CASE NO. S239686

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SUPREME COURT
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IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

STANLEY WILSON,

Plaintiff and Appellant,

vs.

CABLE NEWS NETWORK, INC., A DELAWARE CORPORATION; CNN AMERICA, INC., A DELAWARE CORPORATION; TURNER SERVICES, INC., A GEORGIA CORPORATION; TURNER BROADCASTING SYSTEM, INC., A GEORGIA CORPORATION; PETER JANOS, AN INDIVIDUAL,

Defendants, Respondents and Petitioners.

AFTER PUBLISHED COURT OF APPEAL DECISION,
SECOND APPELLATE DISTRICT, DIVISION 1
CASE NO. B264944
LOS ANGELES SUPERIOR COURT CASE NO. BC559720
HONORABLE MEL RED RECANA

APPELLANT'S ANSWERING BRIEF ON THE MERITS

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I. RESPONSE TO CNN'S STATED ISSUES.

Issue 1: Case law treats a Defendant's discriminatory motive as alleged as relevant to the prong one determination of whether claims arise from conduct in furtherance of defendant's right of free speech under CCP § 425.16(b).

Cable News Network, Inc. ("CNN" collectively references all defendants) asserts an employer's alleged discriminatory motive is irrelevant to the first prong of the anti-SLAPP statute regarding whether its employee's claims arise from conduct in furtherance of defendant's right of free speech. CNN incorrectly asserts that the appellate court in *Wilson v. Cable News Network, Inc.*, (2016) 6 Cal.App.5th 822 ("*Wilson*"), held that "the mere allegation of a discriminatory or retaliatory motive is sufficient to take a case outside the protections of the anti-

SLAPP statute, regardless of the nature of the *conduct.*" (CNN Brief on Merits ("CNN-Brief"), p. 11.).

The *Wilson* Court looked to the *specific allegations* making the claim actionable to determine if Section 425.16 applied. Rejecting CNN's argument, the *Wilson* Court noted that "the only reason defendants' failure to promote and firing of plaintiff are actionable is that they were allegedly acts of discrimination and retaliation. Absent these 'motivations,' Stanley Wilson's employment-related claims would not state a cause of action." (*Wilson,* 6 Cal.App.5th at p. 835.) A producer's involvement in news reporting does "not mean that defendants' alleged discrimination and retaliation against plaintiff--a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable to shape its news reporting--was also an act in furtherance of its speech rights." *(Id.* at p. 834.) "CNN could not argue that because it is a news agency it is allowed to discriminate, harass, or retaliate against its employees." (*Id.* at p. 837.) The *Wilson* Court emphasized that "[t]he critical issue concerns whether 'the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech,'" and concluded it was not. *(Id.* at p. 837.)

If protected activity is alleged in the complaint to constitute an element of the tort, then defendants' motive will not make SLAPP laws inapplicable. No such conduct however was alleged in Wilson's complaint, so defendant's tortious motive indicates the basis of liability and is considered in determining the conduct from which the claim arises.

In asserting discriminatory motive is irrelevant to the first prong of the analysis, CNN relies upon *Tuszynska v. Cunningham,* (2011) 199 Cal.App.4th 257 ("*Tuszynska*"), and *Hunter v. CBS Broadcasting Inc.*, (2013) 221 Cal.App.4th 1510 ("*Hunter*"). This Court, however, addressed this issue in its discussion of appellate decisions which have accurately distinguished "activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim," in *Park v. Board of Trustees of*

California State University, (2017) 2 Cal.5th 1057, 1064-1067 ("*Park*"), where it also disapproved *Tuszynska, supra. (Id.* at p. 1071.)

This Court noted with approval decisions considering whether the actionable conduct was alleged to have been motivated by discrimination. Specifically, it noted with approval consideration of the employer's discriminatory motives in *Martin v. Inland Empire Utilities Agency, (*2011) 198 Cal.App.4th 611. "Liability, if any, would arise from the constructive discharge of the plaintiff *for illegal reasons*, not the defendants' evaluations of the plaintiff at the agency's board meeting." [Emphasis added.] (*Park*, 2 Cal.5th at p. 1066, citing *Martin*, at pp. 624-625.)

This Court similarly cited the consideration of discriminatory motives in *Nam v. Regents of University of California* (2016) 1 Cal.App.5th 1176 ("*Nam*"). "*Nam* illustrates that while discrimination may be carried out by means of speech, such as a written notice of termination, and an illicit animus may be evidenced by speech, neither circumstance transforms a discrimination suit to one arising from speech. What gives rise to liability is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, ***on account of a discriminatory or retaliatory consideration***." [Emphasis added.] (*Park*, 2 Cal.5th at p. 1066.) The defendant's reasons/motive for its conduct identify the conduct giving rise to the claim.

Addressing Park's *specific* allegations, this Court explained, "[t]he elements of Park's claim... depend not on the grievance proceeding, any statements, or any specific evaluations of him in the tenure process, but ***only on the denial of tenure itself and whether the motive for that action was impermissible***... Plaintiff could have omitted allegations regarding communicative acts or filing a grievance and still state the same claims."" (*Id.* at p. 1068.) Wilson could similarly have omitted the pretextual reasons offered by CNN as the reason for his termination (plagiarism) and still have stated a claim. Conversely, had Wilson only referenced the pretextual reasons proffered for his termination, rather than CNN's

discriminatory conduct, he would have failed to state a cause of action.

This Court noted that *Tuszynska* had concluded "that a claim arising from a decision inevitably arises from the communications leading to that decision." (*Park*, 2 Cal.5th at p. 1071.) CNN similarly argues that Wilson's claims arise from CNN's plagiarism investigation, instead of from CNN's discriminatory conduct. This Court disapproved *Tuszynska*'s presupposition that "courts deciding anti-SLAPP motions cannot separate an entity's decisions from the communications that give rise to them, or that they give rise to." (*Id.* at p. 1071.)

Specific allegations regarding a defendant employer's tortious intent/motive are relevant to determining what wrongful actions give rise to a plaintiff's claims and whether those actions constitute protected conduct. The *Wilson* Court appropriately considered which of CNN's actions were alleged to have been discriminatory in determining which actions gave rise to Wilson's claims.

Issue 2: Regarding Wilson's defamation claim, CNN inaccurately presupposes that the Wilson Court required that a defendant demonstrate that the plaintiff had "name recognition" or was "otherwise in the public eye" under prong one of the anti-SLAPP statute.

The *Wilson* Court did not hold that a defendant addressing a defamation claim must demonstrate that the plaintiff had "name recognition" or was "otherwise in the public eye" to meet the first prong of the anti-SLAPP statute. The *Wilson* Court properly considered these among other factors in determining whether CNN's alleged defamatory statements furthered its free speech rights in connection with a public issue or issue of public interest. Since Wilson's defamation claim arose from private statements not about a person in the public eye which were made to a small number of people who could affect Wilson's career, CNN did not satisfy prong one regarding Wilson's defamation claim.

The *Wilson* Court noted the following generally applicable principles:

> "Three general categories of cases have been held to concern an issue of public interest or a public issue: '(1) The subject of the statement or activity precipitating the claim was a person or entity in the public eye. [Citation.] [¶] (2) The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants. [Citation.] [¶] (3) The statement or activity precipitating the claim involved a topic of widespread public interest.' (*Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 33 ("*Commonwealth*").) 'As to the latter, 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.' (*Wilbanks [v. Wolk* (2004)] 121 Cal.App.4th [883,] 898.)"

(*Wilson*, 6 Cal.App.5th at pp. 832-833.)

The *Wilson* Court considered each of these categories. It found that Wilson was not in the public eye and was hidden from public view, that the alleged defamatory statements did not affect large numbers of people beyond the direct

participants, and that the statements did not involve a topic of widespread interest. (*Id.* at pp. 837-839.) It found the defamatory statements involved "a private issue involving plaintiff, defendants, and perhaps a small number of other CNN employees," and the "statement to the effect that plaintiff plagiarized passages in the Baca article in no way contributed to public debate regarding Baca's retirement." *(Id.* at pp. 838-839.) CNN's analysis conflates the requirements addressed these three separate categories of claims, inaccurately suggesting that *Wilson* required all three be satisfied.

CNN asserts that Section 425.16(e)(4) includes "free speech furthering actions that may not themselves be of interest to the public, but which nevertheless are connected to an issue of importance to the public," but it dismisses the need for that speech to somehow contribute to the public debate. (CNN-Brief, pp. 59-60.) Not surprisingly, CNN's analysis of the defamation claim completely omits *Wilbanks*, *supra*, and other cases addressing that public debate requirement.

CNN improperly invokes a broad and amorphous public interest to suggest a public interest is involved. It cites to the public's interest in the news and journalistic ethics and the Baca story as topics of widespread public interest. CNN's defamatory statements were not about these broad topics, nor were they designed to inform the public of an issue of public interest.

The *Wilson* Court accurately found Wilson's defamation claim not subject to Section 425.16.

II. OVERVIEW AND SUMMARY OF *WILSON* OPINION

"The California anti-SLAPP statute was intended to counter the 'disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition....' ...It has been suggested that '[t]he cure has become the disease--SLAPP motions are now just the latest form of abusive litigation.'" (*Nam, supra,* 1 Cal.App.4th at p. 1179, quoting *Navellier v. Sletten* (2002) 29 Cal.4th 82, 96 (dis. opn. Brown).) And, the disease will become fatal to the rights of employees of media conglomerates, if this Court accepts CNN's flawed interpretation of anti-SLAPP laws. Employees of media conglomerates attempting to assert their rights are already engaging in David versus Goliath battles against behemoths such as CNN, with the media completely against the little guy.[1] Add the obstacle of anti-SLAPP motions requiring evidentiary proof without the benefit of discovery, threats of attorney fees when the media giants win and lengthy appellate delays when the media giants lose, and practically speaking, employees of media conglomerates lose their basic protections under California law. The Trial Court accepted CNN's flawed logic, so Wilson is here three years after filing, having conducted no discovery and liable for over $130,000.00 in attorneys' fees, because he protested years of discrimination at CNN. The appellate court rightly corrected that error.

After receiving "above-satisfactory" performance reviews as a behind the scene producer at CNN for 18 years, Stanley Wilson sued CNN for discrimination, retaliation, wrongful termination and defamation. CNN moved to strike all of Wilson's claims (V3AA/754:13-755:14) but failed to prove they *arose from*

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[1] This fact is apparent in the amicus briefs previously filed. These media employers lecture about the threat to the press's First Amendment rights posed by litigation, citing to cases involving attempts to compel, to prevent or to punish the publication of news/stories. No such facts are at issue here. Joining CNN's battle, these employers' interests are not as broadcasters and publishers communicating to the public. Their interests are as employers of thousands of people.

CNN's conduct *in furtherance* of its right of free speech *in connection* with a public issue or issue of public interest.

Division One of the Second District summarized the parties' positions:

> "With respect to his 'employment-related claims,' ... [Wilson] contends that defendants' 'behind-the-scene treatment of a behind-the-scene producer' is neither in furtherance of defendants' free speech nor in connection with a matter of public interest. Defendants, in contrast, argue that because CNN is a news provider, all of its 'staffing decisions' regarding plaintiff were part of its 'editorial discretion' and 'so inextricably linked with the content of the news that the decisions themselves' are acts in furtherance of CNN's right of free speech that were 'necessarily 'in connection' with a matter of public interest news stories relating to current events and matter[s] of interest to CNN's news consumers.'"

(*Wilson*, 6 Cal.App.5th at pp. 833-834.)

Heavily relying upon a liberal interpretation standard, CNN's analysis downplays and ignores the specific requirements of Section 425.16. CNN contends that a sufficient nexus exists between its employee's claims and a protected activity, by the mere fact that its employees' jobs are connected to news reporting, regardless of the tortious conduct alleged. Following that logic, all CNN's employment-related decisions will be subject to special motions to strike, because its employees' end product is connected to an issue of public interest – news reporting. If this argument is accepted, the alleged harassment victims of Harvey Weinstein should also expect anti-SLAPP motions, since their claims arise from their positions connected to his production studio and the creative process.

Contrary to CNN's reasoning, this Court explained that "[a] claim arises from protected activity when that activity underlies or forms the basis for the claim." (*Park*, 2 Cal.5th at p. 1062, citing *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) "The mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute." (*Park* at p. 1063, citing *Navellier, supra*, 29 Cal.4th at p. 89.) Instead, the focus is on determining what "the defendant's activity [is] that gives

rise to his or her asserted liability--and whether that activity constitutes protected speech or petitioning." (*Ibid.* quoting *Navelier,* at p. 92.) "[I]n ruling on an anti-SLAPP motion, 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." [Emphasis added.] (*Park* at p. 1063.)

CNN's actions supplying the elements of Wilson's claims are Wilson's supervisor's discriminatory and harassing conduct preceding his termination and CNN's refusal to promote and decision to terminate him for discriminatory reasons. CNN's assertion that Wilson plagiarized supplies no element of Wilson's employment-related claims. Wilson did not seek an on-air position or role. The person conveying a message on-air *may* constitute part of the message being communicated depending upon the claim alleged, a type of non-verbal communication (*e.g.,* choosing a distinguished older man or sexy young person as a television show host could constitute part of the message conveyed). In contrast, Wilson worked behind the scenes for almost two decades. His connection to CNN's message as conveyed is incidental to his employment-related claims.

The *Wilson* Court analyzed prong one of CNN's anti-SLAPP motion consistently with this Court's directives in *Park.* It differentiated *hiring* decisions from CNN's later discrimination and retaliation against "a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable to shape its news reporting." (*Wilson,* 6 Cal.App.5th at p. 834.) It reasoned:

> "CNN's actions in 2014 premised upon the alleged plagiarism concerning Sheriff Baca are not the basis of Wilson's claims that CNN subjected him to discrimination, harassment and retaliation before he even wrote the Baca report. If we accept CNN's argument as to the first prong, we must necessarily disregard what Wilson has alleged CNN did for a decade prior to his termination—conduct that was not a matter of public interest and could not be justified on the basis of CNN's status as a news entity."

(Id. at p. 837.) It found that Wilson's employment-related claims were *not based*

on an act in furtherance of CNN's right of free speech. (*Ibid.*)

The *Wilson* Court found that authorities reveal "no support for the treatment of employment discrimination and retaliation as a mere motive of no consequence in the determination of the applicability of section 425.16." *(Id.* at p. 834.) It did not hold that mere allegations of a discriminatory or retaliatory motive are sufficient to take a case outside the protections of the anti-SLAPP statute. It rejected "defendants' characterization of their allegedly discriminatory and retaliatory conduct as mere 'staffing decisions' in furtherance of their free speech rights." *(Id.* at p. 836.)

"[I]f the allegations of protected activity are only incidental to a cause of action based essentially on nonprotected activity, the mere mention of the protected activity does not subject the cause of action to an anti-SLAPP motion." (*Scott v. Metabolife International* (2004) 115 Cal.App.4th 404, 414.) CNN attempts to use its incidental and undisputed right to publish whatever it chooses to transform Wilson's employment claims.

Regarding Wilson's defamation claim, the *Wilson* Court found first that "the record does not show that plaintiff was a person in the public eye. He was a producer," and writing for the CNN Wire desk was a comparatively small percentage of his work by comparison to his producing. *(Wilson,* 6 Cal.App.5th at p. 837.) Second, "nothing indicates that plaintiff was a celebrity at any level" or "had name recognition.'" (*Ibid.*) Third, "Defendants' allegedly defamatory statements about plaintiff did not involve conduct that could affect large numbers of people beyond the direct participants" and was a private issue. [2] *(Id.* at p. 838.)

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[2] "The statement precipitating plaintiff's defamation claim was that plaintiff had plagiarized passages in the Baca article, not that Baca was retiring or why. The focus of defendants' statement was a private controversy, not the public interest." *(Wilson,* at p. 839.) His "alleged 'plagiarism' underlying the allegedly defamatory statement did not consist of large-scale copying of another's unique work embodying original research, but merely using a few of the same or similar phrases or sentences regarding accurate background information." (*Ibid.*)

Fourth, the statements "did not involve a topic of widespread public interest." (*Ibid.*) Never communicated to the public, "Defendants' allegedly defamatory statement to the effect that plaintiff plagiarized passages in the Baca article in no way contributed to public debate regarding Baca's retirement." *(Id.* at p. 839.)

Wilson has never disputed CNN's right to not publish any story, and non-publication of an article did not give rise to his claims. Had Wilson sued to have some story/article published, for damages from non-publication of an article, or to assert he had the right to change or not to apply CNN's editorial guidelines -- that would be completely different. Wilson did none of these.

Wilson's claims do not arise from CNN's right of free speech in connection with a public issue. The *Wilson* Court applied section 425.16 consistently with case precedent and this Court's directives, particularly as set forth in *Park*, *Navellier* and *City of Cotati.*

III. FACTUAL OVERVIEW

A. Wilson's Employment at CNN.

From 1996 to 2014, Wilson remained CNN's only African-American news producer in CNN's entire Western Region for over a decade. (V2AA/346:27-348:23, 349:1-10) He was promoted from Producer I to Producer II in 2003 (V2AA/346:27-347:2,348:8-27,349:1-11)

All of Wilson's CNN performance evaluations were satisfactory or higher. (V2AA/349:12-350:10; V2AA/396-499)

In 2004, Janos became the Bureau Chief of CNN Los Angeles and Wilson's supervisor. (V2AA/349:27-350:3,350:12-14) Janos was promoted to Western Regional Chief and then to Vice President and Bureau Chief of CNN Western Region in 2013. (*Ibid.*) Until Wilson's termination, Janos remained Wilson's direct supervisor. (V2AA/346:9-10,349:27-350:3)

Janos showed his preference for his white leadership team and discriminated against, humiliated, isolated and told Wilson to keep up with the "young blood" after repeatedly passing him over for promotion, despite Wilson's excellent qualifications. (V2AA/349:1-350:24,352:17-20,353:18-354:2,354:10-21)

Isolated, Wilson was left out by Janos both at work and at social events. When Wilson raised the issue of needing diversity in the news room during meetings and at his reviews, Janos was dismissive and conveyed his deep opposition. (V2AA/350:15-25) Janos directed particular hostility toward Wilson. (V2AA/352:16-20)

In 2004, Wilson complained in writing to Bob Melisso that journalists of color were still being relegated at CNN to minor roles in the coverage of major breaking news or events. (V2AA/351:14-15) On four separate occasions in 2007, 2008, 2009 and 2010, Wilson complained to Tim Goodly, the CNN Senior Vice-President of Human Resources in Atlanta, that African-American men outside of Atlanta, Washington, D.C., and New York were not being promoted and that African-American producers and photographers were not being treated fairly

based upon their merits. (V2AA/352:12-353:2) Janos played an important role in the discrimination against African-Americans regarding the failure to hire or promote them as staff producers and television photographers in Los Angeles, Chicago and San Francisco. (*Ibid.*) Wilson informed Goodly of his own concerns that his age and compensation package were increasingly being viewed by Janos as a liability. (V2AA/353:1-2)

Wilson observed no investigation of his complaints of discrimination and was never questioned about it. (V2AA/353:3-5,352:12-16)

Between 2005 and 2013, Wilson applied for several job opening at CNN. (V2AA/350:25-351:13) After 2004, Wilson was rejected for all CNN positions for which he applied; his discrimination complaints were ignored by corporate HR. (V2AA/350:25-351:15,352:12-353:5)

Wilson met with Janos about a week before his paternity leave in August of 2013 and stated that his experience and performance reviews merited a promotion to Senior Producer. He had already been performing the same duties as other Senior Producers and was producing more than the other producers in that position. Janos stated that he had no senior position for him. (V2AA/353:24-354:2)

After his twins were born in September 2013, Wilson took five weeks of paternity leave (three of which were vacation time). (V2AA/353:11-17) Upon Wilson's return, Janos assigned Hannah to high profile field assignments and prime time documentary programs, and Wilson was frequently relegated to lesser assignments. (V2AA/354:3-9) Hannah was performing many of Wilson's duties after Wilson's paternity leave. Janos retaliated against Wilson for exercising his right to paternity leave and complaining about discrimination in the workplace. (V2AA/355:14-21) Hannah's promotion was a step toward replacing Wilson, based upon his age, race, color, association with a disabled person (his wife). (V2AA/355:14-21)

In December 2013, Wilson spoke with Janos, expressing his concern about

his future and being relegated to inferior assignments since his paternity leave. (V2AA/354:10-13)

On January 28, 2014, Wilson was terminated at age 51 and was replaced by a much younger Caucasian man. (V2AA/345:5-6, 359:23-350:24, 383:11-20)

B. CNN'S Plagiarism Accusation Is Pure Pretext.

On January 7, 2014, Wilson covered a press conference about Sheriff Baca's retirement and offered to provide a story for the CNN wire desk. (V2AA/354:23-25) In preparing the Baca story, Wilson relied upon his presence at the press conference and his notes, as well as several sources that offered background content and facts about the circumstances of Baca's retirement.[3] (V2AA/355:10-13) While returning to the Bureau, Wilson handwrote an outline that he wanted to use and highlighted/underlined places where he needed to independently verify information that may come from a published source or broadcast source, which is a common practice. (V2AA/355:13-18)

Wilson was later unable to find his notebook with his highlighted draft, so he started a new story on his computer. (*Ibid.*) Wilson completed his story to the best recollection of his s notes, and independently verified any information from other sources. (V2AA/355:19-20) Sources included press releases from the Sheriff's Department and from the U.S. Justice Department about Baca's retirement and a lawsuit against the Sheriff Department. (V2AA/355:20-28; V3AA/503-507) Wilson confirmed the information about Baca's service, adding his own observations for context. (V2AA/355:28-356:2) Background stories that he used included a previously published CNN story about the indictment of sheriff's officials. (V2AA/356:2-7; V3AA/517-519) Wilson also viewed a digital piece posted by the *Los Angeles Times* and local CNN affiliates about Baca's retirement,

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[3] Using sourced material and publicly provided information is common practice when writing a story at news agencies. (V2AA/354:27-355:4)

in case his editors instructed him to match any reporting Wilson didn't already have. (V2AA/7-15; V3AA/509-515)

Wilson prematurely sent the story to the wire desk for copy edit, because he accidently had not included all references to the independent sources, Department of Justice and Press Release documents. Wilson was aware that copy editing was in place at CNN when he submitted it. (V2AA/356:16-20) Wilson then heard from Cathy Straight, the copy editor. (V2AA/356:21-357:5, 358:22) Straight expressed concern that some of the passages looked similar to the *Los Angeles Times* article. She and Wilson exchanged e-mails, he offered to submit a re-write, and he wrote back fifteen minutes later with a few revisions and informed her that he needed to leave but could answer any of her questions from home. (*Ibid.*) That evening, Straight informed Wilson by e-mail that Janos had been notified and that the Baca article would not be published. (*Ibid.*; V3AA/521-527)

Three areas of concern were allegedly identified regarding Wilson's 19 paragraph article, addressed in detail in his declaration. (V2AA/357:6-358:21) The following excerpts were noted as similar or identical to source materials: 1. "...who spent 48 years with the department, including 15 as sheriff;" 2. "The news of Baca's decision to step down startled people inside and outside the agency. He was engaged in a tough re-election battle amid several scandals that had plagued the department;" and 3. "Last year, the U.S. Department of Justice also accused sheriff's deputies of engaging in widespread unlawful searches of homes, improper detentions, unreasonable force and a systematic effort to discriminate against African Americans who received low-income, subsidized housing in the Antelope Valley section of Los Angeles County." (Opinion, pp. 5-6, V3AA/522-524)

Janos saw Wilson on January 8, 2013, but would not listen to his explanation of the incident. Janos warned "there are going to be consequences." (V2AA/358:23-28)

On January 9, 2013, Wilson met with Janos and the Broadcasting HR Manager Zaki and was placed on a leave of absence. (V2AA/359:1-5)

On January 16, 2014, Wilson had a telephone conversation with Zaki, who suggested that Wilson write to Straight emphasizing that Wilson should add that he had made a mistake. (V2AA/359:23-360:3)

On January 16th, Wilson requested that Zaki identify those who were involved in evaluating the plagiarism allegation. She refused, stating that the appropriate "stakeholders" were conducting a review. (V2AA/359:23-27, 360:10-13)

On January 28, 2014, Janos and Zaki met with Wilson, informing him that he had violated company policy and was terminated. Janos identified no one other than himself involved in the termination decision. (V2AA/360:9-12) Wilson has written approximately 200 articles for publication while at CNN, without a single previous suggestion that he had plagiarized or used source materials without attribution. (V2AA/359:18-22)

CNN provided no declarations from those: who supervised Wilson; who purportedly discovered his plagiarism; who investigated the allegation; and who ultimately decided to terminate him, including Janos. (V1AA/61-67, 107-108, 110-111) No declaration explained the involvement of Janos. (V1AA/7:21-11:14; V2AA/350:16-353:2,354:5-21,360:9-13)

C. CNN Incorrectly Asserts that Wilson Admitted that "the Plagiarism Was Solely His 'Fault.'"

Contrary to CNN's assertions, Wilson did not plagiarize or "admit" that he plagiarized. In Wilson's January 17th letter to Straight, he acknowledged that he had accidently sent the draft of his Baca story and took full responsibility for having sent the story prematurely, regretting that he had rushed the story. (V2AA/360:6-8; V1AA/115-117)

Wilson testified: "I did not plagiarize the Los Angeles Times article. I have never stated that I plagiarized it. I used it as one of my reference materials for my Baca article and verified information from it with my independent sources (such as

Justice Department press release) and then prematurely submitted the copy before noting all independent sources. In both the first draft submitted and the revised version that I submitted to Ms. Straight, I had independently verified all information within them. From a journalist's perspective, to plagiarize would suggest that I intentionally used content from another source without proper attribution regarding substantial and original information and without independent verification. I neither intentionally used content from another source, nor used substantial content from another source. First and foremost, I did not intentionally submit that copy. Second, the phrases that I had used were background information with little individualized style involved (such as years of service). Third, the article was never published, and when I submitted it, I knew that the article would be copy edited." (V2AA/359: 6-17)

A CNN declaration states, when "the Row detects such similarities between a draft story and another news source, the editor typically contacts the reporter or field producer to discuss the issue. The editor then determines whether or not the story can be published.... As necessary, writing supervisors may modify stories prior to running them or in some cases after the stories have been published...." (V1AA/65:1-9) Use of the term "typically" suggests that inadequate attribution happens with some regularity, but CNN fails to identify how often that occurs and identifies no policy requiring termination at the first instance of inadequate attribution.

Wilson's copy editors had previously re-written portions of his stories using background information similar to other published news reports without attribution and had moved them to digital publication ***without inquiring or even notifying Wilson of these changes first.*** (V2AA/355:5-9)

The record includes evidence that Janos was responsible for specific CNN stories that contained similar or identical language to previously published article. (V2AA/372:7-374:23; V3AA/563-582) V.P. Burke published two articles on CNN.com without attribution that contained similar or identical language to

previously published articles, but was not terminated. (V2AA/370:11-372:6; V3AA/546-554; V3AA/556-561; V1AA/61-62) Evidence showed numerous CNN stories using sourced material and publicly provided information without attribution by on-air personality Fareed Zakaria, who was not terminated. (V2AA/374:24-26, 374:27-383:8; V3AA/584-673)

CNN alleges that Wilson's January 2014 termination was based upon plagiarism in five other articles, but all of these pieces remained on CNN's site at least until the end of 2014. (V2AA/36, 360:14-24) Wilson was never told that anyone at CNN believed that he had plagiarized any of these stories; he was not allowed to respond to these claims. (V2AA/360:14-24)

IV. LEGAL ANALYSIS

A. CNN's Warnings That Employment Claims Such as Wilson's Will Chill Free Speech, If Section 425.16 Does Not Apply, Are Groundless.

CNN's dire warnings, that free speech will be chilled if Wilson's lawsuit is not found to arise from CNN's protected activity, must be dispelled. Sounding the alarms by weaving this theme throughout each of its arguments, CNN urges that the *Wilson* Court's "reading of the statute effectively extinguishes for employers like CNN important protections against retaliatory lawsuits directed at chilling free speech." (CNN-Brief, p. 26.) It repeatedly restates and warns of this threat to free speech. (CNN-Brief, pp. 10, 30, 34, 50, 54, 68) CNN, however, provides no law or reasoning that supports its assertion that media employers being required to litigate their employees' FEHA-related claims, like all other California employers, would chill free speech in factual scenarios such as Wilson's. The law and facts do not support CNN's position.

As observed in *Wilson*, "the press has no special immunity from generally applicable laws." (*Wilson*, p. 836.) In *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, this Court held that a publication by "the news media to the general

public regarding a private person is not privileged under section 47(3) regardless of whether the communication pertains to a matter of public interest." (*Id.* at p. 719.) This Court's explanation there is equally applicable here:

> "The bedrock of the news media's argument for increased protection is that the costs of defamation actions, either in terms of judgments or litigation costs, stifle their ability to present the news.... [T]he argument is not logically persuasive when the injured plaintiff is a private person. Under defendants' theory, one could argue that a publisher or broadcaster could better cover a 'breaking' news story if its reporter could drive 100 miles per hour to get to the location of the story. No right thinking person, however, would argue that a pedestrian run over and seriously injured by the reporter should have to show malice to recover. 'The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.'"

(Id. at p. 755.)

This Court proved to be an accurate soothsayer, having noted, "[i]t has recently been reported that 'twenty-nine corporations control most of the business in daily newspapers, magazines, television, books, and motion pictures' and predicted that 'by the 1990s a half-dozen large corporations will own all the most powerful media outlets in the United States.'" (*Ibid.*) This occurred. And, some of the same amici have chimed in here. Turner Services is the parent company of CNN, and CNN's reach "extends across multiple television networks carried by cable, direct broadcast satellite, and other multichannel video programming providers, various radio networks and CNN.com." (V1AA/107:11-14,110:11-12)

CNN's chilling free speech warning heavily relies upon *Lyle v. Warner Bros. Television,* (2006) 38 Cal.4th 264, 297. (CNN-Brief, p 10.) Lyle was a comedy writers' assistant who worked on the production of *Friends,* featuring "adult-oriented sexual humor, and typically relied on sexual and anatomical language, innuendo, wordplay, and physical gestures to convey its humor." *(Id.* at p. 271.) Plaintiff was "forewarned that the show dealt with sexual matters," and she would be listening to their sexual jokes and sex discussions. After four months, plaintiff

was fired because of problems with her typing and transcription, and she later asserted a sexual harassment claim based upon the writers' conduct. *(Id.* at pp. 271-272.) ***No anti-SLAPP motion*** was brought. Affirming summary judgment, this Court was "unable to conclude a reasonable trier of fact could... find the conduct of the three male writers was sufficiently severe or pervasive to create a hostile work environment." *(Id.* at p. 291.) The majority did not reach Warner Brothers' contention that this claim infringed on its free speech rights.

Justice Chin noted, writers of the television show "were engaged in a creative process — writing adult comedy — when the alleged harassing conduct occurred." *(Id.* at pp. 295-296, conc. opn.) Lyle's claim was directed at restricting that creative process. "[T]hose who choose to join a creative team should not be allowed to complain that some of the creativity was offensive or that behavior not directed at them was unnecessary to the creative process. When First Amendment values are at stake, summary judgment is a favored remedy." *(Id.* at p. 300.)

Wilson agrees, but his claims are unlike Lyle's and do not challenge CNN's creative process. The creative process did not give rise to his claim. He does not contest CNN's right to publish whatever stories it wants or its right to issue its editorial standards. Wilson merely seeks that opportunity to prove his case, whether at trial or summary judgment.

CNN similarly cites to *Shulman v. Group W Productions, Inc.,* (1998) 18 Cal.4th 200, 228, for the proposition that "speedy resolution of cases involving free speech is desirable." *Shulman* involved an accident victim's invasion of privacy and intrusion claims for the publicly aired story/footage of her rescue and emergency helicopter ride to the hospital. Summary judgment being a favored remedy in a case involving the subject of a news story does not suggest that a media employee plaintiff should be required to prove his/her case before discovery begins. Unlike a plaintiff opposing a summary judgment motion with due process protections in place, the employee faced with an anti-SLAPP motion is required to provide evidentiary proof without the benefit of discovery under the threats of

liability for the media giant's attorney fees. The speedy resolution of such cases is not justified at the expense of employees' due process rights and rights to be free from discrimination.

CNN reiterates its warning that the media's free speech rights are threatened, quoting the UNRUH case not involving employment discrimination *Ingels v. Westwood One Broadcasting Services, Inc.*, (2005) 129 Cal.App.4th 1050, 1064. (CNN-Brief, p. 50.) Ingels asserted a radio station violated UNRUH by screening callers by age, which he argued was not a proper method for selecting on-air guests. The *Ingels* Court looked "to the context out of which appellant's claims arose: his attempt to express himself in an open forum carried over the airwaves of public radio," to conclude defendant providing "an open forum by means of a call-in radio talk show' meets prong one." (*Id.* at p. 1064.) Ingels's claim was aimed at affecting the content of that talk show.

In *Greater L.A. Agency on Deafness, Inc. v. CNN, Inc.*, (9th Cir. 2014) 742 F.3d 414, GLAD sought injunctive relief to change the way CNN has chosen to report "by imposing a site-wide captioning requirement." *(Id.* at p. 423.) The Ninth Circuit warned:

> "In concluding that CNN's conduct is in furtherance of its free speech rights on a matter of public interest, we do not imply that every action against a media organization or any action imposing increased costs against such an organization falls within the scope of California's anti-SLAPP statute. Nor do we suggest that the broad construction of the anti-SLAPP statute triggers its application in any case marginally related to a defendant's exercise of free speech. We adopt instead a much more limited holding: ***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.***" [Emphasis added.]

(Id. at pp. 424-425.)

In contrast to *Greater L.A.* and *Ingels*, Wilson's claims do not target the way a content provider chooses to deliver, present or publish news content on matters

of public interest. Wilson's employment claims do not compel speakers to utter or distribute any message. The enforcement of employees' FEHA protections are compelling interests. These employment rights are nothing like a person's desire to talk on a radio show or affect content.

CNN's public policy argument again warns of the chilling effect and cites to several cases addressing First Amendment immunity, in which plaintiffs directly targeted the way a content provider chooses to deliver, present, or publish news content (e.g., *McDermott v. Ampersand Publ'g, LLC* (9th Cir. 2010) 593 F.3d 950.) (CNN-Brief, pp. 53-56) CNN relied upon this case law in its original anti-SLAPP motion ***prong 2 merits analysis***, when asserting Wilson's claims lacked merit based on an absolute First Amendment immunity. (V1AA/51-53) It reiterated this argument in appellate briefing, boldly concluding: "CNN has a First Amendment right to elect not to use Wilson's services any longer and that CNN cannot be punished under California law for terminating his employment." (Respondent's Brief, p. 33.) The *Wilson* Court properly rejected this contention that media employers are unfettered by employee-protections laws because their employees' positions have some incidental connection to news reporting.

The Legislature enacted the anti-SLAPP law to address "***lawsuits brought primarily to chill the valid exercise of the constitutional rights*** of freedom of speech and petition...." (Section 425.16(a).) Lawsuits primarily brought to chill free speech are not synonymous with any lawsuit with any connection whatsoever to free speech issues. CNN's entire argument based upon First Amendment immunity (involving claims targeting content) constitutes a protection available to the media when content is threatened, not an issue here. CNN fails to demonstrate that these immunity cases have any applicability to the separate analysis under a prong one of the anti-SLAPP statute at issue here. The inapplicability of this immunity to prong two (not at issue before this Court) was proven in Wilson's appellate briefing, attached for this Court's convenience. (Attachment A, pp. 20-29 of Appellant's Reply Brief.)

CNN unsuccessfully attempts to buttress its public policy argument based upon the legislative history of Sections 425.16 and 425.17. It notes certain claims are excluded from Section 425.16 under Section 425.17, except for "news media and other media defendants" when "the underlying act relates to news gathering and reporting to the public with respect to the news media or to activities involving the creation or dissemination of any works of a motion picture or television studio. ***For claims arising from these activities***, the current SLAPP motion would remain available to these defendants.'" [Emphasis added.] (CNN-Brief, p. 52.) CNN again ignores that such claims must arise from such conduct affecting content, which are not at issue here.

CNN eventually asserts that if Section 425.16 is not found applicable, then "news organizations will be less likely to make editorial employment decisions... for fear of protracted discrimination litigation" and will be penalized for rooting out plagiarism and ethical breaches, which will "inevitably" affect the substance of what is published/broadcast. (CNN-Brief, p. 54.) That logic is enormously flawed. Legitimate allegations of employee plagiarism and ethical breaches will not be "penalized," and if legitimate, such evidence might demonstrate a legitimate business motive in employment lawsuits.

CNN cites to a hypothetical television series about Martin Luther King, Jr., as exemplifying this threat to free speech. (CNN-Brief, pp. 54-55.) It describes a producer choosing only African American actors to play roles in the series, being sued for discrimination by a non-African American actor denied a role. As the person seen by the public and conveying the story, the appearance and talent of those actors in the series, including their skin color, are part of the content/message being conveyed. On-air personalities can constitute part of the message conveyed.

Such claims are not at issue here. The *hiring* process into a *creative role* is different than the facts here, involving "a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable." (*Wilson*, 6

Cal.App.5th at p. 834.)

A more relevant hypothetical illustrates Wilson's claims here. Consider instead a claim by a Latino person, already working behind the scenes for the production studio for years on that hypothetical King series, whether as a cameraman, producer or even writer - with no "hiring" decision involved. If the studio then decides to fire that person because it wants only African Americans working behind the scenes, is that employees' discrimination claim subject to an anti-SLAPP motion? And, should the court consider only the studio's alleged reasons for termination or should they consider the actual tortious reasons alleged by the employee in his/her complaint? This Court has already answered that question in *Park*. (*Park*, 2 Cal.5th at pp. 1066-1067.) CNN asserts that the Latino applicant's claim falls under the anti-SLAPP statute, based exclusively upon the employer's media role. The *Wilson* Court's holding correctly suggests that such a discrimination claim is too attenuated to constitute an act in furtherance of free speech rights in connection with a public issue or an issue of public interest.

CNN has submitted no evidence to support its suggestion that allowing employees the legal protections afforded to all other California employees will chill CNN's free speech rights. Its public policy argument ominously warning of a chilling effect on free speech is unsupported by logic and law.

B. The *Wilson* Court Looked to CNN's Tortious *Actions* As Alleged To Determine if Wilson's Claims Arose from Protected Activity; It Did Not Exempt Employment Discrimination, Harassment and Retaliation Claims From Section 425.16.

The *Wilson* Court did not rewrite the anti-SLAP statute to exempt claims for employment discrimination, harassment and retaliation, as asserted by CNN. (CNN-Brief, p. 24.) Rather, its decision prevents media employers from exempting themselves from laws protecting employees from adverse employment

actions due to race, ethnicity, color, age, etc., based merely upon defendants' status as the "media." The *Wilson* Court looked to the specific allegations making the claim actionable and forming the basis of liability rather than to a broad and amorphous public interest in news cited by CNN.

"In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech." [Emphasis in original.] (*City of Cotati*, 29 Cal.4th at p. 78.) "[T]he mere fact an action was filed after protected activity took place does not mean it arose from that activity." (*Id.* at pp. 76-77.) "That a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such." (*Id.* at p. 78.)

As noted by this Court:

> "What gives rise to liability is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, ***on account of a discriminatory or retaliatory consideration***." [Emphasis added.]

(*Park, supra*, 2 Cal.5th at p. 1066) That is exactly what the *Wilson* Court considered here.

To determine whether Wilson's claims "arose from protected activity," the *Wilson* Court correctly noted that courts "disregard [a claim's] label and instead examine its gravamen." They do this by identifying the wrongful and injury-producing conduct that provides the foundation for the claim, "i.e., 'the *acts on which liability is based.*'" [Emphasis in original.] (*Wilson*, at p. 831.)

CNN reasons that, because the *Wilson* Court considered alleged discriminatory intent, it did not examine whether Wilson's claim arose from

CNN's ***acts*** in furtherance of its right of free speech.[4] It asserts "alleged motivations are irrelevant" to this determination, providing a table of cases without analysis in which courts examined defendant's underlying actions, as if the *Wilson* Court did not consider defendant's actions. (*Id.* at pp. 24-26.) That is inaccurate.

In deciding whether the initial "arising from" requirement is met, a court considers the pleadings and affidavits stating the facts upon which the liability is based. (*Navellier* 29 Cal.4th at p. 89.) However, the pleaded facts must be accepted as true. (*Young v. Tri-City Healthcare Dist.* (2012) 210 Cal.App.4th 35, 54.) "The question is what is pled-not what is proven." (*Nam*, 1 Cal.App.5th at p. 1184.) "[A] claim may be struck only if the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability." (*Park,* 2 Cal.5th at p. 1060.)

In accordance, the *Wilson* Court looked to the complaint first to see if any protected activity was alleged to constitute an element of the tort, which it was not. Wilson's employment claims do not arise from CNN's actions in furtherance free speech, do not contest CNN's editorial standards, and do not seek to control content or editorial standards. Wilson alleged that CNN's discrimination and retaliation against him had nothing to do with those issues. CNN's decision not to publish an internet article was not synonymous with its decision to discriminate against and terminate Wilson. Wilson agrees that CNN had every right not to publish the Baca story for any reason whatsoever. As alleged, Wilson's discrimination claim did not arise from that decision. (V1AA/11:21-24) His claims arise from the reverse, as he alleged any suggestion that the termination was

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[4] CNN's anti-SLAPP Motion relied upon the "catchall" subdivision 425.16(e)(4) ("conduct in furtherance of the exercise of... the constitutional right of free speech in connection with a public issue or an issue of public interest"). (V3AA/754:13-755:14)

related to the story was pretextual. (V1AA/10:25-27)

As the *Wilson* Court reasoned, a cause of action can only arise from protected conduct if it alleges at least one wrongful act that falls within the definition of protected conduct. (*Wilson*, 6 Cal.App.5th at p. 835.) Absent allegations of discrimination and retaliation, conduct alleged would not be actionable. (*Ibid.*) "[T]he only reason defendants' failure to promote and firing of plaintiff are actionable is that they were allegedly acts of discrimination and retaliation. Absent these 'motivations,' Stanley Wilson's employment-related claims would not state a cause of action.... Discrimination and retaliation are not simply motivations for defendants' conduct, they *are* defendants' conduct." [Emphasis original.] (*Ibid.*) It found that the gravamen of Wilson's employment-related claims, "neither implicate CNN's First Amendment rights nor are a matter of public interest." (*Id.* at p. 836.)

In support, the *Wilson* Court cited to *Nam* for the proposition that "[t]o conclude otherwise would subject most, if not all, harassment, discrimination, and retaliation cases to motions to strike.... Such a result is at odds with the purpose of the anti-SLAPP law." (*Wilson,* at p. 835, quoting *Nam*, *supra*, 1 Cal.App.5th at p. 1189.)

This Court in *Park* similarly cited to *Nam* with approval, noting:

> "'Any employer that initiates an investigation of an employee, whether for lawful or unlawful motives, would be at liberty to claim that its conduct was protected and thereby shift the burden of proof to the employee, who, without the benefit of discovery and with the threat of attorney fees looming, would be obligated to demonstrate the likelihood of prevailing on the merits.' [Citation omitted.] Conflating, in the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or evidencing discriminatory animus could render the anti-SLAPP statute 'fatal for most harassment, discrimination, and retaliation actions against public employers.'"

(*Park*, 2 Cal.5th at p. 1067, citing *Nam*, at pp. 1179, 1189.)

Wilson's alleged that beginning in 2004, "he was subject to discrimination,

harassment and retaliation because, *inter alia*, he was African-American and disliked by his superiors. He alleges that he repeatedly complained of his circumstances to no avail. Viewed from this perspective, Wilson alleges causes of actions that neither implicate CNN's First Amendment rights nor are a matter of public interest." (*Wilson,* at p. 836.)

The *Wilson* Court relied upon *Martin*, *supra*, as "additional support for viewing discrimination and retaliation as the acts upon which liability is premised, not mere motivations for actions--such as denial of promotions--through which discrimination and retaliation are manifested.... [*Martin*] concluded that 'the pleadings establish that the gravamen of plaintiff's action against defendants was one of racial and retaliatory discrimination.'" (*Wilson*, 6 Cal.App.5th at pp. 835-836.)

Likewise, this Court in *Park* cited to *Martin* as a case that had respected "the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim." (*Park*, 2 Cal.5th at p. 1064.) As explained in *Park*, the defendant agency in *Martin* argued "that the suit arose from negative evaluations of the plaintiff made by agency officers and board members.... '[T]he pleadings establish[ed] that the gravamen of plaintiff's action against defendants was one of racial and retaliatory discrimination, not an attack on [the defendants] for their evaluations of plaintiff's performance as an employee," therefore, liability "would arise from the constructive discharge of the plaintiff for illegal reasons, not the defendants' evaluations of the plaintiff at the agency's board meeting." (*Park* at p. 1066.) The agency urged its own non-discriminatory motive, asserting that Martin's constructive discharge resulted from the protected conduct in evaluating him. Their alleged discriminatory conduct caused Martin damage, not their asserted pretext.

That analysis parallels the facts here. CNN argues that Wilson's employment claims arise from its actions of staffing a news-connected position in *furtherance*

of its free speech rights and/or from its critical evaluation of his Baca article. Wilson alleged that CNN's discriminatory conduct resulted in his claims. The basis of CNN's alleged liability is not staffing or hiring for a news position, but discriminatory treatment and actions.

The *Wilson* Court correctly found that *Hunter* and *Tuszynska* mistakenly based their "conclusions that the employer's motive to discriminate was irrelevant in determining whether the defendant met its threshold burden to prove the conduct arose from protected activity" on *Navellier*. (*Wilson*, at p. 835.) The *Navellier* Court found a defendant had no "requirement of proving the plaintiff's subjective intent," i.e., intent to chill the exercise of its constitutional rights. (*Navellier*, 29 Cal.4th at p. 88.) The *Wilson* Court noted that the Supreme Court "determined that the SLAPPer's, not the defendant's, intent was irrelevant," so it "does not require us to ignore the defendant's alleged motive in a harassment, discrimination, or retaliation case." (*Wilson*, at p. 835.)

This Court in *Park* apparently agreed, as its analysis notes the elements of Park's claim "depend not on the grievance proceeding, any statements, or any specific evaluations of him in the tenure process, but ***only on the denial of tenure itself and whether the motive for that action was impermissible***." [Emphasis added.] (*Park*, 2 Cal.5th at p. 1068.) It also disapproved *Tuszynska* Court's overly broad consideration of communications defendants made in connection with making attorney referrals, rather than just the discriminatory referrals which gave rise to the claim. (*Id.* at p. 1971.) CNN makes the same argument as in *Tuszynska,* alleging Wilson's claims are based on "his employment producing news stories" and "communicating that decision." (CNN-Brief, p. 24.) *Park* has resoundingly rejected an analysis under prong one based upon mere "communication of the decision."

No protected activity was alleged as the basis of Wilson's claims, so the *Wilson* opinion properly emphasizes "discriminatory and retaliatory conduct" while discounting "particular manifestations" which are not protected conduct in

determining the elements of the tort making it actionable. Wilson did not allege that CNN somehow "sinned in its heart." CNN's discriminatory conduct forms the basis of his claim. Mere denial of promotions and termination without more are just not actionable, without consideration of CNN's discriminatory intent. And, denying promotions and termination of a promotion as alleged did not constitute conduct in furtherance of free speech. CNN ignores the actual reasoning and approach applied by the *Wilson* Court which analyzed CNN's actions. (CNN-Brief, p. 20.)

The *Wilson* Court reasoned: "CNN's actions in 2014 premised upon the alleged plagiarism concerning Sheriff Baca are not the basis of Wilson's claims... before he even wrote the Baca report. If we accept CNN's argument as to the first prong, we must necessarily disregard what Wilson has alleged CNN did for a decade prior to his termination—conduct that was not a matter of public interest and could not be justified on the basis of CNN's status as a news entity." (*Wilson*, at p. 837.) Its focus remained squarely on CNN's activity giving rise to its asserted liability.

Accordingly, the *Wilson* Court's analysis of whether Wilson's alleged claims arose from CNN's conduct in furtherance of its right of free speech is consistent with a long line of decisions, as well as this Court's more recent analysis of these issues in *Park*, *supra*.

C. *Wilson* Has Created No Exemption from Section 425.16.

CNN argues exhaustively that *Wilson* is contrary to statutory language and extensive case law because it "effectively rewrote the statute to exempt all claims for employment discrimination, harassment, retaliation."[5] (CNN-Brief, p. 24.)

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[5] CNN does not explain its retreat from its "exemption" argument by later stating that the ruling finds the anti-SLAPP "generally inapplicable" to such claims. (CNN-Brief, pp. 49-50.)

Wilson agrees that no single type of case may be exempted from anti-SLAPP motions - which did not occur here. In those instances where protected activity is alleged as an element the tort (i.e., defamation in an official proceeding or newspaper article), defendant's wrongful motive does not make the anti-SLAPP statute inapplicable. Where protected conduct is not per se alleged, then Courts need to look to whether defendant denied plaintiff a benefit or subjected the plaintiff to a burden because of discriminatory or retaliatory considerations.

Without supporting case-specific analysis, CNN provides its "chart" of cases purportedly addressing claims with proof of motive as an element which were found "subject to the anti-SLAPP statute" but would not be under the *Wilson's* Court's ruling. (CNN-Brief, pp. 25-26.) First, the defamation claim in *Kibler v. Northern Inyo County Hospital Dist.*, (2006) 36 Cal.4th 19, was not found subject to anti-SLAPP statute, as the *Park* case pointed out "we took for granted lower court findings as to what activity the tort claims arose from" and "did not address the arising from issue." (*Park*, at p. 1070.)

Second, in *Navellier*, *supra*, plaintiffs sued for breach of contract and fraud, alleging the defendant had signed a release of claims without any intent to be bound by it and then violated the release by filing counterclaims. The previously filed court claims were an exercise of freedom to petition and were an element of the tort giving rise to liability, so motive would not make SLAPP statute inapplicable.

Third, taking into account defendant's alleged motive when identifying the actions from which plaintiff's intentional infliction of emotional distress claim arose would not have changed the result in *Huntingdon Life Sciences v. Stop Huntingdon Animal Cruelty USA,* (2005) 129 Cal.App.4th 1228. That is because all claims *alleged* protected activity such as "encouragement of demonstrations against animal testing," which is an exercise of free rights. (*Id.* at p. 1245.) The protected activity was an essential element of the tort as alleged, regardless of motive.

Fourth, in *Gallanis-Politis v. Medina,* (2007) 152 Cal.App.4th 600, an employee sued two County supervisors, alleging they had obstructed her efforts to obtain bilingual bonus pay by conducting a pretextual investigation and preparing a false report, protected conduct requested by counsel for litigation. Considering their alleged retaliatory motive in identifying actionable conduct would not change the fact that "[a]bsent the investigation and report, nothing of substance exists upon which to base a retaliation claim against them." (*Id.* at p. 611.) As alleged in the complaint, the investigation and report were essential elements of the claim, and wrongful motive would not make SLAPP inapplicable.

CNN's "exemption" argument fails to consider whether the free speech or petitioning activity was alleged as an element of the tort, so alleged motives changes would not change specifically alleged acts constituting protected activity. The *Wilson* Court noted that, "defendants' choice of who works as a producer or writer is arguably an act in furtherance of defendants' right of free speech. But this does not mean that defendants' alleged discrimination and retaliation against plaintiff--a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable to shape its news reporting--was also an act in furtherance of its speech rights." (*Wilson*, at p. 834.) *Wilson* requires the specific *alleged* facts of the case be considered to determine if prong one is met.

That discrimination suits are unlikely to arise from protected conduct is merely a logical result of a factual analysis. That does not mean discrimination and retaliation suits cannot be protected activities ***based upon specific facts alleged.*** *Wilson* created no statutory exemption from anti-SLAPP laws.

D. *Wilson* Is Consistent with Case Law, Including *Park*.

CNN incorrectly asserts that appellate courts considering defendant's motives, when determining whether the conduct giving rise to the claim is protected conduct, have created an exemption to Section 425.16 and created a split

among the courts. CNN argues that the *Tuszynska* and *Hunter* cases[6] are the more accurate cases, while *Wilson*, *Nam* and *Bonni v. St. Joseph,* (2017) 13 Cal.App.5th 851 (Review Granted 11/1/17, S244148), inaccurately state the law. CNN's position is wrong for several reasons.

First, these cases did not rule that discrimination-related cases are exempted. Second, the disregard of defendant's alleged motivation in determining which actions give rise to plaintiff's claims seen in *Hunter* and *Tuszynska* improperly ignores the activities give rise to the liability. Third, *Park* focuses the analysis on the specific allegations and affirms the reasoning set forth in *Nam* and *Martin*, which is also followed in *Wilson* and *Bonni*.

Decided after *Park*, *Bonni*[7] involved a surgeon's claim that defendants violated the whistleblower statute by retaliating against him for reporting unsafe and substandard conditions and services at defendants' hospitals regarding robotic surgical-related services by suspending and denying him medical staff privileges after a peer review process. The *Bonni* Court relied upon the reasoning in *Park* and *Nam,* consistently with Mr. Wilson's analysis herein. It concluded plaintiff's retaliation claim "arose from defendants' alleged acts of retaliation against plaintiff because he complained about the robotic surgery facilities at the hospitals, and not from any written or oral statements made during the peer review process or otherwise." (*Bonni*, 13 Cal.App.5th at p. 855.) *Bonni* found, "his claim was *not* based merely on defendant's act of initiating and pursuing the peer review process, or on statements made during those proceedings—but on the retaliatory purpose or motive by which it was undertaken." (*Id.* at p. 863.)

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[6] Without noting that review was granted, CNN improperly relies upon *Daniel v. Wayans,* (2017) 8 Cal.App.5th 367 (Review Granted 3/20/2017, S240704). (CNN-Brief, p. 46.) It has no precedential effect. (*Cal. Rules of Court*, rule 8.1115(e)(1).)

[7] With review granted, *Bonni* has not precedential effect, but CNN addresses the reasoning, so Wilson refers to it only for its persuasive value.

CNN entirely omits *Martin* from its briefing, which found that "[l]iability, if any, would arise from the constructive discharge of the plaintiff *for illegal reasons*, not the defendants' evaluations of the plaintiff at the agency's board meeting." [Emphasis added.] (*Park*, 2 Cal.5th at p. 1066, citing *Martin*, 1068 Cal.App.4th at pp. 624-625.) Consistent with *Park*, *Nam*, and *Wilson*, the *Martin* Court considered defendant's alleged discriminatory motive, noting "the pleadings establish that the gravamen of plaintiff's action against defendants was one of racial and retaliatory discrimination." (*Ibid.*, citing *Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments, LLC* (2007) 154 Cal.App.4th 1273, 1284, finding the gravamen of complaint was discrimination, not the exercise of defendant's protected speech.)

As addressed in subsection IV.B., *Wilson*, *Nam*, *Martin,* and *Park* are consistent in their consideration of defendant's alleged motive in determining from which conduct the claim arises.

For its opposing position, CNN relies most heavily upon *Hunter*, *supra*, which involved a discrimination suit for failure to hire as a television weather anchor. In *Park* this Court commented on the "position accepted in *Hunter*," which "treats a news media organization's decision as to who shall report the news as an act in furtherance of that protected speech." (*Park*, 2 Cal.5th at p. 1071.) The television station in *Hunter* "argued that (1) the station itself engaged in speech on matters of public interest through the broadcast of news and weather reports, and (2) the decision as to who should present that message was thus conduct in furtherance of the station's protected speech on matters of public interest, to wit, its news broadcasts." (*Park* at p. 1072.) *Park* noted that *Hunter* found the proper inquiry to be whether selection of a weather anchor was in connection with a matter of public interest. (*Ibid.*)

Park failed to disclose whether it agreed with *Hunter* regarding the identification of which activity Hunter's discrimination claim arose from under Section 425.16. Of note, however, this Court commented that *Hunter* declined "to

consider the significance of the hiring decision itself." (*Park* at p. 1072.) *Park* expressly declined to address whether *Hunter* was correctly decided. (*Ibid.*)

Hunter improperly directed the prong one inquiry to a general topic of interest in who conveys the weather, rather than whether the specific allegedly discriminatory hiring decision on which Hunter based his claim was protected free speech in connection with an issue of public interest. *Hunter* did not consider "what actions by the defendant supply those elements [of claim] and consequently form the basis for liability." (*Park* at p. 1063.) *Hunter* should have considered the specific hiring decision alleged to have been discriminatorily motivated to determine whether the gravamen of the complaint was protected activity.

As noted in a long line of case law, "[t]he fact that 'a broad and amorphous public interest' can be connected to a specific dispute is not sufficient to meet the statutory requirements." (*Dyer v. Childress* (2007) 147 Cal.App.4th 1273, 1280.) "Courts have generally rejected attempts to abstractly generalize an issue in order to bring it within the scope of the anti-SLAPP statute." (*Talega Maintenance Corp. v. Standard Pacific Corp.* (2014) 225 Cal.App.4th 722, 733.) "The inquiry must focus on the content of the speech or other conduct on which the cause of action is based, rather than generalities or abstractions." (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 217.)

In reliance on *Hunter*, CNN argues a public interest based upon CNN's general role in broadcasting the news. *Hunter*, however, identified the prong one inquiry overly broadly. CNN also cannot genuinely assert that Wilson was a person it was considering hiring like Hunter, that Wilson was the face of their news or that Wilson's claims arose from free speech content. Wilson's job as producer was behind the scenes, and writing for the CNN Wire desk "was a comparatively small percentage of my work by comparison to my television producing." (V2AA/348:8-349:5,360:9-10, having written almost 200 stories over a 14 year period as a producer means he wrote about one internet story a month. (V2AA/348:15-27,359:18-20)) The television weather anchor position at issue in

Hunter is the face of the network communicating the news to the public.

Any connection between Wilson's producer position and CNN's free speech are attenuated and incidental to his claims at best, as the activities forming the basis of his claim were discriminatory conduct over years, with no hiring at issue. In contrast to *Hunter*, the *Wilson* Court correctly looked to the specific allegations from which Wilson's claims arose.

CNN's reasoning suggests all of its newsroom employment decisions are speech related and inseparably intertwined with its long-term employee's discrimination claims. This Court's reasoning in *Park* suggests otherwise, as it lauded the appellate courts who respected the distinction between activities forming the basis of the claim and those merely leading to liability creating activities or providing evidentiary support. (*Park*, 2 Cal.5th at p. 1064.) After unraveling the tenure decision from the protected communications leading up to Park's tenure decision, *Park* disapproved *Tuszynska's* failure to separate a defendant's decision from communications giving rise to it. (*Id.* at pp. 1069-1071.)

CNN improperly suggests that courts should jump to that presumption that defendant's claimed constitutional rights are valid, *before identifying whether any protected conduct is implicated.* A court first identifies the gravamen of the complaint to determine whether the plaintiff's cause of action was based on an act in furtherance of the defendant's right of free speech. (*City of Cotati*, 29 Cal.4th at p. 78.) If not, then no presumptions arise. The *Wilson* Court correctly did this, but CNN suggests that it conflated prongs one and two by looking to the alleged wrongfulness of defendant's actions, which was required in determining the gravamen of the complaint. (CNN-Brief, p. 49, citing *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1089.[8]) CNN is attempting to avoid its required "threshold

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[8] CNN cites to *San Diegans for Open Government v. San Diego State University Research Foundation* (2017) 13 Cal.App.5th 76 (review granted 8/16/17, S242529). (CNN-Brief, p. 49.) It has no precedential effect. (*Cal. Rules of Court*, rule 8.1115(e)(1).)

showing that the challenged cause of action is one arising from protected activity." (*Equilon Enterprises v. Consumer Causes* (2002) 29 Cal.4th 53, 67.)

Chavez did not indicate otherwise, stating "the defendant has the initial burden to make a prima facie showing that the plaintiff's claims are subject to section 425.16." (*Chavez, supra,* 94 Cal.App.4th at p. 1087.) *Chavez* involved a malicious prosecution action arising from the defendant's filing of a prior lawsuit against the plaintiffs. Plaintiffs argued that since defendant's unsuccessfully prosecuted claims lacking evidentiary support it indicated no constitutionally protected right. (*Id.* at pp. 1088-1089.) Since plaintiff had alleged the claim arose from the filing the complaint and "filing a lawsuit is an exercise of a party's constitutional right of petition," regardless of validity of the claim, the appellate court rejected the Chavezes' argument. (*Id.* at pp. 1087-1089.) No such per se protected activity is alleged in Wilson's complaint here.

In *Castleman v. Sagaser,* (2013) 216 Cal.App.4th 481, defendant made the same argument as CNN, asserting the court "failed to presume that [defendant's] conduct was protected, and instead (improperly) shifted the burden to [defendant]." (*Id.* at p. 495.) That argument was rejected. Presumptions of validity did not transform an attorney's alleged breach of fiduciary duty into a claim arising from constitutional petitioning or free speech activity.

In disapproving *Tuszynska's* reliance on communications conveying the termination to find the termination was protected conduct, the *Park* Court's analysis redirects the focus to the conduct alleged to have been discriminatory. It cautions against merely relying upon protected speech incidental to the actionable conduct. The *Tuszynska* Court needed to consider defendant's alleged motive to determine the specific conduct from which the claims arose to determine if they were protected.

Additionally, CNN ***incorrectly*** cites to *Barry v. State Bar of California,* (2017) 2 Cal.5th 318, as having "affirmed a trial court's order granting anti-SLAPP motion directed to claims" of retaliation and discrimination. (CNN-Brief,

pp. 31-32.) Rather, that court addressed anti-SLAPP attorney's fees awarded when the court lacked jurisdiction over plaintiff's claims; it did not address whether the anti-SLAPP motion was properly granted. (*Id.* at p. 323, fn.2 ["Neither party has contested the trial court's characterization of Barry's complaint, we assume without deciding that the trial court correctly held that all of Barry's claims concerned the State Bar's actions in pursuing discipline against her, and thus both arose from protected petitioning activity..."].)

In taking into account defendants' discriminatory motive as alleged, courts did exactly as directed by Section 425.16 and case precedent. *Park* did not direct courts to focus on the defendant's activity without considering which activities were alleged to be actionable – in this case discriminatory. It directed courts to consider those *specific* allegations giving rise to the claim. CNN's free speech rights merely lurk in the background of this case. *Wilson* properly looked at the ***specific allegations alleged***, rather than at a broad and amorphous public interest asserted by CNN, to determine which of CNN's actions supply the elements of the challenged clam and consequently form the basis for liability.

E. The Appellate Court Analyzed Wilson's Defamation Claim Consistently with Case Law; "Name Recognition" and Being "In the Public Eye" Were Not Required.

CNN moved to strike Wilson's defamation claim under Section 425.16(e)(4). CNN's defamatory accusations that Wilson plagiarized four sentences of background material in an unpublished article was a private matter concerning Wilson, who was not a public figure or in the public eye. No evidence suggests that his termination received any media coverage, and this plagiarism accusation

was not a topic of already widespread public interest. [9] CNN failed to meet its burden by failing failed to explain how its non-public communications, which in no way contributed to a public debate, on which the defamation claim are based, constitute a "free speech furthering act." Those statements also were not in connection with a public issue or issue of public interest.

Additionally, CNN's motion failed to meet the threshold showing, since the single paragraph addressing prong one regarding Wilson's defamation merely emphasized that defamation claims are typically addressed in Anti-SLAPP Motions aimed at the exercise of First Amendment rights. (V1AA/50:2-19) Without addressing Wilson's actual claim, CNN incorrectly urged that it had satisfied prong one:

> "...because the [defamatory statements] were statements about CNN's editorial standards and whether or not an employee of CNN met those standards ***in reporting on a matter of public interest,*** namely, the sudden retirement of Los Angeles Sheriff Lee Baca.'" [Emphasis added.]

(Ibid.) Wilson never ***reported*** on a matter of public interest (article remained unpublished), and no editorial standards were mentioned in defamatory statements. CNN's handling of this matter was not a matter of public interest anymore than any other employer's publication of defamatory statements about employees would be. Having failed to address the facts actually alleged, CNN

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[9] CNN did not seek judicial notice of any evidence. Unsupported by the record, it references news stories evidencing the public's interest in Wilson's termination, which resulted from a Google search regarding his "$5 million bias and wrongful termination suit" against CNN, as if interest in Wilson at the time he terminated or defamed is synonymous with a large lawsuit later filed against CNN. (CNN-Brief, p. 72.) CNN is too sophisticated to suggest that it was unaware that cite-able facts are limited to those in the record. (*CRC* No. 8.204(a)(2)(C).) This violation is compounded and made more unreasonable by CNN's failure to note and reliance on two cases in which this Court has granted review and its exclusion of the critical *Wilbanks* case, relied upon by the *Wilson* Court and in appellate briefing. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 884-885.)

never met its burden.

CNN incorrectly argues that the *Wilson* Court applied a narrow construction of "in connection with a public issue or issue of public interest" focusing on whether Wilson was "in the public eye, "whose termination would... generate... 'widespread public interest' as a 'celebrity.'" (CNN-Brief, p. 58.) In finding that prong one was not met, the *Wilson* Court separately considered three general categories held to satisfy that requirement. CNN's analysis has merged these three categories to suggest they instead represent a three-pronged test. The three categories are: 1. Subject of the statement was a person/entity in the public eye; 2. The precipitating statement/activity involved conduct that could affect large numbers of people beyond the direct participants; or 3. The precipitating statement/activity involved a topic of widespread public interest. (*Wilson*, at pp. 832-833, quoting *Commonwealth*, *supra.*) Disregarding that the third category is one of three approaches, CNN disputes the *Commonwealth* holding as incorrect because the third category is not required and public interest need not be widespread. However, the *Commonwealth* Court would agree, since it provided two additional categories of cases which would satisfy that requirement.

The *Wilson* Court found that Wilson's role in the news was hidden from public view and he was not a celebrity. It found the second category also was not satisfied. His alleged "plagiarism" was merely using a few of the same or similar phrases or sentences regarding accurate background information. (*Wilson*, at p. 839.) Wilson's conduct "was not so grave or scandalous as to make it a topic of widespread public interest." (*Ibid.*) "[P]rivate disputes between a small number of employees and a large, well-known employer do not involve a public issue or issue of public interest.' An issue of public interest must 'go beyond the parochial particulars of the given parties," and they did not involve a topic of widespread public interest. (*Id.* at pp. 837-839, quoting *Commonwealth,* 110 Cal.App.4th at p. 34.)

The critical issue is again identifying the allegedly protected conduct from

which the defamation claim arose. The *Wilson* Court correctly rejected CNN's "argument that Baca's retirement was the topic of widespread public interest" as misdirecting the proper focus, because "[t]he statement precipitating plaintiff's defamation claim was that plaintiff had plagiarized passages in the Baca article, not that Baca was retiring or why." (*Wilson*, at p. 839.) CNN disputes this focus as erroneously too narrow. (CNN-Brief, pp. 58-60.) Again citing to *Hunter,* CNN invokes the broad and amorphous – "the public's interest in the news" and "the accuracy and integrity of news reporting and journalistic ethics" - instead of the specific speech at issue. (*Ibid.*) Its entire factual analysis can be reduced to its position that the public has an undeniable interest in the news and journalistic ethics so anything that a major news organization does that is remotely connected to producing the news equates to protected speech, plus Wilson received awards from his peers so he was a topic of interest to the public. (*Id.* at pp. 69-72.) These "facts" do not withstand scrutiny. CNN has merely broadened the scope of the speech at issue in order to argue society's general interest in the subject matter rather than in the communication at issue.

Case law requires "some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient.'" (*Wilson*, at p. 832, quoting *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133 [parties were token collectors and defendant believed plaintiff had stolen a token, and began a campaign against the plaintiff. Court found defendant's communications concerned only a private dispute, so they were not connected to an issue in the public interest].)

"By focusing on society's general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is considered] synonymous with the greater whole.' ....we must focus on 'the specific nature of the speech rather than the generalities that might be abstracted from it.'" (*Wilson*, pp. 838-839.) "[W]e

must focus on "the *specific nature of the speech* rather than the generalities that might be abstracted from it." [Emphasis in original.] (*World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1570; see also *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, 601; *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 34.)

CNN's free speech rights merely lurk in the background here. "Though couched in noble language, defendants' communications were not 'about' these broad topics, nor were they designed to inform the public of an issue of public interest." (*World Financial,* at p. 1572.) *Wilson* concluded accordingly that "[t]he record does not reflect any widespread public interest in whether plaintiff lifted phrases from other news reports when composing" an unpublished Web article. (*Wilson*, at p. 838.)

Wilson noted "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,* at p. 839, citing *Wilbanks, supra,* 121 Cal.App.4th at p. 898; cited for this proposition in *Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1347.) The court in *City of Industry v. City of Fillmore,* (2011) 198 Cal.App.4th 191, held "we believe that under clause (4), the constitutionally protected free speech or petitioning activity must directly contribute in some manner to the discussion of an issue of public interest or seek to influence a discretionary decision by an official body relating to such an issue." (*Id.* at pp. 217-218.) CNN's defamatory statements were never made to the public and contributed to no public debate; they were entirely collateral to Baca retiring.

Completely omitting *Wilbanks, Weinberg, World Financial, City of Industry,* and *Albanese v. Menounos,* (2013) 218 Cal.App.4th 923, from its brief, CNN argues that section 425.16 "governs even private communications" regardless of whether they in any manner contribute to a public debate. (CNN-Brief, p. 67, citing to *FilmOn.com v. Double Verify, Inc.*, (2017) 13 Cal.App.5th 707, 717

(Review Petition 9/5/17, S244157), *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1546.) *FilmOn.com* in fact quotes *Wilbanks,* addressing cases regarding a subject of widespread public interest, noting that "the statement must in some manner itself contribute to the public debate." (*Wilbanks*, 121 Cal.App.4th at p. 898, citing *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, [report that an employee was removed for financial mismanagement was informational, but not connected to any discussion, debate or controversy]; *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, 601 [advertisements about a pill offering a natural alternative to breast implants are not about the general topic of herbal supplements]; *Rivero v. American Federation of State, County and Municipal Employees, ALF-CIO* (2003) 105 Cal.App.4th 913, 924 [reports that a particular supervisor was fired after union members complained of his activities are not a discussion of policies against unlawful workplace activities].)

In other words, these cases finding that Section 425.16(e) can apply to private communications do not hold that the communication/conduct need not contribute to the public debate. For instance, in *Terry*, *supra*, the Court found "that plaintiffs' actions gave rise to an ongoing discussion about protection of children, which warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance." (*Terry*, *supra*, 131 Cal.App.4th at p. 1550.) That is a contribution to the public debate, intended or not.

The *FilmOn.com* Court disagreed with *Wilbanks* and found the challenged conduct need not occur in public view or advance a public debate, explaining "[w]hether a statement concerns an issue of public interest depends on the content of the statement, not the statement's speaker or audience." (*FilmOn.com*, 13 Cal.App.5th at 722.) To ignore the speaker and audience altogether means that a person speaking alone in a room to herself could qualify under Section 425.16(e)(4). That is a nonsensical suggestion. What the *FilmOn.Com* Court has

ignored is that Section 425.16 does not merely require that the conduct be in connection with a public issue or an issue of public interest but also be in ***furtherance of the exercise free speech rights, meaning the audience is relevant.*** And, DoubleVerify's classification of FilmOn.com's website as "Copyright Infringement-File Sharing" and "Adult Content" in its reports to its subscribers would constitute a dissemination of the message beyond a private conversation.

CNN's reliance upon *Taus v. Loftus* (2007) 40 Cal.4th 683, is misplaced. In *Taus*, this Court analyzed claims by the subject of a videotaped interview and case study of child molestation. A controversy in the mental health field existed regarding child abuse victims' loss or suppression of their abuse memories and therapists' attempts to regain those memories. Defendant researchers "engaged in conduct in furtherance of their right of free speech in (1) conducting an investigation with regard to the validity of the Child Maltreatment article, (2) writing and publishing responsive articles questioning the conclusions of the Child Maltreatment article, and (3) speaking at professional conferences and meetings regarding the issues raised by the articles." (*Id.* at p. 713.) Their specific communications both contributed to public debate and were already the subject of public interest/debate.

CNN erroneously contends that the communications in *Taus* "did not themselves have a widespread impact on the public" (CNN-Brief, p. 62), which directly contradicts the above finding. CNN suggests *Taus* demonstrates that the subject of the controversy need not be a celebrity (CNN-Brief, p. 63), which is undisputed. *Wilson* never required that the subject of the defamation be in the "public eye." CNN's citation to other cases regarding no celebrity requirement are similarly flawed and unnecessary.

CNN's reliance on *Tamkin v. CBS Broadcasting*, (2011) 193 Cal.App.4th 133, is misplaced. The Tamkins' names and information were directly used in the content of a *CSI* episode, and their last names were used in the creative process. Defendants had demonstrated a "public interest in the writing, casting and

broadcasting of CSI episode 913" and "a connection between the use of plaintiffs' names and the creative process underlying episode." (*Id.* at p. 144.) Those facts have no similarity to Wilson's claim.

Likewise, in *Lieberman v. KCOP Television, Inc.*, (2003) 110 Cal.App.4th 156, KCOP broadcast illegal recordings of Lieberman, identifying him as having improperly prescribed controlled substances. "Because the surreptitious recordings here were in aid of and were incorporated into a broadcast in connection of a public issue," the complaint fell within the scope of section 425.16 *(id.* at p. 166), unlike the accusations against Wilson which were not broadcast or did not contribute to a public debate.

CNN relies upon *McGarry v. University of San Diego,* (2007) 154 Cal.App.4th 97, which involved a university head football coach and his defamation claims regarding implications that his termination was due to "immoral conduct" in a published news article and in a University employee's statement. The court found that McGarry's role as head coach "made him a public figure, and his employment termination was already a topic of widespread public interest," and "it is difficult to imagine a greater 'closeness' between the topic of the public interest (the termination) and the challenged statements (the reasons for the termination).... [T]he focus of the speakers' statements were to respond to the public interest." (*Id.* at p. 110.)

CNN's argument should be rejected just as defendant's argument was rejected in *Albanese*. Albanese, a behind-the-scene celebrity stylist for *Access Hollywood*, was accused of theft while at a hotel. The denial of defendant's Anti-SLAPP motion challenging her defamation claim was affirmed on appeal. "If we were to adopt [defendant's] overly broad definition of a public issue, we would obliterate the requirement that 'there should be a degree of closeness between the challenged statements and the asserted public interest.... Moreover, the focus of the speaker's conduct should be the public interest, not a private controversy.'" (*Albanese, supra*, 218 Cal.App.4th at p. 936.) An entity is hardly exercising free

speech rights in privately carrying on a discussion, defamatory or not.

The *Wilson* Court found: 1. Wilson is not a person in the public eye or celebrity at any level; 2. He had no name recognition; 3. His participation has no effect on CNN's rating; 4. This statement was private involving Wilson, CNN and a small number of others; 5. The statement did not involve conduct affecting large number of people; and 6. The statement did not involve a topic of widespread public interest. (*Wilson*, pp. 837-840; Sect. I, *supra.*)

Consistent with case law, the *Wilson* Court correctly found CNN's conduct giving rise to Wilson's defamation claim was not in furtherance of exercising free speech rights in connection with a public issue or an issue of public interest.

V. CONCLUSION

The Court of Appeal's published decision should be affirmed.

Executed this 13th day of November, 2017, at Los Angeles, California.

SHEGERIAN & ASSOCIATES, INC.

By: Carney R. Shegerian

Carney R. Shegerian
Attorneys for Plaintiff and Appellant,
Stanley Wilson

CERTIFICATE OF WORD COUNT

I, CARNEY R. SHEGERIAN, declare, as follows:

I am the attorney duly authorized to practice before all Courts of the State of California. I am one of the principal attorney of record for Appellant and Plaintiff. Utilizing the computer generated function of Microsoft Word 2003, I hereby certify that the length of APPELLANT'S ANSWERING BRIEF ON THE MERITS is 13,998 words, excluding tables, signature line and the Proof of Service attached hereto.

I declare under penalty of perjury of laws of the State of California that the foregoing is true and correct. Dated this 13th day of November, 2017, at Los Angeles, California.

SHEGERIAN & ASSOCIATES, INC.

By: 

Carney R. Shegerian
Attorneys for Appellant and Plaintiff,
Stanley Wilson

Attachment A

person providing personal knowledge of that decision.

The Trial Court's overruling of all of Wilson's objections provides no reason for this ruling, but the blanket manner in which they were all overruled suggests that the objections were not substantively considered. The declarants provided no personal knowledge or foundation suggesting that their knowledge was synonymous with that of the entire CNN media conglomerate, nor did they suggest how they arrived at their conclusions. This was no close call. The blanket overruling of all of Wilson's objections constituted an abuse of discretion.

CNN asserts Wilson's termination and defamation claims involve freedom of speech based upon the circumstances of Wilson termination and were thereby protected activities, but its only evidence of those circumstances is this inadmissible testimony. As further addressed in Wilson's AOB, the Trial Court's reliance on this inadmissible evidence constituted a miscarriage of justice, because without it, CNN failed to meet its admitted burden as the moving party.

B. CNN WAIVED ANY CHALLENGE TO THE TRIAL COURT'S FAILURE TO RULE UPON ITS EVIDENTIARY OBJECTIONS.

CNN states "CNN filed objections to the declarations filed by Wilson before the trial court, but they were not ruled upon. (V4AA/846-1013) CNN renews those objections here." (RB, p. 27, fn. 8, but see RB, p. 9, fn. 4) CNN's single two-sentence footnote is the extent of CNN's argument regarding its 166-page Evidentiary Objections, which included 160 baseless objections to Wilson's declaration. "The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.... [E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.)

By having failed to identify which objections it asserts are at issue and

having failed to demonstrate any discretionary abuse, CNN has waived any argument regarding CNN's objections to Wilson's Declaration.

C. CNN FAILED TO DEMONSTRATE THAT WILSON'S EMPLOYMENT CLAIMS AROSE FROM A PROTECTED ACTIVITY IN CONNECTION WITH A MATTER OF PUBLIC INTEREST.

"The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 67, quoting *Code of Civil Procedure* § 425.16 ("Section 425.16") subd. (b)(1).) "[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation omitted.] Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail it is one arising from such. [Citation omitted.] In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, citing to *City of Cotati v. Cashman* (2002) 29 Cal.4th 69.) Having failed to introduce any admissible evidence of who decided and why they decided to terminate Wilson, CNN failed to demonstrate that Wilson's employment claims arose from or was in connection with a matter of public interest.

As asserted by CNN, "the court's focus remains squarely on the defendant's activity that gave rise to its asserted liability, and whether that activity constitutes protected speech or petitioning, rather than on any motive the plaintiff may be ascribing to the activity." (RB, pp. 18-19, quoting *Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257, 271.) This is crucial here. Wilson's claims are based upon ***non-protected activity – CNN terminating him as a behind the scene producer***. His claims are not based on whether CNN chose to publish an article,

and CNN failed to demonstrate that in its Anti-SLAPP Motion. Termination does not automatically flow from CNN's decision not to publish stories written by any employees.

Just as this Court should not focus on discriminatory motives which Wilson ascribes to CNN's activity, it also should not focus on non-discriminatory motives which CNN ascribes to its conduct. CNN's ***activity*** at issue is its termination of Wilson. CNN argues that its asserted liability derives from its editorial decisions not to publish the Baca piece, which improperly focuses on motives which CNN credits itself as having. CNN has every right to or not to publish whatever stories it chooses, and Wilson does not allege anything to the contrary. In fact, Wilson alleges the exact opposite, that CNN's editorial guidelines were used as pure pretext and irrelevant to its discriminatory motive in firing him.

"[I]t is the principal thrust or gravamen of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies. (*Id.* at p. 79.) The court held, 'In short, the statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech." (*Scott v. Metabolife International, Inc.* (2004) 115 Cal.App.4th 404, 414, quoting *City of Cotati, supra*, 29 Cal.4th 78-79.) Defendant's critical acts at issue here are its treatment of him and his termination as a producer. His position as producer – not as a reporter – is too attenuated to CNN's freedom of speech to be encompassed by Section 425.16.

"[I]f the allegations of protected activity are only incidental to a cause of action based essentially on nonprotected activity, the mere mention of the protected activity does not subject the cause of action to an anti-SLAPP motion." (*Scott, supra*, 115 Cal.App.4th at 414; *People ex rel. Fire Ins. Exchange v. Anapol* (2012) 211 Cal.App.4th 809, 823.) CNN is attempting to use its right not to publish an article, which is undisputed, to transform Wilson's employment claims regarding his producer position into a claim encompassed within Section 425.16. Had editor Straight chosen not to run the Baca article, rather speaking to his boss Janos and then embarking on a witch hunt after Wilson, no lawsuit would be at

issue.

Section 425.16(3) applies to acts "in furtherance of a person's right of free speech under the Constitution... in connection with a public issue," requiring both this connection to free speech and a connection to a public issue or an issue of public interest. Relying heavily upon *Hunter v. CBS Broadcasting, Inc.*, (2013) 221 Cal.App.4th 1510, 1521, CNN broadly argues that it met this requirement based on the premise: "A news agency's staffing decisions **concerning who it selects or does not select to report the news** constitutes an act "in furtherance of the right of free speech" in connection with a matter of public interest, and thus is within the coverage of Section 425.16(e)(4)." [Emphasis added.] (RB, p. 14) Wilson, however, was a producer, and no staffing decision regarding on-air talent reporting the news was at issue. Wilson's claims do not dispute CNN's editorial right to choose its on-air personalities or reporters or its right to choose which news stories to air or not to air.

Wilson himself is not a person of public interest. Through the time of his termination, Wilson was not the subject of any news shows or articles. CNN produced no evidence that Wilson had any name-recognition. Wilson was not an on-air talent, and he was not a copy editor finalizing and approving pieces for on-air or for CNN.com. Wilson's primary responsibilities were as a behind-the-scene producer, not an on-air personality, and writing for the CNN wire desk constituted a comparatively small percentage of his work. (V2AA/348:24-27) Wilson's primary position as a producer would have remained had his duties regarding internet stories been removed.

Very few people know the identities of those responsible for *producing,* by comparison to on-air *reporting*, their news. For that reason, CNN intermingles and attempts to confuse the positions of "reporter" and "producer" as if they are interchangeable throughout its RB. Being known by his peers did not make him a public figure, so Wilson's awards within the journalism community did not make him publicly known nor a subject of *public interest.*

CNN incorrectly argues that Wilson's declaration "establishes that his

duties at CNN related directly to CNN's speech." (RB, p. 12, 17, fn. 5) From 1996 until January 28, 2014, Wilson worked at CNN, first as production assistant, then as a producer (in 2000) and then a Producer II (in 2003); Wilson explained that his job as producer was not reporting the news and writing for the CNN Wire desk "was a comparatively small percentage of my work by comparison to my television producing." (V2AA/348:8-349:5, 360:9-10) Having written almost 200 stories over an 18 year period means he wrote less than one internet story a month, and the time necessary to write the brief pieces could be minimal, as he testified. Contrary to CNN's suggestion, that in no way impeaches his testimony.

Contrary to CNN's assertion, Wilson's declaration establishes that he did not in fact plagiarize any article, as does CNN's evidence. CNN V.P. Griffiths testified that "CNN has a process in place in order to detect attribution concerns prior to publication," and the Row "reviews stories to ensure that all material is properly attributed and sources and "may detect attribution issues by performing internet searches... or using publication software." (V1AA/64:11-19) Wilson knew this fact when he submitted the Baca article. (V2AA/359:16-17) As Griffiths explained, "[i]f the Row detects similarities between a draft story and another news source, the editor ***typically*** contacts the reporter or filed producer to discuss the issue." [Emphasis added.] (V1AA/65:1-5) Use of this term "typically" would suggest that finding such similarities is not unusual, but CNN failed to identify its frequency. Were all other employees terminated when the Row "typically" found similarities? CNN failed to disclose that information. CNN's suggestion that Wilson's declaration establishes that CNN had made a "good faith determination" of plagiarism is insupportable.

In *Hunter*, the position at issue was a television weather anchor. That position encompasses little other than reporting the weather news. As the person ***communicating*** the news to the public, that anchor position unarguably furthered CBS's free speech.

Similarly, in *Tamkin v. CBS Broadcasting*, (2011) 193 Cal.App.4th 133, the Tamkins' first names and information were directly used in the content of an

episode of the highly popular *CSI* television show and their last names were used in the creative process. Incorporated into that television show of interest to the public, the Tamkins' information furthered CBS's free speech.

Likewise, in *Lieberman v. KCOP Television, Inc.*, (2003) 110 Cal.App.4th 156, KCOP broadcast the illegal recordings of Lieberman, identifying him as having improperly prescribed controlled substances. "Because the surreptitious recordings here were in aid of and were incorporated into a broadcast in connection of a public issue," the complaint fell within the scope of section 425.16, but Lieberman met his burden on prong two. (*Id.* at 166.)

CNN also relies upon *Greater L.A. Agency on Deafness, Inc. v. CNN, Inc.*, (9th Cir. 2014) 742 F.3d 414, 422 ("*GLAD*"), in which "GLAD sought injunctive relief and damages," and "by its own admission, seeks to change the way CNN has chosen to report and deliver that news content by imposing a site-wide captioning requirement on CNN.com." (*Id.*, p. 423.) Accordingly, the claims at issue were directly connected to CNN's right of free speech. The Ninth Circuit, however, warned:

> "In concluding that CNN's conduct is in furtherance of its free speech rights on a matter of public interest, **we do not imply that every action against a media organization or any action imposing increased costs against such an organization falls within the scope of California's anti-SLAPP statute. Nor do we suggest that the broad construction of the anti-SLAPP statute triggers its application in any case marginally related to a defendant's exercise of free speech.** We adopt instead a much more limited holding: 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." [Emphasis added.]

(*Id.* at pp. 424-425.) CNN's interpretation of *GLAD* ignores this limitation on the ruling.

Wilson's claims do not "directly target[] the way a content provider chooses to deliver, present, or publish news content on matters of public interest,"

as required by the Ninth Circuit. In contrast to *Hunter*, *Lieberman*, *Tamkin* and *GLAD*, Wilson's employment claims involve no specific programs being broadcast, no content obtained from plaintiffs for on-air programming and no reporting positions. Wilson's was a behind the scene producer and his discrimination and retaliation claims are not connected to CNN's right of free speech. His claims are based upon CNN's action in terminating him.

D. CNN MISSTATES THE STANDARD APPLICABLE TO THE STEP-TWO PRONG.

As the California Supreme Court has explained, "no cause of action qualifies as a SLAPP merely because the defendant's actions conceptually fall within the ambit of the statute's initial prong." (*Navellier, supra*, 29 Cal.4th at 95.) "If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

CNN's argument misstates the law regarding the step-two prong. CNN states, "Wilson tries to downplay his burden by arguing that he was only required to show that his lawsuit has 'minimal merit.' (AOB, p. 36) **The law is to the contrary**." [Emphasis added.] (RB, p. 26) However, that is exactly the law.

The **California Supreme Court proves CNN's position is false**:

> "In making this assessment it is 'the court's responsibility... to accept as true the evidence favorable to the plaintiff....' [Citation omitted.] The **plaintiff need only establish that his or her claim has 'minimal merit'** [citation omitted] to avoid being stricken as a SLAPP." [Emphasis added.]

(*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291, citing to *Navellier, supra*, 29 Cal.4th at 89.)

E. SATISFYING THE STEP-TWO PRONG, WILSON HAS DEMONSTRATED MORE THAN MINIMAL MERIT IN HIS FEHA/CFRA CLAIMS, WHICH ARE NOT BARRED BY THE FIRST AMENDMENT.

1. Wilson's Prima Facie Showing that his Employment Claims Have Merit Remains Uncontested by CNN.

Wilson must emphasize he met his burden of showing the merit of his employment claims. (AOB, pp. 47-54; Section I *supra.*) Inaccurately stating the evidence, CNN argues in its Introduction that Wilson cannot prove the merits of his claim because he "admitted" to plagiarizing so his termination was justified. CNN does not otherwise respond to Wilson's prima facie showing that his employment claims have minimal merit and ignores the evidence favorable to the merits of Wilson's employment claims. (AOB, pp. 47-54) CNN also does not respond to Wilson's showing that the Trial Court merely criticized Wilson's argument style (which was limited by the available space) rather than considering whether all of the evidence submitted and identified demonstrated minimal merit. (V5AA/1222; AOB, p. 48) In discussing the step-two prong of the Anti-SLAPP analysis, CNN instead asserts that Wilson's antidiscrimination claims are barred by the First Amendment. CNN failed to disprove Wilson's prima facie showing of merit.

The plaintiff in *Cheal*, *supra*, proved her prima facie age discrimination claim in a fashion similar to Wilson. After a decade of good reviews as a dietetic technician, Cheal was terminated by the hospital purportedly for including one or more errors regarding dietary restrictions on menus. The trial court's ruling granting summary judgment based upon the hospital's showing of unsatisfactory performance was reversed on appeal. The appellate court noted that "aside from triable issues concerning the number and magnitude of the 'mistakes'..., there was strong evidence before the court that the hospital, under its own written policies, anticipated and expected such mistakes because, given the nature of the work, they were inevitable." (*Cheal*, *supra*, 223 Cal.App.4th at p 743.) "Evidence of the

employer's policies and practices, including its treatment of other employees, may support a contention, and an eventual finding, that the plaintiff's job performance did in fact satisfy the employer's own norms." (*Id.* at pp. 742-743.)

Wilson made such a showing here. In part, he demonstrated that the final editorial review process was in place to identify adequate attribution of third party sources before publication, that CNN's response to the copy editor's criticism was not applied evenhandedly among employees, that CNN did not actually consider any of his five articles to be plagiarism since they remained on its site, and that a process is in place regarding the procedure that is "typically" implemented when "similarities between a draft story and another news source" are detected (as V.P. Griffiths testified). (V1AA/65:1-5) That process addressing these typical occurrences suggests that this is a common occurrence and not mistake that customarily resulting in termination. Along with his preceding two decades of superlative work performance, Wilson demonstrated that his performance was satisfactory, but was terminated anyway. He also produced evidence of his supervisor's animus, who was a decision maker in his termination, and that his termination followed his discrimination complaints. (AOB, pp. 13-16, 21-22)

Wilson demonstrated that his termination was due to discriminatory animus in violation of FEHA and CFRA, and the First Amendment does not bar Wilson's claims as demonstrated below.

2. CNN Has No Blanket First Amendment Immunity from Liability for its Violations of Antidiscrimination Laws Regarding its Editors, Producers or Writers.

CNN cannot establish that the First Amendment bars Wilson's employment claims. California antidiscrimination laws and the relief sought by Wilson have no relationship to the impartial distribution of news and are not linked to editorial control. No law supports CNN's position that its employment decisions regarding its editors, producers and writers are so inextricably linked with the content of the news that these staffing decisions are entitled to First Amendment protection. To

the contrary, extensive Supreme Court and federal case law holds directly to the contrary.

In *McDermott v. Ampersand Publishing, LLC,* (9th Cir. 2010) 593 F.3d 950 ("*McDermott*"), the Ninth Circuit affirmed an order denying injunctive relief with a "central demand of the ceding of an aspect of [the News-Press's] editorial discretion." (*Id.* at p. 956.) The Ninth Circuit's analysis directly supports Wilson's position here.

In *McDermott*, following clashes "over issues of content," several reporters and editors resigned "to protest what they perceived as unethical interference in the news-reporting function." (*Id.* at p. 954.) Newsroom employees then issued four demands publicly: 1. Restore journalism ethics by implementing and maintaining a clear separation between the opinion/business side of the paper and the news-gathering side; 2. Invite back the six newsroom editors who had resigned; 3. Negotiate a contract regarding wages and m; and 4. Recognize the Union. (*Ibid.*) When the Paper refused these demands, the Union newsroom employees embarked on a campaign with these demands and to persuade readers to cancel their subscriptions, followed with the Union's press conference, fundraiser and rally with these demands. (*Ibid.*) The NLRB certified the Union, but a collective bargaining agreement was not reached. (*Id.* at p. 955.) The paper ultimately discharged employees "for union activity directed at pressuring the newspaper's owner and publisher to refrain from exercising editorial control over news reporting." (*Id.* at p. 953.) The Union then filed a complaint with the NLRB for unfair labor practices, including the discharge of eight employees based on their union activities. (*Id.* at p. 955.) The ALJ conducted a trial of these claims, and the parties filed objections to its ruling and that case remained pending before the Board. (*Id.* at p. 956.) The Board then filed a petition seeking an injunction compelling the paper to offer interim reinstatement of the eight terminated employees. (*Ibid.*)

The District Court denied the injunction, finding it "posed 'a significant risk of violating [the News-Press's] First Amendment rights' since the 'employees'

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the 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 225 Santa Monica Blvd., Suite 700, Santa Monica, California 90401.

On November 13, 2017, I served the foregoing document described as **APPELLANT'S ANSWERING BRIEF ON THE MERITS** on the interested parties in this action as follows:

☒ By placing true copies enclosed in a sealed envelope addressed to each addressee as follows:

Adam Levin (SBN 156773) axl@msk.com Mitchell Silberberg & Knupp LLP 11377 West Olympic Blvd. Los Angeles, CA 90064 Tel: (310) 312-2000	*Attorneys for Defendants,* Cable News Network, Inc., CNN America, Inc., Turner Services, Inc., Turner Broadcasting System, Inc. and Peter Janos
Los Angeles Superior Court Department 45 111 N. Hill Street Los Angeles, CA 90012	*1 copy*

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☒ BY EXPRESS MAIL/OVERNIGHT DELIVERY:

I placed each envelope into a package designated by the express service carrier, with delivery fees provided for and addressed to each addressee as stated on the attached list, and deposited the package in a facility regularly maintained by the express service carrier at Los Angeles, California, for collection and overnight delivery.

Executed on November 13, 2017, at Santa Monica, California.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jose Castro _____ _____