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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10 CENTRAL DISTRICT

11 ALF CLAUSEN, an individual,  
12 Plaintiff,

13 v.

14 TWENTIETH CENTURY FOX FILM, a  
Corporation; THE WALT DISNEY  
15 COMPANY, a Delaware corporation;  
TWENTIETH CENTURY FOX  
16 TELEVISION; GRACIE FILMS; TWENTY-  
FIRST CENTURY FOX, INC.; FOX MUSIC,  
17 INC.; and DOES 1 through 50, Inclusive,

18 Defendants.

CASE NO. 19STCV27373  
[Assigned to Judge Michael L. Stern, Dept. 62]

**DEFENDANTS’ NOTICE OF MOTION  
AND SPECIAL MOTION TO STRIKE  
PLAINTIFF’S COMPLAINT PURSUANT  
TO CALIFORNIA CODE OF CIVIL  
PROCEDURE SECTION 425.16;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF; REQUEST FOR  
ATTORNEYS’ FEES AND COSTS  
(CODE CIV. P. SECTION 425.16(c)(1))**

*[Compendium of Evidence, Volumes 1 and 2,  
Request For Judicial Notice, And [Proposed]  
Order Filed Concurrently Herewith]*

Date: TBD by Court  
Time: TBD by Court  
Dept.: 62

**RESERVATION ID: N/A (Online  
Reservations Not Available Pursuant to  
Covid 19 Restrictions)**

File Date: August 5, 2019  
Trial Date: None Set

1           **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

2           **PLEASE TAKE NOTICE THAT** on a date and time to be determined by the Court in  
3 Department 62 of the Stanley Mosk Courthouse,<sup>1</sup> 111 North Hill Street, Los Angeles, California  
4 90012, before the Honorable Michael L. Stern, Defendants TFCF Film Corporation (f/k/a  
5 Twentieth Century Fox Film Corporation), Twentieth Century Fox Television,<sup>2</sup> Gracie Films,  
6 TFCF Corporation (f/k/a Twenty-First Century Fox, Inc.), The Walt Disney Company, and Fox  
7 Music, Inc. (collectively “Defendants”) will and hereby do move, pursuant to Code of Civil  
8 Procedure Section 425.16 (California’s anti-SLAPP statute), for an order striking the Complaint of  
9 Plaintiff Alf Clausen (“Plaintiff”) in its entirety.

10           This Special Motion to Strike is and will be made on the grounds that each of the Causes  
11 of Action alleged in the First Amended Complaint (“FAC”) against the Defendants arise, in whole  
12 or in part, from conduct of the Defendants in furtherance of the exercise of their constitutional  
13 right to free speech in connection with a matter of public interest. Further, Plaintiff cannot meet  
14 his burden of establishing, through competent and admissible evidence, a probability that he will  
15 prevail on the merits of any of the Causes of Action alleged in the FAC against Defendants.

16           This Special Motion to Strike is made and based upon this Notice of Motion pursuant to  
17 Code of Civil Procedure Section 425.16; the attached Memorandum of Points and Authorities;  
18 Defendants’ Compendium of Evidence, Volumes 1 and 2, (which include the Declarations of  
19 James L. Brooks , Carol Farhat, Al Jean , Chris Ledesma, Richard Sakai, Matt Selman and  
20 Stephen A. Rossi); the Request for Judicial Notice; the pleadings and papers on file in this action;  
21 all other matters of which the Court shall or may take judicial notice; any reply Defendants may  
22 make; and such evidence and argument as Defendants may present at the hearing on this motion.

23           **PLEASE TAKE FURTHER NOTICE** that, pursuant to Code of Civil Procedure Section  
24 425.16(c), Defendants will also move the Court for an award of attorneys’ fees and costs in favor

25 \_\_\_\_\_  
26 <sup>1</sup> Defendants were not yet able to reserve a hearing date because the Court’s reservation system is  
27 not taking reservations, pending resolution of the COVID-19 pandemic’s effect on Court  
28 operations.

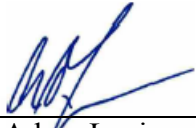
<sup>2</sup> Twentieth Century Fox Television is a division of TFCF Film Corporation and is not a separate  
legal entity. References to TFCF Film Corporation in the Memorandum of Points and Authorities  
therefore refer to Twentieth Century Fox Television.

1 of Defendants and against Plaintiff, and to set a briefing schedule and hearing date to determine  
2 the amount of the same.

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DATED: April 27, 2020

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By:   
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After years of engaging composer Plaintiff Alf Clausen to write the score for the animated  
4 television series *The Simpsons*, the show’s producers decided for creative reasons to make a  
5 change. For sound reasons of capabilities and costs, they decided not to use his services on future  
6 episodes and instead contracted with Bleeding Fingers Music (“Bleeding Fingers”), a music  
7 production company founded by Hans Zimmer, an Academy Award-winning film and television  
8 composer.

9 By his First Amended Complaint (the “Complaint” or “FAC”), Clausen has sued two  
10 producers of *The Simpsons*, TFCF Film Corporation, f/k/a Twentieth Century Fox Film  
11 Corporation (“TFCF Film”) and Gracie Films (“Gracie”),<sup>3</sup> alleging—without any evidence—that  
12 the decision was motivated by his age and disability. Because the gravamen of Clausen’s claims is  
13 the creative choice of composer and music for the series—selecting Bleeding Fingers over  
14 Clausen—the claims fall squarely within the scope of California’s Strategic Lawsuits Against  
15 Public Participation (“anti-SLAPP”) statute. *See* Cal. Civ. Proc. Code § 425.16. That statute was  
16 specifically enacted to “protect defendants from meritless lawsuits that might chill the exercise of  
17 their rights to speak and petition on matters of public concern.” *Wilson v. Cable News Network,*  
18 *Inc.*, 7 Cal. 5th 871, 883-84 (2019). The anti-SLAPP statute provides for a two-step process for  
19 adjudicating claims that is immediately applicable here.

20 First, the moving party must show that the challenged claims arise out of its free speech  
21 activities involving matters of public interest. The California Supreme Court has held that this  
22 requirement is met in certain employment discrimination lawsuits that attack staffing decisions  
23 tied to free speech-related activities, such as the hiring of an on-air news anchor or the termination  
24 of a news producer for plagiarism. *Id.* at 896-98. Likewise, here, the decision to change music  
25 composers on *The Simpsons* for creative reasons is protected. Indeed, in *Symmonds v. Mahoney*,  
26 31 Cal. App. 5th 1096, 1099, 1106 (2019), *review dismissed*, 449 P.3d 692 (Cal. 2019), a case

27  
28 <sup>3</sup> Clausen has also sued TFCF Corporation (f/k/a Twenty-First Century Fox, Inc.), Fox Music, Inc.  
and The Walt Disney Company. All defendants are referred to collectively as “Defendants.”



1 cited by the California Supreme Court with approval in *Wilson*, the Court of Appeal held that a  
2 drummer’s claims that he was terminated from a rock band because of his age and disability were  
3 subject to the anti-SLAPP statute and went on to hold that the band’s music and performances  
4 were of public interest. *Id.* at 1109.

5 The reasoning and conclusion of *Symmonds* apply with equal if not greater force here. Like  
6 a drummer in a band, a composer “advances and assists the performance of the music.” *Id.* at  
7 1106. There can be no doubt that *The Simpsons*, including its music and composer, are of public  
8 interest; the award-winning series, its music, and even the decision not to engage Clausen have  
9 been the focus of much public discussion and debate. Consequently, Clausen’s claims that he was  
10 “terminated” from his job as composer satisfies the first prong of the anti-SLAPP analysis.

11 Second, the burden shifts to Clausen to prove with competent, admissible evidence that he  
12 has a probability of success on the merits of his claims. *Steed v. Dep’t of Consumer Affairs*, 204  
13 Cal. App. 4th 112, 120, 124 (2012). Clausen cannot satisfy this burden:

- 14 1. He was an independent contractor of TFCF Film, not an employee of any Defendant.
- 15 2. He cannot prove that the stated reasons for the decision to replace him as composer on *The*  
16 *Simpsons* are a pretext for unlawful discrimination or retaliation.
- 17 3. He did not engage in protected activity.
- 18 4. He was never “terminated.” His services were simply not engaged for future episodes, as  
19 permitted by his contract.
- 20 5. He did not need and never requested an accommodation of his disability.
- 21 6. His claims for failure to engage in the interactive process and for failure to accommodate  
22 are time-barred.
- 23 7. Like a casting decision or decision to use a different drummer, the choice of composer is  
24 inextricably linked to the creative content of the show, and thus is protected by the First  
25 Amendment.

26 Accordingly, because Clausen cannot prevail on any of his causes of action, the Court should  
27 grant this Motion and dismiss Clausen’s Complaint in its entirety with prejudice.

1 **II. STATEMENT OF FACTS**

2 In 1989, James L. Brooks and his production company, Gracie, signed with TFCF Film to  
3 produce *The Simpsons*. Sakai ¶ 3.<sup>4</sup> Since then, Brooks has served as Executive Producer. *Id.* For  
4 over 30 successful seasons, Brooks has led an accomplished team, including producer Richard  
5 Sakai and showrunners Al Jean and Matt Selman (Brooks, Sakai, Jean and Selman are collectively  
6 referred to as the “Creative Executives”).<sup>5</sup> *Id.*; Jean ¶ 2; Selman ¶¶ 2-3.

7 **A. Clausen Was Engaged As An Independent Contractor To Compose Music**

8 Clausen was first engaged by TFCF Film in 1990, for the second season of *The Simpsons*.  
9 Farhat ¶ 3. At the time, Clausen was about 48 years old. *See* FAC ¶ 11. The engagements were  
10 repeated over several seasons. As described in his 1999 contract (the terms of which, with minor  
11 amendments, governed his services until his replacement (Farhat ¶¶ 6-7)), Clausen agreed to  
12 provide composing and conducting services when requested, and he would be paid a set amount  
13 for each episode for which his services were actually requested. *Id.* ¶ 8, Ex. A at 1 ¶¶ 1-2, 2 ¶ 4, 5-  
14 6 ¶ 9, Ex. B ¶¶ 1-2. He was not guaranteed any episodes, and he was not entitled to payment if the  
15 Creative Executives elected not to use his services. *Id.* ¶ 8, Ex. A at 5-6 ¶ 9.<sup>6</sup> His agreement  
16 acknowledged that his services were “of a special, unique, unusual, extraordinary and intellectual  
17 character,” and that he could not assign his contract. *Id.* Ex. A at 7 ¶¶ 13, 18.

18 Clausen’s work on *The Simpsons* was performed mainly during post-production of an  
19 episode. Selman ¶¶ 13-17. For each episode, Clausen typically attended Friday “spotting” sessions  
20 with the music editor and the episode’s showrunner, at which they all watched that week’s  
21 unfinished episode and chose the placements—called “cues”—for music. Selman ¶ 14; Jean ¶ 4;

22  
23 <sup>4</sup> Citations to Sakai, Brooks, Ledesma, Jean, Selman, Farhat and Rossi are to the Declarations of  
24 Richard Sakai, James L. Brooks, Chris Ledesma, Al Jean, Matt Selman, Carol Farhat and Stephen  
A. Rossi, respectively, submitted herewith.

25 <sup>5</sup> Showrunners are the lead writers responsible for the creation of episodes from start to finish.  
26 Selman ¶ 4. Jean and Selman have been showrunners on *The Simpsons* since 1998 and 2010,  
respectively. Jean ¶ 2; Selman ¶ 3.

27 <sup>6</sup> Clausen’s contract provides: “Producer may at any time, without legal justification or excuse,  
elect not to use Artist’s services .... Producer may not actually request that Artist provide the  
services of Artist for any particular episode, and, in such event, it is specifically acknowledged by  
28 Artist that Producer shall be under no obligation to make any payments whatsoever to Artist in  
connection therewith.” Farhat Ex. A at 5-6 ¶ 9 (Composer Agreement (Jan. 13, 1999)).

1 Ledesma ¶ 3. The showrunner would describe generally the type of mood for each cue, and  
2 Clausen was then responsible for transforming that general concept into finished music that would  
3 help tell the story or underline a joke. Selman ¶ 14; Jean ¶ 3; Ledesma ¶ 3.

4 After the spotting sessions, Clausen composed the music cues away from Defendants’  
5 business premises at a location believed to be his personal office (that was not paid for or provided  
6 by Defendants). Jean ¶ 5; Selman ¶ 15. Then he would run a recording session for the cues using a  
7 large orchestra of 30-plus musicians. Selman ¶¶ 7, 16; Jean ¶ 6. The show’s music editor, Chris  
8 Ledesma, would then edit the recorded music for insertion in the episode. Ledesma ¶ 5.

9 Finally, the showrunners would listen to the recorded music after it was placed in the  
10 episode. *Id.*; Selman ¶ 17; Jean ¶¶ 6, 11. This would be the first opportunity they had to evaluate  
11 Clausen’s work. Selman ¶ 17; Jean ¶¶ 6, 11. Because of the time and budget constraints on  
12 completing an episode, if Clausen had not satisfactorily captured the showrunners’ creative vision  
13 for a cue, it was only possible to make very minor changes to Clausen’s work; there was no time  
14 or budget to reconvene a large-orchestral recording session. Ledesma ¶ 5; Selman ¶ 18; Jean ¶ 11.

15 **B. Music Is A Key Element Of *The Simpsons***

16 Music has always played a prominent role in *The Simpsons*. Selman ¶¶ 6-10; Jean ¶ 3;  
17 Sakai ¶¶ 5-6. As reported in a 2016 article entitled “The 40 Best Songs in *The Simpsons* History,”  
18 “[a]t its heart, *The Simpsons* is an inherently musical show, and one that has dedicated multiple  
19 episodes entirely to music,” and “it’s easy to forget just how many immediately memorable,  
20 catchy pieces of music the show has contributed to the cultural lexicon over the course of 28  
21 seasons.” Rossi Ex. 46. Music conveys feeling and emotion, moves the plot along, is entertaining  
22 and humorous in its own right and keeps the show’s references relevant. Selman ¶¶ 9-10, 22.

23 **C. Over Time, The Show Sought To Reduce Production Costs On *The Simpsons***

24 Good animation is expensive. In 2011, the show sought to reduce its production costs. It  
25 implemented pay reductions affecting the show’s staff and voice actors. Sakai ¶ 8. Clausen and his  
26 large live orchestra were also a substantial and material expense. *Id.* One of the Creative  
27 Executives’ primary considerations was whether they could make creative, high-quality music  
28 without a live orchestra. *Id.* “Synth” orchestral music made with computers called synthesizers

1 had greatly improved over the years to the point that it could sound indistinguishable from live  
2 music. Selman ¶¶ 26, 31. Many television shows had already replaced live orchestras with “synth”  
3 music because of its quality and the considerable cost savings. Sakai ¶ 8. Over the following years,  
4 the Creative Executives periodically discussed whether Clausen’s music and method justified its  
5 considerable costs. *Id.*

6 **D. The Creative Executives Discovered That Clausen Was Having Other Composers**  
7 **Do His Work On *The Simpsons***

8 Clausen’s contributions were most valued when he composed in his “comfort zone”  
9 (classical, jazz, big band, and Broadway-style show tunes), but as other musical genres such as  
10 rap, hip-hop, electronic, and grunge emerged, the show had had to engage other composers to  
11 supplement or even replace Clausen’s work. Selman ¶¶ 19-21.

12 In late 2016, Selman was showrunning a special one-hour episode of *The Simpsons* called  
13 “The Great Phatsby,” a hip-hop parody of *The Great Gatsby* that was intended to be a richly  
14 musical episode. Brooks ¶ 3; Sakai ¶ 9; Selman ¶ 23. It featured a musical guest star who created  
15 the original rap music used in the episode. Selman ¶¶ 23-24. Clausen was responsible for the other  
16 musical cues. *Id.* Brooks was heavily involved in the episode, including the post-production and  
17 music. *Id.* ¶ 24. Brooks had wanted the episode to be rich with music, but when he heard  
18 Clausen’s orchestral cues, he had concerns. *Id.* ¶¶ 24-25; Sakai ¶ 9; Brooks ¶¶ 3-4.

19 Making matters worse, the Creative Executives learned Clausen had not even composed all  
20 the orchestral music. Instead, it had partly been composed by his son and another composer.  
21 Ledesma ¶¶ 6-7, Ex. A. The Creative Executives then discovered that Clausen had been  
22 submitting music composed by these other musicians on other episodes as well. Sakai ¶ 9; Brooks  
23 ¶ 4; Selman ¶ 25; Jean ¶ 9. This was unacceptable to the Creative Executives because they had not  
24 agreed that Clausen could unilaterally delegate his composing work. Sakai ¶ 9; Jean ¶ 9.

25 In the wake of their discovery, and in light of the concerns about the music on “The Great  
26 Phatsby,” the Creative Executives discussed making a change in composers. Brooks ¶ 4; Sakai ¶  
27 10; Selman ¶ 25; Jean ¶ 10. Ultimately, around early August 2017, they decided they should  
28 improve the music and not utilize Clausen’s services on additional episodes, which was their right

1 under his agreement. Farhat ¶ 8, Ex. A at 5-6 ¶ 9; Sakai ¶ 10; Jean ¶ 10; Brooks ¶¶ 4-6. They then  
2 engaged Bleeding Fingers, a music production company founded by Brooks’s long-time  
3 collaborator Hans Zimmer, who had composed music for *The Simpsons Movie* in 2007, as well as  
4 a *Simpsons* short film *The Longest Daycare* in 2012. Brooks ¶¶ 5-6.

5 The Creative Executives have continued to use Bleeding Fingers due to their belief that it  
6 improves upon the series’ music and its compatibility with other creative aspects of the show, such  
7 as: (1) Bleeding Fingers uses synth music, giving the showrunners greater and more timely control  
8 over the final music without the cost of a full orchestra. Selman ¶¶ 28-29, 31; Jean ¶ 11. Instead of  
9 having to accept or reject what Clausen gave them after the recording session, they receive a “play  
10 out” (rough cut) of the music soon after the spotting session and give feedback on the actual music  
11 before the recording session. Selman ¶ 29; Jean ¶ 11. (2) Bleeding Fingers has a large team that  
12 can quickly respond to creative requests and provide creative input. Selman ¶ 30; Jean ¶ 11. (3)  
13 Bleeding Fingers has a deep music library that gives them more material from which to work.  
14 Selman ¶ 30; Sakai ¶ 13. (4) Bleeding Fingers has numerous composers with different styles, their  
15 own studios, and many musicians on hand so the adaptation of a greater variety of musical genres  
16 would be available on a moment’s notice. Selman ¶ 30; Sakai ¶ 13; Jean ¶ 11.

17 Clausen (who last performed services on May 6, 2017) was informed of the decision to  
18 cease using his services on August 16, 2017. Sakai ¶ 11. Out of respect for him and his  
19 contributions, TFCF Film gave him an honorary screen credit, Composer Emeritus, and agreed to  
20 pay him \$2,500 per episode for the remainder of season 28 and for seasons 29-30. Sakai ¶ 16;  
21 Farhat ¶ 10; Jean ¶ 13.

### 22 **III. LEGAL ARGUMENT**

23 The anti-SLAPP statute, Code of Civil Procedure Section 425.16, “is California’s response  
24 to the problems created by meritless lawsuits brought to harass those who have exercised [their]  
25 rights” of free speech and petition. *Dowling v. Zimmerman*, 85 Cal. App. 4th 1400, 1414 (2001)  
26 (internal quotation marks and citation omitted [“IQMC omitted”]). It was enacted “to provide for  
27 the early dismissal of unmeritorious claims filed to interfere with the valid exercise of the  
28 constitutional rights of freedom of speech and petition for the redress of grievances.” *Hunter v.*

1 *CBS Broad. Inc.*, 221 Cal. App. 4th 1510, 1519 (2013) (IQMC omitted).

2 The statute authorizes a special motion to strike any cause of action “arising from any act  
3 of that person in furtherance of the person’s right of petition or free speech under the United States  
4 Constitution or the California Constitution in connection with a public issue ... unless the court  
5 determines that the plaintiff has established that there is a probability that the plaintiff will prevail  
6 on the claim.” Code Civ. P. § 425.16(b)(1). The statute defines “act in furtherance of a person’s  
7 right of petition or free speech” as a list of specified conduct and includes a catchall category of  
8 “any other conduct in furtherance of the exercise of the constitutional right of petition or the  
9 constitutional right of free speech in connection with a public issue or an issue of public interest.”  
10 *Id.* § 425.16(e). The statute is to be “construed broadly.” § 425.16(a).

11 Based on the language of Section 425.16, courts evaluate anti-SLAPP motions using a  
12 two-step process. First, the court determines whether “the defendant has made a threshold showing  
13 that the challenged cause of action is one arising from a protected activity.” *Navellier v. Sletten*, 29  
14 Cal. 4th 82, 88 (2002). Second, once a defendant establishes the activity is protected by Section  
15 425.16, the burden shifts to the plaintiff to show, by “competent admissible evidence,” the  
16 probability of prevailing on the merits. *Steed*, 204 Cal. App. 4th at 124.

17 **A. Prong 1: Clausen’s Causes Of Action Arise From Protected Activity In Connection**  
18 **With A Matter Of Public Interest**

19 As the *Wilson* Court stated, “if the acts alleged in support of the plaintiff’s claim are of the  
20 sort protected by the anti-SLAPP statute, then anti-SLAPP protections apply.” *Wilson*, 7 Cal. 5th  
21 at 887. Here, Clausen’s claims focus on a single alleged act: the show’s use of Bleeding Fingers  
22 (which he alleges to be Hans Zimmer personally) to compose music for *The Simpsons* instead of  
23 him. See FAC ¶¶ 23-24.<sup>7</sup> The act of replacing Clausen and his music with other composers is “of

24 \_\_\_\_\_  
25 <sup>7</sup> Though Clausen also vaguely complains about denied accommodations and a failure to engage in  
26 an interactive process, his Complaint is completely silent as to what accommodations he claims to  
27 have needed. Indeed, Clausen alleges that he “performed the essential duties of his job  
28 exceptionally well and to Defendants’ complete and total satisfaction”; his only condition,  
Parkinson’s disease, was “very mild in nature and well controlled with prescription medication”  
and “did not impair or impede his ability to perform the essential functions of his job in any way”;  
and he admits he did not need an accommodation. FAC ¶¶ 11, 14-15, 26. Accordingly, since  
Clausen has incorporated by reference the allegations concerning his termination into his failure to

1 the sort protected by the anti-SLAPP statute” because it was (1) in furtherance of the right of free  
2 speech and (2) in connection with a matter of public interest.

3 First, the act of replacing Clausen as composer on *The Simpsons* was “in furtherance of the  
4 right of free speech” because it helped to “advance that right or assist[] in the exercise of that  
5 right.” *Hunter*, 221 Cal. App. 4th at 1521 (quoting *Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th  
6 133, 143 (2011)). So, for example, in *Wilson*, the California Supreme Court held that CNN’s  
7 decision to terminate Wilson from his job as news producer for CNN because of his plagiarism  
8 was in furtherance of its right of free speech and fell within Section 425.16. *Wilson*, 7 Cal. 5th at  
9 897-98. *See also Hunter*, 221 Cal. App. 4th at 1521 (CBS’s decision not to select plaintiff for a job  
10 as on-air weather anchor was in furtherance of a constitutionally protected television news show).

11 The Court of Appeal reached a similar conclusion in *Symmonds*. There, the plaintiff sued  
12 singer Eddie Money for age and disability discrimination based on his termination after 41 years  
13 as the drummer in Money’s band, and the trial court denied the Defendant’s anti-SLAPP motion  
14 on the first prong. In reversing, the Court of Appeal observed that “[m]usic, as a form of  
15 expression and communication, is protected under the First Amendment.” *Symmonds*, 31 Cal.  
16 App. 5th at 1105 (IQMC omitted). The Court of Appeal ruled that “[a] singer’s selection of the  
17 musicians that play with him both advances and assists the performance of the music, and  
18 therefore is an act in furtherance of his exercise of the right of free speech.” *Id.* at 1106.

19 *Wilson*, *Symmonds*, and *Hunter* are dispositive here. As in those cases, there is a direct  
20 connection between Clausen’s music services and the content of the show’s speech. Clausen wrote  
21 music for *The Simpsons* with virtually no oversight, and that music was often used on-air without  
22 change. Selman ¶¶ 11, 15-18; Jean ¶ 5, 11; Ledesma ¶¶ 4-5. Indeed, because Clausen recorded the  
23 music he composed with a live orchestra of 30-plus musicians, the producers of the show had  
24 virtually no ability to change it prior to its use on the show. Selman ¶ 18; Jean ¶ 11; Ledesma ¶ 5.  
25 Furthermore, as in *Wilson*, Defendants have presented evidence that the decision not to use  
26 Clausen as composer in future episodes of *The Simpsons* had speech-related motivations. The  
27

28 accommodate and denied interactive process claims, Defendants will address these claims together  
with Clausen’s other claims.

1 Creative Executives elected to use Bleeding Fingers for creative reasons, including its vast music  
2 library and its use of synth music to permit the show’s producers to offer input on the music, while  
3 at the same time achieving cost savings that enabled the producers to devote resources to other  
4 creative aspects of the series. Selman ¶¶ 18-34; Jean ¶ 9-11; Brooks ¶¶ 4-6; Sakai ¶¶ 9-10, 12-15.

5 Second, the acts alleged by Clausen are “in connection” with an issue of public interest.  
6 Again, *Symmonds* is instructive. There, the Court of Appeal found a public interest based on the  
7 millions of records sold by defendant Eddie Money, as well as his considerable social media  
8 following and news articles discussing Money and his music. 31 Cal. App. 5th at 1109. Here, there  
9 is considerable evidence of the public’s interest in *The Simpsons*.<sup>8</sup> Winner of multiple Emmy  
10 Awards, *The Simpsons* is the longest-running scripted primetime television series in America and  
11 was *Time* magazine’s best television series of the last century. Sakai ¶ 4; Rossi Ex. 3. It is  
12 televised around the world and has spawned movies, books, video games, musical albums, toys,  
13 and a theme park attraction. Sakai ¶ 4. It is, to quote the *Los Angeles Times*, a “cultural  
14 phenomenon.”<sup>9</sup> Rossi Ex. 4.

15 Demonstrating a deep public interest in the music of *The Simpsons*, submitted with this  
16 Motion are more than 20 articles specifically discussing and debating the music of *The Simpsons*,  
17 with titles such as “The Ten Best *Simpsons* Songs, As Picked by the Show’s Writers.” Rossi Ex  
18 37, Exs. 24-58. A book on *The Simpsons* includes a chapter on “The *Simpsons and Music*,” and  
19 fans maintain at least two “wiki” pages documenting detailed information about hundreds of songs  
20 from the show. *Id.* Exs 48-50. The show’s music albums are themselves the subject of public  
21 interest. See “A History of *The Simpsons* on Billboard’s Charts.” *Id.* Ex. 27, Exs. 26-31.

22 This interest even extends beyond the music to the making of the music and the people  
23 behind it. For example, in 2017, *Vulture* spent nearly a dozen pages recounting the “oral history”  
24 of a single musical episode that parodied the film *The Planet of the Apes*. Rossi Ex. 56. Clausen

25 <sup>8</sup> Indeed, the Superior Court for the County of Los Angeles previously held that production of *The*  
26 *Simpsons* is a matter of public interest. Defendants’ Request for Judicial Notice, Rossi Ex. 2.

27 <sup>9</sup> There are countless articles paying tribute to *The Simpsons*. *E.g.*, Rossi Exs. 3-7, 11-14, 36-37,  
28 40, 46. *The Simpsons* has tens of millions of followers on social media. *Id.* Ex. 17-19. Wikipedia,  
the publicly maintained encyclopedia, has a page dedicated to *The Simpsons* that spans 39 pages,  
has over 100 citations, and links to numerous other *Simpsons*-related pages. *Id.* Ex. 16.



1 was interviewed about his work in that article and many others.<sup>10</sup> Clausen himself and the music of  
2 *The Simpsons* both have extensive Wikipedia pages maintained by the public. Rossi Exs. 29, 58.

3 When the public learned that Clausen had been replaced, it sparked public debate, which  
4 was renewed when Clausen sued. *See* Rossi Exs. 59-92.

5 **B. Prong 2: Clausen Cannot Demonstrate A Probability Of Prevailing On Any Of His**  
6 **Causes Of Action**

7 Because Defendants have met their burden on the first prong, the burden shifts to Clausen  
8 to present admissible evidence establishing a probability that he will prevail on the merits of each  
9 of his causes of action, (*Steed*, 204 Cal. App. 4th at 124), including by overcoming Defendants’  
10 evidence that defeats his claims as a matter of law, (*Wilson v. Parker, Covert & Chidester*, 28 Cal.  
11 4th 811, 821 (2002)), and by providing evidence to defeat Defendants’ affirmative defenses.  
12 *Dwight R. v. Christy B.*, 212 Cal. App. 4th 697, 715 (2013).

13 **1. All Of Clausen’s Claims Fail Because Clausen Was Not An Employee**

14 In connection with his causes of action, Clausen must prove, as a threshold matter, that he  
15 was an employee of each of the Defendants. *See* Cal. Gov’t Code § 12940 (FEHA discrimination,  
16 accommodation, and retaliation provisions apply to employees); Cal. Code Regs. tit. 2, §  
17 11008(c)(1) (FEHA definition of employee “does not include an independent contractor”);  
18 *Varisco v. Gateway Sci. & Eng’g, Inc.*, 166 Cal. App. 4th 1099, 1102 (2008) (tort of wrongful  
19 termination requires employee relationship). As to TFCF Film, Clausen cannot prove an  
20 employment relationship because, like most composers, he was an independent contractor and not  
21 an employee. *See Bernstein v. Universal Pictures, Inc.*, 517 F.2d 976, 980 (2d Cir. 1975) (“On two  
22 occasions, the National Labor Relations Board has ruled that composers were independent  
23 contractors.”); *Am. Broad. Co.*, 117 NLRB 13, 18 (1957) (composers hired by ABC were  
24 contractors). As to the other Defendants, Clausen will not be able to establish that he had either a  
25

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26 <sup>10</sup> *See, e.g.*, Chuck Crisafulli, *Silly Symphonies*, *Hollywood Rep.*, Feb. 11, 2003; Chuck Crisafulli,  
27 *Show Toons*, *Hollywood Rep.*, Aug. 22, 2006; David Ng, *The Simpsons’ Set to Invade the*  
*Hollywood Bowl*, *L.A. Times*, Sept. 6, 2014; Lior Phillips, *He Put the Spring in Springfield: A*  
*Conversation with ‘The Simpsons’ Composer Alf Clausen*, *Consequence of Sound*, Apr. 8, 2017; *A*  
28 *Salute to 30 Years of The Simpsons*, NPR: *Fresh Air*, May 19, 2017; Aiden Mason, *Five Things*  
*You Didn’t Know About Alf Clausen*, *TV Overmind*, Sept. 24, 2019. Rossi Exs. 51-54, 55 at 23.

1 contractual or employment relationship.

2 “The principal test of an employment relationship is whether the person to whom the  
3 service is rendered has the right to control the manner and means of accomplishing the result  
4 desired....” *Garcia v. Border Transportation Grp., LLC*, 28 Cal. App. 5th 558, 567 (2018) (quoting  
5 *S. G. Borello & Sons, Inc. v. Dep’t of Indus. Relations*, 48 Cal. 3d 341, 350-51 (1989)). Secondary  
6 indicia, (*see id.*), include the following:

7 (a) whether the one performing services is engaged in a distinct  
8 occupation or business; (b) the kind of occupation, with reference to  
9 whether ... the work is usually done under the direction of the  
10 principal or by a specialist without supervision; (c) the skill required  
11 in the particular occupation; (d) whether the principal or the worker  
12 supplies the instrumentalities, tools, and the place of work for the  
13 person doing the work; (e) the length of time for which the services  
14 are to be performed; (f) the method of payment, whether by the time  
15 or by the job; (g) whether or not the work is a part of the regular  
16 business of the principal; and (h) whether or not the parties believe  
17 they are creating the relationship of employer-employee.

18 Here, Clausen cannot establish an employment relationship with any of the Defendants.  
19 Defendants had no right to control the “manner and means of accomplishing the result desired.”  
20 He was given information about the type of music the showrunners wanted for each cue and then  
21 wrote, recorded and turned in the music to the showrunners, who could only accept it, reject it, or  
22 accept it and ask the music editor to tweak the *recording*—not Clausen’s composition. Ledesma ¶  
23 5; Selman ¶¶ 14-18; Jean ¶¶ 4-6, 11. Clausen performed his composing work offsite, with his own  
24 equipment, and with no supervision or control over his composing. *Id.* Unlike an employee,  
25 Clausen was paid by the episode, rather than by the hour or a regular salary. Farhat ¶ 8. He was  
26 engaged in a highly skilled independent profession and provided composing services on other  
27 pictures with other companies. Farhat Ex. A at 7 ¶ 13; Ledesma ¶ 8. Thus, Clausen was not an  
28 employee of any Defendant, requiring dismissal of his claims.

Even if Clausen were an employee, however, his claims still fail for the reasons below.

**2. All Of Clausen’s Claims Fail Because He Cannot Prove Unlawful Action**  
**a. Clausen Cannot Prove Pretext In Support Of His Discrimination And**  
**Retaliation Claims [Causes of Action (“COA”) 1, 4, 5, 6, 7 and 9]**

As discussed above, the Creative Executives selected a new composer for *The Simpsons*

1 for creative reasons. In order to prevail on his claims, Clausen must show that these reasons are a  
2 pretext for unlawful discrimination based on his age, disability or protected activity. *See Guz v.*  
3 *Bechtel Nat. Inc.*, 24 Cal. 4th 317, 354-57 (2000) (if employer offers legitimate reasons for  
4 decision, the burden shifts to employee to establish those reasons are pretextual); *Harris v. City of*  
5 *Santa Monica*, 56 Cal. 4th 203, 232 (2013) (employee must show that protected factor was  
6 substantial motivation for decision). He will be unable to satisfy this burden. Selman ¶ 34; Jean ¶  
7 12; Brooks ¶¶ 8-9; Sakai ¶¶ 17-18; Farhat ¶ 9. Apart from the considerable evidence supporting  
8 the legitimate creative reasons for the decision, Clausen’s claims are undermined by several facts:  
9 he was 48 when he was first engaged as a composer and continued to work through his 50s, 60s  
10 and into his 70s; Clausen admits his disability was not affecting his work and that he needed no  
11 accommodations; and he fails to identify any comments showing animus based on his age,  
12 disability or any protected activity.

13 **b. Clausen’s Retaliation Claim Fails For The Additional Reason That He Did**  
14 **Not Engage In Protected Activity [COA 5]**

15 Clausen’s retaliation claim is apparently based on a request for accommodation. But he  
16 admits he did not need an accommodation and never requested one. FAC ¶ 26. Though Clausen  
17 alleges that he told Defendants about his disability, simply notifying an employer of a disability,  
18 without requesting an accommodation, is not a protected activity that can support a retaliation  
19 claim. *Moore v. Regents of Univ. of California*, 248 Cal. App. 4th 216, 247-48 (2016).

20 **c. The Wrongful Discharge Claim Fails For Lack Of “Termination” [COA 7]**

21 Clausen’s claim for wrongful termination also fails because Clausen was not terminated;  
22 the Creative Executives simply exercised the right under Clausen’s contract not to use his services  
23 on additional episodes. *See Farhat Ex. A* at 5-6 ¶ 9 (explaining the producer had to request  
24 Clausen’s services for each episode and explicitly retained the right not to request Clausen’s  
25 services); *Touchstone Television Prods. v. Superior Court*, 208 Cal. App. 4th 676, 682 (2012)  
26 (“Sheridan cannot pursue a cause of action for wrongful termination ... because ... Touchstone  
27 chose only not to exercise its option to renew her contract for the next season.”); *see also Daly v.*  
28 *Exxon Corp.*, 55 Cal. App. 4th 39, 45 (1997), *as modified* (June 9, 1997) (“[E]mployee may not

1 sue for tort damages where the employment contract is for a fixed term and expires.”).

2 **d. Clausen Cannot Prevail On His Accommodation Claims [COA 2 and 3]**

3 Clausen’s failure-to-accommodate and interactive process claims are time-barred by the  
4 applicable one-year statute of limitations. *See* Cal. Gov’t Code § 12965(b). Clausen filed his  
5 DFEH complaint on August 6, 2018 (FAC ¶ 10), so only unlawful acts that occurred after August  
6 6, 2017 are timely. However, Clausen stopped performing services on *The Simpsons* on May 6,  
7 2017. Sakai ¶ 11. With his services completed, as a matter of law there could be no need for  
8 workplace accommodations or an interactive process designed to identify accommodations.

9 Clausen’s claims fail for the additional reasons that he admittedly never asked for or  
10 needed an accommodation. FAC ¶¶ 11, 14-15, 26; *see supra* n.7; *see also* Jean ¶¶ 7-8; Selman ¶  
11 33; Sakai ¶ 17 Brooks ¶ 7. To the contrary, he told Carol Farhat, his alleged “supervisor,” that he  
12 did not need any accommodation. Farhat ¶ 11. There is no obligation to accommodate an  
13 employee, or engage in the interactive process, if the employee does not need and never requests  
14 an accommodation. *Gelfo v. Lockheed Martin Corp.*, 140 Cal. App. 4th 34, 54 (2006); *Spitzer v.*  
15 *Good Guys, Inc.*, 80 Cal. App. 4th 1376, 1384 (2000); *see also* Cal. Code Regs. tit. 2, § 11069(b).  
16 Though Clausen pleads that he may have come to need an accommodation in the *future*, that  
17 theoretical possibility cannot give rise to a duty to accommodate or engage in the interactive  
18 process because employers must “reasonably accommodate limitations, not disabilities.” *Scotch v.*  
19 *Art Inst. of California*, 173 Cal. App. 4th 986, 1013 (2009) (IQMC omitted). Since Clausen had no  
20 *limitations* that needed accommodation, there was no duty to accommodate or engage in an  
21 interactive process. *Id.*; *see also Doe v. Dep’t of Corr. & Rehab.*, 43 Cal. App. 5th 721, 739-40  
22 (2019) (employer with no information on limitations not obligated to engage). Stated another way,  
23 since Clausen did not need an accommodation, he was not harmed, and so his claims fail. *See* Jud.  
24 Council of Cal. Civil Jury Instr. (“CACI”) No. 2546 (damages required to establish failure to  
25 engage claim); *Scotch*, 173 Cal. App. 4th at 1019 (finding no injury where employee could not  
26 identify available needed reasonable accommodation).

27 **e. The Emotional Distress Claim Is Unfounded [COA 8]**

28 To prevail on a claim for intentional infliction of emotional distress, Clausen must prove

1 that the conduct at issue was “so extreme as to exceed all bounds of that usually tolerated in a  
2 civilized society.” *Trerice v. Blue Cross of Cal.*, 209 Cal. App. 3d 878, 883 (1989). Personnel  
3 management decisions, even if improperly motivated, are not “extreme” and “outrageous” as a  
4 matter of law. *See Janken v. GM Hughes Elecs.*, 46 Cal. App. 4th 55, 80 (1996) (“Managing  
5 personnel is not outrageous conduct beyond the bounds of human decency, ... even if improper  
6 motivation is alleged.”). Here, Clausen cannot show discriminatory conduct, much less “extreme”  
7 and “outrageous” conduct. *See McCoy v. Pac. Mar. Ass’n*, 216 Cal. App. 4th 283, 289 (2013)  
8 (where “harassment was not so severe and pervasive as to alter the conditions of appellant’s  
9 employment,” it also “failed to meet the extreme and outrageous standard necessary for the  
10 emotional distress claim”).

11 **f. The Derivative UCL And Failure To Prevent Claims Fail [COA 6 and 9]**

12 Because Clausen cannot establish his claims for discrimination, failure to  
13 accommodate/engage in the interactive process or retaliation in violation of FEHA, his claims for  
14 unfair competition and failure to prevent also fail. *E.g., Aleksick v. 7-Eleven, Inc.* 205 Cal. App.  
15 4th 1176, 1185 (2012) (“When a statutory claim fails, a derivative UCL claim also fails.”).

16 **3. All Of Clausen’s Claims Fail Because The Choice Of Composer On *The***  
17 ***Simpsons* Is Protected By The First Amendment**

18 All of Clausen’s claims fail for the additional reason that replacing him as composer for  
19 creative reasons is an act protected by the First Amendment. *Symmonds*, 31 Cal. App. 5th at 1105-  
20 06 (musical expression constitutionally protected); *Tamkin*, 193 Cal. App. 4th at 143 (television  
21 production constitutionally protected).

22 The First Amendment prohibits Congress (and, through the Fourteenth Amendment, the  
23 states) from making a law “abridging the freedom of speech, or of the press.” U.S. Const. amends.  
24 I, XIV; *see also* Cal. Const. art. I, § 2. Its protections are not limited to direct governmental action  
25 but extend to private litigation invoking state or federal law, including claims of discrimination.  
26 *See Ingels v. Westwood One Broad. Servs., Inc.*, 129 Cal. App. 4th 1050, 1072 (2005); *Claybrooks*  
27 *v. Am. Broad. Companies, Inc.*, 898 F. Supp. 2d 986, 993, 996 (M.D. Tenn. 2012).

1 “Just as the State is not free to ‘tell a newspaper in advance what it can print and what it  
2 cannot,’” (*Pac. Gas & Elec. Co. v. Pub. Util. Comm’n of California*, 475 U.S. 1, 11 (1986)  
3 (citation omitted)), the government cannot tell an employer who it must hire or retain if that action  
4 is “bound to affect” the “expressive content” of the employer’s works. *McDermott v. Ampersand*  
5 *Publ’g, LLC*, 593 F. 3d 950, 962 (9th Cir. 2010); *see also Nelson v. McClatchey Newspapers, Inc.*,  
6 936 P.2d 1123 (Wash. 1997) (en banc) (holding that a newspaper had First Amendment right to  
7 terminate news reporter). Accordingly, casting-type decisions are protected by the First  
8 Amendment. *See Claybrooks*, 898 F. Supp. 2d at 993 (“[C]asting decisions are part and parcel of  
9 the creative process behind a television program ... thereby meriting First Amendment protection  
10 against the application of anti-discrimination statutes to that process.”); *Ingels*, 129 Cal. App. 4th  
11 at 1072 (“[P]roduction and airing of a talk show involving public discourse of necessity involves a  
12 free speech component which calls into play the First Amendment....”).


13 Here, music is a critical element of *The Simpsons*, and the composer is pivotal to fulfilling  
14 the musical vision of the show. The public was fully vested in the composer and artists *behind* the  
15 show. Thus, changing composers inherently affected *The Simpsons*’ artistic expression (*e.g.*,  
16 Selman ¶¶ 11, 32; Jean ¶ 11), and the First Amendment protects that decision from regulation  
17 under state anti-discrimination law.

18 **IV. CONCLUSION**

19 Clausen’s attempt to use the anti-discrimination laws to undo a creative decision he  
20 disagrees with could chill the free speech of collaborative artists and producers around this state.  
21 The Court should grant Defendants’ anti-SLAPP motion, strike Clausen’s Complaint and award  
22 Defendants their reasonable attorneys’ fees and costs incurred in this lawsuit in an amount to be  
23 proven through a subsequent motion according to proof. Code Civ. P. § 425.16(c)(1).

24 DATED: April 27, 2020

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25  
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