

April 2, 2025

VIA TRUEFILING

The Honorable Chief Justice Patricia Guerrero
and Associate Justices
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, California 94102-4797

Re: ***Hearn v. Pacific Gas & Electric Company***
Court of Appeal No. A167742 c/w A167991
Supreme Court No. S289581
Opposition to Request for Depublication
Opinion Published January 24, 2025

Dear Chief Justice Guerrero and Associate Justices:

The California Employment Law Council urges this Court to deny the request to depublish *Hearn v. Pacific Gas & Electric Company* (2025) 108 Cal.App.5th 301 (*Hearn*). *Hearn* helpfully clarifies that employees may not recover damages for lawful termination decisions merely by recasting their termination-related claims as claims for defamation. That holding is a well-reasoned application of existing law and provides no basis to depublish.

I. Statement of Interest

The California Employment Law Council (CELC) is a voluntary, nonprofit organization whose membership includes more than eighty private sector employers. The employer-members cover many different sectors of the nation's economy including some of the nation's most prominent companies. CELC's members collectively employ hundreds of thousands of Californians. CELC promotes its members' common interests in fostering reasonable, equitable, and progressive rules of employment law.

II. *Hearn* faithfully applies settled law to a new set of facts.

The Court of Appeal's decision in *Hearn* addressed an attempt to significantly expand defamation liability in the employment context. Plaintiff alleged that, in deciding to terminate him, PG&E had documented supposed code of conduct violations within a report submitted to company management. (Typed opn. 6.) PG&E management terminated him based on these violations. This internal

company report, plaintiff argued, defamed him because, in his opinion, he did not commit any violations. (Typed opn. 9.) And the report harmed plaintiff, the theory went, because it caused his termination, so he could recover wrongful-termination damages. In other words, plaintiff's theory was that when a company employee makes internal false statements during a pretermination investigation leading to a lawful termination, the terminated employee can recover damages resulting solely from that lawful termination.¹

The Court of Appeal rejected plaintiff's expansive defamation theory. Discussing decades of precedent, the court noted that California law has long "delineated the ability of a terminated employee to recover tort damages." (Typed opn. 14.) Because the conduct plaintiff complained of "arose from the *same* conduct giving rise to" plaintiff's termination, and because the *only* resulting harm was his loss of employment, plaintiff was impermissibly "recasting his [employment-related] claim as one for defamation." (Typed opn. 18, emphasis added.) The court explained that plaintiffs should not be permitted to use "'pleading artifice to relabel a deficient breach of contract claim.'" (Typed opn. 23, fn. 5, quoting *Lazar v. Superior Ct.* (1996) 12 Cal.4th 631, 648 (*Lazar*).) When an employee believes he is entitled to damages for his termination, he must pursue those damages through a wrongful-termination claim, not a defamation claim. (Typed opn. 24.) The Court of Appeal held nothing more.

The depublication request attempts to cast *Hearn's* straightforward holding as an aberration. In so doing, it assumes that the *Hearn* opinion improperly expanded employer *immunity* from otherwise meritorious employee tort claims. That premise is mistaken.

Not once does the *Hearn* majority opinion use the word "immunity." That is because *Hearn* is not a case about immunity, but about the recoverability of termination damages under a mismatched defamation claim. Where alleged damages are caused solely by an employee's termination, employment law governs. And an employee may not recover for and functionally make unlawful a lawful termination by asserting a defamation claim.

¹ Plaintiff also brought retaliation and wrongful-termination claims, but only one of his retaliation claims made it to trial. And because the jury found PG&E not liable for retaliation (typed opn. 11), plaintiff could not prove that his termination was itself unlawful.

The depublication request is also wrong to portray the Court of Appeal's opinion as conferring tort immunity on employers any time they terminate an employee. (See Depublication Letter 4.) Indeed, *Hearn*'s commonsense holding would not by itself foreclose defamation claims in any of the following examples:

- A terminated employee is compelled to share the reasons for his termination with prospective future employers, harming his ability to find new work.² (See *McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, 798.)
- A terminated employee is defamed within the company, and his reputation injured, but he is terminated for reasons unrelated to the defamation. (See typed opn. 22, citing *King v. U.S. Bank National Assn.* (2020) 53 Cal.App.5th 675, 700, 704.)
- An employer terminates an employee and then widely shares the reasons for the termination within the company, assuming the employer acted with malice sufficient to defeat the common interest privilege. (See, e.g., *McGrory v. Applied Signal Tech., Inc.* (2013) 212 Cal.App.4th 1510, 1540 (*McGrory*).)

To put a finer point on it, plaintiff was damaged by the loss of his job, not by any separate injury to his reputation. The jury was not even asked to find any damage to plaintiff's reputation. (Typed opn. 12.) And he would not have suffered any of the economic harm for which he was awarded damages at trial if he had not been fired. (See *ibid.*) Thus, PG&E's decision to terminate did not grant the company any immunity from liability for otherwise tortious conduct. The termination itself was the entire basis for the supposedly tortious conduct. No termination, no damages, no claim. The only proper theory of damages in *Hearn* is a wrongful-termination theory. Defamation is the wrong claim on these facts.

Hearn is therefore consistent with the principle that "simply effecting a termination in conjunction with [tortious] conduct" does not insulate an employer from an otherwise valid tort claim. (*Lazar, supra*, 12 Cal.4th at p. 643.) And plaintiff's defamation claim was not otherwise valid. The defamation claim was simply a relabeled attack on the validity of his lawful termination. The Court of

² Here, plaintiff did not seek damages related to republication to third parties. (Typed opn. 21.)

Appeal did not create any new “immunity” in holding that such an attack must fail. Nor did it need to. California courts regularly disapprove of similar attempts to improperly litigate the validity of lawful terminations. (See *Soules v. Cadam, Inc.* (1991) 2 Cal.App.4th 390, 403–404, disapproved on another ground in *Turner v. Anheuser–Busch, Inc.* (1994) 7 Cal.4th 1238, 1251; *Hine v. Dittrich* (1991) 228 Cal.App.3d 59, 63; cf. *McGrory, supra*, 212 Cal.App.4th at p. 1540 [improper, in determining the application of the common interest privilege, to “resurrect the question whether [plaintiff’s] termination was factually justified”]; *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 440 [same].)

III. Hearn helpfully clarifies this area of law.

Although straightforward, the Court of Appeal’s opinion contributes to this area of the law. The opinion should remain published, especially given the risk that this type of defamation-dressed wrongful termination lawsuit will proliferate. Indeed, the fact that the Plaintiffs’ Bar is so eager to seek depublication suggests that such proliferation is on the horizon.

Should courts bless plaintiff’s defamation theory, such “expansion of tort remedies in the employment context” will carry “potentially enormous consequences for the stability of the business community.” (See *Hunter v. Up-Right, Inc.* (1993) 6 Cal.4th 1174, 1181.) Every termination-related lawsuit will include a defamation claim in the hope that discovery will reveal an internal company document stating the reason for the plaintiff’s termination. The plaintiff could then dispute the truth of that stated reason—in other words, he could hold a company liable for terminating him without sufficient cause, in violation of our state’s at-will employment principles. (See *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 335.) As one Court of Appeal opinion put it in rejecting an analogous attempt at expanding defamation liability, “no employment contract could be ‘at will,’ ” “ ‘the decision to terminate would be at the discretion of a jury, not the employer,’ ” and “ ‘[t]he law of employment contracts would be turned on its head.’ ” (*Jensen v. Hewlett-Packard Co.* (1993) 14 Cal.App.4th 958, 973–974, quoting *Burton v. Security Pacific Nat. Bank* (1988) 197 Cal.App.3d 972, 979.)

Hearn does not conflict with any published authority. And depublication of the opinion would stifle development of this area of the law.

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For the above reasons, the *Hearn* decision should remain published.

Very truly yours,

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PROOF OF SERVICE
Hearn v. PG&E
Case no. S289581

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On April 2, 2025, I served true copies of the following document(s) described as **OPPOSITION TO REQUEST FOR DEPUBLICATION** on the interested parties in this action as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2025, at Valencia, California.



Cassandra A. Johnson

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