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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 ROBERT HUNTER BIDEN, an
individual,

14 Plaintiff(s)

15 v.

16 GARRETT ZIEGLER, an individual;
17 ICU, LLC, a Wyoming limited liability
company d/b/a Marco Polo, and DOES
18 1 through 10, inclusive,

19 Defendant(s)

Case No.: 2:23-cv-07593-HVD-KS

Honorable Hernan D. Vera
Magistrate Judge Karen L. Stevenson

**DEFENDANTS’ NOTICE OF
MOTION AND MOTION TO
DISMISS PURSUANT TO RULES
12(b)(1), 12(b)(2), 12(b)(3), AND
12(b)(6) OF THE FEDERAL RULES
OF CIVIL PROCEDURE AND
SECTION 425.16 OF THE
CALIFORNIA CODE OF CIVIL
PROCEDURE**

Date: February 15, 2024
Time: 10:00 a.m.
Ctrm: 5B

22 **TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:**

23 **PLEASE TAKE NOTICE** that on February 15, 2024, at 10:00 a.m., in
24 Courtroom 5B of the above-mentioned courthouse, Defendants Garrett Ziegler and
25 ICU, LLC, a Wyoming limited liability company (collectively “Defendants”), will
26 and hereby move to dismiss Plaintiff Robert Hunter Biden’s complaint (“Complaint”)
27 in its entirety.
28

1 This motion is made following the conference of counsel pursuant to Local
2 Rule 7-3 which took place on Monday, December 11, 2023.

3 This motion is made pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), and
4 12(b)(6) of the Federal Rules of Civil Procedure and section 425.16 of the California
5 Code of Civil Procedure and is supported by the concurrently filed memorandum of
6 points and authorities, request for judicial notice and exhibits attached thereto, the
7 [proposed] order, oral argument to be presented at the time of the hearing, and on all
8 other such items the Court may consider.

9
10 DATED: December 21, 2023 TYLER LAW, LLP

11 By: /s/ Robert H. Tyler
12 Robert H. Tyler, Esq.
13 Attorneys for Defendants **Garrett Ziegler**
14 and **ICU, LLC**



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I. INTRODUCTION

1 Plaintiff filed this action in retaliation against Defendants for publishing
2 information, media, and emails originating from the files of the infamous "Biden
3 Laptop." The Plaintiff, a public figure and son of the current U.S. President,
4 abandoned his laptop computer at a Delaware repair shop. The shop owner turned the
5 Biden Laptop over to the FBI on or around October 2019 after discovering disturbing
6 material. Soon after, media outlets gained access to emails and documents found on
7 the Biden Laptop, resulting in a media storm of allegations against Hunter Biden and
8 President Biden regarding potential foreign compromise. By April 2021, Plaintiff
9 appeared in a TV interview discussing the Biden Laptop files found in Delaware and
10 distributed across the internet. Over two years after the dissemination of the Biden
11 Laptop files, Plaintiff inexplicably files this lawsuit against Defendants. Instead of
12 challenging the media outlets, Plaintiff filed half-baked legal challenges against
13 Defendants right before an election season involving his father. Plaintiff's challenges
14 are largely premised on a report Defendants prepared about Hunter Biden as part of
15 their mission of investigating foreign compromise within government. Defendants
16 relied on copies of files from the Biden Laptop that have been widely circulated since
17 the public learned about the Biden Laptop. This Court should dismiss Plaintiff's
18 lawsuit for the following reasons.

19 *First*, the Court lacks subject matter jurisdiction because Plaintiff does not state
20 a viable claim under the Computer Fraud and Abuse Act. Plaintiff also lacks standing
21 to bring any claim against Defendants, as he cannot establish a causal connection
22 between Defendants' conduct and his alleged injuries.

23 *Second*, Plaintiff cannot establish personal jurisdiction. Defendants do not
24 have the necessary continuous and systematic contacts with California to confer
25 general jurisdiction over it. Plaintiff cannot establish specific jurisdiction either, as
26 Defendants have not purposely directed their activities towards California.

27 *Third*, Plaintiff has not stated a claim for relief under the Computer Fraud and
28

1 Abuse Act and its analog, the Comprehensive Computer Data and Access Fraud Act.
2 Plaintiff's claim for unfair business practices also fails because it is predicated on the
3 first two causes of action.

4 *Fourth*, Plaintiff's lawsuit is subject to an anti-SLAPP. Defendants' conduct
5 constitutes protected activity because it involves a public figure and is a matter of
6 public importance. Plaintiff cannot demonstrate meritorious claims either.

7 Accordingly, this Court should dismiss the Complaint with prejudice under
8 Rules 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6) of the Federal Rules of Civil
9 Procedure and section 425.16 of the California Code of Civil Procedure.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 Plaintiff filed this action on September 13, 2023, alleging that Defendants
12 violated the Computer Fraud and Abuse Act ("CFAA") 18 U.S.C. § 1030(a)(2)(A)
13 and (C) for "intentionally accessing a computer without authorization or exceeding
14 authorized access, and thereby obtaining information," along with a claim under its
15 California analog, the Comprehensive Computer Data and Access Fraud Act
16 ("CCDAFA"), and a claim for unfair business practices. (Complaint ("Compl."), ECF
17 No. 1). Defendants now respond with a motion to dismiss pursuant to Rule 12(b) of
18 the Federal Rules of Civil Procedure and section 425.16 of the California Code of
19 Civil Procedure.

20 On April 12, 2019, Plaintiff visited a computer repair shop in Wilmington,
21 Delaware, owned by John Paul Mac Isaac, requesting the shop recover information
22 on a laptop computer he dropped off earlier. (RJN, Ex. 1, ¶ 19). The following day,
23 Plaintiff returned to the shop with an external hard drive, requesting Plaintiff transfer
24 the recovered data, as evidenced by a quote sent by Mac Isaac to Plaintiff. (*Id.*, ¶ 20;
25 Ex. 2).

26 In the process of copying the files, Mac Isaac noticed alarming evidence on
27 Plaintiff's computer and eventually contacted the FBI. (*Id.*, Ex. 4, p. 12). The FBI
28 served Mac Isaac on December 9, 2019 with a Grand Jury Subpoena. (*Id.*, Ex. 3). The

1 electronics remain in possession of the FBI, who analyzed the electronics as part of a
2 criminal investigation that was included in the Congressional testimony of IRS
3 Criminal Supervisory Special Agent Gary A. Shapley, Jr. (*Id.*, Ex. 4, pp. 3, 12-16).
4 Information found on the Biden Laptop is now relevant in a criminal case involving
5 alleged tax crimes by Plaintiff and is pending before this Court. (*Id.*, Ex. 20).

6 Prior to the FBI taking possession of Plaintiff's damaged laptop and the
7 external hard drive, on or around August 28, 2020, Mac Isaac sent a copy of the laptop
8 data to Robert Costello, an attorney for Rudy Giuliani. (*Id.*, Ex. 1, ¶¶ 26, 28; Ex. 17,
9 ¶¶ 24-26). By October 13, 2020, Plaintiff's attorney, George Mesires, wrote to Mac
10 Isaac asking for the return of the laptop. (*Id.*, Ex. 1, ¶ 31; Ex. 17, ¶ 31). On October
11 14, 2020, the New York Post published an article about an email found in the Biden
12 Laptop files that suggested that Joe Biden met with Hunter Biden's foreign business
13 partners. (*Id.*, Ex. 6). Thousands of news articles have been published, sourced from
14 countless copies of the data, widely available in the public domain, including a
15 complete duplicate at a publicly accessible website named "MEGA NZ." (Compl. at
16 ¶ 18). MEGA.NZ is a web-based file hosting service operated by MEGA LIMITED,
17 a registered New Zealand Limited Company. (RJN, Exhs. 14-16.)

18 Despite this extensive dissemination, Plaintiff selectively chose to file a
19 lawsuit against Defendants. More than two years before filing this action, on or around
20 April 4, 2021, Plaintiff appeared in a TV interview discussing a laptop found in
21 Delaware that: included information about him. (*Id.*, Ex. 18). Although Plaintiff
22 asserts "the precise manner by which Defendant Ziegler obtained Plaintiff's data
23 remains unclear", he admits that Jack Maxey, Rudy Giuliani, and MEGA NZ have
24 copies of his Laptop files and further admits these parties are sources of Defendants'
25 copy of the Biden Laptop. (Compl. at ¶¶ 17-18). Plaintiff fails to allege, and cannot
26 allege, that he had any ownership or exclusive right of control over any of the Laptop's
27 files or drives now possessed by third parties. In fact, Plaintiff plainly admits that his
28 data was *first* possessed by third parties, stating that the Laptop's "data appears to

1 have been tampered with, manipulated, altered and damaged *both before Defendants*
 2 *received it* and after it was obtained by Defendants." (Compl. at ¶ 19 (emphasis
 3 added)).

4 The Complaint lacks specific details about any computer Plaintiff claims
 5 Defendants hacked. It mentions an iPhone backup, but a backup is a "copy of files
 6 and programs made to facilitate recovery if necessary", not a computer or storage
 7 system itself. (Compl. at ¶¶ 40-41; RJN, Ex. 10). Plaintiff accuses Defendants of
 8 "knowingly accessing and without permission taking and using data from" Plaintiff's
 9 devices or "cloud" storage (Compl. at ¶¶ 40, 41), computer service (*id.* at ¶ 42), or
 10 protected computer (*id.* at ¶ 35) but fails to identify a single device Defendants
 11 accessed without authorization. The Complaint blithely disregards the publication and
 12 possession of the Biden Laptop files, including entities that possessed and circulated
 13 the data long before Defendants ever obtained a copy. (RJN, Exhs. 6-8).

14 Plaintiff selectively cites to Defendant Ziegler's December 2022 remarks about
 15 decrypting a specific file which stored the passcode to the iPhone backup file, both of
 16 which were on Defendants' copy of the Laptop. (Compl. at ¶ 29). The Complaint
 17 falsely suggests Defendants "hacked" into Plaintiff's iPhone backup. (Zeigler Decl.
 18 at ¶ 19). Defendants received a copy of Plaintiff's iPhone backup file which existed
 19 as part of the files. (*Id.* at ¶ 20). When Defendants received the external hard drive, it
 20 contained passcodes, which allowed access to the iPhone backup file. (*Id.* at ¶ 21).

21 III. ARGUMENT

22 A. Plaintiff's Lawsuit Is Subject To Dismissal Under Rule 12(b)(1) For Lack 23 Of Subject Matter Jurisdiction.

24 The Court lacks subject matter jurisdiction because Plaintiff cannot show that
 25 any federal statutory violation has occurred. "It is to be presumed that a cause lies
 26 outside [of federal courts'] limited jurisdiction, and the burden of establishing the
 27 contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins.*
 28 *Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). When determining whether

1 a claim arises under federal law, a court must "examine the 'well pleaded' allegations
2 of the Complaint and ignore potential defenses: '[A] suit arises under the Constitution
3 and laws of the United States only when the plaintiff's statement of his own cause of
4 action shows that it is based upon those laws or that Constitution.'" *Beneficial Nat'l*
5 *Bank v. Anderson*, 539 U.S. 1, 6 (2003) (jurisdiction upheld) (quoting *Louisville &*
6 *Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908) (jurisdiction lacking)). A federal
7 court lacks jurisdiction over a purported claim involving federal law "when the claim
8 is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or
9 otherwise completely devoid of merit as to not involve a federal controversy.'" *Steel*
10 *Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (citing *Oneida Indian Nation*
11 *of N.Y. v. County of Oneida*, 414 U.S. 661, 666 (1974)).

12 A plaintiff must bring a CFAA action within two years from either: the date of
13 defendant's act or the date plaintiff discovers the unauthorized computer access or
14 damage. 18 U.S.C. § 1030(g). The key inquiry in determining when the limitation
15 period accrues is when the plaintiff learns of the unauthorized access or damage, even
16 if the identity of the perpetrator is unknown. *Sewell v. Bernardin*, 795 F.3d 337, 340
17 (2d Cir. 2015). The Complaint discloses no violation of the CFAA within the statute
18 of limitations period, and this Court should therefore dismiss this case for lack of
19 subject matter jurisdiction. *See Infra*, at 12-15.

20 **B. Plaintiff's Lawsuit Is Further Subject To Dismissal Under Rule 12(b)(1)**
21 **For Lack Of Standing.**

22 Neither the CFAA nor the CCDAFA authorize a party whose data has been
23 copied to assert a civil action over any computer, device, or system not in their
24 possession. *See* 18 U.S.C. § 1030(a)(2)(C); Cal. Penal Code § 502(a); *Infra*, at 12-16.
25 Causation of injury must be predicated upon the ability to show a right of ownership
26 and control over the computer, device, or system. *Id.* Without it, Plaintiff lacks
27 standing to maintain an action, as he is not a real party in interest under either statute.

28 Plaintiff rests the gravamen of his Complaint upon a repeated mantra of

1 “access,” “copying,” and “damage” to his computer files in an attempt to persuade the
2 Court that he has suffered a tangible, redressable injury. (Compl. at ¶¶ 16-21, 27-30).
3 Plaintiff lacks standing in this case because, as both Plaintiff’s admissions and
4 Defendants’ evidence indicate, there is no causal connection between Defendants’
5 conduct and Plaintiff’s alleged injuries. Indeed, Plaintiff alleges he is unaware of how
6 the public accessed his data. (*Id.* at ¶¶ 16-21, 27-30).

7 Additionally, Plaintiff’s repeated assertions of lack of knowledge render him
8 unable to plausibly contest the well-documented circumstances that every party in
9 litigation concerning the Laptop have testified in various fora, including investigating
10 law enforcement officials for the U.S. Government. (RJN, Exhs. 4, 6). As described
11 in the facts above, Plaintiff delivered his damaged computer and external hard drive
12 to repairman John Paul Mac Isaac at his shop in Delaware. (*Id.*, Ex. 1, ¶¶ 19-20). Mac
13 Isaac was responsible for transferring the file contents from Plaintiff’s computer onto
14 the external hard drive. Mac Isaac has proffered a signed work order invoice that is
15 evidence in a Delaware lawsuit between he and Plaintiff. (*Id.*, Ex. 2).

16 Plaintiff further admits that Defendants merely possess a copy of the Biden
17 Laptop and that other parties gave copies of the Biden Laptop to Defendants. (Compl.
18 at ¶ 18; Zeigler Decl. at ¶ 5). Plaintiff cannot demonstrate that the device in
19 Defendants’ possession ever belonged to him. Absent that ownership right, Plaintiff
20 cannot prove that Defendants caused him any injury under either the CFAA or
21 CCDAFA and, therefore, does not have standing to bring the first two causes of
22 action.

23 This Court should also dismiss Plaintiff’s claim regarding unfair business
24 practices for lack of standing as well. “In determining whether the UCL . . . [applies]
25 to non-California residents, courts consider where the defendant does business,
26 whether the defendant’s principal offices are located in California, where class
27 members are located, and the location from which advertising and other promotional
28 literature decisions were made.” *Cooper v. Simpson Strong-Tie Company, Inc.*, 460

1 F. Supp. 3d 894, 911 (N.D. Cal. 2020). The critical issues [] are whether the injury
 2 occurred in California and whether the conduct of Defendants occurred in California.”
 3 *Id.* Defendants do not conduct business in California, nor is their principal place of
 4 business in California. (Ziegler Decl. at ¶¶ 13-17). Plaintiff cannot establish that his
 5 injury transpired in California either. (*Id.* at ¶¶ 5, 17). Plaintiff, therefore, does not
 6 have standing to sue under section 17200.

7 **C. Plaintiff’s Lawsuit Is Subject To Dismissal Under Rule 12(b)(2) For Lack**
 8 **Of Personal Jurisdiction.**

9 “Where, as here, there is no applicable federal statute governing personal
 10 jurisdiction, the law of the state in which the district court sits applies.” *Core-Vent*
 11 *Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1484 (9th Cir.1993) (citation omitted).
 12 “California’s long-arm statute allows courts to exercise personal jurisdiction over
 13 defendants to the extent permitted by the Due Process Clause of the United States
 14 Constitution.” *Id.* at 1484 (citation omitted). As the United States Supreme Court has
 15 long held, the assertion of personal jurisdiction over a nonresident defendant will
 16 comport with constitutional due process only if the defendant has sufficient
 17 “minimum contacts” with the state such that the maintenance of the suit does not
 18 offend “traditional notions of fair play and substantial justice.” *International Shoe Co.*
 19 *v. Washington*, 326 U.S. 310, 316 (1945).

20 **1. Defendants Do Not Have the Necessary “Continuous and Systematic**
 21 **Contacts” with California to Confer General Jurisdiction over the**
 22 **State.**

23 This Court lacks general jurisdiction over Defendants under the Supreme
 24 Court’s decision in *Daimler v. AG Bauer*, 134 S. Ct. 746 (2014). To determine
 25 whether general jurisdiction exists, the relevant inquiry is whether “affiliations with
 26 the State are so continuous and systematic as to render [it] essentially at home in the
 27 forum State.” *Id.* at 761 (cleaned up). The Ninth Circuit has held that when
 28 determining whether a court’s exercise of general jurisdiction over a defendant is

1 appropriate, “[f]actors to be taken into consideration are whether the defendant makes
2 sales, solicits or engages in business in the state, serves the state’s markets, designates
3 an agent for service of process, holds a license, or is incorporated there.” *Bancroft &*
4 *Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

5 Defendant Ziegler resides in Illinois. (Compl. at ¶ 12). Defendants hired no
6 employees or independent contractors to conduct business in California, has made no
7 sales in California, and does not have a California agent for service of process or any
8 California license or incorporation. (Ziegler Decl. at ¶ 14). Plaintiff seeks to link
9 Defendants to California through Plaintiffs’ operation of a website accessible across
10 the world. (Compl. at ¶ 12). However, the operation of a website does not satisfy the
11 physical presence necessary for general jurisdiction.

12 Federal courts in California have consistently held that the maintenance of even
13 a highly interactive website, by itself, is not enough to establish general jurisdiction.
14 *Coremetrics, Inc. v. AtomicPark.com, LLC*, 370 F.Supp.2d 1013, 1019-20 (N.D. Cal.
15 2005). “[I]t is now common for businesses of all types to have an internet website,
16 typically with interactive capability through which customers can communicate with
17 the business and order products. If general jurisdiction were to be predicated on these
18 types of contacts alone, most businesses would be subject to personal jurisdiction in
19 every forum.” *Id.* at 1020 (citations omitted); *see also Love v. The Mail on Sunday*,
20 2006 U.S. Dist. LEXIS 95469, Case No. CV 05-7798 ABC (PJWx) at *11-*12 (C. D.
21 Cal. July 18, 2006) (“[P]ersonal jurisdiction should not be based solely on the ability
22 of forum state residents to access an Internet site within the forum state because that
23 does not by itself show any persistent course of conduct by the defendants.”) (citations
24 omitted).

25 Indeed, courts have declined to exercise general jurisdiction even where the
26 defendant’s contact with the forum was more extensive and specific. For example, in
27 *Boaz v. Boyle & Co.*, 40 Cal.App.4th 700, 715-17 (1995), the nonresident defendant’s
28 contact consisted of targeting mailers to physicians, advertising principally in national

1 medical publications, and deriving 9% of its sales from the forum’s physicians. The
2 court found that the defendant’s level of activity in the forum did not justify the
3 assertion of general jurisdiction. *Id.* at 717-18. Likewise, in *Salu, Inc. v. Original Skin*
4 *Store*, 2008 WL 3863434, Case No. CIV. S-08- 1035 FCD/KJM, at *3 (E.D. Cal.
5 August 13, 2008), the court refused to exercise general jurisdiction over a website that
6 sold products through an eBay virtual store accessible to consumers across the
7 country. “Plaintiff’s contention that 14% of a \$50,000 business operation is comprised
8 of sales to California and that business cards are sent in conjunction with delivery of
9 product shipments falls far short of establishing the equivalence of physical presence
10 under the ‘exacting standard’ required to demonstrate general jurisdiction.” *Id.*

11 Plaintiff claims jurisdiction in California is appropriate because Defendants’
12 website “includes specific disclosures incorporating California consumer protection
13 and privacy laws and purporting to exercise rights under those laws....” (Compl. at ¶
14 12). This allegation is woefully inadequate to establish jurisdiction and is not
15 supported by case law.

16 **2. Plaintiff Cannot Satisfy the Three-Part Test for Limited Jurisdiction**
17 **over Defendants.**

18 The Court may exercise “limited” or “specific” personal jurisdiction if each
19 part of the three prong test is satisfied: (1) the non-resident defendant must
20 purposefully direct his activities or consummate some transaction with the forum or
21 resident thereof; or perform some act by which he purposefully avails himself of the
22 privilege of conducting activities in the forum, thereby invoking the benefits and
23 protections of its laws; (2) the claim must be one which arises out of or relates to the
24 defendant’s forum-related activities; and (3) the exercise of jurisdiction must comport
25 with fair play and substantial justice, i.e., it must be reasonable. *Schwarzenegger v.*
26 *Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff bears the
27 burden of satisfying the first two prongs of the test. *Id.* If the plaintiff fails to satisfy
28 either of these prongs, personal jurisdiction is not established in the forum state. If the

1 plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to
2 the defendant to “present a compelling case” that the exercise of jurisdiction would
3 not be reasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985).

4 *First*, “[e]vidence of availment is typically action taking place *in* the forum that
5 invokes the benefits and protections of the laws in the forum,” whereas “[e]vidence
6 of direction generally consists of action taking place *outside* the forum that is directed
7 at the forum.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006)
8 (emphasis added). Plaintiff does not allege that Defendants took any action from
9 inside California. Rather, Plaintiff alleges that Defendants have taken actions outside
10 California by operating a website that was accessible in California. (Compl. at ¶ 12).
11 Therefore, the purposeful availment test is inapplicable. *Salu*, 2008 WL 3863434 at
12 *4.

13 Defendants have not purposefully directed their activities toward California
14 either. The purposeful direction test is evaluated under the three-part “effects” test
15 based on *Calder v. Jones*, 465 U.S. 783 (1984). The test “requires that the defendant
16 allegedly have: (1) committed an intentional act, (2) expressly aimed at the forum
17 state, (3) causing harm that the defendant knows is likely to be suffered in the forum
18 state.” *Schwarzenegger*, 374 F.3d at 803 (citations omitted). The Plaintiff must show
19 that there was an “individualized targeting” of California residents by the defendant.
20 *Bancroft & Masters, Inc. v. Augusta National, Inc.*, 223 F.3d 1082, 1088 (9th Cir.
21 2000). For example, in *Pebble Beach Co.*, the court held that the defendant engaged
22 in no “individualized targeting” by registering the domain name “pebblebeach-
23 uk.com” and operating a passive website at that domain, even though he knew that
24 plaintiff resided in the forum. 453 F.3d at 1157. The Court held that the operation of
25 a website that is not expressly aimed at California does not give rise to jurisdiction.
26 *Id.*

27 In analyzing Internet contacts, the Ninth Circuit has adopted a “sliding scale”
28 approach under which jurisdiction is “directly proportionate to the nature and quality

1 of commercial activity that an entity conducts over the Internet.” *Cybersell, Inc. v.*
2 *Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997). A mere web presence is insufficient
3 to establish jurisdiction. Thus, “passive” websites, which the Ninth Circuit has
4 described as those that merely post information, or on which consumers cannot make
5 purchases, do not give rise to jurisdiction. *Bancroft & Masters*, 223 F.3d at 1086;
6 *Cybersell*, 130 F.3d at 418.

7 Plaintiff cannot show that Defendants committed any alleged intentional act
8 that was “expressly aimed” at California because there was no “individualized
9 targeting” of California residents by Defendants. (Ziegler Decl. at ¶ 16). Defendants
10 do not charge users, nor do they engage in for-profit sales of products. (*Id.* at ¶ 15).
11 Defendants’ website was passive because it solely existed for “informational
12 purposes.” *Stomp, Inc. v. NeatO, LLC*, 61 F.Supp.2d 1074, 1078 (C.D. Cal. 1999).

13 *Second*, even if Plaintiff satisfied the first prong, he cannot satisfy the second
14 prong, which requires he show that his claims would not have arisen but for
15 Defendants’ contacts with California. *Doe v. American Nat’l Red Cross*, 112 F.3d
16 1048, 1051 (9th Cir. 1997). Defendants’ display of information on their website
17 cannot satisfy this test because the infringement alleged by Plaintiff would have
18 occurred even if Defendants’ website was not accessible in California.

19 *Third*, even if Plaintiff satisfied the first two prongs, Defendants can defeat
20 jurisdiction by “present[ing] a compelling case that the presence of some other
21 considerations would render jurisdiction unreasonable.” *Core-Vent*, 11 F.3d at 1487.

22 Courts balance the following seven factors:

- 23 (1) the extent of the defendants' purposeful interjection into the forum
24 state's affairs; (2) the burden on the defendant of defending in the forum;
25 (3) the extent of conflict with the sovereignty of the defendants' state; (4)
26 the forum state's interest in adjudicating the dispute; (5) the most
27 efficient judicial resolution of the controversy; (6) the importance of the
28 forum to the plaintiff's interest in convenient and effective relief; and (7)

1 the existence of an alternative forum.

2 *Id.* at 1487-88 (internal citation omitted).

3 Defendants' contacts with California are attenuated. Defendants did not
4 intentionally target California, nor did the alleged data breaches occur in California.
5 (Ziegler Decl. at ¶¶ 5, 16-17). Litigating this case in Illinois also serves the interests
6 of justice because the evidence is located in Illinois. (*Id.* at ¶ 17). Even if litigating
7 outside the state will inconvenience Plaintiff, neither the Supreme Court nor Ninth
8 Circuit gives much weight to this factor. *Core-Vent*, 11 F.3d at 1490. Plaintiff has not
9 met the burden of proving that he is unable to sue Defendants in Illinois. Thus, the
10 factors tip in Defendants' favor.

11 **D. Plaintiff's Lawsuit Is Subject To Dismissal Under Rule 12(b)(3) For**
12 **Improper Venue.**

13 Under Federal Rule of Civil Procedure 12(b)(3), a party may file a motion to
14 dismiss for improper venue. *Royal Hawaiian Orchards, L.P. v. Olson*, No. CV 14-
15 8984 RSWL (RZx), 2015 WL 3948821, at *1 (C.D. Cal. June 26, 2015) (citing Fed.
16 R. Civ. P. 12(b)(3)). Plaintiff seeks to establish venue under 28 U.S.C. § 1391(b)(2),
17 which states that venue is proper in the district where "a substantial part of the events
18 or omissions giving rise to the claim occurred." (Compl. at ¶ 9). This substantiality
19 inquiry focuses on the "relevant activities of the defendant, not of the plaintiff."
20 *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995). And "[o]nly the events that
21 directly give rise to a claim are relevant." *Lawler v. Tarallo*, No. C 13-03284 MEJ,
22 2013 WL 5755685, at *3 (N.D. Cal. Oct. 23, 2013) (simplified). Venue is "intended
23 to preserve the element of fairness so that a defendant is not haled into a remote district
24 having no real relationship to the dispute." *Cottman Transmission Sys., Inc. v.*
25 *Martino*, 36 F.3d 291, 294 (3d Cir. 1994).

26 While Plaintiff is allegedly a California resident, it is doubtful whether any
27 alleged injuries occurred in California. Plaintiff has not alleged that any devices from
28 which the alleged data breaches occurred were located in California at the time of the

1 alleged breaches. Further, Defendants did not obtain copies of Plaintiff’s hard drive
2 in California or access his iPhone back-up in California. (Compl. at ¶ 18).

3 Even if Plaintiff did suffer harm in Los Angeles County, that “is not by itself
4 sufficient to warrant transactional venue there.” Wright & Miller, 14D Fed. Prac. &
5 Proc. Juris. § 3806. Otherwise, “venue almost always would be proper at the place of
6 the plaintiff’s residence, an option that Congress abolished in the general venue
7 statute.” *Id.* Courts thus must look “not to a single triggering event prompting the
8 action, but to the entire sequence of events underlying the claim.” *Norsworthy v. Diaz*,
9 20-CV-01859-JST, 2020 WL 10965424, at *2 (N.D. Cal. June 10, 2020) (simplified).

10 Applying this standard, Plaintiff’s claims did not transpire in this District.
11 Plaintiffs’ claims all arise from Defendants’ website and publications. At the heart of
12 those claims are Defendant Ziegler’s decisions about what content to post on his
13 website. All decision-making occurred in Illinois, the nerve center of operations for
14 ICU and the place where Ziegler resides. (Ziegler Decl. at ¶ 17). Therefore, this Court
15 should dismiss this lawsuit or transfer the case to Illinois. *See Allstar Mktg. Grp., LLC*
16 *v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1126 (C.D. Cal. 2009).

17 **E. Plaintiff’s Lawsuit Is Subject To Dismissal Under Rule 12(b)(6) For**
18 **Failure To State A Claim.**

19 **1. Plaintiff’s Claim Falls Outside the Statute of Limitations of the**
20 **Computer Fraud And Abuse Act, 18 U.S.C. § 1030.**

21 As an initial matter, a Plaintiff must bring a CFAA action within two years from
22 either: the date of defendant’s act or the date plaintiff discovers the unauthorized
23 computer access or damage. 18 U.S.C. § 1030(g). The key inquiry in determining
24 when the limitation period accrues is when the plaintiff learns of the unauthorized
25 access or damage, even if the identity of the perpetrator is not known. *Sewell*, 795
26 F.3d at 340. While the precise date when Plaintiff first became aware of access to his
27 data by a third party is presently unknown, it must have indisputably occurred at some
28 date before Plaintiff discussed the contents of his Laptop in a TV interview on or

1 around April 4, 2021. (RJN, Ex. 18). Plaintiff should have filed this action by April
2 2023. Therefore, the action should be dismissed with prejudice.

3 **2. Plaintiff Does Not State A Claim under the Computer Fraud And**
4 **Abuse Act, 18 U.S.C. § 1030.**

5 It is questionable whether Plaintiff has adequately alleged that Defendants
6 accessed a “protected computer” under 18 U.S.C. § 1030(a)(2)(C) and (a)(4). The
7 CFAA defines a computer as “an electronic, magnetic, optical, electrochemical, or
8 other high speed data processing device performing logical, arithmetic, or storage
9 functions, and includes any data storage facility or communications facility directly
10 related to or operating in conjunction with such device.” 18 U.S.C. § 1030(e)(1). This
11 definition also includes cellular devices. *See In re Apple Inc. Device Performance*
12 *Litig.*, 347 F. Supp. 3d 434, 451 (N.D. Cal. 2018) (quoting 18 U.S.C. § 1030(e)(1)-
13 (2)) (holding cellular phones are protected). A “protected computer” under 1030(a)(4)
14 is a computer “which is used in or affecting interstate or foreign commerce or
15 communication.” 18 U.S.C. § 1030(e)(2)(B). Courts have found this definition to
16 include “any computer connected to the internet, including servers, computers that
17 manage network resources and provide data to other computers.” *Miller v. 4Internet,*
18 *LLC*, 433 F. Supp. 3d 1188, 1198 (D. Nev. 2020). Plaintiff’s Laptop and iPhone
19 backup do not satisfy this definition because Plaintiff does not allege that the devices
20 were connected to the Internet when Defendants accessed them.

21 Moreover, Plaintiff does not allege unlawful access to a computer within the
22 meaning of the CFAA. A computer user “without authorization” is one who accesses
23 a computer the user has no permission to access whatsoever—an “outside hacker[].”
24 *Van Buren v. United States*, 141 S. Ct. 1648, 1658, (2021). Here, Plaintiff admitted
25 that Defendants accessed and used a hard drive that Plaintiff never possessed.
26 Specifically, Plaintiff alleges that Defendants accessed a hard drive provided by a
27 third party which contains a copy (duplicates) of files. (Compl. at ¶ 18). Plaintiff does
28 not allege that Defendants possessed or accessed Biden’s computer or original files.

1 Plaintiff alludes to his actual iPhone and iCloud account when he alleges that
2 “at least some of the data that Defendants have accessed, tampered with, manipulated,
3 damaged and copied without Plaintiff’s authorization or consent originally was stored
4 on Plaintiff’s iPhone and backed-up to Plaintiff’s iCloud storage.” (*Id.* at ¶ 28).
5 However, Plaintiff alleges no facts which demonstrate Defendants ever accessed any
6 computer, storage, or service which Plaintiff either owns or has exclusive control
7 over. Likewise, the Complaint also shows facts which conclusively prove that
8 Defendants had no need to access any service or storage because the laptop copy in
9 their possession admittedly contained all of the necessary information, including the
10 passcode to view all of the files contained on the Biden Laptop regardless of
11 encryption. (*Id.* at ¶ 18). Put simply, both the encrypted iPhone backup file and the
12 passcode to open the iPhone backup file were on the Laptop copy.

13 Plaintiff also attempts to conflate use of his data with unauthorized access. In
14 *Van Buren*, the Supreme Court held the following:

15 In sum, an individual "exceeds authorized access" when he accesses a
16 computer with authorization but then obtains information located in
17 particular areas of the computer — such as files, folders, or databases —
18 that are off limits to him. The parties agree that Van Buren accessed the
19 law enforcement database system with authorization.

20 141 S. Ct. at 1662.

21 This holding demonstrates that use of data from a computer is immaterial in
22 determining liability. The Ninth Circuit expressed concern about broadening the
23 scope of the CFAA in *U.S. v. Nosal*, as doing so would “transform the CFAA from
24 an anti-hacking statute into an expansive misappropriation statute.” 676 F.3d 854, 857
25 (9th Cir. 2012).

26 Plaintiff invites the Court to speculate as to wrongdoing on the Defendants’
27 part – while blithely ignoring that many acknowledged copies of Plaintiff’s Laptop
28 exist, and contents have been published by other parties. (RJN, Ex. 6). Plaintiff’s

1 “[t]hreadbare recitals of the elements of [the CFAA], supported by merely conclusory
2 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal
3 citation omitted).

4 Finally, Biden does not allege any recoverable “loss.” The CFAA defines
5 “loss” to include: (1) “any reasonable cost to any victim, including the cost of
6 responding to an offense, conducting a damage assessment, and restoring the data,
7 program, system or information to its condition prior to the offense” and (2) “any
8 revenue lost, cost incurred, or other consequential damages incurred because of
9 interruption of service.” 18 U.S.C. § 1030(e)(11); see *Brown Jordan v. Carmicle*, 846
10 F.3d 1167, 1174 (11th Cir. 2017) (finding that either or both categories may suffice).
11 Furthermore, the “loss” must amount to at least \$5,000 in a one-year period. 18 U.S.C.
12 § 1030(c)(a)(4)(A)(i)(I).

13 Provisions defining “damage” and “loss” specify what a plaintiff in a civil suit
14 can recover. “[D]amage” means “any impairment to the integrity or availability of
15 data, a program, a system, or information.” *Id.* § 1030(e)(8). The term “loss” likewise
16 relates to costs caused by harm to computer data, programs, systems, or information
17 services. *Id.* § 1030(e)(11). The statutory definitions of “damage” and “loss” focus on
18 technological harms – such as the corruption of files – of the type of unauthorized
19 users cause to computer systems and data. Limiting “damage” and “loss” in this way
20 makes sense in a scheme “aimed at preventing the typical consequences of hacking.”
21 *Royal Truck & Trailer Sales & Serv., Inc. v. Kraft*, 974 F.3d 756, 762 (6th Cir. 2020).
22 The term's definitions are unsuitable, however, to remediate “misuse” of sensitive
23 information that an individual permissibly accesses using their computers. *Ibid.*

24 Here, Plaintiff primarily alleges he incurred loss as a result of “investigating
25 and responding to Defendants’ violations of the CFAA”. (Compl. at ¶ 37). But the
26 CFAA does not provide for recovery of legal expenses, lost profits, or other
27 consequential damages untethered to a service interruption or restoration and/or
28 response effort. See 18 U.S.C. 1030(e)(11). The CFAA prohibits unauthorized access

1 to a computer, not misuse of information obtained therefrom. *See Van Buren*, 141 S.
2 Ct. at 1659–60. Plaintiff's single reference to “direct costs, incurred during any one-
3 year period, of investigating and responding to Defendants’ violations of the CFAA”
4 is conclusory and unsupported by any factual allegations. (Compl. at ¶ 37). This Court
5 should therefore dismiss Plaintiff’s CFAA claim because he does not allege
6 recoverable damages.

7 **3. Plaintiff Does Not State A Claim under the Comprehensive**
8 **Computer Data Access and Fraud Act.**

9 The CCDAFA, codified in California Penal Code § 502, is intended to protect
10 individuals from “from tampering, interference, damage, and unauthorized access to
11 lawfully created computer data and computer systems.” Cal. Penal Code § 502(a).
12 The CCDAFA is analogous to the CFAA in that it requires a defendant to access a
13 computer or device belonging to, or controlled by, the Plaintiff. As stated in CACI
14 No. 1812. Comprehensive Computer Data and Access Fraud Act - Essential Factual
15 Elements (Pen. Code, § 502), Plaintiff’s Complaint specifically requires a showing of
16 ownership and control of the accessed computer as a prerequisite of liability. Judicial
17 Council of California Civil Jury Instructions (2023).

18 Plaintiff does not present any facts that Defendants acted “without permission.”
19 (Compl. at ¶ 40). As the CCDAFA jury instruction indicates, ownership of the hard
20 drive in Defendants’ possession would be a necessary prerequisite to assert the right
21 to grant or deny permission to the Defendants in order to access the files it contains.
22 Defendants did not possess or access Plaintiff’s computer or devices, let alone his
23 original files; the Defendants, again, only possess duplicates as Plaintiff admits. And
24 Plaintiff has not asserted (and logically cannot assert) that he ever owned or exercised
25 any right of control over the hard drive possessed by Defendants.

26 Moreover, Plaintiff does not allege that he suffered damages. Section 502
27 “permits ‘the owner or lessee’ of the computer or data ‘who suffers damage or loss
28 by reason of a violation’ to bring a civil action.” *Mintz v. Mark Bartelstein & Assoc.*

1 *Inc.*, 906 F. Supp. 2d 1017, 1031 (C.D. Cal. 2012); Cal. Penal Code § 502(e)(1). The
2 Complaint does not demonstrate what actions, if any, Plaintiff did to prevent any
3 alleged violations of section 502. The Complaint alleges that Plaintiff “notified
4 Defendants that Defendants are not authorized to access any of his data, that they
5 should cease doing so, and that they should return any of Plaintiff’s data in their
6 possession to Plaintiff immediately.” (Compl. at ¶ 22). This assertion is meaningless
7 and proves no damages under the CCDAFA.

8 In sum, the Complaint is merely an invitation to speculate and is nothing more
9 than an attempt to use the CFAA and CCDAFA as a meritless surrogate for a deficient
10 misappropriate claim. The Complaint states formulaic and conclusory conjecture,
11 rather than setting forth a plain statement of facts describing actions or events giving
12 rise to a claim under the CFAA and CCDAFA.

13 **4. Plaintiff Does Not State A Claim for Unfair Businesses Practices**
14 **under California Business and Professions Code § 17200.**

15 “To state a claim for unfair business practices, plaintiff . . . must allege that
16 defendant . . . engaged in business conduct that was unfair, unlawful or fraudulent.”
17 Cal. Bus. & Prof. Code § 17200. Regarding the “unfairness” prong, “there is some
18 uncertainty about the appropriate definition of the word ‘unfair’ in consumer cases
19 brought under section 17200.” *Camacho v. Automobile Club of Southern California*,
20 142 Cal.App.4th 1394, 1400 (2006). “When a plaintiff who claims to have suffered
21 injury from a direct competitor’s ‘unfair’ act or practice invokes section 17200, the
22 word ‘unfair’ in that section means conduct that threatens an incipient violation of an
23 antitrust law, or violates the policy or spirit of one of those laws because its effects
24 are comparable to or the same as a violation of the law, or otherwise significantly
25 threatens or harms competition.” *Cel-Tech Communications, Inc. v. Los Angeles*
26 *Cellular Telephone Co.*, 20 Cal.4th 163, 187 (1999).

27 Here, Plaintiff has not alleged that Defendants’ actions were unfair to
28 consumers or violative of anti-trust laws. Plaintiff claims Defendants violated section

1 17200 because they “have engaged in unfair and unlawful activities in violation of
2 the CFAA and California Penal Code section 502.” (Compl. at ¶ 22). Because Plaintiff
3 does not state a claim for relief regarding his first two causes of action, this Court
4 should dismiss the third cause of action.

5 **F. Plaintiff’s Lawsuit Is Subject To Dismissal Under Rule 12(b)(6) And**
6 **California Code Of Civil Procedure § 425.16.**

7 Additionally, the Court should note that Plaintiff’s action is, quintessentially, a
8 SLAPP action. California Code of Civil Procedure § 425.16 allows a defendant to
9 dismiss an action aimed at chilling the valid exercise of the constitutional rights of
10 freedom of speech and petition for redress of grievances. “[T]he conceptual features
11 which reveal themselves as SLAPP’s are that they are generally meritless suits
12 brought by large private interests to deter common citizens from exercising their
13 political or legal rights or to punish them for doing so.” *Wilcox v. Superior Court*, 27
14 Cal. App. 4th 809, 815-17 (1994). Stated another way, “SLAPP suits are brought to
15 obtain an economic advantage over the defendant, not to vindicate a legally
16 cognizable right of the plaintiff.” *Id.* at 816. “A Court considering a motion to strike
17 under the anti-SLAPP statute must engage in a two-part inquiry. First, a defendant
18 must make an initial prima facie showing that the plaintiff’s suit arises from an act in
19 furtherance of the defendant’s rights of petition or free speech..... Second, once the
20 defendant has made a prima facie showing, the burden shifts to the plaintiff to
21 demonstrate a probability of prevailing on the challenged claims.” *Pac. Surrogacy*
22 *U.S., L.L.C. v. Bai*, No. SA CV 19-01456-DOC (JDEx), 2019 WL 8129615, at *6
23 (C.D. Cal. Nov. 5, 2019) (internal citation omitted).

24 In determining whether Defendants have sustained their initial burden, the
25 Court shall consider the pleadings, declarations, and matters that may be judicially
26 noticed. *Brill Media Co., LLC v. TCW Group, Inc.*, 132 Cal. App. 4th 324, 339 (2005).
27 Defendants need not show that Plaintiff’s lawsuit was brought with the subjective
28 intent to “chill” their rights of petition and free speech. *Equilon Enterprises, LLC v.*

1 *Consumer Cause, Inc.*, 29 Cal. 4th 53, 58 (2002). Moreover, Defendants need not
2 demonstrate that Plaintiff's Complaint actually had a "chilling" effect. *Id.* at 59.

3 **1. Defendants' Speech Constitutes Protected Activity**

4 At the first step, Defendants can demonstrate that their speech encompasses the
5 "right of petition or free speech under the United States Constitution or the California
6 Constitution in connection with a public issue..." Cal. Code Civ. Proc. § 425.16(b)(1).
7 Sections 425.16(e)(3) and (4) of the anti-SLAPP statute protects speech or non-speech
8 conduct made or done "in connection with a public issue or an issue of public
9 interest." To determine whether speech or non-speech conduct is "in connection with"
10 an issue of public interest, a court must consider both the context and the content of
11 the statements or non-speech conduct at issue through a two-part process.
12 *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 149 (2019). Under the *FilmOn*
13 analysis, first, "the court is to examine what 'public issue or ... issue of public interest'
14 the speech in question implicates." *Id.* In this step, the court examines the content of
15 the speech." *Id.* In the second step, the court examines the functional relationship
16 between speech and the public conversation about the matters of public interest
17 implicated. *Id.* at 149-50. In this step, the court examines the context of the speech or
18 non-speech conduct. *Id.* at 150.

19 The speech and non-speech conduct at issue in the Complaint were made in
20 connection with an issue of public interest. As discussed below, Defendants satisfy
21 both the "public issue" step and the "functional relationship" step.

22 a. *The speech and conduct at issue in the Complaint were made or*
23 *done in connection with a public issue or an issue of public interest.*

24 *First*, an "issue of public interest" has been defined using three categories: (1)
25 a person or entity in the public eye; (2) conduct that could directly affect a large
26 number of people beyond the direct participants; or (3) a topic of widespread, public
27 interest. *See Rivero v. American Federation of State, County, and Municipal*
28 *Employees, AFL-CIO*, 105 Cal. App. 4th 913, 924 (2003). "A 'public forum' is

1 traditionally defined as a place that is open to the public where information is freely
2 exchanged." *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468,475
3 (2000), citing *Clark v. Burleigh*, 4 Cal. 4th 474, 482 (1992). "In articulating what
4 constitutes a matter of public interest, courts look to certain specific considerations,
5 such as whether the subject of the speech or activity was a person or entity in the
6 public eye or could affect large numbers of people beyond the direct participants; and
7 whether the activity occurred in the context of an ongoing controversy, dispute or
8 discussion or affected a community in a manner similar to that of a governmental
9 entity." *FilmOn*, 7 Cal.5th at 145-46. "The right to speak on political matters is the
10 quintessential subject of our constitutional protections of the right of free speech."
11 *Matson v. Dvorak*, 40 Cal. App. 4th 539, 548 (1995).

12 Defendants' website is a public forum because it is open to the public and free
13 of charge. Courts have repeatedly held that websites that circulate newsworthy
14 materials are public forums. *See Barrett v. Rosenthal*, 40 Cal.4th 33, 41 n. 4 (2006)
15 ("Web sites accessible to the public, like ... 'newsgroups' ... are 'public forums' for
16 purposes of the anti-SLAPP statute."); *see also Wong v. Tai Jing*, 189 Cal.App.4th
17 1354, 1366 (2010) ("It is settled that 'Web sites accessible to the public ... are public
18 forums for purposes of the anti-SLAPP statute.' ").

19 The public is entitled to Defendants' comments and reports about Plaintiff
20 Hunter Biden because they implicate President Joe Biden's "character and fitness for
21 public office...." *Vogel v. Felice*, 127 Cal. App. 4th 1006, 1015-16 (2005) (collecting
22 cases). Hunter Biden is undoubtedly a person in the public eye. The Biden Laptop has
23 been "a topic of widespread, public interest" since at least October 14, 2020, when
24 the New York Post published an article entitled, "Smoking-gun email reveals how
25 Hunter Biden introduced Ukrainian businessman to VP dad." (RJN, Ex. 6). The Biden
26 Laptop was still the subject of public discussion in 2022. Thousands of news articles
27 have been published regarding the Biden Laptop. (Compl. at ¶ 22; Ziegler Decl. at ¶¶
28 10-11).

1 *Second*, in addressing the context of the speech under the “functional test,” the
2 *FilmOn* Court emphasized that it does not look to the substance of the speech or its
3 social utility, by stating:

4 our inquiry does not turn on a normative evaluation of the substance of
5 the speech. We are not concerned with the social utility of the speech at
6 issue, or the degree to which it propelled the conversation in any
7 particular direction; rather, we examine whether a defendant—through
8 public or private speech or conduct—participated in, or furthered, the
9 discourse that makes an issue one of public interest.

10 7 Cal.5th at 151. “It is at the latter stage that context proves useful.” *Id.* at 150.

11 Here, Defendants participated in the discourse that makes the Biden Laptop an
12 issue of public interest. Defendant Ziegler created a voluminous report detailing
13 potential violations of state and federal law. (Ziegler Decl. at ¶¶ 6-8). He also created
14 a website to house thousands of photos and emails from the Biden Laptop and shared
15 this information with members of the media and on social media. (*Id.* at ¶¶ 8-10).
16 Defendants’ conduct required significant “newsgathering, which therefore can be
17 constructed as undertaken in furtherance of the news media’s right to free speech.”
18 *Lieberman v. KCOP Television, Inc.*, 110 Cal. App. 4th 156, 166 (2003). Indeed,
19 mainstream media has cited Defendants’ report over 300 times. (Ziegler Decl. at ¶
20 10). More than six million unique IP addresses have reviewed the report on
21 Defendants’ website. (*Id.* at ¶ 12). Consequently, the speech and conduct at issue in
22 this case satisfies the second test under the *FilmOn* inquiry.

23 **2. Plaintiff Does Not Have A Probability of Prevailing on the Merits**

24 At the second step, the burden shifts to Plaintiff to demonstrate "a probability
25 that [he] will prevail" on the merits. Cal. Code Civ. Proc. § 425.1 6(b)(1). Defendants
26 will not prevail on the merits for the following reasons.

27 *First*, a computer user “without authorization” is one who accesses a computer
28 the user has no permission to access whatsoever—an “outside hacker[].” *Van Buren*,

1 141 S. Ct. at 1658. As a threshold matter, Plaintiff’s CFAA claim fails because he did
2 not raise the claim within the statute of limitations, rendering the entire lawsuit
3 illegitimate for lack of subject matter jurisdiction. (RJN, Ex. 18). Defendants did not
4 possess or access Biden’s computer or original files. (Ziegler Decl. at ¶ 5). No person
5 associated with Marco Polo has “accessed or attempted to access any computer,
6 device, service, or system owned or controlled by Plaintiff.” (*Id.* at ¶ 22). Plaintiff
7 cannot demonstrate that he had dominion or control over the devices in the
8 Defendants’ possession. Plaintiff, therefore, will not prevail on the merits of his
9 CFAA claim.

10 *Second*, and for related reasons, Plaintiff’s CCDAFA claim is meritless because
11 Plaintiff does not present any facts that Defendants acted without permission.
12 Defendants, again, only accessed duplicate files, and never hacked into Plaintiff’s
13 backup. (*Id.* at ¶¶ 5, 19-22). Defendants’ report on the Biden Laptop concerns the
14 materials found in Defendants’ copy of Plaintiff’s duplicated files. (*Id.* at ¶ 23). As
15 explained above, Plaintiff did not suffer damages under the CCDAFA. *See Supra*, at
16 17-18. Thus, Plaintiff’s CCDAFA claim is untenable.

17 *Third*, Plaintiff will not prevail on his unfair business practices claim because
18 it hinges on the first two causes of action, which are devoid of merit. Plaintiff cannot
19 demonstrate that Defendants’ actions were unfair to consumers or violated anti-trust
20 laws either.

21 In sum, Defendants have demonstrated that their conduct is a protected activity
22 because it involves a matter of significant public interest. Plaintiff cannot satisfy his
23 burden of demonstrating meritorious claims. This lawsuit is therefore subject to anti-
24 SLAPP.

25 IV. CONCLUSION

26 Considering the foregoing, this Court should dismiss the Complaint with
27 prejudice under Rules 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6) of the federal rules
28 of civil procedure and section 425.16 of the California Code of Civil Procedure.

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DATED: December 21, 2023

TYLER LAW, LLP

By: /s/ Robert H. Tyler

Robert H. Tyler, Esq.
Attorneys for Defendants **Garrett Ziegler**
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