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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SACRAMENTO

11 UNLIMITED JURISDICTION

12	)	Case No. 34-2018-00238699
13	)	
14	)	<b>DEFENDANT PAMELA LOPEZ'S</b>
14	)	<b>MEMORANDUM OF POINTS AND</b>
15	)	<b>AUTHORITIES IN SUPPORT OF HER</b>
15	)	<b>SPECIAL MOTION TO STRIKE</b>
16	)	<b>PURSUANT TO CCP § 425.16</b>
17	)	<i>Reservation No. 2374427</i>
17	)	
18	)	Date: December 6, 2018
18	)	Time: 2:00 p.m.
19	)	Dept.: 53
20	)	
20	)	Complaint Filed: August 14, 2018
21	)	Trial Date: TBD

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1 **INTRODUCTION**

2 Former State Assembly Member Matt Dababneh does not bring his lawsuit to pursue  
3 legitimate causes of action. He brings this lawsuit to retaliate against Pamela Lopez for having  
4 the courage to speak out about pervasive sexual misconduct in the state Capitol, of which  
5 Mr. Dababneh’s illegal conduct is a prime example. His attempts to muzzle Ms. Lopez began in  
6 the Las Vegas bathroom where, having just sexually assaulted her, he told her not to tell anyone.  
7 They continued when he threatened her with a defamation lawsuit just hours before she publicly  
8 named him as the perpetrator in a report to the California State Assembly Rules Committee.  
9 (“Rules Committee”) And they culminated when he filed this action attacking her morally  
10 courageous and constitutionally protected speech. Dababneh’s lawsuit is a desperate attempt to  
11 resuscitate the culture of fear and silence that kept women in California state politics from  
12 reporting sexual misconduct for far too long. It must not be allowed to succeed.

13 The legislature passed the anti-SLAPP statute in 1992 to respond to “a disturbing  
14 increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of  
15 freedom of speech and petition for the redress of grievances.” (CCP § 425.16(a)) This retaliatory  
16 and frivolous lawsuit, brought by a powerful former elected official and announced future  
17 candidate for Lieutenant Governor against one of the many women who have named him as a  
18 perpetrator of sexual assault, is a textbook example of why California’s anti-SLAPP law exists.  
19 The anti-SLAPP special motion to strike enables courts to dismiss, early in the proceedings,  
20 specious lawsuits that “lack[] merit,” whose “aim is not to win the lawsuit but to detract the  
21 defendant from his or her objective” by depleting the defendant’s funds and energy. (*Church of*  
22 *Scientology v. Wollersheim*, (1996) 42 Cal. App. 4th 628, 645, *disapproved of on another point*  
23 *by Equilon Enterprises v. Consumer Cause, Inc.*, (2002) 29 Cal. 4th 53) That is exactly what  
24 Dababneh seeks to do here, and this Court should not let him get away with it.

25 **FACTUAL BACKGROUND**

26 Pamela Lopez is a political consultant who runs a small lobbying firm in Sacramento.  
27 She, like other political professionals, depends for her livelihood on building and maintaining  
28 productive relationships with state lawmakers. Unfortunately, women in the Sacramento political

1 community, including Ms. Lopez, have long experienced rampant sexual harassment and  
2 discrimination – including from lawmakers – and, for years, could not hold powerful abusers  
3 accountable without suffering retaliation, stigma, and risk to their careers. The outcome of this  
4 motion will send an important signal about whether this sorry status quo will continue.

5         The #MeToo movement galvanized women in Sacramento to finally say that they had  
6 had enough. Just one year ago, on October 17, 2017 almost 150 women in state politics,  
7 including elected officials and lobbyists (one of whom was Ms. Lopez), created and signed an  
8 open letter calling out sexual harassment in the California Legislature and Sacramento political  
9 community. The letter said that each signatory “has endured, or witnessed or worked with  
10 women who have experienced some form of dehumanizing behavior by men with power in our  
11 workplaces.” (*Declaration of Pamela Lopez* (“Lopez Decl.”) ¶3; *Defendant’s Compendium of*  
12 *Exhibits*, Ex. A) The letter called on the California Legislature to end to sexual harassment in its  
13 ranks, but it did not name names or describe specific incidents. (Ex. A) The letter described its  
14 purpose to “spark a thorough examination of how current complaint protocol, in which the  
15 Legislature handles the matter internally, falls short.” (Ex. A)

16         In media interviews after the letter came out, Ms. Lopez spoke about why she had signed  
17 the letter. (Lopez Decl. at ¶¶ 4-5) She said that had been sexually assaulted by a legislator in a  
18 bathroom, but she did not disclose the identity of the legislator. (Lopez Decl. at ¶ 4) Her purpose  
19 was to raise awareness of the problem of sexual misconduct in California’s political community  
20 so that the legislature would act. (Lopez Decl. at ¶ 5.) However, over time Ms. Lopez heard from  
21 legislators and others who urged her to make an official report. (Lopez Decl. at ¶ 6) She also  
22 learned that the same perpetrator had harassed or assaulted other women.

23         On November 28, 2017, the Assembly Rules Subcommittee on Harassment,  
24 Discrimination, and Retaliation Prevention and Response (“Subcommittee on Harassment”) held  
25 a five-hour hearing entitled “Sexual Harassment Prevention: Current Policies and  
26 Recommendations for Change.” (*Declaration of Hilary Hammell* (“Hammell Decl.”) ¶ 4; Ex. D,  
27 partial transcript of hearing) The purpose of that hearing was to address the State Capitol’s  
28 “pervasive” culture of sexual misconduct, and to generate possible policy reforms to eliminate

1 sexual misconduct by legislators and the “culture of fear” that kept victims of harassment in the  
2 State Capitol from reporting it. (Hammell Decl. ¶ 4; Ex. D) In that hearing, the Subcommittee  
3 on Harassment members “encouraged” victims to come forward and said there would not be any  
4 kind of retaliation. (Ex. D)

5 With these assurances, Ms. Lopez made a written report of the assault to the Assembly  
6 Rules Committee on December 4, 2017. (Lopez Decl. ¶ 8; Ex. E, Report to Rules Committee) In  
7 the report, she identified Dababneh as the perpetrator, briefly described the assault and also  
8 wrote:

9 For nearly two years, I have lived in fear that I will be shunned or retaliated  
10 against if my professional community learns that I was sexually assaulted by a  
11 lawmaker. And that fear caused me to remain silent, instead of seeking justice  
12 through formal channels in the legislature. My fear comes not only from the  
13 perpetrator’s instruction not to tell, but also from the lack of a trustworthy system  
14 in the state house for investigating reports of sexual harassment and holding those  
15 who commit it accountable, regardless of their position.

16 At the November 28<sup>th</sup> hearing held by the Assembly Rules Subcommittee on  
17 Harassment, Discrimination, and Retaliation Prevention and Response, you  
18 encouraged women to step forward with a promise that perpetrators would be held  
19 accountable [...] I am filing this report even though, through his attorney, Mr.  
20 Dababneh has tried to silence me by threatening to sue me for defamation if I  
21 persisted in reporting this assault. If you are true to your word, the Assembly will  
22 exercise its power to stop Mr. Dababneh from abusing his, including by trying to  
23 intimidate a witness. I stand ready to cooperate, and I look forward to hearing  
24 how you propose to fix the broken investigative and disciplinary process and  
25 protect me from retaliation.

26 (Ex. E; Lopez Decl. ¶ 8)

27 Ms. Lopez and Jessica Yas Barker then held a press conference at which Ms. Lopez  
28 announced that she had filed the report. (Ex. F; Lopez Decl. ¶ 9) In the report and at the press  
conference, Ms. Lopez named Dababneh as the perpetrator, and explained she was willing to do  
this due to Assembly Member Cooley and other lawmakers urging her to come forward. (Ex. F;  
Lopez Decl. ¶ 9) Ms. Lopez said she was coming forward so that she, and other women, could  
“feel safe, and also keep our jobs.” (Ex. F) Ms. Yas Barker described how, when she worked  
with Dababneh, he behaved in an “overtly sexual” way, spoke about sex, and showed her a  
drawerful of condoms. (Ex. F)

1 Prior to the press conference, Dababneh's attorney sent a letter to Ms. Lopez threatening a  
2 defamation lawsuit if she spoke out. (Lopez Decl. ¶12; Ex. M) Counsel for Ms. Lopez replied,  
3 making clear that his threats to silence Ms. Lopez would not succeed this time. (Lopez Decl.  
4 ¶ 13; Ex. N)

5 Ten days after Ms. Lopez submitted her report to the Assembly, three additional women  
6 came forward, telling the Los Angeles Times that Matt Dababneh had harassed or assaulted  
7 them, including one who told of him masturbating in front of her when she was just 18.  
8 (Hammell Decl., Exh. I) This brought to five the number of women who bravely spoke out.

9 Meanwhile, the Assembly Rules Committee opened an investigation into Ms. Lopez's  
10 allegations. (Lopez Decl., ¶ 10; Ex. G) The Rules Committee hired an outside investigator who  
11 interviewed 52 witnesses in addition to Ms. Lopez. (Ex. G) On or around June 25, 2018, the  
12 investigator determined that Ms. Lopez's allegations were "substantiated, that is, it is more likely  
13 than not that the facts alleged did occur." (Ex. G) (emphasis added.) Dababneh appealed the  
14 findings. In response to Dababneh's appeal, on Aug. 24, 2018, the Rules Committee found "after  
15 a thorough review and consideration of Mr. Dababneh's appeal," that Ms. Lopez's complaint had  
16 "received a fair evaluation. Accordingly, the appeal is denied." (Lopez Decl. ¶ 11; Ex. L)

17 Yet Mr. Dababneh chose to use his power and resources to attack Ms. Lopez via this this  
18 lawsuit and served complaint on her five days after the Rules Committee rejected his appeal.<sup>1</sup>

## 19 LEGAL ANALYSIS

### 20 **I. THE COMPLAINT SHOULD BE STRICKEN IN ITS ENTIRETY.**

21 California law provides that a cause of action should be stricken as a "SLAPP" -- a  
22 Strategic Lawsuit Against Public Participation -- if the cause of action is "against a person  
23 arising from any act of that person in furtherance of the person's right of petition or free speech  
24 under the United States Constitution or California Constitution in connection with a public  
25 issue." (Cal. Civ. Proc. Code § 425.16(b)(1)). If the claim targets that kind of speech, the court  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Dababneh has paid the counsel who represent him in this matter using funds out of the  
campaign chest he established for the purported purpose of running for California Lieutenant  
Governor in 2020.

1 should strike it, unless the plaintiff establishes that “there is a probability” of prevailing. (*Id.*)  
2 While Mr. Dababneh did bring this lawsuit with an express intent to chill Ms. Lopez’ “exercise  
3 of constitutional speech or petition rights,” she has no obligation, under the law, to prove that  
4 that was his intent. (*Equilon Enterprises v. Consumer Cause, Inc.*, (2002) 29 Cal.4<sup>th</sup> 53, 57)

5 The anti-SLAPP law “shall be construed broadly,” (*Comstock v. Aber*, (2012) 212 Cal.  
6 App. 4th 931, 941) Ms. Lopez’ choice to speak out about Dababneh’s grotesque misconduct is  
7 precisely the type of free speech that the Constitution and the anti-SLAPP statute protects, and  
8 Mr. Dababneh’s claims do not have a “probability” of prevailing – they have zero chance of  
9 prevailing.

10 **A. Ms. Lopez’s Reporting Sexual Assault to the Legislature and the Press Was**  
11 **“In Furtherance of [her] Right of Petition or Free Speech.”**

12 Mr. Dababneh’s two causes of action – for defamation and for intentional infliction of  
13 emotional distress – emanate from two instances of speech by Ms. Lopez: first, her written  
14 statement to the California State Assembly detailing him sexually assaulting her in a bathroom  
15 (the entirety of which is provided here as Ex. E); and second, her statements at a press  
16 conference the same day, discussing the assault and the fact that she had reported it to the  
17 Assembly (see Ex. F (transcript)). (Complaint, ¶¶ 14-15.)

18 Both these instances of Ms. Lopez’s speech are absolutely protected under the anti-  
19 SLAPP statute, which defines protected speech to include:

20 (e)(1) any written or oral statement or writing **made before a legislative, ...**  
21 **proceeding**, or any other official proceeding authorized by law, (2) **any written**  
22 **or oral statement or writing made in connection with an issue under**  
23 **consideration or review by a legislative, ... body, ...** (3) any written or oral  
24 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.  
Cal. Civ. Proc. Code § 425.16(e) (emphasis added.)

25 **B. Ms. Lopez’s Speech Is Absolutely Protected under Section 425.16(e)(1) and**  
26 **(2) as Speech Before a Legislative Proceeding or in Connection with an Issue**  
**under Review by a Legislative Body.**

27 Ms. Lopez’s Dec. 4, 2017 written statement to the Assembly Rules Committee is  
28 absolutely protected under subdivisions (e)(1) and (e)(2) quoted above. The Assembly Rules



1 Committee, also known as the “Committee on Rules,” has the authority to “make studies and  
2 recommendations designed to promote, improve, and expedite the business and procedure of the  
3 Assembly...” (House Resolution 1 (2017-2018) (“HR-1”) §14(A)(3)). As part of its charge, the  
4 Rules Committee promulgated a Policy Against Sexual Harassment governing the investigation  
5 of allegations of sexual harassment by Members and employees of the Assembly, which provides  
6 that in the event a Member violates the Policy, “[t]he Rules Committee may also vote to present  
7 a resolution to the floor of the Assembly for the formal discipline of a Member. Formal  
8 discipline may include reprimand, censure, or expulsion.” (Hammell Decl., ¶14, Ex. S.)

9 For its part, the Subcommittee on Harassment, Discrimination, and Retaliation  
10 Prevention and Response of the Assembly Rules Committee is empowered to “periodically  
11 review procedures for the handling of complaints of harassment, discrimination, and retaliation  
12 lodged against a Member of the Assembly...and submit any recommendations to the Committee  
13 on Rules for consideration.” (HR-1 §14.5(b)). Thus, Ms. Lopez’s report to the Rules Committee  
14 was speech before a legislative body, doing exactly what it is authorized to do – police the  
15 Assembly and address complaints regarding sexual harassment by Assembly Members.

16 Ms. Lopez’s report to the Rules Committee is also protected by subdivision (e)(2) as  
17 speech “in connection with an issue under consideration or review by a legislative...body.”  
18 (C.C.P. § 425.16(e)(2)). Ms. Lopez provided her statement on December 4, 2017, after the  
19 Subcommittee on Harassment had specifically encouraged victims of sexual assault or  
20 harassment to come forward, pursuant to the Assembly’s formal efforts to reform its sexual  
21 harassment policies. (See Hammell Decl. ¶ 3, Ex. D, Partial Transcript of Hearing).

22 The second instance of speech Dababneh challenges – Ms. Lopez’s press conference – is  
23 also covered by Sections 425.16(e)(1) and (2) of the anti-SLAPP law, as speech “seeking to  
24 influence the decisions” of legislative bodies, (*DuPont Merck Pharm. Co. v. Superior Court*,  
25 (2000) 78 Cal. App. 4th 562, 566) and, alternatively, speech “in connection with an issue under  
26 consideration or review” by a legislative body. (C.C.P. § 425.16(e)(2)) That Ms. Lopez made the  
27 statements to the press or to the public, rather than to the legislature, is immaterial, since those  
28 statements were related to the same topic being considered by the Rules Committee. (*Briggs v.*

1 *Eden Council for Hope & Opportunity*, (1999) 19 Cal. 4th 1106, 1116 [nonprofit organization  
2 employees’ conversations with tenants regarding pending HUD investigation were protected  
3 speech under the SLAPP statute]; *Lafayette Morehouse Inc. v. Chronicle Publishing Co.* (1995)  
4 37 Cal. App. 4th 855, 863 [anti-SLAPP law protected news reports of disputes between private  
5 university, county supervisors, and federal courts.]

6 Because Ms. Lopez’s statements fall within subdivisions (e)(1) and/or (2) of the anti-  
7 SLAPP statute, they are absolutely privileged, full stop. There is no need to also assess whether  
8 her statements were “in connection with a public issue or on an issue of public interest,” as  
9 would be required for speech that is not to a governmental body but is in “any place open to the  
10 public.” (C.C.P. § 425.16(e)(3),(4); *Briggs v. Eden Counsel for Hope & Opportunity*, 19 Cal.4th  
11 at p. 1106) Nonetheless, the statute also protects Ms. Lopez under that alternate analysis.

12 **C. Dababneh’s Attack on Ms. Lopez’s Speech Must Be Stopped Because Sexual**  
13 **Harassment is an Issue of Public Concern and He Cannot Show any**  
14 **Probability of Proving What She Said was Unprivileged and False.**

15 1. Reforming Institutions to End the Culture of Sexual Harassment is an  
16 Issue of Public Concern.

17 Ms. Lopez’s speech related to “an issue of public interest.” (C.C.P. § 425.16(e)(3)) It is in  
18 the interest of a substantial number of people in California (and the nation) to expose and  
19 eradicate sexual misconduct and assault. (*See Sippel v. Foundation for National Progress* (1999)  
20 71 Cal.App.4th 226, 239 [allegations of sexual misconduct against political consultant a “public  
21 interest” for purposes of anti-SLAPP statute]). California legislators have stated that this topic is  
22 one of national- and state-level importance.<sup>2</sup> (See Ex. D.) The #MeToo and #TimesUp  
23 movements have driven a national public conversation focused not just on individual bad acts,  
24 but on the ways in which powerful institutions, from corporate boardrooms to legislatures, have

25 <sup>2</sup> Indeed, in the Subcommittee hearing, Rules Chair Assembly Member Ken Cooley described  
26 the topic of sexual harassment and sexual assault as one “that is so pervasive across our building,  
27 our California, our nation,” (Ex. D, Remarks of Assembly Rules Chair Ken Cooley, at 48:52-  
28 49:07) Subcommittee Chair Assembly Member Laura Friedman said “we’re only scratching the  
surface of what’s clearly a problem across our country and across many industries and  
organizations.” (Ex. D, Remarks of Chair Laura Friedman at 07:28-07:39).

1 failed to curb the prevalent and virulent problem of sexual harassment and assault.<sup>3</sup> This was the  
2 context and content of Ms. Lopez’s speech.

3 The #MeToo hashtag, a rallying call “to increase awareness of sexual harassment and  
4 assault,” (*Minnesota Voters All. v. Mansky*, (2018) 138 S. Ct. 1876, 1890), was coined by Tarana  
5 Burke in 2009 and went viral in October of 2017 when actor Alyssa Milano tweeted “If you’ve  
6 been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.”<sup>4</sup> The hashtag has  
7 appeared over 7.7 million times on Twitter<sup>5</sup> and was used 12 million times on Facebook within a  
8 24-hour period.<sup>6</sup> The #MeToo movement has been referred to in thousands of media articles and  
9 reports, and became so high-profile that Time magazine made it the cover story in December  
10 2017, which named “The Silence Breakers: The Voices that Launched a Movement” the 2017  
11 Person of the Year.<sup>7</sup> Such a high degree of media attention makes clear that the pervasive  
12 problem of powerful public officials sexually exploiting women and others with less power has  
13 become a “public concern.” (*See Church of Scientology v. Wollersheim*, (1996) 42 Cal.App.4<sup>th</sup>  
14 628, 650-651, (*disapproved of on other grounds by Equilon Enterprises v. Consumer Cause, Inc.*  
15 (2002) 42 Cal.App.4<sup>th</sup> 628) [“media coverage” of something is evidence that something is a

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17 <sup>3</sup> Ms. Lopez requests judicial notice under Evidence Code Section 451(f) of the fact that  
18 thousands of articles have been published regarding the #MeToo movement, (“facts ... that are  
19 so universally known that they cannot reasonably be subject of dispute”) or, in the alternative,  
20 452(h) (“facts ... not reasonably subject to dispute and are capable of immediate and accurate  
determination by resort to sources of reasonably indisputable accuracy.”) (See Request for  
Judicial Notice ISO Special Motion to Strike, filed concurrently.)

21 <sup>4</sup> Alyssa Milano’s original post is available at:  
[https://twitter.com/alyssa\\_milano/status/919659438700670976?lang=en](https://twitter.com/alyssa_milano/status/919659438700670976?lang=en) (last visited Oct. 18,  
2018)

22 <sup>5</sup> Michael D. Cohen, Ph.D., (George Washington University, PEORIA Project), *The #MeToo*  
23 *Movement: Findings from the PEORIA Project* at 4 (GWU study that analyzed data and found  
over 7.7 million uses of the #MeToo hashtag on Twitter within 13 months, *available at*  
24 [https://gspm.gwu.edu/sites/g/files/zaxdzs2286/f/downloads/2018%20RD18%20MeToo%20Prese](https://gspm.gwu.edu/sites/g/files/zaxdzs2286/f/downloads/2018%20RD18%20MeToo%20Presentation.pdf)  
[ntation.pdf](https://gspm.gwu.edu/sites/g/files/zaxdzs2286/f/downloads/2018%20RD18%20MeToo%20Presentation.pdf) (and attached as Exh P to Hammell Decl.) (last visited Oct. 18, 2018)

25 <sup>6</sup> CBS News, *More than 12M ‘Me Too’ Facebook posts, comments, reactions in 24 hours* (Oct.  
26 17, 2017), *available at* [https://www.cbsnews.com/news/metoo-more-than-12-million-facebook-](https://www.cbsnews.com/news/metoo-more-than-12-million-facebook-posts-comments-reactions-24-hours/)  
[posts-comments-reactions-24-hours/](https://www.cbsnews.com/news/metoo-more-than-12-million-facebook-posts-comments-reactions-24-hours/) (and attached as Exh Q to Hammell Decl.) (last visited Oct.  
27 18, 2018); See Request for Judicial Notice.

28 <sup>7</sup> Stephanie Zacharek et al., *The Silence Breakers*, Time, Dec. 18, 2017, *available at*  
<http://time.com/time-person-of-the-year-2017-silence-breakers/> (and attached as Ex. R. to  
Hammell Decl.) (last visited Oct. 18, 2018.) See Request for Judicial Notice.

1 public concern.]) As one court has put it, a “public interest” concern for the purposes of the anti-  
2 SLAPP law is “any issue in which the public is interested” (*Nygaard, Inc. v. Uusi-Kerttula*, (2008)  
3 159 Cal. App. 4th 1027, 1042 (emphasis in original.)) Thus, even were this case about a silence  
4 breaker whose perpetrator was not a sitting legislator, the public interest standard would be met.  
5 Here, where the specific topic of sexual misconduct in the California Capitol has been covered  
6 extensively by the media, the public interest case for Ms. Lopez’s speech is strong.<sup>8</sup>

7 Approaching the analysis from another angle, Ms. Lopez’s comments about Dababneh  
8 relate to a “public interest” as a matter of law, because speech about a public figure qualifies as a  
9 “public interest” topic under the anti-SLAPP statute. (*Nygaard, Inc. v. Uusi-Kerttula*, (2008) 159  
10 Cal. App. 4th at p. 1039; *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 806-  
11 807) Lawmakers who treat women not as human beings but as objects for their personal sexual  
12 gratification demean the integrity of our state’s political system, a paramount issue of public  
13 concern.<sup>9</sup> (*See Healthsmart Pacific, Inc. v. Kabateck*, (2017) 7 Cal. App. 5th 416, 430 [alleged  
14 illegal activity by a Senator was “undeniably a matter of public concern.”])

15 2. Dababneh Cannot Establish a Probability He Will Prevail on His Causes  
16 of Action for Defamation or Intentional Infliction of Emotional Distress.

17 Under the privilege analyses above, Dababneh’s claims are dead on arrival. The burden  
18 thus shifts to Dababneh to establish a “probability” of prevailing on his causes of action. (CCP  
19 § 425.16(b)(1)). He cannot meet that burden. To establish a probability of prevailing on a claim,  
20 the plaintiff must meet a standard “comparable to that used on a motion for judgment as a matter  
21 of law.” (*Price v. Stossel*, (9th Cir. 2010) 620 F.3d 992, 1000) That means the Plaintiff cannot  
22 just rest on his pleadings, but he must present “competent and admissible evidence” showing that  
23 he “probably” will prevail. (*Id.*) Dababneh cannot meet that standard.

24 //

26 <sup>8</sup> See the extensive list of press coverage at: <https://www.wesaidenough.com/press-list/> (last  
27 visited Oct. 19, 2018.)

28 <sup>9</sup> As Rules Chair Cooley said in the Nov. 27, 2017 subcommittee, sexual harassment in the  
Capitol gets in the way of “attract[ing] the best and the brightest men and women to work in  
careers” in California state lawmaking.

1 a. Dababneh Cannot Establish a Probability He Will Prevail on His  
2 Defamation Claim.

3 i. *Dababneh Cannot Establish a “Probability” That Ms. Lopez’s*  
4 *Statements Were False.*

5 Because Ms. Lopez’s speech is privileged, this Court need not even undertake an analysis  
6 of whether Dababneh can establish a probability that her statements were false. But it is worth  
7 discussing this element of a defamation claim to highlight how frivolous Dababneh’s lawsuit is.

8 “There can be no recovery for defamation without a falsehood.” (*Seelig v. Infinity*  
9 *Broadcasting Corp.*, (2002) 97 Cal.App.4<sup>th</sup> at p. 809) Unlike a private defamation plaintiff,  
10 where the defendant must plead and prove the statements were true as an affirmative defense, in  
11 an action regarding a public figure or a matter of public concern, Dababneh - the defamation  
12 plaintiff - **bears the burden of proving falsity.** (*Smith v. Maldonado*, (1999) 72 Cal. App. 4th  
13 637, 653 fn.5, *as modified* (June 23, 1999) citing *Philadelphia Newspapers v. Hepps* (1986) 475  
14 U.S. 767)

15 Mr. Dababneh must not only establish a probability of falsity, he, as a public figure, must  
16 show that Ms. Lopez had *actual malice* – that is, “knowledge of [the statement’s] falsity  
17 or...reckless disregard of its truth or falsity” when she made her statements. (*Sippel v.*  
18 *Foundation for National Progress*, (1999) 71 Cal.App.4<sup>th</sup> at p. 239) There is a good reason for  
19 imposing stricter standards on governmental officials who try to sue for defamation – to protect  
20 the public’s ability to speak out about suspected misconduct by public officials without fear of  
21 specious defamation suits. As the Supreme Court puts it:

22 An individual who decides to seek governmental office must accept certain  
23 necessary consequences of that involvement in public affairs. He runs the risk of  
24 closer public scrutiny than might otherwise be the case. And society’s interest in  
25 the officers of government is not strictly limited to the formal discharge of official  
26 duties. ... the public’s interest extends to ‘anything which might touch on an  
27 official’s fitness for office. . . . Few personal attributes are more germane to  
28 fitness for office than dishonesty, malfeasance, or improper motivation...

(*Gertz v. Robert Welch, Inc.*, (1974) 418 U.S. 323, 344–45)

26 Accordingly, as a public figure, Dababneh must prove falsity, and also malice by “clear  
27 and convincing evidence.” (*McGarry v. Univ. of San Diego*, (2007) 154 Cal. App. 4th 97, 114)  
28 (internal quotations omitted.) He cannot proffer any evidence other than his own wishful

1 thinking to support his theory that Ms. Lopez made the assault up, much less “clear and  
2 convincing evidence ... of such a character as to command the unhesitating assent of every  
3 reasonable mind.” (*Id.*) (internal quotations omitted.) Bearing in mind that it is Dababneh’s  
4 burden to prove falsity rather than defendant’s burden to prove truth, the following facts make  
5 clear he will never meet his burden.

6 After Ms. Lopez complained to the State Assembly about Dababneh’s sexual assault, the  
7 Assembly retained a third-party investigator to investigate the allegations. (Ex. G.) That  
8 investigator spoke to **52 witnesses** in addition to Ms. Lopez and determined that the allegations  
9 were **substantiated, that is, it is more likely than not that the fact alleged did occur.**<sup>10</sup>  
10 (Ex. G.) The Chief Administrative Officer found that Plaintiff Dababneh violated the Assembly’s  
11 policy against sexual harassment. (Ex. G.) After Ms. Lopez’s allegations came to light, a second  
12 woman, Jessica Yas Barker, accused Mr. Dababneh of sexual harassment. (See Transcript of  
13 Press Conference, Ex. F.) And **three additional women have since accused Mr. Dababneh of**  
14 **sexual harassment.** (Hammell Decl., Ex. I.) One of the women described a similar pattern of  
15 sexual harassment: he cornered her in a room, took out his penis, masturbated in front of her, and  
16 urged her to touch him. (Ex. I.)

17 There is no reason Ms. Lopez or these other individuals would make up these allegations.  
18 Nothing about Ms. Lopez’s conduct suggests she has been anything less than truthful. She told a  
19 friend about the assault shortly after it happened. (Johnston Decl.) Lopez did not want to and did  
20 not name Dababneh at first, focusing instead on asking the legislature to remedy the systemic  
21 problem of which Dababneh’s assault was only a symptom. (Lopez Decl., ¶¶1-7) She only  
22 named Dababneh after being specifically urged to come forward by the Rules Committee, and  
23

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24 <sup>10</sup> Assembly Rules Chair Ken Cooley explained how the investigation process works in the Nov.  
25 27, 2017 subcommittee hearing. “When an allegation violates our policy, the CAO and the  
26 Human Resources Director will review the facts to determine next steps. That can include review  
27 by an external attorney which has been a well-established practice that we use... What does the  
28 investigator do? Their role is fact finder. They do not make preliminary conclusions. They just  
try to figure out what went on. What can we ascertain? What are the facts? They interview  
witnesses, gather facts to determine if the allegation is substantiated. They advise all parties,  
complainant, witnesses, and respondent about the Assembly’s policies including no  
retaliation...” (Ex D at 40:49 – 42:10.)

1 after deciding to trust the legislature’s promise to protect victims from retaliation. (Ex. E, Ex. F,  
2 Lopez Decl. ¶ 5) This course of conduct is not consistent with someone acting with ill will or  
3 intent to lie. The Assembly investigator obviously found Ms. Lopez and other witnesses more  
4 credible than Mr. Dababneh and whomever he may have named as a witness. And the Rules  
5 Committee rejected Dababneh’s appeal, upholding the propriety of the investigation and finding  
6 that Ms. Lopez’s complaint received a “fair evaluation.” (Ex. L.)

7 Even if Mr. Dababneh points to any details about Ms. Lopez’s statements that are less  
8 than 100% accurate he would not be able to prove that the allegations are anything less than  
9 “substantially true,” meaning the “gist or the sting” of the remark is justified. (*Smith v.*  
10 *Maldonado*, 72 Cal. App. 4th at p. 647, *as modified* (June 23, 1999) (internal citations omitted.)  
11 And any inconsistencies do not suggest falsity or an intent to lie.<sup>11</sup> Indeed, after interviewing  
12 scores of witnesses, the Assembly investigator already reached a finding supporting  
13 Ms. Lopez’s credibility over that of Mr. Dababneh.

14 ii. *Dababneh Cannot Establish Ms. Lopez’s Statements Were*  
15 *Unprivileged.*

16 A defamation cause of action requires statements that aren’t just false but unprivileged  
17 and false. (Civ. Code §§ 45, 46) A plaintiff cannot prevail on this prong of the anti-SLAPP  
18 analysis – proving probability of success on the merits – when the “cause of action arises from  
19 the publication of statements that are privileged as a matter of law.” (*Healthsmart Pacific, Inc.*  
20 *v. Kabateck*, (2016) 7 Cal. App. 5<sup>th</sup> at p. 430) Because Lopez’s allegedly wrongful conduct is  
21 privileged, there is “no reasonable probability” that Dababaneh can prevail on his tort causes of  
22 action. (*Id.*)

23 (a) *Absolute Privilege*

24 Statements to and in connection with a legislative proceeding are absolutely privileged –

25 \_\_\_\_\_  
26 <sup>11</sup> Ms. Lopez was forthcoming in her report to the Assembly that she had let the press report that  
27 the incident occurred in Sacramento because she was afraid that if she clarified Las Vegas as the  
28 location it would be easy to identify Mr. Dababneh as the perpetrator. This single inaccuracy  
undermines any suggestion of malice or falsity given that it actually served the purpose of  
protecting Dababneh’s identity, not outing him. (Ex. E.)

1 not just under the first prong of the anti-SLAPP law, as discussed above, but also under Civil  
2 Code Section 47(b). To put it another way, Dababneh loses on privilege on prong one because of  
3 the anti-SLAPP law, and he loses on privilege on prong two because of Section 47. This section  
4 defines a “privileged publication” as one made “in any (1) legislative proceeding....[or] (3) in  
5 any other official proceeding authorized by law.” (Civ. Code § 47(b)) The Assembly had begun a  
6 process of reforming its policies and procedures surrounding sexual misconduct when Ms. Lopez  
7 made her report, and Ms. Lopez made her report to assist the Assembly in that process. (See  
8 discussion *supra*). The Legislature’s reform efforts qualify as a legislative proceeding for the  
9 purposes of absolute privilege under section 47 (b). (*Crane v. Arizona Republic*, (9th Cir. 1992)  
10 972 F.2d 1511, 1518) Indeed, even an informal tip to a governmental body qualifies as a  
11 privileged communication under Section 47(b). (*See Tiedemann v. Superior Court*, (1978) 83  
12 Cal. App. 3d 918, 925) “[T]he critical question is the *aim* of the communication, not the forum in  
13 which it takes place. If the communication is made ‘in anticipation of or [is] designed to prompt  
14 official proceedings, the communication is protected.’” (*Klem v. Access Ins. Co.*, (2017) 17 Cal.  
15 App. 5th 595, 613 (internal quotation and citation omitted), *review denied* (Feb. 28, 2018))  
16 Ms. Lopez’s conduct squarely falls into this category. Ms. Lopez’s statements to the press  
17 regarding her complaint to the Assembly are statements “related to” a privileged communication  
18 and are thus covered by the same privilege. (*1-800 Contacts, Inc. v. Steinberg*, (2003) 107 Cal.  
19 App. 4th 568, 587–88)

20 Ms. Lopez’s statements to the press are also absolutely privileged under the “fair report”  
21 privilege, subdivision (d) of Civil Code section 47. The fair report privilege applies not just to  
22 media defendants, but to “those who communicate information *to the media.*” (*Healthsmart Pac.,*  
23 *Inc. v. Kabateck*, 7 Cal. App. 5th at p. 431, *as modified* (Jan. 10, 2017)). Because Ms. Lopez  
24 accurately reported to the press the substance of her complaint to a governmental body, her  
25 speech to the press is covered by the fair report privilege. (*Id.*)

26 (b) *Qualified Privilege*

27 If Ms. Lopez’s statements were somehow not covered by the absolute privileges  
28 described above, they would in any event be subject to the qualified privilege of Section 47,



1 subdivision (c), the common-interest privilege. This means that any communication “to a person  
2 interested therein...by one who is also interested,” is privileged so long as it is made without  
3 “malice.” (Civ. Code § 47(c)) Ms. Lopez’s statements were to persons “interested,” for the  
4 reasons discussed *supra*. The Legislature has a common interest in knowing about sexual  
5 harassment committed by its Members. (*Vackar v. Package Machinery Co.*, 841 F.Supp. 310,  
6 314-315 [employer holds common interest with those accusing an employee of sexual  
7 harassment]). And the public has demonstrated an intense interest in the topic of systemic sex  
8 harassment and intimidation of women in the workplace. (See discussion *supra*.) The public also  
9 has an interest in the conduct of its elected representatives. (*Healthsmart Pacific v. Kabateck*, 7  
10 Cal. App. 5<sup>th</sup> at p. 430.)

11 As for “malice,” Mr. Dababneh comes up with no persuasive reason, much less  
12 admissible evidence, suggesting Ms. Lopez would make up the assault. As discussed *supra* at  
13 page 11, the facts support inferences of Ms. Lopez’s truthfulness and good-faith conduct.

14 b. Dababneh Cannot Establish a Probability He Will Prevail on His  
15 Claim for Intentional Infliction of Emotional Distress.

16 Dababneh’s tort claim for intentional infliction of emotional distress is premised on  
17 exactly the same conduct as his defamation claim: speech which is absolutely protected under  
18 Civil Code Section 47. The privileges set out in section 47 apply not just to defamation claims  
19 but to any tort cause of action. (*Silberg v. Anderson*, (1990) 50 Cal. 3d 205 at 215) And a  
20 plaintiff opposing an anti-SLAPP motion cannot establish a probability of prevailing on his  
21 claim for any tort where the cause of action is based on privileged speech. (*Feldman v. 1100*  
22 *Park Lane Assocs.*, (2008) 160 Cal. App. 4th 1467, 1485, citing *Kashian v. Harriman* (2002) 98  
23 Cal.App.4th 892, 926–927.)

24 Further, Dababneh cannot establish that Ms. Lopez’s conduct was “outrageous” as a  
25 matter of law, carried out with the requisite intent, or that it was the “actual and proximate  
26 causation of [his] emotional distress.” (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946)  
27 “Outrageous conduct” means conduct so “extreme as to exceed all bounds of that usually  
28 tolerated in a civilized community,” (*Hughes v. Pair* (2009) 46 Cal. 4<sup>th</sup> 1035, 1050-1051)

1 Ms. Lopez spoke out about her experience as the victim of sexual assault, in an effort to make a  
2 difference for other women in her workplace – the California Capitol – and in the world in  
3 general. That is an admirable goal that seeks to make the community more “civilized,” not less  
4 so. It is Dababneh’s conduct, not hers, that “exceed[ed] all bounds of that tolerated in a civilized  
5 community.” (*Id.*) To prevail on his IIED theory he will have to prove that Ms. Lopez’s speech  
6 was not privileged and that it was false, which he also cannot do, for the reasons discussed  
7 above. And he will also have to demonstrate “intent” to inflict emotional distress on him. Since  
8 he cannot show that Ms. Lopez’s speech was unprivileged, and false, and that she had “intent” to  
9 harm him, the court must strike his IIED claim. (*See Okorie v. LAUSD*, (2017) 14 Cal.App.5<sup>th</sup>  
10 574)

11 **D. The Court Should Award Ms. Lopez Attorney Fees and Costs for Having to**  
12 **Defend Against this Specious and Retaliatory Lawsuit.**

13 Attorney fees and costs are mandatory for a defendant who prevails on an anti-SLAPP  
14 motion under CCP § 425.16(c)(1). (*Ketchum v. Moses*, (2001) 24 Cal.4<sup>th</sup> 1122, 1133) This fee-  
15 shifting is an essential means by which the law fulfills its purpose of discouraging SLAPPs by  
16 “imposing the litigation costs on the party seeking to ‘chill the valid exercise of the constitutional  
17 rights of freedom of speech and petition for redress of grievances.’” (*Id.* at 1131) Should this  
18 court grant the instant anti-SLAPP motion, Defendant Pamela Lopez will file a noticed motion  
19 for attorney’s fees and costs. (*Melbostad v. Fisher*, (2008) 165 Cal. App. 4<sup>th</sup> 987, 992)

20 **CONCLUSION**

21 Defendant Pamela Lopez respectfully requests that this court grant this motion to strike  
22 Plaintiff’s Complaint against her in its entirety, and order Plaintiff Matthew Dababneh to pay her  
23 attorney’s fees and costs incurred in having to bring this motion.

24 Dated: October 23, 2018

LEVY VINICK BURRELL HYAMS LLP

25  
26 By: 

JEAN K. HYAMS

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