In the Supreme Court of the State of California

CASE NO. S262032

GREGORY GEISER,

Plaintiff, Appellant, and Cross-Respondent,

v.

PETER KUHNS, ET AL.,

Defendants, Respondents, and Cross-Appellants.

Decision by the Court of Appeal, Second Appellate District
Division Five, Case No. B279738

GREGORY GEISER'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This is the second time that this case has come before this Court. On three prior occasions, once before the Trial Court and twice before the Court of Appeal, Plaintiff prevailed when the courts found that Defendants' conduct at issue was not protected by the Anti-SLAPP statute. Plaintiff respectfully submits that there is no basis for reviewing the latest opinion from the Court Of Appeal.

The history of this litigation started four years ago, when Plaintiff/Petitioner, Appellant, Cross-Respondent, and Respondent Gregory Geiser's ("Plaintiff" or "Mr. Geiser") company bought Defendants/Respondents, Respondents, Cross-Appellants, and Petitioners Pablo Caamal ("Mr. Caamal") and Mercedes Caamal's ("Ms. Caamal") (collectively, the "Caamals") former property (the "Property") at a lawful, nonjudicial foreclosure. In two separate incidents, the Caamals, along with Defendant/Respondent, Respondent, Cross-Appellant, and Petitioner Peter Kuhns ("Mr. Kuhns")[1] and several cohorts showed up to Mr. Geiser's office and home in an attempt to coerce Mr. Geiser and his company to sell the home back to the Caamals.

Following these incidents, Mr. Geiser filed three civil harassment petitions – one for each Defendant – to keep Defendants a safe distance away from him and his family. Defendants moved to strike the petitions pursuant to Code of Civil Procedure Section 425.16 (the "Anti-SLAPP statute"), but the Trial Court determined that Defendants' conduct at issue was not protected by the Anti-SLAPP statute. In 2018, after the Court of Appeal, Second Appellate District, affirmed the Trial Court's ruling, Defendants

[1] The Caamals and Mr. Kuhns are collectively referred to as "Defendants."

petitioned this Court for review. In turn, this Court granted review while deferring the matter pending the consideration and disposition of *FilmOn.com Inc. v. DoubleVerify, Inc.* 7 Cal.5th 133 (*FilmOn*).

In its *FilmOn* decision, this Court established a new, clear benchmark for the lower and intermediate courts to apply in determining whether statements or conduct were made or engaged in "in furtherance of free speech in connection with a public issue" so as to merit protection under the Anti-SLAPP statute. This Court subsequently transferred this case down to the Court of Appeal for further consideration in light of *FilmOn*. The Court of Appeal, in an unpublished decision, affirmed its prior holding that Defendants' conduct was not protected under the Anti-SLAPP statute.

Defendants' contention that the majority reached the wrong conclusion is not a proper basis for review by this Court. Instead, review would only be warranted if there was a disharmony among the various districts of the Court of Appeal or if there was an important question of law left to be decided. Defendants have not shown that such a disharmony exists. While the present case was among the first in what will likely be a long line of cases before the Court of Appeal which apply *FilmOn's* test, it is unlikely to contribute to the broader body of law given the highly-specific facts at issue and the reality that the decision was left unpublished. (See Cal. Rules of Court, 8.1115(a).)

Moreover, despite what Defendants and the recently-submitted *amicus curae* contend, this case does not present any threat to the media's ability to report on various matters because the *FilmOn* test – in general and as applied here – is an inherently fact-based test. A newspaper reporting on a third-party dispute to its millions of potential readers and a few individuals participating in a dispute are readily distinguishable. As such, the Court of

Appeal's Unpublished Majority Opinion does not threaten media protections.

The Court of Appeal, using the case law available to it, correctly decided that Defendants' small-scale protests in the lobby of Mr. Geiser's office and at night in front of Mr. Geiser's home were not protected because they did not fall under the "catchall provision" of the Anti-SLAPP statute. To wit, the Court of Appeal rightly found that the content of Defendants' speech (i.e., demanding a meeting to try and repurchase the Property, proclaiming that Mr. Caamal would not leave the Property alive, and demanding that Plaintiff personally exit his home) merely implicated a private dispute between the Parties over the Property; further, even if Defendants' conduct tangentially implicated broader issues of gentrification and wrongful foreclosures and evictions, the context Defendants' conduct shows why protection under the Anti-SLAPP statute was and is unwarranted.

II. STATEMENT OF THE CASE[2]

A. Background of the Protests.

On May 26, 2006, the Caamals purchased the Property (i.e., a triplex in Rialto, California), secured by two deeds of trust for a total purchase price of $450,000. (1 JA, 262-63, 281-82.) As of March 9, 2012, the Caamals were in default on their mortgage payments in the amount of $46,007.22. (1 JA, 292.) By May 17, 2013, the amount in default had reached $69,263.22. (1 JA, 296.) On August 28, 2015, the trustee under the deed of trust recorded a Notice of Trustee's Sale, stating that the Property would be sold at auction on September 23, 2015. (2 JA, 305.) By then, the total debt secured by the

[2] This Statement Of The Case is reproduced here nearly verbatim from Mr. Geiser's prior briefing from the Court of Appeal for the Court's convenience.

Property had reached $500,425.61. (*Id.*) At the trustee's sale, the Property was sold for $284,000 to Eagle Vista Equities, LLC, an affiliate of Wedgewood. (2 JA, 308-09.) Wedgewood is a real estate company primarily in the business of buying, rehabilitating, and selling distressed residential real estate. (1 JA, 29.) Plaintiff Gregory Geiser is the CEO of Wedgewood. (*Id.*)

B. Protest at Wedgewood's Office.

On December 17, 2015, the Caamals marched into Wedgewood's office, accompanied by a mob of protestors, and demanded to see Mr. Geiser, who was not there at the time. (2 JA, 321.) The protestors were organized by an organization calling itself the Alliance of Californians for Community Empowerment ("ACCE"), of which Mr. Kuhns is the Los Angeles Director. (1 JA, 111.) The protestors pitched a tent in the lobby and refused to leave, disrupting Wedgewood's ability to carry on its business. (2 JA, 321.) Alan Dettelbach, Wedgewood's general counsel, attempted to remove the tent but was shoved away by one of the protestors. (1 JA, 29; 2 JA, 321.) While the police were being called, Mr. Dettelbach and Darin Puhl, Wedgewood's Chief Operating Officer, met with Mr. Kuhns and the Caamals in a conference room to discuss Wedgewood potentially selling the Property back to the Caamals. (1 JA, 96; 2 JA, 322.)

C. Breakdown of Negotiations.

In order to facilitate negotiations, Wedgewood agreed to stay the execution of an unlawful detainer judgment it had already obtained against the Caamals. (*Id.*) In early January, the Caamals returned to Wedgewood's office alone and met with Mr. Puhl again. (*Id.*) Mr. Puhl explained to the Caamals that their initial proposal to pay $300,000 for the Property was

insufficient, but that Wedgewood would agree to sell them the Property for $375,000. (*Id.*) The Caamals were given additional time to attempt to secure financing for the purchase, with the understanding that they would vacate the Property if they were unable to do so. (*Id.*)

On March 18, 2016, two days before the date by which the Caamals had agreed to either close escrow or vacate the Property, they sent Wedgewood a prequalification letter for a purchase price of $300,000, twenty percent below the price previously discussed. (1 JA, 97, 105; 2 JA, 323.) Because the financing was not for the amount Wedgewood had agreed to accept and because the lender and the prequalification did not seem reliable, Wedgewood decided to proceed with the lockout after the agreed vacate date. (2 JA, 323.) On March 23, the Caamals and the ACCE protestors again barged into Wedgewood's offices, looking for Mr. Geiser and breathing threats. (1 JA, 30.)

D. Protest at Mr. Geiser's House.

On March 30, 2016, after being locked out of the Property, the Caamals came to Mr. Geiser's house at 9:00 p.m., accompanied by Mr. Kuhns and around thirty ACCE protestors. (1 JA, 30.) The protestors were shouting and chanting threats, such as "Greg Geiser, come outside; Greg Geiser, you can't hide!" (4 JA, 1015.) The Manhattan Beach police were called to the scene but did nothing to intervene. (1 JA, 30.) Mr. Geiser, fearful for his wife's safety, helped her escape through the back door and to safety at a neighbor's house. (*Id.*) Eventually, the protestors left. (*Id.*)

After this incident, Mr. Geiser was "visibly shaken." (2 JA, 324.) He was particularly afraid that, because his wife has multiple sclerosis, which limits her mobility, she would have a hard time getting away if the protestors returned when Mr. Geiser was not home, and could even fall and be seriously

injured. (4 JA, 1016.) Fearing for their safety, he retained private security to protect both his business and his home. (1 JA, 30.)

E. Restraining Order Proceedings.

After the March 30 incident, Mr. Geiser's understanding was that the police could not protect him from such an incident in the future without a court order. (1 JA, 30.) Based on that understanding, on April 1, 2016 Mr. Geiser brought petitions for restraining orders against Mr. Caamal, Mrs. Caamal, and Mr. Kuhns under Code of Civil Procedure section 527.6. (1 JA, 22.) Temporary restraining orders were issued and a hearing was set on his petitions. (1 JA, 33.) On April 5, 2016, Wedgewood filed a separate unlimited civil lawsuit against the Caamals, Mr. Kuhns, and ACCE for trespass and sought a restraining order. (1 JA, 87.) On April 7, a temporary restraining order was issued in this case. (4 JA, 931.)

On April 27, 2016, Defendants filed special motions to strike the petitions under Code of Civil Procedure section 425.16 ("Anti-SLAPP Motions"). (1 JA, 64.) On May 11, 2016, after a hearing, the court issued a preliminary injunction in the unlimited case filed by Wedgewood, restraining Kuhns and the Caamals from further harassing Wedgewood or Mr. Geiser. (3 JA, 654; 4 JA, 984-85.) The hearings on Mr. Geiser's petitions for restraining orders against the individuals were then continued three times by stipulation so that the parties could attempt to settle the case. (3 JA, 672, 684, 696.)

F. City Council Proceedings and Conversations with the Police Chief.

While pursuing his remedies in court, Mr. Geiser also sought protection from his local elected government. The day after the March 30

incident, Mr. Geiser spoke for over an hour with Amy Howorth, a member of the Manhattan Beach City Council, about what had happened. (4 JA, 1021.) On July 5, 2016, the City Council voted 4-1 to formally introduce an ordinance, proposed by Ms. Howorth, that would place strict limits on residential picketing. (4 JA, 1046.) At the meeting, Mr. Geiser spoke about the March 30 incident. (4 JA, 1021, 1038-41.)

During a break in the meeting, Mr. Geiser was approached by Eve Irvine, Chief of the Manhattan Beach Police Department. (4 JA, 1021.) Chief Irvine assured Mr. Geiser that officers had received additional training as a result of the March 30 incident and that a similar incident would not be allowed to happen in the future, even under existing city law. (*Id.*) Mr. Geiser also had several other conversations after the meeting with members of the police department and members of the city council, who gave him similar assurances. (4 JA, 1021-22.)

On July 19, 2016, the ordinance came before the City Council for a second reading. (4 JA, 1056.) At the meeting, council members again discussed the March 30 incident, noting that other residents on Mr. Geiser's street had also felt threatened by the presence of the protestors. (4 JA, 1090-91.) Several members of the Council were concerned not to involve the city in litigation over the free speech implications of the proposed ordinance. However, even the strongest critics of the ordinance on the Council stated that their concern was not the substance of the ordinance as applied to situations like the March 30 incident but the possibility that the city would be sued by an activist group. (4 JA, 1086, 1088, 1096.) The consensus view of the Council was that existing laws, particularly those regulating nuisance and disturbance of the peace, already allowed the police to prevent a repeat of the March 30 incident. (4 JA, 1062, 1084, 1094-95.) On that basis, the

Council voted unanimously to send the ordinance back to the staff to be refined and given a fuller staff report and to continue the discussion at the next Council meeting. (4 JA, 1098-1100.) Mr. Geiser attended that meeting, and the discussion further reassured him that then-existing law was sufficient to protect him and that the police would protect him if the protestors returned to harass him or his wife. (4 JA, 1022.)

G. Attorney's Fees Motions.

Mr. Geiser obtained the assurance he sought, that he and his wife would be protected from Defendants and the ACCE in the future. (4 JA, 1022.) Furthermore, settlement discussions with the Caamals regarding the Property had failed, and Mr. Geiser did not want pending litigation to complicate the sale of the Property to a different buyer. (4 JA, 1022-23.) As a result, Mr. Geiser dismissed his three petitions, but he dismissed them without prejudice so that he could file them again if the need arose. (3 JA, 711; 4 JA, 1023.) Based on Mr. Geiser's voluntary dismissals, Defendants brought motions requesting payment of their attorney's fees based on the Anti-SLAPP Motions as well as under Code of Civil Procedure section 527.6, subdivision (s). (3 JA, 719.)

III. ARGUMENT

A. There Are No Grounds for Review by the California Supreme Court.

The grounds for review by this Court are governed by California Rules of Court, Rule 8.500 (b). The decision whether to take on such review is discretionary. (*People v. Davis* (1905) 147 Cal. 346, 347-349 (*Davis*).) Correction of a purported error, particularly in an unpublished Court of Appeal opinion such as the present case, is not a basis for review by this

Court. (See Cal. Civ. Prac. Procedure § 43:7, citing *Davis*.) Instead, review may be taken "When necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, 8.500(b)(1).)

Defendants contend that "This case presents the opportunity for this Court to set the opposing boundary to the one set in *FilmOn*." (Ptn., at p. 10.) However, there is no need for this Court to do so. Given just how new the *FilmOn* decision and its test are, there is no need to maintain statewide harmony and secure a uniformity of decision. Moreover, Defendants have not established a disharmony in how the various districts of the Court of Appeal apply the *FilmOn* test so as to require a decision by this Court. Defendants have also not explained how the Court of Appeal's unpublished, and therefore uncitable, opinion creates such disharmony. (See Cal. Rules of Court, 8.1115.)

Instead, Defendants attempt to paint the intermediate courts' reliance on the "categories of public interested matters" set forth in *Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913 (*Rivero*) as inherently in conflict with *FilmOn*. *Rivero* is still good law and it, along with *FilmOn* and existing Anti-SLAPP jurisprudence, is sufficient to guide cases like the present one.

B. The Court of Appeal's Unpublished Majority Opinion Is In Line With Other Decisions Applying the Anti-SLAPP Statute.

1. The *FilmOn* Decision Established a Clear Precedent That Guided the Court of Appeal's Unpublished Majority Opinion.

FilmOn involved a lawsuit by FilmOn, an online video distribution service, against DoubleVerify, an online advertising service, for disparaging FilmOn in confidential reports to DoubleVerify's clients. (*FilmOn*, supra, 7

Cal.5th at 140.) The trial court granted DoubleVerify's Anti-SLAPP Motion on the ground that the reports were covered under the statute and the Court of Appeal affirmed. (*Id*. at 142.) This Court took on the *FilmOn* case to determine whether the commercial nature of a defendant's speech is relevant in determining whether that speech merits protection under the catchall provision of the Anti-SLAPP statute. (*Id*. at 140.) This Court reversed the Court of Appeal's decision, holding that the defendant's reports at issue were "too tenuously tethered to the issues of public interest they implicate, and too remotely connected to the public conversation about those issues, to merit protection under the catchall provision." (*Id*. at 140.)

This Court thereby established a two-part analysis for determining whether a defendant's conduct merits Anti-SLAPP protection: 1) Identifying what "public issue or issue of public interest," if any, the speech at issue implicates (i.e., a question answered by looking at the *content* of the speech); and 2) examining what functional relationship exists between the speech and the public conversation about some matter of public interest (i.e., the *context* of the speech). (*Id*. at 149-150.) As to the latter element, the Anti-SLAPP statute requires there be "some degree of closeness between the challenged speech and the asserted public interest." (*Id*. at 150, citing *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132 (*Weinberg*).)

In articulating what constitutes a matter of public interest, courts look to certain specific considerations, such as whether the subject of the speech or activity "was a person or entity in the public eye" or "could affect large numbers of people beyond the direct participants"; and whether the activity "occur[red] in the context of an ongoing controversy, dispute or discussion", or "affect[ed] a community ... in a manner similar to that of a governmental entity." (*Id*. at 145.)

This Court advised that it "[is] not concerned with the social utility of the speech at issue, or the degree to which it propelled the conversation in

any particular direction; rather, we examine whether a defendant — through public or private speech or conduct — participated in, or furthered, the discourse that makes an issue one of public interest." (*Id*. at 151.) This Court further reaffirmed that "Defendants cannot merely offer a "synecdoche theory" of public interest, defining their narrow dispute by its slight reference to the broader public issue." (*Id*., citing *Commonwealth Energy Corp. v. Investor Data Exchange, Inc*. (2003) 110 Cal.App.4th 26, 34.)

In *FilmOn*, DoubleVerfiy argued that its reports "'concerned' or 'addressed' topics of widespread public interest: the presence of adult content on the internet, generally, and the presence of copyright-infringing content on FilmOn's websites, specifically." (*Id*. at 150.) However, "[E]ven if adult content on the Internet and FilmOn's particular streaming model are in fact issues of public interest, [this Court] agree[d] with the court in *Wilbanks* that 'it is not enough that the statement refer to a subject of widespread public interest; the statement must in some manner itself contribute to the public debate.'" (*Id.* at 150, citing *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898.)

The second prong of the test moves the focus from identifying relevant matters of public interest to addressing the specific nature of the defendants' speech and its relationship to the matters of public interest. (*Id*. at 152.) It is the job of the Court to examine whether a defendant – through public or private speech or conduct – participated in, or furthered, the discourse that makes an issue one of public interest. (*Id*. at 151, citing *All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010) 183 Cal.App.4th 1186, 1203-1204 and *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 375.)

DoubleVerify argued that "FilmOn is notorious for its long history of violating copyright laws" and that FilmOn's CEO routinely entered the public spotlight to discuss himself and FilmOn's business. (*Id*. at 152.) The

Court acknowledged that DoubleVerify "identified the public issues or issues of public interest to which its reports and their 'tags' relate" and that "the various actions of a prominent CEO, or the issue of children's exposure to sexually explicit media content—in the abstract—seem to qualify as issues of public interest under [Code of Civil Procedure section 425.16](e)(4)." (*Id*.)

However, this Court determined that identifying FilmOn as falling into certain categories (i.e., adult content and copyright infringement) tells us nothing about how that identification relates to the issues of adult content and copyright. (*Id*. at 153.) That question can only be answered by looking at the broader context in which DoubleVerify issued its reports, discerning through that context whether the company's conduct qualifies for statutory protection by furthering the public conversation on an issue of public interest. (*Id*.) To that end, a court should examine "the identity of the speaker, the intended audience, and the purpose of the statement." (Id. at 147.)

The Court concluded that DoubleVerify did not issue its report in furtherance of free speech in connection with a public issue – instead, the report was a commercially prepared, confidentially shared document that was only distributed to DoubleVerify's clients solely for business purposes. (*Id*. at 153.)

2. Existing Authority is Sufficient to Establish What Constitutes a Matter of Public Interest.

"[A] matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest." (*Weinberg, supra*, 110 Cal.App.4th at 1132; *Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 658 (*Thomas*).) "[T]he fact that a broad and amorphous public interest can be connected to a specific dispute is not sufficient to meet the statutory requirements of the anti-SLAPP statute." (*World Financial Group, Inc. v.*

HBW Ins. & Financial Services, Inc. (2009) 172 Cal.App.4th 1561, 1570 [internal quotation marks omitted].) "At a sufficiently high level of generalization, any conduct can appear rationally related to a broader issue of public importance." (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal. 5th 610, 625 [speech concerning the issue of who should represent a city in negotiations with the National Football League to build a stadium there is not a matter of public interest, even though the building of the stadium in the city would be].) Such a "synecdoche theory" has been roundly rejected. (*Dual Diagnosis Treatment Center, Inc. v. Buschel* (2016) 6 Cal.App.5th 1098, 1106 [allegations of unethical practice by addiction clinic not a matter of public interest based on general interest in addiction treatment]; *Wilson v. Cable News Network, Inc.*(2019) 7 Cal.5th 871, 900-903 (*Wilson*) [California Supreme Court rejected argument that the discussion of a journalist's termination arising out of an acusation of plagiarism of an article about Sheriff Lee Baca's retirement implicated larger issue of journalistic ethics].)

Similarly, the *ex post facto* media attention a matter receives does not create an issue of public interest or otherwise convert the purely private dispute into one of public interest. (See *Wilson*, *supra*, 7 Cal.5th at 902; *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 354 (*Carver*) [A party cannot "create its own defense" under the Anti-SLAPP statute by taking actions that create a controversy.]; *Rivero*, *supra*, 105 Cal.App.4th at 926 [explaining that if the mere publication of information was sufficient to turn a private issue into a public issue, "the public-issue limitation would be substantially eroded, thus seriously undercutting the obvious goal of the Legislature that the public-issue requirement have a limiting effect."].)

3. The Court of Appeal's Unpublished Majority Opinion's Analysis Followed the Guidance of *FilmOn* and Other Anti-SLAPP Cases.

The Court of Appeal's Unpublished Majority Opinion, guided by *FilmOn,* examined both the content of the speech and the context of the speech to determine whether Defendants' conduct merited Anti-SLAPP protection. (Opn., at p. 9.) It engaged in a two-part analysis: 1) What public issue or issue of public interest" the speech at issue implicates (i.e., a question answered by looking at the *content* of the speech); and 2) what functional relationship exists between the speech and the public conversation about the matter of public interest. (See *FilmOn*, *supra*, 7 Cal. 5th at 149-150.)

Contrary to Defendants' assertion, there is no rule in existing Anti-SLAPP jurisprudence, generally, or in *FilmOn* or *Wilson*, in particular, that the Court must grant deference to a moving party's framing of the issue. Instead, the Court is required to look at the content of the speech to determine what public issue or issue of public interest, if any, are implicated by said speech.

The Court of Appeal Majority Opinion summarized the content of Defendants' speech thusly:

> As to the content of the speech, during the first demonstration at Wedgewood, the Caamals requested a meeting at which they could discuss repurchasing their property from Wedgewood and the demonstrators left the building once Puhl agreed to such a meeting. During the second demonstration, the demonstrators sought another meeting and Mr. Caamal stated that Wedgewood would not get him out of the property alive. The only evidence of the specific content of the speeches during the demonstration at plaintiff's residence was that the demonstrators demanded plaintiff personally come out of his home.
> (Opn., at p. 9.)

The Court of Appeal, in its review of the record, concluded that the "[D]efendants' demonstrations at Wedgewood's office building and plaintiff's residence focused on coercing Wedgewood into selling back the property to Ms. Caamal at a reduced price, which was a private matter concerning a former homeowner and the corporation that purchased her former home and not a public issue or an issue of public interest." (Opn., at p. 8, citing *Garretson v. Post* (2007) 156 Cal.App.4th 1508, 1524 and *USA Waste of California, Inc. v. City of Irwindale* (2010) 184 Cal.App.4th 53, 65).

The Court of Appeal further determined that "[W]e do not find in the record any basis to conclude plaintiff was a public figure or had gained widespread notoriety throughout the community for his real estate activities. Nor do we find any basis to believe the Caamals' private dispute with plaintiff was one of many similar dispute shared in common with members of the community." (Opn., at p. 10.) In reaching this conclusion, the Court of Appeal contrasted Mr. Geiser with the slumlord plaintiff in *Thomas*, who had wronged more than 100 tenants and became "the first big public case of the campaign in Oakland for a Just Cause for Eviction Ordinance" (Opn., at p.10, citing *Thomas*, supra, 126 Cal.App.4th at 654-658.) Moreover, the Court of Appeal found the record on media coverage to be unclear and lacking. (Opn., at 10.)[3]

The Court of Appeal went on to acknowledge that "[E]ven if we accepted defendants' contention that the demonstrations concerned the issues of displacement of residents due to residential real estate business practices,

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[3] The first instance of the media picking up on the Parties dispute came after Defendants stormed Wedgewood's office. As noted above, however, party cannot "create its own defense" under the Anti-SLAPP statute by taking actions that create a controversy. (See *Carver*, *supra*,135 Cal.App.4th at 354.).

gentrification, and large scale fix-and-flip real estate practices leading to the great recession, those demonstrations did not qualify for statutory protection because they did not further the public discourse on those issues." (Opn., at p. 11.) The Court of Appeal did so by looking at the context of Defendants' activities (i.e., the audience, speaker, and purpose).

The Court of Appeal[4] Majority Opinion pointed out that the record indicates that the demonstration at Wedgewood's Office "occurred at a commercial building, during office hours, and were directed at plaintiff" and that the demonstration at Plaintiff's home "took place at 9:00 p.m. and there is no indication in the record that there was an audience other than plaintiff and his family, and no evidence of media presence to inform persons not at the demonstration." (Id.) The speakers were Defendants and their cohorts. (Id.) Most importantly, the evidence in the record showed that the purpose was to further the Caamals' dispute with Wedgewood:

> In Ms. Caamal's declaration, she described the motivation for the demonstrations at Wedgewood's office building. As to the first demonstration, she stated that she and her husband "and a group of concerned citizens *seeking to assist us*, went to Wedgewood's office building in Redondo Beach and requested a meeting with [plaintiff] *to attempt to prevent the impending eviction and negotiate a re-purchase of m*[*y*] *home*." (Italics added.) As to the second demonstration, she stated that "as Wedgewood was attempting to lock me and my husband from our home and continuing to ignor[e] letters from both myself and my attorney, my husband and I, as well as another group of citizens *supporting our effort to repurchase our home,* returned to Wedgewood's office and again requested a meeting with [plaintiff]." (Italics added.) She said nothing about Wedgewood's residential real estate business practices displacing residents and gentrifying working-class

[4] While the Majority Opinion is not as cleanly structured as the the *FilmOn* opinion, it nonetheless fully analyzed each prong of the *FilmOn* test.

> neighborhoods or about large scale fix-and-flip real estate practices being a root cause of the great recession.
>
> Consistent with his wife's stated purpose for the first demonstration, Mr. Caamal stated in his declaration, "I "accompanied my wife to Wedgewood's office building ... to obtain an answer as to why Wedgewood was refusing to negotiation [*sic*] with my wife *in her attempt to repurchase our home*." (Italics added.) Kuhns likewise stated in his declaration, "I and others involved with ACCE accompanied Mr. and Ms. Caamal to Wedgewood's office building ...*to obtain an answer as to why Wedgewood was refusing to negotiation* [*sic*] *with the Camaals* [*sic*] in *their attempt to repurchase their home."* (Italics added.) Neither Mr. Caamal nor Kuhns said anything in his respective declaration about the purpose of the demonstrations relating to issues of displacement of residents due to residential real estate business practices, gentrification, or large scale fix-and-flip real estate practices leading to the great recession.
>
> Even a third-party participant, Saucedo, the National Lawyers Guild legal observer, described in his declaration the purpose for the demonstration at plaintiff's residence as a private matter limited to the Caamals' dispute with Wedgwood. He stated that ACCE organized the demonstration at plaintiff's residence "to protest unfair and deceptive practices used by Wedgewood ... and its agents *in acquiring the real property of Pablo and Mercedes Caamal, and evicting them from their home*." (Italics added.) That motivation was purely personal to the Caamals and did not address any societal issues of residential displacement, gentrification, or the root causes of the great recession.
>
> (Opn., at pp. 8-9.)

As with the reports from *FilmOn*, Defendants' activities, to the extent they implicate any issues of public interest, are "too tenuously tethered to the issues of public interest they implicate, and too remotely connected to the public conversation about those issues, to merit protection under the catchall provision." (*FilmOn*, *supra*, 7 Cal 5th at 140.)

Based on the foregoing, Plaintif respectfully submits that this Court should find that the Court of Appeal's Unpublished Majority Opinion is in line with existing Anti-SLAPP case law and does not present a sufficiently important question of law to warrant this Court's review.

C. Defendants' Contention That the Court of Appeal's Unpublished Majority Opinion Threatens Anti-SLAPP Protection for the Media is Unfounded and No Basis Exists for Granting Review.

The final argument in Defendants' Petition, that the Court of Appeal's unpublished majority opinion could be used to target media outlets that cover disputes like the one at issue in this case, is an unsupported attempt to paint this litigation as an important constitutional issue calling out for California Supreme Court review. Simply put, these fears are unfounded.

At its core, the *FilmOn* test is heavily dependent on the facts at hand. If one changes the content and context of the alleged speech activities at issue, the outcome of the analysis necessarily changes. A newspaper reporting on a third-party dispute to millions of readers and a few individuals participating in a dispute is not an "apples-to-apples" comparison. Not only are the underlying facts dissimilar to Defendants' hypothetical scenario, the procedural tools at play between Defendants' hypothetical scenario and the present case are different. Plaintiff, through this action, was not attempting to stop Defendants from engaging the public with their story through protests or publications. Instead, Mr. Geiser was merely trying to keep Defendants a safe distance away from him after incidents where they stormed his company's private lobby and harangued him from outside his home at night.

Therefore, Defendants' argument that the Court of Appeal's Unpublished Majority Opinion threatens media protections fails.

IV. CONCLUSION

This Court, through its decision in *FilmOn*, has provided helpful guidance for the lower courts to grapple with how to determine whether a defendant's conduct is in furtherance of a matter of public interest. While cases may arise over time, that require this Court to "set boundaries" or additional layers to the *FilmOn* test, the present appeal does not present that case. Since there is no disharmony in the law waiting to be reckoned with, and no important questions of law to decide in this case, Plaintiff respectfully requests that this Court deny Defendants' Second Petition for Review and allow this case to be put to rest.

Dated: June 9, 2020 DINSMORE & SANDELMANN LLP

By: /s/ Frank Sandelmann
Frank Sandelmann
Joshua A. Valene
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CERTIFICATION OF LENGTH
C.R.C. 8.504(d)(1)

I hereby certify, pursuant to California Rules of Court, rule 8.504, subdivision (d)(1), that the foregoing brief was generated on a computer and does not exceed 8,400 words. According to the computer program used to generate the Answer, the word count for the Answer is 6,468 words.

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The undersigned hereby declares under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 324 Manhattan Beach Blvd., Suite 201, Manhattan Beach, California 90266.

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Date

/s/Frank Sandelmann

Signature

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