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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

PAYMAN SIMONI, M.D., Plaintiff, Cross-defendant and Respondent, v. VALERIE SWAN, Defendant, Cross-complainant and Appellant.	B290682 Los Angeles County Super. Ct. No. BC689729

APPEAL from an order of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

Jeffrey Lewis for Defendant, Cross-complainant and Appellant.

Fenton Law Group, Benjamin J. Fenton and Randy Hsieh for Plaintiff, Cross-defendant and Respondent.

Valerie Swan posted statements to the consumer review website Yelp.com claiming, among other things, Dr. Paymon Simoni "screwed up so badly" on a plastic surgery he performed on her that she needed "10 surgeries" and "still need[ed] many more" to "fix it." After corresponding with Swan about negative statements she posted to other review websites, Simoni sued Swan for defamation based on the Yelp review. Swan responded with a cross-complaint for defamation based on a blog post Simoni published to his website, in which he claimed Swan posted "false negative reviews" and tried to "blackmail" him.

Swan moved to strike Simoni's defamation claim under the anti-SLAPP statute (Code Civ. Proc., § 425.16),[1] arguing her review consisted of nonactionable opinions or truthful statements on a matter of public interest. Simoni filed his own special motion to strike Swan's cross-claim, arguing his post concerned a matter of public interest and Swan's cross-claim was untimely under the one-year statute of limitations for defamation. The trial court concluded both posts concerned an issue of public interest entitled to anti-SLAPP protection, but found Simoni had demonstrated a probability of prevailing on the claim by submitting evidence challenging the truthfulness of Swan's statements, while Swan failed to submit admissible evidence establishing the timeliness of her cross-claim. Thus, the court denied Swan's special motion to strike and granted Simoni's. Swan appeals both rulings. We affirm.

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[1] SLAPP is an acronym for strategic lawsuit against public participation. (See *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.) Statutory references are to the Code of Civil Procedure unless otherwise indicated.

FACTS AND PROCEDURAL BACKGROUND

On December 19, 2016, Simoni filed a one-count complaint against Swan for defamation. The complaint alleges Simoni is a "practicing facial plastic surgeon . . . with a reputation in the community for being an excellent, caring, and dedicated physician." It alleges, on August 8, 2016, Swan published to the Yelp website a "false and defamatory review of the medical care" Simoni provided her. The review stated:

> "Payman Simoni is a terrible doctor. He screwed up so badly on the surgery he did on me that I have had 10 surgeries to try to fix it and I still need many more. He caused pain and disfigurement. He also did more horrible things to me, but apparently when a doctor does something extraordinarily bad, yelp removes the post. So you will have to google his name to find my complete reviews of him, but needless to say I do not recommend him."

On July 20, 2017, Swan filed a cross-complaint against Simoni, asserting a single cause of action for defamation. The cross-complaint alleges Simoni performed plastic surgery on Swan, causing her "pain and disfigurement," and requiring her to undergo "in excess of ten plastic surgeries . . . in an attempt to correct damage" caused by Simoni's surgery. Following the surgery, Swan alleges she posted "truthful statements about her experience" with Simoni on the Internet. In response to her posts, the cross-complaint alleges Simoni made the following "false statement" about Swan to a blog on the website for his medical practice:

"**False Review Attack**

"There is one individual is [*sic*] spamming all physicians rating sites posting false negative reviews about Payman Simoni, MD. This is a warning, she is not a real patient. She is a former employee who was caught stealing narcotics. She was let go immediately. Since then, she has tried to blackmail Dr. Simoni and Simoni Plastic Surgery for a huge sum of money.

"She is using many different user names portraying as different people. However, [s]he continues to post the same type messages which reveal she is just one person. She is claiming to have liposuction was [*sic*] done that went wrong. She is recently claiming she had a nose job done, interestingly she uses the same usernames; thus exposing her lies further.

"She has used many sites such as ripoffreport, complaintsboard, complaints, ratemds, yelp, vitals, makemeheal, pissedoffconsumers, and much more to defame Dr. Payman Simoni. Thanks to Google's advanced technology, she has been positively identified and being legally pursuit by local authorities. Many of these sites have removed her post when they received our legal paperwork revealing her false reviews.

"She is using different user names such as V.S. or Jennie and . . . etc. She has done this to other physicians.

> "To view, this individual's past illegal actions click here: [website links omitted]."

Swan filed a special motion to strike Simoni's complaint under the anti-SLAPP statute. She argued Simoni's defamation claim arose from conduct in furtherance of her free speech rights in connection with a public issue—namely, the quality of medical services that Simoni offers to the public—and Simoni had no probability of prevailing on his claim because the statements were either true or nonactionable opinions.

Simoni opposed the motion, arguing, among other things, his defamation claim had merit because Swan's Yelp review contained the provably false claim that he " 'screw[ed] up so badly on the surgery' that [Swan] has required '10 surgeries to try to fix it.' " In support of his opposition, Simoni offered a declaration, asserting he "successfully performed" Swan's procedure and he "never caused her any disfigurement as she falsely states." With his declaration, Simoni submitted evidence of a favorable judgment he received in a 2010 malpractice action Swan filed against him regarding the surgery. He also submitted email correspondence he had with Swan, wherein he claimed to have done "everything . . . within the standard of . . . care," including discussing the risks of "revision surgeries" prior to her procedure.

Simoni filed his own special motion to strike Swan's cross-complaint under the anti-SLAPP law. He argued Swan's defamation claim arose out of his right of free speech on a public issue and Swan could not prevail because she filed the claim outside the one-year statute of limitations for defamation.

Swan opposed the motion to strike, arguing Simoni's blog post was little more than a "marketing piece" for his practice and his website did not invite or allow the public to comment on the

post. She also argued Simoni's evidence failed to prove her claim was time-barred.

The trial court denied Swan's special motion to strike and granted Simoni's motion. With respect to the first prong of the anti-SLAPP analysis, the court concluded both defamation claims arose out of the exercise of free speech on a matter of public interest—namely, the reliability and quality of medical care and complaints about the medical profession.

As for the second prong, the court concluded Simoni met his burden of establishing a probability of prevailing on the merits of his defamation claim and, therefore, Swan's motion must be denied. While the court agreed with Swan that many of the statements in her review were "merely opinion," the court determined the statement that Simoni " 'screwed up so badly,' that she needed 10 surgeries 'to try to fix it,' or that he 'caused pain and disfigurement' " was "a statement of fact." The court credited the statements in Simoni's declaration contradicting this charge, and noted there was evidence showing "Swan sued Simoni for malpractice and lost." Based on that evidence, the court concluded "it [was] reasonably possible that the trier of fact may conclude the statements make assertions of fact subject to being proved true or false." Accordingly, the court denied Swan's motion to strike.

The court reached a different conclusion regarding the second prong on Simoni's anti-SLAPP motion. While the court found Swan's evidence established a probability of prevailing on the elements of a defamation claim, it determined Swan failed to rebut Simoni's evidence showing the applicable one-year statute of limitations barred her claim. Because that evidence showed Simoni's blog post was published sometime before August 4, 2015, more than one year before the complaint was filed on

December 19, 2016, the court granted Simoni's motion to strike Swan's defamation cross-claim.

DISCUSSION

1. *The Anti-SLAPP Statute and Standard of Review*

The anti-SLAPP statute, section 425.16, provides a procedure for expeditiously resolving "nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue." (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235; *Hansen v. Department of Corrections & Rehabilitation* (2008) 171 Cal.App.4th 1537, 1542–1543 (*Hansen*).) "When served with a SLAPP suit, the defendant may immediately move to strike the complaint under section 425.16. To determine whether this motion should be granted, the trial court must engage in a two-step process." (*Hansen,* at p. 1543; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76 (*City of Cotati*).)

The first prong of the anti-SLAPP analysis requires the court to decide "whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity." (*City of Cotati, supra,* 29 Cal.4th at p. 76; § 425.16, subd. (b)(1).) The defendant makes this showing by demonstrating the acts of which the plaintiff complains were taken "in furtherance of the [defendant's] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue . . . ." (§ 425.16, subd. (b)(1); *Hansen, supra,* 171 Cal.App.4th at p. 1543.) To ensure that participation in matters of public significance is not chilled, the anti-SLAPP statute mandates that its terms "shall be construed broadly." (§ 425.16, subd. (a); see *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23 ["The Legislature inserted the 'broad construction' provision out of concern that judicial

decisions were construing [the public participation] element of the statute too narrowly."].)

If the court determines the defendant has made the threshold showing, "it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*); § 425.16, subd. (b)(1).) To establish the requisite probability of prevailing, the plaintiff need only have " 'stated and substantiated a legally sufficient claim.' " (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1123.) "Put another way, 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.' " (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821 (*Wilson*).)

We review the questions of whether the action is a SLAPP and whether the plaintiff has shown a probability of prevailing de novo. (*Hansen, supra,* 171 Cal.App.4th at p. 1544.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier, supra,* 29 Cal.4th at p. 89.)

2. *Simoni's Evidence Established a Probability of Prevailing on His Defamation Claim*

Because the trial court concluded Swan's Yelp review satisfied the first prong of the anti-SLAPP statute, Swan's appeal focuses on the second prong—whether Simoni met his burden to establish a probability of prevailing on his defamation claim.[2]

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[2] Simoni contends the court erred under the first prong. He argues Swan's review concerned what amounted to only a private dispute about the treatment she received and not an accusation

Swan contends the statements in her Yelp review consisted of "either truthful facts or non-actionable opinion" and, therefore, the trial court erred in denying her special motion to strike. We disagree. Like the trial court, we find Simoni presented sufficient evidence to sustain a favorable judgment on his defamation claim. (See *Wilson, supra,* 28 Cal.4th at p. 821.)

"The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369 (*Wong*).) Civil Code section 45 defines libelous defamation to include, among other things, "a false and unprivileged publication by writing, . . . which has a tendency to injure [a person] in his occupation." "Statements that contain such a charge directly, and without the need for explanatory matter, are libelous per se. [Citation.] A statement can also be libelous per se if it contains a charge by implication from the language employed by the speaker and a listener could understand the defamatory meaning without the necessity of knowing extrinsic explanatory matter." (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112.) "Because [a defamatory] statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion for purposes of defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected." (*Ibid.*)

While the trial court agreed with Swan that much of her review constituted statements of opinion, the court concluded the charge that Simoni " 'screwed up so badly,' that [Swan]

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about the quality of his medical practice generally. Because we conclude the trial court correctly denied Swan's motion under the second prong, we need not address the court's first prong analysis. (See *Navellier, supra,* 29 Cal.4th at p. 89.)

needed 10 surgeries 'to try to fix it' " could be regarded as a statement of fact subject to proof of falsehood.[3] Swan does not address the court's ruling in her appellate briefs. While she declares the "first phrase is non-actionable opinion," Swan offers no analysis or supporting authority to demonstrate why the statement that Simoni "screwed up" constitutes an opinion *as a matter of law*. (See *Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 385 ["Whether a statement declares or implies a provably false assertion of fact is a question of law for the court to decide [citations], *unless* the statement is susceptible of both an innocent and a libelous meaning, in which case the jury must decide how the statement was understood [citations]." (Italics added.)]; *Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1608 (*Kahn*).) Under our presumption of correctness, this failure to make a reasoned argument, supported by legal authority, is alone grounds to deem the matter forfeited and to affirm the order on appeal. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as [forfeited]."]; *Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 521 [same]; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 [presumption of correctness and forfeiture principles apply even to matters presented for de novo review].)

In any event, Swan's bare assertion that the phrase could be viewed as an opinion does not refute the trial court's second prong analysis. The court's written ruling acknowledges "a trier of fact could conclude that the statements are merely opinion, as

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[3] Contrary to Swan's contention in her reply brief, the trial court's written ruling expressly identified "what provably false facts" were asserted in her online review.

Swan argue[s]," but specifies that "the statements are not *solely* opinion *as a matter of law*." (Italics added.) As the trial court explained, because the second prong analysis precludes a court from weighing the persuasiveness of evidence, it is not enough that the "statements may be framed as opinions." If they also *imply* statements of fact subject to proof of falsehood, a defamation claim cannot be stricken as a SLAPP on this ground. (See *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 701, 704 [affirming denial of anti-SLAPP motion because " 'a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact' "]; *Kahn, supra,* 232 Cal.App.3d at p. 1608.) In determining whether a reasonable fact finder could conclude a statement implies a provably false assertion of fact, the court must "examine the nature and full content of the particular communication, as well as the knowledge and understanding of the audience targeted by the publication." (*Overstock,* at p. 701.)

Viewed in the context of Swan's full Yelp review, a reasonable fact finder could conclude the statement that Simoni "screwed up" declared or implied an assertion of fact. *Wong*, *supra*, 189 Cal.App.4th 1354 is instructive. In *Wong*, a Yelp reviewer began a review of a dentist by stating "Let me first say I wish there is [*sic*] '0' star in Yelp rating. Avoid her like a disease!" (*Id.* at p. 1361.) The appellate court expressly relied upon those introductory statements as part of the circumstances that would support a fact finder's determination that the review had *falsely implied* the plaintiff engaged in specific acts of professional wrongdoing—even though the review did not explicitly state she had done those things: "Given (1) Jing's introductory remarks that Wong deserves a zero rating and should be avoided 'like a disease' and that he regretted ever bringing his son to see her, (2) his rage at Wong's use of amalgam

because it contains mercury, and (3) Wong's evidence that Jing was advised and consented to the use of amalgam, a jury reasonably could find that the review falsely implied that Wong had failed to warn and advise about silver amalgam and arguably better alternatives to its use." (*Id.* at pp. 1371-1372.)

Without specifically addressing the assertion that Simoni "screwed up," Swan argues the whole review should be regarded as opinion because it appeared on the Yelp website where hyperbolic opinion commentary is commonly used "to convince customers to either use or avoid a business' services."[4] This argument again overlooks the governing law and the trial court's reasoning. It is true that this context might *persuade*

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[4] At oral argument, Swan's counsel asserted the phrase "screwed up" is necessarily an expression of opinion, citing *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669 as authority for the proposition. *Summit Bank* is inapposite. The relevant statement in that case, which appeared on the "Rants and Raves" section of the Craigslist.org website, read: " 'Being a stockholder of this *screwed up Bank*, this year there was no dividend paid. The bitch CEO that runs this Bank thinks that the Bank is her personel [*sic*] Bank to do with it as she pleases. Time to replace her and her worthless son.' " (*Id.* at p. 679, italics added.) The *Summit Bank* court regarded this statement, and another describing the plaintiff as a " 'problem bank,' " to be "colloquial epithets" expressing the author's "own unsophisticated, florid opinions about the Bank and its key personnel." (*Id.* at p. 699.) Referring to a "screwed up Bank" is fundamentally different than asserting a doctor "screwed up" in performing a procedure. Whereas the statement in *Summit Bank* expressed a generalized negative opinion about the bank plaintiff, Swan's statement implies Simoni did not perform her surgery with the skill or care that a competent doctor would have employed. A reasonable jury could regard this as a provably false statement of fact, akin to the assertion that a bank "screwed up" in failing to credit a customer's account with a deposit.

a reasonable fact finder to conclude the whole review should be treated as opinion, but that is not the only conclusion a reasonable fact finder could reach given the content and context of the statements. (See, e.g., *Kahn, supra,* 232 Cal.App.3d at pp. 1608–1609.) And, as *Wong* demonstrates, the mere fact that a statement appears on a review website and uses fiery rhetoric does not establish, as a matter of law, the statement is a nonactionable opinion. (*Wong*, *supra*, 189 Cal.App.4th at pp. 1371–1372; see also *Yelp Inc. v. Superior Court* (2017) 17 Cal.App.5th 1, 16–17 [Anonymous reviewer's comments on Yelp regarding accountant, stating, "Too bad there is no zero star option! I made the mistake of using them and had an absolute nightmare," followed by the statement that "[the b]ill was way more than their quote," could support defamation claim, as reasonable factfinder could conclude reviewer implied accountant had no justification for his price hike, hence, the reviewer's "palpable rage"]; *Bently Reserve LP v. Papaliolios* (2013) 218 Cal.App.4th 418, 429 ["the mere fact speech is broadcast across the Internet by an anonymous speaker does not ipso facto make it nonactionable opinion and immune from defamation law"].)

As in *Wong,* the context of Swan's full review, including the surrounding assertions that Simoni is a "terrible doctor" and that Swan had to undergo 10 subsequent surgeries to "fix" what he did to her, implies that when Simoni "screwed up," he committed malpractice and breached the standard of care that a competent doctor would have employed in performing the procedure. To show the implication of malpractice was false, Simoni explained in his declaration that Swan had consulted him for "revision liposuction" to repair "asymmetry and irregularities from her previous twelve leg liposuction procedures done by other physicians." Simoni declared that he "successfully performed" the procedure and that he did not "cause [Swan] any

disfigurement." In email correspondence between Swan and Simoni attached to his declaration, Simoni further explained that he had done "everything . . . within the standard of . . . care . . . to correct problems with the previous procedure," and that he had discussed with Swan, "prior to [her] procedure, [that] revision surgeries are riskier and less predictable." Finally, as the trial court noted, Simoni's evidence included a judgment showing "Swan sued Simoni for malpractice and lost." Based on this evidence, a jury could reasonably conclude Swan's express claim that Simoni "screwed up" and her implicit claim that he committed malpractice were false. The trial court did not err in concluding Simoni met his burden of establishing a probability of prevailing on his defamation claim.

3. *Simoni's Blog Post Concerned a Matter of Public Interest Entitled to Anti-SLAPP Protection*

Swan also appeals the ruling granting Simoni's anti-SLAPP motion and striking her cross-claim for defamation. She focuses exclusively on the first prong, arguing Simoni's statements were not entitled to anti-SLAPP protection because (1) Simoni made them on the blog for his medical practice's website "where public posting by third parties is not permit[ed]"; and (2) the statements did not concern an issue of public interest or importance. Neither contention has merit.

With respect to Swan's first point, our Supreme Court has expressly recognized that "Web sites accessible to the public . . . are 'public forums' for purposes of the anti-SLAPP statute." (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4.) In her cross-complaint, Swan alleged Simoni made his blog post to "a public website accessible to any member of the public," thereby bringing the post directly within the anti-SLAPP statute's purview under *Barrett*. As for her argument that the post is not entitled to anti-SLAPP protection because Simoni published

it on his website where third party posts are not permitted, the very authority upon which Swan relies undermines her contention. In *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138 (*Chaker*), the court, quoting from *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883 (*Wilbanks*), observed:

> " 'In a sense, the Web, *as a whole*, can be analogized to a public bulletin board. A public bulletin board does not lose its character as a public forum simply because each statement posted there expresses only the views of the person writing that statement. *It is public because it posts statements that can be read by anyone who is interested*, and because others who choose to do so, can post a message through the same medium that interested persons can read. *Here, while Wolk controls her Web site, she does not control the Web. Others can create their own Web sites or publish letters or articles through the same medium, making their information and beliefs accessible to anyone interested in the topics discussed in Wolk's Web site*.' "

(*Chaker,* at p. 1144, quoting *Wilbanks,* at pp. 896–897, italics added; see also *Chaker,* at p. 1146 ["Like the court in *Wilbanks*, we view the Internet as an electronic bulletin board open to literally billions of people all over the world."].) Here, although Simoni may control his own website, he does not control the entire Web, and Swan could post (and in fact did post) her own views and assertions about the care she received on other parts of the Internet.

Chaker also refutes Swan's argument that the post was not entitled to anti-SLAPP protection because it related to a "private

concern." As the *Chaker* court noted, "recently, cases which have considered the public interest requirement of the Anti-SLAPP Law have emphasized that the public interest may extend to statements about conduct between private individuals." (*Chaker, supra,* 209 Cal.App.4th at p. 1145, citing *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 467 and *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1538–1539, 1547.) The court went on to explain that it had "little difficulty" finding the plaintiff's derogatory statements about her daughter's ex-boyfriend and his business were "of public interest." (*Chaker,* at p. 1146.) The court explained: "The statements posted to the Ripoff Report Web site about Chaker's character and business practices plainly fall within the rubric of consumer information about Chaker's 'Counterforensics' business and were intended to serve as a warning to consumers about his trustworthiness. . . . These statements . . . fall within the broad parameters of public interest within the meaning of [the anti-SLAPP statute]." (*Ibid.*)

Like the post in *Chaker*, the negative reviews referenced in Simoni's blog post were critical of Simoni's medical practice and sought to warn prospective customers of, among other things, a liposuction that allegedly "went wrong." Simoni's blog post sought to countermand those negative reviews and, to that extent, concerned an issue of public interest under *Chaker*. (See *Chaker, supra,* 209 Cal.App.4th at p. 1146; see also *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621 [statements concerning " 'conduct that could directly affect a large number of people beyond the direct participants' " implicate a matter of public interest].)

We also agree with the trial court's assessment of the issue. As the court noted, the negative reviews referenced in Simoni's blog post did not only implicate Simoni's medical practice, but

also " 'pertain[ed] to physicians other than Dr. Simoni, and thus, could affect a large number of people' " beyond the immediate parties. Just as Swan's Internet posts concerned a matter of public interest—the reliability and quality of medical care—so too did Simoni's blog post, because, as the trial court recognized, it challenged those "complaints about the medical profession, rather than merely complaints against Simoni individually." The trial court correctly concluded the post concerned an issue of public interest protected under the anti-SLAPP statute. (See *Wilbanks, supra,* 121 Cal.App.4th at p. 900 ["The statements made by [the defendant] were not simply a report of one broker's business practices, of interest only to that broker and to those who had been affected by those practices. [The defendant's] statements were a warning not to use plaintiffs' services. In the context of information ostensibly provided to aid consumers choosing among brokers, the statements, therefore, were directly connected to an issue of public concern."].)

DISPOSITION

The order granting Simoni's special motion to strike and denying Swan's special motion to strike is affirmed. Simoni is entitled to his costs.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.