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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AZAEL CHAVEZ,

Plaintiff and Appellant,

v.

RADY CHILDREN'S HOSPITAL et al.,

Defendants and Respondents.

D072612

(Super. Ct. No. 37-2016-00035118-  
CU-MC-NC)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald F. Frazier, Judge. Affirmed.

Genaro Lara for Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza, James L. Canto, Scott Klausner; Carroll, Kelly, Trotter, Franzen, McKenna & Peabody and Thomas M. Peabody for Defendants and Respondents Sharon Sternfield, M.D., Steven Schneider, M.D., Leslie McCormick, M.D., John Naheedy, M.D., and Deborah Mills, NP.

Lewis Brisbois Bisgaard & Smith, Marilyn R. Moriarty, Ernest Slome and  
Jonna D. Lothyan for Defendant and Respondent Rady Children's Hospital.

Plaintiff Azael Chavez filed an action against Rady Children's Hospital (Rady), several Rady physicians, and other defendants arising out of a report to police of suspected child abuse or neglect of his child that resulted in his conviction on two counts of felony child abuse. After Rady filed an anti-SLAPP<sup>1</sup> motion pursuant to Code of Civil Procedure section 425.16,<sup>2</sup> the trial court issued a tentative ruling granting that motion. However, before the court issued a final ruling on the motion, Chavez voluntarily dismissed his action without prejudice. Rady then filed a motion for an award of attorney fees and costs pursuant to section 425.16, subdivision (c)(1), and sanctions pursuant to section 128.5. The court issued an order granting that motion, awarding Rady attorney fees and costs and dismissing Chavez's action with prejudice, and then entered judgment for Rady. Chavez appeals that judgment.

On appeal, Chavez contends: (1) the court erred by concluding Rady is a mandated reporter under the Child Abuse and Neglect Reporting Act (CANRA) (Pen. Code, § 11164 et seq.); and (2) there is insufficient evidence to support a finding that anyone at Rady filed a report under CANRA. Based on our reasoning below, we affirm the judgment.

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1 "SLAPP is an acronym for 'strategic lawsuits against public participation.' "  
(*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

2 All further statutory references are to the Code of Civil Procedure unless otherwise specified.

## FACTUAL AND PROCEDURAL BACKGROUND

Chavez and Caren Trejo are the parents of twin daughters, I.C. and G.C., who were born prematurely in February 2014. On October 7, 2014, Trejo brought I.C. to Rady because she was not responding normally. Physicians at Rady examined I.C. and concluded she had suffered nonaccidental brain injuries. A Rady employee or agent called the Escondido Police Department to report those injuries. Police detectives arrived at Rady to investigate the report and questioned Chavez. They arrested him and charged him with two counts of felony child abuse. Following a jury trial, Chavez was convicted on two counts of felony child abuse (§ 273a, subd. (a)). On appeal, we reversed his convictions based on the admission of his confession that was procured in violation of *Miranda v. Arizona* (1966) 384 U.S. 436. (*People v. Chavez* (June 5, 2018, D070938) [nonpub. opn.] )

In 2016, Chavez filed the instant action against Rady, several Rady physicians, and other defendants.<sup>3</sup> In his operative first amended complaint, Chavez alleged three causes of action against Rady: (1) his fourth cause of action for breach of fiduciary duty; (2) his seventh cause of action for violation of civil rights (42 U.S.C. §§ 1983, 1988); and (3) his eighth cause of action for fraudulent concealment. He alleged that on October 7, 2014, Rady employees or agents called the Escondido Police Department and provided it

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<sup>3</sup> I.C. and G.C., minors through their legal guardian, Cynthia Chavez, were also named as plaintiffs in the action and were initially parties to this appeal, but have since been dismissed. Accordingly, we limit our discussion to the causes of action alleged by Chavez against Rady.

with private and confidential medical information about I.C., resulting in his interrogation by police and criminal charges against him.

Rady filed an anti-SLAPP motion pursuant to section 425.16, seeking an order striking the causes of action against it and awarding it attorney fees and costs. Rady argued that the causes of action alleged against it arose out of activity that is constitutionally protected and that Chavez could not establish a probability of prevailing on those causes of action. In particular, Rady argued that its mandated report of suspected child abuse under CANRA was protected activity under section 425.16 and it was absolutely immune from civil liability for that mandated report. Chavez opposed the motion, arguing his causes of action against Rady were based on its breach of fiduciary duty and not its report of child abuse and, in any event, Rady was not a mandated reporter under CANRA. Rady replied, arguing that it was a mandated reporter under CANRA and its mandated report to police was the wrongful and injury-producing conduct underlying Chavez's claims against it.

In a tentative ruling dated March 24, 2017, the court indicated that it would grant Rady's anti-SLAPP motion. However, on March 22, just two days before the scheduled hearing on Rady's anti-SLAPP motion, Chavez filed a request for dismissal of his action without prejudice and the court clerk entered that dismissal.

On April 25, Rady filed a motion for attorney fees and sanctions pursuant to sections 425.16 and 128.5 against Chavez and Genaro Lara, his counsel. Rady argued that it was entitled to an award of attorney fees and costs under section 425.16, subdivision (c), even though Chavez voluntarily dismissed his action before the court

decided its anti-SLAPP motion because it would have prevailed on that motion. Rady also sought section 128.5 sanctions against Chavez and Lara based on their pattern of bad faith litigation tactics and meritless action. It requested sanctions of attorney fees and costs and dismissal of the action with prejudice. In response, Chavez argued, inter alia, that Rady was not a mandated reporter under CANRA and its claims against it were for breach of fiduciary duties.

On May 22, the court issued a minute order granting Rady's motion for attorney fees pursuant to section 425.16 and sanctions pursuant to section 128.5. The court concluded, inter alia, that Rady is a mandated reporter under CANRA and Chavez's action against it arose out of its report of suspected child abuse under CANRA, which report was protected activity under section 425.16. Because Chavez did not show there was a probability he would have prevailed on his causes of action against Rady, the court concluded that Rady was entitled to attorney fees and costs pursuant to section 425.16. The court further concluded that Chavez and Lara engaged in a pattern of conduct intended to harass or cause unnecessary delay and imposed sanctions against them.

On July 12, the court entered judgment for Rady, dismissing the action with prejudice and awarding Rady attorney fees of \$13,434.50 and costs of \$564.95 against Chavez and attorney fees of \$17,109 against Lara. Chavez timely filed a notice of appeal.<sup>4</sup>

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<sup>4</sup> Chavez's notice of appeal challenges the court's "[o]rder" awarding attorney fees to Rady and dismissing his action against it pursuant to sections 425.16 and 128.5. In so doing, the notice of appeal presumably refers to the nonappealable May 22, 2017 order

On June 28, 2018, Rady filed a request for judicial notice of a December 8, 2017 order of the United States District Court for the Southern District of California dismissing Chavez's federal civil action against Rady. On July 18, we issued an order stating that we would consider that request for judicial notice concurrently with this appeal. Because the federal court order dismissing Chavez's action against Rady was issued after the judgment being appealed in this case and does not involve the instant action, we deny the request for judicial notice.<sup>5</sup>

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granting Rady's motion and not the final judgment in Rady's favor that was subsequently entered on July 12, 2017. Because a final judgment has been entered in Rady's favor, we liberally construe the notice of appeal as being from that subsequently entered judgment. (Cal. Rules of Court, rules 8.100(a)(2), 8.104(d); *Dominguez v. Financial Indemnity Co.* (2010) 183 Cal.App.4th 388, 391, fn. 1; *Los Altos Golf & Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198, 202; *Zwicker v. Altamont Emergency Room Physicians Medical Group* (2002) 98 Cal.App.4th 26, 29, fn. 2.)

<sup>5</sup> The appellate briefing filed in this case includes Chavez's appellant's opening brief, Rady's respondent's brief, a separate respondents' brief filed by four individual physicians and a nurse practitioner who were also named as defendants in this action, and Chavez's appellant's reply brief. However, Chavez's causes of action against those individuals were dismissed pursuant to a separate judgment entered on June 12, 2017, and not the instant judgment in favor of Rady entered on July 12, 2017, and Chavez's notice of appeal challenges only the July 12, 2017 judgment in favor of Rady, as discussed *ante*. Furthermore, Chavez's appellant's reply brief expressly represents that he "is not contesting the judgment and rulings favorable to [those individuals] entered by the trial court." Accordingly, we disregard the respondents' brief filed by those individuals and do not consider it in disposing of this appeal.

## DISCUSSION

### I

#### *Section 425.16 Generally*

A special motion to strike under section 425.16, the anti-SLAPP statute, enables a defendant to obtain an early dismissal of a lawsuit that is a SLAPP. A SLAPP arises "from any act of [a] person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue" and is subject to a special motion to strike "unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

A court applies a two-step process in deciding an anti-SLAPP motion. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76 (*City of Cotati*).) "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 v. Sletten* (2002) 29 Cal.4th 82, 89 (*Navellier*).)

Under the first step, section 425.16 protected activity includes: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law"; and "(2) any written or oral statement

or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (§ 425.16, subd. (e)(1), (2).) A cause of action arises out of protected activity if the act underlying the claim is an act in furtherance of the right to free speech or petition. (*Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 710 (*Dwight R.*)). We disregard the claim's labeling and examine the principal thrust or gravamen or "[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim." (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1272 (*Hylton*); see also *Dwight R.*, at p. 710.) "Communications that are preparatory to or in anticipation of commencing official proceedings come within the protection of the anti-SLAPP statute. [Citations.] Thus, defendant's reports of child abuse to persons who are bound by law to investigate the report or to transmit the report to the authorities are protected by the statute. (§ 425.16, subd. (e)(2).)" (*Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1570 (*Siam*)).

If the moving party satisfies the first step, the burden then shifts to the plaintiff to establish there is a probability he or she will prevail on the claim. (*Navellier, supra*, 29 Cal.4th at p. 88.) Under the second step, "[t]he court determines only whether the plaintiff has made a prima facie showing of facts that would support a judgment if proved at trial. [Citation.] We grant the motion if the plaintiff fails to produce evidence to substantiate his claim or if the defendant has shown that the plaintiff cannot prevail as a matter of law." (*Siam, supra*, 130 Cal.App.4th at p. 1570.) For example, if the defendant establishes an affirmative defense to the claim, the second step is satisfied and the court



must grant the anti-SLAPP motion. (*Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1513.)

On appeal from an order granting an anti-SLAPP motion, we apply the de novo, or independent, standard of review. (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1056 (*Sylmar Air Conditioning*)). In so doing, "we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.'" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

If a defendant prevails on an anti-SLAPP motion, he or she "shall be entitled to recover his or her attorney's fees and costs." (§ 425.16, subd. (c)(1).) If a plaintiff voluntarily dismisses an action after a defendant has filed an anti-SLAPP motion, whether in an attempt to avoid an adverse ruling and liability for the defendant's attorney fees or otherwise, a defendant may nevertheless recover his or her attorney fees and costs if the defendant shows he or she would have prevailed on the merits of the anti-SLAPP motion. (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1456-1457 (*Tourgeman*)). As one court observed, "[n]umerous courts have agreed . . . a trial court retains jurisdiction to award attorney fees pursuant to section 425.16, subdivision (c)(1) after a plaintiff voluntarily dismisses its complaint while a special motion to strike is pending." (*Id.* at p. 1456.) In that circumstance, "the critical issue is the merits of the defendant's motion to strike." (*Liu v. Moore* (1999) 69 Cal.App.4th 745, 752 (*Liu*)). In

deciding such a section 425.16 motion for attorney fees, the trial court is first required to consider the merits of the anti-SLAPP motion and then award attorney fees to the defendant if he or she shows the claim arises out of protected activity and the plaintiff is unable to show a reasonable probability of succeeding on that claim. (*Ibid.*; *Tourgeman*, at p. 1457; *Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 218.) As *Tourgeman* stated, "a determination of whether a defendant would have prevailed on its motion to strike is an essential prerequisite to an award of attorney fees and costs pursuant to section 425.16, subdivision (c)(1)." (*Tourgeman*, at p. 1457.) On appeal from an order granting a defendant's section 425.16 motion for attorney fees after a plaintiff has voluntarily dismissed his or her action, we apply a de novo, or independent, standard of review to its determination of the merits of the underlying anti-SLAPP motion and defendant's entitlement to an award of attorney fees and costs under section 425.16, subdivision (c)(1). (Cf. *Sylmar Air Conditioning, supra*, 122 Cal.App.4th at p. 1056 [de novo or independent standard applies in reviewing order granting anti-SLAPP motion].)

## II

### *CANRA Generally*

"California has a strong interest in preventing and remediating child abuse and neglect. [Citation.] To better enable authorities to prevent ongoing instances of child abuse and neglect, the Legislature enacted a comprehensive reporting scheme, currently known as [CANRA]. [Citation.] [¶] [CANRA] designates as 'mandated reporters' certain professionals who work in positions where child abuse and neglect is likely to be

detected. [Citation.] In addition to teachers, physicians, and other professionals whose work directly brings them in contact with children, mandated reporters include social workers [citation], family and child counselors . . . ." (*Dwight R., supra*, 212 Cal.App.4th at p. 707.)

A mandated reporter has a duty to make a report to a law enforcement agency or other designated agency "whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect." (Pen. Code, § 11166, subd. (a).) "Given their obligation under penalty of criminal prosecution to report all known and reasonably suspected instances of child abuse or neglect, mandated reporters have unqualified, *absolute immunity from criminal and civil liability* 'for any report required or authorized' to be made under [CANRA] . . . ." (*Dwight R., supra*, 212 Cal.App.4th at pp. 707-708, italics added.) Furthermore, "[a] mandated reporter is also *absolutely immune from civil and criminal liability* for 'conduct giving rise to the obligation to report [including] the collection of data, or the observation, examination, or treatment of the suspected victim or perpetrator of child abuse,' and even for knowingly or recklessly making a false report or falsifying evidence of child abuse or neglect. [Citations.]"<sup>6</sup> (*Dwight R., supra*, at p. 708, italics added.)

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<sup>6</sup> "In contrast to mandated reporters, voluntary reporters [of suspected child abuse or neglect] have *qualified* immunity from civil or criminal liability 'as a result of any report authorized' under [CANRA]." (*Dwight R., supra*, 212 Cal.App.4th at p. 708.)

Penal Code section 11172, subdivision (a), provides: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article . . . ."

CANRA's absolute immunity provision applies not only to the mandated reporter "who telephones the agency and submits a written report," but also to "those mandated reporters who are involved in the identification of an instance of child abuse but do not personally report it to the authorities[.]" (*Storch v. Silverman* (1986) 186 Cal.App.3d 671, 681 (*Storch*)). "Team immunity is consistent with the purpose and intent of the Legislature in promoting the reporting of child abuse. Limitation of immunity to the person making the telephone call to the agency or signing the report would defeat that purpose." (*Ibid.*) In the circumstances of *Storch*, the court concluded that the "[d]efendant physicians, who are mandated reporters, are immune from liability to the plaintiffs for the two causes of action [for medical malpractice and negligent infliction of emotional distress], both of which are premised upon the allegations of negligent reporting of suspected child abuse." (*Ibid.*) *Storch* further concluded the trial court properly granted the hospital's motion to strike the causes of action against it. (*Ibid.*) It stated: "Inasmuch as the liability of the hospital, under the doctrine of respondeat superior, was necessarily predicated upon the negligent report of child abuse by one of the other defendants, the immunity statute defeats any action against the hospital as well." (*Ibid.*)

### III

#### *Rady's Section 425.16 Motion for Attorney Fees*

Chavez contends the trial court erred by granting Rady's section 425.16 motion for attorney fees, arguing: (1) Rady is not a mandated reporter under CANRA; and (2) there is insufficient evidence to support a finding that anyone at Rady filed a report under CANRA.<sup>7</sup>

#### A

As discussed *ante*, Rady filed an anti-SLAPP motion to strike the causes of action against it and for an award of attorney fees and costs, arguing the causes of action arose out of activity that is constitutionally protected and that Chavez could not establish a probability of prevailing on those causes of action. Rady argued that its mandated report of suspected child abuse under CANRA was protected activity under section 425.16 and it was absolutely immune from civil liability for that mandated report. The trial court tentatively ruled that it would grant Rady's anti-SLAPP motion, but Chavez voluntarily dismissed his action without prejudice before the court issued its final ruling.

Rady then filed a motion for attorney fees and sanctions pursuant to sections 425.16 and 128.5 against Chavez and Lara, arguing it would have prevailed on its anti-

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<sup>7</sup> As Rady notes, Chavez's appellant's opening brief erroneously argues that the trial court erred by granting Rady's anti-SLAPP motion. However, as discussed *ante*, Chavez voluntarily dismissed his causes of action against Rady before the court made its final ruling on that motion and therefore the court did not, in fact, grant the motion. Rather, the court granted Rady's subsequent motion for attorney fees and sanctions pursuant to sections 425.16 and 128.5 and entered judgment for Rady accordingly. We treat Chavez's appellate arguments as challenging that decision.

SLAPP motion had Chavez not voluntarily dismissed his action. The court granted its motion, concluding that Rady is a mandated reporter under CANRA and Chavez's action against it arose out of its report of suspected child abuse under CANRA, which report was protected activity under section 425.16. Because Chavez did not show there was a probability he would have prevailed on his causes of action against Rady, the court concluded that Rady was entitled to attorney fees and costs pursuant to section 425.16.

## B

Contrary to Chavez's primary argument, Rady is entitled to absolute immunity under CANRA for any report to a law enforcement agency of suspected child abuse or neglect by a Rady physician or other medical practitioner, whether an employee, agent, or contractor. Assuming arguendo, as Chavez argues, that Rady, as an entity, is not included within the express definition of a mandated reporter under CANRA (e.g., "[a] physician and surgeon" under Pen. Code, § 11165.7, subd. (a)(21)), the immunity provision of Penal Code section 11172, subdivision (a) nevertheless applies to Rady for any reports of suspected child abuse or neglect made by its employees, agents, or contractors. (*Storch, supra*, 186 Cal.App.3d at p. 681.) Because Chavez's causes of action against Rady are implicitly based on the doctrine of respondeat superior for actions of its employees, agents, or contractors and are necessarily predicated on the report of child abuse by one of the individual physician defendants or other Rady employees, agents, or contractors, the immunity statute generally applies to defeat any action against Rady arising out of or related to that report. (*Ibid.*; cf. *Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 91-92.) Accordingly, we reject Chavez's assertion that Rady cannot be

immune from civil liability for mandated reports of suspected child abuse or neglect that are made by its physicians, employees, agents, or contractors. Furthermore, contrary to Chavez's assertion, a mandated reporter is entitled to absolute immunity from civil liability for "any report" required or authorized to be made under CANRA, including an initial report by telephone or other *oral* means, and that immunity is *not* conditioned on the filing of a follow-up written report by the mandated reporter within 36 hours pursuant to Penal Code section 11166, subdivision (a). (Pen. Code, § 11172, subd. (a); *Stecks v. Young* (1995) 38 Cal.App.4th 365, 374-375.)

### C

We likewise reject Chavez's assertion that there is insufficient evidence to support a finding that one of Rady's physicians, employees, agents, or contractors made a report of suspected child abuse or neglect regarding I.C. to the Escondido Police Department or another designated CANRA agency, which report would trigger CANRA's immunity provision and protect Rady from civil liability. However, Chavez's argument defies logic. It is inconceivable that detectives from the Escondido Police Department and/or representatives of the County of San Diego Health and Human Services (i.e., child protective services, or C.P.S., workers) would arrive at Rady on October 7, 2014, to investigate suspected child abuse or neglect of I.C. if no person at Rady had contacted them to report such suspected child abuse or neglect. On the contrary, the record supports a reasonable inference that someone at Rady did, in fact, make such a report. In support of its anti-SLAPP motion, Rady submitted the declaration of Jonna D. Lothyan, which referred to and attached a copy of the reporter's transcript from Chavez's June 8,

2015 preliminary hearing on the criminal charges against him. That transcript includes the testimony of Michelle Mayfield, an Escondido Police Department detective, who went to Rady on October 7, 2014, in response to a call to their dispatcher. Lara, Chavez's counsel, asked her whether she had received a phone call on October 7, 2014, from Rady. Mayfield replied: "I did not receive a phone call, no. It came in to our dispatch." She testified that "[w]e had information that there was [an] approximately seven-month-old infant at Rady . . . with bilateral subdural hematomas and bilateral retinal hemorrhaging." Mayfield testified that C.P.S. had also responded to a report from Rady.<sup>8</sup> Based on that evidence, it can be reasonably inferred that someone at Rady called the Escondido Police Department on October 7, 2014, and made a report of suspected child abuse of I.C. That reasonable inference can be made regardless of any evidence of the name of the person who called police. Rather, the evidence showing that a person (albeit an unnamed one) at Rady made the report of suspected child abuse is sufficient. It can also be further reasonably inferred that the person making that report from Rady was a mandated reporter who made a mandated report to police under CANRA. As a mandated reporter, that person is entitled to absolute immunity from civil liability pursuant to Penal Code section 11172, subdivision (a) for making the mandated report to police and therefore

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<sup>8</sup> Mayfield testified that a C.P.S. worker was present during her investigation, stating that "[t]hey [i.e., C.P.S.] were already previously notified by Rady . . . ." In response to the criminal court's question, Mayfield confirmed that Rady had "reported it [i.e., suspected child abuse] to Child Welfare Services."



Rady is also entitled to such absolute immunity under the doctrine of respondeat superior. (*Storch, supra*, 186 Cal.App.3d at p. 681.) Chavez does not persuade us otherwise.<sup>9</sup>

#### D

Chavez argues that because Rady is not a mandated reporter under CANRA, it is not protected by CANRA's immunity provisions and therefore the trial court erred by concluding Rady would have prevailed on the merits of its anti-SLAPP motion and awarding Rady its attorney fees and costs pursuant to section 425.16, subdivision (c). However, as discussed *ante*, there is substantial evidence to support a finding that a person at Rady, as a mandated reporter, made a mandated report to police regarding suspected child abuse of I.C. and therefore both that person and Rady are protected by the absolute immunity provisions of CANRA. Therefore, the premise of Chavez's argument is faulty.

In independently reviewing the order awarding Rady attorney fees and costs, we conclude that Rady showed that Chavez's claims against it arose from its protected activity under section 425.16 and Chavez did not demonstrate a probability of prevailing on those claims. (*City of Cotati, supra*, 29 Cal.4th at p. 76.) Regarding the first step, Rady showed that the causes of action alleged against it arose from a mandated report under CANRA of suspected child abuse, which is protected activity under section 425.16.

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<sup>9</sup> As Rady notes, although Chavez argues on appeal that there is no evidence showing anyone at Rady filed a mandated report with the police, his first amended complaint contradicts that argument, alleging: "29. On October 7, 2014, [Rady] employees, agents, or contractors called Escondido Police Department and provided law enforcement private and confidential medical information about [I.C]."

As discussed *ante*, we disregard the claim's labeling and examine the principal thrust or gravamen or the alleged wrongful and injury-producing conduct that provides the foundation for the claim. (*Hylton, supra*, 177 Cal.App.4th at p. 1272; *Dwight R., supra*, 212 Cal.App.4th at p. 710.) Although Chavez's fourth cause of action against Rady is labeled "breach of fiduciary duty," our review of its allegations shows its principal thrust or gravamen is actually based on the alleged injury-producing conduct of a report to police by a person at Rady of suspected child abuse of I.C. (Capitalization omitted.) That cause of action alleges Rady did not disclose to him the terms of an agreement between it and police regarding procedures to be used in interviewing witnesses of child abuse, thereby allegedly breaching Rady's fiduciary duties to him and/or his children and which breach resulted in his criminal interrogation by police. However, that alleged breach of fiduciary duty and criminal interrogation were preceded by a call to police by a person at Rady who reported suspected child abuse of I.C. Without that call, there would have been no alleged injury to Chavez (i.e., no alleged breach of fiduciary duty or criminal interrogation that resulted in his subsequent criminal convictions). Therefore, the principal thrust or gravamen of the fourth cause of action is the alleged injury-producing conduct of a report to police by a person at Rady of suspected child abuse of I.C. and not a breach of fiduciary duty.

Furthermore, that principal thrust or gravamen of the fourth cause of action is protected activity under the anti-SLAPP statute. As quoted *ante*, "[c]ommunications that are preparatory to or in anticipation of commencing official proceedings come within the protection of the anti-SLAPP statute. [Citations.] Thus, defendant's reports of child

abuse to persons who are bound by law to investigate the report or to transmit the report to the authorities are protected by the [anti-SLAPP] statute. (§ 425.16, subd. (e)(2).)" (*Siam, supra*, 130 Cal.App.4th at p. 1570.) Therefore, because the report to police by a person at Rady of suspected child abuse of I.C. is protected activity under the anti-SLAPP statute, Rady satisfied its burden under the first step regarding the fourth cause of action.

Rady likewise satisfied its burden under the first step regarding the seventh and eighth causes of action, which alleged violation of Chavez's civil rights under title 42 United States Code sections 1983 and 1988 and fraudulent concealment. The seventh cause of action for violation of his civil rights alleged that police unreasonably seized him and otherwise violated his constitutional rights. The eighth cause of action for fraudulent concealment alleged that Rady fraudulently concealed its agreement with police regarding procedures to be used in interviewing witnesses of child abuse, which concealment resulted in his criminal interrogation by police. However, as with the fourth cause of action, we conclude the principal thrust or gravamen of both of those causes of action is the alleged injury-producing conduct of a report to police by a person at Rady of suspected child abuse of I.C. that resulted in Chavez's interrogation by police and subsequent criminal convictions. Furthermore, as discussed *ante*, that conduct in reporting suspected child abuse is protected activity under the anti-SLAPP statute. (*Siam, supra*, 130 Cal.App.4th at p. 1570; *Dwight R., supra*, 212 Cal.App.4th at pp. 710-711.) Therefore, because the report to police by a person at Rady of suspected child abuse of

I.C. is protected activity under the anti-SLAPP statute, Rady also satisfied its burden under the first step regarding the seventh and eighth causes of action.

Regarding the second step, we conclude Chavez did not carry his burden of showing it was probable he would prevail on those three causes of action against Rady. Because the report to police of suspected child abuse was, as discussed *ante*, a mandated report subject to the absolute immunity provisions of CANRA, both the person at Rady who made the report and Rady, under the doctrine of respondeat superior, are entitled to absolute immunity from civil liability. (Pen. Code, § 11172, subd. (a); *Storch, supra*, 186 Cal.App.3d at p. 681.) Therefore, Rady is absolutely immune from any claims that have a principal thrust or gravamen based on the alleged injury-producing conduct of a report to police by a person at Rady of suspected child abuse of I.C. Because, as discussed *ante*, all three causes of action against Rady have that principal thrust or gravamen, Chavez could not prevail on those causes of action. Chavez did not show below, nor has he shown on appeal, how it is probable he would have prevailed on the fourth, seventh, and eighth causes of action alleged against Rady.<sup>10</sup>

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<sup>10</sup> Assuming *arguendo* that the absolute immunity provisions of CANRA do not apply to the seventh cause of action for violation of civil rights under title 42 United States Code sections 1983 and 1988, Chavez has nevertheless failed to carry his burden to show he probably would prevail on that claim. In particular, he did not present any evidence making a *prima facie* showing that Rady conspired with or acted jointly with police or another state actor to deprive him of his civil rights. (Cf. *Dwight R., supra*, 212 Cal.App.4th at pp. 713-716 [concluding that although CANRA's absolute immunity provision could not be asserted as affirmative defense to 42 U.S.C. § 1983 claim, plaintiff nevertheless did not make *prima facie* evidentiary showing that defendant conspired or engaged in joint action with state actors to deprive him of federal constitutional rights].)

We conclude that because Rady showed the claims against it arose out of protected activity under section 425.16 and Chavez did not carry his burden to show a probability he would have prevailed on the merits of the three causes of action he alleged against Rady, the trial court correctly found that Rady would have prevailed on the merits of its section 425.16 motion to strike the claims against it and therefore was entitled to an award of its attorney fees and costs pursuant to section 425.16, subdivision (c)(1).<sup>11</sup> (*Tourgeman, supra*, 222 Cal.App.4th at pp. 1456-1457; *Liu, supra*, 69 Cal.App.4th at p. 752.)

#### DISPOSITION

The judgment is affirmed. The respondent is entitled to its costs on appeal.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

HALLER, J.

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<sup>11</sup> Because Chavez does not challenge the amount of attorney fees and cost awarded by the trial court or its imposition of sanctions on him (i.e., its dismissal of his action with prejudice), we need not, and do not, address those issues.