

CASE No. S239686



SUPREME COURT
FILED

NOV 14 2017

Jorge Navarrete Clerk

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Deputy

STANLEY WILSON,
Plaintiff and Appellant,

vs.

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

Defendants, Respondents and Petitioners.

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

APPELLANT'S ANSWERING BRIEF ON THE MERITS

LISA L. MAKI, ESQ., SBN 158987
LAW OFFICES OF LISA L. MAKI
523 W. 6TH STREET, SUITE 450
LOS ANGELES, CA 90014
TELEPHONE: 213.745.9511
FACSIMILE: 213.745.9611
E-Mail: lmaki@lisamaki.net

CARNEY R. SHEGERIAN, SBN 150461
JILL McDONELL, ESQ., SBN 162612
SHEGERIAN & ASSOCIATES, INC.
225 SANTA MONICA BLVD., STE. 700
SANTA MONICA, CALIFORNIA 90401
TELEPHONE: (310) 860 0770
FACSIMILE: (310) 860 0771
E-Mail: CRS@Shegerianlaw.com

ATTORNEYS FOR PLAINTIFF AND APPELLANT,
STANLEY WILSON

CASE NO. S239686

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

STANLEY WILSON,
Plaintiff and Appellant,

vs.

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

Defendants, Respondents and Petitioners.

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

APPELLANT'S ANSWERING BRIEF ON THE MERITS

LISA L. MAKI, ESQ., SBN 158987
LAW OFFICES OF LISA L. MAKI
523 W. 6TH STREET, SUITE 450
LOS ANGELES, CA 90014
TELEPHONE: 213.745.9511
FACSIMILE: 213.745.9611
E-Mail: lmaki@lisamaki.net

CARNEY R. SHEGERIAN, SBN 150461
JILL MCDONELL, ESQ., SBN 162612
SHEGERIAN & ASSOCIATES, INC.
225 SANTA MONICA BLVD., STE. 700
SANTA MONICA, CALIFORNIA 90401
TELEPHONE: (310) 860 0770
FACSIMILE: (310) 860 0771
E-Mail: CRS@Shegerianlaw.com

ATTORNEYS FOR PLAINTIFF AND APPELLANT,
STANLEY WILSON

TABLE OF CONTENTS

I. RESPONSE TO CNN’S STATED ISSUES. 6

II. OVERVIEW AND SUMMARY OF *WILSON* OPINION 12

III. FACTUAL OVERVIEW 17

 A. Wilson’s Employment at CNN. 17

 B. CNN’S Plagiarism Accusation Is Pure Pretext. 19

 C. CNN Incorrectly Asserts that Wilson Admitted that “the Plagiarism
 Was Solely His ‘Fault.’” 21

IV. LEGAL ANALYSIS 23

 A. CNN’s Warnings That Employment Claims Such as Wilson’s Will
 Chill Free Speech, If Section 425.16 Does Not Apply, Are
 Groundless..... 23

 B. The *Wilson* Court Looked to CNN’s Tortious *Actions* As Alleged To
 Determine if Wilson’s Claims Arose from Protected Activity; It Did
 Not Exempt Employment Discrimination, Harassment and
 Retaliation Claims From Section 425.16. 29

 C. *Wilson* Has Created No Exemption from Section 425.16..... 35

 D. *Wilson* Is Consistent with Case Law, Including *Park*..... 37

 E. The Appellate Court Analyzed Wilson’s Defamation Claim
 Consistently with Case Law; “Name Recognition” and Being “In the
 Public Eye” Were Not Required. 43

V. CONCLUSION 51

CERTIFICATE OF WORD COUNT.....52

TABLE OF AUTHORITIES

Cases

<i>Albanese v. Menounos</i> (2013) 218 Cal.App.4th 923.....	47, 50
<i>Alicia T. v. County of Los Angeles</i> (1990) 222 Cal.App.3d 869	44
<i>Barry v. State Bar of California</i> (2017) 2 Cal.5th 318.....	42
<i>Bonni v. St. Joseph</i> (2017) 13 Cal.App.5th 851	38
<i>Brown v. Kelly Broadcasting Co.</i> (1989) 48 Cal.3d 711.....	23
<i>Castleman v. Sagaser</i> (2013) 216 Cal.App.4th 481	42
<i>Chavez v. Mendoza</i> (2001) 94 Cal.App.4th 1083.....	41, 42
<i>City of Cotati v. Cashman</i> (2002) 29 Cal.4th 69	13, 16, 30, 41
<i>City of Industry v. City of Fillmore</i> (2011) 198 Cal.App.4th 191	40, 47
<i>Commonwealth Energy Corp. v. Investor Data Exchange, Inc.</i> (2003) 110 Cal.App.4th 26	10, 45, 47
<i>Consumer Justice Center v. Trimedica International, Inc.</i> (2003) 107 Cal.App.4th 595	47, 48
<i>Daniel v. Wayans</i> (2017) 8 Cal.App.5th 367	38
<i>Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments, LLC</i> (2007) 154 Cal.App.4th 1273	39
<i>Du Charme v. International Brotherhood of Electrical Workers</i> (2003) 110 Cal.App.4th 107	48
<i>Dyer v. Childress</i> (2007) 147 Cal.App.4th 1273.....	40
<i>Equilon Enterprises v. Consumer Causes</i> (2002) 29 Cal.4th 53.....	42
<i>FilmOn.com v. Double Verify, Inc.</i> (2017) 13 Cal.App.5th 707	47, 48
<i>Gallanis-Politis v. Medina</i> (2007) 152 Cal.App.4th 600	37
<i>Greater L.A. Agency on Deafness, Inc. v. CNN, Inc.</i> (9th Cir. 2014) 742 F.3d 414	26

<i>Hall v. Time Warner, Inc.</i> (2007) 153 Cal.App.4th 1337	47
<i>Hunter v. CBS Broadcasting Inc.</i> ,	
(2013) 221 Cal.App.4th 1510	7, 34, <i>passim</i>
<i>Huntingdon Life Sciences v. Stop Huntingdon Animal Cruelty USA</i>	
(2005) 129 Cal.App.4th 1228	36
<i>Ingels v. Westwood One Broadcasting Services, Inc.</i>	
(2005) 129 Cal.App.4th 1050	26
<i>Kibler v. Northern Inyo County Hospital Dist.</i> , (2006) 36 Cal.4th 19.....	36
<i>Lieberman v. KCOP Television, Inc.</i> , (2003) 110 Cal.App.4th 156	50
<i>Lyle v. Warner Bros. Television</i> , (2006) 38 Cal.4th 264.....	24, 25
<i>Martin v. Inland Empire Utilities Agency</i>	
(2011) 198 Cal.App.4th 611	8, 28, 33, <i>passim</i>
<i>McDermott v. Ampersand Publ'g, LLC</i> (9th Cir. 2010) 593 F.3d 950.....	27
<i>McGarry v. University of San Diego</i> (2007) 154 Cal.App.4th 97	50
<i>Nam v. Regents of University of California</i>	
(2016) 1 Cal.App.5th 1176	8, 32, <i>passim</i>
<i>Navellier v. Sletten</i> (2002) 29 Cal.4th 82	12, <i>passim</i>
<i>Park v. Board of Trustees of California State University</i>	
(2017) 2 Cal.5th 1057	7, <i>passim</i>
<i>Rivero v. American Federation of State, County & Municipal Employees,</i>	
<i>ALF-CIO</i> (2003) 105 Cal.App.4th 913	48
<i>San Diegans for Open Government v. San Diego State University</i>	
<i>Research Foundation</i> (2017) 13 Cal.App.5th 76	41
<i>Scott v. Metabolife International</i> (2004) 115 Cal.App.4th 404	15
<i>Shulman v. Group W Productions, Inc.</i> , (1998) 18 Cal.4th 200	25
<i>Talega Maintenance Corp. v. Standard Pacific Corp.</i>	
(2014) 225 Cal.App.4th 722	40

<i>Tamkin v. CBS Broadcasting</i> (2011) 193 Cal.App.4th 133	49
<i>Taus v. Loftus</i> (2007) 40 Cal.4th 683	49
<i>Terry v. Davis Community Church</i> (2005) 131 Cal.App.4th 1534	48
<i>Tuszynska v. Cunningham</i> (2011) 199 Cal.App.4th 257	7-9, 34, <i>passim</i>
<i>Weinberg v. Feisel</i> (2003) 110 Cal.App.4th 1122	46, 47
<i>Wilbanks v. Wolk</i> (2004) 121 Cal.App.4th 883	10, 11, 47, <i>passim</i>
<i>Wilson v. Cable News Network, Inc.</i> (2016) 6 Cal.App.5th 822	6, <i>passim</i>
<i>World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.</i> (2009) 172 Cal.App.4th 1561	47
<i>Young v. Tri-City Healthcare Dist.</i> (2012) 210 Cal.App.4th 35	31

Statutes

<i>California Code of Civil Procedure</i> Section 425.16	6, <i>passim</i>
<i>California Code of Civil Procedure</i> Section 425.17	28
<i>California Rules of Court</i> No. 8.204	44
<i>California Rules of Court</i> No. 8.1115	38, 41

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

STANLEY WILSON,
Plaintiff and Appellant,

vs.

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

Defendants, Respondents and Petitioners.

APPELLANT’S ANSWERING BRIEF ON THE MERITS

I. RESPONSE TO CNN’S STATED ISSUES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Three general categories of cases have been held to concern an issue of public interest or a public issue: '(1) The subject of the statement or activity precipitating the claim was a person or entity in the public eye. [Citation.] [¶] (2) The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants. [Citation.] [¶] (3) The statement or activity precipitating the claim involved a topic of widespread public interest.' (*Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 33 ("Commonwealth").) 'As to the latter, it is not enough that the statement refer to a subject of widespread public interest; the statement must in some manner itself contribute to the public debate.' (*Wilbanks [v. Wolk]* (2004) 121 Cal.App.4th [883,] 898.)"

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

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

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

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

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

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

II. OVERVIEW AND SUMMARY OF WILSON OPINION

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

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

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

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

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

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

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

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

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

rise to his or her asserted liability--and whether that activity constitutes protected speech or petitioning.” (*Ibid.* quoting *Navelier*, at p. 92.) “[I]n ruling on an anti-SLAPP motion, courts should *consider the elements of the challenged claim and what actions by the defendant supply those elements* and consequently form the basis for liability.” [Emphasis added.] (*Park* at p. 1063.)

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

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

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

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

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

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

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

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

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

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

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

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

III. FACTUAL OVERVIEW

A. Wilson's Employment at CNN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. CNN'S Plagiarism Accusation Is Pure Pretext.

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

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

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

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

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

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

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

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

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

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

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

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

C. CNN Incorrectly Asserts that Wilson Admitted that “the Plagiarism Was Solely His ‘Fault.’”

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

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