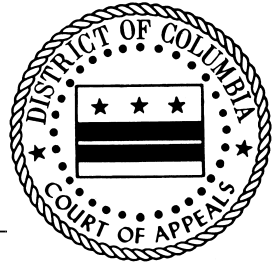


24-CV-0062



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**IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS**

ALLISON McCracken ET AL.,
Appellants,

v.

RAED JARRAR,
Appellee.

On Appeal from the Superior Court of the District of Columbia
Civil Division (2023-CAB-003269)

**OPENING BRIEF FOR
APPELLANTS ALLISON McCracken ET AL.**

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DISCLOSURE STATEMENT

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The Arc, *Tools for Building Power Through Personal Stories* 2, 3 (2019), <https://perma.cc/XNY5-MTLV> 34

STATEMENT OF ISSUES PRESENTED

The plaintiff, a high-profile human-rights advocate, previously admitted, in writing, to physically abusing his ex-wife. After his ex-wife and her friends made public statements about his abuse, in an effort to alert their community of progressive human-rights advocates, he sued them for defamation, and alleges that they engaged in a “campaign” to “effectively ‘cancel’ him.” Two of the defendants now appeal from the denial of their special motion to dismiss under the D.C. Anti-SLAPP Act, D.C. Code § 16-5502(a). Their appeal presents the following questions:

1. Does an advocacy campaign seeking to raise awareness about domestic violence and remove abusive men from progressive advocacy organizations lose its Anti-SLAPP protection if the advocates invoke their personal experiences in making their case?
2. Can a defamation plaintiff establish the necessary likelihood of success on the merits when that plaintiff (a) has already confessed to the acts described in the allegedly defamatory statements, (b) has failed to directly allege that his confession was false and has failed to dispute other, similar allegations?

INTRODUCTION

On June 2, 2022, Allison McCracken left her then-husband Raed Jarrar, a high-profile author and human-rights advocate. A few months later, Jarrar wrote and signed a letter not only admitting to cheating on her and manipulating her emotionally, but also claiming to be “deeply sorry about the physical abuse that I inflicted on you meanwhile in April and May.” He added, “I look at my hands and think about how I pushed, slapped, choked, and hit you.” McCracken and three of her friends—including, Gabriella Smith, also an advocate for human rights in the Middle East—decided to tell their community about Jarrar’s abuse.

Even with Jarrar’s written confession, McCracken and her friends faced the prospect of backlash or retaliation. A few years earlier, Jarrar had brought two separate legal claims against his former employer, Amnesty International, which had terminated him “after an internal investigation substantiated a complaint of ‘inappropriate conduct toward a female coworker.’” Hassan A. Kanu, *Revenge or #MeToo: Firing Exposes Rift at Amnesty*, Bloomberg Law (Apr. 4, 2019), <https://tinyurl.com/4n9yas2r>. His colleague had reported that he made “repeated unwanted sexual overtures toward her, including making comments about her body, suggesting sex that night, attempting to kiss her” and “pressing [his] body against her in an intimidating manner.” *Id.*

Despite the risk of retaliatory lawsuits, McCracken and her friends spoke out. Starting in fall 2022, and continuing after their divorce in December 2022, McCracken and her friends began to share her experience—both to hold Jarrar accountable and to encourage other survivors of abuse who needed help. On Facebook, McCracken described the abuse to help “rais[e] money for the National Network to End Domestic Violence” and to offer support if “you feel like you’re in an abusive situation but you don’t know how to seek help.” And on Twitter, she disclosed that “a staggeringly high number of women I confided in have shared with me similar violent experiences they’ve undergone with men, including so-called leftist men. It is astonishing how prevalent it is.” Siegel, Smith, and Mir likewise discussed Jarrar’s abuse—and the response to it—with members of their community. By describing what happened to her, McCracken and her friends aimed to promote “social accountability and feminist solidarity—reassurances that there is zero tolerance for violence at home or in the workplace.”

Jarrar responded by suing McCracken, Mir, Siegel, and Smith for defamation. He filed suit on June 2, the one-year anniversary of McCracken leaving him. His lawsuit epitomizes a SLAPP suit.

A SLAPP is a strategic lawsuit against public participation, designed “to punish or prevent the expression of opposing points of view.” *Competitive Enter.*

Inst. v. Mann, 150 A.3d 1213, 1226 (D.C. 2016). Although the term SLAPP isn't new, this type of SLAPP—a defamation lawsuit against a woman who has named her abuser—lately has become more common. In response to the #MeToo movement, the “accused have turned around and sued their accusers, effectively silencing them.” Bryce Covert, *Years After #MeToo, Defamation Cases Increasingly Target Victims Who Can't Afford to Speak Out*, *The Intercept* (July 22, 2023), <https://perma.cc/F8BB-XCT5>.

Like other SLAPPs, defamation suits against abuse victims seek to deplete their bank accounts and chill their speech: “Those without the resources to fight these lawsuits may feel forced to recant their accusations, while the potential of being sued for defamation after speak out is likely keeping others silent in the first place.” *Id.* It is riskier yet to disclose abuse or harassment by progressive leaders, several of whom have tried to hide behind the goals of their political movements. See Emily Crockett, *FitzGibbon Media and the Problem of Sexual Harassment in the Progressive Movement*, *Vox* (Dec. 21, 2015), <https://perma.cc/3EAP-ZLNM>.

Rarely, however, has the SLAPP plaintiff already confessed, clearly and in writing, to the abuse described in the allegedly defamatory statements. Raed Jarrar has. He does not directly allege that he lied when he confessed to physically abusing McCracken. Because he has confessed to physically abusing McCracken

multiple times, he necessarily is unable to allege that similar statements by others were false. And because McCracken's and Smith's statements sought to influence a broader debate about the role of abusive men in progressive organizations, the Anti-SLAPP Act dooms Jarrar's attempt to retaliate them in court.

STATEMENT OF THE CASE & JURISDICTION

On June 2, 2023, Raed Jarrar filed a defamation lawsuit against Allison McCracken, Noor Mir, Emily Siegel, and Gabriella Smith. A8. All four defendants filed timely special motions to dismiss under the D.C. Anti-SLAPP Act. With leave from the trial court, Jarrar filed an amended complaint on August 31, 2023. A41. He later settled his claims against defendant Noor Mir.

On October 2, 2023, defendants McCracken, Siegel, and Smith filed (1) a motion to dismiss for failure to state a claim, under Rule 12(b)(6), and (2) a special motion to dismiss under the D.C. Anti-SLAPP Act, D.C. Code § 16-5502(a). *See* A83. A hearing was held on December 15, 2023. A188. On January 5, 2024, the trial court (1) granted the Rule 12(b)(6) motion filed by Emily Siegel, (2) denied the Rule 12(b)(6) motions filed by Allison McCracken and Noor Mir, and (3) denied all three defendants' special motions to dismiss under the D.C. Anti-SLAPP Act. A253.

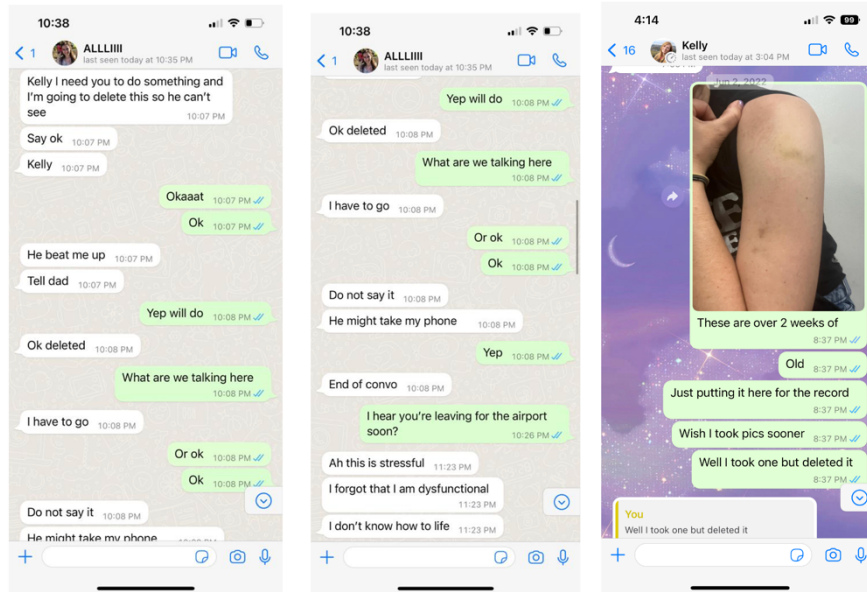
On January 19, 2024, defendants McCracken and Smith filed a timely notice of interlocutory appeal under the D.C. Anti-SLAPP Act, as authorized by *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213 (D.C. 2016).

STATEMENT OF FACTS

Raed Jarrar is a prominent “author and political activist” who first “came into public view as a consequence of the devastation of his family home in Baghdad during the Iraq war.” Am. Compl. ¶ 2 (A42). He “founded an NGO, Emaar, dedicated to the reconstruction of Baghdad and Southern Iraq.” He continues to use “his architectural background and political advocacy skills to aid those displaced in the Middle East.” *Id.* His Wikipedia page (*id.* ¶ 30) (A50), which describes several other high-profile activities. *See* Raed Jarrar, Wikipedia, <https://perma.cc/6576-L9JM> (last visited May 6, 2024).

In 2016, Jarrar met Allison McCracken, who organizes advocacy campaigns for Amnesty International; they got married in April 2018. Am. Compl. ¶¶ 9, 11 (A43).

On June 2, 2022, McCracken confided in her sister that, a few weeks earlier, Jarrar had “beat me up,” and she included a photo of her two-week-old bruises.

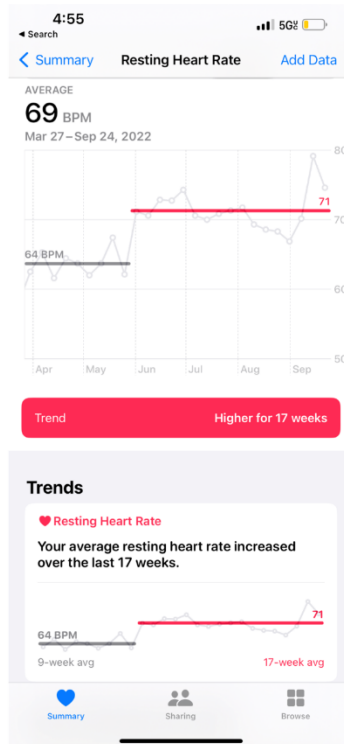


10/2/23 Mot., Ex. C (A21). She left Jarrar later that day, the divorced him in December 2022. Am. Compl. ¶ 16 (A44).

A. Jarrar writes and signs a confession to emotionally and physically abusing McCracken.

After McCracken left Jarrar, a few mutual friends contacted him to begin an accountability process through which he might take responsibility for his violent abuse. *See id.* ¶ 19 (A45–47). Late in June 2022, McCracken and Jarrar signed a Marital Settlement Agreement. Am. Compl., Ex. A (A65–73). Later that summer, Jarrar “execut[ed] a ‘confession and apology’ letter.” *Id.* ¶ 19 (A45) & Ex. C (A75). In this four-page letter, Jarrar admits to infidelity, emotional abuse, and physical violence. Am. Compl., Ex. C (A75).

Jarrar begins his letter by telling McCracken that he has “been falling from the sky since you left”; when waking up each morning, “a bus hits me—even when someone else is in my bed.” *Id.* at 1 (A75). To document his heartache, Jarrar attaches iPhone screenshots depicting his resting heartrate. *Id.* He further recounts how, the month before, he traveled to Bogota with someone and “sat in our spot in the sun,” and attaches a photo of the view. *Id.* at 2 (A76).



Left: Am. Compl., Ex. C at 1; Right: *id.* at 2.

Jarrar also reiterates his attraction to McCracken: “I miss your body. I miss having sex with you. I miss our love soundtrack. Kissing you. Gently biting your lip. Feeling your skin. Your underarms. I miss your orgasms.” *Id.* After describing the state of his hair, nails, and shoulder (*id.*), he suggests that the separation killed one

of their trees: “I tried to save him, but I don’t think he can live without our love. I stroke his dead leaves every day and water him once a week. I know he’s not coming back, but I still say ‘come back to me, my baby.’” *Id.* at 4 (A78).

In early 2022, Jarrar continues, he “unilaterally request[ed] space” from McCracken and began dating a woman named Mariam. *Id.* at 3 (A77). During their first walk, he and Mariam sat on the steps of a freemason temple; Jarrar’s letter includes a screenshot of a map pinpointing the temple’s location in relation to his and McCracken’s home. *Id.* As his affair continued, he “gaslighted” McCracken and “pressured [her] to accept the new terms of our open marriage.” *Id.* at 4 (A78). He concedes that “my relationship with Mariam amounted to a full-fledged affair.” *Id.*

Jarrar agreed that, during his affair with Mariam, his “approach to changing the nature of our marriage was manipulative.” *Id.* But he persuaded himself otherwise: “I rationalized it as fair because I was expressing my needs and wants on the front end rather than cheating on you, but I know I gaslighted you and pressured you in a disingenuous way to change your mind.” *Id.* Ultimately, he “pushed [McCracken] away—emotionally and physically.” *Id.* at 3 (A77).

Finally, Jarrar acknowledged—and was “deeply sorry about”—“the physical abuse that I inflicted on you meanwhile in April and May.” *Id.* at 4 (A78). He elaborated: “I look at my hands and think about how I pushed, slapped, choked, and hit you.” *Id.* There was verbal abuse as well: “Not only am I remorseful for the physical violence, but I also realize the verbal violence was horrendous.” *Id.* As a result, “I’m in a prison that I built with my own hands.” *Id.*

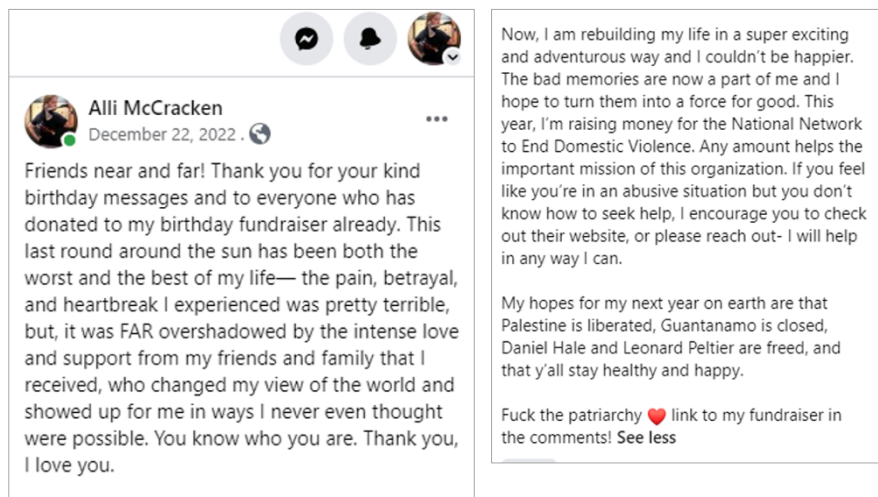
I am deeply sorry about the physical abuse that I inflicted on you meanwhile in April and May. I look at my hands and think about how I pushed, slapped, choked, and hit you. There is no excuse for what I did. I’m ashamed of my actions, and I am sincerely sorry for all the pain that I have caused you. Not only am I remorseful for the physical violence, but I also realize the verbal violence was horrendous. This is not Mariam’s fault, and I won’t blame it on the shingles -- I hold myself 100% accountable, and I am the only one to blame for crossing the line, breaching our values, and violating your trust. I am committed to working on myself to ensure I never repeat my mistakes for the rest of my life. I don’t know if I will ever be able to forgive myself for hurting you and breaking your heart, but I hope my apology helps you heal.

Am. Compl., Ex. C at 4.

B. After Jarrar refuses to follow through on his confession and commitments, McCracken makes public statements about Jarrar’s physical abuse, support for domestic violence victims, and the role of abusive men in progressive organizations.

Despite his willingness to apologize in writing, Jarrar soon stopped participating in the accountability process. He “refused to complete [a] domestic violence class.” Am. Compl. ¶ 35 (A51). And while, last fall, he had agreed to remove guns from his home, he now complains about the loss of “his Second Amendment right to own firearms.” *Id.* ¶ 19 (A45–47).

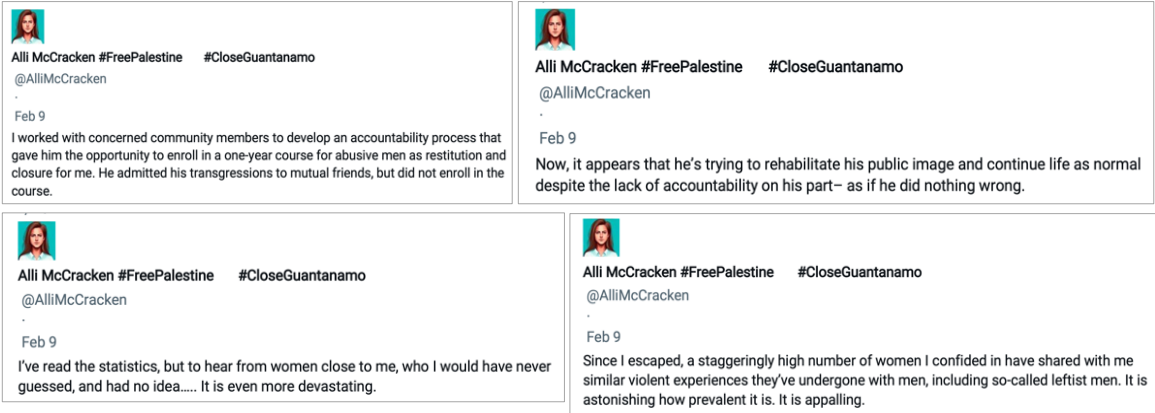
In December 2023, McCracken posted on Facebook about her experiences and the broader issue of domestic violence. Although “the pain, betrayal, and heartbreak [she had] experienced was pretty terrible,” McCracken hoped to turn the bad memories “into a force for good.” 10/2/23 Mot., Ex. A (A112). As part of that effort, she began “raising money for the National Network to End Domestic Violence” and told her audience that “[a]ny amount helps the important mission of this organization.” *Id.*



McCracken also addressed other victims of domestic abuse: “If you feel like you’re in an abusive situation but you don’t know how to seek help, I encourage you to check out their website, or please reach out—I will help in any way I can.” *Id.*

On Twitter, McCracken tweeted that Jarrar had “‘violently abused’ her ‘multiple times.’” 10/2/23 Mot., Ex. B at 1 (A117). Noting that Jarrar had

accepted but then abandoned an accountability process, McCracken warned that “he’s trying to rehabilitate his public image and continue life as normal despite the lack of accountability on his part.” *Id.* at 2 (A118).



Unfortunately, she added, “a staggeringly high number of women I confided in have shared with me similar violent experiences they’ve undergone with men, including so-called leftist men.” *Id.* As a result, McCracken called for social “accountability and feminist solidarity—reassurances that there is zero tolerance for violence at home or in the workplace.” *Id.* at 3 (A119).

C. Jarrar sends legal demand letters to McCracken and her friends, asks the family court to hold McCracken in contempt, and sues McCracken and her friends for defamation.

1. *In family court, Jarrar moves to hold McCracken in contempt and seeks a broad order restricting McCracken’s speech.*

The next day, Jarrar accused McCracken of violating the marital settlement agreement and asked the family court to hold her in contempt. *See* 10/2/23 Mot., Ex. D ¶¶ 2–4 (A122–A123). In addition to claiming that McCracken owed him

\$9,648, he argued that by publicly disclosing Jarrar’s violent abuse, she had breached the parties’ commitment to refrain from portraying each other negatively “to the children or within their hearing.” *Id.* ¶¶ 5–6, 8–11, 14–21 (A123–A125).

On this basis, he requested an order (1) requiring McCracken to “immediately remove any public posting” about him, and (2) barring her from “posting disparaging remarks about [him] online” or “contacting his family, friends, employers, and professional colleagues.” *Id.* at 5 (A126). The court denied Jarrar’s motion, because the spouses’ marital-settlement agreement “is not a Court order.” 10/2/23 Mot., Ex. G at 2 (A135).

2. Jarrar sends legal demand letters to McCracken and three of her friends.

That same month, Jarrar’s lawyer wrote to McCracken and demanded that her statements about Jarrar’s physical abuse “be retracted.” Am. Compl. ¶¶ 46, 55–56, 65–66, 75–76 (A54–A62). He lawyer sent similar demand letters to three of McCracken’s friends: Noor Mir, Emily Siegel, and Gabriella Smith, each of whom is a human-rights activist who focuses on human rights in the Middle East. *See id.*

3. Jarrar files a defamation lawsuit against McCracken, Mir, Siegel, and Smith.

A few months later, Jarrar sued McCracken, Mir, Siegel, and Smith for defamation. He filed the lawsuit on June 2, 2023—exactly one year after McCracken left him. Referring to his ex-wife as his “estranged spouse,” Jarrar

alleged that McCracken “and her friends and supporters” have “engaged in a campaign designed to embarrass and humiliate the Plaintiff, injure his relationship with his minor children, and effectively ‘cancel’ him, by asserting that Plaintiff is a ‘wife beater’ and a chronic abuser that should be ostracized by his friends and associates.” Compl. ¶ 1 (A9).

Jarrar also included explicit allegations about McCracken’s sexual preferences. In the first sentence under “Factual Allegations,” he described McCracken’s alleged interest in “‘rough sex,’ which included bondage, spanking (as well as slapping and other forms of physical strikes), hair pulling, and mild erotic asphyxiation.” *Id.* ¶ 9 (A10–A11).

Jarrar demanded compensatory damages of at least \$1 million—at least \$250,000 against each of the four defendants—as well as punitive damages. Compl. 18–19 (A25–A26). And he demanded a permanent injunction—both to forbid each woman from describing his abuse, and to require each woman to recant her previous statements. *See id.*

All defendants moved to dismiss under Rule 12(b)(6) and filed special motions to dismiss under the D.C. Anti-SLAPP Act. In the joint motion filed by McCracken, Siegel, and Smith, they described how their statements fit into “a broader debate about whether and how to address abuse and harassment in

progressive organizations and communities” —a debate that “preceded the #MeToo movement” and “remains stubborn and fraught.” 7/31/23 Mot. 20.

They also emphasized that Jarrar had confessed to physically abusing McCracken and had failed to directly disavow his own statements in that confession. In particular, they wrote that the allegedly defamatory statements “express what Jarrar has already admitted is true.” *Id.* at 16. And they stressed that the complaint did not allege that anything in the written confession was “actually false” or “a lie.” *Id.* at 9, 10; *see also id.* at 17 (similar).

D. Jarrar files the Amended Complaint

While the anti-SLAPP motions were pending, Jarrar requested and received permission to file an amended complaint, so that he could “address certain details.” 8/17/23 Mot. 1 (A36–A40). Jarrar also wished to “add a cause of action for Breach of Contract arising out of the marital settlement agreement between Plaintiff and Defendant McCracken that was not able to be resolved in the Domestic Relations Branch.” *Id.* Jarrar’s amended complaint did not actually add the contract claim identified in his motion for leave to amend.

Instead, Jarrar again alleges that McCracken, Mir, Siegel, and Smith engaged in “a campaign” against him. Am. Compl. ¶ 1 (A41–A42). Indeed, he seeks to hold McCracken liable not only for her own statements, but also for statements

made by the other defendants. *Id.* at 14–22 (A54–A62). He demands total compensation of at least \$1 million, plus punitive damages. *See id.* at 22–23 ¶¶ A–D (A62–A63). And he seeks an order forbidding the defendants to discuss his “criminal conduct” in his marriage and requiring them to retract any previous statements about such conduct. *Id.* at 23 ¶ E (A63).

Although he has already confessed to cheating on McCracken and demanding that she permit an open marriage, his complaint accuses her of infidelity. *Id.* ¶ 11 (A43–A44). Nearly fifteen months after she left him, Jarrar still accuses McCracken of “abandon[ing] the relationship.” *Id.* ¶ 61 (A57–A58). Even after the divorce, he refers to McCracken as his “estranged wife” and her current boyfriend as her “paramour.” *Id.* ¶ 1, 11 (A9, A11).

1. Allegations about Jarrar’s written confession to physical violence.

Like the original complaint, the amended complaint does not allege that Jarrar’s written confession—to acts of physical violence against McCracken—was false. Instead, Jarrar alleges that he “acquiesced in executing” the letter “to shield his children from Defendant McCracken’s claims and the sordid details of his relationship with Defendant McCracken.” *Id.* ¶ 19. Without elaborating, he adds that McCracken’s “male intermediaries” “intimidate[d]” him into confessing to violent abuse. *Id.* ¶¶ 1, 19, 38.

He adds that the confession “was not written in [his] own words, but rather was a fanciful and in many cases, femininely poetic statement” —a “femininely poetic statement dictated by Defendant McCracken, based on parameters she required” and motivated by “delusions that her departure had devastated the Plaintiff to the point of broken-down sobs ‘in the shower.’” *Id.* ¶ 19 (A12-13). And he alleges that if he had not admitted to abusing McCracken, she would have “‘go[ne] public’ with her claims.” *Id.*

But Jarrar does not allege that he was lying in his confession. Nor does he actually deny writing it; he suggests only that it was “based on parameters [McCracken] required.” *Id.* He also does not allege that McCracken, his “estranged spouse” who since June 2022 spent most of her time in Mexico City, had access to the confession’s private data and details. *Id.* ¶¶ 1, 11 (A9, A11).

Jarrar further alleges that members of McCracken’s support group said that he had “slapped [McCracken’s] jaw very hard, choked her, beat her, punched her arms and legs, kicked her entire body, slapped her, dragged her by her hair, and spat on her.” *Id.* ¶ 20 (A47). He calls these accusations “rumors,” but he does not allege that they are false. *Id.*

Despite his alleged desire to shield his children from “sordid” sexual details, Jarrar again begins his factual allegations by detailing McCracken’s alleged interest

in rough sex. *Id.* ¶ 9 (A43). The amended complaint adds yet more sordid allegations: Jarrar alleges that Smith had once said, “during a sleep over party” that “she would ‘like to be part of a throuple’” with him and McCracken. *Id.* ¶ 19 (A45-47). This alleged proposal took place more than a year before the violent abuse at issue in this case, and Jarrar does not otherwise link it to the claims at issue in this case. *See id.*

2. *Allegations about a campaign aimed at “the nonprofit community within which he works and associates.”*

Jarrar seeks to hold McCracken liable for her posts on Facebook and Twitter. He alleges that she “began a Facebook and Twitter campaign against the Plaintiff to destroy his reputation within the nonprofit community in which he works and associates.” Am. Compl. ¶ 39 (A52). The complaint quotes from the Twitter posts but not from the Facebook posts, and omits copies of both sets of posts. *See id.*

Jarrar also alleges that McCracken “directly contacted Plaintiff’s employers and organizations with which Plaintiff is closely affiliated in order to advocate for the Plaintiff’s social isolation and termination from his employment.” *Id.* And that she contacted “mutual friends who attended [his] February 6, 2023 birthday party, as well as those who ‘liked’ or supported the Facebook post about the party,” to ask “why they continued to be friends with Plaintiff after her departure.” *Id.* ¶ 30 (A50).

Jarrar does not quote any of these statements, and again he omits copies of them. In any event, he does not allege that these statements discussed his violent abuse, let alone that McCracken made any false statements of fact. *See id.* ¶¶ 30, 39 (A50, A52).

3. *Alleged statement in November 2022*

In November 2022, Jarrar alleged, McCracken told one of Jarrar’s former partners that he had “extremely violently beat me up several times” and warned that he might similarly abuse other women. *Id.* ¶ 31 (A50). In the next paragraph, he stated that “suddenly” he was “banned from the dating apps including Bumble and Match.com.” *Id.* ¶ 32 (A50). His earlier divorce filing was more specific: Bumble banned him not in November 2022 but on “January 13, 2023”; and he did not learn that he was banned from “other dating apps, such as Match.com, Ok Cupid, and Plenty of Fish,” until “the week of January 23, 2023.” Am. Compl., Ex. D ¶ 7 (A123).

4. *Alleged statements in January 2023*

In January 2023, Siegel allegedly Siegel “participated with Defendant McCracken in amplifying Defendant McCracken’s assertions about the Plaintiff over social media, including the creation of posts for a Facebook group ‘Are We Dating the Same Guy?/ Washington D.C./ DMV.’” Am. Compl. ¶ 27 (A49). The

complaint does not attach, quote, or even summarize the group posts. It also does not describe how Siegel “participated ... in amplifying” those posts, let alone quote what she actually said. *Id.*

5. *Alleged statements about McCracken’s neck and jaw.*

Jarrar emphasizes a few statements, made in September or October 2022, about a single detail (whether one of his several violent acts caused McCracken to suffer a broken jaw) of a single incident (the violent acts that took place on May 15). Each of the alleged statements was made after Jarrar had confessed to repeatedly and violently abusing McCracken.

With respect to Smith, the complaint identifies a pair of statements. In September 2022, he alleges, Smith “contacted a mutual friend, Sarah Ibrahim, and asked her to cut all ties with Plaintiff because he ‘fractured Alli’s jaw.’” *Id.* ¶ 22 (A47). And on October 19, 2022, Smith allegedly told Laila Mokhaiber that McCracken left Jarrar because he “broke her neck and jaw.” *Id.* ¶ 23 (quotation marks omitted) (A47–A48).

When Dana Barakat texted Smith to ask about her statement, Smith clarified that Jarrar “did fracture her jaw” but “not her neck.” Am. Compl., Ex. D at 1 (quotation marks omitted) (A79). Smith then sent Mokhaiber a follow-up text, which the complaint describes but does not attach. Am. Compl. ¶ 23 (A47–A48).

Smith wrote, “I realized I told you he fractured her neck, I meant to say jaw. very sorry it was a very long day.” Ex. E (A128). Jarrar also omits that Smith linked his abuse to broader concerns about accountability in her community: “Honestly I’m very glad you haven’t dealt with abuse in your community before[;] unfortunately I have many many times.” *Id.*

As for Emily Siegel, Jarrar alleges (on information and belief) that she told Nada Al-Arian that he “broke Alli’s jaw.” Am. Compl. ¶ 25 (A48). Jarrar’s complaint attaches only a secondhand description of Siegel’s message (*see id.*, Ex. F)(A82), and omits Siegel’s actual message.

The actual message confirms that, contrary to Jarrar’s allegation, Siegel did not mention a broken jaw. It was Al-Arian who told Siegel that “Dana Barakat just messaged me [Al-Arian] about Raed” and “asked if it’s true that Raed broke Alli’s jaw??” Ex. F at 1 (A129).

After Siegel summarized Barakat’s ongoing inquiries, Al-Arian—not Siegel—asked “why

there’s such a move to believe Raed over the now TWO women who have spoken out against him.” *Id.* at 2, 4(A130, A132).



Excerpt from Exhibit B to Amended Complaint.

Jarrar also attaches photos of McCracken, taken four and thirteen days after the May 15 incident, which he alleges show “the lack of injuries to [her] during the period following the May 15, 2022 encounter.” Am. Compl. ¶ 18 n.1 (A45). One of these photos, however, shows bruising on McCracken’s upper arm, which is partially covered by her sleeve. Am. Compl., Ex. B (A74). Jarrar’s complaint calls these bruises “discolorations.” Am. Compl. ¶ 18 (A45).

In discussing statements allegedly made by Noor Mir, Jarrar claims that Mir told a mutual friend that Jarrar “beat [McCracken] naked on the floor” and “threatened to break her nose.” Am. Compl. ¶ 25 (A48). In response, he says there was “no evidence” of “‘severe’ beatings on ‘numerous occasions’ or that Plaintiff had ‘fractured’ Defendant McCracken’s jaw.” *Id.* ¶ 26 (A49). But he does not address whether he “beat her naked on the floor” or “threatened to break her nose.” *See id.* ¶¶ 25–26 (A48–A49).

6. Alleged edits to Jarrar’s Wikipedia page.

Finally, Jarrar alleges that McCracken edited his Wikipedia page to state that he was “a ‘wife beater’” and that she had accused him “of physical abuse, showing evidence of a letter” in which he had “admitted to the commission of multiple abuses.” *Id.* ¶¶ 35, 36 (A51). The complaint calls the edit “unauthorized” and describes it as plural “acts of digital sabotage.” *Id.* ¶¶ 1, 36 (A9, A51). But it omits

Wikipedia’s policy, which allows “[a]nyone” to “edit an existing article.”

Wikipedia, *Wikipedia: Who Writes Wikipedia?*, <https://perma.cc/94KH-XUXK>

(last visited Sept. 24, 2023) (emphasis omitted). In any event, Jarrar does not allege that the edits were inaccurate. *See* Am. Compl. ¶ 36 (A51).

E. Jarrar’s opposition and declaration.

Again, all defendants moved to dismiss under Rule 12(b)(6) and filed special motions to dismiss under the D.C. Anti-SLAPP Act. McCracken, Siegel, and Smith again explained that they spoke out because they “believe that progressive movements should hold their leaders accountable for physical or sexual abuse.” 10/2/23 Mot. 23 (A105). They also reiterated that, like the original complaint, Jarrar’s amended complaint was unwilling or unable to allege that his confession was a lie, and hence had failed to allege that defendants’ statements were false. *See* 10/2/23 Mot. 17–18 (A99–A100).

Jarrar’s opposition includes only a few sentences addressing the applicability of the D.C. Anti-SLAPP Act. *See* Opp. 16 (A152). Because “the Legislature has seen fit to provide defendants with significant protection in the Anti-SLAPP Act” and the defendants’ prima facie burden “is not onerous,” the opposition “addresse[d] the primary lingering question of whether [Jarrar] has provided a sufficient showing to support his claims.” *Id.*

As for the latter question, the opposition claimed that Jarrar’s written confession has been “disavowed,” but did not assert that Jarrar had lied in his confession. *Id.* at 3, 5, 10 (A139, A141, A146). Instead, the opposition argued that he had confessed “based on a fear of exposure to his children.” *Id.* at 11 (A147).

Jarrar also submitted a declaration elaborating on the circumstances under which he wrote his confession to physically abusing McCracken. Although he does not identify any specific threats of physical violence against him, he claims that he was threatened by McCracken’s statement that “any attempts to manipulate the narrative to redeem yourself will be met with a strong-handed correction from dozens of individuals.” Jarrar Decl. ¶ 4 (A159).

In any event, Jarrar had already rejected McCracken’s request that he apologize publicly. *Id.* ¶¶ 4, 7 (A159, A161). Rather than address his conduct publicly, as McCracken had requested, he offered only to “send Defendant McCracken a private written apology letter rather than posting a public statement.” *Id.* ¶ 7 (A161). And in response, McCracken had “agreed to the private letter.” *Id.* ¶ 8 (A161-162).

What is more, the declaration concedes that the written confession was Jarrar’s own work; Jarrar describes writing both the first and second drafts. *See id.* ¶ 8 (A161-162). Although he claims that he “did not engage in ‘physical abuse’ of

Defendant McCracken,” (*id.* ¶ 16) (A165-166), he does not identify any false details in the actual written confession.

The motion also noted that Jarrar’s complaint describes as “rumors” —but not “false” —accusations that he “slapped [McCracken’s] jaw very hard, choked her, beat her, punched her arms and legs, kicked her entire body, slapped her, dragged her by her hair, and spat on her.” 10/2/23 Mot. 19 (quoting Am. Compl. ¶ 20) (A101). Jarrar’s opposition, however, offered no explanation for the complaint’s failure to deny these accusations.

By the time of the opposition, moreover, Jarrar had reached a settlement with the fourth defendant, Noor Mir. As part of the settlement, Mir retracted two of the statements she allegedly made about Jarrar. *See* Opp. 7–8 (A143–A144) & Ex. 1 (A156). But she did not retract two other statements: that Jarrar “beat [McCracken] naked on the floor” and “threatened to break her nose.” Am. Compl. ¶ 25 (A48). The amended complaint does not deny them either (*id.*), and the opposition did not address them.

F. The trial court’s ruling and Jarrar’s post-ruling conduct.

After briefing concluded, Jarrar’s counsel withdrew and Jarrar proceeded pro se. On January 5, 2024, the trial court issued a written ruling (1) granting

Siegel's 12(b)(6) motion, (2) denying McCracken's and Smith's 12(b)(6) motions, and (3) denying the motions under the D.C. Anti-SLAPP Act. Order 15.

On the next business day, January 8, Jarrar emailed defense counsel about "pressing issues." 2/14/24 Mot., Ex. A at 5 (A296). Without citing the applicable rules of professional responsibility, or any other authority, Jarrar alleged what "appears to be a conflict of interest in your representation of both Defendants, Allison McCracken and Gabriella Smith" due to "potential diverging defense strategies" with respect to one allegedly false statement discussed in Jarrar's complaint. *Id.* Although he nominally asked "to hear [defense counsel's] thoughts first," Jarrar warned that "[f]ailure to resolve this may necessitate filing a motion for your disqualification from representing both Defendants." *Id.*

In the same email, Jarrar pursued an order that would prevent McCracken and Smith from continuing their online fundraising to help pay for their legal defense. Although he did not share any concrete language or terms, he warned, "If we are unable to reach a mutual agreement, I am prepared to file a preliminary injunction or TRO." *Id.* at 5 (A296). When pressed for details, Jarrar proposed that McCracken and Smith cease to discuss "the matters of this lawsuit" either "public[ly]" or with Jarrar's "professional network," and that all existing "social media posts related to this case [be] made private." *Id.* at 2 (A293). Defense

counsel rejected Jarrar’s request to override the defendants’ First Amendment rights; Jarrar reiterated the prospect of “a motion for preliminary injunction” (*id.* at 1)(A292) and of “filing a lengthy motion” (2/14/24 Mot., Ex. B at 2)(A298).

Two weeks after the trial court’s ruling, McCracken and Smith filed a notice of appeal from the denial of their special motions to dismiss under the D.C. Anti-SLAPP Act. Notice of Appeal (1/19/24). They cited, as the jurisdictional basis for their interlocutory jurisdiction, *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1227–32 (D.C. 2016). In their status report, they observed that “[b]ecause the Court of Appeals now has jurisdiction over the case as a whole, the appeal effects ‘a stay of all proceedings in the trial court.’” Defs.’ Status Report 1–2 (quoting *Mann v. Nat’l Review, Inc.*, No. 2012 CA 8263 B (Super. Ct. Oct. 2, 2013) (Weisberg., J.)) (A268–A269).

Jarrar, however, insisted that the interlocutory appeal did not pause discovery or any other pretrial proceedings. He vowed to file a motion to compel responses to interrogatories and document requests to McCracken and Smith. And even after the notice of appeal was filed, he served a document subpoena on former defendant Emily Siegel. 2/14/24 Mot. 6–9 (A276–A279). The defendants moved for a protective order against these requests, given the pendency of the appeal; in

March 2024, the trial court granted the motion and reaffirmed that the anti-SLAPP appeal puts trial-court proceedings on hold.

SUMMARY OF ARGUMENT

In two respects, the trial court erred in denying McCracken’s and Smith’s special motions to dismiss.

First, the trial court incorrectly concluded that McCracken and Smith’s statements pertain to private disputes rather than issues of public concern. Although they used personal examples and anecdotes to make their points, they still advanced a broader—about the need to support organizations fighting domestic violence, and about the importance of keeping abusive men out of progressive movements. In concluding that the statements were unprotected because they were “largely self-referential,” the trial court erred both factually and legally.

Second, the trial court incorrectly concluded that Jarrar had stated defamation claims against McCracken and Smith, and hence had established a likelihood of success on the merits. Contrary to the trial court’s reasoning, no “credibility determination” is required to hold that Jarrar’s written confession to physical violence against McCracken—a confession that he has yet to directly

allege is false—defeats his claim that he was defamed by statements accusing him of physical violence against McCracken.

ARGUMENT

In enacting the Anti-SLAPP Act, the D.C. Council recognized that a strategic lawsuit against public participation seeks “not to win the lawsuit but to punish the opponent and intimidate them into silence.” Council of the District of Columbia, Report of Committee on Public Safety and the Judiciary on Bill 18-891, at 1 (Nov. 18, 2010). As a result, if McCracken and Smith made “a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest,” then Jarrar was required to “demonstrate[] that the claim is likely to succeed on the merits.” D.C. Code § 16-5502(b).

Here, the trial court erred in concluding that McCracken and Smith had failed to make the prima facie showing, and erred again in concluding that Jarrar demonstrated that his claims are likely to succeed on the merits.

I. The statements at issue in this case are protected by the Anti-SLAPP Act.

The trial court erred in holding that McCracken’s and Smith’s statements—part of an alleged campaign to exclude Jarrar from nonprofit human-rights advocacy—failed to make the necessary “a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public

interest.” D.C. Code § 16-5502(b). An “issue of public interest” includes “an issue related to health or safety” and “environmental, economic, or community well-being.” *Id.* § 16-5501(3). The burden to make the prima facie showing is “not onerous,” and it was met in this case. *Doe No. 1 v. Burke*, 91 A.3d 1031, 1043 (D.C. 2014) (quotation marks omitted).

A. The complaint’s allegations illustrate that McCracken and Smith were engaging in express advocacy on issues of public interest.

Jarrar is a prominent author and human-rights advocate, and he alleges that defendants are trying “to destroy his reputation within the nonprofit community in which he works and associates.” Am. Compl. ¶¶ 1, 33 (A41, A51). As part of that community, McCracken and her friends believe that progressive movements should hold their leaders accountable for physical or sexual abuse—that abusive men, including “so-called leftist men,” should not be able to “go on with business as usual” and that there should be “zero tolerance for violence at home or in the workplace.” 10/2/23 Mot., Ex. B at 2, 3 (A118–A119).

These statements are part of a longstanding debate, which preceded the #MeToo movement and has since intensified. *See, e.g.,* Crockett, *supra* (describing how “these problems occur even at organizations where feminism and inclusivity are taken for granted as basic values”); Jodi Kantor & Michael Gold, *Roberta Kaplan, Who Aided Cuomo, Resigns from Time’s Up*, N.Y. Times (Aug. 9, 2021),

<https://perma.cc/9E3M-QRC8> (“chairman of Time’s Up and the co-founder of its legal defense fund” was “involved in an effort to discredit one of [Governor Cuomo’s] alleged victims”). And the complaint itself recognizes that McCracken’s and Smith’s statements are part of this debate. *See, e.g.*, Am. Compl. ¶¶ 45, 54 (A53, A56) (McCracken’s and Smith’s statements have allegedly caused Jarrar to be “questioned by his employers” and “colleagues”). These statements, then, “related to issues of community well-being” —including “who should participate in” events and advocacy related to issues affecting the Middle East. *Saudi Am. Pub. Affairs Comm. v. Inst. for Gulf Affairs*, 242 A.3d 606, 613 (D.C. 2020).

Defendants’ statements also sought, more broadly, to protect others from domestic violence, which the World Health Organization has classified as “a global health problem of epidemic proportions.” Parul Sehgal, *An Extraordinary New Book Dismantles the Myths That Surround Domestic Violence*, N.Y. Times (May 7, 2019), <https://tinyurl.com/ctruuhbf>. Within the District alone, more than 1 in 4 men and nearly 4 in 10 women have experienced physical violence, stalking, or sexual violence by an intimate partner. *See* Nat’l Ctr. for Injury Prevention & Control, CDC, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010–2012*, at 128, 144 (2017), <https://perma.cc/9BXT-D2BP>. That is why McCracken

encouraged her Facebook audience to donate to domestic-violence-prevention organizations and to pursue help if they too were victims of domestic violence.

Given the contents of these statements, the trial court was mistaken to rely on *Close It! Title Services v. Nadel*, 248 A.3d 132 (D.C. 2021). See 1/5/24 Order 14 (A266). In *Nadel*, the defendant accused the plaintiff of being responsible for a serious cybersecurity incident, and that accusation appeared “in an article featuring the issue of cybercrime.” *Nadel*, 248 A.3d at 144. But the defendant himself—who was representing a client with a private grievance—did “not address” the broader issue of cybercrime (*id.*); the mere appearance of his statement in an article discussing a public concern did not transform the narrower statement into something broader.

Here, conversely, the defendants’ statements are themselves addressing broader concerns, including the need to exclude abusive men from progressive organizations, including human-rights organizations and the need to support domestic-violence organizations. Unlike in *Nadel*, the issues of public concern were invoked by the defendants and were not mere happenstance.

B. The trial court erred in concluding that personal anecdotes are inconsistent with advocacy.

More generally, the trial court opined that the invocation of broader policy issues “remains largely self-referential and directed predominantly, if not

exclusively, to the abuse Plaintiff allegedly inflicted upon her.” 1/5/24 Order 12 (A264). For instance, the trial court contrasted McCracken’s tweets about abuse-free progressive workplaces with “the hashtags affiliated with Defendant McCracken’s username, advocating ‘#FreePalestine’ and ‘#CloseGuantanamo.’” *Id.* at 13 (A265). But the trial court’s observations were both factually inaccurate and legally irrelevant.

They were factually inaccurate because many of the statements at issue refer to McCracken’s personal experience either indirectly or as a way to introduce the broader topic of domestic abuse or the role of domestic abusers in progressive organizations. For instance, her Facebook post does not mention Jarrar by name; although McCracken discusses her experience, she links that experience to a fundraiser for “the National Network to End Domestic Violence” and the “important mission of this organization.” 10/2/23 Mot., Ex. A (A112). Her tweets likewise use her own experience as a starting point to address a broader problem: How “a staggeringly high number of women I confided in have shared with me similar violent experiences they’ve undergone with men, including so-called leftist men,” and how there should be “zero tolerance for violence at home or in the workplace.” 10/2/23 Mot., Ex. B at 2–3 (A118–A119).

Even if the statements had “mostly focused on [the plaintiff] as an individual,” “intermixing public and private interests is not disqualifying.” *Saudi Am. Pub. Affairs Comm.*, 242 A.3d at 606, 613. And for good reason. Personal stories are the bread and butter of advocacy campaigns; they are “a powerful advocacy tool,” because they “make policy ‘real’” and “highlight the importance of an issue, program, or service in an individual or family’s life.” The Arc, *Tools for Building Power Through Personal Stories* (2019), <https://perma.cc/XNY5-MTLV>.

Personal stories are even more important for advocacy about domestic violence. Because public statements by survivors and their allies can prevent or deter future acts of domestic violence, “the movement to end domestic violence has been built and sustained by the voices and stories of survivors and advocates.” Domestic Violence Awareness Project, *Sharing Your Story*, <https://perma.cc/6SKC-HAXQ> (last visited May 6, 2024). Like the personal experiences of many advocates, McCracken personal experiences were central to her broader message.

Ultimately, the absence of a slogan or hashtag did not diminish the public importance of defendants’ message. And the Anti-SLAPP Act does not dictate otherwise. On the contrary, the Act’s reference to “issues of public interest should

be liberally interpreted and that the statements need not explicitly refer to a qualifying topic.” *Saudi Am. Pub. Affairs Comm.*, 242 A.3d at 611.

C. The trial court overlooked Jarrar’s allegations about the statements’ intended audience and purpose.

The trial court further erred in concluding that the Anti-SLAPP Act does not apply because the “majority of the Plaintiff’s claims are premised on statements allegedly made by the Defendants to individual family members or friends, either directly or via text message, or to a WhatsApp group, named ‘Alli’s support group.’” 3/8/24 Order 11 (A263). That is not the case; Jarrar’s complaint invokes statements that the defendants have made on Facebook, Twitter, and Wikipedia; to his “employers and organizations with which [he] is closely affiliated.” *Id.* ¶ 39 (A52).

In any event, the Anti-SLAPP Act does not require a minimum audience size: It protects statements “in furtherance” of the “right of advocacy on issues of public interest.” D.C. Code § 16-5502(b). Indeed, Jarrar alleges that McCracken’s and Smith’s statements are part of a coordinated “campaign” — by McCracken and the “cadre of friends” she “enlisted” — to interfere with his “life and livelihood.” *Am. Compl.* ¶¶ 1, 20 (A42, A47). Like most advocacy campaigns, this advocacy campaign allegedly targeted a combination of larger audiences and smaller audiences. And even if certain statements did not qualify for Anti-SLAPP

protection, that would not deny the Act’s protection to the others; the Act “require[s] a claim-by-claim assessment.” *Am. Stud. Ass’n v. Bronner*, 259 A.3d 728, 743 (D.C. 2021).

D. The trial court improperly speculated about Jarrar’s subjective intent in filing the lawsuit.

Finally, the trial court improperly evaluated Jarrar’s subjective intent in filing the lawsuit. According to the trial court, there is “no basis to conclude that the Plaintiff initiated this action [lawsuit] as an advocate on one side of the public policy debate concerning domestic violence or the #MeToo movement.” 3/8/24 Order 10 (A262). But as the Court has already held, the Anti-SLAPP Act “does not call for inquiry into the plaintiff’s motives; it focuses on the claim, not the claimant.” *Bronner*, 257 A.3d at 748.

Jarrar’s lawsuit, moreover, does reflect his opposing policy view about whether abusive men are qualified to be professional human-rights advocates. Jarrar believes that accusations of domestic violence are not relevant to his work as a human rights advocate. Hearing Tr. 30:23–25 (A217) (“My work is absolutely not related to any of the issues of controversy between me and the defendants.”). And he rejects the view “that there is one umbrella called human rights that includes everything, including issues of domestic violence and relationships.” *Id.* at 30:16–22 (A217). McCracken and Smith have a different view about whether human-

rights campaigns should feature domestic abusers, and their statements sought to advance that view.

II. Jarrar fails to establish that he is likely to succeed in establishing that the defendants made false statements of fact.

Because McCracken and Smith have made the necessary prima facie showing, Jarrar must “demonstrate[] that the claim is likely to succeed on the merits.” D.C. Code § 16-5502(b). And when, as here, the complaint fails “to state a claim upon which relief can be granted, it follows automatically that the plaintiff is unable to demonstrate the claim is likely to succeed on the merits.” *Bronner*, 259 A.3d at 740 (quotation marks omitted). In this case, the trial court erred in concluding that Jarrar had stated a claim.

To state a claim, “a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A plaintiff, moreover, may not salvage claims “simply by failing to attach a dispositive document on which it relied.” *Strumsky v. Wash. Post Co.*, 842 F. Supp. 2d 215, 218 (D.D.C. 2012) (quotation marks omitted). Rather than reward an evasive complaint, “the court may consider the facts alleged in the complaint, documents attached thereto or incorporated therein,

and matters of which it may take judicial notice.” *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059 (D.C. Cir. 2007) (quotation marks omitted).

To sustain his defamation claims, Jarrar must allege facts establishing that (1) McCracken and Smith “made a false and defamatory statement concerning the plaintiff,” (2) they “published the statement without privilege to a third party,” (3) their “fault in publishing the statement amounted to at least negligence,” and (4) “the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.” *Crowly v. N. Am. Telecomms. Ass’n*, 691 A.2d 1169, 1173 n.2 (D.C. 1997). Jarrar has failed to do so.

A. Jarrar fails to allege that McCracken or Smith made statements that were false.

“Truth is a complete defense to a claim of defamation.” *Farrington v. Bureau of Nat’l Affs.*, 596 A.2d 58, 59 (D.C. 1991). In this case, McCracken and Smith expressed what Jarrar had already admitted was true: In 2022, he subjected McCracken to “physical abuse” and “physical violence”—he “pushed, slapped, choked, and hit” her—which he inflicted on her “in April and May.” Am. Compl., Ex. C at 4 (A78). Given the contents of the written confession, these statements defamed Jarrar no more than Jarrar defamed himself.

Although Jarrar hopes to disavow this written confession, his complaint does not allege facts sufficient to do so. For instance, he vaguely alleges that “several

male friends” or “male intermediaries” somehow “intimidated” him into “executing” the letter based on McCracken’s “instructions and dictations.” Am. Compl. ¶¶ 1, 19 (A41, A45–A46). “Intimidated” is undefined; he does not allege these “male” intermediaries attacked him or threatened him. Jarrar also posits that the written confession is “femininely poetic.” *Id.* ¶ 19 (A45–A46). He seems to imply that only a woman would write in the style of Jarrar’s confession, but a legal claim is not plausible if it depends on “stereotyped distinctions between the sexes.” *Frontiero v. Richardson*, 411 U.S. 677, 685 (1973).

Given Jarrar’s failure to clearly allege that his written confession was false, the trial court erred in concluding that dismissal would require an impermissible “credibility determination.” 1/5/24 Order 7 (A259). Even at the pleading stage, courts have dismissed complaints filed by plaintiffs who fail to directly dispute the most salient accusations. In a federal case invoking the District’s defamation law, the plaintiff failed to state a claim because, while his complaint offered “blanket denials” of the author’s claims and “denie[d] having committed any war crimes,” he did “not specifically deny that he was a ‘warlord’ as that term is commonly defined.” *Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 263 (D.D.C. 2013). In another case, the plaintiff “tacitly admitted the substantial truth of” the statement when, although labeling it “false,” he “never stated the true facts to which the

statement would have to be compared in order to establish its substantial falsity.”

Vogel v. Felice, 26 Cal. Rep. 3d 350, 363 (Dist. Ct. App. 2005).

As in those cases, Jarrar’s omissions could not have been inadvertent or immaterial. When their lawsuits depend on it, litigants do not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns., Inc.*, 531 U.S. 457, 468 (2001). These omissions are especially telling in the amended complaint, which Jarrar prepared after defendants’ previous motion had emphasized his failure to directly allege that he lied when confessing to physical abuse.

Meanwhile, Jarrar’s declaration fails to supply the necessary allegations, and in fact undermines some of the allegations in his complaint. In particular, the declaration confirms that Jarrar wrote his own confession, which the complaint attempted to dismiss as “femininely poetic.” Am. Compl. ¶ 19 (A45–A47).

According to the declaration, the confession was Jarrar’s own work. *See* Jarrar Decl. ¶ 8 (describing his first draft); *id.* (describing his second draft) (A161–A162). Although Jarrar avers that a mediator conveyed McCracken’s request that he apologize for pushing, slapping, choking, and hitting her, he likewise does not claim that those details made his confession false. *See id.*

Perhaps Jarrar convinced himself that his acts of physical violence somehow did not amount to “‘physical abuse’ of Defendant McCracken.” *Id.* ¶ 16 (A165–

A166). But he still was unable write the direct sentence—“In my written confession, I lied when I said that I physically, violently, and inexcusably abused my wife”—whose omission was emphasized for months.

B. Jarrar fails to dispute other allegations unrelated to his written confession.

Even if Jarrar had alleged that the written confession was false, neither his amended complaint nor any other pleading denied other—equally serious—allegations of physical violence against McCracken. This too prevents Jarrar from stating a claim that the statements at issue were false.

First, the amended complaint describes as “rumors”—but not “false”—accusations that he “slapped [McCracken’s] jaw very hard, choked her, beat her, punched her arms and legs, kicked her entire body, slapped her, dragged her by her hair, and spat on her.” Am. Compl. ¶ 20 (A47). And in the trial court, Jarrar’s opposition did not explain the complaint’s conspicuous failure to deny.

Second, the amended complaint alleges that Noor Mir stated that Jarrar had “beat [McCracken] naked on the floor” and “threatened to break her nose.” Am. Compl. ¶ 25 (A48). But the amended complaint does not deny those accusations. *See id.* And while Mir later sent an email retracting two other statements she had made about Jarrar, she did not retract her statements that Jarrar beat McCracken naked on the floor and threatened to break her nose. Opp., Ex. 1 (A156).

C. Given his other admitted acts of physical violence, statements about a broken neck or broken jaw are substantially true as a matter of law.

Although the amended complaint more directly disputes that he “fractured” McCracken’s neck or jaw (*id.* ¶ 20), that too fails to state a claim. The District of Columbia “recognize[s] substantial truth as a defense to defamation.” *Armstrong v. Thompson*, 80 A.3d 177, 183 (D.C. 2013). Because “[s]light inaccuracies of expression are immaterial provided that the defamatory charge is true in substance,” it is “not necessary to establish the literal truth of the precise statement made.” *Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1296 (D.C. Cir. 1988). Given his confession to multiple acts of physical violence—including that he “pushed, slapped, choked, and hit” McCracken—it is immaterial whether one of those blows broke one of her bones.

D. Many of the statements at issue are not capable of defamatory meaning.

Not only is truth a defense to all of Jarrar’s claims, but many of the alleged statements were not statements of fact at all. Defamation applies to facts; opinions are defamatory only if they “imply a provably false fact, or rely upon stated facts that are provably false.” *Guilford Transp. Indus., Inc. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000). Several of Jarrar’s allegations, however, do not identify any purportedly false statements of fact.

For instance, McCracken’s statements to their mutual friends may have opined that they should no longer socialize with Jarrar, but the complaint does not allege that those statements accused Jarrar of physical abuse. Am. Compl. ¶ 30 (A50). The same is true of allegations about McCracken’s statements, to his employers and affiliated organizations, that they should isolate or terminate him. *Id.* ¶ 39 (A52). The amended complaint does not attach, quote, or even paraphrase any statements made in the “Are We Dating the Same Guy?” Facebook group, or in any alleged amplification of those statements. *See id.* ¶ 27 (A49).

Jarrar’s repeated failure to specify what the defendants actually said, or to attach copies of the statements at issue, is conspicuous. In addition to all the other unanswered questions raised by his complaint, the “failure to attach” the relevant document, “or at least further quote from it, leaves the factual predicate for Plaintiff’s defamation claim wanting here.” *Libre By Nexus v. BuzzFeed, Inc.*, 311 F. Supp. 3d 149, 158 (D.D.C. 2018).

CONCLUSION

The judgment should be reversed and the case remanded with instructions to dismiss the amended complaint with prejudice under the D.C. Anti-SLAPP Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On May 8, 2024, I served a copy of this brief, through the Court's electronic filing system, on:

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