To be Argued by:
CHRISTINA NEITZEY
(*Time Requested: 15 Minutes*)

Supreme Court of the State of New York
Appellate Division – Fourth Department

Docket No.:
CA 23-00819

MICHAEL HAYES,

Plaintiff-Respondent-Appellant,

- against -

ALEC RICH, NOAH RICH, RHODA RICH, JUNEXA, LLC.,
FRED TURNER, CHAD DOUGLAS and KIRSTEN MILLIRON,

Defendants-Appellants-Respondents.

BRIEF FOR DEFENDANTS-APPELLANTS-RESPONDENTS

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QUESTIONS PRESENTED

1. Does New York's Anti-SLAPP Law apply to a libel action arising out of Facebook posts warning a music community about a colleague's history of sexual misconduct? The lower court incorrectly held that it does not.
2. Does a libel claim subject to New York's Anti-SLAPP Law lack a substantial basis in law when the plaintiff fails to set forth the particular words complained of as required by CPLR Section 3016(a)? The lower court did not directly address this question.
3. Does a libel claim subject to New York's Anti-SLAPP Law separately lack a substantial basis in law where a plaintiff fails to establish that any defendant made a substantially false statement of fact about the plaintiff with actual malice? The lower court did not address this question.

PRELIMINARY STATEMENT

New York, through 2020 amendments to its Anti-SLAPP Law,[1] made an extraordinary promise to individuals in the state. The promise was this: if you speak

[1] "SLAPP" is an acronym for "Strategic Lawsuits Against Public Participation." New York's Anti-SLAPP Law requires a trial court to dismiss a SLAPP action unless a SLAPP plaintiff can show that its "cause of action has a substantial basis in law." N.Y. C.P.L.R. § 3211(g). Prior to the 2020 amendments, the Anti-SLAPP Law applied only where the speech underlying the suit was aimed at an applicant "for a permit, zoning change, lease, license, or other similar document from a government body," *see Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 28 (1st Dep't 2022), and a costs-and-fees award to defendants was discretionary upon dismissal, *see National Fuel Gas Distrib. Corp. v. PUSH Buffalo*, 104 A.D.3d 1307, 1309 (4th Dep't 2013). Now, in order to provide the "utmost protection for the free exercise o[f] speech," *Aristocrat*, 206 A.D.3d at 29 (quoting the Sponsor's Memorandum accompanying the amendments), the law applies to suits based on all speech in public places and fora except that on "purely private" matters

in public about anything other than a "purely private" matter, you shall not have to bear the cost of defending against a defamation suit for that speech unless the plaintiff's claim is substantial enough to reach a jury. No longer, says New York, may plaintiffs use our courts to silence individuals with the threat of meritless, costly defamation suits.

Defendant-Appellants-Respondents[2] Alec Rich, Noah Rich, Rhoda Rich, Fred Turner, Chad Douglas, Kirsten Milliron, and Junexa LLC ("Defendants") should have been able to take advantage of this promise, but Supreme Court failed to apply the Anti-SLAPP Law. The communications underlying this defamation action are a series of Defendants' Facebook posts warning their colleagues in the Central New York independent music scene about Plaintiff-Respondent-Appellant Michael Hayes ("Plaintiff"), another member of the Central New York music scene who Defendants understood to have engaged in sexually inappropriate behavior at music festivals and other settings. Yet, Supreme Court held that these communications were of a purely private nature and thus outside the protections of

(as well as any other lawful conduct in furtherance of the exercise of free speech in connection with issues of public interest), and costs-and-fees awards are mandatory upon dismissal. N.Y. Civ. Rights Law §§ 76-a, 70-a.

[2] Plaintiff Michael Hayes filed a notice of appeal on May 4, 2023. (*See* R2–4.) Defendants filed a notice of cross-appeal on May 10, 2023. (*See* R13–14.) Defendants are the first party to perfect and are therefore "Defendants-Appellants-Respondents." See 22 NYCRR § 1250.9(f)(1)(iii). Although Hayes did not perfect his appeal and has indicated to Defendants that he does not intend to do so, Hayes has not yet withdrawn his appeal; Defendants understand that they are to utilize the cross-appeal party labels until and unless Hayes' appeal is withdrawn.

the Anti-SLAPP Law—thereby sticking Defendants with the bill for their defense of a suit that the court dismissed as legally insufficient. New York law mandates against this result. This Court should reverse Supreme Court's finding that the Anti-SLAPP Law does not apply to this action, and, under the Anti-SLAPP Law, award Defendants their costs and attorneys' fees incurred at the lower court and appellate levels.

Several bases independently require this outcome:

First, Supreme Court erred when it found that the challenged statements fall within the realm of "mere gossip and prurient interest" and that the Anti-SLAPP Law therefore did not apply. This Court should reverse this finding because the challenged statements are warnings to fellow members of Defendants' music community about a predatory colleague—statements which clearly constitute communications made "in connection with an issue of public interest," and therefore fall under the Anti-SLAPP Law's protections. N.Y. Civ. Rights Law § 76-a(1)(a).

Second, because it failed to apply the Anti-SLAPP Law, Supreme Court did not explicitly reach the question of whether Hayes' suit had a "substantial basis in law." But Supreme Court correctly dismissed Hayes' suit independent of the Anti-SLAPP Law because Hayes failed to set forth in his complaint "the particular words complained of" as required by CPLR Section 3016(a). Because the Anti-SLAPP Law's "substantial basis" standard is more stringent than the typical motion to

dismiss standard, Hayes' complaint necessarily lacks a substantial basis in law and Defendants are entitled to costs and attorney's fees.

Third, the lower court could have independently dismissed Hayes' suit for lack of a "substantial basis in law" because Hayes failed to plead or support by affidavit that any Defendant made a false statement of fact about Hayes with actual malice.

Accordingly, this Court should reverse Supreme Court and hold that the Anti-SLAPP Law applies to this action, that the action lacks the substantial basis in law the Anti-SLAPP Law requires to survive a motion to dismiss, and that Defendants are therefore entitled to mandatory costs and attorney's fees under the Anti-SLAPP Law.

STATEMENT OF FACTS

Plaintiff Michael Hayes, a musician, filed the suit underlying this appeal alleging that Defendants defamed him via several Facebook posts and reposts made between August 16 and September 5, 2022 ("Challenged Statements"). (*See* R27–32.) Hayes claims that the Challenged Statements damaged his reputation, causing him to lose band engagements and business opportunities, and he seeks $400,000 in damages. (R32.)

Defendants are affiliated with the Central New York metalcore music scene. (*See* R27–28, 31, ¶¶ 2–4, 21.) Kirsten Milliron is a freelance photographer for local

bands. (*See* R31, ¶ 21.) Defendants Alec and Noah Rich were members of the Central New York-based band "Junexa" at the relevant time (Junexa LLC is also a named Defendant). (*See* R27, ¶ 3.) Defendant Rhoda Rich is married to Noah Rich. Defendants Chad Douglas and Fred Turner are currently members of the band "A Greater Danger"; Douglas was a member of the band "Perspectives" when the Challenged Statements were made. (*See* R28, ¶ 4.) Turner was previously a member of Hayes' band "Fight from Within"; Turner quit the band because he no longer wished to be associated with Hayes due to the allegations against him. (*See* R64, ¶ 6; R27, ¶ 1.)

Hayes alleges that Defendants defamed him through a series of Facebook posts, re-posts, and comments in which Defendants shared their understanding that Hayes had sexually harassed women and engaged in other predatory behavior. (*See* R27–32.) Hayes' complaint does not quote any of the Challenged Statements, nor did he file copies of the allegedly defamatory Facebook posts. Rather, the complaint relies exclusively on Hayes' characterizations and paraphrasing of what Defendants allegedly said about him. (*See id.*; R12.)

The Challenged Statements

Alec Rich: Hayes alleges that in August 2022, Defendant Alec Rich stated falsely via Facebook and "at various band performances" that Hayes – according to Hayes' paraphrasing – "has a long history of inappropriate behavior, . . . [and] makes

fake profiles to harass people." (R28, 30, ¶¶ 6, 14.) Hayes also claims that in August and September of 2022, Alec Rich stated falsely via Facebook that (again, according to Hayes' paraphrasing) Hayes "was prohibited from performing at 3 music festivals for threatening women[,] . . . that [Hayes] hacked Noah Rich's Facebook account, and "that [Hayes] has been accused of sexually assaulting females." (R28–30, ¶¶ 7–8, 14.)

Noah Rich: Hayes similarly alleges that in August and September 2022, Defendant Noah Rich stated falsely via Facebook that (in Hayes' paraphrasing) "there were sexual assault and harassment allegations against [Hayes]," "that [Hayes] has manipulated others into bullying [Noah Rich]," and that "[Hayes] was kicked off Rust Fest for threatening a woman." (R29–30, ¶¶ 9–10, 14.) Hayes alleges that Noah Rich also stated falsely on Facebook that Hayes was (again, quoting Hayes) a "dangerous predator" and a "parasite" with "sexual assault allegations pending against him," and that Hayes "had sexually assaulted multiple women." (R29, ¶¶ 10–12.)

Rhoda Rich: Hayes similarly alleges that Defendant Rhoda Rich, in August 2022, stated falsely via Facebook that Hayes is (in Hayes' paraphrasing) "a sexual predator and [Rhoda Rich] was going to get [Hayes] and his band blacklisted at venues his band is scheduled to perform at," and that Hayes' "victims are everywhere." (R29–30, ¶¶ 13–14.)

Chad Douglas: Hayes alleges that on August 21, 2022, Chad Douglas defamed him by allegedly "republish[ing] on Facebook the . . . false statements" made by Defendants Alec, Noah, and Rhoda Rich. (R30, ¶ 16–17.)

Fred Turner: Defendant Fred Turner was formerly a member of Hayes' band, "Fight from Within." (*See* R27, ¶ 1; R30, ¶ 18; R64, ¶ 3.) Hayes alleges that, on August 16, 2022, Turner falsely stated via Facebook that he (again, quoting Hayes' paraphrasing from the complaint, since Hayes does not quote the Challenged Statements themselves) "quit [Hayes'] band because he could not be associated with [Hayes] because [Hayes] was accused of sexual assault and harassment." (R30, ¶ 18.) Hayes alleges this statement was defamatory because Turner "had no basis for making such a statement other than information he received from the other defendants in this action and he never asked [Hayes] if this information was true[,] which it was not." (R30, ¶ 19.)

Kirsten Milliron: Defendant Kirsten Milliron is a freelance photographer for local bands. (*See* R31, ¶ 21.) Hayes alleges that, in August 2022, Milliron stated falsely via Facebook that (in Hayes' paraphrasing) "[Hayes] sexually harassed [Milliron's] friends, aligned himself with sexual predators, groped a person at a show[,] and has a 'handsy' reputation," and that Milliron "made similar statements thereafter." (R31, ¶¶ 22–23.)

Defendants' and Third Parties' Affidavits Addressing the Challenged Statements

Defendants each filed an affidavit in support of their motion to dismiss Hayes' complaint affirming that, based on their personal experience with Hayes and/or the accounts of others whom they believed to be credible sources, they had reason to believe Hayes had engaged in the sexual misconduct and other predatory behavior described in the Challenge Statements attributed to them. (*See* R58–59, ¶¶ 3–4, 7, 9; R60–61, ¶¶ 2–4, 9, 12–13; R62–63, ¶ 3–6, 8, 10, 12–14; R64–65, ¶¶ 2–5, 7; R66–67 ¶¶ 4–7, 8; R68, ¶¶ 1–4.) Further, Defendants Alec Rich, Noah Rich and Rhoda Rich stated in their affidavits that Hayes' complaint mischaracterizes or inaccurately represents certain statements they made, or asserts they made statements they do not remember making. (*See* R58–59, ¶¶ 5–6, 7–9; R61, ¶¶ 10–14; R63, ¶¶ 9–11.)

Four non-parties to this litigation, Contessa Cavaliere, Joel Bertin, Briana Stolper, and Andrea Saunders, also filed affidavits in support of Defendants' motion to dismiss.[3] Cavaliere swore that she "was touched inappropriately by Michael Hayes in a sexual way without [her] consent" "[o]n more than one occasion" in early 2022, and that she considers these incidents "to be sexual assault." (R70, ¶¶ 2–3.) Cavaliere stated that she "confided in [her] friends [Defendants] Kirsten Milliron and Fred Turner" about these incidents shortly after they took place. (R70, ¶ 4.)

[3] Cavaliere and Bertin filed affidavits with Defendants' opening motion papers. (*See* R70–73.) Sanders and Stolper filed affidavits with Defendants' reply in further support of their motion to dismiss. (*See* R95–99.)

Bertin, like Defendant Fred Turner, was formerly a member of Hayes' band, "Fight from Within." (R71, ¶¶ 2–3; *see also* R30, ¶ 18; R64, ¶ 3.) Bertin stated in his affidavit that he had "personally witnessed [Hayes] engaging in behavior that ha[d] led [Bertin] to view [Hayes] as sexually inappropriate." (R71, ¶ 6.) Specifically, for example, Bertin stated that Hayes had "touched [Bertin's] genitals on the set of a music video," which made Bertin feel "violated and uncomfortable," and that Bertin had "witnessed [Hayes] calling [Bertin's] wife a 'cuck.'" (R72, ¶¶ 7–9.) Bertin also stated that he had knowledge of Hayes "creat[ing] alternative or 'burner' accounts to continue his social media activities" after having his other accounts restricted or banned for misconduct, and that Hayes "used manipulative and abusive behavior, including threats of self-harm" against Bertin and "many other people." (R72, ¶¶ 10, 14–15.)

In opposition to Defendants' motion to dismiss, Hayes stated that he had "never sexually assaulted anyone and in particular, Contessa Cavaliere and Joel Bertin." (R79, ¶ 3.) Hayes also attached what he claimed to be a post from Cavaliere's Facebook page to this affidavit. (R80, ¶ 5.) This attachment consists of a black box with white text, devoid of any logos, usernames, or other indications that the document indeed represents an unaltered Facebook post by Cavaliere. (*See* R83.) The attachment reads, in relevant part:

> So, Mikey was ultra handsy with me at the last show we went to together. He did not assault me, but he went out of his way to have his

> hands on me. This is something I do not bring up because it is immediately construed as 'Mikey sexually assaulted Tessa' but instead, he violated all of my well drawn out boundaries and then blamed it on alcohol and jokes
>
> But that is the behavior that I mentioned about ignoring peoples safety and boundaries. He dusts it away as a simple mistake and never learns from it

(R83.) Hayes claims that this context-less document conflicts with Cavaliere's statement in her sworn affidavit that she "was touched inappropriately by Michael Hayes in a sexual way without [her] consent" "on more than one occasion" in early 2022, and that she considers these incidents "to be sexual assault." (R84; *see also* R70, ¶¶ 2–3.) As to Bertin's sworn affidavit, Hayes made only a blanket claim that Bertin's affidavit "contains incomplete details and circumstances." (R84–85.)

Andrea Saunders, another of Hayes' music industry contacts, filed an affidavit stating that, "[f]rom the first time [she] interacted with [Hayes] he made [her] feel uncomfortable because he appeared to be looking down [her] shirt," then "suddenly made a loud and public statement referencing the size of the breasts of the women in the room." (R97, ¶¶ 3–8.) Saunders stated that she told Defendant Fred Turner about this incident after Turner asked her why she had blocked Hayes on social media. (R98, ¶¶ 9–11.) Another individual who knows Hayes from the music industry, Briana Stolper, filed an affidavit stating that "Hayes' behavior has been the subject of considerable public concern within the Central New York music

industry," and that she "find[s] [Hayes] to be generally inappropriate and unprofessional." (R95, ¶¶ 1–2, 8.)

PROCEDURAL HISTORY

On November 15, 2022, Hayes filed a summons and complaint against Defendants for four counts of defamation, seeking $400,000 in damages. (*See* R26–32.) On December 15, 2022, Defendants moved to dismiss under CPLR Section 3211(a)(7) (New York's typical motion to dismiss vehicle), as well as CPLR Section 3211(g), Civil Rights Law Section 70-a, and Civil Rights Law Section 76-a (collectively, the "Anti-SLAPP Law"). (*See* R33–34, R40.) Defendants asserted that the "Complaint failed to state a cause of action upon grounds which relief can be granted, is an action involving public participation, and has been commenced without . . . substantial basis in law or fact." (*See* R33.) Defendants argued that all of the Challenged Statements, to the extent they could be discerned from Hayes' complaint, are either "true, hyperbolic . . . [or mere] opinion." (R44.) Defendants also argued that Hayes failed to establish that they made any false statement of fact with actual malice, which the Anti-SLAPP Law requires. (*See* R44–45.) Defendants then argued they were entitled to a mandatory award of attorney's fees pursuant to the Anti-SLAPP Law. (R46.)

On April 11, 2023, Judge Antonacci of Supreme Court, Onondaga County, granted Defendant's motion in part. (*See* R6–12.) Supreme Court dismissed Hayes'

suit pursuant to CPLR Section 3211(a)(7), but failed to apply the Anti-SLAPP Law and award attorney's fees. (*See* R12) Judge Antonacci granted Defendants' motion pursuant to CPLR Section 3211(a)(7) because Hayes failed to conform with CPLR Section 3016(a), which "requires that in a defamation action, 'the particular words complained of . . . be set forth in the complaint.'" (R11 (quoting *Dillon v. City of New York*, 261 A.D.2d 34, 38 (1st Dep't 1999).) Because the Hayes' complaint failed to set forth the "actual words" complained of, and instead only paraphrased them, the court "dismiss[ed] the claim for failure to state a cause of action." (R12.)

Although the lower court granted Defendants' motion in part by dismissing the suit under the typical motion to dismiss vehicle, Supreme Court denied Defendants' motion to the extent that it sought dismissal and attorney's fees under the Anti-SLAPP Law. (*See id.*) The court held that the Challenged Statements were not covered by the Anti-SLAPP Law. (*See* R10–11.) Supreme Court acknowledged that application of the Anti-SLAPP Law hinges on whether Defendants' statements were made in "connection with an issue of public interest," and that the term "public interest" must be "construed broadly" to mean "any subject other than a purely private matter." (R10 (first quoting N.Y. Civ. Rights Law § 76-a(1)(a)(1); then quoting N.Y. Civ. Rights Law § 76-a(1)(d)).) Supreme Court also acknowledged that "sexual impropriety and power dynamics in the music industry . . . [are]

indisputably an issue of public interest." (*Id.* (quoting *Coleman v. Grand*, 523 F. Supp. 3d 244, 259 (E.D.N.Y 2021)) (second alteration in original).)

The court went on to state that "[s]tatements falling 'into the realm of mere gossip and prurient interest,' are *not* matters of public concern" and therefore not subject to Anti-SLAPP Law protections. (R11 (quoting *Aristocrat Plastic Surgery, P.C. v Silva*, 206 A.D.3d 26, 30 (1st Dep't 2022)) (emphasis added).) The lower court then summarily characterized the Challenged Statements as pure "gossip," and therefore not connected to an issue of public interest and not subject to the protections of the Anti-SLAPP Law. (*Id.*) The lower court explained that this finding was in part due to Noah and Alec Rich's use of the word "gossip" to describe information they heard about Hayes being kicked off a music festival. (*See id.* (quoting R61, ¶ 14); *see also* R59, ¶ 7.)

On May 3, 2023, Hayes filed a Notice of Appeal challenging the lower court's dismissal of the complaint under CPLR Section 3016(a) for failing to allege the "particular words complained of." (*See* R2–5.) Hayes did not perfect his appeal. On May 10, 2023, Defendants filed a Notice of Cross Appeal of Supreme Court's failure to apply the Anti-SLAPP Law and award Defendants attorney's fees and discretionary punitive damages. (*See* R13–14.)

ARGUMENT

Under the Anti-SLAPP Law, Defendants to a claim "involving public petition and participation" are entitled to dismissal and mandatory attorney's fees unless the plaintiff demonstrates that the claim "has a substantial basis in law." N.Y. C.P.L.R. § 3211(g)(1); N.Y. Civ. Rights Law § 70-a(1).[4] Unlike in typical motions to dismiss under CPLR Section 3211, an Anti-SLAPP motion to dismiss requires the reviewing court to consider, in addition to the pleadings, affidavits from all parties presenting the relevant facts. *See* N.Y. C.P.L.R. § 3211(g)(2).

The Appellate Division reviews questions of law and fact. N.Y. C.P.L.R. § 5501(c). And New York appellate courts review questions of law de novo. *See Weingarten v Board of Trustees of N.Y. City Teachers' Retirement Sys.*, 98 N.Y.2d 575, 580 (2002); *S.H. v. Diocese of Brooklyn*, 205 A.D.3d 180, 185 (2d Dep't 2022).

Here, Supreme Court erred when it held that Hayes' defamation claims were not actions "involving public petition and participation" and that the Anti-SLAPP Law therefore did not apply. (*See* R10–11 (quoting N.Y. Civ. Rights Law § 76-a(1)(a)).) This Court should reverse this aspect of the lower court's ruling because the statements at issue are warnings to colleagues about sexual misconduct and cyber-harassment (and nonactionable name-calling incidental thereto), and were

[4] A plaintiff may also avoid dismissal if the claim "is supported by a substantial argument for an extension, modification or reversal of existing law," N.Y. C.P.L.R. § 3211(g)(1), but Hayes failed to argue for any extension, modification, or reversal of existing law below, so that provision of the Anti-SLAPP Law is irrelevant on appeal.

thus "made in connection with an issue of public interest." Additionally, Supreme Court's dismissal of Hayes' claim under CPLR Section 3016(a) demonstrates that the suit necessarily lacked a "substantial basis in law," because "substantial basis" is a higher burden for plaintiffs than the typical motion to dismiss burden under which the lower court already dismissed Hayes' suit.

Hayes' suit also independently lacks a substantial basis in law because Hayes fails to establish the basic elements of a defamation claim. That is, Hayes fails to allege facts showing that Defendants made any substantially false statement of fact with actual malice. First, embedded within many of the Challenged Statements are expressions of opinion and other statements not provable as true or false. As for statements that are factual assertions, Hayes fails to allege facts showing that any such statements are substantially false. He also fails to allege facts showing actual malice: that Defendants either knew of or recklessly disregarded the falsity of any factual statements (which Hayes would have to show by clear and convincing evidence at trial). Accordingly, Hayes' suit lacks a substantial basis in law and Defendants are consequently entitled to mandatory costs and attorney's fees under the Anti-SLAPP Law.

POINT I: Anti-SLAPP Law protections apply because Defendants made the Challenged Statements in a public forum and on matters of public interest.

Supreme Court held that the Challenged Statements were not made "in connection with an issue of public interest." (R11 (quoting N.Y. Civ. Rights Law § 76-a(1)(a)(1)).) This was incorrect. The Challenged Statements were made in connection with alleged sexual misconduct by a member of the Central New York independent music community—clearly a matter of public interest.

The Anti-SLAPP Law applies to any "action involving public petition and participation." *See* N.Y. Civ. Rights Law § 76-a(2). "An 'action involving public petition and participation' is a claim based upon," among others, "any communication in a place open to the public or a public forum in connection with an issue of public interest." *Id.* § 76-a(1)(a)(1). The statute further commands that "'[p]ublic interest' shall be construed broadly, and shall mean any subject other than a purely private matter." *Id.* § 76-a(1)(d); *see also Gillespie v. Kling*, 217 A.D.3d 566, 567 (1st Dep't 2023) ("'public interest' is construed broadly as 'any subject other than a purely private matter'") (quoting N.Y. Civ. Rights Law § 76-a(1)(d)).

Here, the Challenged Statements fall squarely into the Anti-SLAPP Law's "broad[]" definition of statements "connect[ed] to an issue of public interest." N.Y. Civ. Rights Law § 76-a(1)(d); *id.* § 76-a(1)(a)(1). Indeed, the Challenged Statements

were made (1) in a "public forum" and (2) "in connection with [] issue[s] of public interest." N.Y. Civ. Rights Law § 76-a(1)(a)(1))[5].

First, the Challenged Statements are "communication[s] in a public forum. *Id.* § 76-a(1)(a)(1). All but one of the Challenged Statements were made on social media.[6] (*See* R28–31, ¶¶ 6–13, 16, 18, 22.) The Internet – "social media in particular" – is a quintessential public forum. *See Packingham v. North Carolina*, 582 U.S. 98, 104, 107 (2017). Statements made on social media sites, including in Facebook groups without "meaningful barriers to entry," are both open to the public, and made in a public forum. *See Margolies v. Rudolph*, 2022 WL 2062460 at *7 (E.D.N.Y. 2022) (holding private Facebook group was "a public forum" for Anti-SLAPP purposes due to its "vast membership," lack of "meaningful barriers to entry," and the ability of members to "speak online about any subject openly"); *Balliet v. Kottamasu*, 76 Misc. 3d 906, 917 (Civ. Ct., Kings Cnty., Aug. 9, 2022), *aff'd*, 81 Misc. 3d 132(A) (App. Term 2023) (stating that language of Section 76-a "evidenc[es] inclusion of the Fifth Estate in the ubiquitous social media platforms");

[5] Alternatively, the action "is a claim based upon . . . any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest." N.Y. Civ. Rights Law § 76-a(1)(a)(2).

[6] One of the Challenged Statements was allegedly "reiterated . . . at various band performances," which also constitute public fora, as the complaint does not allege any "meaningful barriers to entry" into these concerts. (R28, ¶ 6; *see Margolies v. Rudolph*, 2022 WL 2062460 at *7 (E.D.N.Y. 2022).) In any event, those statements would also qualify for Anti-SLAPP Law protections because any claims arising from such statements would be "based upon . . . any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest." N.Y. Civ. Rights Law § 76-a(1)(a)(2).

Great Wall Med. P.C. v. Levine, 74 Misc. 3d 1224(A) (Sup. Ct., N.Y. Cnty., March 8, 2022) (finding that statements on public websites, such as Facebook, "were posted in a public forum" under the Anti-SLAPP Law).

Second, all of the Challenged Statements were made "in connection with an issue of public interest," not "purely private matter[s]." N.Y. Civ. Rights Law § 76-a(1)(a)(1); *id.* § 76-a(1)(d)). All of the Challenged Statements concern allegations that Hayes engaged in sexual misconduct or cyber-harassment. (R28–31, ¶¶ 6–13, 16, 18, 22.)

Public statements regarding allegations of sexual misconduct are statements made in connection with issues of public interest under the Anti-SLAPP Law. *See, e.g.*, *Zeitlin v. Cohan*, 220 A.D.3d 631, 631–32 (1st Dep't 2023) (finding article that discussed plaintiff's alleged harassment of a former romantic partner and "viewing websites where members could 'bid' on young teenagers," in the context of an article about his resignation as CEO at Fortune 500 company, in connection with an issue of public interest); *Gillespie v. Kling*, 217 A.D.3d at 567 (holding defendant's statements on a podcast describing her experience of plaintiff's domestic violence and defendant's attendant mental health issues were made in connection with an issue of public interest); *Coleman v. Grand*, 523 F. Supp. 3d 244, 259–260 (E.D.N.Y. 2021); *Watson v. NY Doe 1*, 2023 WL 6540662 at *2–3, (S.D.N.Y. 2023) (finding that an allegation of sexual assault made to an Instagram account dedicated

to collecting stories of sexual impropriety in the advertising industry was made in connection with an issue of public interest); *Margolies v. Rudolph*, 2022 WL 2062460 at *2, *7 n39 (E.D.N.Y 2022); *Goldman v. Reddington*, 2021 WL 4099462 at *4 (E.D.N.Y. 2021) (finding defendant's Facebook and LinkedIn posts accusing plaintiff of sexual assault and containing Me Too hashtag were made in connection with an issue of public interest).

For example, the *Coleman* defendant, an aspiring jazz musician, sent an email "to around 40 friends and [music] industry colleagues" alleging the defendant had "used his age and status to harass and take advantage of her" during their sexual relationship. *Coleman*, 523 F. Supp. 3d at 250–51. The court found the challenged statements were made in connection with "sexual impropriety and pressure in the music industry" and that this issue was "indisputably an issue of public interest at the time [the defendant] sent her email, [the outset of the Me Too movement]." *Id.* at 259 (citation omitted). Similarly, the *Margolies* defendant posted a statement in an entertainment industry Facebook group reporting that "several women ha[d] bravely come forward . . . to report that . . . [the plaintiff] crossed the line" and that the defendant would "always believe women and anyone who speaks up about sexual harassment, assault, and other abuses of power." *Margolies*, 2022 WL 2062460 at *2. The court noted that the plaintiff "d[id] not dispute that the Facebook

Post [wa]s a matter of public interest. Nor could he [have], given the broad reach the statute provides for the term." *Id.* at *7 n39.

Here, most of the Challenged Statements were made in connection with public allegations that Hayes engaged in sexual misconduct or threatened women. (*See* R28–31, ¶ 7 ("Alec Rich on Facebook stated that plaintiff was prohibited from performing at 3 music festivals for threatening women . . . ."), ¶ 8 ("Alec Rich stated on Facebook that the plaintiff has been accused of sexually assaulting females."), ¶¶ 9–13, 16, 18 ("Fred Turner on Facebook said that he quit plaintiff's band because he could not be associated with plaintiff because plaintiff was accused of sexual assault and harassment."), ¶ 22.)

Public statements regarding an Internet-based harassment campaign are also statements made in connection with issues of public interest. *See Atas v. New York Times Co.*, 2023 WL 5715617 at *4 (S.D.N.Y. 2023) (defendant's statements about plaintiff's "use of the Canadian legal system and the internet as tools of harassment are matters of public concern, rather than 'purely private matter[s]'") (quoting N.Y. Civ. Rights Law § 76-a(1)(d)) (alteration in original). Here, the remaining Challenged Statements were made in connection with allegations of an Internet-based harassment campaign. (*See* R28, 30 ¶ 6 ("Alec Rich on Facebook stated that . . . plaintiff makes fake profiles to harass people . . . ."), ¶ 7 ("Alec Rich on Facebook stated that plaintiff . . . hacked Noah Rich's Facebook account."), ¶ 16).)

Supreme Court, citing the First Department's pronouncement that "[s]tatements falling 'into the realm of mere gossip and prurient interest' are not matters of public concern," and noting two of the Defendants and Defendant's counsel had described certain rumors about Hayes as "gossip," held the statements were not made in connection with an issue of public interest and that the Anti-SLAPP Law's protections therefore did not apply. (R10–11 (first quoting *Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 30 (1st Dep't 2022); then quoting R61, ¶ 4 and R51, ¶ 13).) This was in error, for at least two reasons.

First, cherry-picking two Defendants' use of the word "gossip" elides the distinction between statements containing elements of gossip and statements that fall "into the realm of *mere* gossip and *prurient interest*." *See Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 30 (1st Dep't 2022) (emphasis added). Public communications concerning allegations of sexual misconduct necessarily contain elements of "gossip" in that they relay serious allegations about a third party—but they also warn the community about the misconduct of a member, enhancing both public safety and the group's ability to enforce its norms surrounding such conduct. Therefore, such statements do not concern "*purely* private matters," N.Y. Civ. Rights Law § 76-a(1)(a)(1) (emphasis added); they also concern information that the public has an interest in knowing.

Most of the Challenged Statements, like the communications in *Coleman, Margolies,* and *Goldman*, speak about allegations of sexual misconduct. In none of these cases did the fact that the statements may have reflected elements of "gossip" stop the court from finding they were made in connection with an issue of public concern. The allegations here are as important to the safety and norms of the community as were the allegations of sexual harassment and impropriety in these other cases.

Further, although Hayes attempted below to distinguish *Coleman* on the grounds that "2022 was a much different time regarding the 'MeToo movement,'" (R86), allegations of sexual misconduct are matters of public interest whether they were made as part of the Me Too movement or not. In any event, Me Too has crystalized a norm in the music industry that sexual impropriety is always unacceptable and always relevant community information. (*See* R60, ¶¶ 5, 6–7 ("In light of the Me Too movement a musician can expose himself to criticism for not addressing allegations of misconduct on the part of a fellow musician in a public forum. It is no longer considered acceptable in the music industry to stay silent on such issues."), ¶ 8; R63, ¶ 15; R65 ¶¶ 8–9 ("I discussed my decision to leave the band in a public forum because it is a matter of great interest to the public particularly in the post Me Too era. It is now considered part of the responsibility of music professionals to distance ourselves from those who are accused of sexual or other

misconduct . . . ."); R67, ¶ 9; R68, ¶ 5.) *See also Margolies*, 2022 WL 2062460 at *7 n.39 (E.D.N.Y. 2022) (finding, without referencing the Me Too movement, that allegations of sexual misconduct were made in connection with an issue of public interest).

Second, *Aristocrat*, the case upon which Supreme Court relied, is not binding on this Court, and this Court should not follow its reasoning. *See, e.g.*, *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 665 (2d Dep't 1984) (noting that a department of the Appellate Division "accept[s] the decisions of sister departments as persuasive . . . [but is] free to reach a contrary result") (citation omitted). The First Department in *Aristocrat* interpreted the Anti-SLAPP Law through the common law phrase "realm of mere gossip and prurient interest." *See Aristocrat*, 206 A.D.3d at 29–30. This approach ignores the public nature of the substance of the Challenged Statements, as well as the plain text and legislative intent of the Anti-SLAPP Law. Public communications concerning allegations of sexual misconduct necessarily contain elements of "gossip" in that they relay serious allegations about a third party—but they also warn the community about the misconduct of a member, enhancing both public safety and the group's ability to enforce its norms surrounding such conduct. Moreover, the "mere gossip and prurient interest" phrase predates the amendment to the Anti-SLAPP Law by decades. It should not be prioritized over the statute's plain text ("'[p]ublic interest' shall be construed broadly, and shall mean

any subject other than a purely private matter"), nor should it be used to subvert the legislature's stated rationale for passing the 2020 amendments ("to provide the utmost protection for the free exercise of speech, petition, and association rights, particularly where such rights are exercised in a public forum with respect to issues of public concern."), Sponsor Mem., 2019 Legis. Bill Hist. NY A.B. 5991 (Feb. 27, 2019) (internal quotation marks omitted).

In short, all of the Challenged Statements arise from Defendants' exercise of their free speech rights in connection with issues of public interest—that is, topics "other than [] purely private matter[s]." N.Y. Civ. Rights Law §§ 76-a(1)(a)(1); 76-a(1)(d). Thus, the lower court was required to apply the Anti-SLAPP Law's heightened pleading standards in deciding Defendants' motion to dismiss.

POINT II: Defendants are entitled to costs and attorney's fees under the Anti-SLAPP Law because Hayes has not demonstrated that his action has a substantial basis in law.

Because Hayes' claims involve "public petition and participation," the Anti-SLAPP Law applies, and Hayes therefore must establish that his claims have a "substantial basis in law." N.Y. C.P.L.R. § 3211(g); *see also Lavine v. Glavin*, 219 A.D.3d 1165, 1166 (4th Dep't 2023). If Hayes cannot establish a substantial basis in law for his claims, Defendants are entitled to dismissal under the Anti-SLAPP Law, along with a mandatory award of costs and attorney's fees. *See* N.Y. Civ. Rights Law § 70-a(1)(a). Because Hayes has not and cannot satisfy this standard, this Court

must dismiss the suit under the Anti-SLAPP Law and award Defendants costs and attorney's fees.

A plaintiff's burden to demonstrate a *substantial* basis in law is higher than the typical "*reasonable* basis" burden at the motion to dismiss stage. *See* Siegel, Practice Commentaries, McKinney's Cons Laws of NY, 3211:69 (emphasis added). At the very least, a claim lacks a substantial basis in law if "the allegations and evidence presented would [not] require submission to a jury." *See Castle Vil. Owners Corp. v. Greater N.Y. Mut. Ins. Co.*, 58 A.D.3d 178, 183 (1st Dep't 2008) (construing the meaning of "substantial basis in law" under Section 3211(h) of the CPLR); *Smartmatic USA Corp. v. Fox Corp.*, 213 A.D.3d 512, 404 (1st Dep't 2023) (treating the "substantial basis in law" language under 3211(h) and 3211(g) as coterminous by citing *Golby v. N & P Engineers & Land Surveyor, PLLC*, 185 A.D.3d 792, 793 (2020), a 3211(h) case).

Here, Hayes' claim is insufficient to reach a jury – and therefore lacks a substantial basis in law – for several independent reasons, so the Anti-SLAPP Law entitles Defendants to costs and attorney's fees in addition to dismissal. First, as Supreme Court correctly held, Hayes' claims are deficient because he failed to meet the pleading-specificity requirements of CPLR Section 3016(a). Separately, Hayes' suit falls short of the Anti-SLAPP Law's "substantial basis" requirement because Hayes fails to establish the basic elements of a defamation claim; that is, that

Defendants made any substantially false statement of fact about Hayes with actual malice.

A. Hayes' defamation claim lacks a substantial basis in law because, as Supreme Court correctly held, Hayes' complaint merely paraphrases Defendants' alleged statements and therefore does not comply with CPLR Section 3016(a).

A defamation plaintiff must set forth in his complaint "the particular words complained of." N.Y. C.P.L.R. § 3016(a). Failure to do so renders the complaint insufficient as a matter of law and warrants dismissal of the claim. *See Scalise v. Herkimer, Fulton, Hamilton & Otsego County BOCES*, 16 A.D.3d 1059, 1060 (4th Dep't 2005).

Here, Supreme Court correctly observed that Hayes' complaint "contains what can only be described as paraphrasing." (R12.) Indeed, Hayes does not purport to set forth a single quotation in his complaint. (*See* R26–32.) His claims are thus legally insufficient – or in other words, lack a substantial basis in law – and Supreme Court was correct to dismiss them. But because Supreme Court failed to apply the Anti-SLAPP Law, (*see* R12), the court failed to award Defendants the costs and attorney's fees to which the Anti-SLAPP Law entitles them. This Court should modify the lower court's order to dismiss Hayes suit under the Anti-SLAPP Law (rather than under the typical motion to dismiss standard), and to award Defendants costs and attorney's fees, which the Anti-SLAPP Law mandates "shall be recovered" where a defamation plaintiff cannot satisfy the "substantial basis" standard. N.Y.

Civ. Rights Law § 70-a(1)(a) (emphasis added); *see also Gillespie v. Kling*, 217 A.D.3d at 568 (costs-and-fees award proper because the "action constituted a SLAPP suit").

B. Hayes' action also lacks a substantial basis in law because Hayes fails to establish that any Defendant made a substantially false statement of fact about Hayes with actual malice.

In addition to its CPLR Section 3016(a) deficiency, Hayes also fails to adequately establish the essential elements of a defamation claim. First, no defamation claim can survive without sufficient allegations that a defendant made a false statement of fact. *See Lavine v. Glavin*, 219 A.D.3d 1165, 1166 (4th Dep't 2023). Second, because a defendant's statement must be false, the statement must also be a factual assertion, rather than an opinion or other statement that cannot be proven true or false. *See id.* at 846. Third, defamation claims subject to the Anti-SLAPP Law must allege, and eventually prove by clear and convincing evidence, that a defendant published a false statement of fact with "actual malice"—that is, that a defendant made a false statement of fact knowing it was false, or with reckless disregard for its truth or falsity. N.Y. Civ. Rights Law § 76-a(2). Hayes fails to adequately establish these elements essential to a defamation claim.

1. Hayes fails to demonstrate any Defendant made a false statement of fact with actual malice because he does not provide any evidence that Defendants knew of or recklessly disregarded the falsity of any of the Challenged Statements.

The Anti-SLAPP Law bars recovery of damages for any plaintiff who cannot establish actual malice by "clear and convincing evidence." N.Y. Civ. Rights Law § 76-a(2). Actual malice means either "knowledge of" or a "high degree of awareness of [a statement's] probable falsity." *Suozzi v. Parente*, 202 A.D.2d 94, 101 (1st Dep't 1994) (citing *Gertz v. Robert Welch, Inc*, 418 U.S. 323, 332 (1974)). At the motion to dismiss stage, an Anti-SLAPP plaintiff must allege facts showing, at the very least, that a defendant "entertained serious doubts" about a statement's veracity. *Carey v. Carey*, 220 A.D.3d 477, 479 (1st Dep't 2023). Allegations that a defendant held "personal animus" or ill will toward a plaintiff are insufficient to adequately plead actual malice. *See id.* Likewise, allegations that a defendant merely failed to investigate a statement's truth or falsity are not sufficient. *See id.*

Here, the only allegations that tangentially concern Defendants' subjective views of the truth or falsity of their statements are Hayes' claims that Defendants failed to verify their statements before publishing and that, in Hayes' view, Defendants' sources were not "credible." (*See* R30–31, ¶¶ 17, 19; R81, ¶ 7.) But the law has no such verification requirement. Rather, as long as a libel defendant believes her sources and makes statements believing them to be true, the actual malice requirement is not satisfied. Even assuming that Defendants' sources were

objectively not credible, nothing in Hayes' allegations suggests that Defendants did not subjectively believe their sources. Hayes' action is therefore dismissible because it fails to allege any facts indicating that any Defendant was subjectively aware of the probable falsity of any of the Challenged Statements.

Accordingly, Hayes' complaint lacks a substantial basis in law for the additional reason that it does not allege actual malice, and Supreme Court should have dismissed under the Anti-SLAPP Law and awarded costs and attorney's fees.

2. Hayes has not and cannot establish that any Defendant made a false statement of fact.

A defamation plaintiff must at least establish the fundamental element of defamation: "a false statement." *600 W. 115th St. Corp. v Von Gutfeld*, 80 N.Y.2d 130, 133 (1992). Because falsity is a necessary element, and because only facts can be proven false, an expression of protected opinion or statement otherwise not capable of being proven true or false cannot give rise to a defamation claim. *See Davis v. Boheim,* 24 N.Y.3d 262, 263 (2014). "Whether a particular statement constitutes an opinion or an objective fact is a question of law." *Mann v. Abel,* 10 N.Y.3d 271, 276 (2008)*; see also Rinaldi v. Holt, Rinehart & Winston,* 42 N.Y.2d 369, 381 (1977).

Hayes' failure to quote the Challenged Statements in his complaint makes a thorough examination of his complaint's deficiencies an impossible task. But even an examination of Hayes' paraphrased summaries of the Challenged Statements,

alongside the affidavits of Defendants and third parties, reveals that the Challenged Statements consist of expressions of opinion and conjecture, statements that otherwise cannot be definitively proven as true or false, and statements that Hayes cannot establish are substantially untrue. Because Hayes does not adequately allege that Defendants made any substantially false statement of fact about him, he fails to show a substantial basis in law for his suit, providing an additional independent basis for dismissing Hayes' suit under the Anti-SLAPP Law and awarding attorney's fees to Defendants.

i. The Challenged Statements contain many statements of rhetorical hyperbole and opinion which cannot be proven true or false, and as such are not actionable in defamation.

A statement qualifies as a fact for libel purposes if it can be proven true or false. In cases where a statement is demonstrably false, it may give rise to a defamation claim. However, crucially, opinions cannot be definitively established as either true or false, and as such, a libel action based on expressions of opinion cannot be maintained, no matter how offensive the opinion. *See Mann v. Abel*, 10 N.Y.3d 271, 276 (2008). To determine whether a statement is nonactionable opinion, New York courts consider: (1) "whether the specific language in issue has a precise meaning which is readily understood;" (2) "whether the statements are capable of being proven true or false;" and (3) "whether either the full context of the communication in which the statement appears or the broader social context and

surrounding circumstances are such as to signal . . . readers or listeners that what is being read or heard is likely to be opinion, not fact." *Id.* (quoting *Brian v. Richardson*, 87 N.Y.2d 46, 51 (1995)) (alteration in *Mann*).

Here, a substantial portion of the Challenged Statements – as Hayes paraphrases them in the complaint – cannot be proven as true or false and, as such, constitute opinions or otherwise unactionable statements.

Before addressing individual Challenged Statements, it is necessary to consider their overall context, tone, and apparent purpose. *See Mann*, 10 NY.3d at 276. The context and tone of the Challenged Statements – and Facebook posts generally – reflect the Internet's "freewheeling, anything goes writing style." *Sandals Resort Int'l Limited v. Google, Inc.,* 86 A.D.3d 32, 43 (1st Dep't 2011). Nonactionable statements common in this context include those which constitute hyperbole, "name-calling," and general insults. *See Wahrendorf v. City of Oswego*, 72 A.D.3d 1604, 1605 (4th Dep't 2010). None of these categories of statements are actionable in defamation.

Many of the Challenged Statements include language falling within these nonactionable categories of speech. For example, Hayes alleges that Defendant Noah Rich stated falsely on Facebook that Hayes was a "parasite," (R29, ¶ 11), and that Defendant Rhoda Rich falsely stated that Hayes' victims "are everywhere," (R29, ¶ 13). Hayes also alleges that Defendant Kirsten Milliron stated that Hayes

has a "handsy" reputation, (R31, ¶ 22), and that Defendant Fred Turner stated falsely on Facebook that he quit Hayes' band because "he could not be associated with plaintiff because plaintiff was accused of sexual assault and harassment," (R30, ¶ 18.) Although underlying each of these statements are accusations that Hayes engaged in sexual misconduct, the name-calling, rhetorical hyperbole, and opinion reflected in the statements are not themselves actionable. In other words, whether Hayes was indeed accused of sexual assault and harassment is a fact capable of being proven true or false. But if it is true that Hayes was accused of sexual assault and harassment, Defendants' opinions about those accusations and name-calling concerning those accusations are nonactionable. In other words, this Court can examine the factual question of whether Hayes was indeed accused of sexual misconduct, but not whether Hayes is, for example, by extension a "parasite" or has a "handsy" reputation. This conclusion is "especially apt" given that the Challenged Statements were Facebook posts, a context in which "readers give less credence to allegedly defamatory Internet communications than they would to statements made in other milieus." *See LeBlanc v. Skinner*, 103 A.D.3d 202, 213 (2d Dep't 2012).

To the extent the Challenged Statements consist of statements that cannot be definitively proven true or false, they cannot give rise to a defamation claim. For these statements of rhetorical hyperbole, opinion, and other expressions that cannot

be proven true or false, then, Hayes' suit independently lacks a substantial basis in law.

ii. Hayes cannot prove any Challenged Statement is substantially false.

As discussed above, because Hayes fails to actually quote the Challenged Statements, the task of picking out any actual statements of fact from among the Challenged Statements is impossible. However, to the extent any of the Challenged Statements did convey statements of fact, Hayes separately has not and cannot meet his burden of proving any such statements were substantially false. Foundational to a defamation claim is that some statement of fact about the plaintiff be substantially false. *See Phila. Newspapers v. Hepps,* 475 U.S. 767, 776–78 (1986); *Von Gerichten v. Long Island Advance,* 202 A.D.2d 495, 496 (2d Dep't 1994). Thus, if Hayes cannot show that any of the Challenged Statements consist of a substantially false statement of fact about Hayes, then the suit independently fails to satisfy the Anti-SLAPP Law's "substantial basis in law" standard.

Hayes fails to sufficiently allege falsity to establish a substantial basis in law for his claims. Hayes does not challenge the accuracy of any specific factual assertion among the Challenged Statements or the affidavits Defendants filed in support of their motion to dismiss. Instead, Hayes merely makes blanket, conclusory claims that all of the Challenged Statements are false. (*See, e.g.*, R29, ¶ 14 ("Each and everyone of the foregoing defamatory statements by [Defendants] . . . are

false."); R32, ¶ 23 ("All of these statements she made are false . . . .").) This is not enough to sustain a defamation claim, particularly under the Anti-SLAPP Law's exacting "substantial basis in law" standard. Not only does Hayes fail to meet the burden of showing substantial *falsity*, but Defendants actually established the substantial *truth* of their statements about Hayes (or at least the basis for their subjective beliefs) through their own affidavits. (*See* R58–59, ¶¶ 3–4, 7, 9; R60–61, ¶¶ 2–4, 9, 12–13; R62–63, ¶ 3–6, 8, 10, 12–14; R64–65, ¶¶ 2-5, 7; R66–67 ¶¶ 4–7, 8; R68, ¶¶ 1–4), and the affidavits of Contessa Cavaliere, Joel Bertin, Briana Stolper, and Andrea Saunders, (*see* R70, ¶¶ 2–4; R71–73, ¶¶ 2–4, 6–10, 12-15, 20; R95–96, ¶¶ 1–2, 8; R97–98, ¶¶ 1–11). Although Hayes bears the burden of proving substantial *falsity*, defamation actions must also be dismissed when a challenged statement is in fact substantially *true*. *See Tannerite Sports, LLC v. NBCUniversal News Group*, 864 F.3d 236, 242 (2d Cir. 2017). As discussed above, nothing Hayes filed in Supreme Court refutes the substantial truth of Challenged Statements based on these sworn accounts, nor does Hayes satisfy his burden of establishing the substantial falsity of any Challenged Statement.

* * *

In sum, in addition to its 3016(a) deficiency, Hayes' action independently lacks a substantial basis in law because Hayes fails to establish the essential elements of a defamation claim—that is, that any Defendant made a false statement of fact

about Hayes with actual malice. These deficiencies provide an additional basis for dismissing Hayes' suit under the Anti-SLAPP Law and awarding attorney's fees and costs to Defendants.

CONCLUSION

Accordingly, this Court should reverse Supreme Court's ruling that the Anti-SLAPP Law does not apply, modify the lower court's ruling to dismiss the suit under the Anti-SLAPP Law as lacking a substantial basis in law, and award Defendants costs and attorney's fees as the Anti-SLAPP Law mandates and promises.

Dated: December 11, 2023
Ithaca, NY

Respectfully submitted,

CORNELL LAW SCHOOL
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Nothing in this brief should be construed as representing the institutional views of Cornell Law School or Cornell University.

PRINTING SPECIFICATION STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: December 11, 2023

STATEMENT PURSUANT TO CPLR 5531

Supreme Court of the State of New York
Appellate Division – Fourth Department

MICHAEL HAYES,

Plaintiff-Respondent-Appellant,

- against -

ALEC RICH, NOAH RICH, RHODA RICH, JUNEXA, LLC., FRED TURNER, CHAD DOUGLAS and KIRSTEN MILLIRON,

Defendants-Appellants-Respondents.

1. The index number of the case in the Court below is 009463/2022.

2. The full names of the original parties are as above. There have been no changes.

3. The action was commenced in Supreme Court, Onondaga County.

4. The action was commenced on or about November 15, 2022 by filing of a Summons and Complaint. No answer was filed.

5. This is an action brought about by slander, republication, and defamation.

6. The appeal is from the Decision and Order of the Honorable Robert E. Antonacci II, Dated April 11, 2023 and entered on April 11, 2023.

7. The appeal is being perfected on a full reproduced joint record.