statements were made on websites and social-media platforms accessible to the public. Websites that are "accessible to the public … are 'public forums' for purposes of the anti-SLAPP statute." (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 199, quotation omitted.)

Second, as the trial court recognized, "[h]igh profile public figures, such as Musk, and public companies, such as Tesla, are issues of public interest." (4AA1042-43.) Greenspan himself characterized Musk as the "Co-President" of the United States (AOB 13; 1AA53) and a "public figure" who controls multiple companies (1AA173-74, 175 ¶¶ 56, 58). And the challenged speech concerns public debate over Tesla's products, its stock price, and public regulatory issues. Greenspan also claims to have raised "public safety concern[s]" about Tesla. (1AA173-74.) These are quintessential matters of public interest. (See, e.g., *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1254; *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1576.)

Greenspan's own pleading admits that the challenged statements reached tens of thousands of followers and involved

Tesla. (1AA241 ¶ 328.) Indeed, Greenspan has consistently portrayed Musk as a person of public interest, alleging that he had over “59 million followers” on X at the time in question. (1AA283-84 ¶ 529(d).)

Rather than directly challenge the trial court’s ruling, Greenspan argues (AOB 51) that Defendants “never identified any specific public issue implicated by the challenged conduct.” According to Greenspan (AOB 51), Defendants “relied … generally on Musk’s celebrity and Tesla’s publicly traded status.” In support, Greenspan relies on *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149 (AOB 51).

FilmOn establishes a two-part test for determining whether section 425.16(e)(4)’s catchall provision applies. (7 Cal.5th at p. 149.) First, courts “ask what ‘public issue or … issue of public interest’ the speech in question implicates—a question … answer[ed] by looking to the content of the speech.” (*Ibid.*, quoting Civ. Proc. Code § 425.16(e)(4).) Second, courts “ask what functional relationship exists between the speech and the public conversation about some matter of public interest.” (*Id.* at pp. 149-50.)

The trial court’s analysis directly answers both prongs. First, the issues of public interest implicated by the speech in question were “Tesla’s performance and new technology.” (4AA1043.) As already noted, for example, Greenspan claims to have raised “public safety concern[s]” about Tesla. (1AA173-74.) Second, the challenged statements bore a direct functional relationship to the public discussion of those subjects: they concerned Tesla's production levels, vehicle safety and technological capabilities, financial condition, stock performance, and future business prospects. (4AA1042-43.)

Those statements did not merely refer tangentially to matters of public interest or acquire public significance solely because Musk is a celebrity or Tesla is a publicly traded company. They themselves contributed to the public conversation about Tesla's performance, products, and prospects—the very subjects the trial court identified as matters of public interest. That satisfies *FilmOn*. (7 Cal.5th at p. 151 [requiring that the challenged speech "participate[] in, or further[]" the public conversation concerning the identified issue].)

Greenspan's reliance on *Hothi v. Musk* (Dec. 20, 2021) Case No. A162400, 2021 WL 5998549 (AOB 51-52), is improper. *Hothi* is an unpublished decision, and Rule 8.1115(a) of the California Rules of Court prohibits citing or relying on an unpublished California Court of Appeal opinion except in the limited circumstances specified in subdivision (b).

None applies here: *Hothi* is not relevant under the doctrines of law of the case, res judicata, or collateral estoppel, nor does any other exception in Rule 8.1115(b) apply. Greenspan's assertion that *Hothi* involved "substantially identical facts" (AOB 52 n.19) does not bring the decision within any recognized exception and therefore provides no basis for citing it.

In any event, Greenspan's reliance on *Hothi* is misplaced. There, the challenged statement was Musk's assertion that Hothi "almost killed Tesla employees" and that "[w]hat was a sideswipe when Hothi hit one [Tesla employee] could easily have been a death with 6 inches of difference." (*Hothi*, 2021 WL 5998549, at *3.) *Hothi* held that there was no "functional relationship" between those specific statements about Hothi and "the debate regarding Tesla's operations" and "Hothi's 'unreliable and improper methods for obtaining his supposed information.'" (*Id.* at p. 4.) Here, in contrast, Musk's challenged statements relate to "Tesla's performance and new technology," as the trial court recognized. (4AA1043.)

2. Counts Targeting Litigation Conduct And Attorney Conduct Arise From Petitioning Activity (Counts VII, X, XIII, XIV, XV, XVIII)

Section 425.16(e)(1) and (e)(2) protect statements "made before a legislative, executive, or judicial proceeding" and statements "made in connection with an issue under consideration" by such a body.

Here, Counts XIII, XIV, XV, and XVIII, along with portions of Counts VII and X, are based on the Alameda indemnity action, litigation communications, subpoenas, regulatory filings, and alleged perjury and litigation misconduct, as the trial court recognized.[5]

For example, Greenspan alleges that Defendants "filed false and misleading documents in *Greenspan I*" (1AA269 ¶ 497)

[5] 4AA1043, citing 1AA194 ¶ 129; 1AA202 ¶ 162; 1AA209 ¶ 187; 1AA242 ¶ 335; 1AA254-55 ¶ 408; 1AA265 ¶¶ 465, 471; 1AA269-70 ¶ 497; 1AA294-95 ¶¶ 580, 592; 2AA306 ¶ 638; 2AA310-11 ¶ 672.

and engaged in "fraud" and "negligence" in connection with the Alameda indemnity action (1AA294-95 ¶¶ 580, 592; 2AA306 ¶ 638). And Greenspan presented claims relating to California DMV and SEC proceedings. (1AA194 ¶ 129; 1AA242 ¶ 335; 1AA265 ¶¶ 465, 471; 1AA266 ¶ 474.)

The trial court correctly ruled that "regulatory filings and litigation filings are protected activities under subdivision (e)(1)." (4AA1043.) Greenspan does not challenge that conclusion on appeal. (See AOB 45-54.) Thus, the issue is forfeited. (See, e.g., *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

3. The Commercial-Speech Exemption Does Not Apply

Contrary to Greenspan's argument (AOB 45-50), the commercial-speech exemption in section 425.17(c) does not remove Counts VII, VIII, or XVIII—or any other count—from the anti-SLAPP statute's protection, as the trial court recognized (4AA1043).

The burden of proving that every element of the commercial-speech exemption is satisfied "falls on the party seeking the benefit of it—i.e., the plaintiff." (*Simpson Strong-Tie*, 49 Cal.4th at p. 26.) Those elements include that the cause of action actually "arise[] from" a statement by the defendant "consisting of representations of fact" about that defendant's or a competitor's business operations, goods, or services. (*Id.* at p. 30, citing Civ. Proc. Code § 425.17(c)(1).)

As to this representation-of-fact requirement, forward-looking statements about a company's future do not constitute "representations of fact." (*Id.* at p. 31.) For example, an advertisement stating what a business would do "if the reader were to respond to the advertisement 'is not a representation of fact, but an agreement to take certain actions in the future.'" (*Ibid.*, quoting *Navarro v. IHOP Props., Inc.* (2005) 134 Cal.App.4th 834, 841; see also *Six4Three, LLC v. Facebook, Inc.* (2025) 109 Cal.App.5th 635, 674-76.)

Here, the trial court correctly ruled that the commercial-speech exemption's representation-of-fact requirement was not satisfied because the challenged statements "primarily involve[d] … opinions and predictions about the future of Tesla and its offerings, not representations of fact."[6]

Greenspan's complaint targeted, among other things, Musk's statements: Tesla was deploying an Autopilot feature that would improve over time (1AA181-82 ¶ 79); Tesla faced the possibility of insolvency in November 2018 (1AA185 ¶ 98); a Tesla purchased in 2019 would appreciate in value (1AA225-26 ¶¶ 263, 266); and Tesla short sellers such as Greenspan would soon suffer losses (1AA228 ¶¶ 272, 274). These statements expressed predictions, estimates, or opinions about Tesla's future performance. The commercial-speech exemption is inapplicable for this reason alone.

Moreover, section 425.17(c) does not exempt the distinct claims for relief within Counts VII, VIII, and XVIII that arise from litigation conduct or seek to hold Defendants liable for their conduct concerning third-party speech. (1AA190-91 ¶¶ 118-20

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[6] 4AA1042, citing 1AA181-82 ¶ 79; 1AA185 ¶ 98; 1AA225-26 ¶¶ 263, 266; 1AA228 ¶¶ 272, 274.

[alleging that Tesla "authorized EAP participants … to act as its agents and attack critics on Tesla's behalf"].) An anti-SLAPP motion may target "any claim for relief founded on allegations of protected activity," even when that claim is pleaded in a count that also rests on other conduct. (*Baral*, 1 Cal.5th at pp. 382, 393, 395-96.)

Here, Count VII alleges that Defendants "filed false and misleading documents ... in order to defraud [a] court." (1AA269-70 ¶ 497.) Participation in litigation "does not constitute 'representations of fact about … a business' ... within the meaning of section 425.17." (*Contemp. Servs. Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1053, quoting Civ. Proc. Code § 425.17(c).) Count VIII rests in part on customer statements, and section 425.17 has no applicability to claims arising from third-party speech. (*Cross*, 14 Cal.App.5th at pp. 202-03.) And, as explained below (infra pp. 65-66), Greenspan's UCL claim (Count XVIII) is entirely derivative of his other claims. Greenspan could not immunize these claims from anti-SLAPP scrutiny merely by pleading them alongside allegations concerning purported commercial speech.

Greenspan also failed to carry his independent evidentiary burden. As the party invoking section 425.17(c), he was required to prove—not merely allege—each element of the exemption. (*Simpson Strong-Tie*, 49 Cal.4th at p. 26; *Six4Three*, 109 Cal.App.5th at p. 648.) Yet his supplemental declaration merely asserted that, "in [his] view," the statutory requirements were satisfied. (2AA497-98 ¶¶ 9-10.) It supplied no evidence establishing that each challenged claim arose from a representation of existing fact by a defendant, made for a qualifying commercial purpose, to a qualifying audience. Greenspan therefore failed to establish that section 425.17(c) exempted any of these claims from the anti-SLAPP statute.

4. The Exception From *Flatley v. Mauro* For Conduct That Is "Illegal As A Matter Of Law" Does Not Apply

Greenspan also argues (AOB 50-51) that Defendants' conduct is categorically "illegal" and therefore falls outside the anti-SLAPP statute's protection altogether based on *Flatley v. Mauro* (2006) 39 Cal.4th 299. The trial court correctly rejected that argument. (4AA1043-44.)

Flatley applies only where "the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law." (*Flatley*, 39 Cal.4th at p. 320.) It does not apply where, as here, the alleged illegality is neither conceded nor conclusively established on this record. (4AA1043-44.) Greenspan's labels—perjury, harassment, false advertising, extortion, and stalking—are allegations. They are not concessions or conclusive proof as a matter of law.

As the trial court recognized, the record did not "conclusively establish" that "Defendants' speech and petitioning activities were illegal as a matter of law." (4AA1043-44.) "Nor have … Defendants so conceded." (4AA1044.) Thus, Defendants were "not precluded from using the anti-SLAPP statute to strike Plaintiff's claims against them." (4AA1044.)

Greenspan's reliance on a California DMV proceeding (AOB 50-51) does not change that conclusion. Although Greenspan's complaint references the DMV proceeding and broadly alleges unlawful marketing of "Autopilot" and Full Self-Driving (1AA196-97 ¶¶ 137-41), *Flatley* requires conclusive illegality of the particular "assertedly protected speech or petition activity" from which the challenged claim arises. (39 Cal.4th at p. 320.)

The DMV did not adjudicate the legality of the speech the trial court identified here. For example, Greenspan challenges Musk's statements at an October 2015 press event concerning Autopilot's fleet-learning technology and its ability to improve over time. (1AA181-82 ¶ 79.) The DMV proceeding instead concerned Tesla's written vehicle marketing years later, including its use of the terms "Autopilot" and "Full Self-Driving Capability" and representations implying that vehicles could operate autonomously. (5AA1206-08 ¶¶ 24-30, 32.)

Nor did the DMV adjudicate Musk's statements concerning Tesla's financial condition, production, stock performance, or business prospects that underlie the other claims at issue. The DMV's determination that different Tesla advertising violated state law therefore does not establish that the protected activity underlying *these claims* was illegal as a matter of law.

There is an additional defect in Greenspan's argument. Post-*Flatley* cases construe the exception narrowly and treat conduct that is "illegal as a matter of law" as criminal conduct, not merely conduct that violates a noncriminal statute. (See, e.g., *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th

1153, 1169; *Mendoza v. ADP Screening & Selection Servs., Inc.* (2010) 182 Cal.App.4th 1644, 1654.) The DMV's conclusion that certain Tesla advertising violated state regulatory requirements therefore does not remove Musk's challenged speech from the protection of section 425.16.

B. Greenspan Fails To Show A Probability Of Prevailing

As to prong two, Greenspan fails to show a probability of prevailing on any of his stricken claims.

1. Securities Fraud (Counts IV-VI)

Counts IV-VI allege securities fraud and related claims under Corporations Code sections 25400, 25401, 25500, 25501, and 25504.1. Section 25400 prohibits various forms of market manipulation, and section 25500 imposes civil liability for willful violations of section 25400. (Corp. Code §§ 25400, 25500.) Section 25401 prohibits offering to buy or sell, or buying or selling, a security in this state by means of a communication containing a material misstatement or omission. Section 25501 provides a private remedy for a violation of section 25401, subject to statutory defenses based on the plaintiff's knowledge and the defendant's exercise of reasonable care. (Corp. Code §§ 25401, 25501.) Section 25504.1 imposes joint and several liability on a person who materially assists a securities-law violation with intent to deceive or defraud. (Corp. Code § 25504.1.)

None of Greenspan's securities claims are viable. To start, the trial court correctly ruled that Counts IV-VI are barred by claim preclusion. (4AA1044-46.)

Claim preclusion applies when a second suit involves "(1) the same cause of action (2) between the same parties [or their privies] (3) after a final judgment on the merits in the first suit." (*Grande v. Eisenhower Med. Ctr.* (2022) 13 Cal.5th 313, 323, quotation and emphasis omitted.) As to the first requirement, "a 'cause of action' is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 904, quotation omitted.)

The claim-preclusion elements are satisfied here. First, Counts IV-VI involve the same primary right and arise from the same material facts as the securities claims that were already adjudicated in *Greenspan I*. Second, Musk and Tesla were parties to *Greenspan I*, and the remaining Defendants were in privity with Musk and Tesla, as Greenspan himself alleged. (1AA180-81 ¶¶ 75-78; 1AA283-85 ¶ 529; see *Sartor v. Sup. Ct.* (1982) 136 Cal.App.3d 322, 326 [privity includes "master and servant, principal and agent, and indemnitor and indemnitee"].) Third, *Greenspan I* was litigated to a final judgment on the merits. (*Greenspan v. Qazi* (9th Cir. Apr. 4, 2024) 2024 WL 1461364; RA632-35.)

Greenspan raises two counterarguments.

First, he asserts (AOB 54) that claim preclusion does not apply "given that Judge Donato's household was being paid by opposing counsel throughout [*Greenspan I*], which is undisputed." This statement refers to Greenspan's prior motion to recuse

Judge Donato on the ground that Judge Donato's wife is a principal for Solutus Legal Search, whose clients allegedly include law firms hired by Musk and Tesla. (1AA170 ¶ 40.)

Judge Donato considered Greenspan's recusal motion and denied it. (1AA170 ¶ 40; *Greenspan v. Qazi* (N.D. Cal. July 27, 2021) 2021 WL 3173205, at *1.) The Ninth Circuit affirmed, holding that Judge Donato did not abuse his discretion in denying the motion because Greenspan "did not demonstrate that [Judge Donato's] 'impartiality might reasonably be questioned.'" (*Greenspan*, 2024 WL 1461364, at *2, quoting 28 U.S.C. § 455(a); RA635f.) Greenspan cites no authority for the proposition that claim preclusion does not apply against a party who unsuccessfully moved to recuse the judge in the prior proceeding.

Second, Greenspan asserts (AOB 55) that "several defendants were not parties to *Greenspan I*" and argues that they are not in privity with Musk or Tesla. Greenspan argues (AOB 55) that there was no privity because these Defendants did not "acquire[] an interest in the subject matter affected by the [prior] judgment through or under one of the parties, as by inheritance, succession, or purchase." (Quoting *Bernhard v. Bank of Am. Nat'l Tr. & Sav. Ass'n* (1942) 19 Cal.2d 807, 811.)

But Greenspan's formulation ignores that—in addition to inheritance, succession, or purchase—the concept of privity also includes "principal and agent" relationships. (*Bernhard*, 19 Cal.2d at p. 812; *Sartor*, 136 Cal.App.3d at p. 326.) That is the relevant basis for privity here, as the trial court recognized: "Although Excession, the Musk Trust, Birchall, and Morgan

Stanley were not named parties [in *Greenspan I*], the court finds that they were in privity with the named parties. Plaintiff himself pleads privity between Defendants, which includes 'master and servant, principal and agent, and indemnitor and indemnitee.'" (4AA1044-45, citing 1AA180-81 ¶¶ 75-78; 1AA283-85 ¶ 529, and quoting *Sartor*, 136 Cal.App.3d at p. 326.) Thus, Greenspan failed to show a reasonable probability of prevailing on his securities-fraud claims (Counts IV-VI), given the defense of claim preclusion.[7]

Moreover, claim preclusion aside, Greenspan's securities-fraud claims fail for multiple other reasons.

First, Greenspan does not satisfy the heightened pleading standard for his market manipulation claim (Corp. Code §§ 25400, 25500). "In California, fraud must be pled specifically." (*Lazar v. Sup. Ct.* (1996) 12 Cal.4th 631, 645.) "This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered." (*Ibid.*, quotation omitted.) Here, as to the alleged false statements by Musk at the April 2019 Autonomy Investor Day and the December 2020 Axel Springer Award Ceremony, Greenspan failed to specifically plead facts showing that Musk knew that the alleged statements were false when made or that Musk was deliberately reckless as to their truth. (See 1AA195 ¶ 134.)

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[7] Greenspan fails to specifically and distinctly challenge the trial court's privity analysis, and he therefore forfeited that issue. (See AOB 54-55; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8 [issue not briefed is forfeited].)

Second, Greenspan's claim under sections 25401 and 25501 fails because Greenspan lacks the statutorily required privity. "Section 25501 on its face requires privity between the plaintiff and the defendant." (*Apollo Cap. Fund, LLC v. Roth Cap. Partners, LLC* (2007) 158 Cal.App.4th 226, 253.) Specifically, section 25501 provides, in relevant part: "Any person who violates Section 25401 shall be liable to the person who ***purchases a security from***, or sells a security to, ***that person***." (Corp. Code § 25501, emphasis added.) Greenspan's own pleading shows that he cannot establish privity because he admittedly "does not know the identity of the legal entity or entities that sold him the TSLA put options that resulted in [his] losses." (1AA265 ¶ 473.)

Greenspan also failed to satisfy the heightened pleading standard for his claim under sections 25401 and 25501. He did not plead the specifics of the fraud. (1AA265 ¶¶ 471-73.) Instead, he simply alleged that he did not know who sold him the TSLA put options, claimed that Defendants were obligated to restore the consideration he paid for the TSLA securities, and incorporated by reference his prior 470 paragraphs of allegations into Count V. (1AA265 ¶¶ 471-73.)

Third, as to Counts IV and VI, Greenspan failed to present substantial evidence of the willfulness or intent required by sections 25500 and 25504.1. Greenspan argues (AOB 54) that there is no such requirement. But California law is to the contrary. (See, e.g., *Cal. Amplifier, Inc. v. RLI Ins. Co.* (2001) 94 Cal.App.4th 102, 107 ["Section 25500 Liability Requires Knowing and Intentional Conduct"]; *id.* at p. 112 ["Only persons who willfully, not merely recklessly, violate section 25400, subdivision (d) can be liable for damages."]; *Cole v. Patricia A. Meyer & Assocs.* (2012) 206 Cal.App.4th 1095, 1113 ["Scienter also is necessary for liability under Corporations Code sections 25400 and 25500, which together require 'an intent to defraud through a knowingly false statement' designed to manipulate the securities markets."], quotation omitted.)

Greenspan cursorily argues (AOB 54) that he "provided ample evidence that Musk … had knowledge or intent to deceive." But Greenspan does not identify that evidence or provide any record citation. His argument is thus forfeited. (See, e.g., *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [argument unsupported by necessary record citations is forfeited].)

Nor does Greenspan's reliance on Musk's involvement in unrelated SEC and securities litigation (AOB 54) establish that Musk knowingly made, or intended to deceive investors through, the particular statements challenged here. Evidence of other disputes involving different statements and circumstances does not establish Musk's state of mind as to the statements at issue in this case.

2. Fraud And Negligent Misrepresentation (Counts VII-VIII)

To state a claim for fraud, a plaintiff must plead (a) misrepresentation, (b) knowledge of falsity, (c) intent to defraud, (d) justifiable reliance, and (e) resulting damage, with particularity as to how, when, where, to whom, and by what means the representations were made. (*Philipson & Simon v.*

Gulsvig (2007) 154 Cal.App.4th 347, 363; *Rattagan v. Uber Techs., Inc.* (2024) 17 Cal.5th 1, 43.) Negligent misrepresentation requires a representation of past or existing material fact that was untrue, made without reasonable grounds for believing it true, with intent to induce reliance, justifiable reliance, and resulting damage. (*Cont'l Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 402.)

Like Counts IV-VI, these claims are also barred by claim preclusion for the same reasons, as the trial court recognized. (4AA1046-47.) Greenspan does not address that ruling on appeal and thus forfeited the issue. (See AOB 55-56; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

Greenspan's fraud claim was also barred by Civil Code section 47(b), as the trial court recognized (4AA1046). Section 47(b) bars tort liability for statements made in the course of a judicial proceeding. (*Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 365-66.) The statute provides that any "publication" or "broadcast" made in any "judicial proceeding" or "other official proceeding authorized by law" is "privileged." (Civ. Code § 47(b).) Here, Greenspan's fraud claim (Count VII) rests on the allegations that Defendants "filed false and misleading documents" in *Greenspan I* "to defraud the court." (1AA269-70 ¶ 497.) Those filings are absolutely privileged.

Greenspan misplaces reliance (AOB 55) on the malicious-prosecution exception to the litigation privilege. Count VII is not a malicious-prosecution claim; it seeks to impose liability based on Defendants' allegedly "false and misleading" litigation filings.

(1AA269-70 ¶ 497.) Section 47(b) squarely protects such communications. Indeed, the litigation privilege applies not only to fraud claims generally (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 215), but even to litigation filings alleged to be knowingly false or perjurious (*id.* at p. 218; *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1058, 1063 [privilege barred claim based on filing allegedly false declarations to obtain default judgment]).

Nor does Greenspan avoid the privilege by asserting (AOB 55-56) that Musk intended to engage in "hardcore litigation." The litigation privilege is absolute and applies "irrespective of [a communication's] maliciousness." (*Action Apartment Ass'n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241, quotation omitted.) *Silberg* specifically rejected an exception for communications supposedly contrary to the "interest of justice," reasoning that such an exception would swallow the rule because tortious communications are invariably alleged to be improper. (50 Cal.3d at p. 218.) Musk's alleged motive therefore cannot strip otherwise privileged litigation filings of their protection.

Greenspan's claims for fraud and negligent misrepresentation also fail because he presented no evidence that Defendants acted with scienter or intent to defraud (as required for fraud) or that any representation was made without reasonable grounds for believing it true or with the intent to induce reliance (as required for negligent misrepresentation). As the trial court explained, Greenspan "failed to meet his burden by presenting substantial evidence demonstrating … Defendants made any representation without reasonable grounds for believing it to be true, nor evidence that any representation was made with the intent to induce Plaintiff to rely upon it." (4AA1047.) Greenspan's fraud and negligent misrepresentation claims fail for these reasons too.[8]

3. Defamation (Count X)

Defamation requires "(1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Bishop v. The Bishop's Sch.* (2022) 86 Cal.App.5th 893, 909.)

Greenspan's defamation claim (Count X) fails for at least two independent reasons.

First, the claim is barred by claim preclusion for the same reasons as the claims discussed above, as the trial court recognized. (4AA1047-48.) Greenspan does not address that ruling on appeal and thus forfeited the issue. (See AOB 56-57; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

Second, Greenspan's defamation claim depends on a theory that Musk and Tesla are vicariously liable for statements made by Qazi. (1AA283-86 ¶¶ 529-30.) Greenspan alleges that the EAP Agreement expressly disclaimed agency, while contending that later EAP Guidelines re-established it. (1AA190-91 ¶¶ 118-20.) Even crediting that theory, Greenspan submitted no evidence that Musk or Tesla had the right to control Qazi's challenged statements about Greenspan. The federal court in

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[8] Greenspan failed to specifically and distinctly address the trial court's ruling as to his negligent misrepresentation claims, and he therefore forfeited the issue. (See AOB 54-59; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

Greenspan I likewise held that Greenspan had not plausibly alleged an agency relationship. (RA610-11.) After Greenspan amended, the court again concluded that he still had not plausibly alleged agency. (RA629.) More importantly here, Greenspan presented no evidence at prong two establishing the requisite right of control. (4AA1047-48.)

Greenspan's allegations would not establish agency even if credited. Greenspan correctly notes that the hallmark of agency is the principal's "right to control the conduct of the agent," but omits the critical remainder of the rule: the right of control must concern the "matters entrusted to" the alleged agent. (*Garlock Sealing Techs., LLC v. NAK Sealing Techs. Corp.* (2007) 148 Cal.App.4th 937, 964.) Nothing Greenspan identifies shows that Musk or Tesla had the right to control Qazi's statements about Greenspan.

4. Negligent Infliction Of Emotional Distress (Count XIII)

Negligent infliction of emotional distress "is not an independent tort in California, but is regarded simply as the tort of negligence," requiring duty, breach, causation, and damages. (*Klein v. Children's Hosp. Med. Ctr.* (1996) 46 Cal.App.4th 889, 894.) A duty of care may arise only where it is imposed by law, voluntarily assumed, or grounded in a preexisting special relationship. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 464.) Intentional acts cannot give rise to claims for negligent infliction of emotional distress. (*Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1105.)

The trial court correctly ruled that Greenspan's claim for negligent infliction of emotional distress fails for multiple reasons. (4AA1048.)

First, like the preceding claims, it is barred based on claim preclusion. Greenspan does not address that ruling on appeal and thus forfeited the issue. (See AOB 57; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

Second, as the trial court recognized, Greenspan did not "plead any negligent acts to support his claim." (4AA1048.) He instead relied on "only intentional 'harassment.'" (4AA1048, citing 1AA293 ¶ 574.) But intentional conduct cannot support a claim for negligent infliction of emotional distress. (4AA1048.) Greenspan does not address that ruling on appeal and thus forfeited the issue. (See AOB 57; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

Third, as the trial court recognized, Greenspan did not allege facts establishing a duty of care. (4AA1048.) Greenspan's "presence as a mere visitor at a Tesla showroom [in December 2018] [was] insufficient to create a duty of care." (4AA1048.)

Greenspan argues, without citation to any authority (AOB 57), that he "was a prospective customer at a retail location looking into purchasing a Tesla vehicle," which "creates a duty of care under established tort principles no different from any other business invitee." Even assuming Greenspan qualified as a prospective customer—and thus a business invitee—during his December 2018 showroom visit, that status did not create the perpetual duty he alleges. A proprietor's special relationship with an invitee arises from the proprietor's control over its premises and corresponding ability to protect persons present there. (*Morris v. De La Torre* (2005) 36 Cal.4th 260, 269-72; *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 214-16.) Nothing in those authorities suggests that visiting a retail establishment once creates an ongoing duty to protect the visitor from unrelated conduct occurring months or years later and away from the premises.

Greenspan also misplaces reliance on Tesla's "internal anti-harassment policies" (AOB 57) to argue that Defendants owed him a duty of care. Internal employment rules may bear on whether a defendant breached a duty that independently exists, but they do not themselves substitute for the legal requirement of duty. (*Minch v. Dep't of Cal. Highway Patrol* (2006) 140 Cal.App.4th 895, 907-08 [internal manual "does not establish a duty in tort"; it may bear on breach "if there otherwise is a duty"].)

Finally, as the trial court recognized, Greenspan's claim for negligent infliction of emotional distress was untimely. (4AA1048.) California has a two-year statute of limitations for such claims. (See Civ. Proc. Code § 335.1.) Greenspan contends (AOB 57) that "the negligent acts did not occur until October 2019 and July 2020." But Greenspan did not assert negligent infliction of emotional distress in *Greenspan I*; his May 2020 complaint asserted ***intentional*** infliction of emotional distress instead. (*Greenspan v. Qazi* (N.D. Cal. May 20, 2020) Case No. 3:20-cv-03426-JD, Dkt. 1 at 1.) He first asserted a negligent-infliction claim in this action, filed in June 2024. (RA6.) Thus, the claim is untimely on its face, and Greenspan does not identify any viable tolling argument.

5. Malicious Prosecution (Count XIV)

A malicious prosecution claim requires (1) a prior action, commenced by or at the direction of the defendant, that terminated favorably to the plaintiff; (2) that the defendant brought the prior action without probable cause; (3) that the defendant acted with malice; and (4) resulting damage. (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 203.)

Count XIV, which centers on the Alameda indemnity action, fails for at least three independent reasons.

First, Greenspan's own pleading establishes probable cause. Greenspan admits that he published Musk's email, which precipitated the underlying *Hothi* defamation suit against Musk. (1AA295 ¶ 590.) That gave Musk probable cause to seek indemnity from Greenspan—Greenspan's disclosure caused Musk to be sued. (See, e.g., *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 885; *Riverhead Sav. Bank v. Nat'l Mortg. Equity Corp.* (9th Cir. 1990) 893 F.2d 1109, 1116.)

Second, Greenspan presented no evidence of malice—that is, evidence that Defendants acted "primarily for an improper purpose." (*Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 495, quotation omitted.) Filing an indemnity claim against a joint tortfeasor serves the legitimate, statutorily encouraged purpose of allocating liability among those responsible for a plaintiff's loss. (See Civ. Proc. Code § 877.6.)

Third, the Alameda indemnity action did not terminate favorably to Greenspan. "A 'favorable' termination does not occur merely because a party complained against has prevailed in an underlying action." (*Citizens of Human., LLC v. Ramirez* (2021) 63 Cal.App.5th 117, 128.) Rather, the termination must reflect on the merits of the underlying claim. (*Id.* at pp. 128-29.) Thus, when an action ends other than by a merits judgment, courts examine the circumstances of the disposition to determine whether it reflects the court's or plaintiff's view that the claim lacked merit. (*Id.* at p. 129.) A dismissal following settlement generally does not qualify because it "reflects ambiguously on the merits," and the same is true of a dismissal motivated by the cost of continued litigation. (*Ibid.*)

That is what occurred here. The underlying *Hothi* action ended in a $10,000.01 settlement made pursuant to Code of Civil Procedure section 998—not a merits adjudication. (RA899-901.) Musk thereafter voluntarily dismissed the related indemnity action against Greenspan. (4AA1116.) Nothing about that dismissal reflected a determination—by the court or by Musk—that the indemnity claim lacked merit. (*Ibid.*) To the contrary, once the underlying dispute had been resolved for a relatively modest sum, continued litigation over indemnification could readily have cost more than the amount potentially recoverable. A decision not to incur those additional litigation costs says nothing about the merits of the indemnity claim. Because the dismissal did not affirmatively reflect Greenspan's innocence or the lack of merit of Musk's claim, it was not a favorable termination for purposes of malicious prosecution.[9]

6. Negligence (Count XV)

Negligence requires "(1) a legal duty to use reasonable care, (2) breach of that duty, and (3) proximate cause between the breach and (4) the plaintiff's injury." (*Mendoza v. City of L.A.* (1998) 66 Cal.App.4th 1333, 1339.) A litigant or its attorney owes no duty of care to an opposing party. (*Sheldon*, 47 Cal.3d at p. 883.)

Greenspan's negligence claim is premised on the allegation that "Musk and the Hardcore Litigation Department were grossly negligent ... in preparing and filing the Alameda Complaint"—that is, the Alameda indemnity action. (2AA306 ¶ 638.) This claim fails for at least two reasons.

First, the trial court correctly ruled that those filings are protected by the litigation privilege in Civil Code section 47(b). (4AA1049.) As discussed above, that section provides that any "publication" or "broadcast" made in any "judicial proceeding" or "other official proceeding authorized by law" is "privileged." (Civ. Code § 47(b).) It plainly covers Greenspan's negligence claim.

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[9] Defendants do not rely on the one-year statute of limitations in section 340.6 as to Greenspan's malicious prosecution claim. The California Supreme Court recently held in *Escamilla v. Vannucci* (2025) 17 Cal.5th 571, 576-77, 590, that Code of Civil Procedure section 340.6's one-year limitations period does not apply to a malicious-prosecution claim brought by a formerly adverse non-client against an attorney; the two-year limitations period in section 335.1 applies instead.

Second, Defendants were Greenspan's litigation adversaries and thus owed him no duty of care. "[A]n attorney's duty of care runs primarily to his own client rather than to the client's adversary." (*Sheldon*, 47 Cal.3d at p. 883.) And courts have therefore "precluded the adversary from maintaining a negligence cause of action against its opponent's attorney" (*ibid.*), which is precisely what Greenspan seeks to do here.

Greenspan argues (AOB 59) that his "allegations are premised on a duty of candor owed *to the court*." But that duty does not help him because the relevant duty for a negligence cause of action "is the expression of a court's conclusion ***that a particular plaintiff*** is entitled to protection." (*Mendoza*, 66 Cal.App.4th at p. 1339, emphasis added.) That Defendants may have owed a court a duty of candor says nothing about whether they owed Greenspan a duty of care. And Greenspan failed to establish that they did.

7. Unfair Competition (Count XVIII)

The Unfair Competition Law ("UCL") prohibits "any unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code § 17200.) When, as here, "a UCL claim is derivative of other substantive causes of action[], the dismissal of the antecedent substantive causes of action necessarily means dismissal of the UCL claim." (*Uber Techs. Pricing Cases* (2020) 46 Cal.App.5th 963, 979 n.10, quotation omitted.)

Greenspan's UCL claim is entirely derivative of his other claims, each of which was correctly struck for the reasons discussed above. The trial court was therefore correct to strike Greenspan's UCL claim. (4AA1050.) Greenspan does not challenge this ruling on appeal, and he therefore forfeited the issue. (AOB 54-59; *Goncharov*, 19 Cal.App.5th at p. 1167 n.8.)

C. Alleged Defects In The Trial Court's Order And Proposed-Order Process Are Harmless

Greenspan also focuses on asserted errors in the trial court's written order and the process by which the order was prepared. (AOB 41-45.) He emphasizes errors in the court's citations, speculates that AI may have played some role in drafting the order, and faults Defendants for submitting a proposed order. None of this supplies a basis for reversal.

First, there was nothing improper about Defendants submitting a proposed order. California procedure expressly contemplates that, "[u]nless the parties waive notice or the court orders otherwise, the party prevailing on any motion" will prepare and serve a proposed order, subject to the opposing party's opportunity to object. (Cal. Rules of Court, rule 3.1312(a)-(b).) And California courts have long rejected the notion that a court's use of party-prepared findings is inherently improper. (*Sears v. Rule* (1945) 27 Cal.2d 131, 149-50 [procedure under which court directed counsel to prepare proposed findings was "not prejudicial" where the opposing party had an opportunity to propose findings and object].) The pertinent question is whether the resulting ruling is legally correct—not who prepared the first draft.

Greenspan had ample opportunity to identify any perceived errors. He filed a lengthy opposition and supporting declarations addressing Defendants' anti-SLAPP motion. (2AA345; 2AA415; 2AA495.) After the court issued its amended order, Greenspan moved for reconsideration. (3AA840.) The trial court considered and denied that motion. (6AA1505-08.) This is therefore not a case in which an alleged drafting error escaped review because a party lacked an opportunity to call it to the trial court's attention.

Second, even assuming the order contained erroneous citations, imprecise language, or other drafting defects, Greenspan must establish prejudice. The California Constitution prohibits reversal for procedural error unless "the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13; see Civ. Proc. Code § 475.) Thus, even a trial court's failure to comply with an express statutory obligation to explain its reasoning is subject to harmless-error review. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1107-08.) Greenspan cannot obtain reversal simply by identifying an error in the court's explanation; he must show that the error affected the result.

He cannot do so. This Court reviews the grant of an anti-SLAPP motion *de novo*. (*Park*, 2 Cal.5th at p. 1067.) It therefore independently determines, based on the record, whether Defendants' challenged conduct was protected and whether Greenspan established a probability of prevailing. (*Ibid.*) And "[i]f the trial court's decision is correct on any theory applicable to the case," this Court must "affirm the order regardless of the correctness of the grounds on which the lower court reached its conclusion." (*Young*, 91 Cal.App.5th at p. 80, quotation omitted.)

As demonstrated above (supra pp. 39-65), the trial court's order is correct on multiple grounds that do not depend on any asserted defect in the trial court's reasoning, let alone an inadvertent citation or quotation error. The challenged claims arise from protected public speech and litigation activity. And Greenspan's claims independently fail because of claim preclusion, the litigation privilege, applicable statutes of limitation, and defects in the essential elements of his causes of action. (Supra pp. 50-65.) Many of those independent rulings are not even challenged on appeal. (See supra pp. 56, 58, 60, 65.) Thus, whatever Greenspan believes caused particular errors in the trial court's written explanation—including his speculation concerning AI—cannot establish reversible error. The dispositive question is whether the anti-SLAPP ruling is correct. On *de novo* review, it plainly is.

D. Greenspan's Remaining Arguments Lack Merit

Greenspan's remaining arguments likewise provide no basis for reversal.

To the extent Greenspan characterizes the proceedings below as a denial of due process (AOB 41-45), the record refutes that characterization. Greenspan received notice of the anti-SLAPP motion, filed a full opposition and supporting evidence (2AA345; 2AA415; 2AA495), had an opportunity to be heard, moved for reconsideration after the amended order issued (3AA840), and received a ruling on that motion (6AA1505). Due process guarantees a meaningful opportunity to be heard; it does not guarantee that a litigant's arguments will persuade the court. And even assuming some procedural irregularity, Greenspan again identifies no prejudice. (*F.P.*, 3 Cal.5th at pp. 1107-08.)

Nor does the anti-SLAPP procedure itself offend due process or the right to jury trial. The statute does not authorize the court to resolve disputed facts or weigh credibility at prong two; the court accepts the plaintiff's evidence as true and asks only whether the claim has the requisite "minimal merit." (*Baral*, 1 Cal.5th at pp. 384-85, quotation omitted; *Dixon v. Sup. Ct.* (1994) 30 Cal.App.4th 733, 746.) That preliminary merits inquiry is the procedure the Legislature selected to prevent claims arising from protected speech and petitioning from imposing the burdens of litigation when the plaintiff cannot make even a *prima facie* showing. (Civ. Proc. Code § 425.16(a)-(b); *Equilon Enters.*, 29 Cal.4th at pp. 63, 67.)

Finally, any objection to the fee consequences of affirmance is beside the point. Section 425.16(c)(1) expressly provides that "a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs." That statutory entitlement extends to fees reasonably incurred defending a successful anti-SLAPP ruling on appeal. (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 287-88.) Thus, if this Court affirms—as it should—Defendants are entitled to their reasonable appellate fees and costs, with the amount to be determined by the trial court on remand. (*Id.* at p. 288.)

To the extent Greenspan raises other scattered assertions without developing them through reasoned argument, pertinent authority, and record citations, those assertions are forfeited. (*Goncharov*, 19 Cal.App.5th at p. 1167 n.8; *Nwosu*, 122 Cal.App.4th at p. 1246.) In all events, none of Greenspan's remaining complaints undermine the independent grounds requiring affirmance of the trial court's order.

CONCLUSION

This Court should affirm the order granting Defendants' anti-SLAPP motion and award Defendants their costs and attorneys' fees on appeal, with the amount to be determined by the trial court on remand.

DATED: Sept. 15, 2026

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Anthony P. Alden
Anthony P. Alden
Danielle Shrader-Frechette
Dylan C. Bonfigli

Attorneys for Defendants-Respondents Elon Musk, Tesla, Inc., The Elon Musk Revocable Trust dated July 22, 2003, Excession, LLC, Singer Cashman, LLP, Jared Birchall, Adam S. Cashman, Allison Huebert, Adam G. Mehes, and Alex Spiro

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(Cal. Rules of Court, rule 8.204)

Pursuant to rule 8.204 of the California Rules of Court, I certify that the foregoing Respondents' Brief is 1.5 spaced and printed in proportionally spaced 13-point Century Schoolbook typeface. It is 70 pages long and contains 13,936 words (excluding the introductory tables, the signature blocks, the proof of service, and this certificate), which is fewer than the maximum number of words permitted by the Rules of Court. In preparing this certificate, I relied on the word count of the computer program used to prepare this brief.

Executed on Sept. 15, 2026, at Los Angeles, California.

/s/ Dylan C. Bonfigli
Dylan C. Bonfigli

State of California)
County of Los Angeles)
)

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First Appellate District, Division Two
350 McAllister Street, First Floor
San Francisco, California 94102

I declare under penalty of perjury that the foregoing is true and correct:

Signature: /s/ Kirstin Largent, Senior Appellate Paralegal, Proceed Legal, klargent@proceedlegal.com

SERVICE LIST

Omar Qazi 46-E Peninsula Center Drive, Suite 489 Rolling Hills Estate, California 90274 *Defendant and Appellant In Pro Per*	Aaron Greenspan 440 North Barranca Avenue # 6720 Covina, California 91723 *Plaintiff and Appellant In Pro Per*
Clerk for the Honorable Joseph Quinn Superior Court of California County of San Francisco Civic Center Courthouse 400 McAllister Street San Francisco, California 94102 **[BRIEF ONLY]**	