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| MARC D'AMELIO, | : | SUPERIOR COURT |
| Plaintiff, | : | JUDICIAL DISTRICT OF STAMFORD |
| v. | : | |
| CITY OF NORWALK, NANCY CHAPMAN, | : | |
| Defendants. | : | JANUARY 31, 2019 |

**MEMORANDUM IN SUPPORT OF DEFENDANT NANCY CHAPMAN'S SPECIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT**


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## PRELIMINARY STATEMENT

This case improperly seeks to punish a journalist for reporting true newsworthy facts about a political candidate in the middle of a campaign. It should never have been brought. Having lost his bid for a state senate seat, plaintiff advances three tort claims against reporter Nancy Chapman, none of which has any merit under state law and all of which are barred by the First Amendment.

Recently, the Connecticut legislature enacted An Act Concerning Strategic Litigation Against Public Participation And a Special Motion to Dismiss (the Connecticut "Anti-SLAPP" statute) specifically to bring a halt to this type of vindictive litigation asserted against individuals for exercising their free speech rights. The Anti-SLAPP statute enables victims like Chapman to file a special motion to dismiss claims asserted against them for exercising their First Amendment rights and entitles them to costs and fees for the trouble. Pursuant to that Act and for the reasons below, this Court should promptly dismiss D'Amelio's claims against Chapman and enter an order awarding her attorneys' fees and costs.

## BACKGROUND

### A. Defendant Nancy Chapman

Since 2002, defendant Nancy Chapman ("Chapman") has worked full-time as a professional journalist. Affidavit of Nancy Chapman ¶ 5, Jan. 31, 2019 (hereinafter, "Chapman Aff."). She started her journalism career at age 19, freelancing features to the *Cape Cod Times*. *Id.* ¶ 4. In the following years, Chapman covered local news at *The Sarasota Herald Tribune*, which was then a part of The New York Times Regional Media Group; *The Englewood Edge*; *The Daily Journal* in Vineland, New Jersey; and the *Daily Voice* in Norwalk, Connecticut. *Id.*

In 2012, Chapman started *Nancy On Norwalk* with her husband and fellow journalist, Mark Chapman. *Id.* ¶ 7. *Nancy On Norwalk* ("NoN") is a nonprofit news website with an independent board of directors that was created to be "the place to go for Norwalk residents to get the real, unvarnished story about what is going on in and around their city."[1] For six years, NoN has worked to pull the curtain back and shine a spotlight on how Norwalk is run and investigate issues that affect taxpayers' pocketbooks and safety.[2] NoN provides regular and thorough coverage of Norwalk's City Council meetings and Common Council Committees' hearings and meetings;[3] Norwalk Board of Education's activities;[4] and state legislative activities that affect Norwalk.[5] NoN also provides a forum for local commenters to express their own opinions.[6] Chapman is both the editor and primary reporter for NancyOnNorwalk.com. *See* Chapman Aff. ¶¶ 7, 15–16.[7]

NoN's reporting helps Norwalk's citizens hold public officials accountable. In January 2018, for example, Nancy's thoroughly reported the inadvertent transfer of $894,464.83 to scammers by Norwalk's finance department ahead of the daily newspaper and with far more detail.[8] Similarly, she reported in February and March 2018 that Norwalk's new special needs

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[1] Chapman Aff. ¶ 8; *see About This Site*, NancyOnNorwalk.com, https://www.nancyonnorwalk.com (last visited Jan. 9, 2019).

[2] *See, e.g.*, Chapman Aff. ¶¶ 15–16; *About This Site*, NancyOnNorwalk.com, https://www.nancyonnorwalk.com (last visited Jan. 9, 2019).

[3] *City Beat Archive*, NandcyOnNorwalk.com, https://www.nancyonnorwalk.com/category/city-beat/ (last visited Jan. 9, 2019).

[4] *Education Archive*, NancyOnNorwalk.com, https://www.nancyonnorwalk.com/category/education (last visited Jan. 9, 2019).

[5] *See State Archive*, https://www.nancyonnorwalk.com/category/state/ (last visited Jan. 9, 2019).

[6] *Opinion* Archive, https://www.nancyonnorwalk.com/category/opinion/ (last visited Jan. 9, 2019).

[7] Sadly, Chapman's husband died in 2016.

[8] Chapman Aff. ¶ 15; *see* Nancy Chapman, *Norwalk Capital Budget Cybersecurity Talk Yields Disclosure of "Loss"*, NancyOnNorwalk.com (Jan. 25, 2018), https://www.nancyonnorwalk.com/2018/01/norwalk-capital-budget-cybersecurity-talk-yields-disclosure-of-loss/; Nancy Chapman, *Norwalk Wired $900K To Scammers; May Settle Reimbursement Lawsuit*, NancyOnNorwalk.com (Nov. 27, 2018),

preschool was inadequately staffed and transporting children in unsanitary car seats that staff didn't know how to operate properly.[9]

## B. Plaintiff Marc D'Amelio

Plaintiff Marc D'Amelio is a Norwalk resident who has twice sought public office. Compl. ¶ 1. In 2006, D'Amelio founded Level 4 Collective Showroom in New York City, a multiline showroom and sales agency representing several fashion brands.[10] He currently serves as Level 4's President.[11]

### 1. D'Amelio's 2014 DUI Arrest

On January 12, 2014, *The Norwalk Hour* reported that around 2:28 a.m. on January 11, 2014, D'Amelio was "arrested . . . for driving around South Main Street drunk with his 9-year-old daughter in the front seat and three complete strangers that he'd picked up from a bodega in the backseat." Chapman Aff. Ex. A at 1. "Police began following D'Amelio's black BMW after spotting the car making an illegal u-turn . . . . The car begun traveling southbound on South Main Street, swerving numerous times into the northbound lane and, at one point, almost hitting the curb in the northbound lane, police said." *Id.* at 1–2.

When police pulled D'Amelio over, "[h]e immediately exited his vehicle and was told to get back in the car, according to police." *Id.* at 2. When an officer approached the car,

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https://www.nancyonnorwalk.com/2018/11/norwalk-looks-to-settle-lawsuit-stemming-from-hefty-loss-through-online-scam/.

[9] Chapman Aff. ¶ 16; Nancy Chapman, *Mothers Blast Norwalk's New Preschool Facility*, NancyOnNorwalk.com (Feb. 6, 2018), https://www.nancyonnorwalk.com/2018/02/mothers-blast-norwalks-new-preschool-facility/; Nancy Chapman, *Goorevitch Claims Progress at Norwalk Preschool Center*, NancyOnNorwalk.com (Mar. 19, 2018), https://www.nancyonnorwalk.com/2018/03/goorevitch-defends-norwalk-preschool-center/.

[10] *See* Kaitlyn Krasselt, *Norwalk Election Candidate Profile: Marc D'Amelio*, The Hour, Nov. 5, 2017, https://www.thehour.com/news/article/Norwalk-Election-Candidate-Profile-Marc-12333217.php; *About*, Facebook: Level 4 Collective Showroom, https://www.facebook.com/pg/level4collective/about/?ref=page_internal (last visited Jan. 10, 2019).

[11] *Id.*

"D'Amelio allegedly told officers that he was driving around South Norwalk with his daughter, handing out winnings from Mohegan Sun casino in an effort to teach his daughter a lesson on helping the less fortunate." *Id.* at 1. "D'Amelio explained that he had picked the men up at a corner store and was giving them a ride during his mission to hand out cash in South Norwalk . . . , according to police." *Id.* at 2. He "failed all three field sobriety tests and was taken into custody, police said." *Id.*

According to the news account, D'Amelio was "charged with operation while under the influence, risk of injury to a minor, failure to drive in proper lane and restricted turns [sic] signal." *Id.* at 1. "He was held on $25,000 bond and given a court date of Jan. 21." *Id.* "Police also notified the state Department of Children and Families about D'Amelio's arrest." *Id.* at 2.

During D'Amelio's subsequent race for the state senate, on September 28, 2018, the *Hour* published an article recounting many of the details from its 2014 report. It also provided an update that D'Amelio "applied for and was granted accelerated rehabilitation, which entailed maintaining a clean record for nine months." Chapman Ex. B. at 2. After D'Amelio completed the accelerated rehabilitation program, "the charges were dismissed in Norwalk Superior Court." *Id.*

**2. <u>D'Amelio's Campaigns for Public Office</u>**

In 2017, D'Amelio ran for the Norwalk Board of Education.[12] D'Amelio was interviewed by the *Hour* and offered an extended statement to the paper in response to a question about what

[12] Robert Koch, *D'Amelio: 'An Open Mind And No Political Agenda'*, The Hour, Oct. 6, 2018, https://www.thehour.com/news/article/D-Amelio-We-have-been-short-changed-by-13286924.php.

set D'Amelio apart from other candidates.[13] He received the most votes of any Republican candidate[14] but was not elected.[15]

On January 27, 2018, D'Amelio registered with the Connecticut Secretary of State to run for the state senate in district 25,[16] which covers Norwalk and Darien.[17] Three days later, D'Amelio withdrew from the race, citing career and family commitments.[18] D'Amelio re-entered the race three months later, on April 25, 2018,[19] and secured the Republican nomination for the seat.[20]

Over the course of the election, D'Amelio made numerous public appearances, as documented by various YouTube videos. On April 27, 2018, for example, D'Amelio announced his re-entry into the race at a gathering of the Norwalk Republican Town Committee.[21] On June 30, 2018, D'Amelio opened his "Marc D'Amelio for Senate" headquarters and hosted an open

[13] *See* Kaitlyn Krasselt, *Norwalk Election Candidate Profile: Marc D'Amelio*, The Hour, Nov. 5, 2017, https://www.thehour.com/news/article/Norwalk-Election-Candidate-Profile-Marc-12333217.php

[14] Robert Koch, *D'Amelio: 'An Open Mind And No Political Agenda'*, The Hour, Oct. 6, 2018, https://www.thehour.com/news/article/D-Amelio-We-have-been-short-changed-by-13286924.php.

[15] *See* Kaitlyn Krasselt, *Norwalk Election Candidate Profile: Marc D'Amelio*, The Hour, Nov. 5, 2017, https://www.thehour.com/news/article/Norwalk-Election-Candidate-Profile-Marc-12333217.php; *Final Election Results for Norwalk*, The Hour, Nov. 8, 2017, https://www.thehour.com/news/article/Final-election-results-for-Norwalk-12341753.php.

[16] Robert Koch, *D'Amelio, Say 'Stakes Too High,' Re-Enters 25th State Senate District Race*, The Hour, Apr. 26, 2018, https://www.thehour.com/news/article/D-Amelio-saying-stakes-too-high-12867520.php.

[17] *Districts By Town*, Conn. Gen. Assembly, https://www.cga.ct.gov/asp/content/townlist.asp (last visited Jan. 10, 2019).

[18] Nancy Chapman, *D'Amelio Backs Out From Challenge to Duff*, NancyOnNorwalk.com (Feb. 2, 2018), https://www.nancyonnorwalk.com/2018/02/damelio-backs-out-from-challenge-to-duff/.

[19] Nancy Chapman, *D'Amelio Resumes Campaign Against Duff*, NancyOnNorwalk.com (Apr. 25, 2018), https://www.nancyonnorwalk.com/2018/04/damelio-resumes-campaign-against-duff/.

[20] *See* Marc D'Amelio, *Election 2018: Candidates for 25th Senate District and and [sic] 147th House District Speak — Marc D'Amelio*, Darien Times, Oct. 29, 2018, https://www.darientimes.com/2018/10/29/election-2018-candidates-for-25th-senate-district-and-and-147th-house-district-speak-marc-damelio/.

[21] Nancy Chapman, *Marc D'Amelio Announced Run for 25th Senate District*, YouTube (Apr. 27, 2018), https://www.youtube.com/watch?v=p-LxI3C5WRE.

house for the public, which *NancyOnNorwalk.com* covered.[22] On October 20, 2018, D'Amelio debated incumbent Bob Duff, the Majority Leader for the Connecticut State Senate, on News 12 Connecticut's *Connecticut Vote 2018*.[23]

D'Amelio also published op-eds and entertained interviews with journalists throughout his campaign. On April 25, 2018, for example, D'Amelio responded to questions from defendant Chapman, explaining that he'd decided to get back into the race in part because of his relationship with Norwalk's new Republican Town Committee Chairman, Mark Suda.[24] On April 26, 2018, D'Amelio was interviewed by the *Hour*'s Robert Koch and explained that the "stakes [were] too high for [him] to sit on the sideline."[25] On July 3, 2018, D'Amelio published an op-ed on *Darienite.com*, criticizing then-Governor Dan Malloy and laying out his platform.[26] On July 15, 2018, D'Amelio published an op-ed on NoN, encouraging voters to "focus[] on the big stuff for a change."[27]

On November 6, 2018, D'Amelio lost his bid for state senate, receiving approximately 37% of the vote to his opponent Duff's 63%.[28]

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[22] Chapman Aff. ¶ 22; Nancy Chapman, *Opening of "Marc D'Amelio For Senate" HQ*, YouTube (July 1, 2018), https://www.youtube.com/watch?v=_Tm0fI23Lbo&feature=youtu.be.

[23] Connecticut Republicans, *Connecticut State Senate Debate: Marc D'Amelio vs. Bob Duff (Norwalk Dairen [sic] CT)*, YouTube (Oct. 20, 2019), https://www.youtube.com/watch?v=3XRr4CiVve0.

[24] Nancy Chapman, *D'Amelio Resumes Campaign Against Duff*, NancyOnNorwalk.com (Apr. 25, 2018), https://www.nancyonnorwalk.com/2018/04/damelio-resumes-campaign-against-duff/.

[25] Robert Koch, *D'Amelio, Say 'Stakes Too High,' Re-Enters 25th State Senate District Race*, The Hour, Apr. 26, 2018, https://www.thehour.com/news/article/D-Amelio-saying-stakes-too-high-12867520.php.

[26] Marc D'Amelio, *State Sen [sic] Bob Duff Should Focus On The Big Stuff In This Area For A Change*, Darienite.com (July 3, 2018), https://darienite.com/state-sen-bob-duff-should-focus-on-the-big-stuff-in-this-area-for-a-change-34846.

[27] Marc D'Amelio, *Focusing On the Big Stuff For A Change*, NancyOnNorwalk.com (July 15, 2018), https://www.nancyonnorwalk.com/2018/07/focusing-on-the-big-stuff-for-a-change/.

[28] *2018 U.S. General Election*, The Hour, https://www.thehour.com/electionresults/ (last updated Jan. 8, 2019, 4:26 P.M. EST).

## C. The News Report At Issue

This lawsuit challenges an article Chapman published on NoN on October 9, 2018, during D'Amelio's campaign for state senate ("the News Report"). Titled "D'Amelio Attorney Says Arrest Expunged; Threatens Lawsuit," the article details D'Amelio's 2014 DUI arrest and subsequent proceedings. Chapman Aff. Ex. C.

The News Report first recounts the details of D'Amelio's 2014 DUI arrest. *Id.* at 2–4. Chapman's description of the arrest contains no material facts not already made public by the *Hour*'s 2014 report. *Compare* Chapman Aff. Ex. A *with* Chapman Aff. Ex. C.

The News Report also provides D'Amelio's response when asked by Chapman about his 2014 arrest:

> I have to talk about [sic] my lawyer about that. . . . I have never been convicted of a crime, and you know what's going on right now. . . . I do not have a police record, and have not been convicted of a crime. This is what you know it is. It's 'the Senate Majority Leader knows he's vulnerable,' and it is what it is. I'll stand by what I said. I do not have a police record. They want to dig things up.

*Id.* at 4. The News Report also notes that Chapman contacted Mark Sherman, "D'Amelio's Stamford criminal lawyer," on September 7, 2018, who said "the arrest and charges were dismissed, erased, and expunged in March 2016." *Id.* at 5. And the article states that Sherman further said publication of a story about the arrest would constitute libel. *Id.*

On September 25, 2018, Chapman emailed D'Amelio and Sherman to advise them that NoN considered the arrest newsworthy given D'Amelio's candidacy and did intend to publish an article about it. *Id.* On September 27, 2018, Sherman responded by email, stating that "the charges against Mr. D'Amelio were dismissed and expunged by the Norwalk Superior Court" and that Sherman and D'Amelio had asked the Connecticut State Police to conduct an

investigation into how NoN obtained a record of the arrest report, all of which was included in the News Report. *Id.*

The News Report also explains how NoN learned of the arrest. *Id.* at 6. It conveys that two readers contacted Chapman and encouraged her to publish a story on the arrest because they thought the public should know of it. *Id.* at 6.[29] Shortly thereafter, NoN received by mail an envelope with no return address that contained a redacted copy of D'Amelio's arrest report and a copy of *The Norwalk Hour*'s 2014 article on the arrest. *Id.*

The News Report explains that after receiving a copy of D'Amelio's arrest report, NoN contacted the Norwalk Police Department and arranged to pick up a copy of the arrest report. *Id.* The police department provided NoN with a copy of D'Amelio's report, which was more heavily redacted than the report she'd received from a reader. *Id.* The police department subsequently decided that the report should not have been released and asked that it be returned. *Id.* The News Report states that NoN declined to return the copy of the report obtained from the police department, but explains that the News Report "is based entirely on the report which arrived by mail which has far fewer redactions than the report provided by Norwalk Police." *Id.*

The News Report goes on to discuss events at the June 26, 2015, hearing in D'Amelio's DUI prosecution, based upon a transcript of the court proceeding.[30] The News Report links to a copy of the transcript, *see id.* at 7; Chapman Aff. Ex. D (hearing transcript), and it quotes several exchanges from the hearing, including the judge's admonition to D'Amelio "to make your top

[29] At the time her readers first contacted Chapman, Chapman was already aware of the arrest, as she'd previously seen an article about the arrest online. Chapman Aff. ¶ 20. However, when Chapman later searched for the article online, she could not locate it. *Id.* ¶ 24.

[30] The court transcript is a public record and, after receiving a copy of the transcript from a reader, NoN obtained a copy of the same transcript on October 2, 2018 by requesting it from the Norwalk Superior Court Reporter's Office. Chapman Aff. ¶ 38.

priority the safety and welfare of your children" and "to make better decisions," Chapman Aff. Ex. C at 7.

The News Report finally describes the *Hour*'s September 29, 2018 article about D'Amelio's arrest. *See id.* at 8 (discussing Chapman Aff. Ex. B). It concludes with a series of one-sentence paragraphs describing, among other things, a Fall 2017 "whisper campaign" about D'Amelio's arrest and his unsuccessful Board of Education campaign. *Id.* at 7–8.

**D. D'Amelio's Complaint**

On November 28, 2018, D'Amelio filed this lawsuit against the City of Norwalk and Nancy Chapman. Compl. On December 16, 2018, *The Norwalk Hour* published an op-ed in support of NoN.[31] The editorial opened with the observation that, "[i]n suing the local news website Nancy On Norwalk . . . , losing candidate Marc D'Amelio is behaving like both a sore loser and a bully."[32] The editorial added that "his lawsuit has all the earmarks of a personal vendetta."[33] Rejecting D'Amelio's claim that NoN publishes "Democratic and progressive propaganda," the editorial praised Chapman's work on NoN, writing "[i]n fact, we'd be hard-pressed to find a more committed journalist than Chapman. . . . That may make her an easy target. It doesn't make her any less legit."[34]

Nevertheless, D'Amelio has chosen to press forward with three claims against Chapman for her publication of the News Report: false light invasion of privacy (Count Three), negligent infliction of emotional distress (Count Four), and intentional infliction of emotional distress (Count Five). Compl. ¶¶ 33–42.

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[31] *Editorial: Lawsuit Against Local Journalist Unfounded*, The Norwalk Hour (Dec. 16, 2018), https://www.thehour.com/opinion/article/Editorial-Lawsuit-against-local-journalist-13467512.php.

[32] *Id.*

[33] *Id.*

[34] *Id.*

Although D'Amelio characterizes the News Report as "defamatory" and alleges that it contains "numerous misleading" and "false" statements, *id.* ¶¶ 20, 23, 33, he conspicuously omits any claim of defamation and fails to identify any specific statements that are allegedly false or misleading. D'Amelio's false light invasion of privacy claim also fails to grapple with the existence of *The Norwalk Hour*'s 2014 article on D'Amelio's arrest, which describes all the key facts in the NoN article, is available in the Norwalk Public Library and, under Connecticut law, forecloses any false light invasion of privacy claim.

D'Amelio's emotional distress claims against Chapman allege that her failure to return the copy of his arrest report to the Norwalk Police Department was outrageous and caused him distress, Compl. ¶¶ 37–42, but those allegations fail to state a claim under Connecticut law or the First Amendment. Neither which allow claims for emotional distress arising out of the publication of a true, newsworthy report. None of D'Amelio's claims against Chapman have merit and each should promptly be dismissed, as will now be demonstrated.

## ARGUMENT

### I. THE ANTI-SLAPP STATUTE APPLIES TO PLAINTIFF'S CLAIMS AGAINST DEFENDANT CHAPMAN

Effective January 1, 2018, Connecticut's Anti-SLAPP statute provides that "[i]n any civil action in which a party files a complaint . . . based on the opposing party's exercise of its right of free speech . . . under the Constitution of the United States, such opposing party may file a special motion to dismiss the complaint." General Statutes § 52-196a(b). A special motion to dismiss must be filed not later than thirty days after the date of return of the complaint. *Id.* § 52-196a(c). Upon the filing of a special motion to dismiss, the court must stay discovery and conduct an expedited hearing on the motion not later than sixty days after the date of filing. *Id.* §

52-196a(d)–(e)(1). The court must rule on a special motion to dismiss "as soon as practicable." *Id.* § 52-196a(e)(4).

The filing of a special motion to dismiss under the Anti-SLAPP statute triggers the imposition of a unique burden-shifting regime on the parties. The party filing the special motion to dismiss bears the initial burden of "mak[ing] a[] . . . showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech." *Id.* § 52-196a(e)(3). The statute defines the "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern." *Id.* § 52-196a(a)(2). The statute identifies a "matter of public concern," in turn, as "an issue related to (A) health or safety, (B) environmental, economic or community wellbeing, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work." *Id.* § 52-196a(a)(1).

If the moving party carries its initial burden, "[t]he court shall grant [the] special motion to dismiss," *unless* the plaintiff demonstrates "with particularity" that "there is probable cause, considering all valid defenses, that the [plaintiff] will prevail on the merits of the complaint." *Id.* § 52-196a(e)(3).

"When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based." *Id.* § 52-196a(e). Finally, if the court grants the special motion to dismiss, it "shall award the moving party costs and reasonable attorney's fees," including those costs and fees incurred in filing the motion. *Id.* § 52-196a(f)(1).

The Connecticut Legislature enacted the Anti-SLAPP statute to fight "frivolous and often expensive litigation," known as "SLAPP" lawsuits, which "affect the media the most in their

exercise of first amendment rights to free speech." *See* Judiciary Committee Joint Favorable Report, concerning Senate Bill No. 981, entitled "An Act Concerning Strategic Litigation Against Public Participation and a Special Motion to Dismiss," (Apr. 10, 2017). According to testimony by the Connecticut Broadcasters Association, "frivolous lawsuits have become a major hurdle for Connecticut journalists [who are faced with] intimidation tactics by pro se and represented parties who hope to chill [their] reporting by filing baseless lawsuits hoping we'd rather fold than spend money." Comments by Klarn DePalma Vice President/General Manager WFSB—TV 3, Joint Judiciary Committee, Senate Bill No. 981 (March 27, 2017). In passing P.A. 17-71, now § 52-196a, Connecticut joined twenty-eight states and the District of Columbia to put a halt to that sort of frivolous litigation. *Id.*

Here, there can be no doubt that D'Amelio's claims are based on Chapman's exercise of the right of free speech on a matter of public concern, and the SLAPP Statute applies. Publishing articles constitutes an exercise of the "right of free speech" under the SLAPP statute. *See Graves v. Chronicle Printing Co.*, No. CV185010056S, 2018 WL 6264070, at *5 (Conn. Nov. 7, 2018). And courts have squarely held that articles concerning the arrest of an individual for charges related to the safety of a minor and articles relating to a candidate's fitness for office necessarily involve "a matter of public concern." *See id.* (coverage of proceedings related to the safety of minors relate to a matter of public concern); *Cronin v. Pelletier*, No. CV186014395S, 2018 WL 3965004, at *2 (Conn. Super. Ct. July 26, 2018) (holding that a letter concerning a candidate's fitness for office relates to a matter of public concern).

The News Report in this case implicates "a matter of public concern" for the additional reason that the SLAPP Statute defines "an issue related to . . . a public official or public figure" to be a matter of public concern. General Statutes § 52-196a(a)(1). In general, "public figures"

under both federal and Connecticut law include those who have "thrust themselves to the forefront of particular controversies in order to influence the resolution of the issues involved." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974); *Miles v. Perry*, 11 Conn. App. 584, 591, 529 A.2d 199, 204 (1987). Candidates for statewide office are quintessential "public figures." *Mozzochi v. Hallas*, No. CV 950556163S, 1998 WL 19910, at *2 (Conn. Super. Ct. Jan. 6, 1998) ("This court can think of no better example of a public figure than a candidate for public office."); *accord. Strada v. Conn. Newspapers, Inc.*, 193 Conn. 313 (1984) (treating incumbent candidate for state senate as public figure). Accordingly, the News Report about a candidate for state office published during an election addresses "an issue related to . . . a public official or public figure" and, thus involves "a matter of public concern" under the SLAPP Statute. General Statute § 52-196a(1).

Defendant Chapman's publication of an article about a state senate candidate's arrest for driving under the influence and endangering a minor during an election was plainly an exercise of her "right of free speech" on a matter of public concern. The SLAPP Statute unambiguously applies to plaintiff's claims against her and was meant to protect against the very sort of vindictive claims D'Amelio advances here.

## II. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING ON THE MERITS OF HIS TORT CLAIMS

While Connecticut's SLAPP Statute is new, courts in other jurisdictions with similar laws have recognized that a special motion to dismiss is akin to a summary judgment motion in that it requires the plaintiff to adduce admissible evidence demonstrating, with particularity, the factual basis for a meritorious claim. *See, e.g.*, *In re Lipsky*, 460 S.W.3d 579, 590–91 (Tex. 2015) (mere notice pleading is not sufficient under the anti-SLAPP statute; rather, "a plaintiff must provide enough detail to show the factual basis for its claim."). On a special motion to dismiss, a court is

required "to consider both the legal sufficiency of and evidentiary support for the pleaded claims, and must also examine whether there are any constitutional or nonconstitutional defenses to the pleaded claims and, if so, whether there is evidence to negate any such defenses." *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 108 (2007); *see also Beilenson v. Superior Court*, 44 Cal. App. 4th 944 (1996) (dismissing lawsuit under SLAPP statute where plaintiff failed to produce evidence that he would probably prevail on his claims).

D'Amelio cannot carry this burden, for multiple, independent and equally dispositive reasons. D'Amelio has no claim against defendant Chapman because (a) the News Report is privileged from liability as a fair and accurate report of official proceedings; (b) he cannot demonstrate probable cause that he will prevail on any of his tort claims under Connecticut law, (c) all of them are barred in any event under the First Amendment; and (d) he failed to comply with the Connecticut retraction statute, General Statutes § 52-237.

### A. Plaintiff's Claims Are Barred By The "Fair Report" Privilege

Plaintiff's claims against Chapman are barred by Connecticut's "fair report" privilege. This privilege immunizes all fair and accurate descriptions of official proceedings and documents, regardless of the accuracy of the underlying statements. *Burton v. Am. Lawyer Media, Inc.*, 83 Conn. App. 134, 137–38 (2004). The privilege "was one of the most important privileges realized at common law," *Goodrich v. Waterbury Republican-Am., Inc.*, 188 Conn. 107, 114 (1982), and it is meant to protect "the public's strong interest in receiving information about what occurs in official proceedings and public meetings" to enable democratic oversight of public officials and institutions. *Dellacamera v. New Haven Register*, No. CV000436560, 2002 WL 31501855, at *2 (Conn. Super. Ct. Oct. 28, 2002). Because the privilege exists to protect speakers who comment on "individuals . . . who voluntarily inject[] themselves into the public

scene or affect[] the community's welfare," the privilege has long attached to reports on "political candidates." *Goodrich*, 188 Conn. at 114.

To be covered by the privilege, it is not necessary that a publication "be exact in every immaterial detail or that it conform to that precision demanded in technical or scientific reporting. It is enough that it conveys to the persons who read it a substantially correct account of the proceedings." *Burton*, 83 Conn. App. at 140. Notably, the relevant fairness and accuracy inquiry is the fairness and accuracy of a defendant's report of an official record, not the fairness and accuracy of the official record itself. *Id.* at 140; *Finnelli v. Tepfer*, No. CV075011659S, 2009 WL 1424688, at *6 (Conn. Super. Ct. Apr. 24, 2009) ("[T]he relevant inquiry is solely into whether the media reports fairly described the official proceedings."). So long as a report "captures the 'gist' or 'sting' of the official action," it falls within the privilege. *Dellacamera*, 2002 WL 31501855, at *3.

The privilege covers news reports based on court proceedings and records of those proceedings, including transcripts of hearings. *See, e.g.*, *Burton*, 83 Conn. App. at 136 (report based on judicial decisions); *Clark v. Hagedorn Commc'ns*, No. CV030197308S, 2006 WL 1046036, at *3 (Conn. Super. Ct. Mar. 28, 2006) (report based on trial proceedings and transcripts). It also applies fully to news reports based on arrest records. "An arrest by a law enforcement officer is an official action. A report of the fact of the arrest and of the criminal charge made by a law enforcement officer and of the contents of an arrest warrant or arrest report are within the fair report privilege." *Finnelli*, 2009 WL 1424688, at *6 (quoting *Dellacamera*, 2002 WL 31501855, at *3).

Where applicable, the privilege bars not only defamation claims, but also false light invasion of privacy claims and infliction of emotional distress claims premised on the

publication of allegedly false or misleading information. *Dellacamera*, 2002 WL 31501855, at *4 (Conn. Super. Ct. Oct. 28, 2002) (false light invasion of privacy); *Savage v. Andoh*, No. NNHCV075015657S, 2013 WL 951173, at *20 (Conn. Super. Ct. Feb. 6, 2013) (infliction of emotional distress claims).

Here, plaintiff's claims against Chapman are undeniably barred by the "fair report" privilege. Plaintiff alleges that Chapman placed him in a false light by publishing the News Report, Compl. ¶¶ 33–36, but the News report is based entirely on the official arrest report for D'Amelio's 2014 DUI arrest and the transcript of a June 26, 2015, hearing in the State's prosecution of that arrest—official records within the privilege, *see* Compl. ¶¶ 22–23; Chapman Aff. Ex. C. The News Report's description of those records is completely accurate and entirely fair. Chapman Aff. ¶ 40. The News Report does not merely capture the "gist" or "sting" of those official records, *Dellacamera*, 2002 WL 31501855, at *3, but conveys their contents with almost no editorialization. Finally, both the report and the underlying official records relate to a matter of public concern, namely, D'Amelio's fitness for a state senate seat. *See Goodrich*, 188 Conn. at 114 (the fair report privilege traditionally covers reports on political candidates). For these reasons, plaintiff's false light invasion of privacy claim against Chapman is precluded by the "fair report" privilege.

Plaintiff's infliction of emotional distress claims are equally barred by the "fair report" privilege because they arise out of the publication of information in these same official records. Plaintiff claims that Chapman intentionally and negligently inflicted emotional distress on plaintiff by refusing to return copies of the arrest report to police upon request, *see* Compl. ¶¶ 37–42, but Chapman's mere refusal to return the police report was not the proximate cause of Plaintiff's alleged emotional distress. Instead, Plaintiff's alleged emotional distress was caused

by Chapman's publication of the News Report. For that reason, the "fair report" privilege also bars plaintiff's claims against Chapman. *See Savage*, 2013 WL 951173, at *20.

### B. Plaintiff's Claims Fail as Matter of Connecticut Law

#### 1. Plaintiff has no false light claim because he cannot demonstrate falsity, fault, or the disclosure of any private fact, each of which is a necessary element of his claim.

Beyond the fair report privilege, plaintiff's claims must all be dismissed because he cannot not demonstrate probable cause of success. To establish a claim for false light invasion of privacy, D'Amelio must establish that he was placed by Chapman in a false light of such a nature that "would be highly offensive to a reasonable person," and also that Chapman acted with fault, specifically that she "had knowledge of or acted in reckless disregard as to the falsity of the publicized matter." *See Goodrich*, 188 Conn. at 131 (quoting 3 Restatement (Second), Torts § 652E)); *accord.* 3 Restatement (Third), Torts, § 625E. "The essence of a false light privacy claim is that the matter published concerning the plaintiff (1) is not true; . . . and (2) is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position." *Goodrich*, 188 Conn. at 131.

Here plaintiff has not pled and cannot demonstrate either that the News Report was untrue or that Chapman recklessly disregarded the truth in publishing it. Though plaintiff generally avers that the News Report contains "false" and "misleading" statements "designed to impugn the character of plaintiff," Compl. ¶¶ 23, 34, plaintiff fails to identify a single specific statement in the News Report that he alleges to be false or misleading. Nor could he. Nothing in the News Report is either false or a major misrepresentation of plaintiff's character, history, activities, or beliefs. *See* Chapman Aff. Ex. C; Chapman Aff. ¶ 40. Chapman believed everything she reported to be true and did not recklessly disregard the truth. Chapman Aff. ¶ 40.

Plaintiff's inability to demonstrate either falsity or reckless disregard for the truth eviscerates his claim for false light invasion of privacy. *Goodrich*, 188 Conn. at 131.

It appears that plaintiff's false light invasion of privacy claim boils down to an argument that Chapman's publication of the fact and details of his 2014 arrest is "false" and "misleading" because the arrest is expunged from his criminal history as a matter of law. *See* Compl. ¶ 22 ("This article was written and published with actual malice and contained information contained within the reports."). However, the fact that plaintiff's arrest has been expunged as a matter of law does not render the News Report's coverage of the historical fact of plaintiff's arrest false or misleading. As another Connecticut Superior Court has explained,

> [t]he erasure statute operates in the legal sphere, not the historical sphere. That is, the erasure statute is designed to return a person's criminal record to the status quo when that person is found not guilty as a consequence of a final judgment, or a charge is dismissed. The erasure statute does not, and could not, purport to wipe from the public record the fact that certain historical events have taken place. Only in a totalitarian system could law purport to have such a sweeping effect. . . . The erasure statute is powerless to eradicate from the historical record the fact that plaintiff was arrested . . . . The statement that plaintiff was arrested . . . , because a true statement of an historical fact, is not defamatory.

*Martin v. Griffin*, No. CV 990586133S, 2000 WL 872464, at *12 (Conn. Super. Ct. June 13, 2000). The Second Circuit similarly rejected a Connecticut false light invasion of privacy claim premised on the report of an expunged arrest, explaining that no publication-related tort may lie where an article accurately conveys the fact of an arrest and that "[n]either the Erasure Statute nor any amount of wishing can undo that historical truth." *Martin v. Hearst Corp.*, 777 F.3d 546, 552 (2d Cir. 2015).

Plaintiff's false light claim fails for the further reason that the details of his arrest taken from the police arrest report were all previously disclosed in the *Hour*'s 2014 report. As the

Connecticut Supreme Court has instructed, a false light invasion of privacy claim cannot lie where the information contained in an allegedly tortious publication is already a matter of public record. *See Goodrich*, 188 Conn. at 134. In *Goodrich*, a developer of a shopping center sued a newspaper for false light invasion of privacy after it published an article asserting that third parties had filed lawsuits and liens against the developer totaling nearly $100,000. *Id.* at 110–11; *id.* apps. A–B. The Connecticut Supreme Court rejected the developer's false light invasion of privacy claim on the grounds that the plaintiff's finances were already a matter of public record as a result of the lawsuits filed against him. *Id.* at 134.

Here, the details of plaintiff's DUI arrest conveyed in the News Report have been a matter of public record since January 12, 2014, when *The Sunday Hour* published its initial article. *Compare* Chapman Aff. Ex. A *with* Chapman Ex. C. A side-by-side comparison of the two articles is illuminating:

| ***The Sunday Hour* 2014 Report** | ***NoN*'s 2018 News Report** |
|---|---|
| • "A 45-year-old city man was arrested Saturday morning for driving around South Main Street drunk with his 9-year-old daughter in the front seat and three complete strangers that he'd picked up from a bodega in the backseat, police said. . . . He immediately exited his vehicle and was told to get back in the car, police said." | • "The officers stopped the BMW at about 2:30 a.m., and D'Amelio 'jumped out' and walked toward their patrol car, according to the report. He was told to get back in the car, and officers observed his 9-year-old daughter in the front seat, and three men in the back. . . . D'Amelio also said the three passengers were strangers " |
| • "Marc D'Amelio allegedly told officers that he was driving around South Norwalk with his daughter handing out his winnings from the Mohegan Sun casino in an effort to teach his daughter a lesson on helping the less fortunate." | • "D'Amelio said he was in South Norwalk passing out money he had won at the Mohegan Sun Casino to 'teach his daughter a lesson about giving to the unfortunate,' Kruger wrote." |
| • "When an officer approached the vehicle, he noticed that . . . three men, including a man who was on special parole for a | • "One of the three men in the back seat was on parole and had been 'arrested numerous times for narcotics and was |

| | |
|---|---|
| shooting incident, were sitting in the backseat, police said." | arrested on August 25, 2005 for a shooting,' Kruger wrote." |
| • "D'Amelio failed all three field sobriety tests and was taken into custody, police said." | • "D'Amelio agreed to take Standardized Field Sobriety tests. He told officers that he had Parkinson's Disease, which would inhibit some of his physical movements, according to the report. D'Amelio could not perform many of the requirements of the test and at 3:23 a.m. blew a .1178 on his first breath test. A second test at 3:44 a.m. showed .1165, Kruger wrote." |
| • "The 9-year-old was taken to her home, and her mother was notified about the incident, police said. Police also notified the state Department of Children and Families about D'Amelio's arrest." | • "Kruger's 2014 report states that a report of child abuse and neglect was filed with the Department of Children and Families (DCF)." |

Chapman Aff. Exs. A, C. As noted above, a copy of *The Sunday Hour*'s article is currently available in the Norwalk Public Library. Chapman Aff. ¶ 28.

In addition, nearly two weeks *before* Chapman's publication of the News Report, the *Hour* ran a second report about plaintiff's DUI arrest, which appears to have been encouraged by plaintiff himself in an effort to get ahead of Chapman's forthcoming report and minimize any political fallout from that report. *See* Chapman Aff. Ex. B. That *Hour* report discloses further information about D'Amelio's arrest, noting that he "applied for and was granted accelerated rehabilitation, which entailed maintaining a clean record for nine months," and that after D'Amelio completed the accelerated rehabilitation program, "the charges were dismissed in Norwalk Superior Court." *Id.* at 2.

For the same reasons, any false light invasion of privacy claim premised on Chapman's publication of the details of D'Amelio's June 26, 2015 hearing must fail. Chapman's discussion of the hearing is neither false nor misleading, but entirely accurate and truthful. *See* Chapman

Aff. Ex. C at 6–7. It also reveals no information that was not already a matter of public record—the transcript of that hearing is itself a public record and may be readily obtained from the Norwalk Superior Court Reporter's Office. *See* Chapman Aff. ¶ 38.

For each of these reasons, plaintiff could not demonstrate probable cause of success on the merits of his false light invasion of privacy claim, even if the New Report were not fully protected by the fair report privilege.

**2. Plaintiff has no claim for emotional distress because his claims arise from the publication of newsworthy facts and are otherwise deficient as a matter of law.**

Plaintiff's claims for intentional and negligent infliction of emotional distress also fail as a matter of state law for multiple reasons. In order to succeed on his intentional infliction of emotional distress, plaintiff will be required to prove that "(1) that [Chapman] intended to inflict emotional distress or that [s]he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that [Chapman]'s conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." *Carrol v. Allstate Ins. Co.*, 262 Conn. 433, 443 (2003). Similarly, to prevail on his negligent infliction of emotional distress claim, plaintiff will have to demonstrate, "(1) [Chapman]'s conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Id.* at 444.

Plaintiff cannot satisfy the elements of either claim. D'Amelio alleges that Chapman caused him emotional distress through her "refusal to return copies of the police reports when requested." Compl. ¶ 38; *accord. id.* ¶ 41. As an initial matter, Chapman's mere refusal to return the police reports was neither extreme or outrageous. "Extreme and outrageous" conduct

is "conduct that exceeds all bounds usually tolerated by decent society. . . . Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient." *Carrol*, 262 Conn. at 443. Though Chapman's refusal to return the police report may have hurt plaintiff's feelings, it was not "extreme or outrageous," given that she obtained the report lawfully and was under no legal obligation to return the report.

Nor has plaintiff alleged that Chapman's mere refusal to return the police report was the proximate cause of his alleged emotional distress. *Cf.* Compl. ¶¶ 20–30, 37–42. Instead, plaintiff's complaint is more fairly read to allege that he suffered emotional distress as a result of Chapman's publication of the News Report. Connecticut law is clear, however, that an alleged emotional distress flowing from the publication of allegedly false statements is effectively derivative of a defamation claim and must fail if a defamation claim would fail. *Finnelli v. Tepfer*, No. CV075011659S, 2009 WL 1424688, at *7 (Conn. Super. Ct. Apr. 24, 2009); *accord. Petyan v. Ellis*, 200 Conn. 243, 253–55 (1986) (where alleged defamatory statements are privileged, an infliction of emotional distress claim must fail); *McKinney v. Chapman*, 103 Conn. App. 446, 455–56 (2007) (same). Plaintiff did not even assert a defamation claim because it plainly would fail in the absence of any false statement of fact. *See, e.g.*, *Gleason v. Smolinski*, 319 Conn. 394, 430 (2015). Because D'Amelio has no claim for defamation claim, his derivative infliction of emotional distress based on the same facts therefore necessarily also fails.

To the extent that plaintiff is arguing that Chapman's publication of the News Report was extreme and outrageous conduct, that argument is foreclosed by blackletter Connecticut law. Even publishing *defamatory* statements does not necessarily constitute "extreme and outrageous" conduct. *See Capasso v. Christmann*, No. CV095031331S, 2016 WL 7975806, at *10 (Conn. Super. Ct. Dec. 12, 2016) (holding that even if quotes in a newspaper were defamatory, they

were not extreme and outrageous). Here, the News Report contains no defamatory statements, let alone statements the publication of which exceeds all bounds usually tolerated by decent society. *See* Chapman Aff. Ex. C. Accordingly, plaintiff's intentional infliction of emotional distress claim must fail.

Plaintiff has no claim for infliction of emotional distress for the further reason that he cannot demonstrate that Chapman's failure to return the arrest report or her publication of the News Report was intended to inflict emotional distress or created an unreasonable risk of causing emotional distress. In order to succeed on an intentional infliction of emotional distress claim, a plaintiff must demonstrate that the defendant "intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct." *Carrol v. Allstate Ins. Co.*, 262 Conn. 433, 442–43 (2003). Similarly, to demonstrate negligent infliction of emotional distress, a plaintiff must demonstrate that "the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress." *Id.* at 444. The "publication of a newsworthy article," however, "does not create an unreasonable risk of causing emotional distress." *Finnelli*, 2009 WL 1424688, at *7; *Sylvester v. Town of Greenwich*, No. FSTCV065000700, 2007 WL 1599744, at *2 (Conn. Super. Ct. May 18, 2007) (same). Nor does it constitute intended infliction of emotional distress. *Capasso*, 2016 WL 7975806, at *10. Accordingly, Chapman's publication of the News Report detailing information about plaintiff's past relevant to voters in the midst of plaintiff's campaign for a state senate seat cannot form the basis of an intentional or negligent infliction of emotional distress claim.

### C. The First Amendment Independently Bars Plaintiff's Tort Claims

D'Amelio's tort claims against Chapman should be dismissed for yet another reason: they are barred by the First Amendment. "Speech on matters of public concern is at the heart of the

First Amendment's protection." *Snyder v. Phelps*, 562 U.S. 443, 451 (2011). Where speech relates to a matter of public concern, a speaker is generally immune from any state tort liability that would otherwise flow from that speech. *Id.* at 456–58. Accordingly, "[t]he [F]irst [A]mendment bars damages under the generally applicable laws of intentional and negligent infliction of emotional distress where those claims are based on constitutionally protected conduct." *Gleason*, 319 Conn. at 406. So too does it bar damages under the generally applicable law of false light invasion of privacy. *Goodrich v. Waterbury Republican-Am., Inc.*, 188 Conn. 107, 132 (1982); *see generally Time, Inc. v. Hill*, 385 U.S. 374, 387–88 (1967). "As long as the matter published is substantially true, [a] defendant [is] constitutionally protected from liability for a false light invasion of privacy, regardless of [her] decision to omit facts that may place the plaintiff under less harsh public scrutiny." *Goodrich*, 188 Conn. at 132.

Here, there can be no doubt that the News Report relates to a matter of public concern. It concerns plaintiff's campaign for a seat in the state senate and conveys information relating to his fitness for office. *See* Chapman Aff. Ex. C. Plaintiff does not allege that the News Report is false. *See* Compl. ¶¶ 22–23. Instead, it appears that plaintiff, like the plaintiff in *Goodrich*, is alleging that "[d]espite the truth of [the News Report's] statements there exist additional circumstances which when expanded, cast the plaintiff in a more favorable light more in keeping with reality." 188 Conn. at 132. That claim is barred by the First Amendment. *Id.*

To hold otherwise would permit plaintiff to succeed in what appears to be an attempt to end-run around the First Amendment's protection. It is telling that plaintiff has not filed a defamation claim, even though plaintiff cursorily alleges that the News Report is defamatory. Perhaps that is because plaintiff knows that he cannot meet the high threshold of "actual malice" required to satisfy the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 280

(1964). But the Supreme Court has long made clear that a plaintiff may not avoid the Constitution's protections by pursuing a defamation claim in the guise of another tort, such as through an infliction of emotional distress claim. *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988) (holding that a plaintiff seeking to recover on an intentional infliction of emotional distress claim by reason of publication of an alleged defamatory statement must demonstrate "actual malice"). The Supreme Court's vigilance on this front ensure that "the candidate who vaunts his spotless record and sterling integrity cannot convincingly cry 'Foul!' when an opponent or an industrious reporter attempts to demonstrate the contrary," unless he demonstrates "actual malice." *Id.* at 51–52.

Plaintiff cannot demonstrate actual malice and his claims are therefore barred by the First Amendment.

### D. Plaintiff Failed to Comply With Connecticut's Retraction Statute

Finally, plaintiff's claims should also be dismissed under the Anti-SLAPP Act for the independent reason that he has not pleaded – and cannot plead – that he complied with Connecticut's retraction statute. Under Connecticut law, a person who believes he was defamed must request a retraction prior to filing suit, or meet heightened pleading requirements. General Statutes § 52-237. The same pleading requirement also applies to false light privacy claims and infliction of emotional distress claims where those claims are based on the publication of allegedly false statements. *See Dellacamera*, 2002 WL 31501855, at *4 (Conn. Super. Ct. Oct. 28, 2002).

Here, plaintiff does not allege that he ever sought a retraction. Consequently, he must plead and prove either special damages or that the News Report was published with "malice in

fact," *i.e.*, actual malice. *See* General Statutes § 52-237; *Dellacamera*, 2002 WL 31501855, at *4. The Complaint does not meet either requirement.

First, the Complaint does not plead special damages. To adequately plead special damages, a plaintiff must allege "actual pecuniary losses," "legally caused" by the defendant's actions, and not simply "general harm to reputation, injured feelings or mental anguish." *Dellacamera*, 2002 WL 31501855, at *3; *see also* 3 Restatement (Second), Torts § 622 (1977). "Actual pecuniary losses" are economic losses. *Dellacamera*, 2002 WL 31501855, at *3. Here, Plaintiff alleges only that he "was offended and aggrieved and was justified in feeling so," and that he "suffered and continues to suffer emotional distress." Compl. ¶¶ 36, 39; *see id.* ¶ 42. These allegations do not meet the pleading standard for special damages.

Because the Complaint fails to plead special damages, Plaintiff must plead and prove that the Articles were published with "malice-in-fact." *Dellacamera*, 2002 WL 31501855, at *4 ("Absent special damages, the plaintiffs in order to prevail, must prove that the defendant published the article with 'malice-in-fact.'"). "[T]he term 'malice in fact' as used in General Statutes § 52-237 is synonymous with the term 'actual malice.'" *Id.* (citations omitted). Moreover, "[t]he substance of both the actual malice and malice in fact inquiries is the same: Did the defendant act with subjective knowledge that a statement was false or with reckless disregard or entire indifference to whether the statement was true or false." *Id.* (citations omitted).

Plaintiff has not—and cannot—meet that pleading standard. His conclusory allegations about Chapman's state of mind is insufficient to establish actual malice. *See* Compl. at ¶ 34 (alleging that Chapman "knew that the publicized material was false and misleading . . . or acted with reckless disregard as to whether the publicized material was false"); *id.* ¶ 38 (alleging that "Chapman[] was negligent in her treatment of the plaintiff"); *id.* ¶ 41 (alleging that "Chapman

engaged in extreme and outrages conduct"). And, for all the reasons stated in Section II(A), the accurate description of information contained in an official report can never support an inference of actual malice. For the same reasons, even if plaintiff were given leave to re-plead, it is clear that he could not establish actual malice. Thus, his Complaint should be dismissed with prejudice under the SLAPP statute.

## III. BECAUSE PLAINTIFF HAS NO VALID CLAIM, DEFENDANT CHAPMAN IS ENTITLED TO AN AWARD OF HER ATTORNEYS' FEES

The anti-SLAPP statute requires the Court to award costs and reasonable attorneys' fees to a prevailing movant. General Statutes § 52-196a(f)(1). Because plaintiffs' complaint is meritless and is based on defendant's exercise of her free speech rights, this Court should dismiss the complaint with prejudice and award attorneys' costs and fees to defendant.

## CONCLUSION

For the reasons above, Defendant Chapman respectfully requests that the Court dismiss plaintiff's complaint with respect to the claims against her and award her reasonable attorneys' fees and costs.

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[35] This motion has been prepared in part by a clinic associated with the Abrams Institute for Freedom of Expression and the Information Society Project at Yale Law School, but does not purport to present the school's institutional views, if any.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Memorandum of Law in Support of Defendant Chapman's Special Motion to Dismiss Plaintiff's Complaint was mailed or electronically delivered on January 31, 2019, to all counsel of record and that written consent for electronic delivery was received counsel of record who was electronically served.

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