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Opinion on remand from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GREGORY GEISER, Plaintiff, Appellant, and Cross-Respondent, v. PETER KUHNS et al., Defendants, Respondents, and Cross-Appellants.	B279738 (Los Angeles County Super. Ct. Nos. BS161018, BS161019, BS161020)

APPEAL from orders of the Superior Court of Los Angeles County, Armen Tamzarian, Judge. Affirmed.

Dinsmore & Sandelmann, Frank Sandelmann and Brett A. Stroud, for Plaintiff, Appellant, and Cross-Respondent.

Law Office of Matthew Strugar, Matthew Strugar; Law Office of Colleen Flynn, Colleen Flynn, for Defendants, Respondents, and Cross-Appellants.

INTRODUCTION

Plaintiff Gregory Geiser filed petitions for civil harassment restraining orders against defendants Peter Kuhns and spouses Mercedes and Pablo Caamal, after defendants demonstrated at plaintiff's place of business and in front of his residence in an attempt to prevent the Caamals' eviction from their home. In response, defendants moved to strike the civil harassment petitions as strategic lawsuits against public participation (anti-SLAPP motions). After plaintiff voluntarily dismissed his civil harassment petitions, the trial court awarded defendants attorney fees as the prevailing parties on the petitions. The trial court denied defendants' attorney fees on their anti-SLAPP motions, ruling they would not have prevailed on the motions.

Plaintiff appeals the trial court's determination that defendants were the prevailing parties on the civil harassment petitions and, alternatively, the calculation of the attorney fees award. Defendants appeal the trial court's determination that they would not have prevailed on their anti-SLAPP motions.

On August 30, 2018, we affirmed the trial court's orders. On November 14, 2018, the California Supreme Court granted defendants' petition for review. On September 11, 2019, the Supreme Court transferred the matter back to us with directions to reconsider the matter in light of its decision in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133 (*FilmOn.com*) which interpreted the "catchall provision" of the anti-SLAPP statute (Code Civ. Proc., § 425.16, subd. (e)(4)[1]). Having considered *FilmOn.com*'s application to this matter, we affirm.

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[1] All statutory citations are to the Code of Civil Procedure, unless otherwise stated.

BACKGROUND

Plaintiff is the founder, President, and Chief Executive Officer of Wedgewood LLP, which is in the business of purchasing, rehabilitating, and selling distressed properties. On September 23, 2015, through a non-judicial foreclosure sale, a Wedgewood subsidiary purchased from Wells Fargo a triplex Ms. Caamal owned (the property) for $284,000. Wedgewood then obtained an eviction judgment for one of the units.

According to Ms. Caamal, on December 17, 2015, she and her husband, along with a group of concerned citizens, went to Wedgewood's office building and requested a meeting with plaintiff to attempt to prevent their eviction and to negotiate a repurchase of her home. The concerned citizens included Kuhns and persons involved with the Alliance of Californians for Community Empowerment (ACCE), an entity whose various missions include saving homes from foreclosure and fighting against displacement of long-term residents. Kuhns is the Los Angeles Director for ACCE. The group set up a tent in Wedgewood's lobby and disrupted its business.

Plaintiff was not present. Wedgewood's Chief Operating Officer Darin Puhl and its General Counsel Alan Dettelbach went to the lobby. Dettelbach attempted to move the tent and was shoved by one of the demonstrators. The police were called. No one was arrested or cited.

Puhl spoke with the Caamals and learned they were interested in repurchasing the property. He offered to meet with them in private if the demonstrators left the building. The Caamals agreed. In the meeting, the Caamals told Puhl they could afford to repurchase the property. Puhl agreed to hold off enforcement of Wedgewood's eviction judgment on the property's

first unit (an unlawful detainer trial was set for January 2016 for the other two units) for several weeks so the Caamals could meet with a lender to assess whether they could qualify for a loan. Although Puhl "gave [the Caamals] an idea of the value [of the property] according to similar properties in the area," they did not discuss a purchase price.

The Caamals subsequently submitted to Wedgewood a prequalification letter apparently with a purchase price of $300,000. In early January 2016, Puhl again met with the Caamals. Puhl informed them that Wedgewood believed the property was worth $400,000 according to real estate websites and $300,000 was unacceptable. Wedgewood offered to sell them the property for $375,000.

The Caamals asked for additional time to obtain a home loan, agreeing to vacate the entire property within 60 days—by March 20, 2016—if they could not obtain financing. On March 18, 2016, the Caamals sent Wedgewood a prequalification letter with a $300,000 purchase price. Wedgewood deemed the prequalification letter unacceptable because it was not for the purchase price of $375,000 and it expressly stated that it did "not constitute loan approval."

The Caamals did not vacate the property by the date agreed upon, and, on March 23, 2016, they, Kuhns, and persons involved with ACCE returned to Wedgewood's office building seeking to meet with plaintiff. Mr. Caamal allegedly stated, "'[Y]ou're not getting me out of this property alive.'" The Caamals and their supporters left the premises either because the police were called and removed them or because Puhl agreed to review the Caamals' "prequalification" documents.

Because the Caamals had not arranged to purchase the property by the date agreed upon, Wedgewood had the San Bernardino Sheriff's Department evict them on March 30, 2016. Later that night, defendants and persons involved with ACCE went to plaintiff's residence. According to defendants, the Caamals and their supporters staged a residential picket on the sidewalk outside of plaintiff's home. They held signs, sang songs, chanted, and gave short speeches. The demonstration lasted for about an hour—from about 9:00 p.m. to 10:00 p.m. Officers from the Manhattan Beach Police Department were present, but did not order the demonstrators to disburse or intervene to stop the demonstration. No one was arrested or cited.

According to Gilbert Saucedo, a National Lawyers Guild legal observer, ACCE organized the demonstration to protest the unfair and deceptive practices Wedgewood and its agents used to purchase the property and to evict the Caamals. He estimated there were 25 to 30 demonstrators and described the demonstration as "peaceful."

Plaintiff viewed the demonstration at his home differently. Two days after the demonstration, he filed petitions for civil harassment restraining orders against defendants. In his petitions, plaintiff stated that around 9:00 p.m., a "mob" of about 30 persons arrived at his residence and chanted, "Greg Geiser, come outside! Greg Geiser, you can't hide!" Plaintiff called the police. His wife sneaked out the back door and hid at a neighbor's house.

Plaintiff further recounted the incident in his declaration in support of restraining orders as follows: "Sometime before midnight, as a result of discussions with the police and Wedgewood's lawyer, the mob disbanded. My wife and I were left

shaken by the escalating campaign of harassment that has followed me from work to my home. In view of the mob actions combined with the direct verbal threats, we are in fear for our safety. We have arranged for private security to stand guard outside both our place of business and our house.

"I further understand from conversations Wedgewood's general counsel had with the police the night the mob assaulted my home that police require a court order to keep the mob away from my house by any meaningful distance. This is why we are seeking this Court's assistance in issuing an order for these respondents to stay away from my wife and me, my business, and my home, by at least 100 yards."

The trial court issued temporary restraining orders. The orders required defendants to stay at least 50 yards from plaintiff, his wife, and Wedgewood for the following three weeks.

Defendants responded to the civil harassment petitions by filing anti-SLAPP motions. They claimed plaintiff was attempting to stifle their free speech and expressive activity.

In addition to the civil harassment petitions, plaintiff sought to prevent further demonstrations in front of his home through the Manhattan Beach City Council. The day after the demonstration, plaintiff spoke with a city council member. Based on that conversation, the council member proposed an ordinance to the Manhattan Beach City Council that would prohibit targeted residential picketing.

On July 5, 2016, plaintiff spoke at the Manhattan Beach City Council meeting at which the proposed ordinance was

addressed.[2] During a break in the meeting, Manhattan Beach Police Department Chief Eve Irvine approached plaintiff and assured him that what had happened at his home on March 30 would never be allowed to happen again. She explained the police department had received additional training about how to enforce the city's existing laws in those types of situations. If the demonstrators returned to his home, the police department would do everything in its power to make sure that his home, family, and neighbors were protected. Following that meeting, plaintiff had several phone conversations with other members of the Manhattan Beach Police Department and members of the Manhattan Beach City Council during which he was assured that if a similar demonstration happened, he could expect a "full response" from the police department.

On August 4, 2016, plaintiff dismissed without prejudice the three civil harassment petitions.[3] He dismissed the petitions because, based on his July 5, 2016, conversation with Chief Irvine, he "felt reassured" the police department would respond appropriately if the demonstrators returned. Also, it had become clear to plaintiff from ongoing settlement negotiations with the Caamals that they were not going to repurchase the property and

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[2] On August 17, 2017, the City Council tabled a motion to approve the ordinance.

[3] Plaintiff and Wedgewood had also filed a civil action against defendants and ACCE relating to essentially the same conduct giving rise to the civil harassment petitions (case number BC615987). We grant plaintiff's request to take judicial notice of plaintiff's dismissal of that action on July 14, 2016, and otherwise deny his request for judicial notice.

he believed it would be easier to list and sell the property without pending litigation.

When plaintiff dismissed the civil harassment petitions, the trial court had not ruled on defendants' anti-SLAPP motions. Defendants moved for an award of $84,150 in attorney fees (a $56,100 lodestar with a 1.5 multiplier) and $370 in court costs as the prevailing parties under the mandatory attorney fees provision of the anti-SLAPP statute (§ 425.16, subd. (c)(1)) and, alternatively, as the prevailing parties under the discretionary attorney fees provision of the civil harassment statute (§ 527.6, subd. (s)) (attorney fees motion).[4] The trial court ruled that defendants would not have prevailed on the anti-SLAPP motions, but found they were the prevailing parties on the civil harassment petitions. The trial court thus awarded defendants $40,000 in attorney fees and court costs. In declining to award the full amount sought by defendants, the trial court found that the hourly rates defendants' attorneys requested were high in light of their experience and the nature and difficulty of the litigation. The trial court also found that large parts of the requested attorney fees related to unsuccessful settlement negotiations and the anti-SLAPP motion, which the trial court concluded would not have succeeded.

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[4] Defendants did not separately request attorney fees for work performed on the anti-SLAPP motion and for work performed on the civil harassment petition. Instead, they sought an award of attorney fees for all work performed in the litigation.

DISCUSSION

I. Plaintiff's Appeal

Plaintiff appeals the award of attorney fees and costs, claiming the trial court erred by: (1) excluding evidence that was crucial to determine that plaintiff was the prevailing party on the civil harassment petitions; (2) ultimately concluding that defendants were prevailing parties; and (3) miscalculating the amount of fees.

A. *"Exclusion" of Evidence*

Plaintiff contends the trial court erred when it excluded as hearsay his declaration testimony that Chief Irvine assured him the police department would protect him and his family in the event of further demonstrations at his home. The ruling was error, plaintiff argues, because the testimony was offered to show that plaintiff acted in reliance on that assurance when he dismissed his civil harassment petitions, and not for the truth of the matter asserted—i.e., that the police would protect him. Plaintiff contends the error was prejudicial because it was crucial to the trial court's prevailing party determination. The trial court did not err.

We review a trial court's rulings on evidentiary objections for an abuse of discretion. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.) "Discretion is abused only when in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.'" (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281 (*Shaw*).) An appellant bears the burden of establishing an abuse of discretion when challenging a trial court's discretionary rulings. (*Ibid.*)

In the declaration he submitted in opposition to defendants' attorney fees motion, plaintiff stated that Chief Irvine, other members of the Manhattan Beach Police Department, and members of the Manhattan Beach City Council assured him the police department would protect him if the demonstrators returned to his home. Defendants objected to those parts of plaintiff's declaration as hearsay.

The trial court ruled, "[Plaintiff] claims he obtained the relief he sought *outside of court* after he received an assurance from Manhattan Beach Police Chief Eve Irvine that 'what happed at [his] home on the night of March 30 would never be allowed to happen again.' This statement and similar alleged statements by Chief Irvine and other city officials, however, are inadmissible hearsay." In a footnote appended to the ruling, the trial court stated, "[Plaintiff] argues that the statements are admissible to show what his state of mind was when he dismissed the petitions. The court agrees. (See Evid. Code, § 1250.) But petitioner's state of mind is of marginal relevance to the issue of who was the prevailing party in this litigation and the other issues the court must decide to adjudicate [defendants'] motions."

Later, in a section addressing defendants' evidentiary objections, the trial court sustained hearsay objections to the statements made by other members of the Manhattan Beach Police Department and by Manhattan Beach City Council members. With respect to the statements attributed to Chief Irvine, the trial court sustained the hearsay objection, explaining that "Chief Irvine's statements are hearsay to the extent they are offered for the truth of the matter asserted."

Plaintiff's appeal concerns only the trial court's ruling on Chief Irvine's alleged statements. His argument that the trial

court erred by excluding the statements as hearsay fails because the trial court did not exclude the statements for all purposes. The trial court's ruling is clear. It excluded the police chief's statements to the extent they were offered for the truth of the matter asserted, but admitted them to explain why plaintiff dismissed his civil harassment petitions—the very reason plaintiff argues on appeal they were admissible. Accordingly, we find no error with respect to the trial court's evidentiary ruling.

B. *Prevailing Party*

Plaintiff contends the trial court abused its discretion when it determined that he was not the prevailing party under section 527.6. He argues that he prevailed because he "obtained the object of the litigation, namely assurances from representatives of the City of Manhattan Beach that future harassment would be prevented." We disagree.

We review a trial court's prevailing party ruling under section 527.6 for an abuse of discretion. (*Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1777; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 1443 (*Elster*).) As stated above, a trial court abuses its discretion "only when in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.'" (*Shaw, supra*, 170 Cal.App.4th at p. 281.)

"'A plaintiff will be considered a prevailing party when the lawsuit "'was a catalyst motivating defendants to provide the primary relief sought'" or succeeded in "'activating defendants to modify their behavior.'" [Citation.]' [Citation.]" (*Elster, supra*, 211 Cal.App.3d at pp. 1443–1444 [section 527.6 action].) Ordinarily, when a plaintiff voluntarily dismisses an action, the defendant is the prevailing party. (See *Coltrain v. Shewalter*

(1998) 66 Cal.App.4th 94, 100, 107 [alleged SLAPP suit dismissed without prejudice].) However, "a court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, or otherwise." (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 622 [contract action].)

The trial court ruled that defendants were the prevailing parties, finding that "they obtained what they wanted out of the litigation—[plaintiff] dismissed his actions and did not get restraining orders or any other relief." It rejected plaintiff's claim that he was the prevailing party because he achieved what he sought outside of court through Police Chief Irvine's assurances that what happened at his home would not be allowed to happen again. The trial court found that plaintiff "did not obtain this alleged promise by Chief Irvine *as a result of these lawsuits*." It reasoned that plaintiff could have sought Chief Irvine's commitment without filing the civil harassment petitions. Moreover, the trial court recognized the substantial difference between what plaintiff did achieve outside of the lawsuit, i.e., "a commitment by Chief Irvine to enforce existing law—whatever that is worth," and the "gravity" of what plaintiff sought through the lawsuit, i.e., "remedies that would have limited [defendants'] liberty, namely their freedom of movement and communication," as well as "a court finding that they engaged in socially unacceptable behavior."

We agree with the trial court. The objective of plaintiff's civil harassment petitions was to obtain orders restraining defendants from, among other things, harassing or contacting him or his wife, and requiring defendants to stay 100 yards award from him, his wife, his home, and his workplace—i.e.,

Wedgewood. Plaintiff failed to achieve that objective, and obtaining Chief Irvine's assurances fell short of such objective.

Moreover, to the extent obtaining Chief Irvine's commitment to enforce the law can be characterized as having obtained plaintiff's objectives in bringing suit, there is no evidence that plaintiff's civil harassment petitions motivated Chief Irvine to give her assurances or even that Chief Irvine knew of the petitions. In this regard, we reject plaintiff's contention the trial court impermissibly "required" a nexus between plaintiff's filing the petitions and Chief Irvine's actions. The trial court never stated such a nexus was necessary for plaintiff to be a prevailing party. Rather, the trial court's consideration of the lack of any causation between the lawsuit and Chief Irvine's assurance to plaintiff was a valid (if not dispositive) factor in the exercise of its discretion. We likewise reject plaintiff's suggestion that the absence of evidence that his civil harassment petitions were not a motivating factor for the police department means we should infer the petitions were a motivating factor. That suggestion fails to acknowledge that plaintiff bears the burden of showing the trial court's prevailing party determination exceeded the bounds of reason. (*Shaw, supra*, 170 Cal.App.4th at p. 281.)

For the foregoing reasons, we find no abuse of discretion in the trial court's determination that defendants were prevailing parties.

C. *Attorney Fees Calculation*

Plaintiff contends the trial court erred in calculating defendants' attorney fees award on the civil harassment petitions. Plaintiff has failed to demonstrate error.

"A trial court's exercise of discretion concerning an award of attorney fees will not be reversed unless there is a manifest abuse of discretion. [Citation.] '"The 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong['']—meaning that it abused its discretion. [Citations.]"' [Citation.] Accordingly, there is no question our review must be highly deferential to the views of the trial court. [Citation.]" (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239 (*Nichols*).)

In their attorney fees motion, defendants requested $84,150 in attorney fees and $370 in court costs.[5] The trial court awarded a reduced amount—$40,000—finding defendants' attorneys' hourly rates were too high and a large amount of time was spent on unsuccessful settlement negotiations and the anti-SLAPP motion, which would not have succeeded.

Plaintiff contends the trial court disregarded its findings in reducing the requested attorney fees and court costs by $44,520 because time spent on the anti-SLAPP motion alone accounted for $43,230 of the initial request. Thus, plaintiff concludes, the trial court essentially reduced the attorney fees award by the amount spent on the anti-SLAPP motion with no reductions for

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[5] In their reply in support of their motion, defendants increased their request for attorney fees to $100,525, the adjustment reflecting attorney time responding to plaintiff's opposition. The trial court based its attorney fees award on the $84,150 figure in defendants' attorney fees motion and not on the $100,525 figure in their reply. Defendants do not claim on appeal that the trial court erred.

the attorneys' unreasonably high hourly rates or fruitless settlement negotiations.

Plaintiff does not explain how he arrived at the $43,230 figure. His opening brief cites his opposition to defendants' attorney fees motion, which in turn does not explain how plaintiff arrived at the unmodified lodestar of $28,820 ($28,820 x 1.5 = $43,230) for work on the anti-SLAPP motion referenced in the opposition. "Counsel is obligated to refer us to the portions of the record supporting his or her contentions on appeal. [Citations.] . . . [W]e will not scour the record on our own in search of supporting evidence. [Citation.] Where, as here, respondents have failed to cite that evidence, they cannot complain when we find their arguments unpersuasive. [Citation.]" (*Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1149.) Plaintiff has failed to show the trial court abused its discretion in awarding defendants' attorney fees and court costs. (*Nichols, supra*, 155 Cal.App.4th at p. 1239.)

II. Defendants' Cross-Appeal

Defendants contend the trial court erred in denying attorney fees related to their anti-SLAPP motions on the ground that defendants would not have prevailed on such motions. Specifically, they argue the trial court erred in finding that the anti-SLAPP statute did not apply to plaintiff's civil harassment petitions because defendants failed to establish the first step in bringing a successful motion—i.e., that defendants engaged in protected activity. Because defendants' challenged activity concerned a purely private issue and did not concern or further

the public discourse on a public issue or an issue of public interest, the trial court did not err.[6]

"A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056; § 425.16, subd. (b)(1)[7].) The anti-SLAPP statute is to be construed broadly, but not so broadly as to apply to purely private transactions. (*Garretson v. Post* (2007) 156 Cal.App.4th 1508, 1524 (*Garretson*).) We review an order denying an anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325–326.)

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the

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[6] Accordingly, we do not reach defendants' second contention that plaintiff would not have prevailed on his civil harassment petitions.

[7] Section 425.16, subdivision (b)(1) provides, "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."

defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)

At the first step, "[t]he moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. (§ 425.16, subd. (b)(1).)" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) Section 425.16, subdivision (e) sets forth four categories of conduct the anti-SLAPP statute protects.[8] Defendants argue their demonstrations were conducted "in connection with a public issue or an issue of public interest" within the meaning of section 425.16, subdivisions (e)(3) and (e)(4) because they were directed at plaintiff and his company and were "related to the company's residential real estate

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[8] Section 425.16, subdivision (e) provides, "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) 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."

business practices that displace residents and gentrify working-class neighborhoods." Further, the demonstrations concerned the root causes of the great recession—large scale fix-and-flip real estate practices.

"'"The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." [Citation.]' (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1233 [132 Cal.Rptr.2d 57]; see *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479 [102 Cal.Rptr.2d 205].) '[T]he precise boundaries of a public issue have not been defined. Nevertheless, in each case where it was determined that a public issue existed, "the subject statements either concerned a person or entity in the public eye [citations], conduct that could directly affect a large number of people beyond the direct participants [citations] or a topic of widespread, public interest [citation]." [Citation.]' (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736–737 [87 Cal.Rptr.3d 347].)" (*USA Waste of California, Inc. v. City of Irwindale* (2010) 184 Cal.App.4th 53, 65 (*USA Waste of California, Inc.*).)

In *FilmOn.com, supra*, 7 Cal.5th 133, the Supreme Court granted review in part "to decide if and how the context of a statement—including the identity of the speaker, the audience, and the purpose of the speech—informs a court's determination of whether the statement was made 'in furtherance of' free speech 'in connection with' a public issue" and thus merits protection under the anti-SLAPP statute's catchall provision. (*Id.* at

pp. 142–143.) Speech that is "too remotely connected to the public conversation" about "the issues of public interest they implicate" do not "merit protection under the catchall provision." (*Id.* at p. 140.)

"The inquiry under the catchall provision . . . calls for a two-part analysis rooted in the statute's purpose and internal logic. First, we ask what 'public issue or . . . issue of public interest' the speech in question implicates—a question we answer by looking to the content of the speech. (§ 425.16, subd. (e)(4).) Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest. It is at the latter stage that context proves useful." (*FilmOn.com, supra*, 7 Cal.5th at pp. 149–150.)

Applying the first part of the catchall provision analysis, we conclude that defendants' demonstrations at Wedgewood's office building and plaintiff's residence focused on coercing Wedgewood into selling back the property to Ms. Caamal at a reduced price, which was a private matter concerning a former homeowner and the corporation that purchased her former home and not a public issue or an issue of public interest. (*Garretson, supra*, 156 Cal.App.4th at p. 1524; *USA Waste of California, Inc., supra*, 184 Cal.App.4th at p. 65.) The private nature of the demonstrations is made clear in defendants' own declarations submitted in support of the anti-SLAPP motions.

In Ms. Caamal's declaration, she described the motivation for the demonstrations at Wedgewood's office building. As to the first demonstration, she stated that she and her husband "and a group of concerned citizens *seeking to assist us*, went to Wedgewood's office building in Redondo Beach and requested a meeting with [plaintiff] *to attempt to prevent the impending*

eviction and negotiate a re-purchase of m[*y*] *home*." (Italics added.) As to the second demonstration, she stated that "as Wedgewood was attempting to lock me and my husband from our home and continuing to ignor[e] letters from both myself and my attorney, my husband and I, as well as another group of citizens *supporting our effort to repurchase our home*, returned to Wedgewood's office and again requested a meeting with [plaintiff]." (Italics added.) She said nothing about Wedgewood's residential real estate business practices displacing residents and gentrifying working-class neighborhoods or about large scale fix-and-flip real estate practices being a root cause of the great recession.

Consistent with his wife's stated purpose for the first demonstration, Mr. Caamal stated in his declaration, "I "accompanied my wife to Wedgewood's office building . . . to obtain an answer as to why Wedgewood was refusing to negotiation [*sic*] with my wife *in her attempt to repurchase our home*." (Italics added.) Kuhns likewise stated in his declaration, "I and others involved with ACCE accompanied Mr. and Ms. Caamal to Wedgewood's office building . . . *to obtain an answer as to why Wedgewood was refusing to negotiation* [*sic*] *with the Camaals* [*sic*] in *their attempt to repurchase their home."* (Italics added.) Neither Mr. Caamal nor Kuhns said anything in his respective declaration about the purpose of the demonstrations relating to issues of displacement of residents due to residential real estate business practices, gentrification, or large scale fix-and-flip real estate practices leading to the great recession.

Even a third-party participant, Saucedo, the National Lawyers Guild legal observer, described in his declaration the purpose for the demonstration at plaintiff's residence as a private

matter limited to the Caamals' dispute with Wedgwood. He stated that ACCE organized the demonstration at plaintiff's residence "to protest unfair and deceptive practices used by Wedgewood . . . and its agents *in acquiring the real property of Pablo and Mercedes Caamal, and evicting them from their home*." (Italics added.) That motivation was purely personal to the Caamals and did not address any societal issues of residential displacement, gentrification, or the root causes of the great recession.

As to the content of the speech, during the first demonstration at Wedgewood, the Caamals requested a meeting at which they could discuss repurchasing their property from Wedgewood and the demonstrators left the building once Puhl agreed to such a meeting. During the second demonstration, the demonstrators sought another meeting and Mr. Caamal stated that Wedgewood would not get him out of the property alive. The only evidence of the specific content of the speeches during the demonstration at plaintiff's residence was that the demonstrators demanded plaintiff personally come out of his home.

Thomas v. Quintero (2005) 126 Cal.App.4th 635 (*Thomas*) is instructive. Defendants argue that *Thomas* supports their claim they engaged in protected activity because the *Thomas* court found that protest activities against a landlord by a tenant and a group of activists were covered by the anti-SLAPP statute in that particular case. But the facts of *Thomas* demonstrate precisely why defendants' activities here were not protected.

In *Thomas, supra*, 126 Cal.App.4th at page 654, defendant Quintero was a tenant in a building owned by plaintiff Thomas. They became "embroiled in a number of landlord-tenant disputes, which culminated in an eviction proceeding." (*Ibid.*) Quintero

was then put in touch with a group called Campaign for Renters Rights (CRR) through which he met many other former tenants of Thomas. (*Ibid.*) Quintero thus learned that Thomas was "a 'notorious landlord' whose pattern of unjust evictions throughout Oakland was 'the first big public case of the campaign in Oakland for a Just Cause of Eviction Ordinance.'" (*Ibid.*) Indeed, CRR previously "had helped to organize 21 former tenant families who were allegedly owed more than $35,000 in unpaid security deposits by Thomas" and "claim[ed] to have contacted more than 100 former tenants of Thomas's." (*Id.* at pp. 654–655.) According to CRR materials, "Thomas had filed evictions against 142 families over a five-year period," and "he was successfully sued by the City of San Rafael for $19,000 when he failed to initiate repairs of rental units he owned there." (*Id.* at p. 655.) After Quintero and a group appeared at Thomas's church to protest, Thomas petitioned for a civil restraining order, claiming that Quintero and his group "harassed church members, blocked entrances, and trespassed on church property, with the stated purpose of causing extreme embarrassment and severe emotional distress" to him. (*Id.* at p. 654.)

The court in *Thomas, supra*, 126 Cal.App.4th at page 661, held that Quintero's activities were protected by the anti-SLAPP statute, finding that, "while his private interests were certainly in issue, there were much broader community interests at stake in the protests." Specifically, the court reasoned that the protests involved issues of public interest because Thomas was "accused of wrongfully evicting and improperly retaining the security deposits of more than 100 tenants" and was "accused of a pattern of refusing to make needed repairs to his rental properties, allegedly resulting in legal action being taken against him by

several municipalities." (*Ibid.*) The court found that such "allegations against Thomas implicate both a concern for the stability of the rental market in the affected community, as well as intimate the threat of potential urban blight associated with the failure to make necessary repairs to buildings in the neighborhood." (*Ibid.*) Moreover, the court noted that the "protest activities were not an end to themselves, but were coupled with a genuine effort to engage the members of Thomas's congregation in discussing and finding a solution to the disputes," namely, "there was a direct call for public involvement in an ongoing controversy, dispute, or discussion with respect to Thomas's past and continued property management practices." (*Ibid.*)

Here, by contrast, we do not find in the record any basis to conclude plaintiff was a public figure or had gained widespread notoriety throughout the community for his real estate activities. Nor do we find any basis to believe the Caamals' private dispute with plaintiff was one of many similar disputes shared in common with members of the community.[9] The record is also

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[9] In their cross-appeal reply brief, defendants state plaintiff's company "has been accused of unlawful conduct throughout the state" and claim "the record includes accusations" that the company harassed and evicted "many" immigrant working class families, directed its employees to aggressively target foreclosed homes and refrain from repairing them, and participated in various unlawful and fraudulent schemes. To support that claim, however, defendants cite only to two civil complaints filed by two separate homeowners involving two individual properties located in San Francisco. Those complaints are appended as exhibits to a request for judicial notice, which it appears the trial court never granted. Even if properly before this court, these two additional,

devoid of any governmental complaints, actions, or disputes with plaintiff or his company, which might be indicative of a broader public issue with respect to plaintiff's house-flipping conduct. Further, as discussed above in defendants' declarations, the purpose of the demonstrations was to assist the Caamals in getting the property back, not to engage other members of the community or to call for public involvement in finding a solution to purported issues concerning real estate practices. These important differences from the circumstances in *Thomas, supra*, 126 Cal.App.4th 635, underscore exactly why the demonstrations regarding the property were not protected activity concerning a public issue or issue of public interest.

Finally, defendants contend that the "wide-spread" media attention their demonstrations received shows that the demonstrations were matters of public interest. While the fact of media coverage may be indicative of a public matter, "[m]edia coverage cannot by itself . . . create an issue of public interest within the statutory meaning." (*Zhao v. Wong* (1996) 48 Cal.App.4th 1114, 1121, disapproved on other grounds in *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106; see also *Rivero, supra*, 105 Cal.App.4th at p. 926 ["If the mere publication of information in a union newsletter distributed to its numerous members were sufficient to make that information a matter of public interest, the public-issue limitation would be substantially eroded, thus seriously undercutting the obvious

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isolated instances do not transform the Caamals' private dispute into a public one. (See *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 925 (*Rivero*) [supervisor's conduct toward eight custodians in the union did not rise to the level of a public issue involving unlawful workplace activity].)

goal of the Legislature that the public-issue requirement have a limiting effect"].) Moreover, the record on the media attention that defendants did enjoy is not entirely clear. In describing media attention, defendants primarily cited to various websites, without attaching the articles themselves or archiving an article so that the trial court could determine what an article stated at a relevant time.[10] In any event, for the reasons discussed above, defendants' demonstrations concerned the Caamals' private dispute with plaintiff and his company. The fact that they attracted some media attention did not convert a purely private matter into one of public interest.

As for the second part of the catchall provision analysis, even if we accepted defendants' contention that the demonstrations concerned the issues of displacement of residents due to residential real estate business practices, gentrification, and large scale fix-and-flip real estate practices leading to the great recession, those demonstrations did not qualify for statutory protection because they did not further the public discourse on those issues. "'[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.' (*Wilbanks* [*v. Wolk* (2004)] 121 Cal.App.4th [883,] 898 [17

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[10] The dissent refers to a press release by Wedgewood accusing ACCE of being interested in headlines in support of the notion that this was a matter of public interest. But that press release was made in August 2016, four and a half months after the demonstration at plaintiff's home and the filing of the requests for civil harassment restraining orders and does not establish that the demonstrations, at the time, were conducted in connection with a public issue.

Cal.Rptr.3d 497]; see also *Dyer v. Childress* (2007) 147 Cal.App.4th 1273, 1280 [55 Cal.Rptr.3d 544] ['[t]he fact that "a broad and amorphous public interest" can be connected to a specific dispute' is not enough].)" (*FilmOn.com, supra*, 7 Cal.5th at p. 150.) In determining whether speech or conduct contributes to the public debate and thus qualifies for statutory protection, "we examine whether a defendant—through public or private speech or conduct—participated in, or furthered, the discourse that makes an issue one of public interest. [Citations.]" (*Ibid.*; *id.* at p. 151.) As we conclude above, defendants' demonstrations at Wedgewood's office building and plaintiff's residence were directed at Wedgewood and plaintiff and were for the purpose of coercing Wedgewood into selling back the property to Ms. Caamal at a reduced price. Accordingly, the demonstrations did not further the public discourse on the issues of displacement of residents due to residential real estate business practices, gentrification, or large scale fix-and-flip real estate practices leading to the great recession.

To be fair, and as the dissent observes, defendants' conduct does bear certain hallmarks of classic SLAPP conduct. For instance, defendants characterize their conduct as participating in a "demonstration" or "residential picket." They held signs, sang songs, chanted, and gave short speeches. Further, the National Lawyers Guild is "a bar association whose members frequently engage in legal observing for organizations and individuals exercising their First Amendment rights to freedom of speech and freedom of assembly." But merely characterizing conduct as a demonstration or picket does not grant that conduct First Amendment protections. (See, e.g., *FilmOn, supra*, 7 Cal.5th at p. 152 ["[d]efendants cannot merely offer a 'synecdoche

theory' of public interest, defining their narrow dispute by its slight reference to the broader public issue"].)

The anti-SLAPP statute "defines conduct in furtherance of the rights of petition and free speech on a public issue not only by its content, but also by its location, its audience, and its timing." (*FilmOn, supra*, 7 Cal.5th. at p. 143.) Here, the record indicates that the demonstrations at Wedgewood's Office occurred at a commercial building, during office hours, and were directed at plaintiff. As to the demonstration at plaintiff's residence, it took place at 9:00 p.m. and there is no indication in the record that there was an audience other than plaintiff and his family, and no evidence of media presence to inform persons not at the demonstration. Based on this record, we agree with the trial court's conclusion that defendants' activities were not in connection with a public issue or an issue of public interest.

DISPOSITION

The orders are affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.

I concur:

MOOR, J.

Geiser v. Kuhns et al.
B279738

BAKER, Acting P. J., Concurring in Part and Dissenting in Part

Before we get to the merits, a brief recitation of the procedural history of this case is in order. This court initially decided this appeal in 2018. The panel majority held the trial court correctly awarded attorney fees to defendants Mercedes Caamal, Pablo Caamal, and Peter Kuhns for prevailing in civil harassment petition litigation, but excluded from the fees calculation work done on anti-SLAPP motions that defendants filed to strike the civil harassment petitions. I dissented from the anti-SLAPP holding, explaining the majority incorrectly concluded no anti-SLAPP protected activity was at issue. Our Supreme Court thereafter granted a petition for review of this court's opinion and held the matter pending the outcome of its decision in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133 (*FilmOn*), an anti-SLAPP case. Once that decision issued, our Supreme Court issued an order transferring the case back to us for reconsideration in light of *FilmOn*. We vacated our prior opinion and asked counsel to reargue the case.

The largely recycled opinion the majority now files is no more persuasive (as to the cross-appeal's anti-SLAPP issue[1]) than the first. The majority's treatment of the *FilmOn* opinion misunderstands the bounds and contours of the anti-SLAPP

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[1] I continue to concur in the majority's resolution of the civil harassment attorney fees issue.

statute's "catchall provision" (*FilmOn*, *supra*, 7 Cal.5th at 139-140) and produces an outcome inconsistent with the speech-protective purpose behind the anti-SLAPP statute. When *FilmOn* is properly applied, as I will endeavor to show, it is even more apparent now than it was before that the majority's anti-SLAPP rationale is wrong.

I

A sentence that comes early in *FilmOn* suffices almost by itself to point the way to the correct result here. Writing for a unanimous Court, Justice Cuéllar explained: "In the paradigmatic SLAPP suit, a well-funded developer limits free expression by imposing litigation costs on citizens who protest, write letters, and distribute flyers in opposition to a local project." (*FilmOn*, *supra*, 7 Cal.5th at 143.) Now consider the facts here. Well-funded developer? Check. Citizen protest of a local (evict-and-flip housing) project? Check. Limits on free expression by imposing litigation costs? Check. Our facts illustrate precisely why, as I previously said, this case has many of the hallmarks of vintage SLAPP conduct. But let us examine the *FilmOn* decision in greater detail to understand the full analytical route a court should travel to determine anti-SLAPP protected activity is implicated here.

FilmOn.com, a business that distributes online entertainment programming, sued DoubleVerify, a business that generates reports for prospective advertiser clients about the content and viewers of various websites. (*FilmOn*, *supra*, 7 Cal.5th at 140-141.) FilmOn.com contended DoubleVerify improperly disparaged FilmOn.com websites in the reports DoubleVerify sent confidentially to its advertiser clients because

the reports characterized some of FilmOn.com's websites as depicting adult content or copyright infringing material. (*Id.* at 141-142.) In response to FilmOn.com's lawsuit, DoubleVerify filed an anti-SLAPP motion contending its website reports "'concerned issues of interest to the public' because 'the public ha[s] a demonstrable interest in knowing what content is available on the Internet, especially with respect to adult content and the illegal distribution of copyrighted material.' [Citation.]" (*Id.* at 142.)

The trial court granted DoubleVerify's anti-SLAPP motion and the Court of Appeal affirmed. But our Supreme Court "granted review to decide if and how the context of a statement—including the identity of the speaker, the audience, and the purpose of the speech—[should] inform[ ] a court's determination" of whether the statement qualifies as protected activity under subdivision (e)(4) of the anti-SLAPP statute. (*FilmOn*, *supra*, 7 Cal.5th at 142-143.) Under that "catchall" subdivision, "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" qualifies as anti-SLAPP protected activity. (Code Civ. Proc., § 425.16, subd. (e)(4).)

In fleshing out the meaning of subdivision (e)(4), our Supreme Court looked for contextual clues in the other categories of activity protected by the statute and concluded conduct in furtherance of the rights of petition and free speech on a public issue is defined not only by the content of the speech or petitioning activity but by "its location, its audience, and its timing." (*FilmOn*, *supra*, 7 Cal.5th at 143.) Specifically, the Court held catchall provision analysis should consider whether

speech or petitioning activity was private or public, to whom it was directed, and for what purpose it was undertaken. (*Id.* at 148.) The *FilmOn* opinion describes a two-step process to allow for such contextual consideration.

First, courts should identify what public issue or issue of public interest is implicated in the case at hand. (*FilmOn*, *supra*, 7 Cal.5th at 149.) In performing this task, our Supreme Court cited with approval Court of Appeal decisions that have "distilled the characteristics" of what counts as an issue of public interest. (*Ibid.* [citing *Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913 (*Rivero*) and *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122 (*Weinberg*)].) *Rivero* cites three non-exhaustive categories of public interested matters: a person or entity in the public eye (e.g., the Church of Scientology), conduct that could directly affect a large number of people beyond the direct participants (e.g., allegedly defamatory statements made regarding a homeowners association of more than 3,000 individuals), or a topic of widespread, public interest (e.g., the general topic of child molestation in youth sports). (*Rivero*, *supra*, at 924.) *Weinberg* clarifies a matter of public interest does not equate with mere curiosity and should be something of concern to a substantial number of people. (*Weinberg*, *supra*, at 1132-1133.)

Second, courts should assess "what functional relationship exists between the speech [or petitioning activity] and the public conversation about some matter of public interest." (*FilmOn*, *supra*, 7 Cal.5th at 149-150.) Context is useful in undertaking this inquiry, our Supreme Court explained, because it helps avoid the quagmire that otherwise results when "courts strive to discern what the challenged speech is really 'about'—a narrow,

largely private dispute, for example, or the asserted issue of public interest." (*Id.* at 149; see also *ibid.* ["[I]f the social media era has taught us anything, it is that speech is rarely 'about' any single issue"].) As already described, the contextual inquiry considers all relevant circumstances, including the identity of the speaker or petitioner, the audience sought, the timing and location of the speech or petitioning, and the apparent purpose of the conduct assertedly protected by the anti-SLAPP statute. (*Id.* at 142-144, 154.) When there is "'some degree of closeness'" between the challenged statements and the topic of asserted public interest, such that the statements themselves can be said to have contributed to the public debate "in some manner," the statements are protected under the anti-SLAPP statute's catchall provision. (*Id.* at 150.)

Performing this two-step analysis on the facts presented in *FilmOn*, our Supreme Court held the website reports sent to advertisers did not qualify as anti-SLAPP protected activity. (*FilmOn*, *supra*, 7 Cal.5th at 154.) The Court acknowledged the actions of a prominent CEO (DoubleVerify argued FilmOn.com's CEO was in the public spotlight) or the issue of children's exposure to sexually explicit media content would qualify as issues of public interest.[2] (*Id.* at 152.) But the Court held

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[2] In identifying the topics of public interest at issue, the Court seemed to defer at least in part to DoubleVerify's own identification of those issues. The *FilmOn* Court noted "DoubleVerify has identified the public issues or issues of public interest to which its reports . . . relate" and the Court assumed at least one of the issues DoubleVerify identified (the prominence of FilmOn.com's CEO) merited analysis. (*FilmOn*, *supra*, 7 Cal.5th at 152.)

DoubleVerify's reports did not further the public conversation on either issue—emphasizing that the website reports were not distributed to the public at all, only sent confidentially to DoubleVerify's clients who used them solely for their own business purposes. (*Id.* at 153.) The Court cautioned that this single contextual factor (private distribution) was not alone dispositive (*ibid.*), but the Court reasoned the factual "scenario before [it] involve[d] two well-funded for-profit entities engaged in a private dispute over one's characterization—in a confidential report—of the other's business practices," which was not an instance in which a court should liberally extend anti-SLAPP protection to encourage continued participation in matters of public significance. (*Id.* at 154.)

II

When the *FilmOn* framework is applied here, the opposite result obtains: the public protest outside plaintiff Gregory Geiser's home contributed to public debate in some manner and qualifies as protected activity under Code of Civil Procedure section 425.16, subdivision (e)(4).

1

Much like DoubleVerify in *FilmOn*, defendants identify the issue of interest to the public that is implicated in this case: displacement of long-term community residents by unfair foreclosure and fix-and-flip housing practices.[3] Fairly read, the

[3] As in *FilmOn*, we should give some weight to defendants' own identification of the issue of interest to the public that is implicated here. There is little concern speakers will devise and rely on post-hoc rationalizations because the analysis of context—

record bears out the assertion that the content of the speech in question concerned Geiser and his company's housing practices that displace long-time community residents.

The protest outside Geiser's home was attended by Kuhns, the Los Angeles Director of Alliance of Californians for Community Empowerment (ACCE); the Caamals; other ACCE members; and Gabriel Saucedo, a representative of the National Lawyer's Guild. ACCE, according to Kuhns, is an entity dedicated to "sav[ing] homes from foreclosures and the fight against displacement of long[-]term residents in our communities." With that mission, ACCE's participation in the protest is enough by itself to infer the content of the public protest outside Geiser's home concerned unfair (at least as perceived by ACCE) housing practices that displace long-time community residents. But there is more.

Saucedo explained in a declaration that the purpose of the ACCE-attended demonstration outside Geiser's home was "to protest unfair and deceptive practices used by Wedgewood, LLC [Geiser's company] . . . and its agents in acquiring the real property of [the Caamals], and evicting them from their home." The reference to "practices" suggests conduct that includes—but extends beyond—the Caamals' own situation. And that is borne out by the relatively large group, 25 to 30 people, participating in the protest at 9:00 p.m. on a Wednesday evening. That group well exceeds the number of people who had some personal stake in, or connection to, the foreclosure on the Caamals' home, which

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the degree of closeness between the identified interest and the pertinent circumstances—that occurs at step two of the *FilmOn* inquiry will normally smoke out a fabricated issue of public interest identified at step one.

means the only apparent shared tie among everyone present was the desire to engage in public speech consistent with ACCE's mission and the issue of public interest identified here: combatting unfair housing and foreclosure practices that displace long-term community residents.[4]

There is no real dispute that this issue is indeed one of genuine public interest. (See *Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042 [an issue of public interest is *any issue in which the public is interested*].) Indeed, if there were any doubt about that, the fact that Wedgewood issued a press release of its own (one that argued ACCE was more interested in "making headlines" than in helping the Caamals return to their home) confirms Wedgewood's resident-displacing practices was an issue in which the public was interested.

The majority arrives at a different conclusion at step one of the *FilmOn* inquiry by making two missteps. First, the majority

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[4] The Caamals' declarations also generally describe, after recounting their eviction from the home where they lived for 10 years, what occurred during the protest outside Geiser's home. They say the protesters "held signs, sang songs, chanted, and gave short speeches, all from the sidewalk." The majority faults the declarations for not being more specific, i.e., for not detailing whether the signs, songs, speeches, and chants made reference to Wedgewood's residential real estate business practices displacing residents. I suppose that is logical so far as it goes: the absence of direct protestor quotes in the declarations means the majority is free to believe the ACCE members and others present outside Geiser's home might have been holding signs and chanting about the Protestant Reformation or some topic other than displacement of long-term residents like the Caamals. But that is a strained and artificial way to read the record.

spends an inordinate amount of time parsing the descriptions in the Caamals' declarations of the earlier two sit-ins inside the lobby of Wedgewood's office building rather than the public protest outside Geiser's home. The lobby sit-ins, however, are largely irrelevant. It was the protest on the sidewalk outside Geiser's home from which the civil harassment suits arose, and that protest accordingly should be the focus of our analysis. Second, to the extent the majority does engage with the facts concerning the protest outside Geiser's home, it does so mainly by attacking Saucedo's declaration with italics. Here is the majority's sentence: "He [Saucedo] stated that ACCE organized the demonstration at [Geiser's] residence 'to protest unfair and deceptive practices used by Wedgewood . . . and its agents *in acquiring the real property of Pablo and Mercedes Caamal, and evicting them from their home*.' (Italics added.)" Application of italics, however, is not legal analysis. Emphasizing the latter half of Saucedo's sentence does not somehow wipe away his assertion that unfair and deceptive practices used by Wedgewood were in play. And the majority ignores entirely the housing displacement mission of ACCE as described by Kuhns and the participation of ACCE members among the 25 to 30 people present for the sidewalk protest.

2

As just explained, the issue of public interest implicated in this case, properly understood, is displacement of long-term community residents by unfair foreclosure and fix-and-flip housing practices. We now must assess, at step two of the *FilmOn* inquiry, all of the contextual information we have about the sidewalk protest outside Geiser's home to determine whether

there is "'some degree of closeness'" between the protest and the identified issue of public interest, such that the protest can be said to have contributed to the public debate "in some manner." (*FilmOn*, *supra*, 7 Cal.5th at 150.)

The identity of defendants, the audience they sought, and the timing and location of the speech all show a degree of closeness between the protest and the ongoing public conversation about housing displacement. Let us take the considerations in that order.

Kuhns and other ACCE members participated in the sidewalk protest outside Geiser's home, and ACCE's identity and involvement is strong evidence of a connection to an issue of public interest. (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 653-655, 661 [anti-SLAPP statute applied to a civil harassment petition filed by a landlord against a tenant who, with the help of a community renters' organization, organized protests against the landlord; the renters' organization's involvement demonstrated that the tenant's private interests were certainly in issue but "there were much broader community interests at stake in the protests"] (*Thomas*).)

The audience sought here, in meaningful contrast to *FilmOn*, was not limited to a confidential communication to a private business. Rather the audience for the speech at issue was the general public, i.e., those within earshot of the protest and those that might hear about it later, including via press reports. This public aspect of the protest was not mere happenstance; it was integral to its design. Defendants' hope was that by placing the public spotlight on Wedgewood's practices, Wedgewood and Geiser would relent (motivated either by their own shame or the consequences of public disapprobation) and agree to allow the

Caamals to buy back the home they had occupied for 10 years rather than flipping it and selling it for more.

As to location and timing, these too evince a contribution to the public debate: public sidewalks are traditional sites for discussion and debate as "one of the few places where a speaker can be confident that he is not simply preaching to the choir" (*McCullen v. Coakley* (2014) 573 U.S. 464, 476), and the protest occurred the very same day of the Caamals' eviction—when public interest in their plight as a concrete example of the consequences of housing displacement was likely to be at its apex. The various contextual considerations therefore show defendants' sidewalk protest contributed "in some manner" to the public debate.

How does the majority again conclude otherwise? This is the reason we are given: "As we conclude above, defendants' demonstrations at Wedgewood's office building and [Geiser's] residence were directed at Wedgewood and [Geiser] and were for the purpose of coercing Wedgewood into selling back the property to Ms. Caamal at a reduced price." That is wrong on multiple levels.

At the most obvious level, the sidewalk protest—which involved ACCE members who volunteered to help the Caamals—cannot be fairly said to have been directed solely at Wedgewood and Geiser with no connection to broader issues of interest to the community; *Thomas* illustrates the point nicely.[5] But on a deeper level, the majority's analysis fails even on its own terms. Let's

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[5] The majority finds *Thomas* "instructive," but learns the wrong lesson. Even a cursory reading of that opinion reveals it is a case that undermines the majority's anti-SLAPP holding, not one that supports it.

assume, however improbably, that the protesters' sole aim was to get the Caamals their house back and that ACCE would have accordingly disbanded had they been successful. The question still remains, by what means did the protestors seek to succeed? The answer: by appeal to public sentiment. In other words, even if helping the Caamals were the only objective, the way in which defendants and the other protesters hoped to achieve it was by connecting the Caamals' individual plight to public interest in, and disapproval of, long-time community resident displacement and unfair foreclosure practices.[6] That is just the sort of connection the *FilmOn* contextual inquiry demands at step two.

Stepping back from the doctrinal framework, the question of anti-SLAPP protected activity vel non is really rather straightforward on these facts. Stated simply, the public protest contributed to the public debate.

III

The upshot of the majority's anti-SLAPP holding is that in a small corner of Southern California, the venerable American tradition of peaceful public protest—often the only resort of those with modest means—is left diminished by a well-funded litigation scheme seeking to suppress it. That is what the anti-SLAPP statute was intended to guard against, and it is unfortunate the majority idiosyncratically reads the record to

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[6] The majority reasons "merely characterizing conduct as a demonstration or picket does not grant that conduct First Amendment protections." This is not a case of mere characterization. What is undisputedly at issue here is a protest on a public sidewalk. If the majority believes that sort of conduct does not merit First Amendment protection, the majority should try to explain why.

deny anti-SLAPP protection in a case where, as even the majority concedes, "defendants' conduct does bear certain hallmarks of classic [anti-]SLAPP[-protected] conduct."

I would reverse the trial court's anti-SLAPP attorney fees ruling and remand for further proceedings consistent with the views I have expressed.

BAKER, Acting P. J.