

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROBO-TEAM NA, INC.,

Plaintiff,

v.

ENDEAVOR ROBOTICS and SACHEM
STRATEGIES,

Defendants.

Case No. 1:17-cv-01263-ABJ

**DEFENDANT ENDEAVOR ROBOTICS'
MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO DISMISS
UNDER THE D.C. ANTI-SLAPP ACT**

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Pursuant to the District of Columbia's Anti-SLAPP Act of 2010, D.C. Code § 16-5501 *et seq.* ("Anti-SLAPP Act"), Defendant iRobot Defense Holdings, Inc. (d/b/a Endeavor Robots) ("Endeavor"), submits this Memorandum in Support of its Special Motion to Dismiss Plaintiff Robo-Team NA, Inc.'s ("Robo-Team's") Complaint.¹

INTRODUCTION

Robo-Team, a Chinese-backed competitor of Endeavor, initiated this litigation as a misguided public relations stunt to chill Endeavor's legitimate lobbying and protected speech activity on a pressing issue of national security that Robo-Team would prefer not receive public airing and vetting by the public, defense establishment, and policymakers. That vital issue – which is the focus of reporting by our free press and ongoing investigation by multiple branches of our federal government – is the disturbing efforts by Chinese owned and/or controlled entities *like Robo-Team* to gain access to, including through illicit and improper means, sensitive U.S. defense technologies, including robotics technologies.

But Robo-Team's effort to use litigation to chill Endeavor's lobbying and speech activity runs headlong into and is properly barred by the District's Anti-SLAPP Act. That Act provides for speedy resolution of baseless litigation seeking to chill protected First Amendment activities by putting the burden – and costs – of such litigation properly on plaintiffs to prove their claims are "likely to succeed on the merits." D.C. Code § 16-5502(a)-(b). The Act vests SLAPP defendants with *substantive rights*.

Robo-Team's litigation targets activity within the heartland of the Act, and Endeavor can invoke the substantive protections of the Act in this forum. *See Competitive Enterprise Inst. v.*

¹ Endeavor files this Special Motion to Dismiss without waiving its Rule 12 objections to this Court's exercise of personal jurisdiction over Endeavor and to the Court having subject matter jurisdiction over the case. *See* Endeavor Motion to Dismiss, ECF Nos. 10 & 10-1; Endeavor Reply in Support of Motion to Dismiss, ECF No. 18.

Mann, 150 A.3d 1213, 1231, 1238 n.32 (D.C. 2016). Robo-Team’s litigation centers on a four-page memorandum – a.k.a., the “Sachem Memo” – that is a classic policy piece warning Congress about the national security concerns inherent in companies with foreign ownership, and in particular Chinese ownership, participating in government contracts for U.S. military robotics systems and expressly seeking legislative action to address these concerns. The Sachem Memo and Endeavor’s related lobbying efforts strike at the core of pressing issues of significant public interest and fit squarely within the Act’s protections. That is because they address multiple issues under consideration by Congress and the Executive branch, and were communications to the government about abiding issues of national security.

Robo-Team has no likelihood of success on its claims and cannot prove otherwise now. As Endeavor explained in its Memorandum in Support of its Rule 12 Motion to Dismiss, ECF No. 10-1 (“Mot.”), and is also apparent from Robo-Team’s opposition to that motion, ECF No. 15, Robo-Team’s claims fail as a matter of law.² Robo-Team’s central defamation claim fails because the so-called “defamatory” statements themselves are not only legitimate lobbying and free speech on issues of national interest, protected by multiple longstanding privileges, but because they also are manifestly *true*. Nor can Robo-Team show it has suffered any specific harm from the “defamatory” communications. Because Robo-Team cannot assert a defamation claim, its other claims fall away too. Robo-Team’s tortious interference claim is additionally meritless because it does not allege any real lost business or that Endeavor knew of any such supposedly lost business opportunities. Robo-Team cannot convert its complaints about competition into claims for relief. And without any underlying tort, Robo-Team cannot prop up its claims for “unfair competition” and “civil conspiracy.”

² Endeavor agrees with and adopts the additional arguments set forth in Sachem’s Motion to Dismiss and supporting Memorandum. ECF No. 13 & 13-1.

The Court can and should grant this Special Motion, dismiss Robo-Team's claims with prejudice, and award Endeavor its fees and costs for having to defend this baseless litigation seeking improperly to chill Endeavor's protected and core First Amendment activity.

FACTUAL ALLEGATIONS

Endeavor has previously set forth the pertinent facts of this dispute in connection with its pending motion to dismiss.

A. A Chinese-Backed Competitor Brings This Lawsuit Against Its U.S. Rival.

While Robo-Team finds such accusations offensive and "defamatory," it is a wholly-owned subsidiary of a Chinese-backed Israeli company that maintains an outpost in Gaithersburg, Maryland. Cmpl. ¶ 8. Despite the corporate identity shell game it plays in its complaint, Robo-Team is a wholly owned-subsiary of an Israeli company with an office in Maryland that does not engineer or develop anything.³ It has a small number of U.S. employees but the company's research, development, and engineering is performed overseas.⁴

Numerous media outlets have reported Robo-Team raised at least \$50 million in foreign investment when Robo-Team was valued at \$200 million.⁵ That investment came from the

³ See Roboteam, *Leadership*, <http://www.roboteam.com/leadership/> (accessed August 1, 2017); T. Heath, *A robotics company awaited this Israeli soldier at the end of his tunnel*, Wash. Post. (Feb. 24, 2017), https://www.washingtonpost.com/business/economy/a-robotics-company-awaited-this-israeli-soldier-at-the-end-of-his-tunnel/2017/02/24/ada7b774-f87a-11e6-9845-576c69081518_story.html?utm_term=.5f7f31a16c79 (Mot., Ex. B); *Israel's Roboteam provides Pentagon with soldier robots*, Globes (Nov. 6, 2015), <http://www.globes.co.il/en/article-roboteam-wins-25m-us-air-force-robot-deal-1001079121> (linked to on Robo-Team's website, <http://www.roboteam.com/media-news>); see also B. Opall-Rome, *Israeli Startup Targets US Market with Soldier-Carried Robots*, DefenseNews (Oct. 2, 2016), <http://www.defensenews.com/digital-show-dailies/ausa/2016/10/03/israeli-startup-targets-us-market-with-soldier-carried-robots/> (Mot., Ex. C) (linked to on Robo-Team's website, <http://www.roboteam.com/media-news>).

⁴ *Id.*

⁵ See P. Mutter, *Israeli Roboteam raises \$50 million to focus on US growth*, Geektime (Sept. 15, 2016), <http://www.geektime.com/2016/09/15/israeli-roboteam-raises-50-million-to-focus-on-us->

FengHe Investment Group, which is based in the People's Republic of China ("PRC") and Singapore.⁶ The FengHe Investment Group was founded by John Wu and Matt Hu.⁷ Mr. Wu is a "Chinese engineer-turned-venture capitalist,"⁸ and Mr. Hu is "the pioneering institutional asset manager in China."⁹ Mr. Hu "invested personally" in Robo-Team.¹⁰ With the FengHe Group's backing, Mr. Wu said Robo-Team is planning to produce products for the Chinese market.¹¹

Endeavor, on the other hand, is a U.S. company, incorporated in Delaware, and headquartered in Chelmsford, Massachusetts. Cmpl. ¶ 9; Mot., Ex. A, ¶ 6. Endeavor is a leading provider of unmanned ground vehicles ("UGVs"). *Id.* ¶ 5.

Robo-Team and Endeavor compete for defense contracts in the robotics industry. Cmpl. ¶¶ 1 & 15. The two companies have competed for government contracts with national security

growth/ (Mot., Ex. D); B. Noy, *Israeli robot company Roboteam raises \$50 million*, JerusalemOnline (Sept. 14, 2016), [http://www.jerusalemonline.com/finance/israeli-roboteam-raises-\\$50-million-23636](http://www.jerusalemonline.com/finance/israeli-roboteam-raises-$50-million-23636) (Mot., Ex. E); M. Auerbach, *Israeli RoboTeam – the Robot Company That Raised More Than \$50 Million*, Calcalist (Sept. 14, 2016), <http://www.calcalist.co.il/internet/articles/0,7340,L-3697883,00.html>; A. Ruben, *From the Air Force to the World Robot Front: RoboTeam completed a \$50 million financing round*, TheMarker (Sept. 14, 2016), <https://www.themarker.com/technation/1.3068178>.

⁶ See J. Shieber, *Roboteam is building a 10,000-strong robot army for your home*, TechCrunch (Mar. 30, 2017), <https://techcrunch.com/2017/03/30/roboteam-is-building-a-10000-strong-robot-army-for-your-home/> (Mot., Ex. F); Mot., Ex. C; D. Ren, *China engineer-turned-venture capitalist sees opportunities in ageing workforce and new tech*, S. China Morning Post (Aug. 26, 2016), <http://www.fenghegroup.com/china-engineer-turned-venture-capitalist-sees-opportunities-in-ageing-workforce-and-new-tech/>.

⁷ FengHe Group, *About Fenghe Group*, <http://www.fenghegroup.com/about-us/> (accessed August 1, 2017).

⁸ D. Ren, S. China Morning Post, <http://www.fenghegroup.com/china-engineer-turned-venture-capitalist-sees-opportunities-in-ageing-workforce-and-new-tech/>.

⁹ FengHe Group, *About Fenghe Group*, <http://www.fenghegroup.com/about-us/>.

¹⁰ Mot., Ex. F.

¹¹ D. Ren, S. China Morning Post, <http://www.fenghegroup.com/china-engineer-turned-venture-capitalist-sees-opportunities-in-ageing-workforce-and-new-tech/> ("Wu said that robots for household use costing less than 10,000 yuan would be launched by Roboteam in China next year.").

agencies, law enforcement, and branches of the U.S. military. *Id.* ¶¶ 6, 8 & 17. Robo-Team alleges it is currently competing with Endeavor for two Army contracts: the Man Transportable Robot System Increment (“MTRS”) contract and the Common Robotic System-Individual (“CRS-I”) contract. *Id.* ¶¶ 6 & 20-21. Robo-Team alleges it bid for the MTRS contract and “will” bid for the CRS-I contract, neither of which have been awarded. *Id.* ¶¶ 20-21. While Robo-Team also refers to a Squad Multipurpose Equipment Transport (“SMET”) program, it does not allege it bid on, or plans to bid on, the SMET contract. *Id.* ¶ 6.

B. Robo-Team Alleges Endeavor’s Lobbying And Communications On National Security Concerns Involving Widely-Reported And Truthful Information About It Are “Defamatory” And Harmful.

Robo-Team’s lawsuit sets its sights on stopping lobbying activities and communications on issues of vital national security. In recent years, our government has tracked widespread and increasing efforts by the PRC (including by private companies with close ties to the Chinese government and/or the People’s Liberation Army) to infiltrate U.S. robotics companies to steal military-related technology.¹² In October 2016, the Congressional U.S.-China Economic and Security Review Commission issued a 134-page report, detailing the PRC’s efforts to obtain U.S. robotics technology both through illicit means – including industrial and cyber espionage – and through acquisition and investment in robotics companies with U.S. government contracts.¹³

¹² See P. Mojur & J. Perlez, *China Bets on Sensitive U.S. Start-Ups, Worrying the Pentagon*, N.Y. Times (Mar. 22, 2017), https://www.nytimes.com/2017/03/22/technology/china-defense-start-ups.html?_r=1 (“Chinese firms have become significant investors in American start-ups working on cutting-edge technologies with potential military applications.”); U.S. Dep’t of Justice, *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret & Embargo-Related Criminal Cases* (June 27, 2016), https://www.justice.gov/nsd/files/export_case_list_june_2016_2.pdf/download.

¹³ J. Ray *et al.*, U.S.-China Econ. & Sec. Rev. Comm’n, *China’s Industrial and Military Robotics Development*, at 95-106, Oct. 2016, https://www.uscc.gov/sites/default/files/Research/DGI_China%27s%20Industrial%20and%20Military%20Robotics%20Development.pdf (“U.S.-China Econ. & Sec. Rev. Comm’n Report”); Press Release, *NEW REPORT: China’s Industrial*

And our Defense Department recently warned that the PRC is encouraging Chinese companies with close government ties to invest in companies specializing in critical technology, including robotics, to advance China's military capabilities and harm our economic and security interests.¹⁴

Amid these increased concerns by the public, the defense establishment, and policymakers over PRC efforts to secure robotics technology, Robo-Team alleges Endeavor has undertaken a "false information campaign" by lobbying Congress on this important policy issue and advocating legislative change, as well as for alleged communications indicating Robo-Team's Chinese backing – a fact it alleges is defamatory and harmful. Cmplt. ¶ 22, Ex. 1. Thus, Robo-Team alleges Endeavor hired Sachem Strategies – a lobbying firm – to prepare a four-page memorandum "filled with falsehoods" to share with Congress to "damage Robot-Team's reputation and interfere with the award of contracts for the MTRS and CRS-I programs, as well as Robo-team's other business relationships." *Id.* ¶¶ 2 & 23-24. Robo-Team nowhere alleges why and even if it expects to receive any contracts under these programs.

Even a cursory review, reveals the Sachem Memo is a classic policy piece on an important current policy issue that promotes legislative change. It warns Congress the United States should not depend on foreign developers for "war-essential equipment" such as UGVs. *Id.* Ex. 1. It highlights Chinese efforts to access U.S. technology by hacking American robotics companies or investing in companies competing for U.S. defense contracts – *like Robo-Team*. *Id.* And in this context, it recites the widely-reported facts noted above about Robo-Team, which

and Military Robotics Development, U.S.-China Econ. & Sec. Rev. Comm'n (Oct. 25, 2016), https://www.uscc.gov/sites/default/files/Press%20Release_DGI%20China%27s%20Industrial%20and%20Military%20Robotics%20Development.pdf.

¹⁴ See Mojur & Perlez, N.Y. Times, https://www.nytimes.com/2017/03/22/technology/china-defense-start-ups.html?_r=1 ("[Chinese] [i]nvestors could push start-ups to strike partnerships or make licensing or hiring decisions that could expose intellectual property. They can also get an inside glimpse of how technology is being developed and could have access to a start-up's offices or computers."); U.S.-China Econ. & Sec. Rev. Comm'n Report, at 105.

Robo-Team does not allege are somehow false. *Id.* ¶ 23, Ex. 1. The Sachem Memo also sets forth legislative proposals to address these policy concerns. *Id.*

Robo-Team alleges the Sachem Memo was shared with a bipartisan group of Members of Congress who sit on the House Committee on Armed Services. *Id.* ¶¶ 27 & 30-31.¹⁵ That Committee has jurisdiction over defense policy, reform of the Department of Defense, “acquisition and industrial base policy,” and “technology transfer and export controls.” Robo-Team alleges those Members in turn sent letters to the Undersecretary of Defense for Acquisition, Technology, and Logistics at the Pentagon in December 2016 and January 2017, which included information derived from the Sachem Memo. *Id.* Ex. 1, Ex. 2.¹⁶

While Robo-Team alleges it has been “prejudiced in the conduct of its business” and its “reputation has been harmed” by Endeavor’s lobbying, it does not allege (nor is it obvious) how so. The most Robo-Team offers is that it had to respond to a *Wall Street Journal* reporter and investigation of its activities by our government, including its governmental customers. *Id.* ¶¶ 34-37, 43-44, 50, 54 & 57. Nevertheless, it asserts four bare-bones causes of action against Endeavor in an effort to chill Endeavor’s lobbying and protected speech activity.

ARGUMENT

The Anti-SLAPP Act protects a defendant like Endeavor from the very kind of litigation initiated against it by Chinese-backed Robo-Team to chill and punish Endeavor’s legitimate lobbying and exercise of its core petition and speech rights. It provides for speedy resolution of baseless litigation seeking to chill protected First Amendment activities by putting the burden –

¹⁵ House Committee on Armed Services, <https://armedservices.house.gov/about/members> (accessed August 11, 2017).

¹⁶ Robo-Team further alleges that statements similar to those in the Sachem Memo were made to other unidentified government officials and robotics industry members. But Robo-Team does not allege what communications were made, to whom they were made, or when and where such alleged communications were made. Cmpl’t. ¶¶ 5 & 39.

and costs – of such litigation properly on the plaintiffs to prove their claims are “likely to succeed on the merits.” D.C. Code § 16-5502(a)-(b). And it vests Endeavor with substantive rights that it can vindicate in this forum. Because Robo-Team’s litigation targets activity within the heartland of the statute with claims on which it has no likelihood of success, its claims are properly and swiftly dismissed with prejudice, and Endeavor is entitled to its costs and fees.¹⁷

I. ENDEAVOR MAY INVOKE THE SUBSTANTIVE PROTECTIONS OF THE ANTI-SLAPP ACT IN THIS DIVERSITY CASE.

It is a bedrock principle that “[t]he threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself.” *Wash. Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966). To guard against such litigation tactics, the District, just like many other States, enacted the anti-SLAPP Act. That Act provides a vehicle for quickly and efficiently dispensing with “litigation aimed to prevent [defendants from] engaging in constitutionally protected actions on matters of public interest.” Rep. of the D.C. Comm. On Pub. Safety and the Judiciary on Bill 18-893 (Nov. 19, 2010), Declaration of Paul A. Werner (“Werner Decl.”), Ex. A at 4. It “extends substantive rights to defendants in a SLAPP, providing them with the ability to file a special motion to dismiss that must be heard expeditiously by the court.” *Id.*; *see also id.* at 1 (the Act expressly incorporated “*substantive rights* with regard to a defendant’s ability to fend off lawsuits filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view.” (emphasis added)).

¹⁷ Robo-Team’s complaint is subject to dismissal pursuant to Rule 12 of the Federal Rules of Civil Procedure as well. Mot. at 16-26; Endeavor Reply in Support of Motion to Dismiss (“Reply”), ECF No. 18, at 11-17; *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1337-40 (D.C. Cir. 2015) (affirming dismissal of defamation claim with prejudice under Rule 12(b)(6)); *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29, 39-40 (D.D.C. 2012) (dismissing complaint under Anti-SLAPP Act and Rule 12(b)(6)).

For years, courts in this Circuit applied the Act in diversity cases.¹⁸ That approach was consistent with federal appellate courts that had considered the application of state anti-SLAPP statutes.¹⁹ But recently, in *Abbas v. Foreign Policy Group*, the D.C. Circuit held the Act's special motion to dismiss provision was unavailable in diversity cases. 783 F.3d 1328, 1333-40 (D.C. Cir. 2015). That court determined the Act's protections were procedural, and thus inapplicable in diversity cases under the *Erie* doctrine. *See id.* at 1334-36 & n.2 (citing *Burke v. Air Serv Int'l, Inc.*, 685 F.3d 1102, 1107-08 (D.C. Cir. 2012)); *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78-79 (1938). The *Abbas* court held the Act had to give way because the Act and Rules 12 and 56 “ ‘answer the same question’ about the circumstances under which a court must dismiss a case before trial,” and the “Federal Rules answer that question differently” because “[t]hey do not require a plaintiff to show a likelihood of success on the merits.” *Abbas*, 783 F.3d at 1333-34 (quoting *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398-99 (2010)). To support this conclusion, the *Abbas* court noted “the D.C. Court of Appeals has never interpreted the D.C. Anti-SLAPP Act's likelihood of success standard to simply mirror the standards imposed by Federal Rules 12 and 56.” *Id.* at 1335.

Following *Abbas*, however, the D.C. Court of Appeals squarely rejected its holdings. In *Mann*, the court held the Act “create[d] a substantive right not to stand trial and to avoid the

¹⁸ *See Forras v. Rauf*, 39 F. Supp. 3d 45, 51-52 (D.D.C. 2014); *Abbas v. Foreign Policy Grp., LLC*, 975 F. Supp. 2d 1, 9-11 (D.D.C. 2013), *aff'd in part on other grounds*, 783 F.3d 1328 (D.C. Cir. 2015); *Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 254 (D.D.C. 2013); *Farah*, 863 F. Supp. 2d at 36; *Diwan v. EMP Glob. LLC*, 841 F. Supp. 2d 246, 247 n.1 (D.D.C. 2012); *see also Sherrod v. Breitbart*, 843 F. Supp. 2d 83, 85 (D.D.C. 2012) (finding statute confers substantive rights), *aff'd*, 720 F.3d 932 (D.C. Cir. 2013).

¹⁹ *See, e.g., Mebo Int'l, Inc. v. Yamanaka*, 607 F. App'x 768, 769 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 1449 (2016); *Liberty Synergistics Inc. v. Microflo LTD*, 718 F.3d 138, 148 (2d Cir. 2013); *Chandok v. Klessig*, 632 F.3d 803, 817-19 (2d Cir. 2011); *Hilton v. Hallmark Cards*, 599 F.3d 894, 901-02 (9th Cir. 2010); *Godin v. Schencks*, 629 F.3d 79, 89 n.16 (1st Cir. 2010); *Price v. Stossel*, 620 F.3d 992, 1000 (9th Cir. 2010); *Gardner v. Martino*, 563 F.3d 981, 990-91 (9th Cir. 2009); *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164, 170 (5th Cir. 2009).

burdens and costs of pre-trial procedures,” which is consistent with “the public interest in safeguarding important First Amendment rights in an expeditious manner.” 150 A.3d at 1231 (emphasis added). The court then held the Act’s “likely to succeed” standard “simply mirror[s] the standards imposed by Federal Rule 56.” *Id.* at 1238 n. 32.

As a result, the D.C. Court of Appeals – the “principal arbiter of District law” – has confirmed the Anti-SLAPP Act provides substantive protections for defamation defendants under a procedure that mirrors Rule 56. *Lee v. Flintkote Co.*, 593 F.2d 1275, 1279 n.14 (D.C. Cir. 1979). This Court is bound to follow *Mann* and recognize the availability of the Anti-SLAPP procedures in a diversity case like this one. *See Easaw v. Newport*, No. CV 17-00028, 2017 WL 2062851, at *9 (D.D.C. May 12, 2017) (“[W]hen the D.C. COA has spoken clearly and unmistakably to the current state of D.C. law, its views must govern.”).

That is because “in a diversity case, this Court must apply the current substantive law of the District.” *Id.* (citing *Salve Regina College v. Russell*, 499 U.S. 225, 238-39 (1991)); *see also Rogers v. Ingersoll-Rand Co.*, 144 F.3d 841, 843 (D.C. Cir. 1998) (“[W]e follow the decisions of the District of Columbia Court of Appeals, which is, for *Erie* doctrine purposes, treated as if it were the highest court of the state.”). “By following the most recent statement of D.C. law by the D.C. COA, this Court ensures that litigants in state and federal court are on equal footing.” *Easaw*, 2017 WL 2062851, at *9. Doing otherwise would “ ‘subvert the dual aims of *Erie*: discouraging forum shopping and promoting uniformity within any given jurisdiction on matters of local substantive law.’ ” *Id.* (quoting *Lee*, 593 F.2d at 1279 n.14).

That is not a hypothetical concern, as other federal courts have held that failing to apply a state anti-SLAPP statute in federal court results in forum-shopping and inequitable administration of justice. *See, e.g., Godin v. Schencks*, 629 F.3d 79, 92 (1st Cir. 2010); *U.S. ex*

rel. Newsham v. Lockheed Missiles & Space Co., 190 F.3d 963, 973 (9th Cir. 1999). That would be the outcome here too: Allowing Robo-Team to skirt the substantive protections afforded to defendants under the Anti-SLAPP Act by filing their meritless defamation action in federal court would subvert *Erie*'s animating policy. This Court can and should apply the Act here.

II. ROBO-TEAM'S CLAIMS ARE PROPERLY DISMISSED UNDER THE ANTI-SLAPP ACT.

A. Robo-Team Targets Core First Amendment Activity Protected By The Act.

To shift the burden to Robo-Team to prove its claims are likely to succeed on the merits, Endeavor need only make a "prima facie showing that the claims at issue arise from acts in furtherance of the right of advocacy." D.C. Code § 16-5502(b). That showing is easily satisfied.

Under the Act, "an act in furtherance of the right of advocacy on issues of public interest" is defined as "[a]ny written or oral statement" made "[i]n connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law," or "[a]ny other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest." *Id.* § 16-5501(1)(A)(i) & (B). An "issue of public interest" broadly includes "an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place." *Id.* § 16-5501(3).

Endeavor's lobbying and communications are protected under the Act in multiple respects. *First*, Endeavor's lobbying addresses issues "under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." *Id.* § 16-5501(1)(A)(i). The Sachem Memo concerns the protection of the U.S. robotics industry from Chinese influence and trade secrets theft. It comes amidst serious investigations of these

issues by multiple branches of our government. Indeed, the Sachem Memo references the Congressional U.S.-China Economic and Security Review Commission, which has been investigating ongoing efforts by the PRC to obtain U.S. robotics technology through industrial and cyber espionage and through acquisition and investment in robotics companies with U.S. government contracts. Cmpl't., Ex. 1, at 1.²⁰ The Commission has held numerous hearings on this vital subject,²¹ and issued a 134-page report documenting how the PRC (including private companies with close ties to the Chinese government and/or the People's Liberation Army) has sought to infiltrate U.S. robotics companies to steal military-related technology.²² The Justice Department has also closely tracked PRC economic espionage and trade secret theft of critical U.S. defense technologies.²³ Even Robo-Team alleges Endeavor's lobbying spurred a bipartisan group of Congressional Representatives on the House Armed Services Committee to express

²⁰ The U.S.-China Economic and Security Review Commission was created by the U.S. Congress in 2000 "with the legislative mandate to monitor, investigate, and submit to Congress an annual report on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China, and to provide recommendations, where appropriate, to Congress for legislative and administrative action." *About Us*, U.S.-China Econ. & Sec. Rev. Comm'n, <https://www.uscc.gov/about>.

²¹ See, e.g., Transcript, *China's Pursuit of Next Frontier Tech: Computing, Robotics, and Biotechnology*, U.S.-China Econ. & Sec. Rev. Comm'n (Mar. 16, 2017), <https://www.uscc.gov/sites/default/files/transcripts/March%20Transcript.pdf>; Transcript, *Chinese Investment in the United States: Impacts and Issues for Policymakers*, U.S.-China Econ. & Sec. Rev. Comm'n (Jan. 26, 2017), <https://www.uscc.gov/sites/default/files/transcripts/Chinese%20Investment%20in%20the%20United%20States%20Transcript.pdf>; Transcript, *China's Intelligence Services and Espionage Operations*, U.S.-China Econ. & Sec. Rev. Comm'n (June 9, 2016), <https://www.uscc.gov/sites/default/files/transcripts/June%2009%2C%202016%20Hearing%20Transcript.pdf>.

²² U.S.-China Econ. & Sec. Rev. Comm'n Report; Press Release, *NEW REPORT: China's Industrial and Military Robotics Development*, U.S.-China Econ. & Sec. Rev. Comm'n (Oct. 25, 2016), https://www.uscc.gov/sites/default/files/Press%20Release_DGI%20China%27s%20Industrial%20and%20Military%20Robotics%20Development.pdf.

²³ U.S. Dep't of Justice, *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret & Embargo-Related Criminal Cases* (June 27, 2016), https://www.justice.gov/nsd/files/export_case_list_june_2016_2.pdf/download (providing non-exhaustive list of major economic espionage and trade secret theft criminal prosecutions against Chinese nationals).

concern to our Defense Department. Cmplt. ¶¶ 27 & 31, Exs. 2-3.²⁴ Endeavor’s lobbying therefore plainly addresses national security issues “under consideration or review” by both federal legislative and executive bodies.

Second, Endeavor’s lobbying constitutes “expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.” D.C. Code § 16-5501(1)(B). Robo-Team specifically targets Endeavor’s efforts to address an issue of abiding national security and public interest: the promotion of the domestic robotics manufacturing industry and the protection of that industry and our Nation from PRC influence and infiltration.²⁵ The letters from Members of Congress to the Department of Defense confirm that fact. Cmplt., Ex. 2, at 2; Ex. 3. Addressing widely-reported and serious national security concerns to Congress and defense agencies and seeking legislative action is the very essence of petitioning the government and communicating to the public on an issue of public interest. *See, e.g., Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 256 (D.D.C. 2013) (holding statements concerning alleged commission of war crimes by former foreign official, and that official’s arrest, investigation, and charging qualified as “communicating views to members of the public in connection with an issue of public interest”); *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29, 37 (D.D.C. 2012).

²⁴ House Committee on Armed Services, <https://armedservices.house.gov/about/members>.

²⁵ *See, e.g.,* Mojur & Perlez, N.Y. Times, https://www.nytimes.com/2017/03/22/technology/china-defense-start-ups.html?_r=0; P. Polokoff-Kreps, *U.S. investigating China for stealing robotic technology*, Popular Military (Jan. 19, 2016), <http://popularmilitary.com/u-s-investigating-china-stealing-robotic-technology/>; A. Sternstein, *The US Thinks China May Have Stolen Military Robot Designs*, Defense One (Jan. 15, 2016), <http://www.defenseone.com/technology/2016/01/us-thinks-china-may-have-stolen-military-robot-designs/125168/>; U.S.-China Econ. & Sec. Rev. Comm’n Report, at 105.

B. Robo-Team's Claims Are Unlikely To Succeed On The Merits.

Because Robo-Team's litigation targets activity at the core of the Anti-SLAPP Act, and Endeavor has shown Robo-Team's claims arise from acts in furtherance of the right of advocacy, Robo-Team must "demonstrates that [its] claim is likely to succeed on the merits." D.C. Code § 16-5502(b). As Endeavor has already shown in its Rule 12 motion and Reply, and is further apparent from Robo-Team's opposition to that motion, Robo-Team cannot meet its burden because its claims fail as a matter of law for multiple reasons.²⁶

1. Robo-Team Has Failed To Assert A Viable Defamation Claim.

The statements Robo-Team alleges are "defamatory" track widely-reported and truthful information about Robo-Team and are protected speech according to multiple essential privileges. *First*, Endeavor's lobbying communications are shielded by the privilege for unsolicited communications to a legislative body. Mot. at 17-18; Reply at 12-14; *Webster v. Sun Co.*, 731 F.2d 1, 4 (D.C. Cir. 1984); *Webster v. Sun Co.*, 790 F.2d 157, 159 n. 2 (D.C. Cir. 1986); *Webster v. Sun Co.*, 561 F. Supp. 1184, 1189 (D.D.C. 1983); Restatement (Second) of Torts § 590A; *see also id.* § 598. The alleged "defamatory" statements are from the Sachem Memo, which was distributed – without solicitation – to Congressional Representatives on the House Armed Services Committee. Cmpl. ¶¶ 23 & 27-33, Exhs. 1-3. Information on Chinese efforts to infiltrate U.S. defense contracts is related to the work of the Congress and the Committee,

²⁶ The Anti-SLAPP Act is not restricted to defamation claims. *See* D.C. Code § 16-5502(a) ("A party may file a special motion to dismiss *any claim* arising from an act in furtherance of the right of advocacy on issues of public interest.") (emphasis added); *id.* § 16-5501(2) ("claim" includes "any civil lawsuit, claim, . . . [or] cause of action"); *Farah*, 863 F. Supp. 2d at 36-39 (applying Act to claims for defamation, false light, tortious interference with business relations, and misappropriation).

which presides over defense policy and “technology transfer and export controls.” House Committee on Armed Services, <https://armedservices.house.gov/about/jurisdiction-and-rules>.²⁷

Second, the communications Robo-Team challenges are protected by the privilege for fair comment on matters of public interest because they constitute expressions of opinions, supported by widely-reported facts, about matters of legitimate public concern: dependence on foreign companies for military equipment and Chinese efforts to obtain U.S. defense technology. The Sachem Memo presented this information to Congress and government agencies who are more than able independently to evaluate its reasonableness. Mot. at 18-19; *see also Moldea v. N.Y. Times Co.*, 15 F.3d 1137, 1144 (D.C. Cir. 1994); *Lane v. Random House, Inc.*, 985 F. Supp. 141, 150 (D.D.C. 1995); *Coles v. Washington Free Weekly, Inc.*, 881 F. Supp. 26, 32 (D.D.C. 1995).

Third, Endeavor’s alleged statements are protected by the common interest privilege because the public, Endeavor, Members of Congress, and Robo-Team’s customers all have an obvious and abiding national security interest in the subjects of the challenged communications. Robo-Team cannot prove Endeavor acted in bad faith by warning Congress and defense agencies of information that was widely reported – and *true*. Mot. at 19-20; Reply at 14-15; *Mastro v. Potomac Elec. Power Co.*, 447 F.3d 843, 858 (D.C. Cir. 2006); *Columbia First Bank v. Ferguson*, 665 A.2d 650, 655 (D.C. 1995); Restatement (Second) of Torts § 596.

Finally, Robo-Team cannot prove the “defamatory” communications – about its corporate structure, its substantial Chinese investment, and it having exposed Chinese nationals to ITAR-restricted technology – are factual and untrue or express opinions based on false facts.

²⁷ Endeavor’s exercise of its First Amendment right to petition the government is also fundamentally shielded from liability under the *Noerr–Pennington* doctrine. Mot. at 13 n. 22; *Jones v. Louisiana State Bar Ass’n*, 738 F. Supp. 2d 74, 80 (D.D.C. 2010), *aff’d*, No. 10-5327, 2011 WL 11025624 (D.C. Cir. Oct. 3, 2011). Such communications also would be protected by the privilege for communications to those “who may act in the public interest.” Restatement (Second) of Torts § 598.

Mot. at 20-22 & Exhs. B, C, D, E, F; Reply at 15-16; *Oilman v. Evans*, 750 F.2d 970, 980 (D.C. Cir. 1984); *Carpenter v. King*, 792 F. Supp. 2d 29, 34 (D.D.C. 2011), *aff'd*, 473 F. App'x 4 (D.C. Cir. 2012); *Ning Ye v. Holder*, 644 F. Supp. 2d 112, 117-18 (D.D.C. 2009); *Washington v. Smith*, 893 F. Supp. 60, 62 (D.D.C. 1995); Daniel Ren, S. China Morning Post, <http://www.fenghegroup.com/china-engineer-turned-venture-capitalist-sees-opportunities-in-ageing-workforce-and-new-tech/> (discussing John Wu being from China, FengHe's investment in Robo-Team, and Robo-Team launching products in China). Nor can Robo-Team prove any of the "defamatory" communications have resulted in anyone deciding not to do business with it that resulted in any specific loss. Mot. at 22-23; *Smith v. Clinton*, No. CV 16-1606 (ABJ), 2017 WL 2312863, at *13 (D.D.C. May 26, 2017); *Xereas v. Heiss*, 933 F. Supp. 2d 1, 19 (D.D.C. 2013); *Franklin v. Pepco Holdings, Inc. (PHI)*, 875 F. Supp. 2d 66, 75 (D.D.C. 2012).

2. *Robo-Team Has Failed To Assert A Viable Tortious Interference Claim.*

Robo-Team cannot assert a tortious interference claim because it does not allege a single lost contract, customer, or business opportunity, or that Endeavor knew of any such unidentified lost business opportunities. Robo-Team only makes vague allegations about contracts it has merely bid on, or plans to bid on, and does not allege any "defamatory" statements were anything more than lawful competitive activity. Cmpl't. ¶¶ 1, 6, 15, 17, 20-21. These allegations cannot support a tortious interference claim. Mot. at 23-25; Reply at 16-17; *Econ. Research Servs., Inc. v. Resolution Econ., LLC*, 208 F. Supp. 3d 219, 229 & n.10 (D.D.C. 2016); *Sabre Int'l Sec. v. Torres Advanced Enter. Sols., Inc.*, 857 F. Supp. 2d 97, 104 (D.D.C. 2012); *Command Consulting Grp., LLC v. Neuraliq, Inc.*, 623 F. Supp. 2d 49, 52 (D.D.C. 2009).

3. *Robo-Team Has Failed To Assert A Viable Conspiracy Claim.*

Because Robo-Team's underlying claims for defamation and tortious interference are not viable, Robo-Team cannot assert any cognizable conspiracy claim either, which is not a

standalone claim in any event. Mot. at 25-26; *Nyambal v. Alliedbarton Sec. Servs., LLC*, 153 F. Supp. 3d 309, 319 (D.D.C. 2016); *Naegele v. Albers*, 110 F. Supp. 3d 126, 156 (D.D.C. 2015).

4. *Robo-Team Has Failed To Assert A Viable Unfair Competition Claim.*

Because Robo-Team cannot allege any underlying tort, it also cannot allege a viable unfair competition claim. Mot. at 26. It neither alleges nor can show more than that Endeavor's lobbying of our government on critical national security issues was for legitimate purposes and not to "destroy" it. *Ray v. Proxmire*, 581 F.2d 998, 1002 (D.C. Cir. 1978); see *Scanwell Labs., Inc. v. Thomas*, 521 F.2d 941, 949 (D.C. Cir. 1975); *Econ. Research Servs., Inc.*, 208 F. Supp. 3d at 231; *Genetic Sys. Corp. v. Abbott Labs.*, 691 F. Supp. 407, 423 (D.D.C. 1988).

* * *

Robo-Team cannot, as it must, demonstrate its claims are likely to succeed on the merits. Accordingly, the Court should grant this Special Motion and dismiss Robo-Team's complaint.

C. *The Court Should Award Endeavor Its Fees And Costs.*

Under the Anti-SLAPP Act, "[t]he Court may award a moving party who prevails . . . on a motion brought under [the Act] the costs of litigation, including reasonably attorney fees." D.C. Code § 16-5504(a). Robo-Team's lawsuit is a poster-child SLAPP suit brought "not to win the lawsuit but punish [its] opponent and intimidate them into silence." See Werner Decl., Ex. A at 4. An award of costs and attorney's fees is warranted to vindicate Endeavor's fundamental rights to free speech and petition the government. The Court should send a message that abuse of process to chill such basic protected rights will not be tolerated.

CONCLUSION

The Court should dismiss the complaint with prejudice, and award Endeavor its fees.

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Respectfully Submitted,

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