No. S235735

SUPREME COURT OF CALIFORNIA

RAND RESOURCES, LLC et al.,

Plaintiffs, Appellants, and Respondents,

v.

LEONARD BLOOM, et al.,

Defendants, Respondents and Petitioners.

After a Decision by the Court of Appeal
Second Appellate District, Division One
Case No. B264493

On Appeal from the Los Angeles Superior Court
The Honorable Michael L. Stern
Case No. BC564093

APPLICATION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF MEDIA ENTITIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS

DAVIS WRIGHT TREMAINE LLP
KELLI L. SAGER (SBN 120162)
*THOMAS R. BURKE (SBN 141930)
ROCHELLE L. WILCOX (SBN 197790)
DAN LAIDMAN (SBN 274482)
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
(213) 633-6800 tel
(213) 633-6899 fax

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Constitutional Provisions

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

Amici Curiae California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, The Reporters Committee for Freedom of the Press, A&E Television Networks, LLC, BuzzFeed, Inc., Cable News Network, Inc., CBS Corporation, Dow Jones & Company, First Look Media Works, Inc., The Hearst Corporation, NBCUniversal Media, LLC, The New York Times Company, and The Motion Picture Association of America (collectively, "Media Amici") respectfully submit this Amici Curiae Brief in Support of Defendants and Respondents the City of Carson, James Dear, and Leonard Bloom.

For the reasons discussed below, Media Amici urge this Court to reverse the Court of Appeal's impermissibly narrow interpretation of the "public interest" requirement of Subsection (e)(4) of Code of Civil Procedure § 425.16 (the "anti-SLAPP" statute), and the incorrect conclusion it reached as a result – that speech about an individual involved in an effort to bring a major development project to a municipality was outside the scope of the anti-SLAPP statute. Because the Court of Appeal's ruling followed other cases that incorrectly have imposed extra-statutory limitations on the anti-SLAPP statute's public interest requirement, Media

Amici urge this Court to disapprove cases that have failed to apply the public interest standard broadly, and to provide guidance that is consistent with the statute's plain language and well-established constitutional principles.[1]

APPLICATION TO SUBMIT AMICI CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), Media Amici respectfully request this Court's permission to submit the attached Amici Curiae Brief. Media Amici include news, entertainment, and publishing organizations, who themselves or whose members own and operate newspapers, magazines, Internet platforms, movie production and distribution companies, and television and radio stations in California and throughout the United States. Media Amici also include nonprofit organizations representing journalists, community groups, and ordinary citizens, whose missions focus on promoting free speech rights. A further description of Media Amici is included in the attached Appendix A.

Media Amici submit this brief to address the interpretation and application of the anti-SLAPP statute's public interest requirement. See C.C.P. § 425.16(b)(1) (applying statute to claims arising from conduct in furtherance of speech "in connection with a public issue"); (e)(4) (statute

[1] Media Amici submit this brief solely to address the interpretation and application of the anti-SLAPP statute's public interest requirement. They do not concede that the City of Carson has a right to file an anti-SLAPP Motion, or take a position on any other issue raised by this appeal.

applies, inter alia, to claims arising from "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest"). In this case, the Court of Appeal narrowly construed the "public interest" requirement, using an approach followed by several intermediate appellate courts that imposes extra-statutory restrictions on the definition of "an issue of public interest." Rand Resources, LLC v. City of Carson, 247 Cal. App. 4th 1080, 1091-96 (2016). Media Amici believe that the Amici Brief will be of assistance to this Court in tracing the evolution of the divergent approach followed by the Court of Appeal here, and explaining why that approach is inconsistent with the purpose of the anti-SLAPP statute and prior decisions of this Court. See Amici Brief, Section III.

Additionally, Media Amici propose that this Court adopt a workable standard for determining when the "public interest" requirement is met under the anti-SLAPP statute, based on well-established case law from this Court and the United States Supreme Court that has enunciated guiding principles for evaluating matters of "public interest" and "public concern" in other contexts involving the exercise of free speech. Amici Brief, Section IV.

Media Amici are well-positioned to offer this perspective because they have been involved in the crafting and implementation of the anti-SLAPP statute since it was first enacted, and have decades of experience

litigating anti-SLAPP cases at all levels of the court system. See Paterno v. Superior Court, 163 Cal. App. 4th 1342, 1353 (2008) ("[n]ewspapers and publishers, who regularly face libel litigation, were intended to be one of the 'prime beneficiaries' of the anti-SLAPP legislation") (quoting Lafayette Morehouse, Inc. v. Chronicle Publ'g, 37 Cal. App. 4th 855, 863 (1995)).

Media Amici rely on the anti-SLAPP statute to broadly protect their editorial and creative processes. The prospect of defending against even a wholly meritless lawsuit can discourage the publication of news reports and expressive works on matters of public interest. As this Court has recognized, permitting "unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights." Winter v. DC Comics, 30 Cal. 4th 881, 891 (2003) (quotation omitted). Therefore, "speedy resolution of cases involving free speech is desirable." Id. (emphasis added; quotation omitted). See also Baker v. Herald Exam'r, 42 Cal. 3d 254, 268 (1986) ("[t]he threat of a clearly nonmeritorious defamation action ultimately chills the free exercise of expression").

The anti-SLAPP statute provides a means of "screening out meritless claims that arise from protected activity, before the defendant is required to undergo the expense and intrusion of discovery." Baral v. Schnitt, 1 Cal. 5th 376, 393 (2016). But its protections are illusory if courts follow the approach applied by the Court of Appeal here, which narrowly interprets the public interest requirement in a manner that potentially excludes many

content-based claims from the scope of the anti-SLAPP statute. Amici Brief at Section III. Because Media Amici have a strong interest in ensuring that the anti-SLAPP statute continues to serve its purpose of protecting the free flow of information and creative expression to the public, they respectfully request that this Court grant their Application and consider the attached Amici Brief.[2]

AMICI CURIAE BRIEF

I. SUMMARY OF ARGUMENT

In a series of recent decisions, this Court has reaffirmed that the anti-SLAPP statute must be "construed broadly" to further its goal of encouraging "continued participation in matters of public significance." C.C.P. § 425.16(a)(1).[3] But there remains a critical issue that some intermediate appellate courts have addressed in a manner that threatens the anti-SLAPP statute's central purpose. The Court of Appeal's decision here is emblematic of this divergent line of cases, which have erroneously

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

[3] See Barry v. State Bar of California, 2 Cal. 5th 318, 321 (2017); City of Montebello v. Vasquez, 1 Cal. 5th 409, 416 (2016); Baral v. Schnitt, 1 Cal. 5th 376, 392 (2016).

restricted the scope of the anti-SLAPP statute by imposing extra-statutory limitations on the interpretation of what constitutes a matter of "public interest" within the meaning of the statute. This appeal provides an opportunity for this Court to disapprove cases that have impermissibly narrowed the application of the anti-SLAPP statute, and to clarify that the public interest requirement – like other provisions of the statute – must be applied broadly, consistent with the statute's plain language and the Legislature's clear intent.[4]

The Legislature resolved any ambiguity about this question 20 years ago, when it amended the anti-SLAPP statute to expressly ensure that it is broadly construed. See Section II, infra. As this Court recognized, the 1997 amendment rejected a line of cases that had interpreted the law narrowly, as applying only to certain types of political speech. See Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1120 (1999). Subsequently, most intermediate appellate courts have recognized that the public interest requirement also must be read expansively, just the same as other provisions of the anti-SLAPP statute. E.g., Nygård, Inc. v. Uusi-

[4] This Amici Brief addresses only the interpretation of the "public interest" clause in Code of Civil Procedure § 425.16(e)(4). Media Amici do not take a position on the other issue presented regarding Subsection (e)(2) of the anti-SLAPP statute, or on any other question raised by this case, including the threshold issue of whether the plaintiff's claims arise from protected conduct, or whether the plaintiff can establish a probability of prevailing on its claims. See Section V, infra; Martinez v. Metabolife Int'l, Inc., 113 Cal. App. 4th 181, 188 (2003).

Kerttula, 159 Cal. App. 4th 1027, 1042 (2008) ("these cases and the legislative history … suggest that 'an issue of public interest' … is any issue in which the public is interested"); see also Section II, infra.

The Court of Appeal's decision in this case departs from these principles in two significant ways, which are emblematic of the misguided approach adopted in several published appellate decisions.

First, the Court of Appeal's public interest analysis focused narrowly on the particular statements at issue, rather than focusing on the broad subject of the defendant's speech. See Section III.A, infra. As a consequence, although it acknowledged that there was a strong public interest in information about the City of Carson's negotiations with the NFL to bring a football team and major development project to the city, the appeals court nonetheless concluded that "the identity of the person representing the City in its efforts to lure an NFL team to the City is not a matter of public interest." Rand Resources, LLC v. City of Carson, 247 Cal. App. 4th 1080, 1095 (2016) (emphasis added).

This narrow interpretation of the anti-SLAPP statute squarely conflicts with the weight of authority in this area, which has held that "the proper inquiry is whether the broad topic of defendant's conduct, not the plaintiff, is connected to a public issue or an issue of public interest." Doe v. Gangland Productions, 730 F.3d 946, 956 (9th Cir. 2013) (emphasis added). See also Hunter v. CBS, 221 Cal. App. 4th 1510, 1526-27 (2013);

Tamkin v. CBS, 193 Cal. App. 4th 133, 143-44 (2011); Terry v. Davis Community Church, 131 Cal. App. 4th 1534, 1547-49 (2005).

Media Amici are particularly concerned about this aspect of the Court of Appeal's decision, because the same reasoning could be used in lawsuits targeting news reports or creative works that discuss specific examples of political and social issues in the context of addressing broad topics. See Section III.A. This is not mere speculation: following the Court of Appeal issuing its decision in this case, another intermediate appellate court published an opinion declining to apply the anti-SLAPP statute to a defamation claim arising from a publication about regulatory issues at a rehabilitation center, finding that statements about one particular facility did not involve a matter of public interest. See Dual Diagnosis Treatment Center, Inc. v. Buschel, 6 Cal. App. 5th 1098, 1101 (2016). The narrow standard applied by the Court of Appeal here, and by the court in Dual Diagnosis, ignores the plain language of the anti-SLAPP statute – which protects all speech "in connection with … an issue of public interest" (C.C.P. § 425.16(e)(4)) – and would dramatically limit its protection.

Second, the Court of Appeal relied on a misguided legal standard that restricts the interpretation of speech connected to matters of "public interest" to a few narrow categories of speech. See Section III.B, infra. This divergent approach began with a set of observations by a single court in 2003, and morphed into a multi-part framework that has been applied by

some intermediate appellate courts as a binding public interest test. See Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913, 924 (2003); Weinberg v. Feisel, 110 Cal. App. 4th 1122, 1132-33 (2003); Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26, 33 (2003); Du Charme v. International Brotherhood of Electrical Workers, Local 45, 110 Cal. App. 4th 107, 119 (2003).

The Rivero-Weinberg-Du Charme framework was derived in large part from inapposite cases dealing with a different legal standard that is purposefully more restrictive than the anti-SLAPP statute's public interest requirement. See Section III.B, infra. When confronted with fact patterns that do not fit the framework – but which clearly belong within the scope of the anti-SLAPP statute – the same courts that issued these opinions have simply disregarded the Rivero-Weinberg-Du Charme standard, which amply demonstrates its shortcomings. Id. Not surprisingly, other intermediate appellate courts have criticized this line of cases, pointing out that they have created extra-statutory limitations that impermissibly narrow the scope of the anti-SLAPP statute, in contravention of the law's plain language and the clearly expressed intention of the Legislature. E.g., Cross v. Cooper, 197 Cal. App. 4th 357, 381 (2011). The disparate interpretation of the statutory language has resulted in inconsistent decisions and confusion that needs resolution by this Court.

Guidance can be provided by looking to well-established case law in analogous areas of free speech jurisprudence. In the areas of defamation, privacy, emotional distress, publication of "confidential" information, and public employee speech, courts have been required to identify speech that involves matters of "public concern." See Section IV.A, infra. And as the United States Supreme Court recently explained, this adjudication is possible by applying "guiding principles … that accord broad protection to speech to ensure that courts themselves do not become inadvertent censors." Snyder v. Phelps, 562 U.S. 443, 452 (2011); see also Section IV.A, infra.

This Court also has enunciated clear standards for determining if speech is of "legitimate public concern," in evaluating privacy claims arising from the exercise of free speech rights. Shulman v. Group W Productions, Inc., 18 Cal. 4th 200, 215 (1998). In doing so, this Court emphasized that any such inquiry must begin with a presumption that most speech about political, social, and cultural issues is a matter of legitimate public concern, and courts must accord substantial deference to editorial judgment. Id. at 224-25. Moreover, consistent with the anti-SLAPP decisions that correctly have focused the public interest inquiry on the "broad topic" of the defendant's speech, this Court held that private facts claims are barred when the particular information disclosed about the

plaintiff has a "logical relationship or nexus" with the wider subject of public concern. Id. at 224.

To ensure that the anti-SLAPP statute encompasses the full range of speech that it is meant to protect, Media Amici urge this Court to disapprove the Rivero-Weinberg-Du Charme line of cases to the extent that they impose extra-statutory limitations on the interpretation of what constitutes a matter of public interest. See Section III.B, infra. In its place, this Court should adopt an approach to defining "public interest" that is consistent with well-established principles of constitutional law, and satisfies the Legislature's directive that the statute be broadly construed. Id. A clear directive from this Court would vindicate the constitutional interests at the heart of the anti-SLAPP statute, and preserve a means for courts to weed out cases involving purely private matters that do not fall within the law's scope. Id.

II. THE SLAPP STATUTE MUST BE BROADLY CONSTRUED TO PROTECT FREE SPEECH.

In 1992, the California Legislature enacted Code of Civil Procedure § 425.16 "to nip SLAPP litigation in the bud[,]" by quickly disposing of claims that target the exercise of free speech rights. See Braun v. Chronicle Publ'g Co., 52 Cal. App. 4th 1036, 1042 (1997). Under the statute,

> [a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall

> be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

C.C.P. § 425.16(b)(1).

In defining what constitutes conduct in furtherance of speech "in connection with a public issue," the statute identifies several categories of protected conduct, including "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Id. § 425.16(e)(4). The interpretation of the phrases "public issue" and "public interest" were subjects of early disagreement among some appellate courts. A line of cases epitomized by Zhao v. Wong, 48 Cal. App. 4th 1114 (1996), limited anti-SLAPP protections to a "narrowly defined category of litigation," and held that the phrase "public interest" referred only "to speech pertaining to the exercise of democratic self-government." Id. at 1122, 1133. Other contemporary authorities disagreed, noting that "the Legislature intended the statute to have broad application," and that the law encompassed "the broader constitutional right of freedom of speech." Averill v. Superior Court, 42 Cal. App. 4th 1170, 1176 (1996).

The latter group of cases recognized that although the anti-SLAPP statute initially was inspired largely by David and Goliath-type lawsuits aimed at political petitioning activity, the Legislature purposefully had crafted a far more expansive law. As the appeals court explained in Braun,

"[n]othing in any portion of [the statute] … confines free speech to speech which furthers the exercise of petition rights," and held that "section 425.16 motions can apply to media defendants in libel actions." 52 Cal. App. 4th at 1045-46.

The Legislature responded to this split in authority in 1997, by amending the anti-SLAPP statute in a manner that unequivocally embraced the Braun/Averill line of cases and their expansive view of the anti-SLAPP statute's reach. The amendment added the express requirement that the statute "shall be construed broadly." C.C.P. § 425.16(a). As this Court explained, the "Legislature's 1997 amendment of the statute to mandate that it be broadly construed apparently was prompted by judicial decisions" including Zhao that "were mistaken in their narrow view of the relevant legislative intent." Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1120 (1999). This Court added that it "agree[d], moreover, with the court in Braun v. Chronicle that 'Zhao is incorrect in its assertion that the only activities qualifying for statutory protection are those which meet the lofty standard of pertaining to the heart of self-government.'" Id. at 1116 (quoting Braun, 52 Cal. App. 4th at 1046-47).

Since the 1997 amendment, this Court consistently has upheld the statute's broad construction. For example, in City of Montebello, this Court explained that the "Legislature's directive that the anti-SLAPP statute is to be 'construed broadly' so as to 'encourage continued

participation in matters of public significance' supports the view that statutory protection of acts 'in furtherance' of the constitutional rights incorporated by section 425.16 may extend beyond the contours of the constitutional rights themselves." 1 Cal. 5th at 421. Conversely, this Court has "repeatedly emphasized that the exemptions" to the anti-SLAPP statute "are to be narrowly construed." Id. at 419-20 (quotations omitted). See also Barry, 2 Cal. 5th at 321 ("[t]he statute instructs that its provisions are to be 'construed broadly'"; reading the law expansively to allow for motions to strike on jurisdictional as well as merits grounds, and to allow courts without jurisdiction to award fees to prevailing defendants).[5]

---

[5] See also Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 735 (2003) (adhering to the "express statutory command" that the anti-SLAPP statute be "construed broadly"); Navellier v. Sletten, 29 Cal. 4th 82, 91 (2002) (the anti-SLAPP statute does not exclude any particular type of cause of action from its operation, and refusing to adopt plaintiffs' request to exclude contract and fraud causes of action from the anti-SLAPP statute's ambit because it "would contravene the Legislature's express command that section 425.16 'shall be construed broadly'"); Soukop v. Law Offices of Herbert Hafif, 39 Cal. 4th 260, 279 (2006) ("the Legislature has directed that the statute 'be construed broadly.' To this end, when construing the anti-SLAPP statute, '[w]here possible, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law…") (internal citations omitted); Kibler v. Northern Inyo County Local Hospital Dist., 39 Cal. 4th 192, 199 (2006) (following the Legislature's requirement that the courts must "broadly construe" the anti-SLAPP statute, and applying it to hospital peer review proceedings); Club Members For An Honest Election v. Sierra Club, 45 Cal. 4th 309, 318 (2008) (because the anti-SLAPP statute must be construed broadly, exemption for cases brought purely in the public interest are construed narrowly to conform with legislative intent); Vargas v. City of Salinas, 46 Cal. 4th 1, 19 (2009) (noting that after courts narrowly interpreted the anti-SLAPP statute, the Legislature amended that

Many post-amendment decisions of the courts of appeal also recognized that the anti-SLAPP statute's "public interest" standard must be broadly construed in accordance with the Legislature's clear intent. In Nygård, Inc. v. Uusi-Kerttula, 159 Cal. App. 4th 1027 (2008), for example, the Second Appellate District examined the issue at length, observing that "Section 425.16 does not define 'public interest,' but its preamble states that its provisions 'shall be construed broadly' to safeguard 'the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.'" Id. at 1039 (quoting C.C.P. § 425.16(a)).

After examining the text of the anti-SLAPP statute, the 1997 amendment, and many of the earlier cases discussed above, the court concluded:

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

---

law to clarify its intent that it be interpreted broadly, and using a broad interpretation to find that the anti-SLAPP statute applied to claims against government officials); Simpson Strong-Tie Co., Inc. v. Gore, 49 Cal. 4th 12, 21-22 (2010) (recognizing that the anti-SLAPP statute must be "construed broadly," and in turn interpreting commercial speech exemption to the anti-SLAPP statute narrowly to conform with legislative intent).

Id. at 1042 (original emphasis). Accord Brodeur v. Atlas Entertainment, Inc., 248 Cal. App. 4th 665, 674 (2016) ("it is likewise beyond dispute that the anti-SLAPP statute, including the scope of the term 'public interest,' is to be construed broadly"); Hecimovich v. Encinal School Parent Teacher Org., 203 Cal. App. 4th 450, 464 (2012) ("[l]ike the SLAPP statute itself, the question whether something is an issue of public interest must be 'construed broadly'") (quoting Gilbert v. Sykes, 147 Cal. App. 4th 13, 23 (2007)); Chaker v. Mateo, 209 Cal. App. 4th 1138, 1146 (2012) (statements about plaintiff's "character and business practices" on consumer website fell "within the broad parameters of public interest within the meaning of section 425.16"); Seelig v. Infinity Broad. Corp., 97 Cal. App. 4th 798, 808 (2002) ("public interest" requirement, "like all of section 425.16, is to be construed broadly"); Hilton v. Hallmark Cards, 599 F.3d 894, 905-06 (9th Cir. 2009) (same; "the activity of the defendant need not involve questions of civic concern; social or even low-brow topics may suffice").[6]

[6] A wide variety of topics have been found to involve matters of public interest. E.g., Hilton, 599 F.3d at 908 (birthday card depicting Paris Hilton); Seelig, 97 Cal. App. 4th at 808 (television show "Who Wants to Marry a Multimillionaire"); Summit Bank v. Rogers, 206 Cal. App. 4th 669, 694-95 (2012) ("the broad topic of the financial stability of our banking system"); Hecimovich, 203 Cal. App. 4th at 467 (safety of children in sports); No Doubt v. Activision Publishing, Inc., 192 Cal. App. 4th 1018, 1027 (2011) ("Guitar Hero" video game); Rivera v. First DataBank, Inc., 187 Cal. App. 4th 709, 716-17 (2010) (treatment for depression); Stewart v. Rolling Stone LLC, 181 Cal. App. 4th 664, 677-78 (2010) (independent rock and roll bands); Gilbert v. Sykes, 147 Cal. App. 4th 13, 23 (2007) (plastic surgery); Hall v. Time Warner, Inc., 153 Cal. App. 4th 1337, 1347

III. THE COURT OF APPEAL'S DECISION IN THIS CASE FOLLOWS A LINE OF AUTHORITY THAT IMPERMISSIBLY CONSTRUES THE PUBLIC INTEREST REQUIREMENT NARROWLY.

Unfortunately, some intermediate appellate courts have departed from the principles described above in their interpretation of the anti-SLAPP statute's public interest standard. This is apparent in two lines of authority that are exemplified by the Court of Appeal's decision in this case: decisions that narrowly focus on a particular plaintiff or statement, and decisions that apply a rigid "public interest" definition that is limited only to a few types of speech.

A. Focusing On The Specific Plaintiff Or Statement At Issue, Instead Of The Broad Topic Of The Speech, Is Error.

The Court of Appeal here correctly found that "having an NFL team, stadium, and associated developments in Carson is no doubt a matter of substantial public interest." Rand, 247 Cal. App. 4th at 1093. But it broke with established constitutional principles and the weight of authority applying the anti-SLAPP statute by parsing out "the particular communications alleged" in the tortious breach of conduct claim, finding that those statements were not themselves of public interest. Id. at 1094. In doing so, the court narrowly characterized the plaintiff's fraud claim as "concern[ing] the identity of the person(s) reaching out to the NFL and its teams' owners to curry interest in relocating to Carson," and held that

---

(2007) (Marlon Brando's will).

"[t]he identity of the City's representative is not a matter of public interest." Id. at 1093-94.

This narrow reading of the public interest standard fundamentally misconstrues the anti-SLAPP statute, and creates inconsistency and confusion in the law. Just a few years earlier, another Second Appellate District panel had addressed the same issue, in a case where the plaintiff argued that his employment discrimination claim was beyond the scope of the anti-SLAPP statute because "the public had no interest in who CBS selected to serve as its weather anchor." Hunter v. CBS, 221 Cal. App. 4th 1510, 1526 (2013). In that case, the Court of Appeal applied the correct standard, noting that the plaintiff's argument was "predicated on the assumption that … the defendant's conduct must be in furtherance of free speech rights and must also qualify as a public issue or issue of public interest" (emphasis added); as the court explained, however, the statute "states that conduct must be in furtherance of the exercise of free speech rights 'in connection' with a public issue or issue of public interest." Id. at 1526-27 (emphasis added). "Thus, the proper inquiry is not whether CBS's selection of a weather anchor was itself a matter of public interest; the question is whether such conduct was 'in connection with' a matter of public interest." Id. at 1527 (emphasis added). By looking at the statutory language in its entirety, the appeals court found that the anti-SLAPP statute applied because "weather reporting is a matter of public interest," and

"CBS's decisions regarding who would present those reports to the public during its broadcasts was necessarily 'in connection' with that public issue." Id.

The Hunter court's interpretation built on a number of prior decisions that also correctly recognized that in applying the anti-SLAPP statute, "the proper inquiry is whether the broad topic of defendant's conduct, not the plaintiff, is connected to a public issue or an issue of public interest." Doe v. Gangland Productions, 730 F.3d 946, 956 (9th Cir. 2013) (emphasis added). In Gangland, the Ninth Circuit relied on this Court's decision in Taus v. Loftus, 40 Cal. 4th 683 (2007), explaining that:

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

Gangland, 730 F.3d at 955-56 (quoting Taus, 40 Cal. 4th at 712; original emphasis; citations omitted). See also Terry v. Davis Community Church, 131 Cal. App. 4th 1534, 1547-49 (2005) (report about alleged improper personal relationship between church group leaders and a minor was protected; "the broad topic of the report …was the protection of children in church youth programs, which is an issue of public interest").

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

Likewise, in Tamkin, 193 Cal. App. 4th 133, the court explained that "[w]e find no requirement in the anti-SLAPP statute that the plaintiff's persona be a matter of public interest." Id. at 144. Accordingly, that court held that the anti-SLAPP statute applied to claims for defamation based on a pre-broadcast script for the fictional television program "CSI" that used the plaintiffs' actual names. Id. The court properly analyzed the public interest requirement by determining that "the public was demonstrably interested in the creation and broadcasting" of the show, rather than focusing narrowly on the plaintiffs' identity. Id. at 143.

As these cases demonstrate, news and entertainment providers such as Media Amici frequently rely on the anti-SLAPP statute in defending against claims that target their journalistic and expressive activities. The

Court of Appeal's significant departure from these prior decisions is of serious concern to the Media Amici, because it raises the specter of courts limiting application of the anti-SLAPP statute only to generic discussions of broad political and social topics, or statements about individuals who already are in the public eye, leaving a vast array of speech about important public issues unprotected.

In both the entertainment and news contexts, using a particular individual or event as a mechanism for addressing a broader social issue is the very essence of storytelling and reporting. The Second Appellate District recognized this in a recent decision granting an anti-SLAPP motion in a lawsuit based on the 1970s period film American Hustle. Brodeur v. Atlas Entertainment, Inc., 248 Cal. App. 4th 665 (2016). There, author Paul Brodeur sued the filmmakers for defamation based on a reference to his work by one of the film's characters in a scene involving safety concerns about microwaves, which were novel inventions that were just finding their way into American homes during the time period reflected in the film. Id. at 669-70.

The court rejected the plaintiff's argument that the "statement made in the scene 'has no bearing' on the film's depiction of American culture during the 1970's, and that there is no 'connection' between the topics of the film and that scene." Id. at 677. Because the reference to Brodeur's work reflected the wider social issues addressed by the film, the anti-

SLAPP statute's public interest requirement was satisfied. Id. See also Sarver v. Chartier, 813 F.3d 891, 902 (9th Cir. 2016) (anti-SLAPP statute applied to claims based on use of plaintiff's "private persona" in the film The Hurt Locker; "the private aspects that Sarver alleges the film misappropriated are inherently entwined with the film's alleged portrayal of his participation in the Iraq War," a broad topic of public interest).

In contrast, the Court of Appeal's sweeping conclusion here that the "identity of the City's representative is not a matter of public interest" threatens to exclude important news reporting from the scope of the anti-SLAPP statute. For example, in Four Navy Seals v. AP, 413 F. Supp. 2d 1136 (S.D. Cal. 2005), the plaintiffs brought a privacy action against the Associated Press for publishing their photos along with a news story about the abuse of prisoners by U.S. armed forces during the Iraq War. Id. at 1140-41. The plaintiffs tried to evade the anti-SLAPP statute in an argument similar to the Court of Appeal's rationale in this case, arguing that "the case involve[d] protecting identities, not chilling speech." Id. at 1149. But in Four Navy Seals, the court correctly held that the statute applied because the photos were "relevant" to "the broader topic of treatment of Iraqi captives by members of the United States military." Id.

Likewise, in Gangland, the Ninth Circuit held that the anti-SLAPP statute applied to the plaintiff's claims that the defendants improperly disclosed his identity in a television documentary program about gang

violence. 730 F.3d at 950. The Ninth Circuit reversed the decision of the district court, which had "incorrectly determined that Defendants were required to show an independent public interest in Plaintiff's identity." Id. at 955. After surveying the relevant California case law, the Ninth Circuit found that the anti-SLAPP statute applied "because Defendants demonstrated a public interest in the broad topics of" their television program, and they "were not required to show a specific public interest in Plaintiff." Id. at 956. See also Hall v. Time Warner, 153 Cal. App. 4th 1337, 1347 (2007) (anti-SLAPP statute applied to TV report identifying private individual as beneficiary of Marlon Brando's will because it "concerns a topic of widespread public interest and contributes in some manner to a public discussion of the topic").

The Court of Appeal's inconsistent reasoning in this published decision, and the cases on which it relied, creates confusion that will continue to result in improperly narrow applications of the anti-SLAPP statute. Indeed, a Fourth Appellate District panel recently held that the statute did not apply to a defamation action arising from the defendant's publication that included information about a regulatory probe of a local rehabilitation center, which included a link to a newspaper article reporting that the head of the facility had been stripped of his medical license. Dual Diagnosis Treatment Center, Inc. v. Buschel, 6 Cal. App. 5th 1098, 1101 (2016). That court made the same error as the Court of Appeal in Rand,

narrowly focusing on the plaintiff itself in holding that the "licensing status of a single rehabilitation facility is not of widespread, public interest," because that particular facility does not "impact[], or ha[ve] the potential to impact, a broad segment of society." Id. at 1105 (quotation omitted).

This restrictive logic would result in many, if not most, local news stories and other creative conduct losing the protection of the anti-SLAPP statute. It would strip journalists of the law's protections whenever particular individuals or entities are identified as examples of larger political or social issues, and would exclude films that tell an individual's story as part of a broader cultural narrative. This unduly restrictive interpretation not only contradicts the decisions discussed above, which broadly construed the statute in keeping with the Legislature's mandate, but also undermines one of the law's core purposes ensuring a free flow of information to the public by protecting defendants from the burdens of protracted, meritless litigation arising from the exercise of free speech. See Paterno, 163 Cal. App. 4th at 1353 ("[n]ewspapers and publishers, who regularly face libel litigation, were intended to be one of the 'prime beneficiaries' of the anti-SLAPP legislation") (citation omitted).

B. Some Courts Have Applied An Unnecessary And Unduly Restrictive Framework For Evaluating The "Public Interest" Language In The Anti-SLAPP Statute.

The Court of Appeal reached its erroneous conclusion in this case by applying a framework that narrowly defines issues of public interest:

> [t]hree 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.'

Rand, 247 Cal. App. 4th at 1092 (quoting Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26, 33 (2003)).

This restrictive approach began with a trio of cases decided in 2003. In Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913 (2003), the court held that the anti-SLAPP statute did not apply to claims arising from a union's statements about the demotion of a janitorial supervisor who had been accused of favoring certain employees. Id. at 916-17. The court surveyed early anti-SLAPP decisions, noting that while "[n]one of these cases defines the precise boundaries of a public issue," the particular fact patterns in these prior decisions involved "a person or entity in the public eye … conduct that could directly affect a large number of people beyond the direct participants … or a topic of widespread, public interest." Id. at 924. The court then applied this observation about the circumstances involved in prior decisions as though it presented a definitive, factor-based test, holding that because "the Union's statements concerned the supervision of a staff of eight custodians by Rivero, an individual who had previously received no

public attention or media coverage," and "the only individuals directly involved in and affected by the situation were Rivero and the eight custodians," therefore "Rivero's supervision of those eight individuals is hardly a matter of public interest." Id.[7]

Shortly thereafter, in Weinberg v. Feisel, 110 Cal. App. 4th 1122 (2003), the court followed Rivero's rationale, while adding its own observations about how "an issue of public interest" should be defined:

> The statute does not provide a definition for 'an issue of public interest,' and it is doubtful an all-encompassing definition could be provided. However, the statute requires that there be some attributes of the issue which make it one of public, rather than merely private, interest. A few guiding principles may be derived from decisional authorities. First, 'public interest' does not equate with mere curiosity …. Second, a matter of public interest should be something of concern to a substantial number of people …. Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest …. Third, there should be some degree of closeness between the challenged statements and the asserted public interest; the assertion of a broad and amorphous public interest is not sufficient. Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of [private] controversy …. Finally, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure. A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

[7] This Court denied review of Rivero, but Justices Kennard and Moreno voted in favor of hearing the case. See 2003 Cal. LEXIS 3059.

Id. at 1132-33 (quotations and citations omitted). See also Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26, 33-34 (2003) (taking the approach from Rivero and Weinberg and converting it into a formal three-part test, then concluding that the anti-SLAPP statute did not apply because the "speech here fits none of the Rivero categories").

The Court of Appeal in Rand quoted this language as well, and applied many of these limitations in reaching its conclusion here that the public interest standard was not met. Rand, 247 Cal. App. 4th at 1091-92. But the "guiding principles" identified by the Weinberg court are all restrictions that narrow the definition of public interest speech. Weinberg, 110 Cal. App. 4th at 1132-33. This directly contradicts the Legislature's direction to interpret the anti-SLAPP statute broadly (see Section II, supra), and also stands in sharp contrast to the United States Supreme Court's approach of expansively defining matters of public concern in First Amendment cases based on "guiding principles … that accord broad protection to speech to ensure that courts themselves do not become inadvertent censors." Snyder v. Phelps, 562 U.S. 443, 452 (2011) (emphasis added). See Section IV, infra.

Moreover, the Weinberg court drew many of its observations from inapposite cases that had applied a different, far narrower, standard for determining whether a plaintiff should be deemed to be a "public figure" for purposes of defamation law. See Gertz v. Robert Welch, 418 U.S. 323,

346-48 (1974) (discussing the difference between the "public figure" and "public interest" analyses); Mosesian v. McClatchy Newspapers, 233 Cal. App. 3d 1685, 1696 (1991) (same; explaining that the "public figure" standard focuses on "the individual plaintiff's identity and status – i.e., whether the plaintiff was a public official/figure or a private individual," as opposed to whether the defendant's speech "addressed issues of general or public interest").

Having started from the incorrect premise that "public figure" cases provide guiding principles for evaluating speech involving matters of "public interest," the Weinberg court concluded that "the assertion of a broad and amorphous public interest is not sufficient." Weinberg, 110 Cal. App. 4th at 1132. This has since become an oft-quoted phrase in decisions applying an unduly narrow view of the anti-SLAPP law. E.g., Dual Diagnosis Treatment Center, 6 Cal. App. 5th at 1104; see also Section A, supra. But critically, the Weinberg court cited only a single case for its observation: Hutchinson v. Proxmire, 443 U.S. 111 (1979), a libel decision that focused entirely on whether the plaintiff was a public figure. Weinberg, 110 Cal. App. 4th at 1132 (citing Hutchinson, 443 U.S. at 135)).

This Court appropriately has cautioned against using the "public figure" standard from libel law to determine if the anti-SLAPP statute's much broader "public interest" test is met. See Taus, 40 Cal. 4th at 704 n.8 (explaining that it was not necessary to decide if the plaintiff was a limited

purpose public figure in order to determine if the anti-SLAPP statute applied to her claims). Because the Legislature chose to make the anti-SLAPP statute available to all cases arising from speech in connection with issues of public interest, and not merely those cases brought by public figures as defined for purposes of defamation law, the restrictions that the Weinberg court derived from public figure libel cases have no place in this analysis.

Problems with the Rivera/Weinberg approach quickly became apparent. In Du Charme v. International Brotherhood of Electrical Workers, Local 45, 110 Cal. App. 4th 107 (2003), the same division of the First Appellate District that decided Rivero modified its own ruling, only five months after Rivero was decided. The court realized that strict application of the three-part standard would exclude significant speech of interest to small communities. But instead of abandoning that restrictive approach, the court attempted to address the problem by adding a new gloss on its prior restrictions. The court held that "in cases where the issue is not of interest to the public at large, but rather to a limited, but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion." Id. at 119 (emphasis added).

Another division of the First Appellate District further muddied the water the following year, citing Du Charme for the proposition 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." Wilbanks v. Wolk, 121 Cal. App. 4th 88, 898 (2004) (emphasis added).

This misguided and increasingly restrictive line of authority has drawn sharp criticism. In Cross v. Cooper, 197 Cal. App. 4th 357 (2011), for example, the Sixth Appellate District began an extensive discussion of the Rivero/Weinberg/DuCharme decisions by noting that, "[e]ven though the Du Charme rule was derived from an observation of only three cases and not based on a more comprehensive survey of cases, an analysis of legislative intent, or a discussion of statutory interpretation, the rule has been uncritically accepted." Id. at 381. The court noted:

> [T]he result in Du Charme easily could have been reached without the creation of a new rule. Moreover, we believe new, judicially created prerequisites for anti-SLAPP protection should be propounded cautiously and with great perspicacity, especially where, as in Du Charme, the new rule is based on minimal authority and narrows the meaning of 'public interest' despite the Legislature's mandate to interpret the anti-SLAPP statute broadly. Indeed, the adoption of new prerequisites can raise more questions than they answer, as in Du Charme, where the court recognized that the new rule raised difficult additional questions concerning 'what limitations there might be on the size and/or nature of a particular group, organization, or community, in order for it to come within the rule we enunciate today.'

Id. at 381 n.15 (quoting Du Charme, 110 Cal. App. 4th at 119).

The Cross court also pointed out how "the Wilbanks rule, which even further narrows the meaning of 'public interest,'" was similar to the overly restrictive public interest standard from cases such as Zhao, which the Legislature expressly rejected in amending the anti-SLAPP statute in 1997 to expressly require that it be broadly construed. Id. See also Section II, supra.

But perhaps the surest indication of the serious flaws in the Rivero/Weinberg/Du Charme framework is the fact that the same courts that adopted it have chosen not to apply it when its restrictions would exclude a lawsuit that plainly should be protected by the anti-SLAPP statute. For example, in Hecimovich, the same First Appellate District division that decided Rivero and Du Charme held that the statute applied to a volunteer youth basketball coach's lawsuit aimed at parents' criticism of his coaching style. 203 Cal. App. 4th at 455-56. The court characterized the "communications and the dispute" at issue as involving "the conduct of a kid on a fourth grade basketball team, his parents' and his coach's reactions to it, and the ultimate resolution of the situation." Id. at 456.

Although the court included a lengthy discussion of the anti-SLAPP statute's public interest standard, it did not cite Rivero, Weinberg, Commonwealth Energy, or Du Charme, nor did it even mention the three-part public eye/large number of people/topic of widespread interest

framework that those cases espoused. Id. at 464-68. That is not surprising, given that the fact pattern in Hecimovich involved a small group of people, none of whom was in the public eye, and a subject – how a particular volunteer basketball coach dealt with a fourth-grade player – that could hardly be described as a matter of widespread interest if viewed in isolation. Id. at 455-56. Nonetheless, the court invoked the anti-SLAPP statute's broad construction mandate, and held that the action was within the scope of the statute because "the suitability of [the plaintiff's] coaching style was a matter of public interest among the parents" on his particular team, and "safety in youth sports, not to mention problem coaches/problem parents in youth sports, is another issue of public interest within the SLAPP law." Id. at 467-68. The result was correct – and was consistent with the statute's language and this Court's prior decisions – but this ruling cannot be reconciled with the Rivero/Weinberg/Du Charme line of cases.

Similarly, four years after issuing the Weinberg opinion, the Third Appellate District decided Gilbert v. Sykes, 147 Cal. App. 4th 13 (2007), in which it granted an anti-SLAPP motion after engaging in a thorough public interest analysis that did not mention the three-part framework, or cite any of the Rivero/Weinberg/Du Charme line of cases. Id. at 22-24. There, the court held that claims arising from a patient's website criticizing her plastic surgeon fell within the scope of the anti-SLAPP statute, rejecting the doctor's argument that "statements on the Web site do not contribute to the

public debate because they only concern [the patient's] interactions with him." Id. at 23 (original emphasis). The court broadly applied the statute by looking at the patient's entire website, and the topics it encompassed, rather than focusing only on the statements about her doctor, in concluding that the speech at issue "contributed toward the public debate about plastic surgery." Id. at 23.

Here, too, the approach taken by the court was correct. But the fact that this decision – like the decision in Hecimovich – was issued by one of the same courts that developed the restrictive Rivero-Weinberg-Du Charme framework, yet did not even cite to these prior cases, demonstrates that the restrictive standard that this framework embodies does not adequately protect the free speech interests embodied in the anti-SLAPP statute.

IV. THIS COURT SHOULD ADOPT A PUBLIC INTEREST STANDARD THAT IS CONSISTENT WITH THE SLAPP STATUTE'S PURPOSE AND ESTABLISHED CONSTITUTIONAL PRINCIPLES.

Courts that have attempted to create complicated multi-part restrictive standards under the anti-SLAPP statute have been motivated by a concern that it is too difficult to define "public interest" in evaluating the application of the statute. E.g., Weinberg, 110 Cal. App. 4th at 1132 ("[t]he statute does not provide a definition for 'an issue of public interest,' and it is doubtful an all-encompassing definition could be provided"); Rivero, 105 Cal. App. 4th at 929 ("some observers have said that a public concern test

amounts to little more than a message to judges and attorneys that no standards are necessary because they will, or should, know a public concern when they see it") (quotations omitted). But as discussed below, the notion of identifying public interest speech is deeply embedded in American constitutional law. This Court should use these well-established principles, as well as the directive from the Legislature, to provide clear guidance to trial courts and intermediate appellate courts about the properly broad interpretation and application of the anti-SLAPP statute's "public interest" language.

A. Decades Of Federal And State Constitutional Law Provide Guidance For Defining Matters Of "Public Interest" In Connection With Speech.

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

government restrictions on speech. New York Times Co. v. Sullivan, 376 U.S. 254, 266 (1964).

Following these seminal decisions, courts have developed legal standards in a wide variety of different free speech contexts that include evaluating whether speech involves a matter of public interest or public concern. In defamation law, for example, if the speech is about an issue of public concern, the plaintiff bears the burden of proving that it is materially false, and the defendant cannot be held liable without some showing of fault. See Milkovich v. Lorain Journal Co., 497 U.S. 1, 19-21 (1990); Philadelphia Newspapers v. Hepps, 475 U.S. 767, 776-77 (1986).

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

Courts also have developed an extensive body of law addressing whether speech is of public interest in the context of public employees'

First Amendment rights. "To be protected, the speech must be on a matter of public concern, and the employee's interest in expressing herself on this matter must not be outweighed by any injury the speech could cause to the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Waters v. Churchill, 511 U.S. 661, 668 (1994) (quotation omitted).[8]

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

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

turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case." Id. at 451.

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

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

necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said." Id. at 454.

Applying these principles, the Court determined that although the content of the defendant's messages "may fall short of refined social or political commentary, the issues they highlight – the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy – are matters of public import." Id.

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

The Court cited two examples of speech that would fall outside of the broad scope of protection, which were drawn from its prior decisions: (1) the limited distribution of a particular individual's credit report to five recipients for the purpose of a business transaction, and (2) sexually explicit videos made by a police officer. Id. at 453 (citing Dun & Bradstreet v. Greenmoss Builders, 472 U.S. 749, 762 (1985); City of San Diego v. Roe, 543 U.S. 77, 84 (2004)).

This Court has used a similarly expansive approach to defining "public interest" in cases that implicate the First Amendment and Article 1, Section 2(a) of the California Constitution. For example, in Shulman v. Group W Productions, Inc., 18 Cal. 4th 200 (1998), this Court held that "lack of newsworthiness is an element of the 'private facts' tort, making newsworthiness a complete bar to common law liability." Id. at 215. To reach this conclusion, this Court reviewed decades of First Amendment jurisprudence to address how courts should determine what matters are of "legitimate public concern." Id. at 224-25, 229. Several guiding principles emerge from the discussion:

First, this Court noted the importance of consistent decision-making. Citing earlier precedents, it recognized the "strong constitutional policy against fact-dependent balancing of First Amendment rights against other interests." Id. at 221. "'Because the categories with which we deal – private and public, newsworthy and nonnewsworthy – have no clear profile,

there is a temptation to balance interests in ad hoc fashion in each case. Yet history teaches us that such a process leads too close to discounting society's stake in First Amendment rights.'" Id. (quoting Briscoe v. Reader's Digest Ass'n, 4 Cal. 3d 529, 542 (1971)).

Second, this Court concluded that the importance of protecting First Amendment rights required "considerable deference to reporters and editors" in deciding what was of legitimate public interest. Id. at 224. It explained, "[b]y confining our interference to extreme cases, the courts 'avoid unduly limiting the exercise of effective editorial judgment.' … Nor is newsworthiness governed by the tastes or limited interests of an individual judge or juror; a publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it." Id. at 225 (citations omitted; emphasis added).[9]

Third, this Court noted that "newsworthiness is not limited to 'news' in the narrow sense of reports of current events," but the concept "extends also to the use of names, likenesses or facts in giving information to the

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

public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published." Id. at 225 (quotation omitted). Therefore, it can encompass a "news report or an entertainment feature," as well as "the reproduction of past events, travelogues and biographies," or "information concerning interesting phases of human activity." Id. (quotations omitted).[10]

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

Applying these principles, this Court held that an accident victim's "appearance and words as she was extricated from [an] overturned car, placed in a helicopter and transported to the hospital were of legitimate

[10] See also Guglielmi v. Spelling-Goldberg Prods., 25 Cal. 3d 860, 865-67 (1979) ("entertainment is entitled to the same constitutional protection as the exposition of ideas").

public concern," which barred her disclosure of private facts claim as a matter of law. Id. at 228-230. This Court reasoned that the video showing the victim's "injured physical state (which was not luridly shown) and audio showing her disorientation and despair were substantially relevant to the segment's newsworthy subject matter," and therefore could not be considered in isolation from the broad topic of the show. Id. at 229.

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

And this Court applied similar principles in Gates v. Discovery Communications, Inc., 34 Cal. 4th 679 (2004), in holding that an "invasion of privacy claim based on allegations of harm caused by a media defendant's publication of facts obtained from public official records of a criminal proceeding is barred by the First Amendment to the United States Constitution." Id. at 696. The holding was premised on the notion that, "[b]y placing the information in the public domain on official court records,

the State must be presumed to have concluded that the public interest was thereby being served," and that the "dissemination [of public records] was in the public interest." Id. at 695 (quoting Shulman, 18 Cal. 4th at 217-18).

Notably, both Gates and Taus were anti-SLAPP cases, in which the courts not only held that privacy claims were barred on the merits because they arose from newsworthy/public interest speech, but also necessarily found that the anti-SLAPP statute's threshold public interest standard had been satisfied. Gates, 34 Cal. 4th at 696; Taus, 40 Cal. 4th at 712-13.

As these authorities make clear, for many decades courts have successfully applied workable legal standards for identifying speech involving matters of public interest, by hewing closely to guiding principles designed to protect important free speech rights.

B. This Court Should Adopt An Expansive Public Interest Standard Consistent With Its Precedents And Other Constitutional Authorities.

The intermediate court of appeal decisions, like the Rand decision, that have applied extra-statutory frameworks to limit the definition of matters of public interest are inconsistent with the plain language and Legislative intent of the anti-SLAPP statute. See Sections III.A, III.B, supra. They undervalue the free speech interests at the heart of the law, and, as shown by subsequent decisions rendered by the very same courts that developed these restrictive standards, they are inadequate to address the full range of claims that fall within the scope of the statute. Id.

Accordingly, Media Amici urge this Court to disapprove Rivero, Weinberg, Commonwealth Energy, Du Charme, and Wilbanks to the extent that they impose any extra-statutory limitations on the anti-SLAPP statute's public interest standard, as well as any subsequent decisions that have treated the framework enunciated in these opinions as a controlling test.

Instead, this Court should clarify that the anti-SLAPP statute incorporates the same broad and flexible public interest standard that this Court and the United States Supreme Court have applied in other free speech contexts: "[s]peech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community … or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." Snyder, 562 U.S. at 453 (quotations omitted). The definition must be broadly construed (see Section II, supra); the analysis must focus on the broad topic of the defendant's speech, rather than the particular plaintiff or statement at issue (see Section III.A, supra); and California courts should use the principles enunciated by this Court in Shulman to determine if a subject is of legitimate news interest (see Section IV(A), supra).

This approach best effectuates the goals of the anti-SLAPP statute for several reasons.

First, it is appropriate to read the statute as incorporating the broad public interest standard used in other areas of free speech law because Section 425.16 expressly references the First Amendment and California Constitution. The anti-SLAPP statute opens with a declaration that the "Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." C.C.P. § 425.16(a) (emphasis added). It then provides for a special motion to strike a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue…" Id. § 425.16(b)(1).

As one court noted in an early anti-SLAPP decision, "Section 425.16 sets out a mere rule of procedure, but it is founded in constitutional doctrine." Ludwig v. Superior Court, 37 Cal. App. 4th 8, 21 (1995). And another court observed that the "anti-SLAPP statute reinforces the self-executing protections of the First Amendment." Paterno v. Superior Court, 163 Cal. App. 4th 1342, 1349 (2008). See also Dowling v. Zimmerman, 85 Cal. App. 4th 1400, 1414 (2001) (Section 425.16 was "designed to protect citizens in the exercise of their First Amendment constitutional rights of free speech and petition") (quotation omitted).

"As to section 425.16," this Court has "said that '[t]he plain language of the statute establishes what was intended by the Legislature.'" City of Montebello v. Vasquez, 1 Cal. 5th 409, 419 (2016) (quoting Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 735 (2013)). The plain language of the anti-SLAPP statute could not be more clear: the law is designed to protect the free speech guarantees of the California Constitution and First Amendment to the United States Constitution. Consequently, the statute should be interpreted in a manner consistent with state and federal constitutional law in the area of free speech.

Second, courts have used the Rivero-Weinberg-Du Charme public interest framework as a means of excluding cases that they simply do not believe should be within the scope of the anti-SLAPP statute. But as this Court recognized in Shulman, regardless of the motive, vital First Amendment interests are jeopardized when courts are permitted to make largely subjective, ad hoc decisions about what is and is not of legitimate interest to the public. Shulman, 18 Cal. 4th at 225 ("[i]n general, it is not for a court or jury to say how a particular story is best covered"). See also Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976) ("[r]egardless of how beneficent-sounding the purposes of controlling the press might be," the Court has "remain[ed] intensely skeptical about those measures that would allow government to insinuate itself into the editorial rooms of this Nation's press").

Accordingly, this Court explained that "[b]y confining our interference to extreme cases, the courts avoid unduly limiting … the exercise of effective editorial judgment," thus recognizing a strong presumption that most speech about political, social, or cultural issues is of legitimate public concern. Id. (emphasis added; quotation and alteration omitted). And as the United States Supreme Court observed in Snyder, an expansive approach to defining issues of public concern and the resulting "broad protection to speech" is essential "to ensure that courts themselves do not become inadvertent censors." Snyder, 562 U.S. at 452.

Third, adopting a broad public interest standard would not open up the floodgates for unmeritorious anti-SLAPP motions, because the statute includes other limitations which are more appropriate vehicles for weeding out such cases. First and foremost, the statute only applies to claims "arising from any act of [the defendant] in furtherance of the person's right of petition or free speech … in connection with a public issue." C.C.P. § 425.16(b)(1). Defendants therefore are required to make an initial showing separate and apart from the public interest requirement that the claims arise from protected conduct.

This inquiry focuses on the "principal thrust or gravamen of the plaintiff's cause of action." Martinez v. Metabolife Int'l, Inc., 113 Cal. App. 4th 181, 188 (2003) (original emphasis). "[W]hen the allegations referring to arguably protected activity are only incidental to a cause of

action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute." Id. Consequently, if the court determines that the principal thrust or gravamen of a claim is something other than speech or conduct in furtherance of speech, the claim falls outside the scope of the anti-SLAPP statute without requiring any consideration of whether the conduct was related to speech about an issue of public interest. See Castillo v. Pacheco, 150 Cal. App. 4th 242, 252 (2007) (because the complaint did not arise out of protected activity, "it is unnecessary to address whether the … challenged conduct was 'in connection with a public issue or an issue of public interest' … or whether plaintiffs established a probability they would prevail on their claim") (citations omitted).

Furthermore, as this Court recently reiterated, the "anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity." Baral v. Schnitt, 1 Cal. 5th 376, 384 (2016) (original emphasis). Under the statute's second prong, a claim will not be stricken if the plaintiff can "establish[] that there is a probability that the plaintiff will prevail on the claim." C.C.P. § 425.16(b)(1).

Thus, even if a claim arises from protected conduct and the public interest requirement is met, an anti-SLAPP motion will be denied if the

"complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." Navellier v. Sletten, 29 Cal. 4th 82, 93 (2002) (quotations omitted). Consequently, "the anti-SLAPP statute neither constitutes – nor enables courts to effect – any kind of 'immunity'" for injury-producing conduct that happens to have some connection to speech on a matter of public interest. Id. "In so providing … the Legislature weighed an appropriate concern for the viability of meritorious claims against the concern to encourage participation in matters of public significance." Id. at 93-94 (quotation omitted).

V. THE PUBLIC INTEREST REQUIREMENT IS MET IN THIS CASE.

Applying the standards set forth above, the claims at issue in this appeal easily fall within the anti-SLAPP statute's broad public interest requirement.

The litigation arises from the City of Carson's efforts to bring an NFL franchise to the city and develop a football stadium and sports and entertainment complex. Rand, 247 Cal. App. 4th at 1084. The Court of Appeal properly recognized that this subject is a matter of public concern, but it narrowly characterized the anti-SLAPP statute's public interest requirement based solely on the particular statements at issue:

> While having an NFL team, stadium, and associated developments in Carson is no doubt a matter of substantial

> public interest, plaintiffs' complaint does not concern speech or conduct regarding a large-scale real estate development or bringing an NFL team to Carson and building it a stadium. It instead concerns the identity of the person(s) reaching out to the NFL and its teams' owners to curry interest in relocating to Carson. The identity of the City's representative is not a matter of public interest …. Furthermore, the particular communications alleged in the cause of action, i.e., the false representation that the EAA would be renewed, [Mayor James] Dear's false denial about knowing Bloom, and communications entailed in meetings between defendants, are also not matters of public interest.

Id. at 1093-94.

The Court of Appeal applied an improperly narrow legal standard. See Section III.A, supra; see also Taus, 40 Cal. 4th at 712 (public interest test analyzed by reference to "defendants' general course of conduct from which plaintiff's cause of action arose"); Tamkin, 193 Cal. App. 4th at 144 ("[w]e find no requirement in the anti-SLAPP statute that the plaintiff's persona be a matter of public interest"); Gangland, 730 F.3d at 956 ("the proper inquiry is whether the broad topic of defendant's conduct, not the plaintiff, is connected to a public issue or an issue of public interest").

Here, the identity of the firm negotiating the development deal with the NFL on behalf of the City, and alleged false representations by the City's Mayor regarding which municipal contractor would be conducting those negotiations, plainly are connected with the wider topic of the development project itself. Under the unambiguous language of the anti-SLAPP statute, and given the broad construction mandate, nothing more

must be shown to satisfy the public interest requirement here. See Hunter, 221 Cal. App. 4th at 1527 ("the proper inquiry is not whether CBS's selection of a weather anchor was itself a matter of public interest; the question is whether such conduct was 'in connection with' a matter of public interest").

This result is consistent with this Court's precedents and other constitutional authorities. See Section IV(A), infra. The identity of the City's contractor conducting the NFL negotiations, and related statements by the Mayor, have a "logical relationship or nexus" to the wider topic of the potential NFL-Carson stadium deal and development project. Shulman, 18 Cal. 4th at 224. Just as this Court rejected the suggestion that it focus solely on the circumstances of the individual accident victim in Shulman, rather than the broader topic of the television program, and rejected the notion that it should focus only on the plaintiff's personal story in Taus, rather than the public interest themes in the defendants' publications, it should reject the Court of Appeal's narrow focus on the identity of the particular public contractor and the individual statements rather than the broad subject matter of the publication at issue.

Journalists frequently report on the identity of public contractors, and other such details that may seem like mere "parochial particulars" (Rand, 247 Cal. App. 4th at 1094), but are crucial to illuminating how large-scale policies are formulated and executed. This Court has

recognized the strong public interest in the disclosure of such details, and the wider public policy that is implicated in specific information, in the analogous context of granting newspapers access to public employee salary information under the Public Records Act. See International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court, 42 Cal. 4th 319, 334 (2007) ("[i]t is difficult to imagine a more critical time for public scrutiny of its governmental decision-making process than when the latter is determining how it shall spend public funds").[11]

Because the City's potential NFL deal and stadium development project unquestionably are matters of public interest, as even the Court of

[11] Many other public records decisions have recognized the public interest in learning individual identities that illustrate broader policy issues. E.g., San Diego County Employees Retirement Ass'n v. Superior Court, 196 Cal. App. 4th 1228, 1232 (2011) (names of public pension recipients); Sacramento County Employees' Retirement System v. Superior Court, 195 Cal. App. 4th 440, 447 (2011) (same); Sonoma County Employees' Retirement Ass'n v. Superior Court, 198 Cal. App. 4th 986, 990 (2011) (same); Long Beach Police Officers Ass'n v. City of Long Beach, 59 Cal. 4th 59, 74 (2014) (names of police officers involved in shootings); California Commission on Peace Officers Standards & Training v. Superior Court, 42 Cal. 4th 278, 297 (2007) (names and employment information of police officers); Federated University Police Officers Ass'n v. Superior Court, 218 Cal. App. 4th 18, 21 (2013) (names of police officers involved in pepper spray incident); CBS, Inc. v. Block, 42 Cal. 3d 646, 654 (1986) (names of holders of concealed weapons licenses); CBS Broadcasting Inc. v. Superior Court, 91 Cal. App. 4th 892, 894-95, 908 (2001) (names of individuals with criminal convictions with exemptions to work in childcare facilities); New York Times Co. v. Superior Court, 218 Cal. App. 3d 1579, 1581, 1586 (1990) (names of water district customers who exceeded their allocation); California State University, Fresno Ass'n, Inc. v. Superior Court, 90 Cal. App. 4th 810, 833-34 (2001) (names of purchasers of luxury suites at university arena).

Appeal recognized, and the identity of a public contractor negotiating that deal on behalf of a city and related statements by the Mayor clearly are connected with that broad topic, this Court should find that the anti-SLAPP statute's public interest requirement is satisfied in this case.

///

///

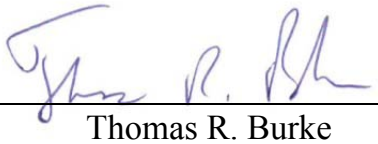
///

VI. CONCLUSION

For all of these reasons, Media Amici respectfully request that this Court disapprove the Rivero-Weinberg-Du Charme line of cases to the extent that they impose extra-statutory limitations on what constitutes a matter of public interest, and adopt a broad approach to defining the public interest that is consistent with the language and purpose of the anti-SLAPP statute and established principles of constitutional law.

Dated: February 24, 2017

DAVIS WRIGHT TREMAINE LLP
KELLI L. SAGER
THOMAS R. BURKE
ROCHELLE L. WILCOX
DAN LAIDMAN

By 
Thomas R. Burke

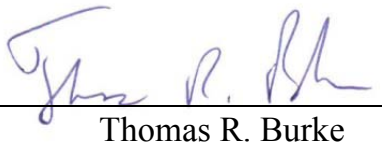
Attorneys for Amici Curiae California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, The Reporters Committee for Freedom of the Press, A&E Television Networks, LLC, BuzzFeed, Inc., Cable News Network, Inc., CBS Corporation, Dow Jones & Company, First Look Media Works, Inc., The Hearst Corporation, NBCUniversal Media, LLC, The New York Times Company, and The Motion Picture Association of America

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court 8.204(c) and 8.486(a)(6), the undersigned certifies that the text of this Application to Submit Amici Curiae Brief and Proposed Amici Curiae Brief, including footnotes, consists of 13,065 words in 13-point Times New Roman type as counted by the Microsoft Word 2010 word-processing program used to generate the text.

Dated: February 24, 2017

DAVIS WRIGHT TREMAINE LLP
KELLI L. SAGER
THOMAS R. BURKE
ROCHELLE L. WILCOX
DAN LAIDMAN

By 
Thomas R. Burke

Attorneys for Amici Curiae California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, The Reporters Committee for Freedom of the Press, A&E Television Networks, LLC, BuzzFeed, Inc., Cable News Network, Inc., CBS Corporation, Dow Jones & Company, First Look Media Works, Inc., The Hearst Corporation, NBCUniversal Media, LLC, The New York Times Company, and The Motion Picture Association of America

APPENDIX A

Descriptions of Amici Curiae

The California Newspaper Publishers Association (CNPA) is a non-profit trade association representing more than 1,300 daily, weekly, and student newspapers in California. For well over a century, CNPA has defended the First Amendment rights of publishers to gather and disseminate – and the public to receive – news and information.

Californians Aware is a nonprofit public benefit corporation organized under the laws of California. Its mission is to support and defend open government, an enquiring press, and a citizenry free to exchange facts and opinions on public issues.

The Center for Investigative Reporting, Inc. (CIR) is nationally respected for setting the highest journalistic standards, and for its signature approach to investigative reporting and collaboration. To reach a broad and diverse audience worldwide, CIR produces stories for its website, revealnews.org, its national radio show and podcast, Reveal, and through partner media outlets on all platforms.

The First Amendment Coalition (FAC) is a non-profit advocacy organization based in San Rafael, California, which is dedicated to freedom of speech and government transparency and accountability. FAC's members include news media outlets, both national and California-based,

traditional media and digital, together with law firms, journalists, community activists and ordinary citizens.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970.

A+E Networks®, LLC ("AETN") is an award-winning, global media content company offering consumers a diverse communications environment ranging from linear channels to websites, gaming, watch apps and educational software. A+E Networks is comprised of A&E®, Lifetime®, History®, LMN®, FYI™, VICELAND, H2™, A+E Studios™, History en Español™, Crime + Investigation™, Military History™, Lifetime Real Women®, A&E IndieFilms®, A+E Networks International®, A+E Networks Digital®, 45th & Dean™, and A+E Networks Consumer Products™. A+E Networks' channels and branded programming reach more than 335 million households in over 200 territories. A+E Networks, LLC. is a joint venture of Disney-ABC Television Group and Hearst.

BuzzFeed, Inc. is a media company that produces and distributes original news, entertainment and video content, and reaches a global audience of more than 8 billion content views.

Cable News Network, Inc. (CNN), a division of Turner Broadcasting System, Inc., a Time Warner Company, is among the most trusted sources for news and information. Its reach extends to nine cable and satellite television networks; one private place-based network; two radio networks; wireless devices around the world; CNN Digital Network; CNN Newssource, the world's most extensively syndicated news service; and strategic international partnerships within both television and the digital media.

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

Dow Jones & Company, a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, Dow Jones Newswires, MarketWatch, and other publications. Dow Jones has produced unrivaled content for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones also provides

information services, including Factiva and Dow Jones Risk & Compliance. Dow Jones is a division of News Corp.

First Look Media Works, Inc. is a non-profit digital media company that publishes The Intercept, among its other properties. The Intercept provides an outlet for fearless, adversarial journalism that holds the powerful accountable. The award-winning news site produces investigative reporting, analysis, commentary and multi-media content focusing on national security, politics, civil liberties, the environment, technology, criminal justice, the media and more.

Hearst Corporation is one of the nation's largest diversified media and information companies. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the *San Francisco Chronicle*; hundreds of magazines around the world, including *Good Housekeeping*, *Cosmopolitan*, *ELLE* and *O, The Oprah Magazine*; 30 television stations that reach a combined 18 percent of U.S. viewers, including three local stations in California; ownership in leading cable networks; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; a majority stake in global ratings agency Fitch Group; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

NBCUniversal Media, LLC (NBCUniversal), is one of the world's leading media and entertainment companies in the development, production, and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal produces and distributes feature films, owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks including MSNBC and CNBC, and a television stations group consisting of 29 owned-and-operated stations. NBC News produces the Today show, NBC Nightly News, Dateline, and Meet the Press.

The New York Times Company is the owner of *The New York Times* and nytimes.com and maintains bureaus in San Francisco and Los Angeles.

The Motion Picture Association of America (MPAA) is a not-for-profit trade association founded in 1922 to address issues of concern to the United States motion picture industry. Its members[12] and their affiliates are the leading producers and distributors of audiovisual entertainment in the theatrical, television and DVD/home video markets. MPAA often has

[12] The members of MPAA are: Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

appeared as amicus curiae in cases involving claims that potentially implicate the First Amendment rights of its members.

PROOF OF SERVICE
Case No. S235735

I, the undersigned, declare that I am over the age of 18 years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 505 Montgomery Street, Suite 800, San Francisco, CA 94111. On February 24, 2017, I served the following document(s):

APPLICATION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF MEDIA ENTITIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS

as follows:

[x] U.S. Mail: I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence is deposited with the United States Postal Service in a sealed envelope or package that same day with first-class postage thereon fully prepaid. I served said document on the parties below by placing said document in a sealed envelope or package with first-class postage thereon fully prepaid, and placed the envelope or package for collection and mailing today with the United States Postal Service at San Francisco, California addressed as set forth below:

Joseph Ybarra, Esq.
Aaron M. May, Esq.
Kevin H. Scott, Esq.
Huang Ybarra Singer & May LLP
550 South Hope Street, Suite 1850
Los Angeles, CA 90071
Email: joseph.ybarra@hysmlaw.com

Counsel forPlaintiff, Appellants, and Respondents Rand Resources, LLC and Carson El Camino, LLC

Sunny Soltani, Esq.
Anthony Taylor, Esq.
Christine Burrows, Esq.
Aleshire & Wynder LLP
18881 Von Karman Avenue
Suite 1700
Irvine, CA 92612
Email: ataylor@awattorneys.com

Counsel for Defendants and Respondents City of Carson and James Dear

John V. Tamborelli, Esq. Tamborelli Law Group 21700 Oxnard Street, Suite 1590 Woodland Hills, CA 91367 Email: jtamborelli@lawtlg.com	*Counsel for Defendants and Respondents Leonard Bloom and US Capital LLC*
Hon. Michael Stern Superior Court of California, County of Los Angeles 111 N. Hill Street, Department 62 Los Angeles, CA 90012	(1 copy)
Clerk of the Court California Court of Appeal Second Appellate District – Div. 1 Ronald Regan State Building North Tower 300 S. Spring Street, 2nd Floor Los Angeles, CA 90013	(1 copy)
Supreme Court of California Earl Warren Building 350 McAllister Street, Room 1295 San Francisco, CA 94102	(Original+8 copies via messenger)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 24, 2017, at San Francisco, California.

Aysha D. Lewis