No. S239686

SUPREME COURT OF CALIFORNIA

STANLEY WILSON,

Plaintiff and Appellant,

v.

CABLE NEWS NETWORK, INC., et al.,

Defendants and Respondents.

SUPREME COURT
FILED
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Deputy

After a Decision by the Court of Appeal
Second Appellate District, Division One
Case No. B264944

On Appeal from the Los Angeles Superior Court
The Honorable Mel Red Recana
Case No. BC559720

APPLICATION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF LOS ANGELES TIMES COMMUNICATIONS LLP, CBS CORPORATION, NBCUNIVERSAL MEDIA, LLC, AMERICAN BROADCASTING COMPANIES, INC., CALIFORNIA NEWS PUBLISHERS ASSOCIATION, AND FIRST AMENDMENT COALITION IN SUPPORT OF DEFENDANTS AND RESPONDENTS

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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Amici Curiae Los Angeles Times Communications LLP, CBS Corporation, NBCUniversal Media, LLC, American Broadcasting Companies, Inc., California News Publishers Association, and the First Amendment Coalition (collectively, "Amici") respectfully submit this Amici Curiae Brief in Support of Respondents Cable News Network, Inc. et al. (collectively, "CNN").

For the reasons discussed below, Amici urge this Court to reverse the Court of Appeal's holding that this action is outside the scope of Code of Civil Procedure § 425.16 (the "SLAPP" statute). Despite Section 425.16's broad construction requirement, the majority in Wilson v. Cable News Network, Inc., 6 Cal. App. 5th 822 (2016), narrowly applied the law to exclude claims arising from CNN's editorial decisions that directly affect its news content. Amici urge this Court to clarify that the SLAPP statute's "public interest" language must be construed broadly, consistent with the express requirements and purpose of Section 425.16 and in accordance with the well-established precedent of the courts of this state and principles of constitutional law. This Court also should make clear that the threshold inquiry under the SLAPP statute is properly focused on the defendant's

conduct, and cannot be evaded by a plaintiff's allegations of a purportedly wrongful "motive" for the defendant's acts.

APPLICATION TO SUBMIT AMICI CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), Amici respectfully request this Court's permission to submit the attached Amici Curiae Brief. Amici are organizations who themselves or whose members own and operate newspapers, websites, broadcast and cable television networks, feature film production and distribution companies, and television and radio stations in California and throughout the United States. These broadcast, print, and online news operations gather and disseminate information to the public, and also create, produce, and distribute a wide variety of constitutionally-protected expressive works and content through all kinds of media.

Amici are vitally interested in this appeal, which raises questions concerning the scope and application of the SLAPP statute. Amici have decades of experience litigating SLAPP cases, at all levels of the court system. See Paterno v. Superior Court, 163 Cal. App. 4th 1342, 1353 (2008) ("[n]ewspapers and publishers, who regularly face libel litigation, were intended to be one of the 'prime beneficiaries' of the anti-SLAPP legislation") (quoting Lafayette Morehouse, Inc. v. Chronicle Publ'g, 37 Cal. App. 4th 855, 863 (1995)).

Amici rely on the SLAPP statute to broadly protect their editorial and creative processes. The prospect of defending against even a wholly meritless lawsuit can discourage the publication of news reports and expressive works on matters of public interest. As this Court has recognized, permitting "unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights." Winter v. DC Comics, 30 Cal. 4th 881, 891 (2003) (quotation omitted). Therefore, "speedy resolution of cases involving free speech is desirable." Id. (emphasis added; quotation omitted). See also Ludwig v. Superior Court, 37 Cal. App. 4th 8, 16 (1995) (Section 425.16 is designed to provide "fast and inexpensive unmasking and dismissal" of unmeritorious claims).

In this case, the Court of Appeal majority narrowly applied the SLAPP statute, finding that Section 425.16's "public interest" requirement was not met because Plaintiff is not well-known, and the particular journalistic lapses of which he was accused were not sufficiently serious. See Amici Brief, Section II. It also declined to apply the SLAPP statute as a threshold matter based on Plaintiff's allegations that CNN acted with an improper motive. See Amici Brief, Section III. These erroneous holdings conflict with the legislative determination that the SLAPP statute must be construed "broadly," and are against the weight of existing case law. If not corrected, Amici have grave concerns that Wilson will set a dangerous precedent that excludes important speech from the statute's protection,

undermines the policies behind the statute, and provides a roadmap for plaintiffs seeking to evade the SLAPP statute through creative pleading.

This case arises from a news organization's investigation into alleged plagiarism, and its resulting decision to fire a producer responsible for reporting, writing, and editing news pieces. The Court of Appeal's holding that the SLAPP statute does not apply to Plaintiff's resulting lawsuit may discourage media organizations from vigorously enforcing journalistic ethics policies, or from being transparent with readers and viewers about their editorial operations. See Amici Brief, Sections II.E, III. Because they are directly affected by the case at hand and have extensive experience litigating Section 425.16, Amici are well-positioned to offer this Court additional perspective on these issues. They respectfully request that this Court grant their Application and consider the attached Amici Brief.[1]

[1] Pursuant to California Rule of Court 8.520(f)(4), Amici respectfully advise the Court that no party or counsel for a party in the pending appeal authored the proposed amici curiae brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amici curiae, their members, or their counsel in the pending appeal.

AMICI CURIAE BRIEF

I. SUMMARY OF ARGUMENT

Although the intersection of anti-discrimination law and the First Amendment raises complex and challenging issues, those thorny questions are beyond the scope of this appeal. At this early stage, the case is limited to a narrow but critical question: can litigants evade the SLAPP statute with creative pleading? In a case involving the statute's second prong, this Court emphatically responded "no." See Baral v. Schnitt, 1 Cal. 5th 376, 392 (2016) ("application of section 425.16 cannot reasonably turn on how the challenged pleading is organized" because that would "permit[] artful pleading to evade the reach of the anti-SLAPP statute").

This case raises the same issues that this Court addressed in Baral, but in the context of Section 425.16's threshold "public interest" inquiry. Plaintiff's claims arise from CNN's editorial decisions about the content of its news reporting on matters of public interest. But the Court of Appeal's decision nonetheless would allow the lawsuit to avoid application of the SLAPP statute by effectively deferring to the Plaintiff's pleading strategy, akin to accepting "how the challenged pleading is organized." Id.

First, over a vigorous dissent, the Wilson majority accepted Plaintiff's narrow framing of the statute's "public interest" requirement, focusing on his personal lack of notoriety. Wilson, 6 Cal. App. 5th at 839-40. This ignores the SLAPP statute's broad construction mandate, and its

key statutory language that includes conduct in furtherance of speech "in connection with" matters of public interest. C.C.P. §§ 425.16(a), (e)(4) (emphasis added). Courts consistently have held that this means the public interest inquiry focuses on the "broad topic" of the speech, not the identity of the particular plaintiff. See Section II.A.

This broad reading of the public interest standard not only stems from the plain language and history of Section 425.16, but also is consistent with decades of federal and state constitutional law addressing analogous free speech questions. See Section II.B. This Court should clarify that the same broad principles that have been used to define "matters of public concern" and "newsworthiness" in other contexts apply as well to the definition of "public interest" under Section 425.16. See Section II.B.1-2, Section II.C. The majority's decision, and the decisions of other intermediate courts that are inconsistent with these well-established principles, should be disapproved. See Section II.D.

Second, the Wilson majority allowed Plaintiff to plead around CNN's protected editorial decisions by accepting allegations of improper "motive" that should properly have been addressed in the SLAPP statute's second prong. See Wilson, 6 Cal. App. 5th at 834-36. In so doing, the appeals court improperly deferred to Plaintiff's pleading tactic of combining multiple allegations of protected and unprotected activity, contravening this Court's directive in Baral that, at the "first step" of the

SLAPP inquiry, "[w]hen relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage." 1 Cal. 5th at 396 (emphasis added). Instead, the Court of Appeal disregarded allegations of protected conduct in the first prong analysis, focusing instead on Plaintiff's allegations about CNN's purported "motive" for its conduct. See Section III. This departed from well-established authority holding that "the first step of the anti-SLAPP analysis focuses on the acts the plaintiff alleges as the basis for his or her claims, not the motive or purpose the plaintiff attributes to the defendant's acts." Collier v. Harris, 240 Cal. App. 4th 41, 53 (2015) (emphasis added). Without this distinction, creative litigants can evade the SLAPP statute by framing a complaint as challenging a purportedly wrongful motive, and thereby target core protected speech that the SLAPP statute was designed to protect. See Section III.

These rulings are contrary to well-established law. If allowed to stand, the majority's decision could have far-reaching implications for the efficacy of the SLAPP statute. Consequently, Amici request that this Court reverse the Court of Appeal's decision, and take this opportunity to clarify the standards for analyzing the meaning of "public interest" under Section 425.16, as well as making clear that the first prong analysis focuses on the

defendant's "conduct," rather than allegations concerning alleged "motives" for the defendant's acts.[2]

II. THE COURT OF APPEAL IMPERMISSIBLY APPLIED A NARROW CONSTRUTION TO THE "PUBLIC INTEREST" LANGUAGE IN THE SLAPP STATUTE.

A. The SLAPP Statute Must Be Interpreted Broadly.

The Legislature amended the SLAPP statute in 1997 to require that the statute "shall be construed broadly." C.C.P. § 425.16(a). This amendment came in direct response to decisions that narrowly applied the law and found "that the only activities qualifying for statutory protection are those which meet the lofty standard of pertaining to the heart of self-government." Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1116 (1999) (quotation omitted). Following the 1997 amendment, this Court consistently has upheld the statute's broad construction, and has rejected attempts to impose limits on Section 425.16 that are unsupported

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[2] Applying the SLAPP statute to Plaintiff's claims would not immunize media defendants from discrimination lawsuits, as CNN properly acknowledges. Constitutional concerns generally are not implicated by claims involving non-editorial employees, or by conduct that has only a distant and attenuated relationship to content. See CNN OB 55-56. As the dissent in Wilson noted, the SLAPP statute "does not bar a plaintiff from litigating an action that arises out of the defendant's free speech" activity, "nor does it confer any kind of immunity on protected activity." Wilson, 6 Cal. App. 5th at 843 (Rothschild, P.J., dissenting). Instead, if the defendant makes the necessary showing under prong one, courts still must allow claims to proceed if the plaintiff meets his or her burden under the second prong of the statute, and shows a probability of success on the merits of the claim. Id.

by its language or history. E.g., Equilon Enterprises v. Consumer Cause, Inc., 29 Cal. 4th 53, 61 (2002) (rejecting "intent to chill" requirement); Simpson Strong-Tie Co., Inc. v. Gore, 49 Cal. 4th 12, 21-22 (2010) (exemptions must be construed narrowly); Barry v. State Bar of California, 2 Cal. 5th 318, 321 (2017) (refusing to limit fee recovery under Section 425.16(c), explaining that "[t]he statute instructs that its provisions are to be 'construed broadly'"); Jarrow Formulas v. LaMarche, 31 Cal. 4th 728, 735 (2003) (adhering to "express statutory command" that the SLAPP statute be "construed broadly").[3]

The broad construction mandate should be applied to determinations of what constitutes a matter of "public interest" under Subsection (e)(4), as intermediate appellate courts have recognized. For example, the Court of Appeals in Nygård, Inc. v. Uusi-Kerttula, 159 Cal. App. 4th 1027 (2008),

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[3] See also Navellier v. Sletten, 29 Cal. 4th 82, 91 (2002) (SLAPP statute does not exclude any particular type of cause of action from its operation; excluding contract and fraud claims from statute's ambit "would contravene the Legislature's express command that section 425.16 'shall be construed broadly'"); Soukup v. Law Offices of Herbert Hafif, 39 Cal. 4th 260, 279 (2006) ("the Legislature has directed that the statute 'be construed broadly.' To this end, when construing the anti-SLAPP statute, '[w]here possible, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law…") (internal citations omitted); Club Members For An Honest Election v. Sierra Club, 45 Cal. 4th 309, 318 (2008) (SLAPP statute's exemption for cases brought purely in the public interest are construed narrowly to conform with legislative intent); Vargas v. City of Salinas, 46 Cal. 4th 1, 19 (2009) (broad interpretation required conclusion that statute applies to claims against government officials).

explored this question at length, surveying the cases and legislative history before concluding:

> Taken together, these cases and the legislative history that discusses them suggest that 'an issue of public interest' within the meaning of section 425.16, subdivision (e)(3) is any issue in which the public is interested. In other words, the issue need not be 'significant' to be protected by the anti-SLAPP statute – it is enough that it is one in which the public takes an interest.

Id. at 1042 (original emphasis). See also Chaker v. Mateo, 209 Cal. App. 4th 1138, 1146 (2012) (recognizing "the broad parameters of public interest within the meaning of section 425.16"); Seelig v. Infinity Broad. Corp., 97 Cal. App. 4th 798, 808 (2002) ("public interest" requirement, "like all of section 425.16, is to be construed broadly"); Damon v. Ocean Hills Journalism Club, 85 Cal. App. 4th 468, 481 (2000) (public interest "has been broadly construed to include ... private conduct that impacts a broad segment of society"); Hecimovich v. Encinal Sch. Parent Teacher Org., 203 Cal. App. 4th 450, 464 (2012) ("the question whether something is an issue of public interest must be construed broadly") (citation omitted); Hilton v. Hallmark Cards, 599 F.3d 894, 905-06 (9th Cir. 2010) (defendants' activities "need not involve questions of civic concern; social or even low-brow topics may suffice").

Subjects deemed to be of public interest have included "safety in youth sports, not to mention problem coaches/problem parents in youth sports" (Hecimovich, 203 Cal. App. 4th at 468 (2012)); domestic violence

(Sipple v. Foundation for Nat. Progress, 71 Cal. App. 4th 226, 238 (1999)); treatment for depression (Rivera v. First DataBank, Inc., 187 Cal. App. 4th 709 (2010)); diet supplements (Nagel v. Twin Laboratories, Inc. 109 Cal. App. 4th 39 (2003)); product quality (Wilbanks v. Wolk, 121 Cal. App. 4th 883 (2004)); plastic surgery (Gilbert v. Sykes, 147 Cal. App. 4th 13 (2007)); the "broad topic of the financial stability of our banking system" (Summit Bank v. Rogers, 206 Cal. App. 4th 669, 694-95 (2012)); independent rock and roll bands (Stewart v. Rolling Stone LLC, 181 Cal. App. 4th 664, 677-78 (2010)); and college football (McGarry v. University of San Diego, 154 Cal. App. 4th 97 (2007)), among many others.

These decisions are consistent with the Legislature's intended broad construction of the SLAPP statute, and this Court's directive that the statute should be interpreted broadly. As discussed below, the broad interpretation of "public interest" also is consistent with the distinction drawn between "public" and "private" subjects in analogous First Amendment jurisprudence.

B. The SLAPP Statute Should Be Interpreted Consistently With First Amendment Protections For Speech That Is Not About Private Matters.

The question of what constitutes an issue of "public interest" or a "public issue" did not spring to life when the Legislature passed the SLAPP statute in 1992, nor should the interpretation of this language be done in a vacuum. Courts considering claims for invasion of privacy have long

considered the distinction between information that is "private" and information that is "public" or is of legitimate "public interest" in the context of constitutionally-protected speech. The principles used in those decisions are instructive here: If a topic is deemed to be of "legitimate public concern" in adjudicating a private facts claim, it should, by definition, fall within the SLAPP statute's even broader definition of matters of "public interest."

For example, courts routinely have recognized that information that is already "public," or involves events occurring in public, cannot give rise to a claim for invasion of privacy.[4] By analogy, claims arising from speech that involves something "public" – as opposed to "private" – should fall within the expansive interpretation of the SLAPP statute. Furthermore, a substantial body of law recognizes First Amendment protections where the information disclosed was a matter of legitimate public interest.[5]

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[4] See, e.g., Gill v. Hearst Publ. Co., 40 Cal. 2d 224, 230 (1953) (no privacy claim arose from publishing photograph of couple embracing in public market, although it "extended knowledge of the particular incident to a somewhat larger public than had actually witnessed it"); Aisenson v. ABC, 220 Cal. App. 3d 146, 162-63 (1990) (rejecting privacy claim arising from videotaping individual in public view); Sipple v. Chronicle Publ. Co., 154 Cal. App. 3d 1040, 1047 (1984) (rejecting privacy claim arising from disclosure of plaintiff's sexual orientation); Virgil v. Time, Inc., 527 F.2d 1122, 1126 (9th Cir. 1975), cert. denied, 425 U.S. 998 (1976) ("[m]erely giving further publicity to information about plaintiff that is already public" is not actionable).

[5] See, e.g., Smith v. Daily Mail Publ'g, 443 U.S. 97, 103 (1979) (striking down statute barring publication of juvenile defendants' names;

1. This Court Has Defined "Newsworthiness" And "Public Concern" Broadly In Analogous Contexts Involving Speech.

In Shulman v. Group W Productions, Inc., 18 Cal. 4th 200 (1998), this Court held that "lack of newsworthiness is an element of the 'private facts' tort, making newsworthiness a complete bar to common law liability." Id. at 215. To reach this conclusion, this Court reviewed decades of First Amendment jurisprudence to consider how courts should determine what matters are of "legitimate public concern." Id. at 224-25, 229. Several guiding principles emerge from this thorough analysis:

First, this Court noted the importance of consistent decision-making. Citing earlier precedents, it recognized the "strong constitutional policy against fact-dependent balancing of First Amendment rights against other interests." Id. at 221. "'Because the categories with which we deal – private and public, newsworthy and nonnewsworthy – have no clear profile, there is a temptation to balance interests in ad hoc fashion in each case. Yet history teaches us that such a process leads too close to discounting society's stake in First Amendment rights.'" Id. (quoting Briscoe v. Reader's Digest Ass'n, 4 Cal. 3d 529, 542 (1971)).

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publication of "truthful information about a matter of public significance" is constitutionally protected); Kapellas v. Kofman, 1 Cal.3d 20, 36 (1969) ("newsworthy" publication was constitutionally protected).

Second, this Court concluded that the importance of protecting First Amendment rights required "considerable deference to reporters and editors" in deciding what was of legitimate public interest. Id. at 224. It explained, "[b]y confining our interference to extreme cases, the courts 'avoid unduly limiting the exercise of effective editorial judgment.' ... Nor is newsworthiness governed by the tastes or limited interests of an individual judge or juror; a publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it." Id. at 225 (citations omitted; emphasis added).[6]

Third, this Court noted that "newsworthiness is not limited to 'news' in the narrow sense of reports of current events," but instead "extends also to the use of names, likenesses or facts in giving information to the public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published." Id. at 225 (quotation omitted). Consequently, "newsworthiness" can encompass a "news report or an entertainment

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[6] See also Miami Herald v. Tornillo, 418 U.S. 241, 258 (1974) ("[t]he choice of material to go into a newspaper ... and treatment of public issues and public officials – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time"); Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U.S. 376, 391 (1973) ("we reaffirm unequivocally the protection afforded to editorial judgment and to the free expression of views on these and other issues, however controversial").

feature," as well as "the reproduction of past events, travelogues and biographies," or "information concerning interesting phases of human activity." Id. (quotations omitted).

Fourth, this Court held that in situations involving "otherwise private individuals involved in events of public interest," courts should examine "the logical relationship or nexus, or the lack thereof, between the events or activities that brought the person into the public eye and the particular facts disclosed." Id. at 224. A defendant's speech satisfies the newsworthiness test if the facts about the plaintiff "have some substantial relevance to a matter of legitimate public interest"; conversely, speech may fall outside of this broad protection if "the material revealed ceases to have any substantial connection to the subject matter of the newsworthy report." Id. (emphasis added).

Applying these principles, this Court held that an accident victim's "appearance and words as she was extricated from [an] overturned car, placed in a helicopter and transported to the hospital were of legitimate public concern," which barred her disclosure of private facts claim as a matter of law. Id. at 228-230. Although the plaintiff was a private figure, this Court reasoned that the video showing her "injured physical state (which was not luridly shown) and audio showing her disorientation and despair were substantially relevant to the segment's newsworthy subject

matter," and therefore could not be considered in isolation from the broad topic of the show. Id. at 229.

Several years later, in Taus v. Loftus, 40 Cal. 4th 683 (2007), this Court rejected a private facts claim brought by another individual whose personal life was discussed in the defendants' scholarly and journalistic works about the controversial issue of repressed memories of childhood abuse. Applying the broad standards enunciated in Shulman, this Court held that, even assuming the plaintiff was "an otherwise private person involuntarily involved in an event of public interest," the statements about her were newsworthy because of their relevance to the broader topic of defendants' speech, which was plainly of public concern. Id. at 719.

Similarly, in Gates v. Discovery Communications, Inc., 34 Cal. 4th 679 (2004), this Court held that an "invasion of privacy claim based on allegations of harm caused by a media defendant's publication of facts obtained from public official records of a criminal proceeding is barred by the First Amendment to the United States Constitution." Id. at 696. The holding was premised on the notion that, "[b]y placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served," and that the "dissemination [of public records] was in the public interest." Id. at 695 (quoting Shulman, 18 Cal. 4th at 217-18).

Notably, both Gates and Taus were SLAPP cases, in which the courts not only held that privacy claims were barred on the merits because they arose from newsworthy/public interest speech, but also necessarily found that Section 425.16's threshold public interest standard had been satisfied. Gates, 34 Cal.4th at 696; Taus, 40 Cal.4th at 712-13. This Court implicitly recognized that the principles discussed above were relevant not only to the "merits" of a privacy claim, but also to evaluating the meaning of the "public issue" and "public interest" language in the SLAPP statute. Just as the Court recognized in Shulman, the analysis must begin by recognizing the need to broadly protect the exercise of free speech – indeed, that was the Legislature's unambiguously expressed motivation for enacting the statute. See Section II.A. And, just as in privacy lawsuits, courts should adopt an interpretation of the "public interest" language in the SLAPP statute that avoids ad hoc and inconsistent application of the law. Shulman, 18 Cal. 4th at 225.

Here, if Plaintiff had sued for invasion of privacy based on the disclosure of his termination as a news producer following a plagiarism investigation, his lawsuit clearly would have failed. As discussed in more detail below, there is a demonstrated public interest in the inner workings of news organizations like CNN and how they make editorial decisions that affect the accuracy and reliability of news content upon which the public relies to make important civic decisions. See Section II.E. The

determination of whether a statement is of "public interest" under the SLAPP statute cannot be more restrictive: the statute's breadth is legislatively mandated, and does not include restrictive language or the balancing of interests that may arise in a merits decision. The Court of Appeal erred by engaging in an ad hoc application of the law, based on its own knowledge and interests, rather than considering whether the information disclosed was "private," or was of legitimate public interest.

2. The United States Supreme Court Has Applied An Expansive "Public Concern" Test In Speech Cases.

United States Supreme Court decisions from analogous First Amendment contexts also provide a useful guide for interpreting the SLAPP statute's public interest standard. Section 425.16 opens with a declaration that the "Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." C.C.P. § 425.16(a) (emphasis added). It then provides for a special motion to strike 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...." Id. § 425.16(b)(1).

As one court noted in an early SLAPP decision, "Section 425.16 sets out a mere rule of procedure, but it is founded in constitutional doctrine."

Ludwig v. Superior Court, 37 Cal.App.4th 8, 21 (1995). Another court observed that the "anti-SLAPP statute reinforces the self-executing protections of the First Amendment." Paterno v. Superior Court, 163 Cal.App.4th 1342, 1349 (2008). See also Dowling v. Zimmerman, 85 Cal. App. 4th 1400, 1414 (2001) (Section 425.16 was "designed to protect citizens in the exercise of their First Amendment constitutional rights of free speech and petition") (quotation omitted).

Nearly eight decades ago, the U.S. Supreme Court addressed the parameters of protected speech involving matters of "public concern," in striking down a statute that restricted labor picketing. As the Court explained, the "freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." Thornhill v. Alabama, 310 U.S. 88, 101-02 (1940). The Court again considered whether speech was of "public interest and concern" when it held that First Amendment protections apply in state court litigation involving private parties, not just in direct challenges to government restrictions on speech. New York Times Co. v. Sullivan, 376 U.S. 254, 266 (1964).

Following these seminal decisions, the Court has developed legal standards in a wide variety of different free speech contexts that include evaluating whether speech involves a matter of public interest or public

concern. In defamation law, for example, if the speech is about an issue of public concern, the plaintiff bears the burden of proving that it is materially false, and the defendant cannot be held liable without some showing of fault. See Milkovich v. Lorain Journal Co., 497 U.S. 1, 19-21 (1990); Philadelphia Newspapers v. Hepps, 475 U.S. 767, 776-77 (1986).

Similarly, in Bartnicki v. Vopper, 532 U.S. 514 (2001), the Supreme Court held that media defendants and their source could not be held liable for publishing a recording of an illegally intercepted phone conversation, even though disclosure was prohibited under federal and Pennsylvania wiretapping statutes. Id. at 526-27. It reasoned that the First Amendment bars "punishing disclosures of lawfully obtained information of public interest by one not involved in the initial illegality." Id. at 529. See also id. at 535 ("a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern").

Courts also have developed an extensive body of law addressing whether speech is of public interest in the context of public employees' First Amendment rights. "To be protected, the speech must be on a matter of public concern, and the employee's interest in expressing herself on this matter must not be outweighed by any injury the speech could cause to the interest of the State, as an employer, in promoting the efficiency of the

public services it performs through its employees." Waters v. Churchill, 511 U.S. 661, 668 (1994) (quotation omitted).[7]

The U.S. Supreme Court discussed this issue at length in Snyder v. Phelps, 562 U.S. 443 (2011). There, the Court held that protesters from the Westboro Baptist Church could not be held liable under several different state law torts (including intentional infliction of emotional distress, invasion of privacy by intrusion upon seclusion, and civil conspiracy) for picketing near a soldier's funeral service with signs reading "Thank God for Dead Soldiers," "God Hates Fags," and "You're Going to Hell," among other such messages. Id. at 448. Framing the constitutional question, the Court explained that "[w]hether the First Amendment prohibits holding Westboro liable for its speech in this case turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case." Id. at 451.

Acknowledging that "the boundaries of the public concern test are not well defined," the Court set forth "some guiding principles, principles

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[7] Accord Harris v. Quinn, 134 S. Ct. 2618, 2623 (2014) (First Amendment does not permit "a State to compel personal care providers to subsidize speech on matters of public concern by a union that they do not wish to join or support"); Pacific Gas & Electric Co. v. Public Utilities Com., 475 U.S. 1, 9 (1986) (First Amendment scrutiny applied to regulation of utility company's distribution of newsletter to customers where the publication "includes the kind of discussion of 'matters of public concern' that the First Amendment both fully protects and implicitly encourages") (quoting Thornhill, 310 U.S. at 101).

that accord broad protection to speech to ensure that courts themselves do not become inadvertent censors." Id. at 452. The Court offered an expansive definition of "public concern," holding that "[s]peech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community ... or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." Id. at 453 (quotations omitted). "The arguably 'inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.'" Id. (quoting Rankin v. McPherson, 483 U.S. 378, 387 (1987)).

The Court further explained that "[d]eciding whether speech is of public or private concern requires us to examine the content, form, and context of that speech, as revealed by the whole record," and "the court is obligated to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." Id. (quotations and alterations omitted). "In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said." Id. at 454.

Applying these principles, the Court determined that although the content of the defendant's messages "may fall short of refined social or political commentary, the issues they highlight – the political and moral

conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy – are matters of public import." Id.

Just as the weight of California authority recognizes that the SLAPP public interest analysis must focus on the broad topic of the speech rather than the particular plaintiff or statement (see Section II.C), the Court in Snyder recognized that "even if a few of the signs – such as 'You're Going to Hell' and 'God Hates You' – were viewed as containing messages related to Matthew Snyder or the Snyders specifically, that would not change the fact that the overall thrust and dominant theme of Westboro's demonstration spoke to broader public issues." Id. (emphasis added). Likewise, the Court rejected the plaintiff's argument that "the 'context' of the speech – its connection with his son's funeral – makes the speech a matter of private rather than public concern," concluding that Westboro's "speech is fairly characterized as constituting speech on a matter of public concern, and the funeral setting does not alter that conclusion." Id. at 454-55 (quotation omitted).

The Court cited two examples of speech that would fall outside of the broad scope of protection, which were drawn from its prior decisions: (1) the limited distribution of a particular individual's credit report to five recipients for the purpose of a business transaction, and (2) sexually explicit videos made by a police officer. Id. at 453 (citing Dun & Bradstreet v.

Greenmoss Builders, 472 U.S. 749, 762 (1985); City of San Diego v. Roe, 543 U.S. 77, 84 (2004)).

The expansive "public concern" standard developed through decades of federal constitutional cases and distilled in Snyder is fully consistent with the "newsworthiness" standard enunciated by this Court in Shulman and applied in a variety of privacy and SLAPP contexts. See Section II.B.1. As these authorities demonstrate, the "public interest" encompasses all speech that "can be fairly considered as relating to any matter of political, social, or other concern to the community ... or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." Snyder, 562 U.S. at 453 (quotations omitted). The analysis must afford "broad protection to speech" in order "to ensure that courts themselves do not become inadvertent censors" (Snyder, 562 U.S. at 452), while also providing "considerable deference to reporters and editors." Shulman, 18 Cal. 4th at 224. And in applying the test to speech about a specific individual or entity, courts must look to the broad topic of the defendant's speech, and merely ask if the plaintiff has "some substantial relevance to a matter of legitimate public interest." Id.

C. The Court Of Appeal Erred By Focusing Its "Public Interest" Analysis On The Identity Of The Particular Plaintiff, Rather Than The Broad Topic Of The Defendant's Speech.

The Wilson majority narrowly applied the SLAPP statute's public interest requirement in a manner inconsistent with the approach set forth

above. It held that Plaintiff's claims were outside the scope of Section 425.16 because "nothing indicates that plaintiff was a celebrity at any level," adding that, "[w]hile plagiarism by an international news figure such as Fareed Zakaria might constitute an issue of public interest, plaintiff was a behind-the-scenes person the public probably had never heard of – a producer not seen on camera who also occasionally wrote articles for CNN.com." 6 Cal. App. 5th at 837-38.

This remarkably narrow approach is a significant departure from prior decisions, which have held that, under the SLAPP statute, "the proper inquiry is whether the broad topic of defendant's conduct, not the plaintiff, is connected to a public issue or an issue of public interest." Doe v. Gangland Productions, 730 F.3d 946, 956 (9th Cir. 2013) (emphasis added). In Gangland, the Ninth Circuit relied on this Court's decision in Taus, explaining:

> [T]he California Supreme Court did not directly address the question whether a defendant must show a specific public interest in plaintiff under the anti-SLAPP statute. But the court's public interest inquiry focused on defendants' general activities, not the plaintiff's. The court found that 'there can be no question ... that defendants' general course of conduct from which plaintiff's cause of action arose was clearly activity 'in furtherance of [defendants'] exercise of ... free speech ... in connection with a public issue.'

Gangland, 730 F.3d at 955-56 (quoting Taus, 40 Cal. 4th at 712; original emphasis; citations omitted).

The overwhelming majority of SLAPP cases have properly applied this principle, focusing the "public interest" inquiry on the subject matter of the work, rather than the individual plaintiff. For example, in Hall v. Time Warner, 153 Cal. App. 4th 1337, 1347 (2007), the plaintiff was a private person who never sought publicity; nonetheless, the court found that claims arising from the defendant's conduct in reporting a news piece identifying her as a beneficiary of Marlon Brando's estate fell within the scope of the SLAPP statute. Id. As the court explained, if a "statement or conduct concerns a topic of widespread public interest and contributes in some manner to a public discussion of the topic," it satisfies the prong one requirements. Id. (emphasis added). "The public's fascination with Brando and widespread public interest in his personal life made Brando's decisions concerning the distribution of his assets a public issue or an issue of public interest." Id.

Similarly, in M.G. v. Time Warner, Inc., 89 Cal. App. 4th 623 (2001), former Little League players and coaches sued for invasion of privacy after the defendants used a team photograph to illustrate reports about molestation in youth sports. The appellate court rejected plaintiffs' attempt "to characterize the 'public issue' involved as being limited to the narrow question of the identity of the molestation victims," finding that definition was "too restrictive." Id. at 629. Instead, it concluded "[t]he broad topic of the article and the program was not whether a particular child

was molested but rather the general topic of child molestation in youth sports[.]" Id. (emphasis added). See also Lieberman v. KCOP Television, 110 Cal. App. 4th 156, 166 (2003) (applying SLAPP statute to doctor's claims arising from defendants' surreptitious videotaping of him in private examination room); Terry v. Davis Community Church, 131 Cal. App. 4th 1534, 1547-1549 (2005) (report disclosing accusations about alleged sexual relationship between church group leaders and a minor was protected; "the broad topic of the report ...was the protection of children in church youth programs, which is an issue of public interest").

Importantly, this body of law is consistent with the framework this Court applied in Shulman for analyzing analogous First Amendment law involving private-facts claims. See 18 Cal. 4th at 223-224 (even where the information at issue involves a private person "involuntarily" caught up in a matter of public interest, the constitutional interests prevail so long as there is a "logical nexus" between the information about the individual plaintiff and the broad subject matter of the program). See also Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222, 1232-1233 (7th Cir. 1993) (rejecting privacy claim arising from identification of plaintiff in discussing his checkered past because his identity was relevant to story) (cited with approval in Shulman, 18 Cal. 4th at 218); Sipple, 154 Cal. App. 3d at 1048-1050 (sexual orientation of man who saved President Ford's life was newsworthy); Pasadena Star-News v. Superior Court, 203 Cal. App. 3d

131, 133-134 (1988) (articles about abandoned newborn that identified mother were newsworthy).[8]

Thus, in analyzing the "public interest" issue, courts should not focus solely on the plaintiff, or on the statement(s) about the plaintiff, scrutinizing whether separate parts are individually of interest. If the statement at issue is "connected with" a topic of public interest,[9] it falls within the statute's broad scope.

This principle is apparent from the language of the SLAPP statute itself, which does not require that the speech itself be of public interest, but extends protection to conduct in furtherance of speech "in connection with

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[8] This framework also is consistent with the analysis used in defamation cases, where courts consider the work as a whole, rather than parsing individual statements out of context. See Balzaga v. Fox News Network, LLC, 173 Cal. App. 4th 1325, 1338 (2009) ("[a] defamatory meaning must be found, if at all, in a reading of the publication as a whole. ... Defamation actions cannot be based on snippets taken out of context") (quotations omitted).

[9] This, too, is consistent with other First Amendment jurisprudence. For example, courts evaluating trademark claims involving expressive works have held that First Amendment rights apply if there is any connection whatsoever between the content of the work and the plaintiff. E.g., Rogers v. Grimaldi, 875 F.2d 994, 999 (2d Cir. 1989). In finding that the Lanham Act's application to expressive works must be construed to avoid conflicts with First Amendment rights, the Rogers court emphasized that this balance favors the First Amendment "unless the title has no artistic relevance to the underlying work whatsoever, or, ...explicitly misleads as to the source or the content of the work." Id. at 999 (emphasis added). See also E.S.S. Entertainment 2000 v. Rock Star Videos, 547 F.3d 1095, 1098-1101 (9th Cir. 2008) (same; for "[a]n artistic work's use of a trademark" ... "the level of relevance merely must be above zero") (emphasis added).

a public issue or an issue of public interest." C.C.P. § 425.16(e)(4). Accordingly, the court in Tamkin v. CBS, 193 Cal. App. 4th 133 (2011), explained that "[w]e find no requirement in the anti-SLAPP statute that the plaintiff's persona be a matter of public interest." Id. at 144. Broadly applying Section 425.16, the court held that the statute applied to an unknown couple's claims based on the use of their names in a pre-broadcast script for the television program "CSI." Id. The court properly analyzed the public interest requirement by determining that "the public was demonstrably interested in the creation and broadcasting" of the show, rather than focusing narrowly on the plaintiffs' identity. Id. at 143.

The Wilson majority ignored this clear line of controlling authority, and overlooked the key statutory phrase "in connection with," when it narrowly framed the question here as whether there was "widespread public interest in whether plaintiff lifted phrases from other news reports when composing a Web article that was never published." Wilson, 6 Cal. App. 5th at 838. Properly applied, the SLAPP statute did not require CNN to demonstrate a public interest in Plaintiff himself or even in his particular conduct; CNN only had to show that its speech about this news report was "in connection with" such a matter of public interest. See Hunter v. CBS, 221 Cal. App. 4th 1510, 1527 (2013) ("the proper inquiry is not whether CBS's selection of a weather anchor was itself a matter of public interest;

the question is whether such conduct was 'in connection with' a matter of public interest") (emphasis added).

The majority's narrow approach creates a serious threat to the application of the SLAPP statute. It could be read to limit application of the SLAPP statute to generic discussions of broad political and social topics, or to statements about celebrities or other individuals already in the public eye. It has created significant uncertainty in the law's application, because journalistic and creative projects focusing on a particular individual as an example of a broader social issue traditionally have fallen within the broad protections of Section 425.16. E.g., Carver v. Bonds, 135 Cal. App. 4th 328, 343-44 (2005) (SLAPP statute applied to claims arising from newspaper article about a particular doctor's disciplinary issues because it was "a cautionary tale" reflecting broader health and safety issues).

For example, in Four Navy Seals v. AP, 413 F. Supp. 2d 1136 (S.D. Cal. 2005), the plaintiffs brought a privacy action against the Associated Press for publishing their photos along with a news story about the abuse of prisoners by U.S. armed forces during the Iraq War. Id. at 1140-41. The plaintiffs tried to evade the SLAPP statute by emphasizing they were not prominent individuals and arguing that "the case involve[d] protecting identities, not chilling speech." Id. at 1149. But the court correctly held that the statute applied because the defendant's publication of the photos

was "relevant" to "the broader topic of treatment of Iraqi captives by members of the United States military." Id.

The Second Appellate District applied the same principle in a recent case that illustrates the importance of a broad application of the SLAPP statute to artists and entertainers. In Brodeur v. Atlas Entertainment, Inc., 248 Cal. App. 4th 665 (2016), author Paul Brodeur alleged he was defamed by a scene in the 1970s period film American Hustle in which a character referenced his work in a scene involving safety concerns about microwaves, which were novel inventions that were just finding their way into American homes during the time period reflected in the film. Id. at 669-70.

The court rejected the plaintiff's argument that the "statement made in the scene 'has no bearing' on the film's depiction of American culture during the 1970's, and that there is no 'connection' between the topics of the film and that scene." Id. at 677. Because the reference to Brodeur's work reflected the wider social issues addressed by the film, the SLAPP statute's public interest requirement was satisfied. Id. See also Sarver v. Chartier, 813 F.3d 891, 902 (9th Cir. 2016) (SLAPP statute applied to claims based on use of plaintiff's "private persona" in the film The Hurt Locker; "the private aspects that Sarver alleges the film misappropriated are inherently entwined with the film's alleged portrayal of his participation in the Iraq War," a broad topic of public interest).

The threat posed by the majority's analysis in the Wilson case already has been evidenced, in a decision that followed this erroneous reasoning in denying a SLAPP motion involving a media publication to the general public. Dual Diagnosis Treatment Center, Inc. v. Buschel, 6 Cal. App. 5th 1098, 1101 (2016). There, a Fourth Appellate District panel held that the statute did not apply to a defamation action arising from the defendant's online publication that included information about a regulatory probe of a local rehabilitation center, which included a link to a newspaper article reporting that the head of the facility had been stripped of his medical license. Id. at 1101. Like the Wilson majority, the appeals court in Dual Diagnosis narrowly focused on the specific plaintiff, rather than the broad topic of the publication, finding that the "licensing status of a single rehabilitation facility is not of widespread, public interest" because that particular facility did not "impact[], or ha[ve] the potential to impact, a broad segment of society." Id. at 1105 (quotation omitted).

This Court should reject this unduly restrictive interpretation, which could undermine the efficacy of the SLAPP statute by excluding untold numbers of valuable news reports and expressive works from its scope.

D. The Wilson Majority Applied An Unduly Restrictive Framework For Evaluating What Constitutes A Matter Of "Public Interest."

The Court of Appeal reached its misguided conclusion here by utilizing an extra-statutory framework for identifying matters of public

interest that has been sharply criticized as improperly limiting the scope of the SLAPP statute. What began as one court's observations about common threads in a handful of early SLAPP cases has evolved into a judicially-created multi-part analysis that some intermediate appellate courts are treating as a binding limit on Section 425.16. See, e.g., Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913, 924 (2003); Du Charme v. International Brotherhood of Electrical Workers, Local 45, 110 Cal. App. 4th 107, 119 (2003); Weinberg v. Feisel, 110 Cal. App. 4th 1122, 1133-34 (2003). In Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26 (2003), the court took the approach from Rivero and converted it into a formal three-part test, concluding that the SLAPP statute did not apply because the "speech here fits none of the Rivero categories." Id. at 33-34.

Despite many decisions to the contrary, and although nothing in the statute or legislative history supports such an interpretation, the Wilson majority read these few cases as limiting the definition of "public interest" to plaintiffs in the public eye and matters affecting large numbers of people, finding 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." Wilson, 6 Cal. App. 5th at 823-33 (emphasis added; quotation omitted).

Other courts rightfully have criticized this approach. For example, in Cross v. Cooper, 197 Cal. App. 4th 357 (2011), the Sixth Appellate District explained that it "is based on minimal authority and narrows the meaning of 'public interest' despite the Legislature's mandate to interpret the anti-SLAPP statute broadly," and raises "difficult additional questions concerning what limitations there might be on the size and/or nature of a particular group, organization, or community, in order for it to come within the rule." Id. at 381 n.15 (quotation omitted). Indeed, the same courts that originated this framework have not applied it consistently, disregarding it in cases where a panel concluded the SLAPP statute should be applied.

For example, four years after the Third Appellate District decided Weinberg, a different panel of that court properly granted a SLAPP motion after engaging in a thorough public interest analysis that did not even mention the three-part framework, or cite any of the Rivero/Weinberg/Du Charme line of cases. See Gilbert v. Sykes, 147 Cal. App. 4th 13 (2007). The court applied the SLAPP statute to claims arising from a patient's website criticizing her plastic surgeon, rejecting the doctor's argument that "statements on the Web site do not contribute to the public debate because they only concern [the patient's] interactions with him." Id. at 23 (original emphasis). Instead, the court looked at the patient's entire website, and the topics it encompassed, rather than focusing only on the statements about the plaintiff, and concluded that the speech at issue "contributed toward the

public debate about plastic surgery." Id. at 23. See also Hecimovich, 203 Cal. App. 4th at 472 (panel in Appellate District that decided Rivero and Du Charme applied SLAPP statute to claims involving an entirely unknown plaintiff and a dispute among small number of people, focusing on the broad topic of the speech).

The Wilson majority also relied on language from Weinberg which added that court's own observations about how "an issue of public interest" should be defined. See Wilson, 6 Cal. App. 5th at 832 (quoting Weinberg, 110 Cal. App. 4th at 1132-33). But the "guiding principles" identified by the Weinberg court are all restrictions that narrow the definition of public interest speech. Weinberg, 110 Cal. App. 4th at 1132-33. This approach not only contradicts the broad construction mandate, but relied on inapposite cases applying a different, and far narrower, standard for determining whether a plaintiff should be deemed to be a "public figure" for purposes of defamation law. Id.

The "public figure" standard is purposefully narrower and stricter than the "public interest" inquiry; it triggers the constitutional actual malice requirement, a unique extra layer of protection for speech about public plaintiffs that goes above and beyond other legal protections. See Gertz v. Robert Welch, 418 U.S. 323, 346-48 (1974) (discussing the difference between the "public figure" and "public interest" analyses); Mosesian v. McClatchy Newspapers, 233 Cal. App. 3d 1685, 1696 (1991) (same;

explaining that the "public figure" standard focuses on "the individual plaintiff's identity and status – i.e., whether the plaintiff was a public official/figure or a private individual," as opposed to whether the defendant's speech "addressed issues of general or public interest").

Having started from the incorrect premise that "public figure" cases can be used to determine if speech is connected to matters of "public interest," the Weinberg court concluded that "the assertion of a broad and amorphous public interest is not sufficient." Weinberg, 110 Cal. App. 4th at 1132. This has since become an oft-quoted phrase in decisions that apply an unduly narrow view of the SLAPP law. E.g., Wilson, 6 Cal. App. 5th at 833, 838; Dual Diagnosis, 6 Cal. App. 5th at 1104. The sole support for that phrase is the U.S. Supreme Court's decision in Hutchinson v. Proxmire, 443 U.S. 111 (1979), a libel decision that focused entirely on whether the plaintiff was a public figure. Weinberg, 110 Cal. App. 4th at 1132 (citing Hutchinson, 443 U.S. at 135)).

This Court appropriately has cautioned against using the "public figure" standard from libel law to determine if the SLAPP statute's much broader "public interest" test is met. See Taus, 40 Cal. 4th at 704 n.8 (explaining that it was not necessary to decide if the plaintiff was a limited purpose public figure in order to determine if the anti-SLAPP statute applied to her claims). Because the Legislature chose to make the SLAPP statute available to all cases arising from speech in connection with issues

of public interest, and not only cases brought by public figures as defined for purposes of defamation law, the restrictions that the Weinberg court derived from public figure libel cases have no place in the first prong analysis.[10]

The Wilson majority and other courts have undervalued important First Amendment interests by treating the Rivero-Weinberg-Du Charme line of cases as a binding public interest test that limits the scope of Section 425.16. This extra-statutory framework contradicts the broad construction mandate, excludes worthy cases from the SLAPP statute's reach, and, as shown by subsequent decisions rendered by the very same courts that developed these restrictive standards, is inadequate to address the full range of claims that fall within the scope of the statute.

Accordingly, Amici urge this Court to disapprove Rivero, Weinberg, Commonwealth Energy, Du Charme, Dual Diagnosis, and other subsequent decisions to the extent that they impose extra-statutory limitations on the SLAPP statute's public interest standard. Instead, this Court should clarify that Section 425.16 incorporates the same broad and flexible public interest

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[10] Courts have made clear that defamation claims can be struck under the SLAPP statute based on a variety of legal defenses and doctrines, regardless of the plaintiff's public figure status or whether statements were made with actual malice. E.g, The Garment Workers Center v. Superior Court, 117 Cal. App. 4th 1156, 1162-63 (2004) (vacating order allowing defamation plaintiff to take discovery to oppose a SLAPP motion where the defendant also had other potentially dispositive defenses).

standard that this Court and the United States Supreme Court have applied in other free speech contexts, and that many intermediate California courts have applied when evaluating the SLAPP statute. See Section II.B, II.C.

E. The Public Interest Test Is Met In This Case.

When the correct standards are applied, the claims at issue here easily fall within the SLAPP statute's broad public interest test. Plaintiff's lawsuit arises from CNN's actions in making hiring and firing decisions and determining assignments for editorial employees engaged in reporting and writing news content for dissemination to the public; enforcing its editorial policies against plagiarism in news stories; and in stating that Plaintiff had committed plagiarism in a draft news story. E.g., CNN OB 18-19.

All of this conduct is "in connection with" CNN's decisions about gathering and disseminating news to the public, which easily falls within the broad parameters of the public interest test. C.C.P. § 425.16(e)(4). As the Ninth Circuit held in Greater L.A. Agency on Deafness, Inc. v. CNN, Inc., 742 F.3d 414 (9th Cir. 2014), "where, as here, an action directly targets the way a content provider chooses to deliver, present, or publish news content on matters of public interest, that action is based on conduct in furtherance of free speech rights and must withstand scrutiny under California's anti-SLAPP statute." Id. at 425.

Similarly, in San Diegans for Open Government v. San Diego State University Research Foundation, 13 Cal. App. 5th 76 (2017) ("SDOG"), the plaintiff's conflict-of-interest claims under the Government Code fell under Subsection (e)(4) because "Inewsource is a news organization that publishes news stories of public interest, and its decision of whom to partner with to deliver the news (i.e., KPBS, under the challenged contracts) is conduct in furtherance of its protected speech on matters of public interest." SDOG, 13 Cal. App. 5th at 105. "SDOG is not seeking to void a contract to make widgets or to construct a building. It is seeking to void contracts that directly affect the content of news stories the public receives. That protected content brings this case within section 425.16, subdivision (e)(4)." Id. at 105-106.[11]

The same is true here. The Wilson majority narrowly framed Plaintiff's claims as involving a "behind-the-scenes" news producer whose allegedly plagiarized article did not end up being published. Wilson, 6 Cal. App. 5th at 838-39. But as discussed above, this ignores the statutory language that applies the statute to speech "in connection with" matters of public interest, and improperly focuses on the narrow particulars of the plaintiff in isolation. See Section II.C.

[11] This Court has granted review and held SDOG pending the outcome of the current appeal. See 399 P.3d 644 (Aug. 17, 2017).

But even with respect to Plaintiff's own situation, there is a strong public interest in the inner-workings of news organizations like CNN and how they enforce their ethics policies, including decisions that certain pieces will not be published. The public relies on the accuracy of media outlets for information it uses to make important civic choices. See Courthouse News Serv. v. Planet, 750 F.3d 776, 786 (9th Cir. 2014) (in reporting on public affairs the "news media ... are surrogates for the public" and the "free press is the guardian of the public interest") (quotation omitted). Thus, for example, in Paterno v. Superior Court, 163 Cal. App. 4th 1342 (2008), the appellate court easily found that the SLAPP statute applied, acknowledging the significant public interest in the subject matter of a magazine article that presented a "behind-the-scenes look" at controversies at the Santa Barbara News-Press, including allegations that the newspaper's management exerted improper influence over news coverage. Id. at 1346-47.

This Court similarly emphasized the importance of journalism ethics and the need for media organizations to be vigilant about accuracy and transparent with the public, in a recent decision involving disgraced former journalist Stephen Glass. In re Glass, 58 Cal. 4th 500 (2014). In rejecting Glass' application for a law license on moral fitness grounds, this Court noted that his conduct as a magazine reporter "violated ethical strictures governing his profession," including the Society of Professional

Journalists' admonitions that "'[t]he duty of the journalist is to ... seek[] truth and provid[e] a fair and comprehensive account of events and issues [and] striv[e] to serve the public with thoroughness and honesty .... Deliberate distortion is never permissible.'" Id. at 522-23 (quoting Code of Ethics of the Society of Prof. Journalists (1996 rev.) reprinted in Brown et al., Journalism Ethics, a Casebook of Professional Conduct (4th ed. 2011) p. 8); id. at 526). This Court concluded that denying Glass a law license was appropriate, because of the Court's "duty to protect the public and maintain the integrity and high standards of the profession." Id. at 526.

Notable for purposes of the instant appeal, this Court's opinion included an extended discussion of the investigation into Glass' work that had been conducted by the editor of The New Republic. Id. at 508-10. After the editor learned of concerns about Glass' articles, he conducted an exhaustive internal probe that ultimately led to Glass' termination. Id. at 508-09. The editor recognized the importance of being accountable to readers and viewers, and the strong public interest in vigorously enforcing against ethical lapses like plagiarism or outright fabrication.[12]

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[12] Stephen Glass' story inspired a 2003 movie, "Shattered Glass." See http://www.imdb.com/title/tt0323944/. This and other recent films like "Spotlight" and "The Post" underscore the strong public interest in how information is gathered and reported to the public, and other "behind-the-scenes" editorial matters. See generally Joe Nocera, "When Journalism Catches Hollywood's Eye," N.Y. Times (Dec. 31, 2015), available at https://www.nytimes.com/2016/01/03/movies/when-journalism-catches-hollywoods-eye.html.

The Wilson majority dismissed these policy concerns, however, because it did not believe the plagiarism allegations against Plaintiff were sufficiently serious. 6 Cal. App. 5th at 839. It opined that, "[w]hile Plaintiff's conduct may or may not have been an acceptable practice at CNN and may or may not have constituted a legitimate ... reason for his termination, it was not so grave or scandalous as to make it a topic of widespread public interest." Id. at 839, n. 4. The court accepted Plaintiff's characterization that he merely used "a few of the same or similar phrases ... in an unpublished Web article," finding that this ethical lapse was not a serious matter when compared to the "publication of a false article," which would be "far more egregious and scandalous." Id. (original emphasis).

The court's subjective weighing of the seriousness of the alleged journalistic breach was improper. First, it conflated the two stages of the SLAPP inquiry, making the threshold public interest standard dependent on the Court's view of the seriousness of Plaintiff's alleged plagiarism or the merits of the case. See Section III. The relevant question was whether CNN's conduct was "in connection with" matters of public interest, not whether Plaintiff's alleged wrongdoing was as "egregious and scandalous" as some other breach of journalistic ethics.

Second, the majority's approach is precisely the type of government "intrusion into the function of editors" that the First Amendment precludes. Tornillo, 418 U.S. at 258. There is no dispute that the conduct at issue here

directly involved CNN's news content; the majority decision parsed the "phrases" and "sentences" used in a draft article. Wilson, 6 Cal. App. 5th at 839, n.4. The court simply substituted its own judgment for that of CNN's news editors about whether Plaintiff's alleged conduct was a serious journalistic ethics matter. Id.

The experienced journalists overseeing the matter at CNN had good reason to treat the matter seriously. Even relatively minor incidents of plagiarism have been harbingers of far more serious ethical issues. The best-known example is that of Jayson Blair, a reporter who left the New York Times in 2003, shortly after it was discovered that an article he wrote "included passages that were similar to some that appeared earlier in the San Antonio Express-News." Jacques Steinberg, "Times Reporter Resigns After Question on Article," N.Y. Times (May 2, 2003), available at http://www.nytimes.com/2003/05/02/us/times-reporter-resigns-after-questions-on-article.html. A subsequent investigation of his prior work, prompted by this discovery, uncovered "widespread fabrication and plagiarism" that the newspaper characterized as a "profound betrayal of trust." Dan Barry et al., "Correcting the Record: Times Reporter Who Resigned Leaves Long Trail of Deception," N.Y. Times (May 11, 2003), available at http://www.nytimes.com/2003/05/11/us/correcting-the-record-times-reporter-who-resigned-leaves-long-trail-of-deception.html.

The public's unquestionable interest in ethical journalism, and its interest in knowing how a news organization responds to an ethical breach,[13] plainly shows the error by the majority in downplaying the seriousness of the allegations in this case. But it was not proper for the court to impose its subjective judgment in the first place. As this Court has observed, courts making public interest determinations must "avoid unduly limiting the exercise of effective editorial judgment.' ... Nor is newsworthiness governed by the tastes or limited interests of an individual judge or juror." Shulman, 18 Cal. 4th at 225.

This Court should find that the SLAPP statute's public interest requirement is satisfied in this case, and clarify that the standard must be broadly construed consistent with familiar constitutional principles.

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[13] The Blair scandal generated extensive media coverage beyond the New York Times itself, again demonstrating the substantial public interest in journalism ethics and in knowing how news organizations enforce their standards to ensure the public receives accurate information. E.g., Katie Couric, "A Question of Trust," Dateline NBC (Mar. 17, 2004), available at http://www.nbcnews.com/id/4457860/ns/dateline_nbc/t/question-trust/#.WnZDY0byuUk. A 2013 documentary film was released about it entitled "A Fragile Trust: Plagiarism, Power, And Jayson Blair At The New York Times." See http://www.kpbs.org/news/2014/apr/30/independent-lens-fragile-trust-plagiarism-power-an/.

III. PRONG ONE OF THE SLAPP STATUTE SHOULD FOCUS ON THE CONDUCT ON WHICH A CLAIM IS BASED, NOT ON ALLEGATIONS ABOUT THE DEFENDANT'S PURPORTED MOTIVES.

Both the majority and the dissent in Wilson effectively agreed on one key threshold issue raised by this appeal: a media organization's decisions about who reports, writes, or delivers news content on its behalf can be protected conduct under Section 425.16(e)(4). See Wilson, 6 Cal. App. 5th at 834 ("[u]ndoubtedly, a producer or writer shapes the way in which news is reported. Thus, defendants' choice of who works as a producer or writer is arguably an act in furtherance of defendants' right of free speech"); id. at 842 (Rothschild, P.J., dissenting) (recognizing that "the employment decisions concerning the work of a CNN news producer such as Wilson" qualify "as an act in furtherance of the exercise of free speech" under the SLAPP statute) (quotation omitted).

Nonetheless, the majority declined to apply the SLAPP statute in the underlying case, because it accepted the Plaintiff's allegation that his claims arose from CNN's "discrimination and retaliation," as opposed to CNN's act – firing him from his editorial position. Id. at 835. As Presiding Justice Rothschild correctly explained in her dissent, the Wilson majority erred by "expressly conflat[ing], in its first prong analysis, CNN's alleged discriminatory motive and the conduct upon which Wilson's action is based." Id. at 844 (Rothschild, P.J., dissenting).

The Second Appellate District enunciated the basic principle in Fox Searchlight Pictures, Inc. v. Paladino, 89 Cal. App. 4th 294 (2001). That case involved claims for breach of contract, confidence, and fiduciary duty in connection with a lawsuit that the defendant had filed. Id. at 307. The plaintiff argued that the claims fell outside of the SLAPP statute because each cause of action also included an allegation that the defendant mishandled confidential information, which was not protected activity. Id. at 307-08. The court rejected this attempt to evade Section 425.16, reasoning that "whether the material in question is privileged or confidential is not relevant to the threshold issue of whether the SLAPP statute applies," and a "plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action.'" Id. at 308.

This Court recently cited Paladino with approval when it held that courts can strike particular allegations of protected activity under prong two of the SLAPP statute, even if they are combined in a single cause of action. See Baral, 1 Cal. 5th at 387, 396. As the Court acknowledged, a contrary rule "permits artful pleading to evade the reach of the anti-SLAPP statute. By mixing allegations of protected and unprotected activity, the pleader may avoid scrutiny of the claims involving protected activity." Id. at 392. This Court further observed that,

> [a]s we noted in Navellier, '[t]he anti-SLAPP statute's

> definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning.' ...
>
> The anti-SLAPP procedures are designed to shield a defendant's constitutionally protected conduct from the undue burden of frivolous litigation. It follows, then, that courts may rule on plaintiffs' specific claims of protected activity, rather than reward artful pleading by ignoring such claims if they are mixed with assertions of unprotected activity.

Id. at 393 (emphasis added; citations omitted).

This Court concluded its opinion by noting that, "[a]lthough the issue arose here at the second step of the anti-SLAPP procedure, identification of causes of action arising from protected activity ordinarily occurs at the first step." Id. at 396. Under this initial inquiry, "[w]hen relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage." Id. (emphasis added). Then, "[i]f the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached," and the "burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." Id.

The Wilson majority did not follow this approach. Instead, it categorically denied CNN's SLAPP motion as to all claims by accepting Plaintiff's pleading tactic of combining multiple allegations of protected and unprotected activity. See Wilson, 6 Cal. App. 5th at 836-37 (accepting

Plaintiff's premise that each claim was based on more than a "decade" of discrimination, harassment and retaliation in addition to his ultimate firing). But Plaintiff's claims are not unrelated to CNN's content: he filed his lawsuit for wrongful termination and related claims only after he was fired in connection with the plagiarism investigation; he claims that this editorial decision was an "adverse action" that supplied an element of each claim. See id. at 828-29; CNN RB at 12.

Consequently, Plaintiff's claims arise at least in part from protected conduct under the first prong of the SLAPP statute. See Park v. Board of Trustees, 2 Cal. 5th 1057, 1063 (2017) ("courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability"). In Okorie v. LAUSD, 14 Cal. App. 5th 574 (2017), review denied 2017 Cal. LEXIS 9285 (Nov. 29, 2017), the court properly applied this Court's guidance in an analogous situation involving a pleading alleging discrimination and retaliation "where the plaintiff's protected and unprotected claims ... are not well delineated and are even enmeshed one within another and the moving party has sought to strike the entire complaint." Id. at 589. Synthesizing the guidance from this Court's decisions in Baral and Park, the appellate court correctly held that the SLAPP statute applied as a threshold matter because the defendant's communicative conduct was "not incidental to – but integral to – Plaintiffs' complaint and each cause of

action alleged therein." Id. at 595.

The majority in Wilson reached a different outcome by focusing exclusively on the unprotected activity, rather than disregarding it as directed by Baral. It compounded this error by accepting the complaint's legal conclusions and deeming Plaintiff's allegations about CNN's motive to be dispositive on the first prong analysis. This misguided approach would effectively bar application of the SLAPP statute to entire categories of claims, in contravention of clear authority from this Court holding that there is no particular "claim" that is categorically exempt from the SLAPP statute; Section 425.16 can apply to any type of claim if the statutory requirements are met. See CNN OB 28-32; CNN RB 11-13.

As CNN correctly explained, the majority treated "discrimination" and "retaliation" as conduct, rather than recognizing these terms as mere legal conclusions. See CNN RB 12. In contrast, the Court of Appeal in Hecimovich recognized this distinction, overturning the trial court's finding that the defendants' SLAPP motion should be denied because "the 'gravamen' of plaintiff's complaint was defamation," and "defamation cannot be protected activity within the anti-SLAPP analysis." 203 Cal. App. 4th at 455. The appeals court noted that the trial court had improperly framed the complaint in terms of the plaintiff's legal conclusion ("defamation"), instead of looking at the defendants' conduct (making statements about the plaintiff). Id. at 464.

The Wilson majority made the same mistake as the trial court in Hecimovich, stating that "[d]iscrimination and retaliation are not simply motivations for defendants' conduct, they are defendants' conduct." 6 Cal. App. 5th at 835 (original emphasis). But the same could be said of every claim in which motive is a required element.

For example, intentional infliction of emotional distress is one of the "favored causes of action in SLAPP suits." Hupp v. Freedom Communications, Inc., 221 Cal. App. 4th 398, 402 (2013). To state a claim for IIED, a plaintiff must allege both injury-producing conduct and an accompanying wrongful motivation. See Okorie, 14 Cal. App. 5th at 597 (elements of IIED claim include "extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress").

Under the Wilson majority's logic, a plaintiff could evade the SLAPP statute by arguing that an IIED claim does not arise from protected conduct, because the "intent to cause distress" was the conduct. Cf. 6 Cal. App. 5th at 835. But courts consistently have avoided conflating conduct and intent in this way, and have applied the SLAPP statute to IIED claims by focusing solely on the actions alleged to give rise to liability. E.g., Okorie, 14 Cal. App. 5th at 597-98; Hecimovich, 203 Cal. App. 4th at

464.[14]

Courts have applied the SLAPP statute to a broad range of causes of action that include, as one of the elements, a bad intent or wrongful motive. For example, in Cross, the court held that Section 425.16 applied to claims for inducing breach of contract, intentional interference with contract, and intentional interference with prospective economic relations, all based on the plaintiff's allegation that the defendants made negative statements about her property to a prospective buyer in order to derail the sale "in retaliation" for a rent dispute. 197 Cal. App. 4th at 365-66. See also Hansen v. Dep't of Corrections & Rehabilitation, 171 Cal. App. 4th 1537, 1545 (2008) (striking claim for whistleblower retaliation under Labor Code § 1102.5 that alleged defendants conspired to spread lies about plaintiff "in

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[14] The Wilson majority reasoned that absent the allegations of discriminatory and retaliatory motive, "plaintiff's employment-related claims would not state a cause of action and defendants no doubt would have demurred, not filed an answer and anti-SLAPP motion." 6 Cal. App. 5th at 835. To the extent that the majority was suggesting that a SLAPP motion cannot be brought on the grounds that the plaintiff failed to state a claim, it was mistaken. As this Court has held, it is entirely proper for a defendant to bring a SLAPP motion on this ground, as "a plaintiff responding to an anti-SLAPP motion must 'state and substantiate a legally sufficient claim." Taus, 40 Cal. 4th at 713-14 (emphasis added). Consequently, courts have "reject[ed the] conclusion that [an] anti-SLAPP motion must be denied when the trial court would have sustained [a] demurrer to same cause of action." Barry v. State Bar of California, 2 Cal. 5th 318, 328 (2017). As this Court noted, Section 425.16's "procedural protections would be lost if we were to adopt plaintiff's proposed rule requiring all jurisdictional challenges to be resolved on demurrer, rather than in the context of a special motion to strike." Id.

retaliation for complaints that he made during his employment"). Whether the elements of the claim have been satisfied – i.e., whether the defendant acted with the requisite intent, or wrongful motive – goes to the merits analysis in the second prong of the SLAPP statute. It is not appropriate to carve out all such cases as part of the first prong analysis.

Instead, even where a wrongful motive is part of a claim, courts evaluating the first prong of the SLAPP statute must focus on the defendant's conduct, not its alleged intent. Otherwise, any savvy litigant could structure a complaint to obscure explicit allegations of protected activity with conclusory assertions of a wrongful motivation. This would allow claims to evade scrutiny under Section 425.16 even if they actually target core First Amendment activity.

The danger is illustrated by Collier v. Harris, 240 Cal. App. 4th 41 (2015), in which the Fourth Appellate District noted that the lawsuit arose from a campaign for political office, where the "constitutional guarantee of free speech has its fullest and most urgent application." Id. at 52 (quotation and alterations omitted). But the plaintiff's suit against a political adversary asserted non-traditional claims such as false impersonation under Penal Code, § 528.5 and illegal use of a domain name under Business & Professions Code, § 17525, based on the defendant's registration of Internet domains using the plaintiff's name in order to redirect the online traffic to other political websites. Id. at 48. The plaintiff argued that these claims

fell outside of the SLAPP statute because the complaint alleged that the defendant engaged in "criminal impersonation of another committed to deceive the public." Id. at 53 (emphasis added).

If the logic of the Wilson majority was applied, the plaintiff in Collier could have evaded the SLAPP statute based on her allegation that the deception was the pertinent conduct giving rise to the claims. Cf. Wilson, 6 Cal. App. 5th at 835 ("[d]iscrimination and retaliation are not simply motivations for defendants' conduct, they are defendants' conduct") (original emphasis). But the court properly held that Section 425.16 applied because the act of registering the domains was the relevant conduct, and "the first step of the anti-SLAPP analysis focuses on the acts the plaintiff alleges as the basis for his or her claims, not the motive or purpose the plaintiff attributes to the defendant's acts." Collier, 240 Cal. App. 4th at 53 (emphasis added).

The court applied the same distinction in SDOG, which involved a paradigmatic SLAPP suit in which a small nonprofit news outlet was sued by an organization controlled by a prominent attorney who was the subject of critical news coverage. 13 Cal. App. 5th 76 at 83. Apparently aware that there was no viable defamation claim, the plaintiff instead seized upon the news outlet's partnership with KPBS, a department of San Diego State University, and sued for alleged violation of state conflict-of-interest laws. Id. at 89. The plaintiff then tried to avoid application of the SLAPP statute

by insisting that the claims arose from the defendants' "self-dealing" and "procuring of a contract by unlawful influence, [] not any free-speech or petitioning activity." Id. at 103 (quotation omitted).

The appeals court rejected this pleading artifice, explaining that "when determining whether SDOG's action arises from defendants' protected acts, we must separate the alleged unlawful motive (self-dealing) from defendants' conduct (entering into newsgathering and news producing contracts)." Id. at 104 (emphasis added). The court then properly concluded that the SLAPP statute applied because the conduct at issue – "defendants' decisions in entering into contracts to partner newsgathering, news reporting, and news production on television and other media" – was conduct in furtherance of speech under Subsection (e)(4). Id.

As Collier and SDOG demonstrate, courts must look past plaintiffs' allegations about a defendant's unlawful motive and focus on the actual conduct giving rise to the claim, or else the SLAPP statute's protections easily could be evaded through artful pleading. See also Stewart v. Rolling Stone LLC, 181 Cal. App. 4th 664, 678 (2010) (striking right of publicity and unfair competition claims against Rolling Stone based on the placement of editorial content near a cigarette advertisement; rejecting plaintiffs' argument that conduct was unprotected because the claims arose from the magazine's commercial motivation, not its "editorial decision").

Here, by focusing on Plaintiff's allegations of improper motive, the

majority allowed all of his claims to avoid scrutiny under the SLAPP statute even though they unquestionably arise, at least in part, from constitutionally-protected conduct. Because media organizations ultimately are responsible for the news reports and creative work produced by their employees, the First Amendment broadly protects the right of publishers and broadcasters to control their own content. See Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston, 515 U.S. 557, 569-70 (1995) (recognizing that by "combining multifarious voices" for their publications and broadcasts, cable operators and newspaper publishers "fall squarely within the core of First Amendment security").

The constitutional protection for choosing the contours of one's own message is not a "benefit restricted to the press," but is "enjoyed by business corporations generally and by ordinary people engaged in unsophisticated expression as well as by professional publishers." Id. at 574. Thus, the truism cited by the majority about the press having "no special immunity from generally applicable laws" is a red herring. Wilson, 6 Cal. App. 5th at 836. CNN does not owe its First Amendment rights and benefits under the SLAPP statute to any institutional label, but to the fact that it is engaging in expressive conduct by reporting and publishing the news. See Hurley, 515 U.S. at 570.

Although the First Amendment protects any speaker engaged in such activities, by virtue of their nature, news organizations like Amici

frequently have been subjects of precedential cases applying this principle and curtailing the government's ability to control editorial content directly or indirectly. For example, in Miami Herald v. Tornillo, 418 U.S. 241 (1974), the U.S. Supreme Court struck down a Florida statute affording a "right of reply" to political candidates, because it impermissibly encroached upon the editorial judgment of newspaper publishers. Id. at 258. The Court held that:

> [e]ven if a newspaper would face no additional costs to comply with a compulsory access law and would not be forced to forgo publication of news or opinion by the inclusion of a reply, the Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

Id. at 258 (emphasis added).

Because Plaintiff's claims arise at least in part from such conduct, the SLAPP statute should apply to this action as a threshold matter, irrespective of his allegations of wrongful motive. To hold otherwise would significantly weaken the protections of the SLAPP statute by inviting litigants to plead around protected activity.

IV. CONCLUSION

For all of these reasons, Amici respectfully request that this Court reverse the decision of the Court of Appeal, and hold that the SLAPP statute applies to Plaintiff's claims as a threshold matter.

Dated: February 7, 2018

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CERTIFICATE OF WORD COUNT

Pursuant to Rules of Court 8.520(c) and (f), the undersigned certifies that the text of this Application to Submit Amici Curiae Brief and Proposed Amici Curiae Brief, including footnotes, consists of 13,624 words in 13-point Times New Roman type as counted by the Microsoft Word 2010 word-processing program used to generate the text.

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APPENDIX A

Descriptions of Amici Curiae

Los Angeles Times Communications LLC ("The Times"), is the publisher of the Los Angeles Times, the largest metropolitan daily newspaper circulated in California. The Times also publishes through Times Community News, a division of the Los Angeles Times, the Daily Pilot, Coastline Pilot, Glendale News-Press, The Burbank Leader, Huntington Beach Independent, and the La Cañada Valley Sun, and maintains the website www.latimes.com, a leading source of national and international news.

CBS Corporation is a mass media company that creates and distributes content across a variety of platforms to audiences around the world. CBS's businesses include the CBS Television Network, CBS News, CBS Sports, CBS Television Stations, CBS Television Studios, CBS Global Distribution Group, CBS Interactive, CBS Films, Showtime Networks, CBS Sports Network, and Simon & Schuster.

NBCUniversal Media, LLC ("NBCUniversal"), is one of the world's leading media and entertainment companies in the development, production, and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal produces and distributes feature films, owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several

news and entertainment networks including MSNBC and CNBC, and a television stations group consisting of 29 owned-and-operated stations. NBC News produces the Today show, NBC Nightly News, Dateline, and Meet the Press.

American Broadcasting Companies, Inc. ("ABC") is a broad-based communications company with significant holdings in the United States and abroad. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations that regularly gather and report news to the public, including California stations KABC-TV, KGO-TV, and KFSN-TV. ABC News produces the television programs World News, 20/20, This Week, Good Morning America and Nightline, among others.

The California News Publishers Association (CNPA) is a non-profit trade association representing more than 800 daily, weekly, and student newspapers in California. For well over a century, CNPA has defended the First Amendment rights of publishers to gather and disseminate – and the public to receive – news and information.

The First Amendment Coalition (FAC) is a nonprofit, public interest organization committed to freedom of speech, more open and accountable government, and public participation in civic affairs. Founded in 1988, FAC's activities include free legal consultations on First Amendment issues, educational programs, legislative oversight of bills in

California affecting access to government and free speech, and public advocacy, including extensive litigation and appellate work. FAC's members are news organizations, law firms, libraries, civic organizations, academics, freelance journalists, bloggers, community activists, and ordinary citizens.

PROOF OF SERVICE

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On February 7, 2018, I hereby certify that I electronically filed the foregoing **APPLICATION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF LOS ANGELES TIMES COMMUNICATIONS LLP, CBS CORPORATION, NBCUNIVERSAL MEDIA, LLC, AMERICAN BROADCASTING COMPANIES, INC., CALIFORNIA NEWS PUBLISHERS ASSOCIATION, AND FIRST AMENDMENT COALITION IN SUPPORT OF DEFENDANTS AND RESPONDENTS** through the Court's electronic filing system, TrueFiling.

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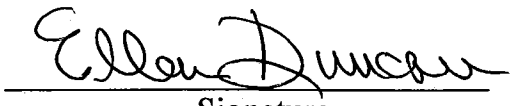
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