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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

KIMBERLY KOERBER,

Plaintiff and Appellant,

v.

PROJECT VERITAS,

Defendant and Respondent.

B287742

Los Angeles County  
Super. Ct. No. BC649878

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth R. Feffer, Judge. Affirmed.

Gary Rand & Suzanne E. Rand-Lewis and Suzanne E. Rand-Lewis for Plaintiff and Appellant.

Litchfield Cavo, G. David Rubin and Elizabeth M. Sanguinetti for Defendant and Respondent.

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## INTRODUCTION

Plaintiff Kimberly Koerber appeals from the trial court's order granting defendant Project Veritas's special motion to strike all causes of action against it in the operative first amended complaint under Code of Civil Procedure section 425.16 (anti-SLAPP statute).<sup>1</sup> Koerber contends the court abused its discretion in denying her ex parte request to conduct additional discovery under section 425.16, subdivision (g), and erred in granting Project Veritas's anti-SLAPP motion. We conclude: (1) the court did not abuse its discretion in denying Koerber's request to conduct additional discovery; (2) the court correctly found all Koerber's claims against Project Veritas arise out of the organization's protected free speech activity; and (3) Koerber has forfeited her challenge to the court's findings that she failed to demonstrate a probability of prevailing on any of her claims. We therefore affirm the order granting Project Veritas's anti-SLAPP motion.

## FACTS AND PROCEDURAL BACKGROUND

### 1. The Parties

Between November 2013 and January 2016, Koerber was employed by defendants Cengage Learning, Inc. and Cengage Learning Holdings II, Inc. (collectively, Cengage), for-profit companies specializing in "educational content, technology, and services." Koerber was a sales consultant who sold "National Geographic materials."

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<sup>1</sup> All undesignated statutory references are to the Code of Civil Procedure.

Project Veritas is a non-profit “media organization” that engages in “undercover investigative journalism.” Project Veritas claims its “reports average over 100,000 views online” and are often covered by “other news outlets.” One of Project Veritas’s goals is to “educate and inform the public about issues of public interest.”

## **2. Koerber’s Interview and the Termination of Her Employment**

In September 2015, Project Veritas “launched an investigation into the Common Core curriculum.” The investigation focused on the “relationship between textbook companies and Common Core standards, how textbook companies promoted Common Core to public officials and legislators, and the lobbying tactics of textbook companies,” as well as “the reaction of those within the textbook industry to the backlash against Common Core.”

On November 10, 2015, an anonymous caller asked Koerber to participate in an interview about Common Core. The caller told Koerber the interview would help Kamala Harris, who was then the Attorney General of California, “obtain research” about Common Core. The caller told Koerber the meeting would be “private” and “confidential.”

On November 11, 2015, Koerber went to a Starbucks in Woodland Hills, California to participate in the interview. Koerber chose to conduct the interview on the front patio outside the Starbucks.

There, she met two individuals, one of whom gave her a business card, which stated the cardholder’s name was “Alyssa Harris,” a “project manager” with “Breakthrough Dev Group.” The two individuals told Koerber her statements would be used

“as anonymous research to assist Kamala Harris in formulating policy.” The interview was video and audio recorded without Koerber’s knowledge and consent.

In January 2016, Project Veritas published four reports on Common Core. The third report, which was originally published on YouTube on January 21, 2016, is a video featuring clips of Koerber’s November 11, 2015 interview, as well as clips of several candidates from the 2016 presidential primary election and an individual named James O’Keefe talking about Common Core. The video was also featured in an article published by “Breitbart News” (Breitbart) on January 21, 2016.

A recording of the video report containing footage of Koerber’s November 11, 2015 interview was admitted in the trial court and is part of the record on appeal. In the video, Koerber makes numerous disparaging remarks about, among other things, people who oppose Common Core. Koerber also made several comments criticizing Republicans, school administrators in Texas, and the Second Amendment. For example, Koerber complained that during a recent presentation she gave on the “AP US History” curriculum, “Texas got upset” because the curriculum did not focus enough on “their founders.”

The footage from Koerber’s interview appears to have been filmed on a single camera focused on the top half of Koerber’s body. It is light outside, and Koerber is sitting in an outdoor patio in front of a parking lot. Strangers can be seen walking past Koerber and heard talking in the background throughout the interview. At one point, a person stands directly behind Koerber for about 20 seconds, locking his bicycle to a fence. Music and the sounds of traffic can also be heard in the background throughout the interview.

On January 21, 2016, Koerber's supervisors informed Koerber that "video of [her] was on the internet," including on Breitbart's website. Cengage fired Koerber the next day.

### **3. Koerber's Lawsuit**

On February 8, 2017, Koerber sued Cengage, three of Koerber's supervisors at Cengage,<sup>2</sup> and several entities and individuals associated with Project Veritas.<sup>3</sup> The operative first amended complaint asserted 23 causes of action, including the following 11 causes of action against Project Veritas: (1) intentional infliction of emotional distress (13th Cause of Action); (2) violation of Business and Professions Code section 17200 (14th Cause of Action); (3) invasion of privacy in violation of Penal Code section 632 (15th Cause of Action); (4) invasion of privacy in violation of Penal Code section 647, subdivision (j) (16th Cause of Action); (5) invasion of privacy in violation of Civil Code section 1708.8 (17th Cause of Action); (6) common law invasion of privacy (18th Cause of Action); (7) public exposure of private facts (19th Cause of Action); (8) false light (20th Cause of Action); (9) unlawful use of another's name or likeness in violation of Civil Code section 3344 (21st Cause of Action); (10) negligence in violation of Civil Code section 1708 (22nd Cause of

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<sup>2</sup> Cengage and Koerber's individual supervisors are not parties to this appeal. We therefore do not discuss in detail the claims Koerber brought against them.

<sup>3</sup> With respect to her claims arising out of the recording, editing, and publishing of the November 11, 2015 interview, Koerber named Project Veritas, Project Veritas LLC, Project Veritas Action Fund, Breakthrough Dev Group, James O'Keefe III, Allison Maass, and Christian Harstock as defendants.

Action); and (11) intentional interference with prospective economic relations (23rd Cause of Action). Each of Koerber's claims against Project Veritas is premised on allegations that Project Veritas recorded, edited, and published the November 11, 2015 interview under false pretenses and without Koerber's knowledge or consent.

In October 2017, Project Veritas moved to strike the claims asserted against the organization in Koerber's first amended complaint under section 425.16, the anti-SLAPP statute. Project Veritas argued Koerber's claims arose out of the organization's protected free speech—i.e., the gathering and publishing of news. Project Veritas also argued the claims were time-barred and, in any event, Koerber could not demonstrate a probability of success on the merits of any of her claims. In support of its motion, Project Veritas filed declarations executed by Russell Verney, the organization's executive director, and G. David Rubin, Project Veritas's counsel.

In early November 2017, on the date her opposition to Project Veritas's motion was due, Koerber filed an ex parte application seeking, among other things, an order continuing the hearing to allow her to conduct additional discovery. Koerber argued she needed to conduct additional discovery to ascertain the identities of the "two people who illegally recorded her" and to obtain copies of the original recordings of the November 11, 2015 interview. The court denied Koerber's request to conduct discovery but continued the hearing on Project Veritas's motion.

In late November 2017, Koerber opposed Project Veritas's motion. Koerber argued all of her claims against the organization were exempt from the anti-SLAPP statute because they arose out of Project Veritas's commercial conduct targeted at the

organization's potential customers. Alternatively, Koerber claimed Project Veritas's surreptitious recording of her November 11, 2015 interview was not protected activity and, regardless, she had demonstrated a probability of prevailing on all her claims.

In support of her opposition to the motion, Koerber filed a 19-page declaration. Koerber claimed, among other things, that: (1) she was misled into conducting the November 11, 2015 interview by false promises that her statements would remain anonymous and confidential; (2) she "intentionally chose" to conduct the interview outside on a Starbucks patio because she believed it was a "completely private" location; (3) she did not consent to any recording of the interview; (4) she was not aware she was being recorded at any time during the interview; and (5) although her employer informed her on January 21, 2016 that a video containing footage of her speaking about Common Core had been posted on the internet, she did not "discover" that Project Veritas had recorded the November 11, 2015 interview until "March 2016."

Project Veritas filed 100 objections to Koerber's declaration, primarily because Koerber's statements were conclusory, lacked foundation, or were hearsay. For example, Project Veritas objected to Koerber's statement in paragraph 81 of her declaration that "O'Keefe, on behalf of [Project Veritas], public[ly] stated that it was his intent to get me fired and to damage me. O'Keefe, on behalf of [Project Veritas], admits his 'crimes' and that his 'undercover work' uses illegal 'hidden video cameras'; referring to his illegal recording activities as 'dark art' in which 'his people' pose as representatives of politicians and lure individuals to be illegally recorded by falsely stating that their 'consulting firm advises legislators.' "

Following a hearing in December 2017, the court took Project Veritas’s motion under submission. On January 12, 2018, the court issued its written ruling granting Project Veritas’s motion.<sup>4</sup> The court concluded Koerber’s claims were not exempt from the anti-SLAPP statute because no evidence was presented establishing Project Veritas “is involved in textbook publication or produced, marketed, or sold textbooks[,]” or that any of Koerber’s claims arise out of Project Veritas’s “representation of fact about [the organization’s] business operations, goods, or services[.]” The court then found Project Veritas’s conduct of recording, editing, and publishing Koerber’s November 11, 2015 interview was protected under the anti-SLAPP statute because it qualified as journalism or news reporting addressing an issue of national public interest—i.e., the implementation of the Common Core curriculum. Finally the court concluded Koerber failed to demonstrate a probability of prevailing on any of her claims because: (1) her claims were barred by a one-year statute of limitations or the Uniform Single Publication Act (see Civ. Code,

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<sup>4</sup> The court sustained more than 60 of Project Veritas’s objections to Koerber’s declaration, including the organization’s objection to paragraph 81 of Koerber’s declaration. The court overruled Project Veritas’s remaining objections. The court also sustained four of Koerber’s objections to Verney’s declaration, overruling the rest of Koerber’s objections to that declaration as well as all her objections to Rubin’s declaration. The court granted Project Veritas’ requests for judicial notice of the January 21, 2016 video report containing footage of Koerber’s November 11, 2015 interview, four federal district court opinions, and the “2009 California Assembly Bill No. 524.” The court denied Koerber’s request for judicial notice of a federal district court opinion, which Koerber filed after the court took Project Veritas’s anti-SLAPP motion under submission.



§ 3225.3); and (2) Koerber failed to make a prima facie showing that she could succeed on the merits of any of her claims. The court ordered Koerber’s first amended complaint “dismissed against Project Veritas with prejudice.”

Koerber timely appealed.

## DISCUSSION

### 1. The Denial of Koerber’s Request to Conduct Additional Discovery

As a preliminary matter, Koerber contends the court abused its discretion when it denied her ex parte application for an order allowing her to conduct additional discovery related to Project Veritas’s anti-SLAPP motion. This argument lacks merit.

Under section 425.16, subdivision (g), all discovery in a lawsuit is “stayed upon the filing of a notice of [an anti-SLAPP motion].” If a party files a *noticed motion* and makes a showing of good cause, “[t]he court ... may order that specified discovery be conducted.” (§ 425.16, subd. (g).) We review for abuse of discretion the denial of a request to conduct additional discovery under section 425.16, subdivision (g). (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1247 (*Tuchscher*).)

Discovery in this case was stayed once Project Veritas filed its anti-SLAPP motion in October 2017. In early November 2017, on the day her opposition to Project Veritas’s motion was due, Koerber filed an ex parte application seeking an order allowing her to conduct additional discovery. An ex parte application is not a noticed motion, however, (see *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199, 207–208), and Koerber points to no part of the record showing she ever filed a noticed motion requesting an

order to conduct additional discovery. Koerber also makes no attempt to explain how she met the statutory requirements for obtaining an order allowing additional discovery under section 425.16, subdivision (g), or why she should have been excused from meeting those requirements. (See *Tuchscher, supra*, 106 Cal.App.4th at pp. 1247–1248 [a “request for discovery [is] not authorized under section 425.16, subdivision (g)[,] [if] it was not made by noticed motion”].) Koerber has, therefore, not demonstrated the court abused its discretion in denying her request to conduct additional discovery under section 425.16, subdivision (g).

## **2. The Order Granting Project Veritas’s Anti-SLAPP Motion**

### **2.1. Legal Principles and Standard of Review Regarding the Anti-SLAPP Statute**

Under the anti-SLAPP statute, a defendant may move to strike a complaint because it was filed “to challenge the exercise of constitutionally protected free speech rights.” (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 196.) “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).) Section 425.16 does not completely insulate a defendant’s protected speech; rather, it provides a mechanism “for weeding out, at an early stage, *meritless* claims arising from” protected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).)

Courts apply a two-prong test when evaluating an anti-SLAPP motion. (*Baral, supra*, 1 Cal.5th at p. 384.) “First, the defendant must establish that the challenged claim arises from activity protected by section 425.16.” (*Ibid.*) To determine whether the plaintiff’s causes of action arise from the defendant’s protected activity, we look at the “pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2); see also *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

If the defendant meets that burden, the plaintiff then must “demonstrate the merit of the claim by establishing a probability of success.” (*Baral, supra*, 1 Cal.5th at p. 384.) The second prong involves an analysis similar to that used to evaluate a summary judgment motion. (*Ibid.*) “The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. [The court] accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law.” (*Id.* at pp. 384–385.) The plaintiff may not, however, “rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.” (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 673 (*Paulus*).)

We independently review an order granting a special motion to strike under section 425.16. (*Paulus, supra*, 139 Cal.App.4th at p. 672.)

## **2.2. Defects in Koerber’s Opening Brief**

Before reaching the merits of Koerber’s arguments challenging the court’s order granting Project Veritas’s anti-

SLAPP motion, we address Koerber's failure to comply with the California Rules of Court's requirements governing the content of appellate briefs.

Under rule 8.204(a)(1)(C) of the California Rules of Court (Rule 8.204(a)(1)(C)), a party submitting an appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." This means the appellant must accompany every factual assertion in her brief with a citation to the exact page of the record supporting that assertion. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) Failure to comply with Rule 8.204(a)(1)(C) may result in a waiver or forfeiture of the appellant's claims on appeal. (*Id.* at p. 1239; *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826, fn. 1 (*Sheily*) "[u]pon the party's failure" to comply with rule 8.204 "the appellate court need not consider or may disregard the matter".)

Here, Koerber's opening (and only) brief is rife with factual assertions that lack citations to the almost 600-page appellate record. For example, nearly every paragraph in Koerber's statement of facts contains multiple sentences that are not accompanied by a citation to the appellate record. Although Koerber often includes a string of citations to a series or block of pages in the record at the end of each paragraph in her statement of facts, she fails to support any of the other assertions with citations to the record, violating Rule 8.204(a)(1)(C) and making any review of the accuracy of those assertions unnecessarily time consuming. (See *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205 [disapproving of the appellant's use of a "block page reference" to support a series of factual assertions].)

To make matters worse, many of Koerber's record citations are to portions of her declaration that were excluded when the court sustained Project Veritas's objections, rulings that Koerber does not challenge on appeal. By way of example, Koerber states on page 23 of her opening brief that Project Veritas "uses its catfishing activities to generate commercial online content, as a business entity[.] In 2017[.], donations exceeded five million dollars, which [Project Veritas] used to support O'Keefe's salary/lifestyle, its videos and merchandise advertising." Koerber cites to "5AA305:28-306:9" to support these assertions, which includes only statements in Koerber's declaration that the court excluded. Koerber does not cite to any other part of the record containing admissible evidence that would support those assertions.

Since Koerber does not challenge any of the court's evidentiary rulings on appeal, those rulings remain undisturbed. (*Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41 [a party who fails to attack the trial court's evidentiary rulings on appeal forfeits any contentions of error concerning those rulings].) Consequently, we must disregard Koerber's factual assertions that are dependent on statements in her declaration that the court excluded, since that evidence is not properly before us on appeal. (See *Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1181 [where an appellant fails to challenge the court's rulings excluding evidence, we will not consider that evidence when reviewing the issues raised on appeal].)

As our summary of the applicable law makes clear, any review of an order granting or denying an anti-SLAPP motion is necessarily fact-intensive. Because Koerber has failed to support

the majority of her factual assertions with specific and accurate citations to admissible evidence contained in the appellate record, she has forfeited her arguments on appeal. We nevertheless briefly dispose of Koerber's arguments below.

**2.3. Koerber's claims against Project Veritas are not exempt from the anti-SLAPP statute under section 425.17.**

Koerber contends the court should have denied Project Veritas's motion because each of her claims against the organization is exempt from the anti-SLAPP statute under section 425.17, subdivision (c). We disagree.

Section 425.17, subdivision (c) provides an exemption from the protections of the anti-SLAPP statute for commercial speech. (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 22.) To show a claim falls under the commercial speech exemption, the party opposing the anti-SLAPP motion must show: (1) the moving party was primarily engaged in the business of selling goods or services; (2) the moving party's challenged conduct was a representation of fact about its operations or services, intended to obtain or promote sales of the moving party's goods or services; and (3) the intended audience was an actual or potential customer. (§ 425.17, subd. (c).) This exemption is narrowly construed, and the party seeking to avoid application of the anti-SLAPP statute bears the burden of proving the exemption applies. (*Simpson*, at pp. 22–25.)

Koerber argues her causes of action against Project Veritas are exempt from the anti-SLAPP statute under section 425.17, subdivision (c) because the claims “arise from [Project Veritas's] conduct about [Koerber] rendering services in the publishing industry ... , and also about [Project Veritas's] own services.”

Koerber asserts the January 21, 2016 video report supports this argument, claiming the report contains footage of “O’Keefe at a convention signing books that he is selling.” But Koerber does not identify which part of the video contains such footage or explain why that footage establishes *Project Veritas* is a business primarily engaged in the sale of goods or services. Instead, Koerber cites only to portions of Verney’s declaration that state Project Veritas is “a media organization” engaged in “investigative journalism,” and that Project Veritas’s investigation into Common Core produced four reports that were published in January 2016. Koerber also cites to “2AA124,” which is only a cover page stating that the compact disc containing the January 21, 2016 video report was lodged separately from the appellant’s appendix.

In sum, Koerber fails to point to any evidence that supports a finding that Project Veritas was “primarily engaged in the business of selling or leasing goods or services,” or that the acts giving rise to her claims—i.e., the recording, editing, and publishing of her November 11, 2015 interview—were undertaken with a commercial intent and directed at potential customers. (See § 425.17, subd. (c).) The court, therefore, correctly found Koerber’s claims against Project Veritas were not exempt from the anti-SLAPP statute.

**2.4. All of Koerber’s claims against Project Veritas arise out of protected free speech activity.**

Koerber next contends the court erred in finding her claims arise out of free speech activity protected by the anti-SLAPP statute. Subdivision (e) of section 425.16 identifies four types of conduct that qualify for anti-SLAPP protection, including: “(3) 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, or (4) 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.” (§ 425.16, subd. (e)(3)–(4).)

It is well-established that news reporting and journalism are entitled to free speech protections and subject to the anti-SLAPP statute when the reporting or journalism giving rise to the plaintiff’s claims “concerns a public issue or an issue of public interest.” (*Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 164 (*Lieberman*), citing *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1047, fn. 5.) The act of “newsgathering,” such as the recording and editing of footage, is also entitled to protection under the anti-SLAPP statute, even if the recording was made without the subject’s knowledge or consent, so long as the recording was used in connection with a report or article addressing a public issue. (See *Lieberman*, at p. 166; see also § 425.16, subd. (e)(4) [any “conduct in furtherance of” the exercise of free speech qualifies for protection under the anti-SLAPP statute].)

The conduct giving rise to all of Koerber’s claims against Project Veritas in this case—i.e., the recording, editing, and publishing of Koerber’s November 11, 2015 interview—falls within the scope of section 425.16. That interview focused on an issue of public interest—i.e., Common Core. As Project Veritas’s January 21, 2016 video report shows, Common Core was an issue discussed by several of the Republican presidential candidates during the 2016 primary election. Political issues are undoubtedly “protected under the First Amendment and section 425.16.” (*Nagel v. Twin Laboratories, Inc.* (2003) 109 Cal.App.4th



39, 47, citing *National Endowment for the Arts v. Finley* (1998) 524 U.S. 569, 603.) The footage from the November 11, 2015 interview also shows that Koerber played a role in attempting to influence the adoption of Common Core standards by government agencies. As we noted above, Koerber told the interviewers that she had recently conducted a “big presentation” for the “AP US History Agenda,” during which “Texas got upset” about the content of the curriculum.

In short, because “the surreptitious recordings [here] were in aid of and incorporated into a broadcast in connection with [a] public issue,” Koerber’s claims against Project Veritas fall within the scope of the anti-SLAPP statute. (*Lieberman, supra*, 110 Cal.App.4th at p. 166.)

**2.5. Koerber has forfeited her arguments challenging the court’s findings that she failed to demonstrate a probability of prevailing on the merits of any of her claims.**

Finally, Koerber contends the court erred in finding she failed to demonstrate a probability of prevailing on the merits of any of her claims against Project Veritas. Koerber has forfeited these arguments by failing to adequately develop them in her opening brief.

In her first amended complaint, Koerber asserts 11 causes of action against Project Veritas. Although Koerber identifies in her brief the elements of each cause of action, she fails to develop reasoned arguments explaining how she established a probability of prevailing on the merits of any of those claims. For example, with respect to her 23rd Cause of Action for intentional interference with prospective economic relations, Koerber simply argues, “Appellant’s Declaration establishes one or more of the

elements of this cause of action with minimal merit, as it establishes her wrongful termination in violation of public policy.” Koerber does not explain why her declaration would establish “one or more” of the elements of the claim, nor does she identify any specific statements in her declaration that are relevant to that cause of action. Koerber follows a similar approach in addressing the remaining 10 causes of action asserted against Project Veritas in her first amended complaint.

A judgment is presumed correct, and the appellant carries the burden of affirmatively showing reversible error. (Cal. Const., art. VI, § 13; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799.) When an appellant fails to specifically reference parts of the record that support arguments raised on appeal or fails to support those arguments with reasoned legal and factual analysis, courts may deem those arguments forfeited. (See *Sheily, supra*, 122 Cal.App.4th at p. 826, fn. 1; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].) By failing to support her arguments with reasoned legal and factual analysis, Koerber has forfeited her contention that the court erred in finding she failed to demonstrate a probability of success on the merits of any of her causes of action asserted against Project Veritas. (See *Paulus, supra*, 139 Cal.App.4th at p. 685 [appellant waived any challenge to the trial court’s second-prong analysis of certain causes of action, where appellant offered only a conclusory argument that he had “‘met his burden to show a prima [facie] case’” for each cause of action].)

## DISPOSITION

The order granting Project Veritas's anti-SLAPP motion is affirmed.<sup>5</sup> Project Veritas is awarded its costs on appeal.

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

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.

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<sup>5</sup> Because we affirm the court's order granting Project Veritas's anti-SLAPP motion, we dismiss as moot Project Veritas's unopposed motion to strike portions of Koerber's opening brief filed on February 1, 2019.