**Hearing Date:** 11/05/2020
**Department:** 58

**Judge John P. Doyle**

**Department 58**

Hearing Date:             November 5, 2020

Case Name:                 Sanchez v. Bezos, et al.

Case No.:                    20STCV04212

Matter:                        Anti-SLAPP Motion

Moving Party:             Defendants Jeffrey Preston Bezos and Gavin de Becker

Responding Party:       Plaintiff Michael Sanchez

**Tentative Ruling:      The Anti-SLAPP Motion is granted.**

On January 31, 2020, Plaintiff Michael Sanchez filed the operative Complaint against Defendants Jeffrey Preston Bezos and Gavin de Becker for (1) defamation and (2) intentional infliction of emotional distress.  Plaintiff alleges that Defendants falsely published statements that (a) Plaintiff leaked nude photos of Defendant Bezos to the press; (b) he did so as part of a conservative conspiracy with, for example, Roger Stone, Carter Page, and the government of Saudi Arabia to injure Defendant Bezos; (c) Plaintiff stole and sold pictures of his sister, Lauren Sanchez; and (d) Plaintiff shopped around information about an extramarital affair of Mark Bezos, Defendant Jeffrey Bezos’ brother, to the media.

On February 3, 2020, Defendants filed an anti-SLAPP motion seeking to strike the entirety of the Complaint.

**(a)  Legal Standard**

Code of Civil Procedure section 425.16 sets forth the procedure governing anti-SLAPP motions.  In pertinent part, the statute states, “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.”  (Code Civ. Proc. § 425.16(b)(1).)  The purpose of the statute is to identify and dispose of lawsuits brought to chill the valid exercise of a litigant’s constitutional right of petition or free speech.  (Code Civ. Proc. § 425.16(a); *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*(2004) 122 Cal.App.4th 1049, 1055-1056.)

Courts employ a two-step process to evaluate anti-SLAPP motions.  (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.)  To invoke the protections of the statute, the defendant must first show that the challenged lawsuit arises from protected activity, such as an act in furtherance of the right of petition or free speech.  (*Ibid*.)  From this fact, courts “ ‘presume the purpose of the action was to chill the defendant’s exercise of First Amendment rights.  It is then up to the plaintiff to rebut the presumption by showing a reasonable probability of success on the merits.’ ”  (*Ibid*.)  In determining whether the plaintiff has carried this burden, the trial court considers “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.”  (Code Civ. Proc. § 425.16(b)(2); see *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291 (“*Soukup*”).)

**(b)  Protected Activity**

To meet their burden for the first prong of the anti-SLAPP analysis, Defendants must demonstrate that Plaintiff’s claims arise from protected activity.  That is, it must be that “defendant’s conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) . . . ‘the act underlying the plaintiff’s cause’ or ‘the at which forms the basis for the plaintiff’s cause of action’ must itself have been an act in furtherance of the right of petition or free speech.’ ”  (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 63 (internal citations omitted).)

An “ ‘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.”  (Code Civ. Proc. § 425.16(e).)

Defendants argue Plaintiff’s causes of action arise from protected activity under Code Civ. Proc. § 425.16(e)(3)-(e)(4) to the extent the subject statements relate to an issue of public interest.

“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.”  (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479.)  A statement concerns a “public issue” where it either “[(1)] concerned a person or entity in the public eye [Citations], [(2)] conduct that could directly affect a large number of people beyond the direct participants [Citations] or [(3)] a topic of widespread, public interest.”  (*Rivero v. Am. Fed'n of State, Cty., & Mun. Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924.)

For the purposes of Code Civ. Proc. § 425.16(e)(3), “[a] ‘public forum’ is traditionally defined as a place that is open to the public where information is freely exchanged.”  (*Damon*, supra, 85 Cal.App.4th at p. 475.)

With respect to Code Civ. Proc. § 425.16(e)(4), our Supreme Court has stated,

The inquiry under the catchall provision instead 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.

But the catchall provision demands “some degree of closeness” between the challenged statements and the asserted public interest. (*Weinberg, supra,* 110 Cal.App.4th at p. 1132, 2 Cal.Rptr.3d 385.) . . . “[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, supra,* 121 Cal.App.4th at p. 898, 17 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].)

What it means to “contribute to the public debate” (*Wilbanks, supra,* 121 Cal.App.4th at p. 898, 17 Cal.Rptr.3d 497) will perhaps differ based on the state of public discourse at a given time, and the topic of contention. But ultimately, our inquiry does not turn on a normative evaluation of the substance of the speech. We are not concerned with the social utility of the speech at issue, or the degree to which it propelled the conversation in any particular direction; rather, 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. (See *All One, supra,* 183 Cal.App.4th at pp. 1203–1204, 107 Cal.Rptr.3d 861 [finding the “OASIS Organic seal” did not “contribute to a broader debate on the meaning of the term ‘organic’ ”]; *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 375, 127 Cal.Rptr.3d 903 [finding the defendant's conduct “directly related” to an issue of public interest because it “served th[e] interests” of preventing child abuse and protecting children].)

(*FilmOn.com Inc. v. DoubleVerify Inc.*(2019) 7 Cal.5th 133, 149–51.)

Plaintiff’s Opposition is silent on the issue of whether his causes of action arise from protected activity.  Accordingly, this issue is conceded.  (See *DuPont Merck Pharmaceutical Co. v. Superior Court*(2000) 78 Cal.App.4th 562, 566.)

In any case, there is evidence the subject statements relate to an issue of public interest as there was widespread media coverage relating to Jeffrey Bezos’ extramarital affair and the source which leaked the affair to the media.  (Johnson Decl., Exhibits 1-29.)  Plaintiff’s Complaint indicates the subject statements “spread like wildfire.”  (Compl. ¶ 25.)  Simply put, these statements pertain to “issue[s] in which the public is interested.”  (*Nygard, Inc.*, supra,159 Cal.App.4th at p. 1042 (italicization removed.)  Indeed, “the issue need not be ‘significant’ to be protected by the anti-SLAPP statute . . . . [such that] ‘tabloid’ issues [have been] held to be protected by the anti-SLAPP statute.”  (*Ibid.*)

Further, the subject statements constitute protected activity under Code Civ. Proc. § 425.16(e)(3) to the extent they were published in news or tabloid articles.  (See, e.g., Johnson Decl., Exhibit 7 [“It was claimed that explicit selfies and texts between Bezos and [Lauren] Sanchez were leaked by her brother.”]; *Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1038 [accessible magazines and websites constitute public forum].)

Alternatively, to the extent the subject statements were conveyed to news reporters (Sanchez Decl. ¶¶ 37, 39-40, 42-43, 45-46), the statements are protected under Code Civ. Proc. § 425.16(e)(4) as they furthered the discourse as to the source who provided explicit photos (and other personal information) of Defendant Bezos to the media. (See *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736  [“[S]ubdivision (e)(4) applies to private communications concerning issues of public interest.”].)

In sum, Defendants have met their burden under the first prong of the anti-SLAPP analysis.

**(c) Minimal Merit**

On the second component of the analysis, courts employ a “summary-judgment-like” procedure, “accepting as true the evidence favorable to the plaintiff and evaluating the defendant’s evidence only to determine whether the defendant has defeated the plaintiff’s evidence as a matter of law.”  (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 444.)  In other words, the Court does not assess credibility, and the plaintiff is not required to meet the preponderance of the evidence standard.  The Court accepts as true the evidence favorable to the plaintiff, who need only establish that his or her claim has “minimal merit” to avoid being stricken as a SLAPP.  (*Soukup*, supra, 39 Cal.4th at p. 291.)

The tort of defamation consists of (1) a publication that is (2) false, (3) defamatory, and (4) unprivileged, and that (5) has a natural tendency to injure or that causes special damage.  (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.)

Here, there is no admissible evidence that Defendants published the subject statements.  Plaintiff’s declaration merely discusses what he was told by reporters, which is inadmissible hearsay.  (Evid. Code § 1200.)

In his supplemental briefing, Plaintiff argues that the statements within his declaration are not hearsay because they are not being used to prove the truth of the matter asserted.  Plaintiff cites *Russell v. Geis* (1967) 251 Cal.App.2d 560, 571, in which it was said “There is a well-established exception or departure from the hearsay rule applying to cases in which the very fact in controversy is *whether certain things were said or done* and not as to whether these things were true or false, and in these cases the words or acts are admissible not as hearsay but as original evidence.”

Plaintiff’s arguments, however, fail to distinguish between the use of hearsay to demonstrate that words were uttered, and the use of hearsay to *identify* the publisher.  The former does not relate to the truth of the statements while the latter does.  A case cited by Plaintiff confirms the distinction: “plaintiff seeks to testify that one person (‘B’) told the plaintiff that another person (‘A’) made a statement defaming plaintiff. Plaintiff offers this testimony in an effort to show that ‘A’ did, in fact, make the defamatory statement. This is inadmissible hearsay . . . .”  (*GMO Rice v. Hilton Hotel Corp.* (D.D.C. Sept. 1, 1987) 1987 WL 16851, at \*2.)

Indeed, “[e]vidence must be presented that the defendant or anyone associated with the defendant made or authorized the publication.  Evidence that others told the plaintiff that they heard the defamatory statement is insufficient, absent evidence as to how or from whom they heard it.  *The plaintiff's testimony that third parties told the plaintiff that the defendant made certain statements is generally insufficient, because it is hearsay*.”  (Coltoff et al., 53 C.J.S. Libel and Slander, Injurious Falsehood § 264 (emphasis added).)

Here, Plaintiff’s statements about what he was told by reporters (Sanchez Decl. ¶¶ 37, 39-40, 42-43, 45-46), constitute hearsay because they relate to out-of-court statements that are being used to prove the truth of the matter asserted—specifically, that *Defendants*published the subject statements.  Plaintiff has not indicated any hearsay exception for such statements.

Plaintiff—citing *Sweetwater Union High Sch. Dist. v. Gilbane Bldg. Co.* (2019) 6 Cal.5th 931—argues the hearsay rule does not apply because the statements within his declaration could be admissible at a later time.

In *Sweetwater*, our Supreme Court considered “what kind of evidence a court may consider in ruling on a pretrial anti-SLAPP motion in determining a plaintiff’s probability of success.”  (*Id.* at p. 937.)  The court held that testimony under oath from a grand jury proceeding in another case was “at least as reliable as an affidavit or declaration.”  (*Id.* at pp. 941, 943.)  The court noted that “[a]lthough affidavits and declarations constitute hearsay when offered for the truth of their content, section 425.16, subdivision (b)(2) permits their consideration in ruling on a pretrial anti-SLAPP motion.”  (*Id*. at p. 942.)  Because of similar indicia of reliability, the court concluded that the grand jury transcript could be considered, despite the defendants’ hearsay objection.  (*Id.* at pp. 942-943.)

*Sweetwater* does not hold that the hearsay rule does not apply to all content found within a declaration filed in relation to an anti-SLAPP motion.  Rather, our Supreme Court stated the obvious: primary statements by a declarant within a declaration/affidavit are not subject to the hearsay rule and can be considered for the purposes of an anti-SLAPP motion.  That is, a declaration itself is not hearsay simply because it is an out-of-court statement. The court stated such to conclude that grand jury testimony made under oath is similar in nature to a declaration which, by statute, can be considered by the court.

Contrary to Plaintiff’s contention, hearsay within a declaration is inadmissible.  Indeed, “declarations . . . that are . . . hearsay . . . are to be disregarded.”  (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26.)

In sum, Plaintiff has not shown admissible evidence of publication by the Defendants which is an element of a prima facie case of defamation.  Accordingly, his defamation claim—as well as his derivative claim for intentional infliction of emotional distress—are stricken.  The Anti-SLAPP Motion is granted.