Case No. S262032

In the Supreme Court of the State of California

GREGORY GEISER,
Plaintiff, Appellant, and Cross-Respondent,
v.

PETER KUHNS, et al.
Defendants, Respondents, and Cross-Appellants.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FIVE, CASE NO. B279738
SUPERIOR COURT OF COUNTY OF LOS ANGELES
CASE NOS. BS161018, BS161019 & BS161020
THE HONORABLE JUDGE ARMEN TAMZARIAN

Petitioners' Opening Brief on the Merits

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Issue Presented

How should it be determined what public issue or issue of public interest is implicated by speech within the meaning of the anti-SLAPP statute (Code of Civ. Proc., § 425.16, subd. (e)(4)) and the first step of the two-part test articulated in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149–150 (*FilmOn*), and should deference be granted to a defendant's framing of the public interest issue at this step?

Introduction and Summary of Argument

The Court of Appeal ruled that the anti-SLAPP statute offered no protection to a group of displaced homeowners and housing rights advocates who led a public sidewalk picket protesting a real estate developer's business practices. To reach this conclusion, the court ignored the public interest in the speech at issue, treating the protest as a private dispute with little political significance. That decision threatens all people seeking to exercise their rights as protestors, and it flattens the analysis that the *FilmOn* decision last year set out for interpreting the anti-SLAPP statute's reference to "a public issue or an issue of public interest."

The facts here are largely undisputed. When Pablo and Mercedes Caamal lost the house they shared with their three children to foreclosure during the financial crisis, they didn't just seek to negotiate with the bank or the foreclosure purchaser. They chose to organize in a public way. They turned to the Alliance of Californians for Community Empowerment Action (ACCE)—one of the state's largest housing rights organizations—for help. Together with ACCE's Los Angeles director Peter Kuhns, they organized the community to denounce Wedgewood, the corporate buyer, and help the Caamals repurchase the

property. They held protests and publicized their story to the media.

And news media spread reports about the family's fight against Wedgewood to readers throughout the Southland. That coverage drew connections between the family's story and the larger narrative of the thousands of families who lost their homes to companies unwilling to negotiate.

After Wedgewood evicted the family, Kuhns, the Caamals, and a group of supporters held a public sidewalk demonstration outside Wedgewood CEO Greg Geiser's home. About 25 to 30 people attended. Police monitored the protest and gave no instructions or warnings to the demonstrators.

Geiser sued Kuhns for his decision to organize and participate in the public sidewalk demonstration. He also sued the Caamals. And his company placed a hit piece in Breitbart News and issued a press release about the dispute.

Recognizing the public reaction to the protest, Geiser also sought to prohibit future protest by moving to enact an ordinance that would criminalize similar protests in the future.

The Caamals used every tool available to people of limited means to participate in the public discussion around foreclosure and displacement and highlight their role in that narrative. They gathered supporters and held a vigil on their own front lawn and they protested on public sidewalks. They enlisted a state-wide advocacy organization. They sought and received media attention.

And all signs point to the protest implicating an issue of public interest: an ongoing campaign with ACCE; dozens of participants at a public sidewalk demonstration; repeat media coverage; attempts to change local law; and the plaintiff's own company placing articles and issuing press releases. Still, the majority of the Court of Appeal determined it was not enough for the anti-SLAPP statute to apply.

The Legislature enacted the anti-SLAPP statute to prevent and deter "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278.) "In the paradigmatic SLAPP suit, a well-funded developer limits free expression by imposing litigation costs on citizens who protest, write letters, and distribute flyers in opposition to a local project." (*FilmOn*, *supra*, 7 Cal.5th at p. 143, citing Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1296 (1997–1998 Reg. Sess.) as amended June 23, 1997, pp. 2–3; Barker, *Common-Law and Statutory Solutions to the Problems of SLAPPs* (1993) 26 Loyola L.A. L.Rev. 395, 396). The Legislature sought to interrupt the disturbing rise in wealthy, powerful, and politically well-connected plaintiffs filing such suits to shut down dissent by less powerful and less wealthy citizens or public interest groups by burying them in legal fees.

But because much human activity is carried out by speech, this Court began to recognize important limitations on the statute's application to prevent it from swallowing wide swaths of civil actions. Primary among those limitations is the requirement that the speech must "underlie[] or form[] the basis for the claim" for the statute to apply, not simply be "evidence of liability or a step leading to some different act for which liability is asserted." (*Park v. Bd. of Trs. of Cal. State Univ.* (2017) 2 Cal.5th 1057, 1060, 1062 (*Park*).) And even when speech forms the basis for a claim, speech is not "in furtherance of" or "in connection with" a public issue under subsection (e)(4)'s catchall provision unless contextual cues—including the identity of the speaker, the audience, and the purpose of the speech—show the speaker "participated in, or furthered, the discourse that makes an issue one of public interest." (*FilmOn*, *supra*, 7 Cal.5th at p. 151.) Without such limitations, the statute threatened to be "'fatal for most harassment, discrimination, and retaliation actions against

public employers,'" among other types of claims. (*Park*, *supra*, 2 Cal.5th at p. 1067 [quoting *Nam v. Regents of University of California* (2016) 1 Cal.App.5th 1176, 1179].)

But some courts, including the majority of the Court of Appeal below, have overcorrected, interpreting the statute so narrowly that it denies protection to even the paradigmatic SLAPP suit. This case presents the opportunity for this Court to explain how an overly narrow statutory construction threatens to deprive even textbook SLAPP suits from the law's protection.

A simple and effective way to protect the statute against such narrow constructions is to begin with appropriate deference to the defendant's identification of the public issue or issue of public interest. Starting with deference makes sense because the defendant is in the best position to identify the issue his speech implicated. Deference would also advance the anti-SLAPP statute's policy goals and is implicit in this Court's recent anti-SLAPP decisions. And deference in initially identifying the public interest allows courts to perform the fulsome contextual analysis required by the second part of *FilmOn*'s test.

The majority opinion threatens public protest, undermines *FilmOn*'s framework, and cripples the anti-SLAPP statute. By accepting the plaintiff's framing of the issue as a purely personal dispute between two former homeowners and the new purchaser, the Court of Appeal ignored that one of the state's largest housing rights organizations participated at every stage of this dispute, that its organizer ended up a defendant in these lawsuits, that dozens of participants joined the public protest, and that the media reported all of it along the way. As the dissenting opinion below found, the "upshot of the majority's [opinion] . . . is that . . . the venerable American tradition of peaceful public protest . . . is left diminished by a well-funded litigation scheme seeking to suppress it." (Dis. Opn. at p. 12.)

Properly applied, *FilmOn*'s framework—including consideration of the speakers' identity, audience, and purpose—reveals a public issue here. This Court should reverse.

Standard of Review

This Court reviews de novo the grant or denial of an anti-SLAPP motion. (*Park*, *supra*, 2 Cal.5th 1057, 1067.)

Statement of the Case

I. When a Family Falls Behind on Their Mortgage, Wedgewood Purchases the Home at a Foreclosure Auction and Evicts the Family (October 2015)

Mercedes and Pablo Caamal bought their Rialto home for $450,000 during the height of the national real estate bubble. (1 JA 96, 263, 281.[1]) Like many working-class home buyers at the time, they obtained their mortgages from big banks with no cash down. (1 JA 262–290.) They lived there with their family for about a decade. (1 JA 96.)

When the financial crisis hit, Mercedes and Pablo Caamal both lost their jobs, fell behind on their payments, and defaulted. (1 JA 292–299.) An affiliate of Wedgewood, LLC, the nation's largest fix-and-flip company, bought the home at a foreclosure auction for $284,000 and moved to evict the family. (1 JA 96; 2 JA 326–328.)

[1] Because this is a consolidated appeal from orders in three cases, most material in the record appears in identical or substantially similar form three separate times. For simplicity, this brief only cites the first instance of each document.

II. The Family and Supporters Stage a Sit-in at Wedgewood's Office and the Eviction Is Halted (December 17, 2015)

Once Mercedes and Pablo Caamal regained employment, they tried to reach out to Wedgewood in an effort to keep their home. (1 JA 96–98.) Wedgewood ignored them. (*Ibid*.) The Caamals turned to ACCE on account of its mission to save homes from foreclosures and fight against displacement of long-term residents. (1 JA 111.)

Having received only silence from Wedgewood and with a scheduled eviction pending, the Caamals—together with ACCE's Los Angeles Director Peter Kuhns and a group of other ACCE supporters who faced similar issues with displacement—staged a sit-in at Wedgewood's office building. (1 JA 96, 108, 111.) They sought a meeting with Wedgewood CEO Gregory Geiser to determine why Wedgewood refused to negotiate with the family. (*Ibid*.)

Geiser was out of the office. (2 JA 321.)

Wedgewood called the police. (1 JA 29, 111.) They responded, but no one was cited or arrested for anything. (1 JA 111.)

Wedgewood's Chief Operating Officer for Flip Operations Darin Puhl agreed to meet with the Caamals. (1 JA 96.) The other protesters left. (1 JA 111.) Together the Caamals and Puhl reached an agreement to halt the impending eviction. (1 JA 96.)

The next week, Mercedes Caamal wrote Geiser to thank him and his company for working with the family, halting the eviction, and its willingness to work with the family to negotiate a repurchase. (1 JA 96, 103.)

III. The Media Picks up the Story (December 17, 2015)

The media took note. La Opinión—the second largest newspaper in Los Angeles—ran a story about the Caamals' desperate attempt to remain in their home. (See *Familia logra parar el desalojo y tiene oportunidad de recuperar su hogar*, La Opinión (Dec. 17, 2015) <https://bit.ly/2YyMZ6z> [as of Oct. 20, 2020], cited at 1 JA 75; Petitioners' Motion to Take Judicial Notice (MJN), Ex. 1.) The article weaved the family's story into the larger narrative of the thousands of families who lost their homes to companies unwilling to negotiate and the displacement of long-term residents that is inherently part of residential flipping. (*Ibid.*)

IV. The Family and Wedgewood Settle the Unlawful Detainer Actions and Wedgewood Gives the Family Sixty Days to Obtain Financing to Keep the Home (January 2016)

When the Caamals appeared to contest Wedgewood's motions for summary judgment in the unlawful detainer proceedings, the presiding judge ordered the parties to discuss settlement and return in the afternoon. (1 JA 96–97; 5 JA 1233.)

They reached an agreement. The Caamals agreed to vacate the home after 60 days if they could not repurchase it in that time. (5 JA 1223.) In exchange, Wedgewood agreed to negotiate with the family over the next sixty days to facilitate the family's re-purchase effort. (*Ibid.*)

V. The Family Scrambles to Obtain Financing but Is Ignored by Wedgewood (January – March 2016)

The Caamals spent much of January and February of 2016 trying to obtain financing. (1 JA 98.) The foreclosure on their

record made it difficult. The family was unable to secure financing for the $375,000 Wedgewood sought for the house, but they did pre-qualify for a loan above the $284,000 that Wedgewood paid for the home months earlier. (1 JA 97, 105–106.)

Near the end of February, Mercedes Caamal called Wedgewood seeking to engage in the negotiations that Wedgewood agreed to engage in as part of the settlement agreement. (1 JA 97.) No one returned her call. (*Ibid.*) One week before the sixty-day period was set to run, the family sent Wedgewood the pre-qualification letter and begged the company for a response. (1 JA 97, 105–106.)

The family's counsel in the unlawful detainer cases also sent the pre-qualification letter to Wedgewood's counsel two days later. (1 JA 97–98; 5 JA 1241, 1246–1248.) The attorney explained to Wedgewood's counsel that the family had pre-qualified for a higher loan amount than the amount stated in the pre-qualification letter and that the family was willing to negotiate with Wedgewood over the purchase price. (5 JA 1246.)

Wedgewood simply ran out the clock, ignoring the family and their counsel and letting the move-out date pass without responding or engaging in negotiations in any way. (1 JA 98.)

VI. The Family and Supporters Return to Wedgewood's Office (March 23, 2016)

With Wedgewood seeking to have the County Sheriffs evict them, the family—along with Kuhns and other supporters—returned to Wedgewood's office seeking a response to their repeated entreaties. (1 JA 98, 111.) Wedgewood COO Puhl again agreed to meet with the family and review their loan documents if the family's supporters agreed to disperse. (1 JA 111.) They did. (*Ibid.*) Wedgewood again called the police but again no one was cited or arrested for anything. (1 JA 30, 111.)

Mercedes Caamal later heard from her lender that Wedgewood had called and spoken with the lender, but the family heard nothing more from Wedgewood. (1 JA 98.)

VII. The Media Interest Intensifies (March 24–29, 2016)

La Opinión ran another piece about the dispute the next day. (See Martínez Ortega, *'De aquí no me sacan más que arrestado' advierte dueño de casa al borde del desalojo*, La Opinión (Mar. 24, 2016) <https://bit.ly/3c6weDJ> [as of Oct. 20, 2020], cited at 3 JA 731; MJN Ex. 2.) That article described how the public mobilized support for the family by camping out in the front yard to stave off the eviction and again framed the family's story within the broader narrative: families suffering personal and national hardship losing their homes to predatory house-purchasing corporations. (*Ibid.*)

The online news source Huffington Post also ran an article about the family's fight. (See Dreier, *A Working Class Family Battles a 'Fix and Flip' Real Estate Tycoon*, Huffington Post (Mar. 28, 2016) <https://bit.ly/2xyZt2Q> [as of Oct. 20, 2020], cited at 1 JA 75; MJN Ex. 3.) It too situated the family's fight within the broader context of the housing market meltdown, noting the family's condition "is an experience that millions of Americans have faced." (*Ibid.*) And it discussed how homeowners facing foreclosure are working with community organizers to advance a "movement against predatory banks and investment firms," pursuing a range of political strategies that have been "successful not only in getting banks to halt foreclosures but also at pressuring lenders to renegotiate mortgages." (*Ibid.*) The article detailed "an around-the-clock vigil to demand that the eviction be stopped," attended by several community members. (*Ibid.*)

Facing eviction by Wedgewood Inc, Pablo Caamal and his family have launched a vigil in front of their Rialto, CA home, supported by friends and neighbors (Photo by *La Opinion*).

A still from the Huffington Post article.

VIII. When Sheriffs Lock the Family Out of Their Home, the Family and ACCE Demonstrate Outside Geiser's Home (March 30, 2016)

The San Bernardino Sheriff's Department evicted the Caamals and locked them out of the house on March 30, 2016. (1 JA 98.)

Kuhns and ACCE, together with the Caamals, organized an emergency public demonstration for that evening on the public sidewalk outside Geiser's Manhattan Beach home. (1 JA 98, 108, 112.) Between 25 and 30 people showed up on short notice to denounce Geiser and his company. (1 JA 114.) The local chapter of the National Lawyers Guild dispatched an attorney to act as a legal observer at the demonstration. (*Ibid.*)

The demonstrators held signs, sang songs, chanted, and gave short speeches in protest of Wedgewood. (1 JA 98, 108, 112.)

Several Manhattan Beach police officers arrived within a few minutes of it starting. (1 JA 114.) The legal observer spoke

with the commanding officer and the police allowed the demonstration to continue without so much as a warning or even an instruction to the demonstrators. (1 JA 98, 108, 112, 114.) The officers remained throughout the demonstration. (1 JA 114.)

At about 10:00 p.m., Pablo Caamal thanked everyone and declared the demonstration was over. (*Ibid*.) The legal observer stayed until the last demonstrator left around 10:20 p.m.[2] (*Ibid*.)

IX. Geiser and Wedgewood File Four Lawsuits Against the Family and Supporters (April 1, 2016)

Two days after the eviction and demonstration, Geiser filed four separate lawsuits. Three cases sought civil harassment restraining orders against Pablo Caamal, Mercedes Caamal, and ACCE organizer Peter Kuhns. (1 JA 22–63.) In the fourth, Geiser, joined by Wedgewood, sued the Caamals, Kuhns, and ACCE, in an unlimited civil damages case. (1 JA 87–94.) In that case, Wedgewood brought a single claim for trespass related to demonstrations at the Wedgewood office. (1 JA 91–92.) Geiser asserted two claims—"violation of Los Angeles County Code section 13.43.010" and intentional infliction of emotional distress. (1 JA 92–93.)

X. The Media Interest Continues to Grow (May 2016)

The lawsuit fueled the media's interest in the story. The conservative Breitbart News ran a story about the foreclosure, the demonstration, and the lawsuit, focusing on ACCE's role and drawing alleged connections between the dispute and various

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[2] Both Geiser and the Court of Appeal majority describe the protest as ending "[s]ometime before midnight," which, while technically true, is a misleading way to describe 10:00 p.m. or 10:20 p.m. (1 JA 28; Opn. at p. 5.)

boogeymen in the rightwing imagination (and issues of public interest), including Hillary Clinton, voter fraud, embezzlement, tax increases, "the early release of criminals," and "corporations, foundations, millionaires and hedge-fund managers." (See Barajas, *ACORN Reborn: Alliance of Californians for Community Empowerment*, Breitbart News (May 21, 2016) <https://bit.ly/3b5n1tK> [as of Oct. 20, 2020], cited at 3 JA 732 (Breitbart Article); MJN Ex. 4..)

The byline failed to mention that the Breitbart Article's author—who had never written an article for the outlet before and has not since—is a Wedgewood public-relations spokesperson. (See Victoria, *Rialto family fights eviction; says realtor's actions unjust*, Rialto Record Weekly (May 12, 2016) <https://bit.ly/2YAKssE> [as of Oct. 20, 2020] (Victoria), cited at 3 JA 731, quoting Breitbart Article's author Hector Barajas on dispute with the Caamals and describing him as a "Wedgewood spokesperson"; MJN Ex. 5.)

The regional newspaper conglomerate Inland Empire Community News also picked up the story. (See Victoria, *supra*.)

XI. When Kuhns and the Caamals File Anti-SLAPP Motions, Geiser Dismisses His Suits and Issues a Press Release (May – August 2016)

Kuhns and the Caamals filed anti-SLAPP motions. (1 JA 64–225.) In the anti-SLAPPs to the civil harassment petitions, they argued that Geiser's petitions appeared to hinge on a contention that a Los Angeles County Code provision that restricts residential protests in the unincorporated areas of the county also applied to the incorporated city of Manhattan Beach. (1 JA 76–81, 130–133, 184–189.) Kuhns and the Caamals contended that incorporated cities like Manhattan Beach make their own municipal public welfare laws and restricting

residential picketing in Manhattan Beach was a matter for the Manhatan Beach City Council, not the courts. (1 JA 79-80.)

The parties tried to settle the lawsuits while the anti-SLAPP motions were pending, but negotiations broke down after Geiser insisted on both a nondisparagement clause that sought to insulate Wedgewood from any future criticism by ACCE and a waiver of any future First Amendment defenses by Kuhns or the Caamals. (4 JA 1190.)

After walking away from the settlement, Geiser dismissed each of his lawsuits. (3 JA 711–718.)

Before serving the requests for dismissal, Wedgewood issued a press release detailing its version of the settlement negotiations and their eventual demise. (5 JA 1348; Moody, *Media Statement In Response to ACCE,* Wedgewood, Inc. (Aug. 16, 2017) <https://bit.ly/2SFbwTs> [as of Oct. 20, 2020].) The press release *admitted* Wedgewood refused to settle because ACCE would not agree to abstain from criticizing Wedgewood in the future. (5 JA 1348.) It decried ACCE's "portray[al of] the Caamal family as victims, while exploiting a very emotional issue without any serious attempt . . . to resolve the situation." (*Ibid.*) And it acknowledged the public's interest, further editorializing that for ACCE, "making headlines and political gain[] far outweighs helping the Caamals return to their home." (*Ibid.*)

XII. Geiser Appeals to His City Council for a Prohibition on Residential Picketing, Generating Even More Media Interest (July – August 2016)

Geiser finally sought his remedy with his local legislature, just as Kuhns and the Caamals had urged from the start of the litigation. Geiser backed proposed legislation that would have made it a misdemeanor to protest within 150 feet of a targeted residence in Manhattan Beach. (4 JA 1021, 1026, 1030.) The law

was first proposed as part of a consent calendar by a friend of Geiser's on the City Council. (4 JA 1021, 1045.) Another councilmember objected to it being slipped into the consent calendar. (4 JA 1045–1047.) The Council then discussed the ordinance over three separate meetings. (See 4 JA 1054–1173.)

Wedgewood submitted a position paper to the City Council advocating for the draft ordinance. (3 JA 748–759.) It summarized residential picketing ordinances in California, including city-specific ordinances in five of the 88 cities in Los Angeles county. (3 JA 752–755.) Wedgewood advocated adopting the ordinance because, in Manhattan Beach, "there are no existing laws to deal with this unique problem." (3 JA 749.)

Geiser's attempt to restrict residential picketing in Manhattan Beach brought even more media interest to the situation that precipitated his lawsuits. South Bay newspaper the Daily Breeze covered the City Council debate as well as the Caamals' dispute with Wedgewood and the protest outside Geiser's residence. (See Burns, *Manhattan Beach moves to ban picketing outside homes*, Daily Breeze (July 20, 2016) <https://bit.ly/2SyFXdZ> [as of Oct. 20, 2020], cited at 3 JA 732; MJN Ex. 6.) South Bay weekly Easy Reader ran similar coverage. (See McDonald, *Manhattan Beach council modifies upcoming election, rejects picketing law*, Easy Reader (July 21, 2016) <https://bit.ly/3c6sIZQ> [as of Oct. 20, 2020], cited at 3 JA 732; MJN Ex. 7.)

The San Bernardino County Sun, a regional newspaper in the Inland Empire, also covered the city council events, linking them to the Caamals' attempt to keep their Rialto home. (See Barnes, *Rialto family's eviction prompting protests in Manhattan Beach*, San Bernardino County Sun (July 24, 2016) <https://bit.ly/2Wtn1Pe> [as of Oct. 20, 2020], cited at 3 JA 732; MJN Ex. 8.)

XIII. The City Council Rejects the Proposed Restriction (August 2016)

The proposed ordinance failed by a 3–2 vote. (4 JA 1171–1173.)

Its failure received local press coverage, again contextualizing the proposed ordinance as a result of the Caamals' eviction and demonstration. (See Segura, *Manhattan Beach backs away from proposed restrictions on picketing*, Daily Breeze (Aug. 18, 2016) <https://bit.ly/2W2vXvO> [as of Oct. 20, 2020], cited at 3 JA 732; MJN Ex. 9.)

XIV. After Kuhns and the Caamals' Anti-SLAPP Motions Are Denied for Lack of a Public Interest, This Court Directs the Court of Appeals to Reconsider

Kuhns and the Caamals moved for an award of attorney fees in the three civil harassment cases under both the anti-SLAPP statute and the civil harassment statute. (3 JA 719–740.)

The trial court denied the motions in part under the anti-SLAPP, finding the statute did not apply because there was no public issue or issue of public interest. (6 JA 1689–1692.) The court granted the motion in limited part under the discretionary fee-shifting provision of the civil harassment statute. (6 JA 1692–1695.)

The Court of Appeal affirmed the trial court's order finding Kuhns's and the Caamals' protest did not connect to an issue of public interest. Acting Presiding Justice Baker dissented.

This Court granted review and held briefing pending the decision in *FilmOn*. After this Court issued its opinion, it transferred this case back to the Court of Appeal with directions to reconsider in light of *FilmOn*.

XV. The Court of Appeal Majority Again Finds a Lack of Public Interest

On reconsideration, the Court of Appeal again split 2–1. In what Justice Baker's dissent characterized as a "largely recycled opinion," Dis. Opn. at p. 1, the majority again found that Kuhns's and the Caamals' protest did not connect to an issue of public interest.[3]

Applying the first part of the *FilmOn* analysis—determining "what public issue or . . . issue of public interest the speech in question implicates," *FilmOn*, *supra*, 7 Cal.5th at p. 149—the majority defined the issue narrowly. It determined that the public protest outside Geiser's residence attended by more than two dozen people was "focused on coercing Wedgewood into selling back the property to Ms. Caamal at a reduced price," and as such "was a private matter concerning a former home owner and the corporation that purchased her former home and not a public issue or an issue of public interest." (Opn. at p. 19.)

The majority narrowly framed the issue by focusing on Kuhns's and the Caamals' earlier visits to Wedgewood's office and virtually ignoring the sizable protest on a public sidewalk outside Geiser's home. (Opn. at pp. 19–20; see also Opn. at pp. 15–16, 21, 25 [also characterizing the issue as one "purely private" and "purely personal" to the Caamals].) Similarly, it found that "a third-party participant['s]" declaration that the demonstration sought "to protest unfair and deceptive practices used by Wedgewood . . . and its agents in acquiring the real property of Pablo and Mercedes Caamal, and evicting them from their home" was a motivation "purely personal to the Caamals and did not address any societal issues of residential displacement, gentrification, or the root causes of the great

[3] Of the majority's 6,931-word opinion, only 360 words—just 5% of the total—are devoted to analysis in light of *FilmOn*.

recession." (*Id.* at pp. 20–21.) And the majority found that while there was evidence that 25 to 30 people attended the protest outside Geiser's home and held signs, sang songs, and gave speeches, there was no evidence of the specific text on the signs, or the specific words in the speeches or songs, linking their rudimentary protest to more sophisticated, abstract issues of gentrification and displacement. (*Id.* at p. 21.)

The majority dismissed out of hand the media coverage of the dispute between the Caamals and Wedgewood, quoting a Legislatively overturned case to conclude that "[w]hile the fact of media coverage may be indicative of a public matter, '[m]edia coverage cannot by itself . . . create an issue of public interest within the statutory meaning.'" (Opn. at p. 24, quoting *Zhao v. Wong* (1996) 48 Cal.App.4th 1114, 1121 (*Zhao*).)

Having determined on the first step of the *FilmOn* analysis that the issue was purely personal, the majority had little need for the contextual analysis required by the second step. (Opn. at pp. 25–27.)

The majority's opinion concluded by conceding that Kuhns's and the Caamals' activity "does bear certain hallmarks of classic SLAPP conduct," including holding signs, singing songs, and giving short speeches. (Opn. at p. 26.) But the majority dismissed those hallmarks by asserting that "merely characterizing conduct as a demonstration or picket does not grant that conduct First Amendment protections." (*Ibid.*) It offered no further explanation about why the sidewalk demonstration was unprotected or why First Amendment protection—usually an issue for the second step of the anti-SLAPP analysis—was relevant to determining whether the statute applies on step one. (Cf. Dis. Opn. at p. 12 [criticizing the majority's cryptic statement and lack of analysis].)

XVI. The Dissenting Opinion Applied the *FilmOn* Test to Find a Public Interest

Acting Presiding Justice Baker dissented again.

The dissent began by noting that early in *FilmOn*, this Court recognized that "'[i]n the paradigmatic SLAPP suit, a well-funded developer limits free expression by imposing litigation costs on citizens who protest, write letters, and distribute flyers in opposition to a local project.'" (Dis. Opn. at p. 2, quoting *FilmOn*, *supra*, 7 Cal.5th at p. 143.) This case, the dissent noted, has 1) a well-funded developer; 2) citizens protesting a local project; and 3) limits on free expression by imposing litigation costs. (Dis. Opn. at p. 2.)

After summarizing the facts and holding of *FilmOn*, the dissent provided a detailed application of its framework to this case. On the first step of the *FilmOn* analysis, the dissent identified the issue as "displacement of long-term community residents by unfair foreclosure and fix-and-flip housing practices." (Dis. Opn. at p. 6.) To reach this conclusion, the dissent gave weight to Defendants' identification of the issue and then pointed to evidence in the record supporting that frame: ACCE's mission of fighting residential displacement and their involvement in the demonstration, the legal observer's statement that the demonstrators sought "'to protest unfair and deceptive practices used by Wedgewood,'" and 25 to 30 people participating in a Wednesday night demonstration. (*Id*. at pp. 6–7.)

Addressing the majority's criticism that declarants did not specifically identify the text of the signs or the words of the songs and speeches, the dissent noted the criticism "is logical so far as it goes: the absence of direct protestor quotes in the declaration means the majority is free to believe ACCE members and others present outside Geiser's home might have been holding signs and chanting about the Protestant Reformation or some topic other

than displacement of long-term residents like the Caamals." (Dis. Opn. at p. 8, fn. 4.) But such a reading, the dissent recognized, "is a strained and artificial way to read the record." (*Ibid*.)

And the dissent noted that the public clearly showed interest in the issue and the demonstration, noting that Wedgewood's own press release accusing ACCE of "'making headlines'" should have put to rest any doubt about the public's interest. (Dis. Opn. at p. 8.)

With the public interest at stake acknowledged and identified, the dissent went on to apply the second step of the *FilmOn* analysis. The dissent found "[t]he identity of the defendants, the audience they sought, and the timing and location of the speech all show a degree of closeness between the protest and the ongoing public conversation about housing displacement." (Dis. Opn. at p. 10.) The speakers included not only Kuhns and the Caamals, but "other ACCE members[,] . . . and ACCE's identity and involvement is strong evidence of a connection to an issue of public interest." (*Ibid*.) The audience—unlike the audience in *FilmOn*—"was the general public." (*Ibid*.) The "location and timing" also "evince a contribution to the public debate": a sidewalk protest on the same evening as the Caamals' eviction. (*Id*. at p. 11.)

The dissent dissected the majority's contrary conclusion that the protest solely sought to force Wedgewood to resell the property to the Caamals. "At the most obvious level, the sidewalk protest—which involved ACCE members who volunteered to help the Caamals—cannot be fairly said to have been directed solely at Wedgewood and Geiser with no connection to broader issues of interest to the community." (Dis. Opn. at p. 11.) But even if that were their sole purpose, the protesters' way to achieve that end was "by appeal[ing] to public sentiment." (*Id*. at p. 12.) "In other words, even if helping the Caamals were the only objective, the way in which defendants and the other protesters hoped to

achieve it was by connecting the Caamals' individual plight to public interest in, and disapproval of, long-time community resident displacement and unfair foreclosure practices." (*Ibid*.) The dissent would have found each contextual factor showed a connection to a public issue. (*Ibid*.)

This Court granted review for a second time.

Argument

For decades, the Courts of Appeal struggled to define what constitutes "an issue of public interest" for the purpose of section 425.15, subsections (e)(3) and (e)(4). While some courts defined the issue more or less self-reflexively, see *Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042 [finding an issue of public interest is "*any issue in which the public is interested*"], others sought to divine a singular issue being addressed, often deciding between the parties' two competing frames. (See, e.g., *Bikkina v. Mahadevan* (2015) 241 Cal.App.4th 70, 81–85 (*Bikkina*); *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1569–74 (*World Financial Group*); *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 111 (*Mann*).)

The task of adopting one of two competing frames usually involved settling on a level of abstraction. Defendants routinely claimed their speech touched on a broad, abstract issue of public interest, while plaintiffs asserted the defendant's speech only involved a narrow dispute (typically between the plaintiff and the defendant individually) that the greater public did not care about. (See, e.g., *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 465–468 (*Hecimovich*) [seeking to determine whether the issue in a fourth grade basketball coach's suit arising from parent coaching complaints was only about the parents and the coach or if it involved the

broad topic of "safety in youth sports"]; *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23–24 (*Gilbert*) [seeking to determine whether the issue in a former patient's complaints about her plastic surgeon was simply a dispute between a patient and her surgeon or if it was about the public issue of plastic surgery generally].) The level of abstraction a court adopted determined the outcome: when it accepted the defendant's broader frame, the statute applied; when it accepted the plaintiff's narrow frame, it didn't.

Last year, this Court recognized the futility of these searches for a singular, transcendental issue. (*FilmOn*, *supra*, 7 Cal.5th at p. 149.) Those decisions that "strive to discern what the challenged speech is really 'about' — a narrow, largely private dispute, for example, or the asserted issue of public interest" — are "less than satisfying" because "speech is rarely 'about' any single issue." (*Ibid.*, citing *Bikkina*, *supra*, 241 Cal.App.4th at p. 85; *World Financial Group*, *supra*, 172 Cal.App.4th at p. 1572; *Mann*, *supra*, 120 Cal.App.4th at p. 111.)

Instead, this Court instructed lower courts to engage in "a two-part analysis rooted in the statute's purpose and internal logic" to determine whether speech implicates an issue of public interest. (*FilmOn*, *supra*, 7 Cal.5th at p. 149.) "First, [a court should] ask what public issue or issue of public interest the speech in question *implicates*—a question [courts can] answer by looking to the content of the speech." (*Ibid.*, emphasis added)

"Second, [a court should] ask what functional relationship exists between the speech and the public conversation about some matter of public interest." (*FilmOn*, *supra*, 7 Cal.5th at pp. 149–150.) Here, "context proves useful." (*Id.* at p. 150.) "[C]ontext allows [courts] to assess the functional relationship between a statement and the issue of public interest on which it touches." (*Id.* at p. 140.) Courts should use "ordinary contextual clues" to determine whether speech connects to an issue of public interest,

including "the identity of the actor," "the audience of the speech," and "the purpose of the speech." (*Id.* at p. 145.)

FilmOn's "functional relationship" analysis frees courts from the outcome-determinative task of adjudicating what singular issue a defendant's speech was "really 'about,'" *FilmOn*, *supra*, 7 Cal.5th at p. 149, and shifts the focus to whether the defendant's speech implicated and furthered any public discussion about the issue the defendant claims to have been addressing. Or, in the statute's parlance, it shifts the focus from determining *the* "public issue" to whether the defendant's speech was "in furtherance of" and "in connection with" *a* public issue. (Code Civ. Proc., § 425.16, subd. (b)(1).)

But a problem remains. A court that treats the first step of *FilmOn*'s analysis as requiring the pre-*FilmOn* search for "the" singular issue at stake and accepts the plaintiff's narrow frame can avoid the functional relationship analysis in *FilmOn*'s second step. By defining the issue narrowly to begin with—a private dispute between the litigants, for example—the court hamstrings the second step. No matter what is revealed by the contextual factors identified in *FilmOn*—the identity of the speaker, the audience of the speech, or its purpose—if the court predetermines the issue as one that lacks public interest then there will be no public issue. After all, those contextual factors will rarely illuminate a functional connection to an issue the defendant does not even claim to be addressing.

That is what the majority did here. It accepted Geiser's frame that a protest attended by dozens of people, and in which Geiser sued an organizer for one of the state's largest housing rights organizations, was *purely* private business between two former homeowners and the company that bought their home. (Opn. at pp. 15–16, 21, 25.) No amount of contextual clues could show a functional relationship to a public issue on the second *FilmOn* step because the majority determined the issue was non-

public on the first *FilmOn* step. The identity of the speakers (not only the family members but a housing rights organizer and two dozen others protesters), the audience of the speech (not only Geiser but his neighbors and the public at large), and the purpose of the speech (not only to persuade Geiser's company to negotiate with the family but to decry the widespread dispossession caused by him, his company, and the "fix-and-flip" business model that Wedgewood is a national leader on) could only show a relationship to the purely personal dispute between the Caamals and Wedgewood because that was the singular issue on which the majority settled.

A simple solution to this problem is already implicit in this Court's anti-SLAPP jurisprudence: begin with deference to the defendant's framing of the issue before applying the detailed functional relationship test on *FilmOn*'s second step.

This brief proceeds in two parts. The first part seeks to directly answer the question presented, disconnected from the facts of this case. It shows that starting with deference to the defendant's framing of the issue is the best way to determine the issue of public interest for the purposes of the anti-SLAPP statute. The second part shows how the majority undermined the *FilmOn* and anti-SLAPP frameworks by adopting Geiser's framing of the issue.

I. Courts Should Defer to a Defendant's Identification of the Issue

Deference to a defendant's framing of the issue is the best way for courts to determine the issue of public interest for five reasons.

First, a speaker is in the best position to know the content and purpose of his speech.

Second, this Court's recent anti-SLAPP cases appear to apply such deference and criticize decisions that refused to so.

Third, deference promotes *FilmOn*'s two-step framework.

Fourth, deference advances the statute's legislative purpose and promotes judicial efficiency.

And fifth, deference allows *FilmOn*'s second step to screen out so-called "synecdoche theory" cases and purely personal disputes only tangentially related to issues of public interest.

A. A Speaker is in the Best Position to Articulate His Motivations

Deference to the defendant's framing of the issue makes sense at the most fundamental level: no one is in a better position to define what a speaker was talking about than the speaker himself. The defendant will always be better situated to determine the issue he sought to address than the plaintiff's subjective interpretation, or even a court's assessment between the parties' competing frames.[4]

Providing appropriate deference to the defendant's framing of the issue would also recognize that people often bring multiple, overlapping motivations to any speech or action. If a family who loses a loved one to a police shooting protests outside of the police station, they bring their personal grief with them, but they also bring broader motivations around police violence and reform. If an advocacy organization rallies supporters to join the family at

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[4] Of course, starting with deference would not mean the statute automatically applies anytime the defendant claims he was addressing a public issue. For one, deference need not be absolute. Second, as shown below, the contextual factors in the second step of the *FilmOn* analysis would have to show that the defendant's speech actually furthered the public discussion on that public issue. (See *infra*, Section II.E.) Those factors should shut down any attempts to fabricate a public issue. (See *ibid*.)

the station, they too bring concerns over the individual tragedy together with their broader policy goals. The Court recognized this multiplicity of motivations last year, when it rejected the search for a single, transcendental issue because "speech is rarely 'about' any single issue." (*FilmOn*, *supra*, 7 Cal.5th at p. 149.)

Deference dispenses with the fiction that human action must have a single motivation and that it is a court's job to discover it. Because any action can involve multiple motivation or 'issues,' deferring to a defendant's identification of his motivation frees the court from making "less than satisfying" singular assessments of motivation. (*FilmOn*, *supra*, 7 Cal.5th at p. 149.)

B. This Court's Recent Anti-SLAPP Precedent Deferred to the Defendants' Identification of the Issues

Deference to the defendant's framing of the issue of public interest is implicit in this Court's recent precedent addressing the public interest issue. In recent cases, the Court accepted the defendants' frames even when the plaintiffs framed the issues differently. And in each of the Court of Appeal cases this Court criticized for improperly striving to determine the singular issue, the Court of Appeal failed to give deference to the defendants' frame and accepted the plaintiffs' frame instead.

The parties presented competing frames in *FilmOn*. The Court of Appeal's decision shows that the plaintiff framed the issue narrowly, as one that was not of public interest: "'[b]asic classification and certification decisions that contain little to no analysis or opinion.'" *FilmOn.com v. DoubleVerify, Inc.* (2017) 13 Cal.App.5th 707, 714) But this Court accepted the issues as the defendant identified them: "the presence of adult content on the Internet, generally, and the presence of copyright-infringing

content on *FilmOn*'s websites, specifically." (*FilmOn*, *supra*, 7 Cal.5th at p. 150.)

So too in *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871 (*Wilson*). The Court of Appeal's decision shows the plaintiff framing the issue as the "'behind-the-scene treatment of a behind-the-scene producer.'" (*Wilson v. Cable News Network, Inc.* (2016) 6 Cal.App.5th 822, 833.) But again, this Court accepted the "three issues of public significance" identified by the defendant: "Los Angeles County Sheriff Lee Baca's retirement, Wilson's plagiarism, and the general subject of journalistic ethics." (*Wilson*, *supra*, 7 Cal.5th at p. 900.) And the Court explicitly rejected Wilson's contention that the plaintiff's framing of the issue should be entitled to deference. (*Id.* at p. 887 ["This is not how the anti-SLAPP statute works."].)

Showing the inverse point, each of the three "less than satisfying" cases criticized by *FilmOn* for seeking to discover a singular issue gave no deference to the defendant's framing of the issues and instead adopted the plaintiff's narrow frame.

In *Bikkina*, the defendant claimed to be addressing the issue of "'climate change and greenhouse gases,'" but the Court of Appeal determined the issue was "a private campaign to discredit another scientist at the University, . . . and not part of a public debate on a broader issue of public interest." (*Bikkina*, *supra*, 241 Cal.App.4th at pp. 82-83.)

Similarly, *World Financial Group* involved a defendant claiming the issue was "'the pursuit of lawful employment pursuant to Bus. & Prof. § 16600' and 'workforce mobility and free competition.'" (*World Financial Group*, *supra*, 172 Cal.App.4th at p. 1572.) The Court of Appeal rejected that frame and determined that, "[t]hough couched in noble language, defendants' communications were not 'about' these broad topics" but "merely solicitations of a competitor's employees and

customers undertaken for the sole purpose of furthering a business interest." (*Ibid.*)

Finally, in *Mann*, the Court of Appeal rejected the defendant's assertion that its speech involved the public issue of "unlawful dumping of toxic chemicals," instead finding the issue was really "about [the plaintiff's] specific business practices." (*Mann*, *supra*, 120 Cal.App.4th at p. 111.) And because the plaintiff was not "an entity in the public eye," there was no public interest. (*Ibid.*)

This Court's recent precedents and criticisms point toward deference.

C. Adopting a Plaintiff's Frame Undermines *FilmOn*'s Second Step

Providing deference to the defendant's framing of the issue also advances *FilmOn*'s two-step framework. When a court accepts a plaintiff's frame or casts about to determine what transcendental issue the defendant's speech was "really 'about,'" *FilmOn*, *supra*, 7 Cal.5th at p. 149, the contextual analysis in *FlimOn*'s second step can become superfluous, as it did in the majority's opinion below. This is because the relevant contextual clues in the second *FilmOn* step will virtually never line up with an issue the defendant does not even claim to address. For instance, if a defendant claims the issue she was speaking on is overdevelopment or environmental damage but the court finds the issue to be the business transactions of a single company not in the public eye, neither the identity of the speaker, her audience, nor the purpose of the speech help assess the public's interest in that speech. Even in the unlikely scenario that a court finds those contextual clues advance the issue the court identified but the defendant did not claim to be addressing, it wouldn't

matter—the court already decided the issue is not one of public interest.

Instead, as this Court did in *FilmOn* and *Wilson* courts should begin with deference to the defendant's framing and evidence of the issue at stake and then apply the contextual analysis to determine whether the speech furthered public discussion on that issue.

D. Deference Advances the Statute's Purpose and Promotes Judicial Efficiency

Deference advances the legislative purpose of the statute, reduces the risk of courts relying on normative evaluations about the defendant's speech, and provides simplicity to a statutory inquiry already packed with multifactor tests.

1. The Legislature Designed the Statute to Apply to Individual Disputes that Implicate Larger Issues

Deference promotes the legislative purpose. Legislators intended the statute to protect people involved in individual disputes that affect their lives and whose voices SLAPP suits silenced. The author of the bill that created the statute cited "[e]xamples of SLAPP suits" which the statute was "intended to screen." (Sen. Com. On Judiciary Rep. on Sen. Bill 1264 (1991–1992 Reg. Sess.) Feb. 25, 1992, at p. 4.) They included lawsuits that targeted speech critical of a "local sanitary district's garbage burning plant," another trash incinerator in a different community, and a local land development project. (*Ibid.*) The plaintiffs' frame in any of these examples would no doubt be one resident's speech about a specific, local dispute with an unknown company. But the Legislature created the statute to apply in exactly these circumstances.

Deference also advances the legislature's command to broadly construe the statute. (Code Civ. Proc., § 425.16, subd. (a).) The legislature added the broad construction mandate in 1997 in response to judicial decisions that narrowly interpreted the public issue prong. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1120 [citing Stats. 1997, ch. 271, § 1; *Zhao*, *supra*, 48 Cal.App.4th at p. 1128].) Anti-SLAPP defendants inevitably frame the issue more broadly than plaintiffs because the public is more likely to be interested in a broader issue than a narrowly framed one. Deferring to the defendant's broader, more protective frame naturally advances the legislative intent to broadly construe the statute.

2. Deference Reduces the Risk of Courts Making Normative Evaluations of Speech When Weighing the Parties' Competing Frames

Deference also guards against judges making the kind of "normative evaluation[s] of the substance" of a defendant's speech or the issue she claims to address that *FilmOn* warned about. (*FilmOn*, *supra*, 7 Cal.5th at p. 151.) When the parties present differing conceptions of the public issue, the process of weighing those competing conceptions to determine a singular issue will almost inevitably involve normative assessments.

When former aspiring actress Lucia Evans accused producer Harvey Weinstein of sexual harassment and assault, was it simply an actress's personal dispute with a film producer, or did it implicate sexual harassment in the workplace experienced by millions of women? (See Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories* (Oct. 23, 2017) The New Yorker < https://bit.ly/338EMIa> [as of October 20, 2020].)

When the Dayton, Tennessee school district told John Scopes that the material he used to teach his high school science class was off limits, was the singular issue a personal dispute between teacher and employer, or was the issue the origin of human existence?

Did Rosa Parks have a purely personal dispute with her municipal transit operator, or was there a broader public issue of racial segregation? In each of these examples, the opposing parties could make a case for either frame. A judge forced to settle on a singular issue at stake risks making normative judgments about the speech to reach a conclusion.

And like everyone, judges have blind spots. They routinely find public interest in speech that implicates issues that middle-class professionals could imagine themselves facing or caring about: alerting a potential home buyer that a sex offender lives nearby, *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 378, parents criticizing a youth basketball coach's coaching style, *Hecimovich*, *supra*, 203 Cal.App.4th at pp. 465–468, plastic surgery, *Gilbert*, *supra*, 147 Cal.App.4th at pp. 23–24, or allegations of molestation by a particular church official, *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1547.

But in searching for a singular issue, judges risk missing the implication to issues outside of their immediate experiences: a near-homeless family protesting foreclosure and eviction, janitors organizing for better working conditions, *Rivero v. Am. Fed'n of State, Cty. & Mun. Emps., AFL-CIO* (2003) 105 Cal.App.4th 913, 924, or an eccentric token collector trying to expose a cheat among his community of collectors, *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1133–1136.

Deference is unlikely to eliminate normative evaluations completely, but it could greatly reduce them. By shifting the focus from the often-normative determination of what the singular issue is, deference instead allows the defendant to identify the

issue he intended his speech to implicate and concentrates the court's inquiry on whether the speech furthered the public discussion of that issue. Applying those contextual factors—the identity of the speaker, the audience, and the purpose of the speech, *FilmOn*, 7 Cal.5th at p. 145—is naturally a more objective endeavor. And it reduces the appearance of results-oriented, normative holdings—i.e., defining the issue granularly to avoid the statute's application, or broadly to apply it.

3. Deference Promotes Judicial Efficiency by Adding Simplicity to a Convoluted Statute

Providing deference to the defendant's framing of the public issue is also an elegant solution that promotes judicial efficiency by introducing some simplicity to an area of law already full of multi-step and multi-factor tests. To show the statute applies, a typical opening brief in support of an anti-SLAPP motion under subsection (e)(4) must (1) identify the issue and explain how the content of the speech connects to the issue (*FilmOn* step one); (2) show (2.1) the identity of the speaker, (2.2) the audience, and (2.3) the purpose of the speech furthers that issue (*FilmOn* step two), and (3) show the plaintiff's lawsuit "arises" from the defendant's speech or conduct. The defendant must then show the plaintiff does not have a probability of prevailing on the merits of his claim on the statute's second step. Depending on the plaintiff's cause of action, this too involves analysis of multiple elements. A defamation cause of action might involve showing the alleged speech is opinion not capable of being proven true of false, establishing that the plaintiff is a public figure or limited purpose public figure, and showing that that the plaintiff did not allege or cannot prove malice, a lack of damages, or any other

element of defamation's multi-part analysis. And so on for the plaintiff's other causes of action.

Adding a statement of facts, standard of review, and potentially a fee request (itself requiring multi-factor analysis) severely strains the 15-page limit for trial court briefs. (Cal. Rules of Court, rule 3.1113(d).)

Creating another multi-factor test designed to establish the public issue risks generating as many problems as it might solve. Deference would obviate the need for another multi-factor test and instead focus judicial resources on determining whether the defendant's speech in fact furthered discussion on the issue the defendant claims to have addressed.

E. Deference Has No Obvious Downside Because the Contextual Factors in *FilmOn*'s Second Step Guard Against Attempts to Make Tangential Connections to Public Issues

Deference has little downside. As the dissent below recognized, "[t]here is little concern speakers will devise and rely on post-hoc rationalizations because the analysis of context—the degree of closeness between the identified interest and the pertinent circumstances—that occurs at step two of the *FilmOn* inquiry will normally smoke out a fabricated issue of public interest identified at step one." (Dis. Opn. at pp. 6–7, fn. 3.)

That kind of smoking out is exactly what happened in *FilmOn* and *Wilson*. In both cases, the Court accepted the defendant's asserted public issue, but the contextual analysis revealed their speech did not further public discussion on those issues. (*FilmOn*, *supra*, 7 Cal.5th at pp. 153–154; *Wilson*, *supra*, 7 Cal.5th at pp. 901–904.)

Deference would not risk permitting defendants to rely on the so-called "'synecdoche theory' of public interest," where

defendants try to connect their speech on a narrow dispute to broader issues of public interest, either. (*FilmOn*, *supra*, 7 Cal.5th at p. 152.) For instance, "[s]elling an herbal breast enlargement product is not a disquisition on alternative medicine" not because the singular issue is necessarily 'selling an herbal breast enlargement product' but because the contextual factors—identity of the speaker, audience, and purpose—did not show that such sales furthered the public discussion about alternative medicine. (*Commonwealth Energy Corp. v. Inv'r Data Exch., Inc.* (2003) 110 Cal.App.4th 26, 34 [citing *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, 600–603].) And "hawking an investigatory service is not an economics lecture on the importance of information for efficient markets" not because such hawking does not implicate the issue of 'information for efficient markets' but because the contextual factors did not suggest any real effort to further the discussion about that issue. (*Ibid.*)

Even the three cases that *FilmOn* criticized for searching for a singular issue—*Bikkina*, *World Financial Group*, and *Mann*—would have likely reached the same result if the courts in those cases deferred to the defendants' frames. The statute wouldn't apply to the "private campaign to discredit another scientist" in *Bikkina* not because the defendant's speech didn't implicate "'climate change and greenhouse gases,'" but because the private campaign didn't further the public discussion of that issue. (*Bikkina*, *supra*, 241 Cal.App.4th at pp. 82–83.) The same is true for the "solicitations of a competitor's employees . . . undertaken for the sole purpose of furthering a business interest" in *World Financial Group*. (*World Financial Group*, *supra*, 172 Cal.App.4th at p. 1572.) And for *Mann*, where the defendant's false report to the National Terrorist Hotline and sending "magazine subscriptions, junk mail and pornography" to the plaintiff did not further any public discussion of "unlawful

dumping of toxic chemicals." (*Mann*, *supra*, 120 Cal.App.4th at pp. 100–101, 111.) In each of these cases, the courts would have reached the same conclusion that the statute did not apply if they deferred to the defendant's identification of the issue and then focused on whether the defendant's speech furthered the public discussion on that issue. Deference wouldn't change the outcome in such cases; but it would ensure the courts reached the result the right way.

The work of screening synecdoche theory cases occurs through the contextual analysis in the second *FilmOn* step, not defining the issue in the first step. A defendant who seeks to tangentially connect a narrow dispute to a broader, lofty purpose will be exposed when a court analyzes the audience of the speaker, its purpose, and even the speaker's identity on the second step. Or alternatively, if those contextual factors show that the defendant's speech furthered public discussion of the broader issue, then there is little need to worry about whether the defendant is seeking anti-SLAPP protection for speech about a private dispute that the public has no interest in. The facts of *FilmOn* proves this point again: the defendant sought to connect its private communications to paying subscribers to broader issues of adult content on the internet, but the context of its speech revealed the peripheral connection to the issue the defendant identified. *FilmOn*'s second step will smoke out similar attempts, too.

Deference wouldn't risk turning so-called "purely private" disputes into issues of public interest, either. (See Opn. at p. 16 [citing *Garretson v. Post* (2007) 156 Cal.App.4th 1508, 1524].) The statute does not apply to purely private disputes—and they are not issues of public interest—because those disputes remain strictly between the parties. In other words, the speaker, context, and (particularly) audience for the speech in those disputes does not further a public discussion on any issue.

Of course, plenty of disputes that begin as personal spill into the collective consciousness. Ms. Evans's accusations against Harvey Weinstein sparked a worldwide reckoning on workplace sexual harassment. (See Farrow, *supra*.) A white woman's dispute with a black family barbecuing in an Oakland park generated more than two-million views on YouTube, sparked several weeks of national news stories, and led to hundreds of people attending a "BBQing While Black" protest/cookout attended by political candidates. (See Mezzofiore, *A white woman called police on black people barbecuing. This is how the community responded*, CNN (May 22, 2018) <https://cnn.it/2rYKqtm> [as of Oct. 20, 2020].) And in another dispute involving both Geiser's company and ACCE, a group of homeless women who moved into a long-empty Wedgewood-owned home in Oakland, generated literally thousands of stories in local, national, and international media—about the women's own situation as well as housing affordability, real estate practices, and gentrification generally. (See, e.g., Hanh, *These Moms Fought for a Home—And Started a Movement* (May 12, 2020) Vogue <https://bit.ly/355NV45> [as of Oct. 20, 2020]; Ho, '*This movement is just beginning': homeless moms evicted after taking over vacant house*, The Guardian (June 15, 2020) <https://bit.ly/2HcNrk3> [as of Oct. 20, 2020].) Thousands of other examples abound.

Deference would help distinguish the purely personal from the issue of public interest. This case provides a good example. The Court of Appeal found this was a purely personal dispute lacking public interest because the originating dispute involved only the Caamals and Geiser's company. (Opn. at pp. 15–16.) If Geiser had sued the Caamals for trespass for remaining in the house after his company took possession and evicted them, or if the Caamals sued Wedgewood for breach of contract for not engaging in good-faith negotiations to sell the property back to

them after agreeing to do so, those purely personal disputes would have lacked a connection to an issue of public interest because the speaker, audience, and context would not have indicated furthering any public discussion on any broader issue. But here, the contextual factors evince furthering a public discussion: dozens of protesters on a public sidewalk, both sides engaging the media, and the involvement of a statewide advocacy organization. By framing the issue as a purely personal one, the Court of Appeal obviated the need to engage in any real contextual analysis because it pre-defined the issue as one not of public interest. Deference to the defendant's framing would force a robust contextual analysis.

II. The Majority Erred in Adopting Geiser's Framing of the Issue and Finding the Anti-SLAPP Statute Did Not Apply

The majority undermined the *FilmOn* framework—and the anti-SLAPP statute generally. It focused its search on determining a single issue and adopted Geiser's narrow frame. In so doing, it ignored a wealth of evidence showing not just a connection to a public issue, but a classic SLAPP suit.

Properly applied, the *FilmOn* framework reveals a public issue because the speaker, audience, and purpose of the speech all furthered the public discussion around residential displacement caused by unfair foreclosure and fix-and-flip housing practices.

A. By Searching for a Singular Issue, the Majority Cut Off the Contextual Analysis Required by *FilmOn*

Ignoring the guidance this Court provided in *FilmOn* and the weight of other authority interpreting the "public interest"

requirement, the majority below found that a community demonstration on a public sidewalk attended by 25 to 30 people against a major real estate developer did not involve an issue of public interest. It reached that conclusion by adopting Geiser's singular and narrow frame: "a private matter concerning a former homeowner and the corporation that purchased her former home." (Opn. at p. 19.)

The majority flouted *FilmOn*'s command to avoid hunting for a singular, transcendental issue and instead to recognize that speech can implicate several issues at once. (*FilmOn*, *supra*, 7 Cal.5th at p. 149.) Because it accepted Geiser's frame that the singular issue was the purely personal dispute between the Caamals and Wedgewood, no amount of contextual connection (speaker, audience, or purpose) in the second part of the *FilmOn* analysis could have established a connection to a public issue. The majority predetermined the issue was nonpublic—i.e., purely personal—on the first step.

The majority should have instead deferred to the defendants' framing of issue and then looked to the contextual clues to determine whether there was "some degree of closeness" between the defendants' speech and the issue they claimed their speech implicated, such that the defendants' speech could be said to have contributed to the public debate "in some manner." (*FilmOn*, *supra*, 7 Cal.5th at p. 150.) By defining the issue narrowly from the start, the majority cut the contextual analysis off at the pass.

B. The Majority's Strained Reading of the Record Misfocused the Analysis and Conflicts with Precedent

Even if the majority was correct in insisting on a singular issue and refusing to give deference to the defendants' frame, it

still erred in three ways in concluding that the issue was a purely personal dispute between the Caamals and Wedgewood. (See Dis. Opn. at pp. 8–9.)

First, the majority trained much of its focus on the two sit-ins in the lobby of Wedgewood's office building rather than the protest outside Geiser's home. (Opn. at pp. 19–21.) Geiser admits that he was not present for the first protest in the Wedgewood office lobby and makes no claim that he was present for the second protest, either. (1 JA 29–30; 2 JA 321.) Any claims related to the office lobby protest likely belonged to Wedgewood, not Geiser. And Wedgewood asserted those claims when it sued Kuhns, the Caamals, and ACCE for trespass in the separate unlimited civil damages lawsuit. (1 JA 87–94.) As the dissent found, "[i]t was the protest on the sidewalk outside Geiser's home from which the civil harassment suits arose, and that protest accordingly should be the focus of our analysis." (Dis. Opn. at p. 9.) Regardless, even in a "mixed cause of action," where "relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded" when determining whether the claims arise from protected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.)

Second, the majority gave no credit to ACCE's participation, its mission of fighting housing displacement, the participation of dozens of ACCE members at the protest outside Geiser's house, or the Defendants' identification of the issue in their briefing. Instead, it dissected the declarations in support of the anti-SLAPP motion to avoid finding a public issue.

The Caamals' own declarations describe their efforts to negotiate with Wedgewood, their eviction, and the protest with dozens of supporters outside Geiser's home, noting the protesters "held signs, sang songs, chanted, and gave short speeches, all from the public sidewalk." (1 JA 98, 108, 112.) The majority faults them for not detailing the text of the signs, speeches, and chants

or detailing whether they spoke abstractly about Wedgewood's displacement practices. Such explicitness from the defendants themselves is generally not required to gain the statute's protection, at least in part because both speakers and listeners understand that all speech operates at some level of subtlety and abstraction. Readers of Animal Farm do not need Snowball to declare, "This farm is run like Stalinist Russia," to grasp the allegory, just as DoubleVerify's reports did not need to formally declare, "This report is about the presence of adult content on the Internet, generally," for this Court to conclude the reports implicated that issue. (Orwell, Animal Farm (1954); *FilmOn*, *supra*, 7 Cal.5th at p. 150.) The dissent offered a biting criticism on this point: "the absence of direct protestor quotes in the declarations means the majority is free to believe the ACCE members and others present outside Geiser's home might have been holding signs and chanting about the Protestant Reformation or some topic other than displacement of long-term residents like the Caamals. But that is a strained and artificial way to read the record." (Dis. Op. at 8 fn. 4.)

The majority seizing on the fact that Kuhns and the Caamals spoke in terms of the Caamals' fight misses another important point: this is how average people typically talk about their motivations. If a family loses someone to a police shooting, the family members who protest outside the police station are likely to say they are there because the police shot their family member and not to speak in abstract policy terms about the need for generalized police reform. Lawyers and judges can frame and assess the connection to a public interest. It is error to laser-focus on the parties' declaration at the expense of the public interest identified in their briefing.

The dissent observed that the majority also ignored the declaration of Gilbert Saucedo, the legal observer dispatched to monitor the protest, other than to quote it with italics. The

majority recounted the Saucedo declaration stating the purpose of the protest was "to protest unfair and deceptive practices used by Wedgewood . . . *and its agents in acquiring the real property of Pablo and Mercedes Caamal, and evicting them from their home*." (Opn. at 21.) As the dissent recognized, "[a]pplication of italics, however, is not legal analysis. Emphasizing the latter half of Saucedo's sentence does not somehow wipe away his assertion that unfair and deceptive practices used by Wedgewood were in play." (Dis. Opn. at p. 9.)

Third, the majority's conclusion that the statute did not apply created a conflict with another protester case with almost identical facts. In *Thomas v. Quintero* (2005) 126 Cal.App.4th 635 (*Thomas*), the First District found the anti-SLAPP statute applied to a civil harassment petition filed by a landlord against a tenant who, helped by a community renters' organization, organized a sidewalk protest against the landlord. (*Thomas*, *supra*, 126 Cal.App.4th at pp. 653–655.) That court found it particularly significant that the tenant "did not act alone, but in conjunction with planned demonstrations against [the landlord] by a nonprofit group purportedly dedicated to upholding tenant rights. Thus, [the court concluded,] while [the tenant's] private interests were certainly in issue, there were much broader community interests at stake in the protests." (*Id*. at p. 661.)

Thomas is on all fours with this case. *Thomas* involved a renter's dispute with his landlord; this case involves two former homeowners' (and a community activist's) dispute with the developer that purchased the home to sell it. In both cases, local organizations dedicated to protecting housing rights lent assistance, including by organizing a protest against the owner. *Thomas* involved a landlord with multiple units throughout the city; this case involves the country's largest fix-and-flip operation that has been sued across the state for its displacement practices.

(5 JA 1274–1340 [examples of two such cases in the record]; MJN Exs. 10 & 11.)

The majority tried to distinguish *Thomas* on a minor factual difference, arguing there was evidence the landlord there was accused of wrongdoing by more than 100 tenants, while Kuhns and the Caamals showed Wedgewood was sued only two other times for unlawful business practices. (Opn. at pp. 21–24.) The majority declined to define the threshold number of tenants a landlord must mistreat before the public's interest in his business practices is valid for the purpose of the anti-SLAPP statute. And as the dissenting opinion from the initial Court of Appeals decision noted, "[q]uibbling about precisely how much other wrongful conduct evidence there is here as compared to *Thomas* unjustifiably elevates insignificant factual distinctions over the many salient factual similarities between that case and this one." (Dis. Op. to Initial Panel Decision (Aug. 30, 2018) at pp. 5–6.)

It is also a result that would make the law unrecognizable to the legislators who enacted the anti-SLAPP statute. Nothing in the legislative record suggests that the problem of "well-funded developer[s] limit[ing] free expression by imposing litigation costs on citizens who protest, write letters, and distribute flyers in opposition to a local project" was limited to those notorious for having done so in the past, or that they get a pass when they do it for the first time. (*FilmOn*, *supra*, 7 Cal.5th at p. 143.)

C. Properly Applied, *FilmOn*'s Contextual Analysis Reveals a Connection to a Public Issue

The majority failed to apply *FilmOn*'s contextual analysis in any meaningful way. Proper application of the contextual factors shows that the protest sought to further the public

discussion about combatting unfair housing and foreclosure practices that displace long-term community residents.

1. The Identity of the Speakers—Dozens of People Participating in a Public Sidewalk Demonstration—Shows Defendants Furthered Discourse on an Issue of Public Interest

The identity of the speakers shows their speech furthered the conversation on public issues. Unlike *FilmOn*, this case did not involve a private, for-profit enterprise selling its commercial products. It involved dozens of people engaged in a community protest on a public sidewalk.

The majority focused not on "the identity of the *speaker*," as *FilmOn* commands, *FilmOn*, *supra*, 7 Cal.5th at pp. 140, 142, 147 (emphasis added), but on the identity of the *plaintiff*. It grounded its finding of the lack of a public issue in its determination that Geiser was not "a public figure" and "had [not] gained widespread notoriety throughout the community for his real estate activities." (Opn. at p. 23.) This narrow reading misconstrues the purposes of the anti-SLAPP statute and creates a dual system of protection under which those involved in celebrity disputes receive the statute's protection while everyday people don't.

Even if *FilmOn* or any prior precedent left open the possibility that the subject of a speaker's criticism must be a public figure or have gained widespread notoriety for his unfair business practices, *Wilson* put that possibility to bed: "that a statement is about a person or entity in the public eye may be sufficient, but it is not necessary, to establish that a statement is free speech in connection with a public issue or an issue of public interest." (*Wilson*, *supra*, 7 Cal.5th at p. 902.)

The speakers here included the family members embroiled in the dispute, but they were not alone. Dozens of others joined

them, all of whom had no financial or tangible interest in the Caamals' former home—including Kuhns, a housing rights organizer who also bore the brunt of Geiser's litigiousness. As the dissent recognized, "Kuhns and other ACCE members participated in the sidewalk protest outside Geiser's home, and ACCE's identity and involvement is strong evidence of a connection to an issue of public interest." (Dis. Opn. at p. 10.)

Here, the speakers are participants in a public demonstration, speaking out against a real estate magnate—in protest of the family's individual treatment and as an emblem of how such practices displace others and create housing instability on a macro level. The identity of the speakers indicates furthering a discussion of a public issue.

2. The Audience for the Speech—the Public Writ Large—Shows Defendants Furthered Discourse on an Issue of Public Interest

The speakers' audience also shows their speech furthered the conversation on a public issue. In *FilmOn*, the Court noted that the private audience—"a coterie of paying clients"—cut against finding a connection to a public issue. (*FilmOn*, *supra*, 7 Cal.5th at p. 153.) The Court built on that foundation in *Wilson:* "private communications may qualify as protected activity in some circumstances," but the private context "makes heavier [the speaker's] burden of showing that . . . the alleged statements nevertheless contributed to discussion or resolution of a public issue." (*Wilson*, *supra*, 7 Cal.5th at p. 903, citing *FilmOn*, *supra*, 7 Cal.5th at pp. 146, 150–151).

Unlike *FilmOn* and *Wilson*, the audience here was the public writ large. The community protest took place on a public sidewalk.

The majority dismissed dozens of people protesting on a public sidewalk by claiming the residential location made Geiser the sole audience.[5] (Opn. at p. 27.) To be sure, Geiser was part of the protesters' audience, but they also sought to inform the public, including his neighbors and others in his community, of his behavior. Courts regularly recognize that protests geographically-focused on an individual or a specific locale also seek to engage the public. (See, e.g., *Organization for a Better Austin v. Keefe* (1971) 402 U.S. 415, 419 [protesters' leafletting in target's residential neighborhood was fully protected speech because it was aimed at "openly and vigorously . . . making the public aware of [Keefe's] real estate practices"]; *Huntingdon Life Scis., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1241, 1246 [protest attended by 15 to 20 participants outside home of mid-level employee of an animal testing facility met the public issue requirement because animal testing generally is an issue of public interest and the demonstrators' activity "contribute[d] to the public debate"]; *City of Los Angeles v. Animal Def. League* (2006) 135 Cal.App.4th 606, 620–621 [demonstration outside home of mid-level employee of city animal shelter involved a public issue because "[d]emonstrations . . . to criticize government policy regarding the alleged mistreatment of animals at City-run animal shelters . . . constitute a classic exercise of the constitutional rights of petition and free speech in connection with a public issue or an issue of

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[5] The majority also faulted the protesters for not having members of the media present for the protest. (Opn. at p. 27.) No authority supports the position that media must be in tow for the anti-SLAPP statute to apply to protest activity. And it is unclear why a media presence at *this* demonstration might have shown defendants' speech furthering the discussion of an issue of public interest given the majority's wholesale dismissal of the media's presence at and coverage of the Caamals' earlier protests against Wedgewood. (Opn. at p. 24.)

public interest"]; *Thomas*, *supra*, 126 Cal.App.4th at p. 661 [activists demonstrating in parking lot of defendant's church related to a public issue]; *Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal.App.4th 1138, 1143–1144 [demonstrations and pickets in front of stores that sold clothing, some of which was manufactured by 19 garment workers who allegedly worked under inhumane conditions, was made in connection with a public issue]; *Lam v. Ngo* (2001) 91 Cal.App.4th 832, 837–839, 845 [demonstrations in the parking lot of restaurant owned by city councilperson who declined to denounce a neighborhood video store's hanging of a communist flag in its window was "no doubt" in connection with an issue of public interest].) Public demonstrations are one of the few outlets available to the poor and powerless to participate in public discussions and reach wider audiences.

And the public showed interest. Multiple news outlets independently reported on the issue, reflecting informed professional judgments about the public's interests, and tying the specific issue facing the Caamals to the broader public issues related to the foreclosure crisis. The media coverage of this dispute demonstrates that the connection to the public interest was clear and substantial.

Wedgewood's *own press release* also confirm the broader connections to issues of public interest, stating that for ACCE, "making headlines and political gain[] far outweighs helping the Caamals return to their home." (5 JA 1348; Moody, *supra*.) As does Wedgwood's hit piece in Breitbart News. (Breitbart Article, *supra*.) Indeed, the Wedgewood press release and Breitbart Article neatly demolish Geiser's own defense by the very fact of their issuance. If there was no public interest in this dispute, as he contends, why would Geiser's company feel the need to broadcast its own spin to the news media? He stoked the press coverage because he understood the public took interest.

Unlike DoubleVerify's reports in *FilmOn*, the audience for Kuhns's and the Caamals' speech was not a private subscriber base or a narrow subset of people who privately received their speech. Their audience was the same as that of every other public demonstration: literally anyone who would listen. The audience was the public.

3. The Purpose of the Speech—to Denounce Unethical Business Practices—Shows Defendants Furthered Discourse on an Issue of Public Interest

The purpose of the demonstration affirms the speech furthered the conversation on a public issue. (*FilmOn*, *supra*, 7 Cal.5th at p. 143.) As explained above, the purpose of the demonstration was, 1) at a general level, to engage in public speech denouncing a business leader who the demonstrators believed to be engaged in unethical and immoral business practices that displace families, and 2) at a specific level, to denounce Geiser's company's practices surrounding the Caamals' eviction. The public was interested in both issues.

The majority's analysis of the purpose of the speech reflexively circled back to what it determined to be the singular issue—"coercing Wedgewood into selling back the property to Ms. Caamal at a reduced price."[6] (Opn. at p. 26.)

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[6] The majority's conclusion that the 'purpose' prong of the contextual analysis involved an identical analysis to how it defined the issue at the first *FilmOn* step stresses the need for deference to the defendant's framing of the issue at the outset. Otherwise, like the majority found here, the 'purpose' prong of the contextual analysis threatens to be redundant of the first *FilmOn* step.

Perhaps if the Caamals were alone in their demonstration outside Geiser's home, or if Geiser sued only the Caamals, the majority's conclusion that the protest was purely private might be plausible. But they weren't, and he didn't, so it isn't. Dozens of people with no connection to the Caamals' property joined the protest—including Kuhns, a local organizer for one of the state's largest housing rights organizations, who Geiser then sued. Geiser didn't sue Kuhns because Kuhns had any connection to the purely private eviction between the Caamals and Geiser's company. Geiser sued Kuhns to shut him up. And Geiser's company *admitted as much in its press release*, explaining Wedgewood blew up the parties' settlement negotiations because ACCE refused to refrain from all future criticism of the company. (5 JA 1348.)

Kuhns's and the Caamals' protest tied directly to the broader dispute around combatting unfair housing and foreclosure practices that displace long-term community residents. ACCE's involvement, as an organization on the front line of broader disputes around foreclosure and residential displacement, shows as much. And multiple news outlets independently reported on the issue, reflecting informed professional judgments about what the public is interested in, and tying the specific issue facing the Caamals to the broader public issues related to the foreclosure crisis. The media coverage of this dispute demonstrates that the connection to the public interest was clear and substantial.

The purpose of Kuhns's and the Caamals' speech was to shame a business leader who they viewed as engaging in callous and unethical business practices—as is the case with thousands of other public demonstrations.

4. The Timing and Location of the Protest Shows Defendants Furthered Discourse on an Issue of Public Interest

While not factors identified by *FilmOn*, other contextual clues also show the protest furthered the conversation on a public issue.

The location—a public sidewalk—shows an attempt to contribute to public debate. Sidewalks are quintessential public fora that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions," and "occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate." (*McCullen v. Coakley* (2014) 573 U.S. 464, 476.) "With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks." (*Ibid.*) They remain "one of the few places where a speaker can be confident that he is not simply preaching to the choir." (*Ibid.*) This "is a virtue, not a vice." (*Ibid.* see also Dis. Opn. at p. 11.)

The timing of the protest also shows an attempt to contribute to public debate. "[T]he protest occurred the very same day of the Caamals' eviction—when public interest in their plight as a concrete example of the consequences of housing displacement was likely to be at its apex." (Dis. Opn. at p. 11.)

* * *

The majority erred in finding the anti-SLAPP statute did not apply. This Court should reverse.

Conclusion

The great number of cases invoking the anti-SLAPP statute are far afield from the core, paradigmatic forms of suppression that the Legislature originally designed the statute to guard against. "But this wolf comes as a wolf." (*Morrison v. Olsen* (1988) 487 U.S. 654, 699 (dis. opn. of Scalia, J.).) Rare is the lawsuit that is so clearly aimed at punishing public participation and so directly within the anti-SLAPP statute's primary purpose.

Because the Court of Appeal misinterpreted and misapplied the anti-SLAPP statute, its decision should be reversed.

Respectfully submitted this 20th day of October, 2020

Law Office of Matthew Strugar
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By: /s/ Matthew Strugar

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Pursuant to California Rule of Court 8.204(c)(1), the text of this brief, including footnotes and excluding the caption page, table of contents, table of authorities, the signature blocks, and this Certificate, consists of 13,685 words in 13-point Century Schoolbook type as counted by the Microsoft Word word-processing program used to generate the text.

Dated this 20th day of October, 2020.

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At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3435 Wilshire Boulevard, Suite 2910, Los Angeles, California 90010.

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Matthew Strugar

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