R. Paul Katrinak, State Bar No. 164057
LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., 458
Beverly Hills, California 90210
Telephone: (310) 990-4348
Facsimile: (310) 921-5398

Attorneys for Defendant
Michael Pierattini

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE DECASTRO, Plaintiff, v. KATHERINE PETER; DANIEL CLEMENT; MICHAEL PIERATTINI; DAVID OMO JR.; and DOES 1 TO 30, inclusive, Defendants.	Case No. 23SMCV00538 Assigned for all purposes to the Honorable H. Jay Ford, Dept. O **DEFENDANT MICHAEL PIERATTINI'S RESPONSE TO PLAINTIFF'S BRIEF ON THE CRIMINAL RECORDS OF PLAINTIFF** Date: August 30, 2024 Time: 8:30 a.m. Dept: O

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

I. INTRODUCTION

At the hearing on the Motion for Summary Judgment, the Court granted each side a supplemental brief on the impact of the criminal records of Plaintiff, which were submitted in response to Plaintiff's Opposition. What we know from the criminal records are two things:

(1) Under the "gist" rule there is no actionable defamation here; and

(2) Those criminal records negate any semblance of a claim of malice.

The simple fact is that the criminal records show that what Mr. Pierattini said on the video is protected under both of these bedrock First Amendment principles.

Nothing in Plaintiff's brief rebuts the "gist" rule

A statement that is true—no matter how damaging to the Plaintiff's reputation—cannot be defamatory. Within the truth defense is the "substantial truth" doctrine. Under the "substantial truth" doctrine, a statement is considered true (and thus protected from liability for defamation) if the "gist" or "sting" of the statement is true. Thus, even if the statement is partially incorrect, if the "gist" of the statement is true, the statement is protected.

Separately, the criminal records show there can be no claim of malice

These Court documents raise a completely separate issue for which the Motion should be granted. For a public figure like Plaintiff to establish defamation,[1] he must show that Mr. Pierattini acted with malice. Basically, Mr. Pierattini needed to know the statements that he made in the video were false, and he made them anyway to intentionally hurt Plaintiff. If Mr. Pierattini made the statements based upon his belief (even if mistaken) that these criminal records suggest that what he said was true then there can be no liability under the malice rule. This is a very heavy burden for the Plaintiff. This burden is the main reason why celebrities generally do not bring defamation lawsuits, because malice is so difficult to prove.

[1] In fact, Plaintiff alleges his public figure status in his First Amended Complaint as follows: "Plaintiff was employed as a constitutional activist and media content creator after studying and teaching constitutional law for over twenty years." (First Amended Complaint, p. 2, ¶ 22 – 23). According to Webster's dictionary, activists are people who publicly campaign to bring about social or political change, inherently making themselves public figures for defamation law. But, this issue is not in dispute because neither the Opposition to the MSJ nor the Supplement Brief even respond to the arguments that Plaintiff is a public figure, so opposition is waived on that point. (See below.)

Therefore, the only remaining issues before the Court are: (1) whether the "gist" of Mr. Pierattini's statement that Plaintiff committed a crime using a fake ID is true; or (2) whether the criminal records would give Mr. Pierattini some basis to make that statement (if there was any basis at all - there is a lack of malice). We say or because either of these are an absolute defense to these defamation claims.[2]

II. THE CRIMINAL RECORDS ESTABLISH THAT THE STATEMENTS MADE BY MR. PIERATTINI ARE TRUE AND THE "GIST" OF THE STATEMENTS ARE TRUE

It is axiomatic that there can be no recovery for defamation without a falsehood. *Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 259, 228. Minor inaccuracies in factual statements disclosed in support of an otherwise unactionable opinion do not render the opinion defamatory if the substance or gist of the average listener would not understand the statement to be defamatory.[3]

After *Milkovich v. Lorain Journal Co.,* California courts have continued to apply the "totality of the circumstances" test when deciding whether a reasonable fact finder could conclude that a purportedly defamatory statement makes or implies a provably false factual assertion.[4] Statements analyzed under the "totality of the circumstances" test "may not be ripped out of context" but must be assessed in light of the entire publication at issue. *See, e.g., Ferlauto, supra*, 74 Cal. App. 4th at p. 1405. Of course, whether a challenged statement constitutes or implies a provably false factual assertion instead of an expression of nonactionable opinion generally presents a question of law.[5]

[2] There is some nonsense claims that of a "conspiracy" but there is no evidence at all of a conspiracy. Those conspiracy claims are addressed in the Memorandum supporting the MSJ and the Reply, so we do not need to address those. We also do not need to address the wild accusations (made without evidence) that Mr. Pierattini allegedly created a conspiracy to have others engage in the intentional torts of battery, trespass, et cetera. There is nothing to support these claims, so we will not waste the Court's time.

[3] *Smith v. Maldonado* (1999) 72 Cal. App. 4th 637, 646-47; *Ferlauto v. Hamsher* (1999) 74 Cal. App. 4th 1394, 1404. No liability attaches to opinion statements that do not convey a false factual imputation. *Kahn v. Bower* (1991) 232 Cal. App. 3d at pp. 1607-08; *see also Copp v. Paxton* (1996) 45 Cal.App.4th 829, 837; *Moyer v. Amador Valley J. Union High Sch. Dist.* (1990) 225 Cal. App. 3d 720, 724.

[4] (1990) 497 U.S. 1, 20; *See, e.g., Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal. App. 4th 798, 809; *Ferlauto, supra*, 74 Cal. App. 4th at p. 1401. The "totality of circumstances" test requires a "review of the meaning of the language in context and its susceptibility to being proved true or false." *Moyer, supra*, 225 Cal. App. 3d at p. 725; *see also, e.g., Franklin v. Dynamic Details, Inc.* (2004) 116 Cal. App. 4th 375, 116, 385.

[5] *See Franklin, supra*, 116 Cal. App. 4th at p. 385; *Ferlauto, supra*, 74 Cal.App.4th at p. 1401.

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

A. The Nature and Meaning of Mr. Pierattini's Statements, and the Context in Which They Were Made, are Not Actionable Subjective Statements of Judgment and Opinion

In making the distinction between a provably false factual assertion and non-actionable opinion,[6] "the courts have regarded as opinion any broad, unfocused and wholly subjective comment, such as that the plaintiff was a 'shady practitioner,' 'crook,' or 'crooked politician.'" *Copp supra,* 45 Cal.App.4th at, 837. (citations omitted.). Plaintiff goes a bit off topic in his brief on the criminal records, addressing Pierattini's statements that Plaintiff's brain had been turned to glue, or that Plaintiff was a scammer or crook. As explained in the Reply, no one actually believes that an examination of Plaintiff's brain would reveal Elmer's glue. Thus, the statement is non-actionable hyperbole. We also addressed the opinion that someone is a crook or a scammer in that brief, so we will not belabor the point here. These are simply hyperbole or protected opinion as noted in the cases we cited. Even improperly taking a shot at these statements again, Plaintiff does not cite to any case which could have interpreted those statements as fact, as opposed to non-actionable opinion or hyperbole.[7]

B. Plaintiff Has The Burden to Show The "Gist" Is False, Because The Statements Have Full Constitutional Protection

When the statements made are of public concern, as they are here, the burden of proof shifts to the Plaintiff to show that the assertions made were in fact false. *Philadelphia Newspapers, Inc. v Hepps* (1986) 475 US 767, 772-778. In *Philadelphia Newspapers* the trial court ruled that the statute giving the defendant the burden of proof on its defense of truth was unconstitutional and instructed the jury that the plaintiff had the burden of proving the assertions false. *Ibid.* The Supreme Court agreed, at least where the speech in contention is of

---

[6] Opinions are not actionable. *See Okun v. Superior Court* (1981) 29 Cal. 3d 442, 450. "'An essential element of libel . . . is that the publication in question must contain a false statement of fact . . . This requirement . . . is constitutionally based. The reason for the rule, well stated by the high court, is that "[u]nder the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas."'" *Id.* citing *Gertz v. Robert Welch, Inc*. (1974) 418 U.S. 323, 339-340.

[7] These broad, unfocused or subjective comments are Defendant's views, which are not actionable. *Moyer*, 45 Cal.App.4th at pp. 834-36, 837, 845-46. Comments by a county emergency services coordinator that plaintiff's views were "nonsense" and that it was a challenge to "keep him honest" were deemed incapable of defamatory meaning as a matter of law, and the court described them as mere "vague expression[s] of low esteem." *Ibid*. at pp. 838-39; *see also, e.g, Ferlauto, supra*, 74 Cal.App.4th at pp. 1403-04; *Seelig, supra*, 97 Cal.App.4th at p. 811.) Like the statements found inactionable in *Copp,* and the related cases, here, the statements made by Mr. Pierattini regarding Plaintiff were all non-actionable opinion.

public concern, as it surely was when an alleged mobster was accused of "fixing" government agencies. *Ibid.* The Court reasoned that "when the speech is of public concern but the plaintiff is a private figure, the Constitution supplants the standards of the common law," and shifts the burden of proof to the plaintiff. *Ibid.*

Further, as numerous courts have held, the literal truth or falsity of a statement is not determinative; rather, the question is whether it is substantially true.[8] As noted above, "substantial truth" looks to the sting or "gist" of a publication as a whole, and it "overlooks minor inaccuracies and concentrates upon substantial truth."[9] The Supreme Court held:

> The common law of libel takes but one approach to the question of falsity, regardless of the form of the communication. It overlooks minor inaccuracies and concentrates upon substantial truth. As in other jurisdictions, California law permits the defense of substantial truth and would absolve a defendant even if [he or] she cannot 'justify every word of the alleged defamatory matter; it is sufficient if the substance of the charge be proved true, irrespective of slight inaccuracy in the details.' ... Minor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'

Masson v. New Yorker Magazine (1991) 501 U.S. 496, 516-517.

Falsehoods that do not harm the plaintiff's reputation more than a full recital of the true facts are not actionable. *Haynes v. Alfred A. Knopf, Inc.*, (7th Cir. 1993) 8 F.3d. 1222, 1225-1227, (quoting *Herron v King Broadcasting Co*. (Wash. 1989) 776 P.2d 98, 102 (a false statement is actionable "'only when "significantly greater opprobrium" results from the report containing the falsehood than would result from the report without the falsehood"'); *Masson, supra,* 501 U.S. at pp. 516-519 ("We conclude that a deliberate alteration of words uttered by a plaintiff does not equate with knowledge of falsity for purposes of *New York Times v. Sullivan*... unless the alteration results in a material change in the meaning conveyed by the statement.")

---

[8] *Maheu v. Hughes Tool Co.* (9th Cir. 1977) 569 F.2d 459, 466 (holding that literal truth is not required, so long as the remark's gist or sting is justified by substantial truth).

[9] *Masson v. New Yorker Magazine, Inc*. (1991) 501 U.S. 496, 516-519 (also noting the constitutional protection afforded an author's rational interpretation of another's statement or an ambiguous event, which allows the interpretive license necessary to protect the First Amendment right of free speech); *cf. Underwager v. Channel 9 Australia* (9th Cir. 1995) 69 F.3d 361, 367-377 (noting the word "lying" applies to a spectrum of untruths including "white lies," "partial truths.," "misinterpretation," and deception," and is thus "no more than nonactionable "rhetorical hyperbole, a vigorous epithet".) The crux of a defamation claim is the existence of falsity. However, according to the "gist" rule, there cannot be falsity if the substance of the challenged statements appear to be substantially true. *Jackson v. Maywhether* (2017) 10 Cal.App.5th 1240, 1262.

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

Here, Mr. Pierattini's statement is "substantially true" as its "sting" asserts Plaintiff had a criminal record; he does.

Accusations of criminal records are not actionable

Direct accusations of alleged criminal conduct are not actionable where the statement is substantially true.[10] Additionally, a plaintiff also cannot selectively "choose what meanings to attach" to certain words used in conjunction with the mention of criminal conduct.[11]

The "gist" of the fake ID and restraining order statements are true

The "gist" of the factual statements made in the video about a restraining order and a fake ID charge are true. Plaintiff bears the burden to prove here that they are false. As the cases explain, we do not get into semantics as he attempts to do in his declaration. Plaintiff woefully fails to meet his burden on showing the "gist" of the statements are false.

Plaintiff says that Mr. Pierattini falsely stated that Plaintiff used a fake ID. The criminal record shows that to be true. But, even Plaintiff's characterization of this issue is woefully deficient. Plaintiff admits in Para. 5 of his declaration in support of his Response Brief that he was arrested for a fake ID. He says: "I was arrested for having a false ID". Id. He then states he was "charged" with "giving false information to a police officer". Id. Whether it was his roommate's ID or whomever, certainly he cannot show that the "gist" of the statement that he used a false identification is not true. He admits to it. The punishment itself is totally immaterial and certainly does not change the "gist" of that statement. He attempts to parse words that on that particular crime he did not go to jail (he has on several other matters),

[10] *See Greenbelt Cooperative Publishing Ass'n. v. Bresler* (1970) 398 U.S. 6, 13-14 (holding that assertion of "blackmail" with respect to a developer's position did not accuse the developer of criminal conduct, but rather was hyperbole); *Old American Branch No. 496 v. Austin* (1974) 418 U.S. 264, 268 (holding accusation of treason was not actionable in context as an assertion of criminal conduct); *Hustler Magazine, Inc. v, Falwell* (1988) 485 U.S. 46, 48 (assertion of incest not actionable as accusation of criminal conduct in context); *Secrist v. Harkin* (8th Cir. 1989) 874 F.2d 1244, 1247-1248, cert. den. 493 U.S. 933 (holding the statements were not "so precise, specific, or verifiable" that they equated with "an accusation of criminal conduct (illegal political fundraising)"; while a precise charge of criminal conduct may be actionable as a statement of fact, a veiled charge of criminal conduct is protected as opinion); *Pierce v. Capital Cities Communications, Inc.* (3d Cir. 1978) 576 F.2d 495, 499-509, cert. den. 439 U.S. 86 (holding implication of criminal conduct not actionable).

[11] *Fudge v. Penthouse Internat., Ltd.* (1st Cir. 1988) 840 F.2d 1012, 1016-1017; *Price v. Viking Penguin, Inc.* (8th Cir. 1989) 881 F.2d 1426, 1445; *Campbell v. Citizens for an Honest Government, Inc.* (8th Cir. 2001) 255 F.3d 560, 567; *Seymour v. AS. Abell Co.* (D. Md. 1983) 557 F.Supp. 951, 956-957, (holding a "long line of cases hold that technical errors in legal nomenclature in reports of matters involving violation of the law are of no legal consequence.")

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

but the First Amendment looks at the overall gist – meaning was there a use of a fake ID. People like Mr. Pierattini reporting on such incidents are not in violation of the "gist" rule through those minor inaccuracies. Moreover, the sting of the claim is the crime alleged (using the fake ID) and not the punishment.

In fact, even if the First Amendment did allow the parsing of words (it certainly does not), Plaintiff would still lose. Plaintiff admits that some of the records show he committed theft. See Para. 3 of his declaration. He attempts to explain one of his thefts as a "prank," as if the First Amendment has a prank exception. He admits that he left a store with "ten or more pairs of pants".

The final issue is the claim that Plaintiff had restraining orders against him. Here, his claims are simply frivolous under First Amendment law.

> * The criminal records show more than a half a dozen restraining orders against Plaintiff. Plaintiff selectively discusses one of them in his Response Decl. Para. 3. Plaintiff admits that "I was alleged to have stalked my girlfriend". Id. And, he adds that he pled guilty to that charge, stating "I unfortunately pled out the claim for diversion". Id. That alone would be enough, but we should discuss the other half a dozen restraining orders against Plaintiff.
>
> * He admits in Para. 7 of his declaration that three of the exhibits were from restraining orders obtained by his former girlfriend (separate from the stalking above), who was his girlfriend in LA. So, he has separate restraining orders from different girlfriends in Oregon and California. On these restraining orders in Para. 7 of his Response Decl. he admits that his former girlfriend KTLA reporter Kacey Montoya obtained restraining orders against him through "false claims about me".
>
> * But these several restraining orders above are not the only ones. Para. 8 is a restraining order obtained by Eric Montoya who obtained a TRO but did not prosecute it further. Para. 9 talks about yet another restraining order by Michael Hanson, who again got a restraining order by TRO. Para. 12 is another TRO by Dina Chavez who got a TRO but did not prosecute the matter further to get a permanent injunction,
>
> * Even more damning is the admission in Para. 14 that a Co-Defendant in this case Daniel Clement obtained a restraining order against Plaintiff on the TRO level, but did not prosecute the matter to a full, permanent injunction.
>
> * All of this evidence is more than enough but Plaintiff does not stop there. In Para. 15, he admits Mr. Pierattini successfully obtained a restraining order against him. He admits that there is a "restraining order that defendant Pierattini obtained against me".

Plaintiff wants to argue semantics that the restraining order implies that Plaintiff assaulted or harmed a victim. That is not what Mr. Pierattini said, but even if it was, the KTLA reporter's retraining order that Plaintiff "hit or choked her" in 2024 certainly protects the "gist" of any

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

such statements about a restraining order. The fact that Plaintiff wants to characterize those restraining orders granted against him by that KTLA reporter as "false claims" (see Para. 7 of his decl.) does not change the fact that the court did not agree. Here, not only were Mr. Pierattini's statements true as established by the criminal records and court documents, but they are substantially true. As such, Mr. Pierattini's truthful commentary and opinions are protected speech and not defamatory.

III. PLAINTIFF HAS NO EVIDENCE OF MR. PIERATTINI ACTING WITH MALICE, AND THE COURT RECORDS PROVE THE CONTRARY

Aside from the fact that the "gist" of every factual statement made by Mr. Pierattini in the video was true, there is a completely separate reason summary judgment should be granted (as noted in the motion). We know that Plaintiff is a public figure or at least a limited purpose public figure, because he did not even dispute that issue in opposition to the Motion for Summary Judgment. Of course, someone in Plaintiff's position is required to establish malice as part of a defamation claim. Malice is a heavy burden. Plaintiff must establish by clear and convincing evidence that Mr. Pierattini basically knew he was telling a lie and did it anyway. As applied here, if Mr. Pierattini believed that the criminal records supported what he said, then there is no known lie, and there is no malice. An absence of malice means that summary judgment must be granted. With that in mind, we now turn to what effect the records had on what Mr. Pierattini subjectively believed.

The critical issue is what effect the criminal records had on Mr. Pierattini. It is reversible error to deny a motion for summary judgment where Mr. Pierattini (based upon these criminal records) believed something to be true when he said it, even if the information later turned out to be false. There is nothing in the Opposition or this Supplemental Brief to show malice or suggest that Mr. Pierattini knew what he said to be false. Thus, Plaintiff's claims fail as a matter of law.

As the U.S. Supreme Court made plain in *Garrison v. Louisiana* (1964) 379 U.S. 64, "only those false statements made with a high degree of awareness of their probable falsity demanded by *New York Times [v. Sullivan]* may be the subject of either civil or criminal

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

sanctions." *Id.* at 74.[12] Justice White, writing for the Court in *St. Amant v. Thompson* (1968) 390 U.S. 727, 730, provided the most comprehensive guidelines for the constitutional malice standard. In addition to a disclaimer that "'[r]eckless disregard'... cannot be fully encompassed in one infallible definition," he ruled that constitutional malice requires a "calculated falsehood" - i.e., a showing of either deliberate falsification or reckless publication despite the publisher's awareness of probable falsity. 390 U.S. at p. 731, quoting *Curtis Publishing Co. v. Butts*, 388 U.S. at p. 153.[13]

The malice rule in California has also made clear that constitutional malice requires competent evidence of *subjective* intentional disregard of falsity. *Melaleuca, Inc.* v. *Dark, supra, 66* Cal.App.4th at 1360-1361. The Supreme Court has "repeatedly eschewed reasoning based on what a defendant 'must have realized' or should have realized." *Ibid.* Cf. *Underwager v. Channel 9 Australia* (9th Cir. 1995) 69 F.3d 361, 368 (there must be evidence the speaker knew the statement was false or had serious doubts as to the truth).

Plaintiff was required to produce "facts" showing Mr. Pierattini believed, at the time he made the statements, that his statements were false or that he had serious doubts as to their truth. A misperception, misunderstanding or mistake precludes such a finding.[14]

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

[12] The demanding constitutional malice standard honors a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may include vehement, caustic, and sometimes unpleasant attacks" on people like Plaintiff. *New York Times v. Sullivan* (1964) 376 U.S. 254, 270. The standard recognizes that "erroneous statement is inevitable in free debate and... it must be protected if the freedoms of expression are to have the 'breathing space that they need to survive.'" *Id.* at 271. Additionally, actual malice must be established by clear and convincing evidence in order to pursue a defamation claim by a public figure, or a limited purpose public figure. *Reader's Digest Assn. v. S. Ct.* (1984) 37 Cal.3d 244, 252.

[13] It is not a question of whether the "reasonably prudent man" would publish or would investigate before publishing; rather, "there must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Id.*; cf. *Masson v. The New Yorker Magazine Inc., supra*, 506 U.S. at pp. 516-517 (same). A "failure to investigate before publishing, even when a reasonably prudent person would have done so," is not sufficient to establish constitutional malice or reckless disregard. *Harte-Hanks v. Connaughton* (1989) 491 U.S. 657, 688.

[14] See *McCoy* v. *Hearst Corp.* (1986) 42 Cal.3d 835, 834 fn. 16, citing *Base Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 512 (speaker who believed she had evidence to support her statement cannot be held to have spoken with "constitutional malice" as a result of a mistaken belief, as it is the subjective state of mind of the speaker that is relevant, not the accuracy of the source); *Mahoney v. Adirondack Publishing Co.* (1987) 523 N.Y.S. 2d 480, 484 (there must be evidence to negate the possibility that the defendant simply misunderstood the plaintiff).

In construing the constitutional malice standard, courts have rejected a finding based upon evidence that the speaker was merely negligent,[15] made a mistake in interpreting the events or facts,[16] or selected the wrong language. [17] It is similarly insufficient for a plaintiff to point to embellishments or a snide or sarcastic tone of a publication to show constitutional malice, because they do *not* indicate the publisher's lack of belief in the truth of the statements.[18] The fact that an article is intended to harm or disparage the plaintiff does not establish constitutional malice because it also does not prove knowledge of falsity.[19] Likewise, constitutional malice is not established by any failure to verify information,[20] or a failure to discover contradictory material not actually known to the publisher.[21] As the Eighth Circuit Court of Appeal noted in *Price v. Viking Penguin, Inc., supra,* 881 F.2d at pp. 1430-1431, false statements will necessarily occur in vigorous public debate, and absent constitutional protection for such statements, destructive self-censorship will result.

Plaintiff has fallen far short of carrying his burden, let alone by clear and convincing evidence. Plaintiff has offered nothing to show actual malice. He has offered his own declaration that, frankly, admits the general statement made were true. There is no evidence that Mr. Pierattini knew the statements were false at the time of the allegations.

Plaintiff's offense to the characterizations or opinions of the criminal records is insufficient to establish a prima facie showing of constitutional malice.[22]

---

[15] See, e.g., *Mahoney v. Adirondack Publishing Co.* (1987) 523 N.Y.S.2d 480, 484; *Pauling v. Globe-Democrat Publishing Co.* (8th Cir. 1966) 362 F.2d 188, cert. den. (1967) 388 U.S. 909; *Newton v. NBC* (9th Cir. 1991) 930 F.2d 662 (rejecting "should have been foreseen" as standard for "actual malice").

[16] *Time, Inc. v. Pope* (1971) 401 U.S. 279; *Orr v. Argus-Press Co.* (6th Cir. 1978) 586 F. 2d 1108,cert. den. (1979) 440 U.S. 960.

[17] *Bose v. Consumers Union of U.S., Inc.,* (1984) 466 U.S. 485, 513 (the choice of improper language through reflecting a misconception does not place speech beyond the outer limits of the First Amendment).

[18] *Thomas v. News World Communications* (D.D.C. 1988) 681 F.Supp. 55; *Ryan v. Brooks* (4th Cir. 1980) 634 F.2d 726; *Meeropol v. Nizer* (2d Cir. 1977) 560 F.2d 1061, cert. den. (1978) 434 U.S. 1013; *Reliance Ins. Co v. Barron's, supra*.

[19] *Tavoulareas v. Piro* (D.C. Cir.) 817 F.2d 762, 795-96 (en banc), cert. den. (1987) 484 U.S. 870.

[20] *Fadett v. Minneapolis Star* (N.D. Ind. 1976) 425 F.Supp. 1075, affd. (7th Cir. 1977) 557 F.2d 107, cert. den. (1977) 434 U.S. 966.

[21] *New York Times v. Sullivan, supra,* 376 U.S. at p. 287.

[22] *Ampex,* 128 Cal. App. 4th at 1579. Plaintiff's bald assertations certainly don't "provide sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth" of her statements. *Reader's Digest*, 37 Cal.3d at 256.As the United States Supreme Court stated in *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 292, fn. 30, "Since the First Amendment requires recognition of the constitutional privilege

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

Presenting information believed to be true but that later turns out to be false is absolutely protected under the actual malice standard. The Supreme Court ruled in 1964's *New York Times v. Sullivan* that the First Amendment requires defamation law to accommodate good-faith public debate. As the Court explained in *Sullivan*, the "actual malice" standard protects our:

> "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks."

New York Times v. Sullivan (1964) 376 U.S. 254, 270.

As such, a lot of debate can surround the hypocrisy of an individual with multiple criminal cases discussing how to beat the law. His own advice does not seem to be working well for him.

But Plaintiff certainly has a place to have this debate. Actual malice applies to people like Plaintiff because of the First Amendment maxim: "The answer to bad speech is more speech." It deters lawsuits from people who do not need to use the court system. Plaintiff complains about Mr. Pierattin's statements on an obscure YouTube video. Yet, Plaintiff is on YouTube every day and has a massive following. This situation is the reason the malice rule exists.

IV. CONCLUSION

For the foregoing reasons, Mr. Pierattini respectfully requests that the Court grant his Motion for Summary Judgment or in the alternative Summary Adjudication.

DATED: August 20, 2024

THE LAW OFFICES OF
R. PAUL KATRINAK

R. Paul Katrinak

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

for honest misstatements of fact, it follows that a defense of fair comment must be afforded for honest expressions of opinion based upon privileged, as well as true statements of fact"

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 9663 Santa Monica Boulevard, Suite 458, Beverly Hills, California 90210.

On August 20, 2024, I served the foregoing document(s) described as:

DEFENDANT MICHAEL PIERATTINI'S RESPONSE TO PLAINTIFF'S BRIEF CONCERNING THE CRIMINAL RECORDS REGARDING PLAINTIFF

on the interested parties to this action addressed as follows:

Steven Gebelin
LESOWITZ GEBELIN LLP
8383 Wilshire Blvd #520
Beverly Hills, CA 90211
contact@lawbylg.com

(BY MAIL) I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid and addressed to the person above.

(BY PERSONAL SERVICE) by causing a true and correct copy of the above documents to be hand delivered in sealed envelope(s) with all fees fully paid to the person(s) at the address(es) set forth above.

X (BY EMAIL) I caused such documents to be delivered via electronic mail to the email address for counsel indicated above.

Executed August 20, 2024, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

R. Paul Katrinak