Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 2/16/2021 at 9:44:54 AM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 2/16/2021 by Tao Zhang, Deputy Clerk

Case No. S262032

In the Supreme Court of the State of California

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

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

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

Petitioners' Reply Brief

Matthew Strugar
State Bar No. 232951
Law Office of Matthew Strugar
3435 Wilshire Blvd.
Suite 2910
Los Angeles, CA 90010
(323) 696-2299
matthew@matthewstrugar.com

Colleen Flynn
State Bar No. 234281
Law Office of Colleen Flynn
3435 Wilshire Blvd.
Suite 2910
Los Angeles, CA 90010
(213) 252-0091
cflynnlaw@yahoo.com

Attorneys for Defendants, Respondents, Cross-Appellants, and Petitioners
PETER KUHNS, PABLO CAAMAL & MERCEDES CAAMAL

Table of Contents

Introduction 8

Argument 10

I. After Courts Struggle with Outcome-Determinative Approaches to Identifying a Public Issue, *FilmOn* Provides a Framework 10

II. A Problem Persists: the Framework Can Be Undermined by Defining the Issue Narrowly in the First *FilmOn* Step 11

III. Deference Is the Solution 11

IV. Deference Will Work and the Answer Brief Presents No Compelling Case Against It 13

A. The Answer Brief's Concession That Speech Can Implicate Multiple Issues Undermines Geiser's Argument That Courts Should Seek to Determine a Single Public Issue for the Purpose of *FilmOn*'s First Step 13

B. The Answer Brief Relies on Disapproved and Unhelpful Authority That Does Not Support Geiser's Position 14

C. The Answer Brief Conflates *FilmOn*'s Contextual Analysis with Identifying the Issue and Other Aspects of the anti-SLAPP Analysis 16

D. Cases Applying the *FilmOn* Framework Show that Deference Would Not Be a Rubber Stamp 19

E. The Hypotheticals in the Answer Brief Conflate the *FilmOn* Steps and Fail to Support Geiser's Arguments 23

V. The *FilmOn* Test Shows Petitioners' Speech Furthered Discussion on a Public Issue and the Answer Brief Relies on Nonexistent Defenses to the Anti-SLAPP Motion 25

A. The Demonstration Outside Geiser's Residence Was the Focus of These Lawsuits 28

B. There Is No "Defendant Spoke First" Defense to an Anti-SLAPP Motion 28

C. The Media Attention Reflected the Public's Interest and Was Not "Ex Post Facto" 32

Conclusion 35

Table of Authorities

Cases

Abuemeira v. Stephens
(2016) 246 Cal.App.4th 1291 30

Baral v. Schnitt
(2016) 1 Cal.5th 376 .... 25, 28

Bikkina v. Mahadevan
(2015) 241 Cal.App.4th 80 .... 14, 16

Carver v. Bonds
(2005) 135 Cal.App.4th 328 31

Central Valley Hospitalists v. Dignity Health
(2018) 19 Cal.App.5th 203 22

FilmOn.com Inc. v. DoubleVerify Inc.
(2019) 7 Cal.5th 133 .... passim

Grewal v. Jammu
(2011) 191 Cal.App.4th 977 22

Hewlett-Packard Co. v. Oracle Corp.
(2015) 239 Cal.App.4th 1174 22

HMS Capital, Inc. v. Lawyers Title Co.
(2004) 118 Cal.App.4th 204 18

Jeppson v. Ley
(2020) 44 Cal.App.5th 845 .... 21, 22

Mann v. Quality Old Time Serv., Inc.
(2004) 120 Cal.App.4th 90 16

Murray v. Tran
(2020) 55 Cal.App.5th 10 21

Oakland Bulk & Oversized Terminal, LLC v. City of Oakland
(2020) 54 Cal.App.5th 738 22

Park v. Board of Trustees of California State University
(2017) 2 Cal.5th 1057 18

Rand Resources, LLC v. City of Carson
(2019) 6 Cal. 5th 610 .... 15, 19, 20

Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO
(2003) 105 Cal.App.4th 913 15

Serova v. Sony Music Entertainment
(2020) 261 Cal.Rptr.3d 415 .... 14, 21

Serova v. Sony Music Entertainment
(2020) 44 Cal.App.5th 103 .... 14, 21

Soukup v. Law Offices of Herbert Hafif
(2006) 39 Cal.4th 260 18

Thomas v. Quintero
(2005) 126 Cal.App.4th 635 .... 34, 35

Weinberg v. Feisel
(2003) 110 Cal.App.4th 1122 .... 12, 15, 30

Wilbank v. Wolk
(2004) 121 Cal.App.4th 883 17

Wilson v. Cable News Network, Inc.
(2016) 6 Cal.App.5th 822 34

Wilson v. Cable News Network, Inc.
(2019) 7 Cal.5th 871 .... 17, 20, 33

Workman v. Colichman
(2019) 33 Cal.App.5th 1039 22

World Financial Group, Inc., v. HBW Ins. & Financial Services, Inc.
(2009) 172 Cal.App.4th 1561 .... 13, 14, 16

Yang v. Tenet Healthcare Inc.
(2020) 48 Cal.App.5th 939 .... 15, 20, 21

Zhao v. Wong
(1996) 48 Cal.App.4th 1114 24

Statutes

Civ. Code Proc., § 425.16 8

Code Civ. Proc., § 425.16, subd. (a) 19

Code Civ. Proc., § 425.16, subd. (d) 23

Other Authorities

Barajas, *ACORN Reborn: Alliance of Californians for Community Empowerment*, Breitbart News (May 21, 2016) ... 31

Cal. Style Manual (4th ed. 2000) § 3:12 33

Dreier, *A Working Class Family Battles a 'Fix and Flip' Real Estate Tycoon*, Huffington Post (Mar. 28, 2016) 33

Familia logra parar el desalojo y tiene oportunidad de recuperar su hogar, La Opinión (Dec. 17, 2015) 32

Mari, *Using the Homeless to Guard Empty Houses* (Nov. 30, 2020), The New Yorker 34

Martínez Ortega, '*De aquí no me sacan más que arrestado' advierte dueño de casa al borde del desalojo*, La Opinión (Mar. 24, 2016) 33

Mather & Sewell, *Sheriff Lee Baca's retirement: 'Very shocking and very surprising'*, L.A. Times (Jan. 7, 2014) 33

Moody, *Media Statement In Response to ACCE*, Wedgewood, Inc. (Aug. 16, 2017) 31

Stevens, *Ex-Los Angeles Sheriff Lee Baca Is Sentenced to 3 Years in Prison*, N.Y. Times (May 12, 2017) 34

The Bluebook: A Uniform System of Citation (21st ed. 2020) § 16.6 33

Rules

Cal. Rules of Court, Rule 8.1115, subd. (e)(1) 14

Introduction

Gregory Geiser sued housing rights organizer Peter Kuhns and husband and wife Pablo and Mercedes Caamal after they collectively organized and participated in a protest outside Geiser's home to denounce him and his company. The media took interest in the dispute from the beginning. And Geiser fueled the media interest. His company placed a hit piece in Breitbart News, accusing the Caamals, Kuhns, and Kuhns's employer the Alliance of Californians for Community Empowerment (ACCE) of being linked to voter fraud, tax increases, and Hillary Clinton. After Kuhns and the Caamals argued that any remedy Geiser had was with his local legislature and not the courts, he went to his elected officials and advocated for a ban on residential picketing, generating still more media coverage. And when—with anti-SLAPP motions pending—Kuhns and the Caamals balked at agreeing to a settlement under which neither they nor ACCE could criticize Geiser or his company, Geiser dismissed his lawsuits. But before serving the requests for dismissals, his company *issued a press release* admitting that it refused to settle because ACCE would not agree to abstain from criticizing Wedgewood in the future. The press release explicitly acknowledged the public's interest, editorializing that "making headlines and political gain[] far outweighs helping the Caamals return to their home." (5 JA 1348)

A two-Justice majority below found that the anti-SLAPP statute, Civ. Code Proc., § 425.16, did not apply to Geiser's lawsuits. It reached this conclusion in large part by defining the issue narrowly: "a private matter concerning a former homeowner and the corporation that purchased her former home and not a public issue or an issue of public interest." (Opn. at p. 19.) By defining the issue as a private one, the majority undercut any contextual analysis seeking to show Kuhns and the Caamals

furthering discussion on an issue of public interest. No amount of context can show furthering a public interest if the interest is defined as private to begin with.

This Court granted review to decide how courts should determine what the issue of public interest is and whether courts should defer to a defendant's framing of the issue. In their Opening Brief, Kuhns and the Caamals urged this Court to adopt a rule deferring to a defendant's framing of the public issue and detailed why such a rule makes sense as well as how it would work in practice. (See Opening Br. at pp. 33-46.)

Geiser disagrees. In his Answer Brief, he concedes that speech can implicate multiple issues but urges this Court to adopt a rule where trial courts will search for a singular issue before determining whether contextual factors show the defendant's speech furthered discussion of that issue. (See Answer Br. at pp. 10, 12–13.) In so doing, the Answer Brief conflates various aspects of the anti-SLAPP analysis and seeks refuge in defenses to the anti-SLAPP statute that do not exist.

To preserve the existing framework, this Court should instruct the lower courts to defer to a defendant's framing of the issue of public interest. And because that framework, when properly applied, reveals that Kuhns's and the Caamals' protest activity furthered discussion of an issue of public interest, this Court should find that the anti-SLAPP statute applied to Geiser's lawsuits and remand for determination of Geiser's probability of prevailing on the merits of his claim.

Argument

I. After Courts Struggle with Outcome-Determinative Approaches to Identifying a Public Issue, *FilmOn* Provides a Framework

California courts have long struggled to determine what constitutes "an issue of public interest" under the anti-SLAPP statute. For decades, this task mostly involved selecting between the parties' competing frames. Defendants inevitably asserted their speech addressed broad, abstract issues of public interest, while plaintiffs inevitably advanced narrower frames, almost always reducing the issue to an individual transaction or dispute. Choosing a frame typically determined the outcome: when a court accepted the defendant's broader frame, the statute applied; when it accepted the plaintiff's narrow frame, it didn't.

This Court helped solve this problem in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133 (*FilmOn*). It recognized that a search for a singular issue was an unsatisfying way to determine whether the statute applied. (*Id.* at p. 149.) Instead, it offered a two-part framework to determine whether speech implicates an issue of public interest. (*Ibid.*) In the first part, courts "ask what public issue or issue of public interest the speech in question implicates—a question [courts can] answer by looking to the content of the speech." (*Ibid.*) Second, a court should look for a "functional relationship" between "the challenged statements and the asserted issue of public interest" by looking at "ordinary contextual clues," including "the identity of the actor," "the audience of the speech," and "the purpose of the speech." (*Id.* at pp. 145, 149–150.) The *FilmOn* framework steers courts away from the outcome-determinative task of divining a singular issue and toward a focus on whether the defendant's speech implicated and furthered any public discussion about the

"asserted public interest" the defendant claims to have been addressing. (*Id*. at pp. 149–150.)

II. A Problem Persists: the Framework Can Be Undermined by Defining the Issue Narrowly in the First *FilmOn* Step

But there is an end-run around the *FilmOn* framework. If a court adopts the plaintiff's narrow framing of the issue in the first part of the *FilmOn* analysis, it automatically hamstrings the second part for two reasons. First, the contextual factors in the second part of the *FilmOn* analysis are meaningless if the court determines in the first part that the issue lacks public interest. How could context show a defendant furthering discussion of a public issue if the court already determined the issue lacks public interest? Second, the contextual factors in the second part of the *FilmOn* analysis will rarely illuminate a functional connection to an issue the defendant does not even claim to be addressing. Framing the issue narrowly in the first part creates its own conclusion that the contextual factors do not show the defendant's speech furthering the narrow issue. This undermines the entire framework and leads back to the original problem of determining outcomes based on the framing of the issue. And it raises the specter of judges making implicit normative evaluations of substance in identifying the issue. (See Opening Br. at pp. 39–40.)

III. Deference Is the Solution

The simple solution to this problem is beginning with deference to a defendant's framing of the issue. As explained in Petitioners' Opening Brief, deference makes sense for five reasons. For one, a speaker is always going to be in the better

position to articulate what issue he was addressing. (Opening Br. at pp. 34–35.)

Second, *FilmOn* points to deference. (Opening Br. at pp. 35–37.) *FilmOn* identified the problem courts face when they "strive to discern what the challenged speech is really 'about'—[the Plaintiff's frame of] a narrow, largely private dispute, for example, or the [Defendant's] asserted issue of public interest." (*FilmOn*, *supra*, 7 Cal.5th at p. 149.) The court then explained that the contextual analysis "demands 'some degree of closeness' between the challenged statements and the *asserted* public interest." (*FilmOn*, *supra*, 7 Cal. 5th at p. 150, italics added [quoting *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132 (*Weinberg*)].) *FilmOn* is definitive here: because any speech can implicate several issues, courts should apply the contextual analysis to "the asserted interest"—i.e., what the defendant asserts is the public issue.

Third, deference avoids the problem of a narrow framing of the issue undermining the second step of the *FilmOn* analysis described above. (Opening Br. at pp. 37–38.)

Fourth, deference advances the legislative purpose of applying broad protection under the anti-SLAPP statute and promotes judicial efficiency by providing simplicity to a statutory inquiry already packed with multifactor tests. (Opening Br. at pp. 38–42.)

And fifth, deference poses little downside because it allows *FilmOn*'s second step to screen out so-called "synecdoche theory" cases and purely personal disputes only tangentially related to issues of public interest. (Opening Br. at pp. 42–46.)

IV. Deference Will Work and the Answer Brief Presents No Compelling Case Against It

The Answer Brief neither provides a compelling case against deference nor offers any solution to the end-run around the *FilmOn* framework. To the contrary, the brief concedes speech can implicate more than one issue but advocates that courts still search for a singular one. It relies on nonprecedential and disapproved authority. It consistently conflates the first step of the *FilmOn* analysis with the second, as well as with other parts of the anti-SLAPP analysis. And its hypotheticals fail to support its point.

A. The Answer Brief's Concession That Speech Can Implicate Multiple Issues Undermines Geiser's Argument That Courts Should Seek to Determine a Single Public Issue for the Purpose of *FilmOn*'s First Step

Pivoting from his position throughout this litigation that the issue was only a private dispute between the Caamals and Wedgewood, Geiser's Answer Brief rejects "the notion that speech can *only* have a single purpose." (Answer Br. at pp. 10.) His concession tracks this Court's holding in *FilmOn* that "speech is rarely 'about' any single issue." (*FilmOn*, *supra*, 7 Cal.5th at p. 149.) But the Answer Brief never contends with the implications of this concession. Instead, Geiser retreats to the idea that speech *can* have a singular purpose and that a trial court should divine it from the facts, even relying on the very cases *FilmOn* criticized for trying to do just that. (See, e.g., Answer Br. at pp. 24, 28, citing *World Financial Group, Inc., v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1570 (*World Financial Group*), *Bikkina v. Mahadevan* (2015) 241 Cal.App.4th

80, 85 (*Bikkina*); *FilmOn*, *supra*, 7 Cal.5th at p. 149 [disapproving both cases].)

Geiser's concession that speech can have multiple purposes gives up the game. If speech can implicate multiple issues, how is a court to decide which of those issues to apply the contextual factors to in the second step of the *FilmOn* analysis? Should the court apply the contextual analysis to each of the possible issues? Or is it enough that any one of the multiple issues is a public issue? If it is enough that any one of them is a public issue, how is that functionally different from deferring to the defendant's inevitably broad framing of the issue? The Answer Brief lacks answers or guidance to these questions.

B. The Answer Brief Relies on Disapproved and Unhelpful Authority That Does Not Support Geiser's Position

The Answer Brief tries to escape the consequences of its concession by retreating to cases that try to divine a singular, transcendental issue.

For starters, it relies on *Serova v. Sony Music Entertainment* (2020) 44 Cal.App.5th 103, 118 (*Serova*), to argue that *FilmOn* did not announce any change in how courts should determine an issue of public interest. (Answer Br. at p. 25.) But this Court granted review of that decision.[1] (*Serova v. Sony Music Entertainment* (2020) 261 Cal.Rptr.3d 415 (*Serova II*).)

The Answer Brief also relies on *World Financial Group* and *Bikkina* to show how court should determine the singular issue of public interest. (Answer Br. at pp. 24, 28, citing *World Financial Group*, *supra*, 172 Cal.App.4th at p. 1570, *Bikkina*, *supra,* 241 Cal.App.4th at 85.) But *World Financial Group* and *Bikkina* were

---

[1] The Answer Brief fails to "note the grant of review." (Cal. Rules of Court, Rule 8.1115, subd. (e)(1).)

two one of the three cases specifically criticized in *FilmOn* for their "less than satisfying" approach in identifying a public issue. (*FilmOn*, *supra*, 7 Cal.5th at p. 149.)

Even the Answer Brief's heavy reliance on more foundational cases like *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913 (*Rivero*), and *Weinberg* is misplaced post-*FilmOn*. (Answer Br. at pp. 24–26, 39; *Yang v. Tenet Healthcare Inc.* (2020) 48 Cal.App.5th 939, 947–949 (*Yang*) [finding the *Rivero* and *Rivero*'s progeny that purported to draw definitive definitions of a public issue do not survive *FilmOn*'s framework].) In *Rivero*, the First District noted the particular fact patterns of early anti-SLAPP decisions involved "a person or entity in the public eye[,] . . . [c]onduct that could directly affect a large number of people beyond the direct participants[,] . . . or a topic of widespread, public interest." (*Rivero*, *supra*, 105 Cal.App.4th at p. 924.) The court then applied these observations as though they presented exclusive categories of public issues. (*Ibid.*) Soon after, in *Weinberg*, the Third District followed *Rivero*'s rationale, articulating additional "attributes" to distinguish private disputes from issues of public interest. (*Weinberg*, *supra*, 110 Cal.App.4th at pp. 1132–1133.)

But in recent years, this Court has repeatedly instructed the lower courts that while *Rivero* is useful for "distill[ing] the characteristics" of an issue of public interest, its categories are "nonexclusive." (*FilmOn*, *supra*, 7 Cal.5th at p. 149; see also *Rand Resources, LLC v. City of Carson* (2019) 6 Cal. 5th 610, 621.) And *FilmOn* confirmed that a court's task is to determine whether the speech "implicates" a public issue—not whether it neatly slots into the *Rivero* or *Weinberg* categories—because "speech is rarely 'about' any single issue." (*FilmOn*, *supra*, 7 Cal.5th at p. 149.) In fact, in each of the cases *FilmOn* criticized as "less than satisfying" for seeking out a singular issue, the

court relied heavily on the *Rivero* categories to reach its decision. (*Ibid.*; *Bikkina*, *supra*, 241 Cal.App.4th at pp. 83–85; *World Financial Group*, *supra*, 172 Cal.App.4th at pp. 70–71; *Mann v. Quality Old Time Serv., Inc.* (2004) 120 Cal.App.4th 90, 111.)

While Geiser asks this Court to adopt a rule where courts search for a singular public issue, he offers no distinction between his approach and the approach of the cases of which *FilmOn* disapproved.[2]

C. The Answer Brief Conflates *FilmOn*'s Contextual Analysis with Identifying the Issue and Other Aspects of the anti-SLAPP Analysis

The Answer Brief's argument against deference variously conflates identifying the public issue with both steps of the *FilmOn* analysis, with whether a cause of action arises from protected speech, and with whether the plaintiff has a probability of prevailing on the second step of the anti-SLAPP analysis.

It argues that courts should not defer to a defendant's identification of the public issue because "[t]he Court should consider the actions by the defendant that supplied the basis for liability" when the defendant "tie[s] that public issue to the conduct at issue and the content of the speech based on the pleadings and the evidence." (Answer Br. at pp. 27; 29–30.) A defendant will, of course, have to show that his speech furthered

---

[2] Geiser's approach also invents another level of potential appeals on anti-SLAPP motions. A defendant who loses an anti-SLAPP motion for lack of a public issue could get a reversal on appeal with a remand to apply the contextual factors, lose again on remand, take another appeal, and obtain another reversal with instructions to reach the probability-of-prevailing question on the second step of the anti-SLAPP analysis. If the defendant loses again in the trial court, he could take another appeal. It could take five years just to begin discovery.

the public issue in these ways, but tying the speech to the issue happens in the *second* part of the *FilmOn* analysis.

The Answer Brief's discussion of *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, suffers this same flaw. (Answer Br. at p. 29.) CNN's motion to strike Wilson's defamation claim did not fail for not implicating public issues, as the Answer Brief appears to contend, but because the speech and conduct did not further the public debate on public issues. (*Wilson*, *supra*, 7 Cal.5th at pp. 901–904.) In fact, *Wilson* helps prove Petitioners' point: deferring to the defendant's framing of the issue will not bring the parade of horribles that the Answering Brief imagines because *FilmOn*'s second step blocks attempts to invoke the anti-SLAPP statute where speech does little to further discussion on a public issue.[3]

And again with the Answer Brief's treatment of this Court's discussion of *Wilbank v. Wolk* (2004) 121 Cal.App.4th 883, 898, in *FilmOn*. (Answer Br. at p. 22). Geiser quotes the rule from *Wilbank*—that "'it is not enough that the statement refer to a subject of widespread public interest; the statement must in some manner itself contribute to the public debate,'" *FilmOn*, *supra*, 7 Cal.5th at p. 150, quoting *Wilbanks*, *supra*, 121 Cal.App.4th at 898—in his argument about defining the public issue, when the quote addresses whether a defendant's speech furthers the public discussion on the second part of the *FilmOn* analysis.

---

[3] Moreover, CNN firing Wilson for plagiarism *was* protected by the statute because plagiarism threatened CNN's ability to maintain credibility in its reporting, an issue of public interest. (*Wilson*, *supra*, 7 Cal.5th at p. 898.) This conduct related to outward facing speech—like the protest here—was categorically different from the claims involving internal conduct like passing Wilson over for promotions and giving him menial assignments. (*Ibid*.)

The Answer Brief also conflates identifying the issue with other aspects of the anti-SLAPP analysis. It posits *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, as a case about identifying the public issue, Answer Br. at p. 27, where what was fatal in *Park* was that the speech, even if connected to a public issue, was not the basis of liability. (*Park*, *supra*, 2 Cal.5th at p. 1068.) Discriminatory motive was. (*Ibid.*) The speech was just evidence of liability. (*Ibid.*) As a result, the plaintiff's claims did not "aris[e] from" protected speech under subsection (b)(1) of the statute. (*Ibid.*)

And the Answer Brief conflates identifying the issue with the analysis of whether the plaintiff has a probability of prevailing on the merits in the second step of the anti-SLAPP analysis. (Answer Br. at p. 26, citing *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 and *HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212, on the evidentiary burdens of the second, probability-of-prevailing prong of the anti-SLAPP analysis.)

The Answer Brief seeks to raise the specter of rampant over application only by conflating the issue of identifying the public interest with other aspects of the anti-SLAPP analysis. When the Answer Brief does not confuse the issue, it dismisses the idea that the second step of the *FilmOn* analysis does any work. It claims it "is going to be the very rare instance where an attorney, in retrospect, would be unable to come up with some connection between the speech and a public issue, unless they are required to be tethered to evidence of the content of an actual statement." (Answer Br. at p. 13.) But cases applying the *FilmOn* framework, including *FilmOn* itself, show that is wrong. The second step of the *FilmOn* analysis is working to screen out speech that does not further public discussion of the identified public issue.

D. Cases Applying the *FilmOn* Framework Show that Deference Would Not Be a Rubber Stamp

Deference would not increase abuse of the anti-SLAPP statute or result in defendants automatically prevailing on their burden of showing the statute applies. Geiser's primary argument against deference is that "'[a]t a sufficiently high level of generalization, any conduct can appear rationally related to a broader issue of public importance.'" (Answer Br. at p. 24, quoting *Rand Resources*, *supra*, 6 Cal.5th at p. 625.) But as Petitioners showed in their Opening Brief, the inverse is also true: at a sufficiently granular level of generalization, any dispute can cynically be cast as only involving the direct participants. John Scopes might be said to have had a personal dispute with his employer over the material he taught in his high school science class. Or Rosa Parks a personal dispute with a bus conductor. (Opening Br. at pp. 39–40.) Given the anti-SLAPP statute's command to construe the statute's protection broadly, guarding against such granular framing is at least as important as guarding against framing the issue at a high level of generalization. (Code Civ. Proc., § 425.16, subd. (a).)

Moreover, the issue at the first *FilmOn* step is just identifying the public issue, not—as the Answer Brief confusedly asserts—determining whether the "'conduct can appear rationally related to'" it. (Answer Br. at p. 24, quoting *Rand Resources*, *supra*, 6 Cal.5th at p. 625.)

This misguided interpretation overlooks the work performed at *FilmOn*'s second step. Even when courts defer to a defendant's framing of the public issue, the contextual factors in *FilmOn*'s second step turn back defendants whose speech did not further public discussion.

That is what happened in *FilmOn* itself. *FilmOn* accepted the defendant's "asserted public interest": "the presence of adult content on the Internet, generally, and the presence of copyright-infringing content on FilmOn's websites, specifically." (*FilmOn*, *supra*, 7 Cal.5th at p. 150.) But settling on that issue wasn't enough for DoubleVerify to meet its burden of showing the anti-SLAPP statute applied. Applying the contextual analysis of step two, this Court found DoubleVerify's speech did not further any conversation on those issues of public interest. (*Id*. at pp. 152–153.)

The same thing happened in *Wilson*. This Court accepted "three issues of public significance" identified by CNN, *Wilson*, *supra*, 7 Cal.5th at p. 900, but found that CNN's speech did not further the public debate on those issues. (*Id*. at pp. 901–904.)

The few Court of Appeals cases that have applied *FilmOn* also show that the framework is working. It is applying the statute where it was intended to apply and turning away attempts to apply the statute when a defendant's speech is only tangentially related to a public issue. But the cases also show the lower courts need more guidance on applying the framework.

Using the *FilmOn* framework, the Fourth District found that the statute applied to a case in which a physician sued other doctors and medical facilities over "statements made about her qualifications, competence, and medical ethics" to "healthcare providers, medical practices, her patients, and members of the general public." (*Yang*, *supra*, 48 Cal.App.5th at p. 943 internal quotation marks omitted.) The court rejected the plaintiff's argument that there is no public issue where the defendant's speech does not fit into the *Rivero* categories because they are illustrative, not exclusive, categories of what constitutes an issue of public interest. (*Id*. at p. 949, citing *Rand Resources*, *supra*, 6 Cal.5th at p. 621, in turn citing *Rivero*, *supra*, 105 Cal.App.4th at p. 924.)

Yang accepted the defendant's framing of the issue as the fitness of a licensed physician. (*Yang*, *supra*, 48 Cal.App.5th at p. 948.) And applying the contextual factors in the second part of the *FilmOn* analysis, it found the speech furthered public discussion on that issue, in part because the statements "were communicated to the public, not just to discrete doctors or hospital staff members." (*Id*. at pp. 947–948.)

Using the same approach, the Fourth District applied *FilmOn* to a dispute in which one dentist accused his business partner of substandard work after a falling out. (*Murray v. Tran* (2020) 55 Cal.App.5th 10, 15 (*Murray*).) The court accepted a broad framing of the issue as the accused dentist's "qualifications and competence." (*Id*. at p. 30.) But *FilmOn*'s contextual analysis worked to screen out the dentist's anti-SLAPP motion relating to most of the speech at issue because it did not further public discussion on that issue. (*Id*. at pp. 31–36.)

That is, *Murray* held that statements to former business partners or to a retired dentist did not further any public discussion, even when accepting a broad frame of the public issue. (*Murray, supra,* 55 Cal.App.5th at pp. 31–34.) But statements to the other working dentists warning them not to refer patients to the allegedly substandard dentist did further the public discussion because they were made to protect patients from his shoddy work. (*Id*. at pp. 34–35.)

At the same time, other courts have simply refused to receive *FilmOn*'s message. In *Serova*, the Second District declared that "*FilmOn* did not announce any change in the approach that courts should take to identifying issues of public interest." (*Serova*, *supra*, 44 Cal.App.5th at 118.) This Court granted review of that decision. (*Serova II*, *supra*, 261 Cal.Rptr.3d 415.) In *Jeppson v. Ley* (2020) 44 Cal.App.5th 845, the Second District avoided this Court's repeated instruction that the *Rivero* categories are nonexclusive and applied them as if

they were. (*Id*. at p. 856.) That decision venerates *Rivero* as both "the historic taproot of the guiding doctrine" and "especially authoritative," and treats *FilmOn* as though it did nothing but confirm *Rivero*'s authoritative status. (*Id*. at pp. 851–852, 855–856.) That case reached the right decision—that the anti-SLAPP statute did not apply to a silly dispute between feuding neighbors—but that it reached that decision by eschewing *FilmOn* in favor of the *Rivero* categories shows that the lower courts need guidance on the framework.

The Judiciary is understandably frustrated by the misuse of the anti-SLAPP statute in garden-variety business disputes. (See, e.g., *Hewlett-Packard Co. v. Oracle Corp.* (2015) 239 Cal.App.4th 1174, 1183–1186; *Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 994–1000; *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland* (2020) 54 Cal.App.5th 738, 760–765.)

But the courts have several tools to deal with such misuse. The *FilmOn* framework is one. The rule in *Park* that requires a defendant show that their challenged speech or conduct forms an element of the cause of action, and not just provide evidence of liability, is another. (*Park*, *supra*, 2 Cal.5th at pp. 1062–1063.) The low "minimal merit" bar that a plaintiff must meet to defeat an anti-SLAPP motion on the second step is another tool. (*Id*. at p. 1061.) And some courts have expressed an increased willingness to sanction counsel and parties who pursue frivolous anti-SLAPP appeals. (See, e.g., *Workman v. Colichman* (2019) 33 Cal.App.5th 1039, 1062–1065; *Central Valley Hospitalists v. Dignity Health* (2018) 19 Cal.App.5th 203, 221–223.)

But these tools must preserve the motion for all lawsuits by well-heeled parties aimed at silencing impecunious protesters because that was the very reason for the enactment of the anti-SLAPP statute. And any of these tools—especially when they come from the Judiciary and not the Legislature—must be wary of overcorrecting so far that the statute no longer applies to a

case by a wealthy developer against a group of protestors and activists challenging exploitative practices that have drawn national scrutiny.

The *FilmOn* framework is a solution that is working. Even when accepting a broad framing of the issue, it is screening out cases in which the defendant's speech did not further any public discussion, including *FilmOn* itself, *Wilson*, and the privately directed statements in *Murray*. But the courts must also protect the statute from efforts to undermine it, which include defining the public issue narrowly at the first part of the analysis.

When courts frame the issue broadly, or defer to the defendant's framing of the issue, *FilmOn* works to apply the statute as the Legislature intended—protecting speech implicating broad issues of public interest where that speech fosters public discussion about the issue. But where, as with the Court of Appeal here, a court insists on framing an issue narrowly, the *FilmOn* framework crumbles.

E. The Hypotheticals in the Answer Brief Conflate the *FilmOn* Steps and Fail to Support Geiser's Arguments

Even the self-proclaimed "extreme" hypotheticals that Geiser offers to advocate against deference don't make a convincing point against it. (Answer Br. at p. 34.) Consider Geiser's hypothetical case involving demonstrators holding "Justice for Floyd" signs after George Floyd's death at the hands of Minneapolis police officers. (Answer Br. at p. 32.) Geiser states that if a City tried to sue these protestors, applying the anti-SLAPP statute would be obvious and axiomatic. (Answer Br. at pp. 32–33.) Putting to the side the fact that the statute exempts such suits from the anti-SLAPP statute's protection, Code Civ. Proc., § 425.16, subd. (d), the same analysis that led the court

below to find the lack of a public issue could lead to the same result in the hypothetical. A city attorney using a cynical enough frame could posit the issue was one man's encounter with the police after being suspected of writing bad checks. Especially if the protest was small enough and close enough in time to Floyd's death, the massive public attention that followed could be dismissed for any number of the reasons Geiser and the Court of Appeal dismiss the media attention here: it was 'ex post facto' to the protest, Answer Br. at pp. 25–26, "'[m]edia coverage cannot by itself . . . create an issue of public interest within the statutory meaning,'" Opn. at p. 24, quoting *Zhao v. Wong* (1996) 48 Cal.App.4th 1114, 1121, or even that the very act of participating in the demonstration is "a party . . . 'creat[ing] its own defense," Answer Br. at pp. 26, 41 fn. 12. Truly, without deference, any dispute can be framed to lack public interest.

Geiser's other hypotheticals involving abusive ex-partners or rapists using deference to find refuge in the anti-SLAPP statute are equally unconvincing because they again ignore the work of the second *FilmOn* step. (Answer Br. at pp. 33–34.) Geiser raises the specter of deference leading to an abusive ex-boyfriend who harasses the mother of his child using the anti-SLAPP statute as a shield against a petition for a civil restraining order by framing the issue as "the broader social bias against fathers in custody disputes." (Answer Br. at p. 33.) But the contextual factors in the *FilmOn* test would prevent the statute from applying. Mainly because, like in *FilmOn*, the audience is private: the mother alone. Both the speaker and the purpose prongs would also work to screen out the anti-SLAPP statute from applying given the father's private interest.

The same principles apply to Geiser's hypothetical rapist who cyberbullies his victim online and then asserts he was participating in speech around the public issues "related to the propriety of #MeToo and other 'believe the victim' movements

versus false accusations, 'innocent until proven guilty' and other 'men's rights' issues." (Answer Br. at pp. 33–34.) The rapist's personally directed attacks against his victim would fail to connect to his asserted public issues on the audience, speaker, and purpose prongs in the second part of the *FilmOn* analysis.[4]

V. The *FilmOn* Test Shows Petitioners' Speech Furthered Discussion on a Public Issue and the Answer Brief Relies on Nonexistent Defenses to the Anti-SLAPP Motion

In their Opening Brief, Kuhns and the Caamals explained that applying the *FilmOn* framework here shows furthering the discussion of a public issue. (Opening Br. at pp. 51–58.)

On the first step, even without deference, Kuhns's and the Caamals' public sidewalk protest, attended by dozens of other people, implicated issues of residential displacement and unfair foreclosure practices. A state-wide housing rights organization with a mission of fighting residential displacement practices organized the protest. Kuhns was the organization's Los Angeles director. The protesters chanted, sang songs, and gave speeches denouncing the CEO of the nation's largest residential fix-and-flip operation. It was a community protest where the only shared tie among the dozens of demonstrators was to engage in public speech directed at someone responsible for a company they

---

[4] Not to mention that in both examples, even if the second part of the *FilmOn* analysis failed to screen the hypothetical abusive ex-boyfriend and rapist's bogus assertions of a public issue, an anti-SLAPP motion would easily fail on the second, probability-of-prevailing-on-the-merits step of the statute, when a plaintiff need only show her claims have minimal merit. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385 (*Baral*).)

believed was involved in greedy and callous practices that displaced long-term community residents.[5]

The contextual factors showed a furthering of the public discussion on the public issue required by *FilmOn*'s second step, too.

The identity of the speakers shows the speech furthered public discussion on a public issue. Unlike *FilmOn*, this case does not involve a private, for-profit enterprise selling its commercial products. The family members embroiled in the dispute participated in the protest, but they were not alone. Dozens of others with no financial or tangible interest in the Caamals' former home joined them in a community protest on a public sidewalk—including Kuhns, a housing rights organizer who also bore the brunt of Geiser's litigiousness.

The speakers' audience also shows the speech furthered public discussion on a public issue. Unlike the private speech in *FilmOn* and *Wilson*, the speakers here spoke publicly during a sidewalk demonstration. Their audience was the public writ large.

The speakers' purpose shows the speech furthered public discussion on a public issue. Unlike the commercial purpose in *FilmOn*, the speakers here sought to publicly denounce a business leader who they believed to be engaged in greedy and immoral business practices.

---

[5] With no explanation, Geiser asserts that he "did not challenge Defendants' right to protest." (Answer Br. at p. 39.) Of course he did. It is uncontested that he brought these lawsuits over their participation in the protest outside his home. And he didn't just file these lawsuits, but also brought a separate civil damages action against Kuhns and the then-near-homeless Caamals seeking "economic damages," "non-economic damages," "emotional distress damages" *and* "punitive damages" over their protest against him. (1 JA 94.)

And other contextual factors show furthering a public discussion on a public issue. The location of the speech—a public sidewalk—shows an attempt to contribute to public debate. And the timing of the protest—the same day of the Caamal's eviction, when the public interest in their fight against Geiser's company was at its peak—shows an attempt to further public discussion.

Rather than address the *FilmOn* factors, the Answer Brief diverts attention away from the public protest outside Geiser's home and argues the anti-SLAPP statute should not apply to Geiser's lawsuits by advancing several policy arguments. This Court should reject each one.

First, while focusing much of its attention on the sit-ins at Wedgewood's office building, the Answer Brief ignores that Geiser was not present for either protest and was not harassed by them—a point made repeatedly in the Opening Brief. (See Answer Br. at pp. 36–41).

Second, the Answer Brief contends that Geiser should be spared from the anti-SLAPP statute's application because Kuhns and the Caamals "created their own defense" by speaking up against Geiser and his company. (Answer Br. at pp. 25–26, 41 fn. 12.)

Finally, in a related argument, the Answer Brief contends that the Court should ignore all the media attention on this dispute and Geiser's company because the media only picked up on the story once the Caamals started to speak out against the company. (Answer Br. at pp. 25–26, 39, 41 fn. 12.)

If accepted, Geiser's proposed defenses would cripple the statute.

A. The Demonstration Outside Geiser's Residence Was the Focus of These Lawsuits

Like the majority below, the Answer brief puts much of its focus on two sit-ins in the Wedgewood office lobby instead of on the public sidewalk protest outside Geiser's home. (Answer Br. at pp. 35–41; Opn. at pp. 19–21.) But the Answer Brief ignores the point made in Petitioners' Opening Brief that Geiser was not present for either of these protests and was not harassed by them for the purposes of the civil harassment statute. (Opening Br. at p. 48.) The real party in interest for any claims arising out of the office sit-in was Wedgewood, which asserted those claims in a separate civil action against each of the Petitioners as well as ACCE. (1 JA 87–94.) As the dissent below noted, "[i]t was the protest on the sidewalk outside Geiser's home from which the civil harassment suits arose, and that protest accordingly should be the focus of our analysis." (Dis. Opn. at p. 9.) Like much else, the Answer Brief just ignores this argument.

Even so, multiple demonstrators participating in each of those protests reinforces the public's interest in Wedgewood's role in residential displacement and unethical fix-and-flip practices. And even if Geiser were a real party in interest able to raise a civil harassment claim related to the office demonstration, the sidewalk protest outside his house would at the very least make his petition a "mixed cause of action" and so the anti-SLAPP statute still applies. (*Baral*, *supra*, 1 Cal.5th at 394, 396.)

B. There Is No "Defendant Spoke First" Defense to an Anti-SLAPP Motion

The Answer Brief contends that impecunious protesters speaking out against a millionaire CEO during a sidewalk demonstration should not receive the benefit of the anti-SLAPP statute because, by protesting, the demonstrators were "creating

their own defense" should the millionaire drag them into court alleging harassment. (Answer Br. at pp. 25–26, 41 fn. 12.)

This is a profoundly cynical argument. Kuhns, the Caamals, and the other demonstrators protested outside Geiser's home to proclaim he was a scoundrel, not to gird themselves against any lawsuit he might bring. (1 JA 114 [protest was called "to protest unfair and deceptive practices used by Wedgewood . . . in acquiring the real property of Mercedes and Pablo Caamal, and evicting them from their home"].)

The Answer Brief suggests Geiser doesn't even believe his own argument. It concedes that "if Geiser had brought a defamation claim against the Defendants in April of 2016 over an interview Defendants gave to a news outlet, then those statements could have been in furtherance of a public issue." (Answer Br. at p. 40.)

This concession undercuts Geiser's defenses in multiple ways. First, it shows that even he does not buy his argument that any attention the dispute received after the first demonstration at Wedgewood's office in March 2016 should be ignored because it involved Kuhns and the Caamals creating their own defense. Why would holding a sidewalk protest be Kuhns and the Caamals "creating their own defense" but speaking to a news outlet would not be? Second, it shows that Geiser understands that Kuhns's and the Caamals' speech implicated a public issue. Whether holding a sidewalk demonstration or giving an interview to a news outlet, the *issue* is the same. And that issue is what *FilmOn* requires courts to analyze. The contextual factors in the second part of the *FilmOn* test might come out differently—there is a different audience when speaking to a news outlet than when protesting on a sidewalk, for instance, and perhaps arguably a different purpose—but both involve the same issue for the first part of the *FilmOn* test.

In any event, there is no basis to Geiser's argument that the anti-SLAPP statute has a "you-spoke-first" defense. Most SLAPP defendants will have spoken first. When a developer sues people who organize opposition to a project, *FilmOn*, *supra*, 7 Cal.5th at p. 143, the protesting citizens are the ones who speak first. Geiser's proposed rule stripping a person of anti-SLAPP protections if they had any involvement in putting the issue into the public consciousness would leave countless potential defendants without the statute's protection—people who describe workplace sexual harassment, victims of child molestation, and those ripped off by some unknown consumer scam. The statute's protections are not that narrow.

Geiser also waves away the media attention around this dispute by accusing Kuhns and the Caamals of "creat[ing their] own defense" by seeking publicity around the dispute. (Answer Br. at p. 26, 41 fn. 12.) But Kuhns and the Caamals didn't write or place these stories. Rather, multiple news outlets independently reported on the issue, reflecting informed professional judgments about what the public is interested in, and tying the specific issue facing the Caamals to the broader public issues related to the foreclosure crisis.

The authority Geiser relies on did not involve independent journalists reporting on issues, but defendants' self-published statements based on the defendants' own judgment of the importance of their cause. (See, e.g., *Abuemeira v. Stephens* (2016) 246 Cal.App.4th 1291, 1294–1296 [defendant showing self-recorded video to several third parties did not create an issue of public interest]; *Rivero*, *supra*, 105 Cal.App.4th at 924–929 [union's self-published pamphlets distributed to their membership were not in connection with an issue of public interest, distinguishing facts from case in which magazine independently reported on an issue and speech was not merely self-published]; *Weinberg*, *supra*, 110 Cal.App.4th at 1128–1129

[coin collector's letters describing the plaintiff as a thief, with no other coverage, were not made in connection with an issue of public interest].)[6] Here, eleven news articles, across various formats and from diverse perspectives, detailed the Caamals' dispute with Geiser and his company.

In fact, the *only* evidence in the record that shows any party seeking publicity around this issue involves Geiser seeking publicity. His company issued a press release about the dispute which even admitted that Geiser and his company blew up the parties' settlement negotiations because ACCE refused to agree to withhold all future criticism of the company. (5 JA 1348; Moody, *Media Statement In Response to ACCE*, Wedgewood, Inc. (Aug. 16, 2017) <https://bit.ly/2SFbwTs> [as of Feb. 16, 2021].) And it acknowledged the public's interest, arguing that for ACCE, "making headlines and political gain[ ] far outweighs helping the Caamals return to their home." (*Ibid*.)

And a spokesperson for his company *ran a hit piece on ACCE about this dispute in the alt-right Breitbart News*. (See Barajas, *ACORN Reborn: Alliance of Californians for Community Empowerment*, Breitbart News (May 21, 2016) <https://bit.ly/3b5n1tK> [as of Feb. 16, 2021], cited at 3 JA 732.)

Kuhns and the Caamals discussed the press release and Breitbart News article at length in their Opening Brief. (Opening Br. at pp. 22, 23, 55.) In his Answer Brief—as in his trial court briefing and his briefs on both trips to the Court of Appeal—

---

[6] The Answer Brief's repeated reliance on *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 354 (*Carver*), to support his argument that this Court should disregard the media attention this dispute generated is confounding. (Answer Br. at p. 26, 41 fn. 12). This citation refers to a discussion of whether the plaintiff was a public figure on the merits of a defamation claim on the second step of the anti- SLAPP analysis. The court in *Carver* only reached that step two issue because *there was a public issue on the first step*. (*Carver*, *supra*, 135 Cal.App.4th at pp. 342–344.)

Geiser does not disavow the article, try to contextualize it, or anything else. He simply ignores it.

Geiser had every right to add fuel to this fire. The First Amendment offers robust protections for speech in the public interest. But it is a two-way street. Geiser cannot seriously claim the public had no interest in this dispute while he actively attracted, manipulated, and stoked the public's interest.

Because Geiser's own actions show that the public was interested in this dispute specifically and the broader issues surrounding it generally, the anti-SLAPP statute applies to his petitions.

C. The Media Attention Reflected the Public's Interest and Was Not "Ex Post Facto"

Geiser waves away the media attention around this dispute by asserting that "the *ex post facto* media attention a matter receives does not create an issue of public interest or otherwise convert the purely private dispute into one of public interest." (Answer Br. at p. 25.) Geiser both misrepresents the facts and misstates the law.

The most significant media attention predated the March 30, 2016, protest outside Geiser's residence. The first La Opinión article ran more than three months earlier. (*Familia logra parar el desalojo y tiene oportunidad de recuperar su hogar*, La Opinión (Dec. 17, 2015) <https://bit.ly/2YyMZ6z> [as of Feb. 16, 2021], cited at 1 JA 75.)[7]

---

[7] The majority below found that "the media attention that defendants did enjoy is not entirely clear" because they provided citations and URL links to the news articles on their publishers' webpages and did not "attach[] the articles themselves or archiv[e] an article so that the trial court could determine what an article stated at a relevant time." (Opn. at p. 25; see also Answer Br. at p. 11 fn. 2.) Petitioners cited each of the articles in

The second was six days before the protest. (Martínez Ortega, '*De aquí no me sacan más que arrestado' advierte dueño de casa al borde del desalojo*, La Opinión (Mar. 24, 2016) <https://bit.ly/3c6weDJ> [as of Feb. 16, 2021], cited at 3 JA 731.) And the Huffington Post article ran two days before the eviction and the protest outside Geiser's house. (Dreier, *A Working Class Family Battles a 'Fix and Flip' Real Estate Tycoon*, Huffington Post (Mar. 28, 2016) <https://bit.ly/2xyZt2Q> [as of Feb. 16, 2021], cited at 1 JA 75.) Each of these three articles pre-dated Geiser suing Kuhns and the Caamals. They were not ex post facto; they were *ex ante*.[8]

Even so, articles published after an incident that prompts a lawsuit still reveal the public's interest. In *Wilson*, for instance, this Court cited two newspaper articles to show that the public took interest in former Los Angeles County Sheriff Lee Baca's retirement, including one that post-dated CNN firing Wilson by more than three years. (*Wilson*, *supra*, 7 Cal.5th at p. 901, citing Mather & Sewell, *Sheriff Lee Baca's retirement: 'Very shocking and very surprising'*, L.A. Times (Jan. 7, 2014); Stevens, *Ex-Los Angeles Sheriff Lee Baca Is Sentenced to 3 Years in Prison*, N.Y.

---

their anti-SLAPP briefing and provided URL links to online versions of each of the articles. (1 JA 75; 3 JA 731–732.) Both the California Style Manual and the Bluebook provide rules for citations to newspaper articles. (Cal. Style Manual (4th ed. 2000) § 3:12; The Bluebook: A Uniform System of Citation (21st ed. 2020) § 16.6, p. 161–162; § 16.6, subd. (f), p. 162 ["Online newspapers may be used in place of print newspapers."].) Petitioners are aware of no rule requiring a party who cites a newspaper article to also submit the article itself to the trial court. The trial court never expressed any objection or concern about its access to the newspaper articles.

[8] Geiser contends these were ex post facto because the media attention began after ACCE and the Caamals began to protest against Wedgwood. (Answer Br. at p. 41 fn. 12.) This is just another gloss on Geiser's "defendants spoke first" theory.

Times (May 12, 2017); *Wilson v. Cable News Network, Inc*. (2016) 6 Cal.App.5th 822, 827 [showing CNN fired Wilson on January 28, 2014].) *Wilson*'s reliance on the May 12, 2017 article to establish there was public interest in the issue shows that subsequent and continued media interest is evidence of the public's interest in an issue.

Geiser's proposed ex post facto rule would deny the statute's protection to whistleblowers and breaking news journalists who alert an ignorant public to issues they later show great interest in. The anti-SLAPP statute should not only protect those who follow up on stories of public interest, but those who bring them to light as well.

And Geiser and his company have only continued to gain public scrutiny in the years since the Caamals and ACCE first denounced them. At the end of 2019, a group of homeless mothers moved into a long-abandoned home in Oakland owned by Wedgewood, sparking thousands of local, national, and even international articles spotlighting Wedgewood's role in the nation's housing crisis. (See Opening Br. at p. 40 [citing articles in Vouge and the Guardian detailing the homeless women's actions and Wedgewood's role].) In the time since Kuhns and the Caamals filed their Opening Brief, the New Yorker published a 2,800-word profile of Wedgewood and its practice of hiring homeless people to guard vacant homes. (Mari, *Using the Homeless to Guard Empty Houses* (Nov. 30, 2020), The New Yorker https://bit.ly/3oQkP05 [as of Feb. 16, 2021].) The public is interested in issues of residential displacement generally and Wedgewood's role specifically.

As Kuhns and the Caamals stressed in their Opening Brief, this dispute has almost identical facts with *Thomas v. Quintero* (2005) 126 Cal.App.4th 635 (*Thomas*). (Opening Br. at pp. 50–51.) In *Thomas*, the First District found the anti-SLAPP statute applied to a civil harassment petition filed by a landlord against

a tenant who, with help from a community renters' organization, organized a sidewalk protest against the landlord. (*Thomas*, *supra*, 126 Cal.App.4th at pp. 653–655.) Geiser contends, and the majority below found, that *Thomas* could be distinguished because he was a landlord who wronged more than 100 tenants and the dispute at issue became "the first big public case of the campaign in Oakland for a Just Cause for Eviction Ordinance." (Answer Br. at p. 40, quoting Opn. at p. 22, citing *Thomas*, *supra*, 126 Cal.App.4th at 654–658.) But that's no distinction. The same applies to Geiser. ACCE launched a campaign against Wedgewood that continues to unfold five years later and garnered far more public attention than the campaign at issue in *Thomas*.

And again, Geiser's dismissal of the media attention around this dispute ignores his own role in generating it, including having a spokesperson for his company run the Breitbart News article and issuing a press release about his lawsuit. (3 JA 732; 5 JA 1348; Opening Br. at pp. 22, 23, 55.) Geiser's own actions stoking the media interest should, by itself, destroy any defense that this dispute did not involve a public issue.

This was an issue in which the public took interest.

Conclusion

In his dissenting opinion below, Justice Baker warned that the "upshot of the majority's [opinion] . . . is that . . . the venerable American tradition of peaceful public protest . . . is left diminished by a well-funded litigation scheme seeking to suppress it." (Dis. Opn. at p. 12.) Geiser's lawsuits are exactly the kind of cases the Legislature sought to protect against when it passed the anti-SLAPP statute.

Because the majority opinion below threatens to undermine the anti-SLAPP statute's application to even the paradigmatic SLAPP suit, this Court should reverse the decision below and find that Kuhns and the Caamals have met their burden of showing the anti-SLAPP statute applied to Geiser's lawsuits. It should further hold that courts should defer to a defendant's framing of the public issue or issue of public interest in the first part of the *FilmOn* analysis.

Respectfully submitted this 16th day of February, 2021

Law Office of Matthew Strugar
Law Office of Colleen Flynn

By: /s/ Matthew Strugar

Attorneys for Petitioners Peter Kuhns, Mercedes Caamal, and Pablo Caamal

Certificate of Word Count

Pursuant to California Rule of Court 8.520(c)(1), the text of this brief, including footnotes and excluding the caption page, table of contents, table of authorities, the signature blocks, and this Certificate, consists of 8,393 words in 13-point Century Schoolbook type as counted by the Microsoft Word word-processing program used to generate the text.

Dated this 16th day of February, 2021.

Law Office of Matthew Strugar
Law Office of Colleen Flynn

By: /s/ Matthew Strugar

Attorneys for Petitioners Peter Kuhns, Mercedes Caamal, and Pablo Caamal

Proof of Service

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

On February 16, 2021, I served true copies of this Petitioners' Reply Brief on the interested parties in this action as follows:

Clerk of the Court California Supreme Court 350 McAllister Street San Francisco, CA 94102 Frank Sandelmann Brett A. Stroud Joshua Valene Dinsmore & Sandelmann 324 Manhattan Beach Blvd., Ste. 201 Manhattan Beach, CA 90266 Seth Cox Alan Dettelbach Wedgewood 100 Manhattan Beach Blvd., #100 Redondo Beach, CA 90278	Clerk of the Court Court of Appeal Second Appellate District 300 S. Spring St., Fl. 2, N. Tower Los Angeles, CA 90013-1213 *Via TrueFiling Electronic Service* Clerk to the Hon. Armen Tamzarian Los Angeles Superior Court 111 N Hill Street Los Angeles, CA 90012 *Via U.S. Mail*

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

Executed on February 16, 2021 at Los Angeles, California.

Matthew Strugar

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 2/16/2021 by Tao Zhang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **GEISER v. KUHNS**
Case Number: **S262032**
Lower Court Case Number: **B279738**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **matthew@matthewstrugar.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Petitioners' Reply Brief - S262032

Service Recipients:

Person Served	Email Address	Type	Date / Time
Eugene Volokh Scott & Cyan Banister First Amendment Clinic 194464	volokh@law.ucla.edu	e-Serve	2/16/2021 9:44:54 AM
Mark Fingerman ADR Services, Inc.	mfingerman@adrservices.org	e-Serve	2/16/2021 9:44:54 AM
Brett Stroud Dinsmore & Sandelmann LLP 301777	bstroud@lawinmb.com	e-Serve	2/16/2021 9:44:54 AM
David Greene Electronic Frontier Foundation 160107	davidg@eff.org	e-Serve	2/16/2021 9:44:54 AM
Alan Dettelbach Court Added	adettelbach@wedgewood-inc.com	e-Serve	2/16/2021 9:44:54 AM
Matthew Strugar Law Offices of Matthew Strugar 232951	matthew@matthewstrugar.com	e-Serve	2/16/2021 9:44:54 AM
Colleen Flynn Law Offices of Colleen Flynn	cflynnlaw@yahoo.com	e-Serve	2/16/2021 9:44:54 AM
Frank Sandelmann Dinsmore & Sandelmann LLP 186415	fsandelmann@lawinmb.com	e-Serve	2/16/2021 9:44:54 AM
Noah Grynberg LA Center for Community Law and Action 296080	noah.grynberg@laccla.org	e-Serve	2/16/2021 9:44:54 AM
Joshua Valene Dinsmore & Sandelmann, LLP 292109	jvalene@lawinmb.com	e-Serve	2/16/2021 9:44:54 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with

TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

2/16/2021
Date

/s/Matthew Strugar
Signature

Strugar, Matthew (232951)
Last Name, First Name (PNum)

Law Office of Matthew Strugar
Law Firm