

1 GAUTAM DUTTA (State Bar No. 199326)  
2 BUSINESS, ENERGY, AND ELECTION LAW, PC  
3 1017 El Camino Real # 504  
4 Redwood City, CA 94063  
5 Telephone: 415.236.2048  
6 Email: [Dutta@BEELawFirm.com](mailto:Dutta@BEELawFirm.com)  
7 Fax: 213.405.2416

8 Attorneys for Plaintiffs  
9 SHAHID BUTTAR FOR CONGRESS COMMITTEE and  
10 SHAHID BUTTAR

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SHAHID BUTTAR FOR CONGRESS  
14 COMMITTEE and SHAHID BUTTAR, an  
15 individual;

16 *Plaintiffs,*

17 vs.

18 HEARST COMMUNICATIONS, INC., a  
19 Delaware corporation; and DOES 1  
20 through 5;

21 *Defendants.*

CASE NO. 3:21-cv-05566-EMC

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS AND SPECIAL  
MOTION TO STRIKE**

Hearing Date: Mar. 17, 2022, 1:30 pm

JUDGE: Hon. Edward M. Chen

COURTROOM: 5 – 17<sup>th</sup> Floor

POINTS AND AUTHORITIES

**I. Introduction**

Defendant’s combined Anti-SLAPP Motion and Motion to Dismiss must be denied, for Plaintiffs have alleged claims for Defamation (and an associated Unfair Competition Law violation) that must be allowed to move forward, as a matter of law. In July 2020, the San Francisco *Chronicle* published two pieces that contained the false allegation that Congressional candidate Shahid Buttar had committed sexual harassment. Before publishing the first piece, the *Chronicle* chose not to interview Mr. Buttar or his accuser (Elizabeth Croydon).

Equally troubling, the *Chronicle* deliberately chose not to contact known individuals who would have provided critical information regarding Ms. Croydon’s credibility – including the fact that Ms. Croydon had previously made false claims about the husband of another person. Making matters worse, the *Chronicle* refused to disclose to its readers the serious doubts that had been raised regarding Ms. Croydon’s credibility. Because the *Chronicle* thus acted with actual malice, Mr. Buttar and his campaign have met their “minimal burden” by introducing sufficient facts to establish a prima facie case for defamation.<sup>1</sup>

**II. Relevant Background<sup>2</sup>**

A. Relevant Parties

Plaintiff **Shahid Buttar** is a constitutional lawyer, legal advocate, nonprofit leader, community organizer, poet, and musician. A British immigrant of Pakistani descent, Mr. Buttar grew up in the Midwest. He first came to the Bay Area in 2000 to study law at Stanford Law School, from which he received his law degree in 2003.

---

<sup>1</sup> “In opposing an anti-SLAPP motion, a defamation plaintiff *need not establish malice by clear and convincing evidence*, the standard applicable at trial. Rather, the plaintiff must meet her *minimal burden* by introducing sufficient facts to establish a prima facie case of actual malice; in other words, to establish a reasonable probability that she can produce clear and convincing evidence showing that the statements were made with actual malice.” *Young v. CBS Broadcasting, Inc.*, 212 Cal.App.4<sup>th</sup> 551, 563 (Cal.Ct.App. 2012) (italics added, citation omitted).

<sup>2</sup> Plaintiffs derive all facts from their Complaint and matters of which judicial notice may be taken. *See Planned Parenthood v. Center for Medical Progress*, 890 F.3d 828, 834-35 (9<sup>th</sup> Cir. 2018) (plaintiff need not proffer evidence in response to Anti-SLAPP motion filed in federal court).

1 An early advocate for LGBTQ marriage equality and a longtime advocate for civil  
2 liberties, Mr. Buttar worked over the previous 15 years for nonprofit organizations including the  
3 Electronic Frontier Foundation, Bill of Rights Defense Committee (now known as Defending  
4 Rights and Dissent), Muslim Advocates, and the American Constitution Society.

5 In 2020, Mr. Buttar and House Speaker Pelosi were the only two candidates to qualify for  
6 the Nov. 3, 2020 general election for California’s 12<sup>th</sup> Congressional District.

7 To date, no immigrant, Muslim, or person of color like Mr. Buttar has represented  
8 California’s 12<sup>th</sup> Congressional District. Mr. Buttar intends to run again as a candidate in the  
9 2022 Congressional election.

10 Plaintiff **Shahid Buttar for Congress Committee** (“Buttar for Congress”), an  
11 unincorporated organization headquartered in San Francisco, constituted Mr. Buttar’s  
12 Congressional campaign for the 2020 Congressional election, and constitutes Mr. Buttar’s  
13 campaign for the 2022 Congressional election.

14 Defendant **Hearst Communications, Inc.** (“Defendant Hearst”), a Delaware corporation,  
15 owns the San Francisco *Chronicle*. The *Chronicle* is the newspaper of record for the 12<sup>th</sup>  
16 Congressional District, which covers most of the City and County of San Francisco. Defendant  
17 Hearst and the Bay Area News Group (which owns the *Mercury News* and *East Bay Times*)  
18 comprise the two media conglomerates that own the only newspapers of record in the Bay Area.

19 B. Relevant Facts

20 *The Chronicle’s Original Piece*. On **July 22, 2020**, the *Chronicle* published an article in  
21 its print edition, by reporter Joe Garofoli, under the headline, “Shahid Buttar, Nancy Pelosi’s  
22 Election Opponent, Accused of Sex Harassment”.<sup>3</sup>

23 The Original Piece was based on a self-published *Medium* post in which a former  
24 acquaintance (Elizabeth Croydon) alleged that Mr. Buttar had sexually harassed her.<sup>4</sup>

25 The previous afternoon (**July 21, 2020**), Mr. Garofoli demanded that Buttar for Congress  
26

---

27 <sup>3</sup> Complaint ¶15 & n.2; see also Plaintiffs’ Jan. 25, 2022 Request for Judicial Notice, at 2:7-  
2:14.

28 <sup>4</sup> Complaint ¶16.

1 provide a response to Ms. Croydon’s allegations in less than two hours.<sup>5</sup> Within two hours,  
 2 Buttar for Congress promptly emailed Mr. Garofoli a statement from Mr. Buttar that denied Ms.  
 3 Croydon’s claims.<sup>6</sup>

4 Based on the text of the Original Piece, it does not appear that Mr. Garofoli interviewed  
 5 Ms. Croydon before the Original Piece was published.<sup>7</sup> In other words, the *Chronicle* published  
 6 the Original Piece – even though its reporter had interviewed *neither* Ms. Croydon *nor* Mr. Buttar  
 7 regarding Ms. Croydon’s allegations against Mr. Buttar.<sup>8</sup>

8 *Buttar for Congress Notifies the Chronicle of Ms. Croydon’s Prior False Claims.* In an  
 9 email sent at 8:30 pm on July 21, 2020,<sup>9</sup> Buttar for Congress representative Patricia Brooks  
 10 notified Mr. Garofoli that Ms. Croydon had not only made a false claim about Mr. Buttar, but had  
 11 made false claims about the husband of another person:

12 We do have some people who can speak about [Mr. Buttar’s] character and  
 13 other claims [Ms. Croydon] has made in the past that are *false* – including  
 14 one who alleges that she also made *false claims about her husband*. Would  
 15 you want to speak with them? We are reluctant to attack her character out  
 of respect to survivors ... but *they are willing to speak with you.*<sup>10</sup>

16 Ms. Brooks offered to put Mr. Garofoli in touch with those individuals – including one  
 17 person (Dr. Margaret Flowers, M.D.) who alleged that Ms. Croydon had made false claims about  
 18 her husband.<sup>11</sup> However, Mr. Garofoli chose not to interview *any* of those individuals, including  
 19 Dr. Margaret Flowers, M.D. and Martine Zundmanis.<sup>12</sup>

20 Both Dr. Flowers and Ms. Zundmanis knew both Mr. Buttar and Ms. Croydon during the  
 21 2000s, the period when Ms. Croydon alleged that Mr. Buttar had purportedly harassed her.<sup>13</sup>  
 22 According to Dr. Flowers, Ms. Croydon falsely accused Dr. Flowers’ husband Kevin Zeese of

---

23 <sup>5</sup> Complaint ¶17.

24 <sup>6</sup> Complaint ¶18.

25 <sup>7</sup> Complaint ¶19.

26 <sup>8</sup> Complaint ¶20.

27 <sup>9</sup> All times reflect Pacific Standard Time (PST).

28 <sup>10</sup> Complaint ¶21 (italics in original).

<sup>11</sup> Complaint ¶22.

<sup>12</sup> Complaint ¶23.

<sup>13</sup> Complaint ¶24.

1 sexual assault in 2006: the same year Mr. Zeese was a Maryland candidate for the U.S. Senate.<sup>14</sup>

2 According to Ms. Zundmanis, there is no merit to Ms. Croydon’s allegations regarding  
3 Mr. Buttar. Ms. Zundmanis has observed previous instances where Ms. Croydon false accused  
4 progressive political activists of sexual harassment – including an activist who worked at a  
5 prominent environmental organization and suffered grave harm as a result.<sup>15</sup>

6 *The Bay Area Reporter Article Discussing Ms. Croydon’s Credibility.* That same evening  
7 (**July 21, 2020**), the *Bay Area Reporter* – which interviewed both Dr. Flowers and Ms.  
8 Zundmanis – published an article (the “B.A.R. article”) that included their accounts regarding Ms.  
9 Croydon’s claims.<sup>16</sup> In relevant part, the B.A.R. article stated:

10 Two women who knew Buttar in the 2000s told the *B.A.R.* that there was  
11 *no credibility* to what Croydon alleges occurred. Martine Zundmanis, who  
12 met Buttar in 2004 while working together on civil rights issues, said there  
13 is “absolutely no merit” to Croydon’s claims.

14 “I think in context of the progress victims and survivors have made as a  
15 result of the #MeToo movement, to have someone as ethical and with so  
16 much integrity as Shahid to be attacked with *lies* like this is just  
17 disgusting,” she said.

18 Dr. Margaret Flowers, on Twitter and in a phone interview with the  
19 B.A.R., said Croydon had *falsely accused* her partner, attorney Kevin  
20 Zeese, of *sexual assault* in 2006. “It is really sad she is given any  
21 credibility,” said Flowers. “I have known Shahid for at least a decade; I  
22 have a lot of respect for him.”<sup>17</sup>

23 *Plaintiffs’ Request for Correction.* At 5:44 am the next morning (**July 22, 2020**), Buttar  
24 for Congress’ Patricia Brooks sent an email to the *Chronicle*’s Joe Garofoli. In her email, Ms.  
25 Brooks again stated that (1) Ms. Croydon’s allegations about Mr. Buttar were false, and (2) “a  
26 number of voices” had been “left out” from the *Chronicle*’s story. To that end, Ms. Brooks  
27 requested that the *Chronicle* correct the Original Piece by, *inter alia*, interviewing individuals  
28 “closer to this situation” (such as Dr. Flowers or Ms. Zundmanis).<sup>18</sup>

26 <sup>14</sup> Complaint ¶25.

27 <sup>15</sup> Complaint ¶26.

28 <sup>16</sup> Complaint ¶27.

<sup>17</sup> Complaint ¶28.

<sup>18</sup> Complaint ¶¶29, 30.

1           However, the *Chronicle* failed to correct or otherwise revise the Original Piece. Instead,  
2 in a **July 22, 2020** email, Mr. Garofoli invited Ms. Brooks to submit an opinion (op-ed) piece to  
3 the *Chronicle*. Within a matter of hours, Buttar for Congress submitted an opinion piece to the  
4 *Chronicle*. However, the *Chronicle* refused to publish it in the interest of “fairness”.<sup>19</sup>

5           *Author Chris Sampson’s Email to the Chronicle regarding Ms. Croydon’s Credibility.*

6 The next day (**July 23, 2020**) at 4:22 pm, Mr. Garofoli and two other *Chronicle* employees  
7 received an email from Chris Sampson, a national security expert.<sup>20</sup>

8           In that email, Mr. Sampson stated that Ms. Croydon was a “pathological liar” who had  
9 “harassed” one of his friends “repeatedly in private texts to the point of [his] friend considering  
10 suicide.” Mr. Sampson further stated that he had “no association” with Mr. Buttar and had “never  
11 talked with him.” Mr. Sampson also stated that he contacted Buttar for Congress when he “saw  
12 [Ms. Croydon’s] accusation”.<sup>21</sup>

13           Mr. Sampson ended his email by expressing his disappointment with the *Chronicle*:

14                           You had a duty to tell the readers the truth.

15                           You should do a better job in the future or consider your reputation  
16 destroyed.<sup>22</sup>

17           *Other Published Articles Examining Ms. Croydon’s Credibility.* On **July 23, 2020**, the  
18 day after the Original Piece was published, the *Intercept* covered Ms. Croydon’s allegations.  
19 Significantly, the *Intercept* expressly stated that a number of individuals had questioned Ms.  
20 Croydon’s credibility: “The *Intercept* has spoken to several people who recounted having  
21 disturbing interactions with Croydon that caused them to question her credibility.”<sup>23</sup>

22           *The Open Letter Regarding Ms. Croydon’s Credibility.* The next day (**July 24, 2020**), the  
23 *Independent Political Report* published an open letter (the “Open Letter”), in which 17  
24 individuals (including Dr. Flowers, Ms. Zundmanis, and former federal candidate Kevin Zeese)

25 \_\_\_\_\_  
26 <sup>19</sup> Complaint ¶¶31, 32.

27 <sup>20</sup> Complaint ¶33.

28 <sup>21</sup> Complaint ¶¶34, 35.

<sup>22</sup> Complaint ¶36.

<sup>23</sup> Complaint ¶39.

1 expressed deep concern regarding Ms. Croydon’s credibility and described her history of false  
2 allegations against political activists:

3 The accuser [Ms. Croydon] is well known in the D.C. social-justice  
4 community. Unfortunately, this troubled individual has a long history of  
5 fabricating attacks against innocent people. A review of litigation she has  
6 filed in various jurisdictions would likely yield a revealing picture to an  
7 enterprising journalist. She has engaged in *late-night phone harassment*  
8 *campaigns, false allegations, and physical threats* against numerous  
9 individuals over the years. She is NOT a credible witness against this  
10 promising progressive leader.”<sup>24</sup>

11 Two months later (**Sept. 25, 2020**), after conducting a follow-up investigation, the  
12 *Intercept* delivered a definitive, sobering conclusion regarding Ms. Croydon’s allegations about  
13 Mr. Buttar: “Yet Croydon’s claims *have not been borne out*. The *Intercept* was **not able to**  
14 *corroborate Croydon’s allegations* and has interviewed multiple sources who recounted having  
15 disturbing interactions with her that *caused them to question her credibility*.”<sup>25</sup>

16 The *Intercept*’s Sept. 25, 2020 findings prompted it to update its original, July 23, 2020  
17 article. Specifically, the *Intercept* placed an “editor’s note” in a prominent position at the top of  
18 the article text.<sup>26</sup>

19 The *Chronicle*’s *Follow-Up Piece on Ms. Croydon’s Allegations*. On **July 25, 2020** the  
20 *Chronicle* published a follow-up piece (the “Follow-Up Piece”) by Mr. Garofoli, regarding Ms.  
21 Croydon’s allegations.<sup>27</sup>

22 Although it quoted individuals who defended Mr. Buttar’s ethics and integrity, the  
23 Follow-Up Piece was misleading in two major ways. *First*, it portrayed those individuals as Mr.  
24 Buttar’s friends, when they are fiercely independent political activists.<sup>28</sup>

25 *Second*, even though Mr. Garofoli had been apprised by Dr. Flowers, Ms. Zundmanis,

26 <sup>24</sup> Complaint ¶38. A copy of the Open Letter has been attached as RJN **Exhibit H** to Dec. 2,  
27 2021 Ibarguen Declaration.

28 <sup>25</sup> Complaint ¶39 (*quoting Akela Lacy, Intercept, Sept. 25, 2020, “Shahid Buttar’s Bid to  
Unseat Nancy Pelosi Roiled by Staff Mistreatment”*) (italics and bold print added); *see* Plaintiffs’  
Jan. 25, 2022 Request for Judicial Notice, at 2:20-3:6.

<sup>26</sup> Complaint ¶40; *see also* note 25 *supra*.

<sup>27</sup> Complaint ¶41; *see also* Plaintiffs’ Jan. 25, 2022 Request for Judicial Notice, at 2:15-2:19.

<sup>28</sup> Complaint ¶42.

1 other signatories of the Open Letter, and Mr. Sampson that Ms. Croydon had a long history of  
 2 false accusations against political activists (including Kevin Zeese, a federal candidate), the  
 3 Follow-Up Piece failed to disclose that highly relevant history to *Chronicle* readers.<sup>29</sup>

4 To make matters worse, the Follow-Up Piece *did not even provide a hyperlink* to the Open  
 5 Letter. In stark contrast, both the *Chronicle*'s Original Piece and Follow-Up Piece had provided  
 6 hyperlinks to Ms. Croydon's false, self-published *Medium* allegations.<sup>30</sup> As a result, *Chronicle*  
 7 readers were deprived of critical information: the deep concerns of 17 individuals regarding Ms.  
 8 Croydon's lack of credibility.

9 The *Chronicle* has never published a piece like the Original Piece about a White male  
 10 candidate for office. Had Mr. Buttar been a White male, rather than an immigrant Muslim, the  
 11 *Chronicle* would not have recklessly rushed to publish the Original Piece, much less publish it.  
 12 Instead, the *Chronicle* would have thoroughly investigated whether or not Ms. Croydon's  
 13 allegations were credible.<sup>31</sup>

14 *The Harm Suffered by Plaintiffs.* The *Chronicle*'s publication of the Original Piece  
 15 delivered crippling blows to Mr. Buttar's insurgent campaign against House Speaker Pelosi, who  
 16 defeated Mr. Buttar on Nov. 3, 2020. Ms. Croydon's false accusations were immediately and  
 17 consistently seized upon by critics across the political spectrum – including K-Hive, an organized  
 18 network of certain supporters of Vice President Kamala Harris. To this day, voices associated  
 19 with K-Hive continue to actively promote Ms. Croydon's false allegations that were amplified by  
 20 the *Chronicle*'s Original Piece.<sup>32</sup>

21 Indeed, taking the cue from San Francisco's only newspaper of record, local media outlets  
 22 such as the San Francisco *Bay Guardian*, *48 Hills*, and *Mission Local* published their own stories  
 23 that referenced Ms. Croydon's false allegations.<sup>33</sup>

24 As a result, Mr. Buttar and Buttar for Congress suffered lasting, grievous harm. The

---

26 <sup>29</sup> Complaint ¶43.

<sup>30</sup> Complaint ¶44.

27 <sup>31</sup> Complaint ¶¶46, 47.

<sup>32</sup> Complaint ¶¶48, 49.

28 <sup>33</sup> Complaint ¶50.



1 *Chronicle* recklessly and unjustly smeared Mr. Buttar’s ethics and integrity, harmed his  
 2 professional livelihood and personal relationships, slashed his speaking and writing opportunities,  
 3 and gravely damaged the public’s perception of his fitness to hold political office.<sup>34</sup>

4 The *Chronicle*’s publication of Ms. Croydon’s false allegations misled voters in a federal  
 5 election. Against such a backdrop, the *Chronicle*’s defamation of Mr. Buttar undermined Mr.  
 6 Buttar, the integrity of our elections, and our very democracy.<sup>35</sup>

7 Plaintiffs bring claims for Defamation at Common Law and under Civil Code 45 (Libel)  
 8 and associated claims under the Unfair Competition Law.

### 9 **III. Legal Analysis**

#### 10 A. Plaintiffs Have Sufficiently Alleged Defamation and Associated UCL Claims

11 Plaintiffs have sufficient alleged their claims for Defamation and violations of the Unfair  
 12 Competition Law (B&P §§17200, et seq.),<sup>36</sup> for they have (1) alleged sufficient facts showing  
 13 Defendant’s actual malice, (2) made a timely request for a correction of the Original Piece  
 14 pursuant to Civil Code 48a, and (3) properly alleged damages they have suffered due to  
 15 Defendant’s wrongdoing.

16 *Overview of Anti-SLAPP Analysis.* Contrary to Defendant’s claim, Plaintiffs’ allegations  
 17 amply satisfy the requirements of the second prong<sup>37</sup> of the Anti-SLAPP analysis (as well as  
 18 those of a Rule 12(b) motion to dismiss). An anti-SLAPP motion should only combat “meritless  
 19 suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe  
 20 economic sanctions against the defendant, and not to vindicate a legally cognizable right.”<sup>38</sup>

21 Under CCP §425.16(b)(1), a cause of action is subject to an anti-SLAPP motion *only* “if  
 22 the defendant shows that the cause of action arises from an act in furtherance of the defendant’s  
 23

---

24 <sup>34</sup> Complaint ¶51.

25 <sup>35</sup> Complaint ¶54.

26 <sup>36</sup> Complaint ¶¶55-68. UCL claims may be brought for any “unlawful, unfair, *or* fraudulent  
 practice” *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4<sup>th</sup> 163, 180  
 (Cal. 1999) (*italics in original*).

27 <sup>37</sup> Plaintiffs do not dispute that the first prong of the Anti-SLAPP analysis has been satisfied.

28 <sup>38</sup> *Hewlett Packard Co. v. Oracle Corp.*, 239 Cal.App.4<sup>th</sup> 1174, 1183 (Cal.Ct.App. 2015)  
 (citations omitted).

1 constitutional right of petition or free speech in connection with a public issue *and* the plaintiff  
2 fails to demonstrate a probability of prevailing on the claim.”<sup>39</sup>

3 Thus, a defendant must satisfy two requirements to strike a cause of action: (1) it must  
4 show that the cause of action (1) “arises from protected speech or petitioning”, and (2) “lacks  
5 even *minimal* merit”.<sup>40</sup> “First, the court decides whether the defendant has made a *threshold*  
6 *showing* that the challenged cause of action is one arising from the protected activity. Second, if  
7 the court finds such a showing has been made, it then determines whether the plaintiff has  
8 demonstrated a probability of prevailing on the claim.”<sup>41</sup> In that regard, a plaintiff need establish  
9 only “minimal merit” in his or her legal claim. Put another way, a plaintiff need only show a  
10 “*minimum level* of legal sufficiency and triability” to carry its burden.<sup>42</sup>

11 *Plaintiffs’ Defamation Claim.* Plaintiffs are entitled to move forward with their  
12 Defamation claim, for they have properly alleged the requisite facts and harm. In relevant part,  
13 public figures like Plaintiffs must (1) allege that the published statement is false, and (2) the  
14 defendant made the defamatory statement at issue with actual malice: “that is, with knowledge  
15 that it was false or with *reckless disregard of whether it was false or not.*”<sup>43</sup>

16 “[A]ctual malice can be proved by *circumstantial evidence.*”<sup>44</sup> As the California  
17 Supreme Court has admonished, “before *republishing* an accusation *likely to have a devastating*  
18 *effect* on the reputation of the person accused”, one must “*take the time necessary to investigate*  
19 *the matter with sufficient thoroughness to form an independent judgment[.]*”<sup>45</sup> Such a duty to

20 <sup>39</sup> *Ulkarim v. Westfield LLC*, 227 Cal.App.4<sup>th</sup> 1266, 1273 (Cal.Ct.App. 2014) (italics added);  
21 *see also Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal.4<sup>th</sup> 53, 67 (Cal. 2002).

22 <sup>40</sup> *Ulkarim*, 227 Cal.App.4<sup>th</sup> at 1275 (italics added) (*quoting Navellier v. Sletten*, 29 Cal.4<sup>th</sup>  
82, 89 (Cal. 2002)).

23 <sup>41</sup> *Hanover Ins. Co. v. Fremont Bank*, 68 F.Supp.2d 1085, 1096-97 (N.D. Cal. 2014) (italics  
added, quotation marks omitted) (*quoting Equilon*, 29 Cal.4<sup>th</sup> at 67).

24 <sup>42</sup> *Soukup v. Law Offices of Herbert Hafif*, 39 Cal.4<sup>th</sup> 260, 291 (Cal. 2006) (italics added,  
citation and internal quotation marks omitted).

25 <sup>43</sup> *Reader’s Digest Assn. v. Superior Court*, 37 Cal.3d 244, 253-54 (Cal. 1984) (italics  
added). *Cf. Flowers v. Carville*, 310 F.3d 1118, 1131 (9<sup>th</sup> Cir. 2002) (diversity case applying  
26 Nevada law); *Glassdoor, Inc. v. Superior Court*, 9 Cal.App.5<sup>th</sup> 623, 636 (case involving alleged  
breach of nondisclosure agreement).

27 <sup>44</sup> *Reader’s Digest*, 37 Cal.3d at 257 (italics added).

28 <sup>45</sup> *Khawar v. Globe Int’l, Inc.*, 19 Cal.4<sup>th</sup> 254, 277 (Cal. 1998) (italics added); *accord*,  
*Widener v. Pacific Gas & Elec. Co.*, 75 Cal.App.3d 415, 434 (1977), disapproved on other

1 investigate arises not only with allegations that someone has committed a crime,<sup>46</sup> but also with  
 2 non-criminal allegations regarding one’s conduct, including a “gross breach” of professional  
 3 ethics.<sup>47</sup> “[R]eliance on sources known to be *unreliable*” provides evidence that the “publisher  
 4 himself had *serious doubts* regarding the truth of his publication.”<sup>48</sup>

5 *Evidence Actual Malice Reflected by the Original Piece.*<sup>49</sup> With respect to the Original  
 6 Piece, Plaintiffs (1) told the *Chronicle* reporter (Joe Garofoli) that Ms. Croydon’s claim of sexual  
 7 harassment was false, and (2) repeatedly offered to connect Mr. Garofoli with individuals such as  
 8 Dr. Flowers and Ms. Zundmanis, who both would have provided details of Ms. Croydon’s history  
 9 of lobbing false allegations – including Ms. Croydon’s claim that Dr. Flower’s husband had

10 \_\_\_\_\_  
 grounds, *McCoy v. Hearst Corp.*, 42 Cal.3d 835, 846 n.9 (Cal. 1986).

11 Contrary to Defendant’s insinuation, California law (which controls in this diversity case)  
 12 does not recognize the neutral report privilege. In 1998, the California Supreme Court held, in  
 13 *Khawar*, that the privilege did not apply to private figures, and expressly declined to rule as to  
 14 whether the privilege applies to public figures. *Khawar*, 19 Cal.4<sup>th</sup> at 272. Even if the neutral  
 15 report privilege were recognized for a public figure, it would not shield Defendant from liability –  
 because the *Chronicle* **concealed** from its readers critical information that affected Ms. Croydon’s  
 16 credibility. See *Barry v. Time, Inc.*, 584 F.Supp. 1110, 1112 (N.D. Cal. 1984) (Patel, J.) (pre-  
*Khawar* case held that neutral report privilege may apply, but only where the publication did *not*  
 17 conceal from its readers factors affecting the accuser’s credibility); see also *Barger v. Playboy*  
*Enterprises, Inc.*, 564 F.Supp. 1151, 1157 (N.D. Cal. 1983).

18 <sup>46</sup> *Khawar*, 19 Cal.4<sup>th</sup> at 277 (defamatory accusation that an individual had committed  
 19 murder).

20 <sup>47</sup> *Widener*, 75 Cal.App.3d at 423.

21 <sup>48</sup> *Reader’s Digest*, 37 Cal.3d at 258 (italics added).

22 <sup>49</sup> Under the single-publication rule, Plaintiffs are entitled to bring claims based on the  
 23 Original Piece (as it appeared in the July 22, 2020 *print* edition), even though the text of the  
 24 Original Piece had been posted online the previous day (July 21, 2020). Namely, the single-  
 25 publication rule does *not* apply where defamatory content has been *republished* on a different day  
 26 and in a different form or format – because the republication was made with the goal of reaching  
 27 a new audience. See *Traditional Cat Assn., Inc. v. Gilbreath*, 118 Cal.App.4<sup>th</sup> 392, 401  
 28 (Cal.Ct.App. 2004) (“repetition of the defamatory statement in a *new edition* of a book or  
*newspaper* constitutes a *new publication* of the defamation that may give rise to a new cause of  
 action”) (italics added); *Yeager v. Bowlin*, 693 F.3d 1076, 1082 (9<sup>th</sup> Cir. 2012) (defamatory  
 content republished when it is reprinted in a different format, such from hardcover to paperback);  
*Kanarek v. Bugliosi*, 108 Cal.App.3d 327 (Cal.Ct.App. 1980) (same); *Church of Scientology v.*  
*Dell Publishing Co.*, 362 F.Supp. 767, 770 (N.D. Cal. 1973) (same); *Shively v. Bozanich*, 31  
 Cal.4<sup>th</sup> 1230, 1243 (Cal. 2003) (same); *Salyer v. Southern Poverty Law Center*, 701 F.Supp.2d  
 912, 914 (W.D. Ky. 2009) (defamatory material is republished where it has been distributed for a  
 second time “with the goal of reaching a new audience”). See also *Nationwide Bi-Weekly*  
*Admin., Inc. v. Belo Corp.*, 512 F.3d 137, 146 (5<sup>th</sup> Cir. 2007) (Fifth Circuit notes that if a print  
 article is posted online, it reaches a “new audience”) (citing *Firth v. State*, 775 N.E.2d 463, 466  
 (N.Y. 2002)).

1 sexually assaulted her.<sup>50</sup>

2 In response, the *Chronicle* did not subsequently contact or interview either Dr. Flowers or  
3 Ms. Zundmanis. In stark contrast – and the day *before* the Original Piece was printed (July 21,  
4 2020) – the *Bay Area Reporter* not only interviewed Dr. Flowers and Ms. Zundmanis, but  
5 published their statements regarding Ms. Croydon’s lack of credibility.<sup>51</sup>

6 *Evidence of Actual Malice from the Follow-Up Piece.* In the Follow-Up Piece (published  
7 in the *Chronicle*’s **July 25, 2020** print edition), Defendant not only refused to investigate the  
8 evidence that was proffered by Plaintiffs and actually used by the *Bay Area Reporter*, but ignored  
9 additional red flags regarding Ms. Croydon’s credibility. For example, a July 23, 2020 *Intercept*  
10 article (published the day after the Original Piece) expressly stated that a number of individuals  
11 had questioned Ms. Croydon’s credibility: “The *Intercept* has spoken to several people who  
12 recounted having disturbing interactions with Croydon that caused them to question her  
13 credibility.”<sup>52</sup>

14 Equally troubling, the *Chronicle* ignored the July 23, 2020 email it received from Chris  
15 Sampson, a national security expert who had never previously spoken with Mr. Buttar or  
16 contacted his campaign. Mincing no words, Mr. Sampson stated that Ms. Croydon was a  
17 “*pathological liar*” who had “harassed” one of his friends “repeatedly in private texts to the point  
18 of [his] friend considering *suicide*.”<sup>53</sup>

19 What is more, the Follow-Up Piece did not report on the Open Letter’s troubling account  
20 of Ms. Croydon’s history of making false allegations. In the Open Letter, a whopping 17  
21 individuals (including Dr. Flowers, Ms. Zundmanis, and former federal candidate Kevin Zeese)  
22 expressed deep concern regarding Ms. Croydon’s credibility and described Ms. Croydon’s history  
23 of making false claims against political activists:

24 The accuser [Ms. Croydon] is well known in the D.C. social-justice  
25 community. Unfortunately, this troubled individual has a long history of

26 <sup>50</sup> Complaint ¶¶21, 18.

27 <sup>51</sup> Complaint ¶¶28, 27.

28 <sup>52</sup> Complaint ¶39.

<sup>53</sup> Complaint ¶34 (italics added).

1 fabricating attacks against innocent people. A review of litigation she has  
 2 filed in various jurisdictions would likely yield a revealing picture to an  
 3 enterprising journalist. She has engaged in *late-night phone harassment*  
 4 *campaigns, false allegations, and physical threats* against numerous  
 individuals over the years. She is NOT a credible witness against this  
 promising progressive leader.”<sup>54</sup>

5 Making matters worse, while both the Original Piece and Follow-Up Piece had provided  
 6 hyperlinks to Ms. Croydon’s false, self-published *Medium* allegations, the Follow-Up Piece *did*  
 7 *not even provide a hyperlink* to the Open Letter. As a result, *Chronicle* readers were deprived of  
 8 critical information: the deep concerns of 17 individuals regarding Ms. Croydon’s lack of  
 9 credibility.

10 *Evidence of Actual Malice from Original Piece Imputed to Follow-Up Piece.*

11 Significantly, the evidence of actual malice from the Follow-Up piece may be imputed to the  
 12 Original Piece. As this Court held in the seminal *Church of Scientology v. Dell Publishing Co.*,  
 13 [i]f the *republication* [of defamatory matter] is found to be malicious, that *can be evidence of*  
 14 *maliciousness in the original publication.*”<sup>55</sup>

15 *Actual Malice in Original Piece and Follow-Up Piece.* Viewing the evidence of actual  
 16 malice as a whole, the *Chronicle* (1) was presented with a grave allegation that would have a  
 17 “devastating effect” on the reputation of Plaintiffs; and (2) refused to investigate, and instead  
 18 republished, the allegation – even after it had received numerous red flags regarding the accuser’s  
 19 credibility from a spectrum of sources: other media outlets, a national security expert, the Open  
 20 Letter from 17 individuals, and Mr. Buttar’s campaign. Therefore, Plaintiffs have sufficiently  
 21 alleged that Defendant had actual malice, with respect to both the Original Piece and Follow-Up  
 22 Piece.

23 B. Plaintiffs Have Properly Alleged Their Defamation Claims Under the Correction  
 24 Statute

25 Contrary to Defendant’s claim, Plaintiffs have properly alleged their claims under the  
 26 Correction Statute (Civil Code 48a), as well as for damages. In defamation cases, Civil Code 48a

27 <sup>54</sup> Complaint ¶38.

28 <sup>55</sup> *Scientology*, 362 F.Supp. at 770 (italics added).

1 requires a plaintiff to request a correction within 20 days of the publication of the defamatory  
 2 material.<sup>56</sup> That statute does “not intend to build *technical barricades* to recovery by the  
 3 individual who had given notice sufficient to advise a reasonable publisher acting in good faith of  
 4 the claimed error. The crucial issue in evaluating the adequacy of the notice turns on whether the  
 5 publisher should *reasonably have comprehended* which statements plaintiff protested and wished  
 6 corrected.”<sup>57</sup>

7 Here, Plaintiffs timely requested that the *Chronicle* for a correction of the Original Piece.  
 8 Namely, on the same day that the Original Piece was printed (**July 22, 2020**), Buttar for  
 9 Congress’ Patricia Brooks sent an email to the *Chronicle*’s Joe Garofoli. In her email, Ms.  
 10 Brooks stated that (1) Ms. Croydon’s allegations about Mr. Buttar were false, and (2) “a number  
 11 of voices” had been “left out” from the *Chronicle*’s story. To that end, Ms. Brooks requested that  
 12 the *Chronicle* correct the Original Piece by, *inter alia*, interviewing individuals “closer to this  
 13 situation” (such as Dr. Flowers or Ms. Zundmanis, who would have spoken about the false claim  
 14 of sexual assault that Ms. Croydon had made against former federal candidate Kevin Zeese).<sup>58</sup>

15 Because Ms. Brooks requested that the *Chronicle* correct the Original Piece by  
 16 interviewing individuals like Dr. Flowers and Ms. Zundmanis, the *Chronicle* should “reasonably  
 17 have comprehended” that Plaintiffs sought to correct the Original Piece’s omission of Ms.  
 18 Croydon’s history of lobbing false accusations. Accordingly, Plaintiffs have properly alleged  
 19 their Defamation claims under Civil Code §48a.

20 C. Plaintiffs Have Properly Alleged Damages

21 Finally, Plaintiffs have properly alleged damages that they suffered due to Defendant’s  
 22 wrongdoing. As California courts have made clear, Plaintiffs may seek allege damages for  
 23 *assumed* harm to their reputation, and need not allege any damages for *specific* harm to their  
 24 reputation.<sup>59</sup> As Plaintiffs have alleged, the *Chronicle* recklessly and unjustly smeared Mr.

25  
 26 <sup>56</sup> *Anschutz Ent. Group, Inc. v. Snepp*, 171 Cal.App.4<sup>th</sup> 598, 641 (Cal.Ct.App. 2009)

27 <sup>57</sup> *Id.* at 641 (italics added) (citations omitted).

28 <sup>58</sup> Complaint ¶¶29, 30.

<sup>59</sup> *Weller v. American Broadcasting Cos., Inc.*, 232 Cal.App.4<sup>th</sup> 991, 1014 (Cal.Ct.App. 1991); *Di Giorgio Fruit Corp. v. AFL-CIO*, 215 Cal.App.2d 560, 577 (Cal.Ct.App. 1963).

1 Buttar’s ethics and integrity, harmed his professional livelihood and personal relationships,  
2 slashed his speaking and writing opportunities, and gravely damaged the public’s perception of  
3 his fitness to hold political office – which severely harmed his campaign.<sup>60</sup> Accordingly,  
4 Plaintiffs have properly alleged damages.

5 **IV. Conclusion**

6 In short, Plaintiffs have met their “minimal burden” required to continue their quest to  
7 restore their good name.<sup>61</sup> Accordingly, Defendant’s Motion must be denied in its entirety.  
8 Alternatively, Plaintiffs seek leave to amend pursuant to the Ninth Circuit’s requirement that  
9 plaintiffs be given the opportunity to amend their initial complaint,<sup>62</sup> without any award of  
10 attorney’s fees to Defendant.<sup>63</sup>

13 DATED: Jan. 25, 2022

BUSINESS, ENERGY, AND ELECTION  
LAW, PC

16 By: /s/ Gautam Dutta  
GAUTAM DUTTA, ESQ.

18 Attorneys for Plaintiffs

19 SHAHID BUTTAR FOR CONGRESS  
20 COMMITTEE and SHAHID BUTTAR

23 <sup>60</sup> Complaint ¶51.

24 <sup>61</sup> See note 1 *supra*.

25 <sup>62</sup> *Sanchez v. Law Office of Armo*, No. 1:20-cv-00163-NONE-SKO, 2021 WL 1214559, at  
\*17 (E.D. Cal. Mar. 31, 2021) (citing *Verizon Del., Inc. v. Covad Communications Co.*, 377 F.3d  
1081, 1091 (9<sup>th</sup> Cir. 2004)).

26 <sup>63</sup> “Since Defendants’ anti-SLAPP motion is being considered in federal court, and since the  
27 Ninth Circuit requires that plaintiff be given an opportunity to amend her coamplaint, the granting  
of *attorney’s fees* to Defendant as the prevailing party.” *Sanchez*, 2021 WL 1214559, at \*18  
28 (italics added) (citing *Verizon*, 377 F.3d at 1091).