Case No. S239686

IN THE SUPREME COURT OF CALIFORNIA

STANLEY WILSON,

Plaintiff and Appellant,

vs.

CABLE NEWS NETWORK, INC., a Delaware corporation; CNN AMERICA, INC., a Delaware corporation; TURNER SERVICES, INC., a Georgia corporation; TURNER BROADCASTING SYSTEM, INC., a Georgia corporation; PETER JANOS, an individual,

Defendants, Respondents and Petitioners.

APPEAL AFTER DECISION BY THE COURT OF APPEAL
SECOND DISTRICT, DIVISION ONE, CASE NO: B264944
LOS ANGELES SUPERIOR COURT CASE NO: BC559720

ANSWER TO PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(1) Appellant Stanley Wilson is a natural person and no entity possesses an ownership interest in his claim.

(2) Appellant does not know of any other person or entity that has a financial or other interest in the outcome of the proceeding that Appellant reasonably believes the Justices should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

(3) Appellant knows of no interested entity or person that must be listed under the California Rules of Court.

Dated: February 13, 2017

Lisa Maki,
Counsel for Plaintiff and Appellant,
Stanley Wilson

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I. INTRODUCTION & SUMMARY OF *WILSON v CNN* OPINION

"The California anti-SLAPP statute was intended to counter the 'disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' (*Code Civ. Proc.*, § 425.16, subd. (a).) It has been suggested that '[t]he cure has become the disease- SLAPP motions are now just the latest form of abusive litigation.'" (*Nam v. Regents of University of California* (2016) 1 Cal.App.4th 1176, 1179, quoting *Navellier v. Sletten* (2002) 29 Cal.4th 82, 96 (dis. opn. Brown).) And, the disease will become fatal to the rights of employees of media conglomerates, if this Court accepts Cable News Network, Inc.'s ("CNN," collectively references all defendants) flawed interpretation of anti-SLAPP laws. Media employees attempting to assert their rights are already engaging in David versus Goliath battles against behemoths such as CNN, with the media one hundred percent against the little guy.[1] Add the obstacle of anti-SLAPP motions requiring evidentiary proof without the benefit of discovery, threats of attorney fees when the media giants win and lengthy appellate delays when the media giants lose, and practically speaking, employees of media conglomerate lose their basic rights under California law.

Applying CNN's logic here, all of its employment-related decisions will be subject to special motions to strike, because its employees' end

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[1] This fact is apparent in the amicus briefs already filed in the appellate court and anticipated supporting CNN's Petition. These media employers lecture about the threat to the press's First Amendment rights posed by litigation, citing to cases involving plaintiffs' attempts to compel, to prevent or to punish the publication of news/stories, which have no applicability here. Joining CNN's battle, these media employers' interests are not as broadcasters and publishers communicating to the public. Their interests are as employers of thousands of people attempting to exclude themselves from laws applicable to all other California employers.

product is connected to an issue of public interest – CNN's news reporting. Under CNN's approach, whether the media employer's actions "giving rise" to the employee's claim (*e.g.*, actions alleged to be discriminatory) actually "furthered" its right to free speech and how attenuated the connection is between its tortious conduct and the news produced are both irrelevant. The anti-SLAPP statute, however, provides that causes of action "arising from" acts "in furtherance" of a person's constitutional right of free speech "in connection with a public issue" are subject to a special motion to strike.[2] CNN's analysis discounts these requirements.

After receiving "above-satisfactory" performance reviews as a behind the scene producer at CNN for 18 years, Stanley Wilson sued CNN for discrimination, retaliation, wrongful termination and defamation. CNN moved to strike all of Wilson's claims. To determine whether the conduct is protected, courts look to the definitions in subsection 425.16(e). (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 422.) CNN relied upon the "catchall" subdivision 425.16(e)(4), defining anti-SLAPP as applicable to any "conduct in furtherance of the exercise of... the constitutional right of free speech in connection with a public issue or an issue of public interest." (V3AA/754:13-755:14) CNN produced no evidence demonstrating that Wilson's claims *arise from* CNN's conduct *in furtherance* of its right of free speech *in connection* with a public issue or issue of public interest.

The Division One of the Second District summarizes the parties' positions:

> "With respect to [Wilson's] 'employment-related claims,' ... plaintiff contends that defendants' 'behind-the-scene treatment of a behind-the-scene producer' is neither in furtherance of defendants' free speech nor in connection with

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[2] *Code of Civil Procedure* §425.16(b). Statutory references are to the Code of Civil Procedure unless otherwise specified.

> a matter of public interest. Defendants, in contrast, argue that because CNN is a news provider, all of its 'staffing decisions' regarding plaintiff were part of its 'editorial discretion' and 'so inextricably linked with the content of the news that the decisions themselves' are acts in furtherance of CNN's right of free speech that were 'necessarily 'in connection' with a matter of public interest news stories relating to current events and matter[s] of interest to CNN's news consumers.'"

(Opinion, p. 10.)

Regarding Wilson's employment-related claims, the appellate court distinguished *hiring* decisions from CNN's later discrimination and retaliation against "a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable to shape its news reporting." (Opinion, p. 10.) Wilson alleges "that beginning in 2004 and continuing thereafter, he was subject to discrimination, harassment and retaliation because, inter alia, he was African American and disliked by his superiors. He alleges that he repeatedly complained of his circumstances to no avail." (Opinion, pp. 13-14.) The appellate court reasoned:

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

(*Id.*, p. 14.) It found that Wilson's employment-related claims were *not based* on an act in furtherance of CNN's right of free speech. (*Ibid.*)

Regarding Wilson's defamation claim, the appellate court found "no connection between the defendants' allegedly defamatory statements about plaintiff and a public issue or issue of public interest." (Opinion, p. 14.) "The statement precipitating plaintiff's defamation claim was that plaintiff

had plagiarized passages in the Baca article, not that Baca was retiring or why." (*Id.*, p. 17.) His article regarding Baca was never published, and his "alleged 'plagiarism' underlying the allegedly defamatory statement did not consist of large-scale copying of another's unique work embodying original research, but merely using a few of the same or similar phrases or sentences regarding accurate background information." (*Id.*, pp. 16-17.) The appellate court reasoned first that "the record does not show that plaintiff was a person in the public eye. He was a producer," and writing for the CNN Wire desk was a comparatively small percentage of his work by comparison to his producing. (*Id.*, pp. 14-15.) Second, "nothing indicates that plaintiff was a celebrity at any level," and "nothing in the record indicates he had name recognition.'" (*Id.*, p. 15.) Third, "Defendants' allegedly defamatory statements about plaintiff did not involve conduct that could affect large numbers of people beyond the direct participants" and was a private issue. (*Id.*, p. 16.) Fourth, the statements "did not involve a topic of widespread public interest." (*Ibid.*) Having never been communicated it to the public, "Defendants' allegedly defamatory statement to the effect that plaintiff plagiarized passages in the Baca article in no way contributed to public debate regarding Baca's retirement." (*Id.*, p. 17.) Although it challenges the appellate court's finding that CNN failed to meet the first prong regarding Wilson's defamation claim, CNN's Petition addresses none of this preceding analysis of that claim.

"[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation omitted.] Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail it is one arising from such.... [T]he critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." (*Navellier, supra,* 29 Cal.4th at p. 89, citing to *City of Cotati v.*

Cashman (2002) 29 Cal.4th 69.) The appellate court accurately applied that principle here.

The appellate court noted that authorities reveal "no support for the treatment of employment discrimination and retaliation as a mere motive of no consequence in the determination of the applicability of section 425.16." (Opinion, pp. 10-11.) It did not hold that mere allegations of a discriminatory or retaliatory motive are sufficient to take a case outside the protections of the anti-SLAPP statute. "The critical issue concerns whether 'the plaintiff's cause of action itself was *based on* an act in furtherance of the defendants' right of petition or free speech.'" (Petition, p. 14, quoting *Gotterba v. Travolta* (2016) 228 Cal.App.4th 35, 42, quoting *City of Cotati, supra*, 29 Cal.4th at p. 78.) It rejected "defendants' characterization of their allegedly discriminatory and retaliatory conduct as mere 'staffing decisions' in furtherance of their free speech rights." (Opinion, p. 13.) To determine which actions "give rise" to a plaintiff's claim the court looks to the actions making the claim actionable.

Wilson does not dispute CNN's right to not publish an internet piece and does not contend that non-publication of an article gave rise to his claims. Had Wilson sued to have some story/article published, for damages from non-publication of an article, or to assert he had the right to change or not to apply CNN's editorial guidelines -- that would be completely different. Wilson, however, did not contest CNN's right to set its own editorial guidelines and does not seek to influence those standards. Although repeatedly referenced by CNN to suggest its free speech rights are at issue, the unpublished Baca articles does not form the controversy upon which Wilson's discrimination claim rests.

Wilson also did not seek an on-air position or role. The person conveying a message on-air constitutes part of the message being communicated, a type of non-verbal communication (*e.g.*, choosing a

distinguished older man or sexy young blonde as a television show host is an obvious part of the message being conveyed). In contrast, Wilson's role was behind the scenes for almost two decades. His connection to the news is incidental to his discrimination and retaliation claims.

CNN is attempting to use its right to publish/air or not to publish whatever it chooses, *which is absolutely undisputed*, to transform Wilson's employment claims. "[I]f the allegations of protected activity are only incidental to a cause of action based essentially on nonprotected activity, the mere mention of the protected activity does not subject the cause of action to an anti-SLAPP motion." (*Scott v. Metabolife International, Inc.* (2004) 115 Cal.App.4th 404, 414.) "Where the defendant's protected activity will only be used as evidence in the plaintiff's case, and none of the claims are based on it, the protected activity is only incidental to the claims." (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1388-1389.)

Wilson's case in chief is not based upon protected activity. The appellate court applied section 425.16 consistently with case precedent.

II. NO ISSUE REQUIRES SUPREME COURT REVIEW

A. Section 425.16(b) requires that the first step in analyzing anti-SLAPP motions requires that the plaintiff's claims arise from conduct in furtherance of in furtherance of defendant's right of free speech in connection with a public issue or issue of public interest. Allegations regarding a defendant employer's discriminatory intent/motive are thereby relevant to determining what wrongful actions give rise to the claims. The appellate court's consideration of the employer's discriminatory intent in determining whether the first step of the anti-SLAPP statute has been satisfied is proper.

B. Suggesting that the appellate court held that a defendant "must" "demonstrate that the plaintiff had 'name recognition' or was 'otherwise in the public eye'" to meet the first prong of the anti-SLAPP statute, CNN argues this holding requires review. (Petition, p. 7.) That was not its holding. The appellate court properly considered these factors, among others, regarding whether CNN's alleged conduct furthered its free speech rights in connection with a public issue or issue of public interest. (Opinion, p. 9, 14-16; quoting *Commonwealth Energy Corp. v. Investor Data Exchange* (2003) 110 Cal.App.4th 26, 33.)

Neither of CNN's suggested issues requires review by this Court.

III. CORRECTIONS TO CNN'S FACTUAL OVERVIEW

A. Overview.

From 1996 to 2014, Wilson worked at CNN and remained the only African-American news producer in CNN's entire Western Region for over a decade. (V2AA/346:27-348:23, 349:1-10)

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

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

Wilson felt isolated and was left out by Janos both at work and at social events. When Wilson raised the issue of needing diversity in the news room at CNN during meetings and at his reviews, Janos was dismissive towards any such suggestions and conveyed his deep opposition. (V2AA/350:15-25) Janos particularly directed this hostility toward Wilson and humiliated him. (V2AA/352:16-20)

In 2004, Wilson complained in writing to Bob Melisso that journalists of color were still being relegated at CNN to minor roles in the coverage of major breaking news or events. (V2AA/351:14-15)

On four separate occasions in 2007, 2008, 2009 and 2010, Wilson complained to Tim Goodly, the CNN Senior Vice-President of Human Resources in Atlanta, that African-American men outside of Atlanta,

Washington, D.C., and New York were not being promoted and that African-American producers and photographers were not being treated fairly based upon the merits of their work. (V2AA/352:12-353:2) Janos played an important role in the discrimination against African-American men regarding the failure to hire or promote them as staff producers and television photographers in Los Angeles, Chicago and San Francisco. (*Ibid.*) Wilson also informed Goodly of his own concerns that his age and compensation package were increasingly being viewed by Janos as a liability. (V2AA/353:1-2)

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

After 2004, Wilson was rejected for all CNN positions for which he applied, and Wilson's complaints of discrimination were ignored by corporate HR. (V2AA/350:25-351:15, 352:12-353:5)

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

After his twins were born in September 2013, Wilson took five weeks of paternity leave (three of which were vacation time). (V2AA/353:11-17) Upon Wilson's return, Janos assigned Hannah to high profile field assignments and prime time documentary programs, and Wilson was frequently relegated to in-house packaging and fill-in work on the Assignment Desk. (V2AA/354:3-9) Hannah was performing many of Wilson's duties after Wilson's paternity leave, and Janos had retaliated against Wilson for exercising his right to paternity leave and complaining about discrimination in the workplace. (V2AA/355:14-21) Hannah's

promotion was a step toward replacing Wilson, based upon his age, race, color, association with a disabled person (his wife). (V2AA/355:14-21)

In December 2013, Wilson spoke with Janos and expressed his concern about being relegated to inferior assignments since his paternity leave and what that meant for his future. (V2AA/354:10-13)

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

B. CNN'S Assertion That Wilson Plagiarized Is Pure Pretext.

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

At the Bureau, Wilson was unable to find his reporter's notebook with his highlighted draft, so he started a new story on his computer. (*Ibid.*) Wilson completed his story to the best recollection of his reporter's notes, and independently verified any information from other sources. (V2AA/355:19-20) Sources included press releases from the Sheriff's

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

Department about Baca's retirement and from the U.S. Justice Department regarding a lawsuit against the Sheriff Department and about Baca's retirement. (V2AA/355:20-28; V3AA/503-507) Wilson confirmed the information about Baca's service and added his own observations for context. (V2AA/355:28-356:2) Background stories that he used included a previously published CNN story about the indictment of Los Angeles sheriff's officials, written by CNN's Alan Duke and Wilson's byline. (V2AA/356:2-7; V3AA/517-519) Wilson also viewed a digital piece posted by the *Los Angeles Times* and local CNN affiliates about Baca's retirement, in case his editors instructed him to match any reporting Wilson didn't have in their story. (V2AA/7-15; V3AA/509-515)

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

Straight allegedly identified three areas of concern regarding Wilson's 19 paragraph article, and he detailed the source of each in his declaration. (V2AA/357:6-358:21) Straight identified the following excerpts as similar or identical to source materials: 1. "...who spent 48 years with the department, including 15 as sheriff;" 2. "The news of Baca's decision to

step down startled people inside and outside the agency. He was engaged in a tough re-election battle amid several scandals that had plagued the department;" and 3. "Last year, the U.S. Department of Justice also accused sheriff's deputies of engaging in widespread unlawful searches of homes, improper detentions, unreasonable force and a systematic effort to discriminate against African Americans who received low-income, subsidized housing in the Antelope Valley section of Los Angeles County." (Opinion, pp. 5-6, V3AA/522-524)

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

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

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

Wilson has written approximately 200 articles for publication while at CNN, without a single suggestion that he had plagiarized or used source materials without attribution prior to January of 2014. (V2AA/359:18-22)

On January 16th, Wilson requested that Zaki identify those who were involved in evaluating the plagiarism allegation. She refused to provide any names or even titles; she stated that the appropriate "stakeholders" were conducting a review. (V2AA/359:23-27, 360:10-13)

On January 28, 2014, Janos and Zaki met with Wilson, informing him that he had violated company policy and was terminated. Janos identified no one other than himself involved in the termination decision. (V2AA/360:9-12)

CNN failed to ever identify who made the decision to terminate. ***It provided no declarations from those: who supervised Wilson; who***

purportedly discovered his plagiarism; who investigated the allegation; and who ultimately decided to terminate him, including Janos. (V1AA/61-67, 107-108, 110-111) No declaration explained the involvement of Wilson's direct supervisor Janos, who was alleged to have discriminated against Wilson. (V1AA/7:21-11:14; V2AA/350:16-353:2, 354:5-21, 360:9-13) Declarations stating, "CNN elected to terminate Wilson's employment..." without foundation, without personal knowledge, and without identifying decision makers are not evidence. (V1AA/110:27-28, 62:14-16)

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

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

Wilson testified: "I did not plagiarize the Los Angeles Times article. I have never stated that I plagiarized it. I used it as one of my reference materials for my Baca article and verified information from it with my independent sources (such as Justice Department press release) and then prematurely submitted the copy before noting all independent sources. In both the first draft submitted and the revised version that I submitted to Ms. Straight, I had independently verified all information within them. From a journalist's perspective, to plagiarize would suggest that I intentionally used content from another source without proper attribution regarding substantial and original information and without independent verification. I neither intentionally used content from another source, nor used substantial

content from another source. First and foremost, I did not intentionally submit that copy. Second, the phrases that I had used were background information with little individualized style involved (such as years of service). Third, the article was never published, and when I submitted it, I knew that the article would be copy edited." (V2AA/359: 6-17)

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

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

The record includes evidence that Janos was responsible for specific CNN stories that contained similar or identical language to a previously published Omaha.com article. (V2AA/372:7-374:23; V3AA/563-582) Burke also published two articles on CNN.com without attribution that contained similar or identical language to previously published Associated Press articles. (V2AA/370:11-372:6; V3AA/546-554; V3AA/556-561) The record also includes numerous examples of CNN stories using sourced material and publicly provided information without attribution by on-air personality Fareed Zakaria. (V2AA/374:24-26, 374:27-383:7; V3AA/584-673) Zakaria was not terminated for his conduct. (V2AA/383:8) Burke is presently employed by CNN. (V1AA/61-62)

D. Additional Articles Cited By CNN Do Not Evidence Plagiarism And Were Not Grounds For Termination.

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

Three of the five articles had co-authors. (V2AA/360:25-17, 365:19-21, 367:1-2, 369:16-19; V3AA/517-519, 536-541) Wilson was not the final writer submitting two of the articles. (V2AA/365:19-21, 369:16-19; V3AA/517-519, 536-538) Wilson's Declaration compared verbatim these five articles to the source materials from which he allegedly plagiarized. (V2AA/361:11-369:11)

IV. LEGAL ANALYSIS

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

CNN strongly urges that the "threat of employment litigation can easily chill free speech" when the employers are news organizations -- that "chilling effect cannot be overstated." (Petition, p. 24.) While it restates this conclusion repeatedly (Petition, pp. 24-25), it provides no law or reasoning that supports its assertion that media employers being required to litigate their employees' claims, like all other California employers, would chill free speech. CNN cites to no case law supporting that position. Rather, it cites exclusively to *Lyle v. Warner Bros. Television* (2006) 38 Cal.4th 264, 297, and a purportedly similar hypothetical scenario. Neither supports its position.

As observed by the appellate court, "the press has no special immunity from generally applicable laws." (Opinion, p. 13, citing *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 755; *Mabee v. White Plains Pub. Co.* (1946) 327 U.S. 178, 184.) In *Brown*, this Court held that a publication by "the news media to the general public regarding a private person is not privileged under section 47(3) regardless of whether the communication pertains to a matter of public interest." (*Brown*, 48 Cal.3d at p. 719.) This Court's response to the news media's argument is equally applicable here:

> "The bedrock of the news media's argument for increased protection is that the costs of defamation actions, either in terms of judgments or litigation costs, stifle their ability to present the news. Perhaps the media are correct, but as we have explained, they have not submitted any evidence to support this argument. That point aside, the argument is not logically persuasive when the injured plaintiff is a private person. Under defendants' theory, one could argue that a publisher or broadcaster could better cover a 'breaking' news story if its reporter could drive 100 miles per hour to get to the location of the story. No right

> thinking person, however, would argue that a pedestrian run over and seriously injured by the reporter should have to show malice to recover. 'The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.'"

(*Id.*, p. 755.)

The *Brown* Court proved to be an accurate soothsayer, having noted, "[i]t has recently been reported that 'twenty-nine corporations control most of the business in daily newspapers, magazines, television, books, and motion pictures' and predicted that 'by the 1990s a half-dozen large corporations will own all the most powerful media outlets in the United States.'[Citation.] Indeed, the news media amici curiae who have appeared in this action are entities of enormous financial resources." (*Ibid.*)

This of course did occur. And, some of the same amici have chimed in here. Turner Services is the parent company of CNN, and CNN's reach "extends across multiple television networks carried by cable, direct broadcast satellite, and other multichannel video programming providers, various radio networks and CNN.com." (V1AA/107:11-14, 110:11-12)

CNN has submitted no evidence to support its suggestion that allowing employees the legal protections afforded to all other California employees will chill CNN's free speech. Its argument is not logically persuasive.

CNN suggests that *Lyle*, *supra*, supports its chilling of free speech argument. Lyle was a comedy writers' assistant who worked on the production of *Friends,* which "featured adult-oriented sexual humor, and typically relied on sexual and anatomical language, innuendo, wordplay, and physical gestures to convey its humor." (*Lyle,* 38 Cal.4th at p. 271.) Plaintiff was "forewarned that the show dealt with sexual matters," and she would be listening to their sexual jokes and sex discussions. After four months, plaintiff was fired because of problems with her typing and

transcription, and she later asserted a sexual harassment claim. (*Id.*, pp. 271-272.) No motion section 425.16 motion was brought there. Affirming summary judgment, this Court was "unable to conclude a reasonable trier of fact could... find the conduct of the three male writers was sufficiently severe or pervasive to create a hostile work environment." (*Id.*, p. 291.) The majority did not reach Warner Brothers' defense that this claim infringed on its right of free speech.

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

Wilson agrees and his claims do not challenge CNN's creative process in any manner, and he does not assert that the creative process gave rise to his claim. He does not contest CNN's right to publish whatever stories it wants or its right to issue its editorial standards. Wilson merely seeks that opportunity to prove his case, whether at trial or summary judgment.

CNN asks that this Court consider the example of a producer choosing only African American actors to play roles in a series about Martin Luther King, Jr., being sued for discrimination by a non-African American actor denied a role. As the person seen by the public and conveying the story, the appearance and talent of those actors in the series, including their skin color, are part of the message being conveyed. On-air personalities - whether they are actors, news anchors or weathermen - similarly constitute part of the message conveyed.

Such claims would be subject to an anti-SLAPP motion, but such

claims are not at issue here. As noted by the appellate court, the hiring process into a creative role is different than the facts here, involving "a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable." (Opinion, p. 10.)

A more relevant hypothetical illuminates Wilson's claims here. Consider instead a claim by a Chinese or Caucasian person, already working behind the scenes for the production studio for years on that hypothetical King series. If the studio then decides to fire that person because it wants only African Americans working behind the scenes, is that employees' discrimination claim subject to an anti-SLAPP motion?

CNN asserts that is it, based exclusively upon CNN's media role. The appellate court's holding correctly suggests that such a discrimination claim is too attenuated to constitute an act in furtherance of free speech rights in connection with a public issue or an issue of public interest.

B. The Second District Accurately Sets Forth the Principles Applicable to Anti-SLAPP Motions.

Under the first prong of section 425.16, a "defendant must make a prima facie showing that the plaintiff's cause of action arises from an act by the defendant in furtherance of the defendant's right of petition or free speech in connection with a public issue." (Opinion, p. 6.) "'[T]he court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' (§ 425.16, subd. (b)(2).) However, the pleaded facts must be accepted as true. (*Young v. Tri-City Healthcare Dist.* (2012) 210 Cal.App.4th 35, 54.) 'An anti-SLAPP motion is brought against a 'cause of action' or 'claim' alleged to arise from protected activity. [Citation.] The question is what is pled—not what is proven.'" (Opinion, p. 7.)

"To determine whether a cause of action arises from protected

activity, we disregard its label and instead examine its gravamen 'by identifying '[t]he allegedly wrongful and injury-producing conduct ...that provides the foundation for the claim'' (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1272), i.e., 'the *acts on which liability is based*,' not the damage flowing from that conduct." (*Renewable Resources Coalition, Inc. v. Pebble Mines Corp.* (2013) 218 Cal.App.4th 384, 396-397.)" (Opinion, p. 7.) That is exactly what the appellate court did here.

"The trial court must 'distinguish between (1) speech or petitioning activity that is mere *evidence* related to liability and (2) liability that is *based on* speech or petitioning activity." (Opinion, p. 8, quoting *Graffiti Protective Coatings v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1214-1215.) "[T]hat a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such." (*Navellier*, [*supra*] 29 Cal.4th [at p. 89].) Thus, the statute does not automatically apply simply because the complaint refers to some protected speech activities. (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188.)" (Opinion, p. 8.)

C. The Second District's Opinion Follows Consistent Precedent

The appellate court looked to Wilson's complaint to determine the alleged wrongful acts making Wilson's claims actionable. Accepting the claims as alleged, it found that the gravamen of Wilson's employment-related claims, CNN's discriminatory conduct, "neither implicated CNN's First Amendment rights nor are a matter of public interest." (Petition, pp. 13-14.) It noted that "the victim of a SLAPP has no burden to prove either that the SLAPPer intended to chill the exercise of its constitutional rights or that the exercise of the protected acts actually was chilled." (Petition, p. 11.) "The Supreme Court determined that the SLAPPer's, not the

defendant's, intent was irrelevant. Thus, in our view, *Navellier* does not require us to ignore the defendant's alleged motive in a harassment, discrimination, or retaliation case." (*Ibid.*)

The appellate court reasoned that a cause of action can only arise from protected conduct if it alleges at least one *wrongful act* (that wrongful act requires the breach of a duty injuring plaintiff) that falls within the definition of protected conduct. (Opinion, p. 12.) The conduct breaching the duty is the discrimination or retaliation; otherwise the claim is not actionable. (*Ibid.*) Absent allegations of discrimination and retaliation, conduct alleged would not be actionable and cannot be said to give rise to the claim. (*Ibid.*) Accordingly, "Discrimination and retaliation are not simply motivations for defendants' conduct, they *are* the defendants' conduct." (*Ibid.*)

The appellate court's reasoning is consistent with specific holdings addressing discrimination claims. As the *Nam* Court explained:

> "Neither the rental property removal process or the unlawful detainer proceedings in [*Department of Fair Employment & Housing v. 1105*] *Alta Loma* [*Road Apartments, LLC* (2007) 154 Cal.App.4th 1273,] nor the board hearing in *Martin* [*v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611,] inoculated the defendants from discrimination claims. In those cases, the courts did not consider the defendants' motives at all. Rather, they looked to the allegations of wrongdoing and determined that in both cases the gravamen of the complaint was discrimination or retaliation.... In other words, 'the mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.'"

(*Nam*, *supra*, 1 Cal.App.5th at p. 1190.)

Consistent with those cases, the appellate court considered Wilson's allegations of discrimination and retaliation to determine which conduct was actionable. In finding that Wilson's employment-related claims were

not ***based on*** acts in furtherance of CNN's right of free speech, it explained: "CNN's actions in 2014 premised upon the alleged plagiarism concerning Sheriff Baca are not the basis of Wilson's claims that CNN subjected him to discrimination, harassment and retaliation before he even wrote the Baca report. If we accept CNN's argument as to the first prong, we must necessarily disregard what Wilson has alleged CNN did for a decade prior to his termination—conduct that was not a matter of public interest and could not be justified on the basis of CNN's status as a news entity." (Petition, p. 14.) Its focus remained squarely on CNN's activity which gave rise to its asserted liability and not on motives which CNN ascribed to its activity.

Contrary to the facts as alleged, CNN argues that its alleged liability derives from its editorial judgment not to publish an article, so Wilson's employment claims arise from issues of public interest. It also argues that as a news provider, its staffing decisions constitute editorial discretion and are in connection with matters of public interest. CNN argues as if its motive/intent – "editorial judgment" -- are established facts rather than motives *as alleged by CNN*. The non-discriminatory motives which CNN ascribes to its conduct are irrelevant and unsupported by evidence.

CNN incorrectly states that Wilson's employment-related claims are "based on" a list of ten facts alleged in his complaint. (Petition, p. 17.) Wilson alleged these facts as evidence demonstrating that the plagiarism accusations were merely pretextual. (V1AA/10:4-12:16) He did not challenge CNN's editorial standards in any fashion, and he did not allege that any specific stories should have been published. (V1AA/8-17) CNN's implications to the contrary are unsupported.

Wilson's claims do not arise from the exercise of CNN's editorial guidelines or from whether an article was published. Rather, he was mistreated and eventually fired for discriminatory reasons. Discrimination

does not automatically flow from CNN's decisions not to publish stories written by any employees.

CNN also relies upon itself as newsworthy, as if anything it does connected in any manner to the news is of public interest. That broad sweeping reasoning ignores the necessary analysis of the first prong. The "defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." (Opinion, p. 7, quoting *City of Cotati, supra*, 29 Cal.App.4th at p. 78.) "Mere 'collateral or incidental allusions to protected activity will not trigger application of the anti-SLAPP statute.'" (Opinion, p. 8, quoting *Hylton, supra*, 177 Cal.App.4th at p. 1272.)

The appellate court correctly found that CNN failed to satisfy the first prong of the anti-SLAPP statute regarding Wilson's employment-related claims.

D. The Opinion Has Not Created a Split Among Appellate Courts.

Wilson's claims involve no attempt to change the manner in which CNN chooses to deliver the news, no action based upon content improperly used in programming and no on-air position. Case law addressing claims aimed at the content of speech are therefore distinguishable. CNN, however, tangles such cases together in its analysis to suggest that the appellate court's reasoning is inconsistent. While the appellate court disagreed with some reasoning in *Hunter v. CBS Broadcasting,* (2013) 221 Cal.App.4th 1510, and *Tuszynska v. Cunningham,* (2011) 199 Cal.App.4th 257, it distinguished the factual basis of Wilson's claims and the different principles applicable here. It ruled consistently with precedent.

CNN cites to cases such as *Tamkin v. CBS Broadcasting*, (2011) 193 Cal.App.4th 133, in which the Tamkins' names and information were

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

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

The appellate court explains that Plaintiff's role "was hidden from public view, unlike the local television 'weather news anchor' role sought by the plaintiff in *Hunter...*, upon which defendants principally rely. There, the television stations submitted evidence that the principal reason viewers watched local news broadcasts was to obtain information about the weather, and this resulted in 'weather anchors' becoming 'local celebrities' who had 'a significant effect on newscast ratings.' (*Id.*, p. 1515.) Here, nothing indicates that plaintiff was a celebrity at any level or that his participation in producing a program for CNN had any effect whatsoever upon the newscast ratings." (Petition, pp. 14-15.) In differentiating Wilson's claims from Hunter's, it finds no connection to a matter of public interest.

The television weather anchor position at issue in *Hunter* is the face of the network communicating the news to the public. That person constitutes part of the message conveyed. Wilson's claims do not dispute CNN's editorial right to choose its on-air personalities or its right to choose which news stories to air or not to air.

Unlike Wilson's claims, the *Hunter* Court addressed only the issue of ***hiring*** a weather anchor, which the appellate court distinguished from the

Wilson's claims. CNN's hiring decisions regarding "who works as a producer or writer is arguably an act in furtherance of defendants' right of free speech. But this does not mean that defendants' alleged discrimination and retaliation against plaintiff—a long-term, well-reviewed existing employee that CNN had already deemed qualified and acceptable to shape its news reporting—was also an act in furtherance of its speech rights." (Opinion, p. 10.)

While the appellate court disagrees with some reasoning in *Hunter* and *Tuszynska*, to the extent discriminatory motive is irrelevant to determining actionable conduct, all three decisions all look to the defendants' conduct (not just motive as CNN suggests) as alleged to determine if protected conduct is at issue.

Tuszynska involved a gender discrimination claim, regarding a legal plan providing legal representation to the organization's members in job-related civil and other matters. (*Tuszynska* 199 Cal.App.4th at p. 262.) Plaintiff attorney filed a discrimination complaint alleging that plan administrators had refused to assign her cases on the basis of her gender. Defendants' motion to strike asserted that plaintiff's claim was predicated on their attorney selection decisions, which was an act in furtherance of protected petitioning activity. Plaintiff argued that her discrimination claims were based on defendants conduct in failing to assign cases to her. (*Ibid.*) The *Tuszynska* Court found section 425.16 "applies to claims 'based on' or 'arising from' statements or writings made in connection with protected speech or petitioning activities, regardless of any motive the defendant may have had in undertaking its activities, or the motive the plaintiff may be ascribing to the defendant's activities." (*Id.*, p. 268.) However, "We assess the principal thrust by identifying '[t]he allegedly wrongful and injury-producing conduct... that provides the foundation for the claim.'" (*Id.*, p. 267.)

The appellate court did identify CNN's wrongful conduct here. However, unlike *Tuszynska* and *Hunter*, which found discrimination allegations irrelevant to that determination, it found that the alleged discrimination was relevant to determining which conduct constituted the allegedly wrongful and injury producing conduct. Contrary to CNN's suggestion, it did not find this to be the only relevant inquiry, as its analysis of the claims demonstrates.

CNN also relies upon *Greater L.A. Agency on Deafness, Inc. v. CNN, Inc.*, (9th Cir. 2014) 742 F.3d 414, in which GLAD sought injunctive relief and damages and sought "to change the way CNN has chosen to report and deliver that news content by imposing a site-wide captioning requirement." (*Id.*, p. 423.) The Ninth Circuit warned:

> "In concluding that CNN's conduct is in furtherance of its free speech rights on a matter of public interest, we do not imply that every action against a media organization or any action imposing increased costs against such an organization falls within the scope of California's anti-SLAPP statute. Nor do we suggest that the broad construction of the anti-SLAPP statute triggers its application in any case marginally related to a defendant's exercise of free speech. We adopt instead a much more limited holding: ***where, as here, an action directly targets the way a content provider chooses to deliver, present, or publish news content on matters of public interest, that action is based on conduct in furtherance of free speech rights and must withstand scrutiny under California's anti-SLAPP statute***." [Emphasis added.]

(*Id.*, pp. 424-425.)

Wilson's claims do not target the way a content provider chooses to deliver, present or publish news content on matters of public interest. In contrast to *Hunter*, *Lieberman*, *Tamkin* and *GLAD*, Wilson's employment-related claims involve no specific programs being broadcast, no content obtained from plaintiffs for on-air programming and no employee conveying the message.

The case law relied upon by CNN found section 425.16 applicable in actions directly targeting the way a content provider chooses to deliver, present, or publish its message on matters of public interest – unlike here.

E. The Second District Create A Test Regarding "Issues of Public Interest."

Without support in the Opinion and without identifying this alleged "test," CNN asserts the appellate court "created an inappropriately rigid test for what is an issue of public interest." (Petition, p. 42.) Ignoring the court's analysis above, CNN asserts the appellate court failed to analyze the public interest issue regarding Wilson's employment-related claims. (*Ibid.*) The preceding section disproves this suggestion. CNN also incorrectly argues that the appellate court created a mandatory requirement "that the plaintiff had 'name recognition' or was 'otherwise in the public eye'" to meet the first prong of the anti-SLAPP statute. (Petition, p. 7.) It created no mandatory or other test regarding issues of public interest.

The appellate court first mentions "name recognition" or "the public eye," among other relevant categories of interest, when it quotes from *Commonwealth*, *supra*, identifying categories held to concern an issue of public interest or a public issue. (Opinion, p. 9.) CNN omits any reference to this analysis and ignores *Commonwealth* and all cases relied upon by it for these categories.

In determining whether the matter is a public issue or issue of public interest, the appellate court notes some guiding principles. "First, 'public interest' does not equate with mere curiosity. [Citations.] Second, a matter of public interest should be something of concern to a substantial number of people. [Citation.] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [Citations.] Third, there should be some degree of closeness between the challenged

statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation]. 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.'" (Opinion, pp. 8-9, quoting *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133.)

It provides three general categories 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; 2. The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants; and 3. The statement or activity precipitating the claim involved a topic of widespread public interest. (Opinion, p. 9, quoting *Commonwealth, supra,* 110 Cal.App.4th at p. 33.)

CNN demonstrates no inaccuracy in these statements of the law or in the appellate court application of these guidelines. CNN completely ignores the appellate court's analysis (particularly of *Hunter* addressed in the preceding section). CNN seems to have pulled this argument that review is required based upon this "rigid new test" out of thin air.

F. The Second District Analyzed Wilson's Defamation Claim Consistently With Precedent, Which CNN Largely Failed to Address.

The appellate court addressed Wilson's defamation claim separately from his employment-related claims. (Opinion, pp. 14-18.) CNN only challenges the defamation ruling in two paragraphs based upon "the same reasons" as its employment-related argument. CNN fails to address the appellate court's reasoning and the cases it relied upon in reaching its decision. (Petition, pp. 43-45; Opinion, pp. 14-17.)

CNN reasons that Wilson's defamation claim arises out of acts in connection with an issue of public interest, because the public has an interest in having news accurately reported. (Petition, pp. 43-44.) Citing to the dissent, it asserts CNN's alleged defamatory actions concern CNN's actions and "are connected with a matter of public interest" but fails to explain how CNN's alleged defamatory statements about an unknown person/Wilson never made to the public are connected to that public interest.

The appellate court considered the factors listed in the preceding section, from *Weinberg*, *supra*, and *Commonwealth*, *supra*, and rejected each as inapplicable: 1. Wilson is not a person in the public eye or celebrity at any level; 2. He had no name recognition; 3. His participation has no effect on CNN's rating; 4. This statement was private involving Wilson, CNN and a small number of others; 5. The statements did not involve conduct affecting large number of people; and 6. The statements did not involve a topic of widespread public interest. (Opinion, pp. 14-16; further detailed in Sect. I, *supra*.)

"'The fact that 'a broad and amorphous public interest' can be connected to a specific dispute is not sufficient to meet the statutory requirements' of the anti-SLAPP statute.... we must focus on *'the specific nature of the speech* rather than the generalities that might be abstracted from it.'" (Petition, p. 16, quoting *World Financial Group v. HBW Ins. & Financial Services* (2009) 172 Cal.App.4th 1561, 1570.) "The record does not reflect any widespread public interest in whether plaintiff lifted phrases from other news reports when composing a Web article that was never published." (Petition, p. 16.)

"[T]he record establishes that plaintiff's alleged 'plagiarism' underlying the allegedly defamatory' statement did not consist of large-scale copying of another's unique work embodying original research, but

merely using a few of the same or similar phrases or sentences regarding accurate background information taken from press releases and a press conference." (Petition, p. 17.) Wilson's conduct "was not so grave or scandalous as to make it a topic of widespread public interest." (*Ibid.*, fn. 4.)

"The statement precipitating plaintiff's defamation claim was that plaintiff had plagiarized passages in the Baca article, not that Baca was retiring or why. The focus of defendant's statement was a private controversy, not the public interest." (*Ibid.*, citing to *Commonwealth*, *supra*, 110 Cal.App.4th at p. 33, and *Albanese v. Menounos* (2013) 218 Cal.App.4th 923, 936.) "[I]t 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." (Petition, p. 17, citing *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898.) The defamatory statement regarding plagiarism was never made to the public so it contributed to no public debate and it was entirely collateral to Baca retiring.

Consistent with case law, the appellate court found CNN's acts giving rise to Wilson's defamation claim were not in connection with a public issue or an issue of public interest.

V. CONCLUSION

CNN'S Petition for Review should be summarily denied.

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

LAW OFFICES OF LISA L. MAKI

By:_____

Lisa L. Maki
Attorneys for Plaintiff and Appellant,
Stanley Wilson

CERTIFICATE OF WORD COUNT

I, LISA L. MAKI, declare, as follows:

I am the attorney duly authorized to practice before all Courts of the State of California. I am one of the principal attorneys of record for Appellant and Plaintiff. Utilizing the computer generated function of Microsoft Word 2007, I hereby certify that the length of ANSWER TO PETITION FOR REVIEW is 8,390 words, excluding Tables of Contents and Authorities, signature line and the Proof of Service attached to Appellant's Brief.

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

LAW OFFICES OF LISA L. MAKI

By: _____

Lisa L. Maki
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PROOF OF SERVICE
CCP §§ 1011, 1013, 1013a

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1111 South Grand Avenue, Suite 101, Los Angeles, California 90015.

On February 13, 2017, I served the foregoing document described as **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

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

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☒ BY EXPRESS MAIL/OVERNIGHT DELIVERY:

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

Executed on February 13, 2017 at Los Angeles, California.

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

Catherine Baklayan _____ Catherine Baklayan