SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

23SMCV00538 September 5, 2024
JOSE DECASTRO vs KATHERINE PETER 8:30 AM

Judge: Honorable H. Jay Ford III
Judicial Assistant: G. Curiel
Courtroom Assistant: A. Pearson

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Steven T. Gebelin (via LA Court Connect)

For Defendant(s): Raymond Paul Katrinak

NATURE OF PROCEEDINGS: Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication; Status Conference

The Corrected tentative ruling is as follows:

TENTATIVE RULING
Defendant Michael Pierattini's Motion for Summary Adjudication is GRANTED as to the 1st–7th causes of action and DENIED as to the 8th cause of action alleged in Plaintiff Jose DeCastro's First Amended Complaint (FAC). Defendant shows that one or more elements of the 1st through 7th causes of action cannot be met, and Plaintiff does not meet his burden to show a triable issue of material fact as to those elements. Defendant does not meet his burden to show one more elements cannot be met as to the 8th cause of action.
Defendant Michael Pierattini's 4-30-24 RJN is GRANTED as to the existence of articles, court documents, and the administrative ruling documents, but not to the "truth of the hearsay statements in the documents." (In re Vicks (2013) 56 Cal.4th 274, 314.) The Court will not take judicial notice of unidentified facts in the attached discovery responses but will take judicial notice to the existence of the documents.
Defendant Michael Pierattini's 7-30-24 RJN Nos 1–17, and 19 are GRANTED as to the existence of articles, court documents, and the administrative ruling documents, but not to the "truth of the hearsay statements in the documents." (In re Vicks (2013) 56 Cal.4th 274, 314.) RJN No. 18 is DENIED (Al Shikha v. Lyft, Inc. (2024) 102 Cal.App.5th 14, 21 [The Court "may not take judicial notice of the truth of the contents of a website"]; LG Chem, Ltd. v. Superior Court of San Diego County (2022) 80 Cal.App.5th 348, 362 fn.7 [Court cannot take judicial notice of facts stated in a "Company Profile" accessible from a website.]

Rulings on Plaintiff Jose DeCastro's Objections to declarations of Michael Pierattini and R. Paul Katrinak.

No. 1—SUSTAINED, as to Pierattini's statements of the content of the June 5, 2022, video at issue. Also, a copy and transcript of the video has been submitted by the Plaintiff. There is no dispute regarding the contents of the video [Evid. Code §1521(b), 1523; see also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing under the former best evidence rule].)
No. 2—OVERRULED
No. 3—SUSTAINED (lack of foundation)
Nos. 4–7 —OVERRULED
No. 8—SUSTAINED (legal conclusion, foundation for opinion)
No. 9—OVERRULED as to RJN of content of discovery responses filed with the Court.
No. 10–13 —SUSTAINED as to the truth of the number of subscribers, videos posted, number of views, and all other alleged facts related to the YouTube page(s) (hearsay, lack of authentication).
No. 14 – SUSTAINED (improper opinion; legal conclusion)
No. 15 – SUSTAINED without prejudice to taking judicial notice of the documents received.

PLAINTIFF'S OBJECTIONS TO DEFENDANTS REPLY DECLARATIONS SUBMITTED WITH REPLY:
No. 16 - SUSTAINED.[Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].)].)
No. 17 – SUSTAINED. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].)].)
No. 18 – OVERRULED
No. 19 - SUSTAINED in part where describing what is in the alleged documents. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.")
No. 20 – OVERRULED
No. 21 – SUSTAINED in part where describing what is in the alleged documents. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.")
No. 22 – SUSTAINED in part where describing what is in the alleged documents. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.)
No. 23 – SUSTAINED as to the truth of matter asserted by the third party regarding Plaintiff's

criminal and civil charges OVERRULED as to the nonhearsay purposes of the hiring the private investigator and providing Katrinak with the investigation into Plaintiff's criminal and civil charges.
No. 24 – OVERRULED
No. 26 – SUSTAINED (speculation)
No. 27 – SUSTAINED (speculation)
No. 28, 29, 30 SUSTAINED (Not material)

DEFENDANTS JULY 30 2024 RJN:
No. 31–No. 36 —SUSTAINED without prejudice to taking judicial notice of the existence of the documents and their legal effect, but not the truth of the facts stated therein documents received

Rulings on Defendant Michael Pierattini's Objections to Plaintiff Jose DeCastro's declarations in support of the opposition are as follows:
No. 5–6 SUSTAINED in part as to the description of the video contents. . [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].) OVERRULED as to the admission of the exhibit 1 for the purpose of showing what was said not to the truth of the statements (non hearsay purpose.)
No. 7—SUSTAINED {Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].)
No. 9—SUSTAINED in part as to the description of the video contents. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].)
No. 10—SUSTAINED in part as to the description of the video contents. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.")
No. 11— OVERRULED – no grounds stated.
No. 12—OVERRULED.
No. 13—SUSTAINED in part as to the description of the content of the text messages, overruled as to the admission of the exhibit 4 messages.
Rulings on Defendant Michael Pierattini's Objections to Plaintiff Jose DeCastro's declarations in support of the supplemental brief in opposition are as follows:

No. 1—SUSTAINED (legal conclusion)
No. 16—SUSTAINED as to the line "Those videos published during my incarceration were posted by agents of Ethic SCS LLC, not me personally," as hearsay, and no foundation [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].)].)
No. 17 – SUSTAINED. [Evid. Code §1521(b), 1523(a) ("Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.") No foundation for exception under Evid. Code 1523 (b) or (c) (See also People v. Panah (2005) 35 Cal.4th 395, 475 [Recognizing a videotape is a writing for purpose of the rules of evidence].)].)
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No. 24 – OVERRULED
No. 26 – SUSTAINED (speculation)
No. 27 – SUSTAINED (speculation)
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Rulings on Defendant Michael Pierattini's Objections to Plaintiff Jose DeCastro's declarations in support of the supplemental brief in opposition are as follows:
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REASONING
I. Continuance

A declaration in support of a request for continuance under section 437c, subdivision (h) must show: "(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts."(Cooksey v. Alexakis (2004) 123 Cal.App.4th 246, 254.) "The purpose of the affidavit required by Code of Civil Procedure section 437c, subdivision (h) is to inform the court of outstanding discovery which is necessary to resist the summary judgment motion." (Bahl v.

Bank of America (2001) 89 Cal.App.4th 389, 397.) "It is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show facts essential to justify opposition may exist." (Roth v. Rhodes (1994) 25 Cal.App.4th 530, 548.) "[T]he affiant is not required to show that essential evidence does exist, but only that it may exist . . . . This, and the language stating the continuance shall be granted upon such a showing, leaves little room for doubt that such continuances are to be liberally granted." (Frazee v. Seely (2002) 95 Cal.App.4th 627, 634.) Likewise a request to continue a summary judgment hearing must explain why additional time is needed, and in so doing explain why the discovery could not have bee pursued sooner. As explained in Crooksey, supra:

"We agree with the majority of courts holding that lack of diligence may be a ground for denying a request for a continuance of a summary judgment motion hearing. Although the statute does not expressly mention diligence, it does require a party seeking a continuance to declare why "facts essential to justify opposition ... cannot, for reasons stated, then be presented" (§ 437c, subd. (h), italics added), and courts have long required such declarations to be made in good faith. (Citations). There must be a justifiable reason why the essential facts cannot be presented. An inappropriate delay in seeking to obtain the facts may not be a valid reason why the facts cannot then be presented. The statute itself authorizes the imposition of sanctions for declarations presented in bad faith or solely for purposes of delay. (§ 437c, subd. (j).) A good faith showing that further discovery is needed to oppose summary judgment requires some justification for why such discovery could not have been completed sooner."

123 Cal.App.4th at257.

Plaintiff Jose DeCastro ("DeCastro') submits a declaration stating "facts essential to justify opposition may exist but cannot, for reasons stated, be presented . . ." DeCastro declares that "[d]ue to [his] recent wrongful incarceration (which conviction was overturned on appeal) and the state of discovery, [DeCastro] ha[s] not been able to obtain discovery materials or a deposition from co-defendant Kate Peter, the head of Troll Mafia Official on YouTube who led significant portions of the conduct at issue and alleged in the First Amended Complaint." (DeCastro Decl., ¶ 12.) DeCastro further declares that based "on the messages produced by Pierattini, there is reason to believe that discovery from Ms. Peter would show additional communication and potentially evidence cooperation by Pierattini with her harassing actions as alleged in the First Amended Complaint," (Id., ¶ 12.) Additionally, DeCastro has not deposed Defendant Michael Pierattini as of the time DeCastro submitted the opposition, and DeCastro declares that Pierattini has not submitted significant amounts of "videos relating to [DeCastro's] claims" that DeCastro declares Pierattini removed from Pierattini's YouTube account. (Id., ¶ 13.)

The Court finds that DeCastro has not made the necessary showing to support a continuance of the Motion for Summary Adjudication . There is no persuasive evidence to support DeCastro's speculation of what discovery from Ms. Peter would show. Nor is there any evidence why Decastro did not seek discovery from Ms. Peter before his incarceration in March 2024. This action was filed in February 2023. Mr. Decastro was served with comprehensive discovery in December 2023. Decastro responses to discovery in January 2024 consisted of frivolous objections and failed to disclose facts to support his claims. Indeed, in his response to requests for admission showed he admits his lack of knowledge of any facts to support his claims. Despite this lack of knowledge, Decastro has not made any effort to obtain evidence he has known he lacks since he filed his complaint. Nor does Decastro explain how the unidentified evidence will support the elements of all his claims. Moreover, Decastro still has not served two of the four defendants. It appears to the Court that Decastro's delay in obtaining any additional evidence to support his claims before he was incarcerated was intentional.

II. Merits

Where a defendant seeks summary judgment or adjudication, he must show that either "one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action." (Code of Civil Procedure §437c(o)(2).) A defendant may satisfy this burden by showing that the claim "cannot be established" because of the lack of evidence on some essential element of the claim. (Union Bank v. Superior Court (1995) 31 Cal.App.4th 574, 590.) Once the defendant meets this burden, the burden shifts to plaintiff to show that a "triable issue of one or more material facts exists as to that cause of action or defense thereto." (Id.) If unable to prove the existence of a triable issue of material fact, summary judgment or summary adjudication in favor of the defendant is proper. (Id.)

"The burden on a defendant moving for summary judgment based upon the assertion of an affirmative defense is different than the burden to show that one or more elements of the plaintiff's cause of action cannot be established. Instead of merely submitting evidence to negate a single element of the plaintiff's cause of action, or offering evidence such as vague or insufficient discovery responses that the plaintiff does not have evidence to create an issue of fact as to one or more elements of his or her case the defendant has the initial burden to show that undisputed facts support each element of the affirmative defense. If the defendant does not meet this burden, the motion must be denied." (Consumer Cause, Inc. v. SmileCare (2001) 91 Cal.App.4th 454, 467–468.)

"In general, the opposing party may not rely on the opposing party's own pleadings (even if

verified) to oppose the motion. Code Civ. Proc. § 437c, subd. (p); Roman v BRE Props., Inc. (2015) 237 CA4th 1040, 1054, 188 [plaintiff must show "specific facts" to defeat defendant's summary judgment motion and may not rely on allegations of complaint].). A plaintiff may rely on the plaintiff's pleadings to resist a summary judgment motion if the defendant's motion is based on the legal insufficiency of the plaintiff's claims as alleged. Hand v Farmers Ins. Exch. (1994) 23 CA4th 1847, 1853, 29 CR2d 258." (Cal. Judges Benchbook Civ. Proc. Before Trial § 13.24 (2023).)

"[P]ointing out the absence of evidence to support a plaintiff's claim is insufficient to meet the moving defendant's initial burden of production. The defendant must also produce evidence that the plaintiff cannot reasonably obtain evidence to support his or her claim." (Gaggero v. Yura (2003) 108 Cal.App.4th 884, 891; see Zoran Corp. v. Chen (2010) 185 Cal.App.4th 799, 808 ["It was not enough simply to assert that [Plaintiff] had no evidence supporting an element of each cause of action; a moving defendant "must indeed present 'evidence,' " such as " 'affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice' must or may 'be taken"].)

a) 1st cause of action for Libel, Slander, and False Light—GRANTED

"The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. 'In general, … a written communication that is false, that is not protected by any privilege, and that exposes a person to contempt or ridicule or certain other reputational injuries, constitutes libel.' The defamatory statement must specifically refer to, or be ' "of [or] concerning," ' the plaintiff." (Jackson v. Mayweather (2017) 10 Cal.App.5th 1240, 1259, internal citations omitted.) "A statement is defamatory when it tends directly to injure [a person] in respect to [that person's] office, profession, trade or business, either by imputing to [the person] general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to [the person's] office, profession, trade, or business that has a natural tendency to lessen its profits." (Issa v. Applegate (2019) 31 Cal.App.5th 689, 702, internal citation omitted.) "[Name of plaintiff] may also recover damages to punish [name of defendant] if [he/she/nonbinary pronoun] proves by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud." (CACI 1704.)

"The critical determination of whether an allegedly defamatory statement constitutes fact or opinion is a question of law for the court [citations] and therefore suitable for resolution by demurrer. [Citation.] If the court concludes the statement could reasonably be construed as either fact or opinion, the issue should be resolved by a jury. (Ferlauto v. Hamsher (1999) 74

Cal.App.4th 1394, 1401.)

"If the person defamed is a public figure, he cannot recover unless he proves, by clear and convincing evidence … , that the libelous statement was made with " 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." ' 'The rationale for such differential treatment is, first, that the public figure has greater access to the media and therefore greater opportunity to rebut defamatory statements, and second, that those who have become public figures have done so voluntarily and therefore "invite attention and comment." (Jackson, supra, 10 Cal.App.5th at p. 1259, footnotes and internal citations omitted.)

"To qualify as a limited purpose public figure, a plaintiff 'must have undertaken some voluntary [affirmative] act[ion] through which he seeks to influence the resolution of the public issues involved.'" (Rudnick v. McMillan (1994) 25 Cal.App.4th 1183, 1190.) 'The question whether a plaintiff is a public figure is to be determined by the court, not the jury." (Stolz v. KSFM 102 FM (1994) 30 Cal.App.4th 195, 203.)

"We apply a " 'totality of the circumstances' " test to determine whether a statement is fact or opinion, and whether a statement declares or implies a provably false factual assertion; that is, courts look to the words of the statement itself and the context in which the statement was made." (Issa v. Applegate (2019) 31 Cal.App.5th 689, 703.) "Under the totality of the circumstances test, '[f]irst, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense.... [¶] Next, the context in which the statement was made must be considered.' " (Ibid.) "Whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court." (Ibid.)

"[I]t is not the literal truth or falsity of each word or detail used in a statement which determines whether or not it is defamatory; rather, the determinative question is whether the "gist or sting" of the statement is true or false, benign or defamatory, in substance." (Ringler Associates Inc. v. Maryland Cas. Co. (2000) 80 Cal.App.4th 1165, 1181–1182.)

Defendant Michael Pierattini ("Defendant") argues that Plaintiff Jose DeCastro ("Plaintiff) is a public figure due to Plaintiff's Youtube channel subscribers allegedly numbering "559,000" with over "241,783,000" views and containing over "2500 videos," and therefore Plaintiff must establish that the alleged slanderous statements were made with actual malice. (Motion, p. 5:9–21; SSUF, ¶¶ 1–3; Katrinak Decl., ¶ 4, 5 Ex. A, B.) However, the Court cannot take judicial notice to the truth of the contents on a YouTube Page without proper authentication, and the Court has sustained objections to the Katrinak Declaration ¶¶ 4 and 5. (Ragland v. U.S. Bank National Assn. (2012) 209 Cal.App.4th 182, 193 ["While we may take judicial notice of the

existence of . . . Web sites, and blogs, we may not accept their contents as true."].) The Katrinak Declaration alone stating that he took a screenshot of Plaintiff's YouTube channel is not enough to properly authenticate the the facts stated on the YouTube channel website.

Defendant has not provided any other evidence to show that Plaitniff can be considered a public figure other than the screenshot of the YouTube page. Thus, Defendant has not provided evidence to show that Plaintiff is a public figure. Additionally, in the FAC, Plaintiff alleges he is not a public figure (see FAC, ¶ 39), and with no admissible evidence supplied by Defendant to the contrary, the Court cannot find as a matter of law that Plaintiff is a public figure.

Defendant argues the alleged defamatory statements in the June 5, 2022 Video submitted as Exhibit 1 stating Plaintiff's "brain was being turned to glue" and calling Plaintiff a "scammer because of the legal information products that DeCastro sells," are non-actionable opinions. (Reply, pp. 5–6.) Regarding the first statement, essentially where Defendant states Plaintiff is lacking in intellect, the Court finds as a matter of law that this statement is an opinion rather than a factual assertion. Defendant's statement is an expression of his subjective judgment, and contains no verifiable facts and thus is then protected under the First Amendment. (See Moyer v. Amador Valley J. Union High School Dist. (1990) 225 Cal.App.3d 720, 725 ["As to the third or "worst teacher" statement, there is no factual assertion capable of being proved true or false. Clearly, the statement is an expression of subjective judgment by the speaker."]; Copp v. Paxton (1996) 45 Cal.App.4th 829, 837 ["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"].)

The same can be true with the statements in the Video where Defendant refers to the Plaintiff as a "scammer," or Defendant claiming Plaintiff is defaming Defendant. These statements appear to be the following:

1. "I'm gonna still be there in the background, at the very least, making sure that people aren't being scammed. Or at least trying to make a difference." (Video Transcript, p. 12; Ex. 1, 00:18:28,000 --> 00:18:36,000.)
2. "Because I'm not a big fan of scammers. Chille? So I'm gonna try to make the world a better place by stopping you from making it worse." (Video Transcript, p. 12; Ex. 1, 00:18:45,000 --> 00:18:54,000.)
3. "Now he's basically defaming me. Honestly, I should be the one filing lawsuit against him. Because this is defamation against me." (Video Transcript, p. 6; Ex. 1, 00:11:31,000 --> 00:11:44,000

Under the totality of circumstances test these statements are non-actionable opinion, and clearly show an expression of subjective judgment. The statements align with the non-actionable opinion of calling someone a shady politician, or crook under Copp.

Defendant argues the alleged defamatory statements regarding Plaintiff's conviction are non-actionable under the "gist or sting" rule stating that Defendant's alleged defamatory statements were substantially true and thus protected. Defendant submits copies of Plaintiff's criminal records, to which the Court takes judicial notice, to argue because Plaintiff has a criminal record, any statement about Plaintiff being a criminal is protected under this gist or sting rule. The Court agrees with the Defendant.

The alleged defamatory statements regarding Plaintiff's alleged criminal activity in the video are as follows:

1. "Oh, except for that theft you admitted to committing, right? Or what about the restraining order? There was a victim there." (Video Transcript, p. 10; Ex. 1, 00:16:47,000 --> 00:16:55,000
2. "Ooh, your roommate was the victim when you used his ID to pretend that he was the one that got the speeding ticket, or the traffic ticket, because you were on probation and didn't have a license and would have gone back to jail." (Video Transcript, p. 11; Ex. 1, 00:16:55,000 --> 00:17:11,000.)
3. "Remember that? That had a victim. It was your roommate because you pretended to be him. And he almost got in a lot of trouble. Remember that?" (Video Transcript, p. 11; Ex. 1, 00:17:11,000 --> 00:17:22,000.)

The court records submitted by Defendant show that Plaintiff had a restraining order filed against him on 11-14-07 and 12-4-15, and was arrested for giving false information to a police officer. (See 7-30-24 Defendant's RJN, Ex. 3, 9, 10.) Additionally, Plaintiff admits to being arrested for having a false ID within his declaration. (See 8-13-24 DeCastro Decl., ¶ 5.) Thus, the general "gist or sting" of the Defendant's alleged defamatory statements are substantially true and non-actionable for defamation. The arguable minor inaccuracies in the statements do not amount to defamation when the statement as a whole is substantially true. (See Medical Marijuana, Inc. v. ProjectCBD.com (2020) 46 Cal.App.5th 869, 889 ["falsity cannot be shown if the statement at issue appears substantially true: "To bar liability, ' "it is sufficient if the substance of the charge be proved true, irrespective of slight inaccuracy in the details." [Citations.] ... [Citation.] ... Minor inaccuracies do not amount to falsity so long as "the substance, the gist, the sting, of the libelous charge be justified."].)

Defendant meets his burden to show that the alleged defamatory statements are either non-actionable opinion or substantially true under the "gist or sting" rule. The burden now shifts to the Plaintiff to show the existence of a triable issue of material fact.

Plaintiff does not provide any disputed facts to show that the statements were not either opinion or substantially true. In Plaintiff's 8-13-24 declaration the Plaintiff essentially agrees with the Defendant that the court documents provided and the statements made in relation to the court documents are substantially true with a few minor inaccuracies. (See 8-13-24 DeCastro Decl., ¶¶ 3–12.) As analyzed above, the mere fact of minor inaccuracies alongside substantially true statements does not mean the statements are now considered defamatory.

Thus, Plaintiff does not meet his burden to raise a triable issue of material fact as the 1st cause of action for for Libel, Slander, and False Light. Defendants Motion for Summary Adjudication is GRANTED as to the 1st cause of action.

a) 2nd cause of action for Battery—GRANTED

"The essential elements of a cause of action for battery are: (1) defendant touched plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in plaintiff's position would have been offended by the touching." (So v. Shin (2013) 212 Cal.App.4th 652, 669, as modified on denial of reh'g (Jan. 28, 2013); see also CACI 1300.)

Defendant argues and provides evidence that Defendant was not in Boston on 5-30-22, Oklahoma on 7-22-22, or Denver on 8-8-22, during the time of the alleged batteries, and thus Plaintiff can not meet the first element of battery claim. (See SSUF, ¶¶ 13–16; Pierattini Decl., ¶¶ 3–4.) Defendant has met his burden to show that Plaintiff cannot meet the first element of the Battery claim. The burden now moves to the Plaintiff to show a triable issue of fact.

Plaintiff concedes that Defendant was not in the locations on the specific dates the alleged battery occurred, but speculates Defendant "communicated with co-defendants Peter and Oro about DeCastro, indicating evidence may exist that Pierattini may have been involved in, "caused", and be legally responsible these actions coordinated by co-defendants. (AMF, ¶¶ 14, 16; DeCastro Decl., ¶ 10, Ex. 2, 3.) Plaintiff is correct that Defendant does not need to be in the physical location of the alleged battery in order to be liable for a battery claim. Battery does not

need to be committed by direct touching, nor is battery "limited to direct body-to-body contact." (Mount Vernon Fire Insurance Corporation v. Oxnard Hospitality Enterprise, Inc. (2013) 219 Cal.App.4th 876, 881; see People v. Dealba (2015) 242 Cal.App.4th 1142, 1151 ["it is well-established that battery can be committed indirectly, i.e., that the crime does not require a direct touching of the victim's person by the defendant's person."].) However, no evidence provided by Plaintiff shows Defendant directed the action of Peter and Oro, the defendants alleged to have physically committed the battery. Plaintiff's argument in the separate statement states that some unidentified evidence "may exist" is not sufficient to show a triable issue of material fact. Even with declarations in opposition being liberally construed, the evidence provided by Plaintiff fails show that how Defendant directed, or could have directed, the co-defendants actions in order to commit battery. Thus, Plaintiff does not meet his burden to show a triable issue of material fact as to the first element of battery. Defendant's Motion for Summary Adjudication as to the 2nd cause of action for Battery is GRANTED.

b) 3rd cause of action for Trespass—GRANTED

Trespass is the "unlawful interference with possession of property." (Ralphs Grocery Co. v. Victory Consultants, Inc. (2017) 17 Cal.App.4th 245, 261.) The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. (See id. at p. 262, citing CACI No. 2000.)

Defendant argues and provides evidence in form of a declaration that Defendant was not in Denver on 8-8-22 and 8-19-22, nor in New Hampshire and Boston in "late August, early September 2022," during the time of the alleged trespass claims, and thus Plaintiff can not meet the second element of the trespass claims. (See SSUF, ¶¶ 17–25; Pierattini Decl., ¶¶ 3–6.) Defendant has met his burden to show that Plaintiff cannot meet the second element of the Trespass claim. The burden now moves to the Plaintiff to show a triable issue of fact.

Liability for trespass does not need to include being physically present in the alleged trespass location. (see Daly v. Smith (1963) 220 Cal.App.2d 592, 604 ["An action for trespass committed by one person does not make another person liable unless he participated by agreement or otherwise."].) Similar to the Battery cause of action, Plaintiff speculates Defendant "communicated with codefendants Peter and Oro about DeCastro, indicating evidence may exist that Pierattini may have been involved in, "caused", and be legally responsible these actions coordinated by co-defendants." (Plaintiff's Additional Merial Facts ("AMF"), ¶¶ 18, 19, 31–34;

DeCastro Decl., ¶¶ 7, 10–12, 14; Ex. 2,3.) Similar to the analysis above, Plaintiff does not provide competent evidence to show the Defendant directed co-defendants to trespass, or that Defendant was personally involved with the trespass. Nor does the evidence submitted by Plaintiff from Defendant's discovery responses show that Defendant directed co-defendants to trespass. (See 7-24-24 Notice of Lodging of Documents under Seal, Ex. 2–4.) Thus, Plaintiff does not meet his burden to show a triable issue of material fact as to the second element of trespass. Defendant's Motion for Summary Adjudication as to the 3nd cause of action for Trespass is GRANTED.

c) 4th cause of action for Harassment and Civil conspiracy—GRANTED

Plaintiff fails to allege or explain the statutory or other legal basis of his "harassment" and "Civil Conspiracy" claim. Likewise, "[t]o support a conspiracy claim, a plaintiff must allege the following elements: (1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct." (AREI II Cases (2013) 216 Cal.App.4th 1004, 1022.)

Defendant provides a declaration stating that Defendant is not an agent of co-defendant Peter, and that Defendant did not engage in any of the conduct included in the FAC ¶ 42. (SSUF, ¶¶ 31, 33; Pierattini Decl., ¶ 9.) Paragraph 42 of the FAC alleges:

Peter and her agents have repeatedly emailed, cyberstalked, stalked, harassed, and trespassed on my residence. Additionally, they commit wholesale copyright infringement of my creative content in order to harass me. I have a pending federal lawsuit over the wholesale copyright infringement. These people have even harassed my dog, Charlie. Defendants further refuse to honor any harassment cease requests or cease demands. There are additional events that discovery will reveal, and proof provided at trial.

(FAC, ¶ 42.)

Defendant shows through declaration that Defendant did not participate in or post any of the alleged harassing videos described in FAC ¶¶ 38-39. (SSUF, ¶¶ 26–27; Pierattini Decl., ¶ 9.) Defendant shows through declaration that Defendant did not make any phone calls or send any text messages to Plaintiff on May 3, 2022, as alleged in FAC ¶ 40. (SSUF, ¶¶ 28–29; Pierattini Decl., ¶ 9.) Defendant shows through declaration that Defendant does not know and has not previously known or interacted with an individual named "Todd Lyon," as alleged in Paragraph FAC ¶ 41. (SSUF, ¶ 30; Pierattini Decl., ¶ 9.) Thus, Defendant has met his burden to show that Plaintiff cannot meet his burden to show any statutory claim of harassment and or a civil

conspiracy claim related to the alleged harassment.

In opposition, Plaintiff provides the same argument as the claims for trespass, battery and assault pointing to evidence that Plaintiff argues could show Defendant is an agent of the co-defendants, and that Defendant's communications caused Co-Defendants to commit the alleged online harassment. (See AMF, ¶¶ 31–34; DeCastro Decl. ¶ 10-12, Exs. 2, 3.) Additionally, Plaintiff argues that the June 5, 2022 Video shows that Defendant harbored ill will towards the Plaintiff and that Defendant admitted to Plaintiff's harassment in the video. (DeCastro Decl. ¶ 7; Ex. 1.) Plaintiff does not specifically point to what statements within the Video show that Defendant admitted to the alleged harassment, and from viewing the video and a reading of the lodged transcript, the Court cannot find any evidence of the Defendant admitting to the alleged harassment. Moreover, it is not the Court's job to pick apart evidence submitted to find the exact allegations. (See Cal. Rules of Court, rule 3.1350, subd. (f)(2) ["Citation to the evidence in support of the position that a fact is controverted must include reference to the exhibit, title, page, and line numbers."].) Plaintiff highlights the specific lines within the transcript that he deems meaningful to the opposition, but does not reference them in a separate statement, nor does Plaintiff apply specific lines to the causes of action or arguments in opposition that could create a triable issue of material fact.

Plaintiff argues that within Plaintiff's submitted exhibit 4 there are communications that show Defendant tried to email four different email accounts associated with Plaintiff and to "find DeCastro's location to send people to him." (DeCastro Decl. ¶ 14, Ex. 4.) Plaintiff does not provide any authority that sending emails to different email addresses associated with the Plaintiff can be considered harassment under any statute, nor the process of finding Plaintiff and "sending people to" Plaintiff can be considered harassment. From a reading of the submitted evidence in Exhibit 4, it appears that Defendant is discussing a way to electronically serve Plaintiff with a protective order from different email addresses, or discussing the best way to electronically serve Plaintiff. Nothing in the submitted evidence shows the alleged harassment, nor does Plaintiff provide any authority that emailing someone to satisfy electronic service of a protective order amounts to stalking, cyberstalking or harassment.

Thus, Plaintiff does not meet his burden to show that there is a dispute of material fact as to any element of the 4th cause of action for Harassment and Civil conspiracy. Defendants Motion for Summary Adjudication as to the 4th cause of action is GRANTED.

d) 5th cause of action for stalking, cyberstalking, and civil conspiracy—GRANTED

(a) A person is liable for the tort of stalking when the plaintiff proves all of the following

elements of the tort:
(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, place under surveillance, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.
(2) As a result of that pattern of conduct, either of the following occurred:
(A) The plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this subparagraph, "immediate family" means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff's household.
(B) The plaintiff suffered substantial emotional distress, and the pattern of conduct would cause a reasonable person to suffer substantial emotional distress.
(3) One of the following:
(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with either (i) the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member, or (ii) reckless disregard for the safety of the plaintiff or that of an immediate family member. In addition, the plaintiff must have, on at least one occasion, clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct unless exigent circumstances make the plaintiff's communication of the demand impractical or unsafe.
(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).

(Civ. Code, § 1708.7.)

Defendant shows through declaration that he did not send Plaintiff "harassing emails forged to look like they're from the court, two or three times a day since at least November 2022." (See FAC, ¶ 56; SSUF, ¶ 35; Pierattini Decl., ¶ 10.) Defendant argues that Plaintiff has not produced any of the alleged emails or any other evidence to support this allegation of forged emails. (Motion, p. 14:21–23.) Additionally, Defendant declares he not an agent of Defendant Peter, and Defendant did not work together with other co-defendants to commit the alleged stalking acts. (See SSUF, ¶¶ 36–37; Pierattini Decl., ¶ 10.)

Thus, Defendant has met his burden to show that Plaintiff cannot meet one or more elements of the 5th cause of action for stalking, cyberstalking and civil harassment. The burden now shifts to the Plaintiff to show a triable issue of material fact.

Plaintiff does not dispute Defendants stated material fact that Defendant did not send any forged emails to Plaintiff, nor does Plaintiff provide any evidence of the alleged forged emails. (AMF, ¶ 35.) Plaintiff makes the same argument that there may be evidence of Defendant conspiring with Co-Defendants to stalk and harass the Plaintiff, but Plaintiff does not provide any evidence other than conclusory declarations and exhibits including discord conversation that do not specifically support Plaintiff's allegations.

Thus, Plaintiff does not meet his burden to show that there is a dispute of material fact as to any element of the 5th cause of action for stalking, cyberstalking, and civil conspiracy. Defendants Motion for Summary Adjudication as to the 5th cause of action is GRANTED.

e) 6th cause of action for assault - GRANTED

"The essential elements of a cause of action for assault are: (1) defendant acted with intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; (3) plaintiff did not consent to defendant's conduct; (4) plaintiff was harmed; and (5) defendant's conduct was a substantial factor in causing plaintiff's harm."(So v. Shin (2013) 212 Cal.App.4th 652, 668–669.)

Defendant argues and provides evidence that Defendant was not in Los Angeles on 10-17-22 when the alleged assault took place, and thus Plaintiff can not meet the first element of the assault claim. (See SSUF, ¶¶ 39–40; Pierattini Decl., ¶ 11.) Defendant has met his burden to show that Plaintiff cannot meet the first element of the Assault claim. The burden now moves to the Plaintiff to show a triable issue of fact.

Plaintiff does not meet his burden to show a triable issue of material fact for the same reason as analyzed in the battery cause of action. (See supra, Section II.b.ii.) A person can indeed be liable for assault without being physically present, as argued by Plaintiff, when the person allegedly encourages the assault. (See Ayer v. Robinson (1958) 163 Cal.App.2d 424, 428 ["A party injured by an unjustified assault may recover damages not only from the actual assailant, but from any other person who aids, abets, counsels or encourages the assault."].) However, Plaintiff does not provide any admissible evidence to show that Defendant directed the actions of co-defendants to commit the alleged assault. Plaintiff's declaration and attached exhibits of discord communications do not show Defendant directed any alleged assault on Plaintiff. Thus, Plaintiff has not met his burden to show a triable issue of material fact. Defendants Motion for Summary Adjudication as to the 6th cause of action is GRANTED.

f) 7th cause of action for economic interference— GRANTED

"Tortious interference with contractual relations requires (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (Ixchel Pharma, LLC v. Biogen, Inc. (2020) 9 Cal.5th 1130, 1141.) "Tortious interference with prospective economic advantage, on the other hand, does not depend on the existence of a legally binding contract. A plaintiff asserting this tort must show that the defendant knowingly interfered with an economic relationship between the plaintiff and some third party, [which carries] the probability of future economic benefit to the plaintiff." (Ibid.)

Defendant shows that he had no knowledge of the alleged contract in the claim for economic interference through providing a declaration stating Defendant "had no knowledge of any alleged contract or economic relationship between Plaintiff and David Condon." (SSUF, ¶¶ 41–42; Pierattini Decl., ¶ 12.) Defendant has met his burden to show that Plaintiff cannot meet the second element of a tortious interference with contractual relations claim and tortious interference with prospective economic advantage claim. The burden now moves to the Plaintiff to show a triable issue of fact.

Plaintiff does not meet his burden to show a triable issue of material fact as to Defendant's claim that he did not know of any alleged contractual or economic relationship between Plaintiff and David Condon. Plaintiff does not dispute these facts in the separate statement, nor does Plaintiff provide any arguments in the opposition or supplemental briefs to create a triable issue of fact as to this cause of action.

Defendant's Motion for Summary Adjudication as to the 7th cause of action is GRANTED.

g) 8th cause of action for Right of publicity torts - DENIED

"The right of publicity protects an individual's right to profit from the commercial value of his or her identity." (Ross v. Roberts (2013) 222 Cal.App.4th 677, 684.) "California recognizes both a common law and statutory right of publicity." (Ibid.) "The common law cause of action may be stated by pleading the defendant's unauthorized use of the plaintiff's identity; the appropriation of the plaintiff's name, voice, likeness, signature, or photograph to the defendant's advantage, commercially or otherwise; and resulting injury. (Id., at pp. 684–685.) "The statutory right, enacted in 1971, was intended to complement this common law right of publicity, " under Civ.

Code § 3344 which states: "Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent ... shall be liable for any damages sustained by the person or persons injured as a result thereof.". (Id., at p. 685; Civ. Code, § 3344, subd. (a).)

The common law right of publicity claim has four elements which include: "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." (Cross v. Facebook, Inc. (2017) 14 Cal.App.5th 190, 208.) To prove the statutory right of publicity claim under Civ. Code § 3344 "a plaintiff must present evidence of all the elements of the common law cause of action and must also prove a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose." (Orthopedic Systems, Inc. v. Schlein (2011) 202 Cal.App.4th 529, 544.)

"Though both celebrities and non-celebrities have the right to be free from the unauthorized exploitation of their names and likenesses, every publication of someone's name or likeness does not give rise to an appropriation action. Publication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it, is not ordinarily actionable." (Dora v. Frontline Video, Inc. (1993) 15 Cal.App.4th 536, 542.) "Public interest attaches to people who by their accomplishments or mode of living create a bona fide attention to their activities." (Ibid.)

"[N]o cause of action will lie for the [p]ublication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it...." (Montana v. San Jose Mercury News, Inc. (1995) 34 Cal.App.4th 790, 793, as modified (May 30, 1995).)

Defendant argues that the Plaintiff is a public figure, and has created attention to his activities, because Plaintiff maintains a YouTube channel with over 559,000 subscribers on which he has posted over 2,500 videos that have amassed over 241,783,000 views. (SSUF, ¶¶ 43–45.) Defendant argues that Plaintiff bringing attention to Plaintiff's activities allows for Defendant to utilize Plaintiff's name, image, and likeness as newsworthy commentary. (SSUF, ¶ 48.) However, Defendant does not provide any admissible evidence that Plaintiff is a public figure, nor that Plaintiff is newsworthy to allow Defendant to use the likeness or image. There is no authentication for the truth of the statements of number of subscribers or views of the YouTube channel. Plaintiff has shown any foundation to the statements are "admissions" by the plaintiff. Thus, Defendant does not meet his initial burden to show that Plaintiff cannot meet an element of his right of publicity claim, nor does Defendant provide a defense to the claim through

admissible evidence.

Defendant's Motion for Summary Adjudication as to the 8th cause of action is DENIED.

********** FINAL TENTATIVE **********

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Gail R. Davidson, CSR# 12823, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

The Court hears oral argument.

The Court adopts the tentative ruling as heard on the record and has been updated above.

Motion for Summary Adjudication to the 1st-7th causes of action is GRANTED.

Motion for Summary Adjudication to the 8th cause of action is DENIED.

Defendant is to prepare a proposed order.

Status Conference RE: ADR and Discovery is scheduled for 12/05/2024 at 08:30 AM in Department O at Santa Monica Courthouse.

Notice is waived.