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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

BRIAN WARNER p/k/a MARILYN MANSON,

Plaintiff,

vs.

EVAN RACHEL WOOD; ASHLEY GORE a/k/a/ ILLMA GORE,

Defendants.

CASE NO. 22STCV07568

PLAINTIFF'S OPPOSITION TO DEFENDANT WOOD'S SPECIAL MOTION TO STRIKE

[Filed concurrently with: Opposition to Gore's anti-SLAPP Motion; King Declaration; Supplemental King Declaration; Berk Declaration; Warner Declaration; Balog Declaration; Weiss Declaration; Meyer Declaration; Kunkel Declaration; B. Gore Declaration; Opposition to Gore's RJN; Objections to Defendants' Evidence; Notice of Lodging; Application to Seal; [Proposed] Order Granting Sealing Application]

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The Hon. Teresa A. Beaudet, Dept. 50

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

State Cases

Federal Cases

State Statutes

Federal Statutes

Secondary Sources

I. INTRODUCTION

Evan Rachel Wood and her on-again, off-again romantic partner Illma Gore engaged in a malicious campaign to cast Wood's ex, Brian Warner, as a rapist and abuser. They recruited, pressured, and coached would-be accusers on specific acts to allege against Warner; forged a letter from a real FBI agent (who has called the letter a "fraud") to create the false appearance that Warner was under FBI investigation and his "victims" were in danger; spread falsehoods to shore up their manufactured narrative, including that Warner is a child pornographer; solicited personal information from Warner's former employees; hacked his online accounts; manufactured evidence that he exchanged illicit pornography; and "swatted" Warner at his home to draw further attention to the falsehoods Wood and Gore conspired to have made against him.

In March 2022, Warner sued Wood and Gore for intentional infliction of emotional distress, defamation, and hacking and impersonation over the internet. Wood responded by filing an anti-SLAPP motion (the "Motion" or "Wood Mot."), claiming that certain aspects of the conspiracy—specifically, portions of two of Warner's four causes of actions, and a litany of allegations—were supposedly First Amendment activity. But her self-serving denials conflict with or side-step Warner's evidence, ignore undisputed allegations and evidence of her co-conspirator Gore's bad acts, and, ultimately, fail to transform the alleged wrongful, illegal acts into something they are not—constitutionally protected activity.

First, Wood cannot strike the portion of Warner's cause of action that arises from the undeniably fake FBI letter. Wood's sole argument for why the letter is "protected activity" relies on a false premise—that Warner's claim arises from filing the letter in her custody case with ex Jamie Bell. While Wood's perjurious statements to California and Tennessee courts provide context, Warner's claim really arises from forging the letter for use outside of the custody case. Evidence shows Wood told third parties the letter was "so important to her work *against Warner*," and neither Wood nor Gore attempt to explain why, if the letter was not distributed outside Wood's case with Bell, Gore was involved at all. Gore has nothing to say about the letter—zero—much less the fact that just before Wood and Gore were exchanging draft language, Gore had been pressuring prospective accusers on behalf of Wood, and the Phoenix Act organization, by

referencing a fictitious FBI investigation of Warner. Even assuming Wood focused on conduct actually underlying Warner's claim, she cannot show it was protected activity because impersonating a federal agent is illegal, and the anti-SLAPP statute does not protect illegal acts. As a separate basis for denial, Warner can make a *prima facie* showing on his claim.

Second, the Court should not strike Warner's cause of action that arises from Wood and Gore's efforts to recruit, pressure, and organize people to make false accusations against Warner. Wood's conclusory assertions do not show the alleged conduct is entitled to protection. Wood cites no evidence to link the alleged acts to any official proceeding or investigation, and incorrectly contends that broadcasting otherwise private disputes (albeit false ones) transforms them into "public issues." As an additional basis to defeat the Motion, Warner can show that at this early stage his claim has at least the "minimal merit" required to proceed.

Third, Wood cannot evade liability for Gore's defamatory statements about Warner. Wood's overbroad contention that any statement concerning alleged abuse automatically triggers anti-SLAPP protection is not supported by any authority. On the merits, all of Wood's arguments ignore she can be held *vicariously* liable for Gore's conduct, and that Warner can show why.

Fourth, regardless of how the Court rules on the other issues raised in Wood's Motion, it should not gut the Complaint by striking large swaths of allegations that provide context and background to causes of action that Wood has not moved to strike.

II. FACTUAL BACKGROUND

Wood and Warner were romantic partners over 12 years ago, when Warner was known for his shock-rocker persona and rock-and-roll lifestyle, and Wood, an actress, was known for being Warner's "wild" partner who, despite having a "healthy, loving" relationship with Warner, "crav[ed] danger and excitement." Compl., ¶ 2. Wood has since attempted to rebrand and distance herself from Warner. *See, e.g., id.*, ¶¶ 3, 16, 23. To that end, she and Gore conspired to recruit and wrongfully cause women to make false public accusations of abuse against him. *See, e.g., id.*, ¶¶ 4-5, 23, 25-31. They weaponized Wood's fame and influence, lies about Warner, and threats of a fictitious FBI investigation to lure in would-be accusers, while engaging in outrageous and illegal acts to implant, secure, distribute, and amplify coordinated falsehoods. *See, e.g., id.*, ¶¶

4, 21-23, 25-31, 32-35, 38-41, 42-50, 51-55, 56-61. While many refused to engage, others did not—some have admitted gaining "***new memories***" of abuse after meeting with Gore and Wood. *See, e.g.*, Kump Ex. 7, ¶¶ 108, 127, Ex. 10, ¶¶ 44, 47 (emphasis added).

III. LEGAL STANDARD

The anti-SLAPP statute provides a procedural remedy to dismiss at an early stage frivolous actions that chill the "valid exercise of the constitutional right of freedom of speech." CCP § 425.16(a). "To determine whether this motion should be granted, the trial court must engage in a two-step process." *Grenier v. Taylor*, 234 Cal. App. 4th 471, 480 (2015) (citing CCP § 425.16(b)(1)). The Court first decides whether the defendant has shown that the anti-SLAPP statute applies. CCP § 425.16(b)(1). "[S]ection 425.16 requires every defendant seeking its protection to demonstrate" that "the defendant's conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e)." *Equilon Enterprises v. Consumer Cause*, *Inc.*, 29 Cal. 4th 53, 66 (2002). If the defendant "fail[s] to make a threshold showing that the causes of action arose from protected activity" there is "no need to address the second step of the anti-SLAPP inquiry"—the motion is denied. *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 819 (2011).

Only if the defendant satisfies the first prong does the Court determine whether the plaintiff can demonstrate a "probability" of success. CCP § 425.16(b)(1). "[A]ll that a plaintiff must do to defeat an anti-SLAPP motion is to establish the claim has minimal merit." *Grenier*, 234 Cal. App. 4th at 486. To that end, courts "accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." *Comstock v. Aber*, 212 Cal. App. 4th 931, 947 (2012). Courts may "not weigh the credibility or comparative probative strength of competing evidence," *Gruber v. Gruber*, 48 Cal. App. 5th 529, 537 (2020), and are 'required to 'draw every legitimate favorable inference from the plaintiff's evidence,'" *Kinsella v. Kinsella*, 45 Cal. App. 5th 442, 462 (2020). "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002) (emphasis in original).

IV. ARGUMENT

A. The Court should not strike matter related to the fake FBI letter.

1. Wood does not show Warner's claim arises from "protected activity."

Wood argues the acts giving rise to Warner's claim are "protected" under §§ 425.16(e)(1) and (2)—*i.e.*, they are writings made in "judicial proceedings" or in connection with "official proceedings." Wood Mot. at 13. But this relies on a false premise—that the claim is "based on a declaration filed in a parentage action" which "attached a purportedly fabricated letter from the FBI." *Id.* at 1; *see also id.* at 13 ("Filing the FBI Letter in a parentage action is protected activity."). The claim actually arises from falsifying FBI correspondence to use outside of Wood's custody proceeding with Bell, and Wood makes no attempt to show *this* activity is protected—nor can she, as alleged illegal conduct is not protected under the anti-SLAPP statute.

(a) Wood focuses on the wrong conduct.

Wood cannot strike a claim by misidentifying the acts upon which it is based. *See Ratcliff v. The Roman Cath. Archbishop of Los Angeles*, 79 Cal. App. 5th 982, 1008-09 (2022) (defendant "ignore[d] allegations in its effort to squeeze plaintiffs' negligence cause of action into something fitting its preferred contention regarding protected speech"). While there is no dispute Wood filed the letter in court, Compl., ¶ 36, Warner's claim does not arise from that act. *Park v. Bd. of Trustees of California State Univ.*, 2 Cal. 5th 1057, 1063 (2017) ("[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.") (quotation omitted); *see also Baral v. Schnitt*, 1 Cal. 5th 376, 394 (2016) ("Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute."). Rather, the challenged portion of Warner's First Cause of Action arises from "forging and distributing a fictitious letter" from a real FBI agent. Compl., ¶ 4; *see also id.*, ¶¶ 63(c), 32-35, 37.

The self-serving statement in Wood's declaration that she "did not distribute the FBI letter outside the scope of [her] custody dispute" is not dispositive of any issue in the Motion, Wood Decl., ¶ 22, as the Court of Appeal recently emphasized: "A defendant's declaration denying that he or she engaged in the conduct alleged in the complaint does not foreclose the possibility that a

fact finder could later find that he or she did in fact engage in that conduct. Foreclosing an anti-SLAPP motion based upon one version of the facts would irrationally and unfairly disregard this possibility." *Belen v. Ryan Seacrest Prods., LLC*, 65 Cal. App. 5th 1145, 1160 (2021).

Nor may the Court disregard or discount evidence or inferences supplied by Warner that conflict with Wood's account. *See Gruber*, 48 Cal. App. at 537; *Kinsella*, 45 Cal. App. 5th at 462; *Ralphs Grocery Co. v. Victory Consultants, Inc.*, 17 Cal. App. 5th 245, 266 n.7 (2017). Wood told a third party that "the letter was so important to her work ***against Warner***," which directly contradicts her suggestion that it was ***only*** used in her custody proceeding with Bell. B. Gore Decl., ¶ 25 (emphasis added). Indeed, there can be no dispute the letter is a forgery—the purported signatory has called it a "fraud." Berk Decl., ¶ 5. Copies of the letter were found on Gore's former iPad (B. Gore Ex. B), and around the time Gore referenced a fictitious FBI investigation of Warner to recruit potential accusers to join her and Wood (King Exs. D, R, S; Meyer Decl., ¶¶ 9-10), Gore and Wood (aka "Alabama") drafted language for the letter (B. Gore Decl., ¶¶ 13-15, Ex. A), a copy of the letter (later deleted by Wood) had Gore's name on it (King Ex. A at 26-27 (¶ 14)), and Gore was holding herself out as being involved with the letter (Meyer Decl., ¶ 20 & Ex. G). Gore's undisputed participation alone refutes Wood's suggestion that the letter was not distributed "outside the scope of [her] custody dispute" with Bell. On this record, it would be improper to credit Wood's declaration and conclude as Wood urges—before any discovery has been taken—that the letter "never saw the light of day." Order, Sept. 27, 2022, at 8.

(b) Wood does not demonstrate that impersonating an FBI agent as alleged is protected activity.

Because Warner's claim does not arise from "filing the FBI Letter in a parentage action," subdivisions (e)(1) and (e)(2), which cover statements made to a court, do not apply. Wood Mot. at 13-14. And Wood does not attempt to "demonstrate" that the actual conduct at issue "falls within" (e)(3) or (e)(4). *Equilon*, 29 Cal. 4th at 66. Wood states in passing that "[t]he FBI letter" and related communications "also constitute protected activity for the reasons discussed in Section V.A." Wood Mot. at 14. But Section V.A says nothing about the fake FBI letter, *id.* at 17-19, and because Wood "do[es] not explain why" the conduct at issue "constitute[s] protected activity," she

fails on step one. *Turnbull v. Lucerne Valley Unified Sch. Dist.*, 24 Cal. App. 5th 522, 535 (2018); *see also Flatley v. Mauro*, 39 Cal. 4th 299, 317 (2006) ("[C]ourts do more than simply rubber stamp such assertions before moving on to the second step."). As Wood's "primary argument" is she did "not engage" in the acts alleged, her Motion is not "guarding" one "engag[ing] in" protected activity. *Ralphs*, 17 Cal. App. 5th at 266 n.8 (MSJ is "more appropriate[]" tool).

(c) The illegal acts alleged are not "protected activity."

The alleged conduct also does not satisfy the first step because, "[t]o the extent [Warner] alleges criminal conduct, there is no protected activity as defined by the anti-SLAPP statute." *Gerbosi v. Gaims, Weil, W. & Epstein, LLP*, 193 Cal. App. 4th 435, 445 (2011); *Lefebvre v. Lefebvre*, 199 Cal. App. 4th 696, 706 (2011) ("illegal activity" is "not a constitutionally protected exercise of the right of petition or free speech"). The critical question is whether Warner's claim "is based on alleged criminal activity," not whether Wood agrees she engaged in that activity. *Gerbosi*, 193 Cal. App. 4th at 445. "[M]erits based arguments have no place in [the] threshold analysis of whether plaintiffs' causes of action arise from protected activity." *Sprengel v. Zbylut*, 241 Cal. App. 4th 140, 156 (2015); *Gerbosi*, 193 Cal. App. 4th at 447 (stating that while a plaintiff may have "winning defenses to [the] causes of action alleging criminal activity . . . those defenses must be established by a procedural tool other than the anti-SLAPP motion procedure").

Gerbosi is on point. There, plaintiff sued a law firm for various claims arising out of the firm's alleged wiretapping. 193 Cal. App. 4th at 445. The firm argued "it satisfied the first step of the anti-SLAPP procedure" because "its evidence showed it did not do the acts that [plaintiff] alleges it did," and thus the conduct was not "conclusively" illegal. *Id.* at 446. The Court disagreed. *Id.* "***A showing that a defendant did not do an alleged activity is not a showing that the alleged activity is a protected activity***." *Id.* The focus must be on whether the conduct alleged is illegal, lest a defendant accused of even undisputedly illegal activity could simply "deny[] [the] allegation," thereby "eviscerat[ing] the first step of the two-step inquiry." *Id.*

Focusing on the conduct alleged, rather than Wood's self-serving denials, there can be no dispute that forgery and impersonation of a federal agent is conclusively illegal under multiple criminal statutes. *Flatley*, 39 Cal. 4th at 320. It is a federal crime to "falsely assume[] or pretend[]

to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof," regardless of the claimed purpose. 18 U.S.C. § 912; *United States v. Wade*, 962 F.3d 1004, 1011 (7th Cir. 2020) ("[A]n intent to defraud or deceive is not a separate element of § 912."). "False personation" and "forgery" are also crimes under California law. *See* Penal Code §§ 529, 470. If anything, Wood's assertion that she did not "fabricate or forge the FBI letter" and "believed it to be authentic," Wood Decl., ¶ 22, "is more suited to the second step of a[n] anti-SLAPP motion," not the first. *Gerbosi*, 193 Cal. App. 4th at 446.[1]

2. Warner can demonstrate a probability of success on the merits.

While Wood's attempt to strike this claim fails without ever reaching the second step, Warner can show at least the "minimal merit" required to proceed. *Navellier*, 29 Cal. 4th at 89.

(a) The "litigation privilege" does not apply.

Wood's argument that the "litigation privilege," Civ. Code § 47(b), prohibits any claim based on the fake FBI letter, Wood Mot. at 15-16, is wrong for at least two reasons.

First, Wood's argument misidentifies the acts underlying Warner's claim. *Id*. at 15 ("Wood's declaration attaching the FBI Letter was filed in a parentage action . . . [and] [t]hus, they are 'absolutely immune from tort liability' by the litigation privilege."); *see also Chen v. Berenjian*, 33 Cal. App. 5th 811, 821 (2019) (privilege did not apply where "the agreement to defraud," not "filing the sham complaint," was "the gravamen of [the] fraudulent transfer cause of action"). Warner's claim is not based on a "publication or broadcast . . . [i]n [a] . . . judicial proceeding," Civ. Code § 47(b), and giving Warner's evidence and inferences their due weight, it would be improper to conclude, based on Wood's declaration alone, that the letter "never saw the light of day." Order, Sept. 27, 2022, at 8; *see also supra*, § IV.A.1(a).

Second, even if Wood did focus on the right acts, the cases she cites make clear that an illegal act of forgery is not immunized merely by submitting the forged document in an official

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[1] Contrary to Wood's contention, Wood Mot. at 14, the "litigation privilege" is "irrelevant for purposes of the first step of the anti-SLAPP procedure." *Lefebvre*, 199 Cal. App. 4th at 705; *see also Garretson v. Post*, 156 Cal. App. 4th 1508, 1517 (2007) ("[W]e reject the broad conclusion that conduct deemed communicative for purposes of Civil Code section 47 automatically qualifies as constitutionally protected speech under section 425.16.").

proceeding. Wood Mot. at 15-16. In each case, a forgery was created for, or arose out of, that proceeding. *Id.* The case *Pettit v. Levy*, 28 Cal. App. 3d 484 (1972) is illustrative. There, defendants altered plaintiffs' building permits and submitted them to the City of Fresno so the City would deny plaintiffs' requested zoning variance. *Id.* at 487-88. For purposes of Section 47(b), the Court of Appeal did not separate the act of forgery from the harm caused by the City's denial of the variance, but only because the "***only acts alleged to have been done*** pursuant to the conspiracy are the preparation and submission of a false or forged building permit to the City":

> [The] complaint herein does not allege, nor have appellants contended at any stage of this case, that there was any publication or use of the false or forged permit ***other than in connection with the proceedings before the Fresno City Planning Commission and City Council***. Nor do they allege that any damage resulted other than by the denial of a zoning variance to them by reason of its use before those bodies. Our decision herein is necessarily limited to those alleged facts.

Id. To the contrary, Warner's Complaint does not ***only*** reference Wood's custody proceeding, but also that the fake FBI letter and investigation was one of many tactics to recruit, coordinate, and pressure false accusers. *See, e.g.,* Compl., ¶¶ 4, 37; *see also id.*, ¶¶ 23, 28. These allegations are supported at this early stage by a *prima facie* showing of evidence. *Supra*, § IV.A.1.

(b) Warner's IIED claim has sufficient merit to proceed.

Warner defeats the Motion by making a *prima facie* showing that "(1) the defendant engaged in extreme and outrageous conduct with the intention of causing, or reckless disregard of the probability of causing, severe emotional distress to the plaintiff; (2) the plaintiff actually suffered severe or extreme emotional distress; and (3) the outrageous conduct was the actual and proximate cause of the emotional distress." *Ross v. Creel Printing & Publ'g Co.*, 100 Cal. App. 4th 736, 744-45 (2002) (internal citations omitted). Warner can also show a false statement of fact, which Wood contends applies to "public figure" plaintiffs. Wood Mot. at 17.

Outrageous conduct. The letter and its contents are fake. Berk Decl., ¶ 5; Meyer Decl., ¶¶ 15-26; B. Gore Decl., ¶¶ 5-6, 25. The acts alleged—impersonating a federal agent, forging a document from that agent, and using the forgery to back-up a fictitious investigation—are plainly outrageous. Not even Wood argues otherwise. *See* Wood Mot. at 16. Her declaration denying involvement is not dispositive, especially in light of evidence suggesting the opposite. *Ralphs*, 17

Cal. App. 5th at 266 n.7; *Belen*, 65 Cal. App. 5th at 1160.[2]

Intentional/reckless conduct. Wood *at the very least* acted recklessly. Multiple people confronted Wood about the letter's glaring inaccuracies, yet she failed to reveal the truth because, as she told one such person, "the letter was so important to her work ***against Warner***." B. Gore Decl., ¶ 25 (emphasis added). Wood argues she "did not *file* the FBI Letter to cause Warner distress," but, again, she focuses on the wrong acts. Wood Mot. at 16-17 (emphasis added). Despite her claim that she "did not distribute the FBI letter outside the scope of [her] custody dispute," Wood Decl., ¶ 22, there is ample evidence to the contrary. *Supra*, § IV.A.1(a).

False statement. The fake FBI letter contained numerous false statements—most obviously that it was drafted and signed by FBI Agent Langer, which it was not. *See* Berk Decl., ¶ 5; *see also* Meyer Decl., ¶¶ 14-27; King Decl., ¶¶ 4-6; B. Gore Decl., ¶¶ 5-6, 25.

Emotional distress. Warner provided a sworn declaration that he suffered severe emotional distress caused by Wood's wrongful conspiracy, which included forging the FBI letter. *See* Warner Decl., ¶¶ 8-11; *Belen*, 65 Cal. App. 5th at 1165 (plaintiff's affidavit sufficient to make *prima facie* showing on second and third elements); *see also Godfrey v. Steinpress*, 128 Cal. App. 3d 154, 173 (1982) ("[T]he court determines whether severe emotional distress can be found; the jury determines whether on the evidence it has, in fact, existed.").

B. The Court should not strike any portion of the Complaint that arises from recruiting, coordinating, and pressuring prospective accusers.

1. Wood does not show that the alleged acts are protected activity.

None of Wood's arguments demonstrate that recruiting, coordinating, and pressuring people to make false accusations about Warner, as alleged, is protected First Amendment activity. Wood Mot. at 17-19 (citing CCP § 425.16(e)(2)-(4)).

First, Wood's cases do not stand for the proposition that *any* statement about "domestic violence and abuse" is automatically "protected activity," Wood Mot. at 18:

- Unlike in *M.G. v. Time Warner, Inc.*, 89 Cal. App. 4th 623 (2001), the communications

[2] Wood's declaration side-steps obvious questions concerning the letter—who she "received" it from and when; why she was involved in drafting it; and what, if any, connection she "believe[d]" it had to unspecified "investigations" that she references. *See* Wood Mot. at 16.

here did not concern domestic violence as a general topic—they were specifically about Warner. *See Dual Diagnosis Treatment Ctr., Inc. v. Buschel*, 6 Cal. App. 5th 1098, 1106 (2016) ("Given the focused nature of the statements at issue in this case, Buschel's reliance on *M.G.* . . . is misplaced.").

- Unlike in *Sipple v. Found. for Nat'l Progress*, 71 Cal. App. 4th 226 (1999), Warner did not invite public comment regarding his own moral superiority. *See Albanese v. Menounos*, 218 Cal. App. 4th 923, 936 (2013) (distinguishing *Sipple* because "[t]here was no similar evidence in this case that [plaintiff], for example, by publicly promoting her own moral superiority had invited public comment").

- Unlike in *Cross v. Cooper*, 197 Cal. App. 4th 357 (2011), the communications did not serve to "alert" or "protect" anyone given that they were with people alleged to have already been abused by Warner. *Id.* at 375.

In any event, "a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." *Weinberg v. Feisel*, 110 Cal. App. 4th 1122, 1133 (2003).

Second, while Wood references "criminal investigations by the FBI and L.A. County Sherriff's Department," she offers nothing to show that the alleged conduct actually occurred "in anticipation of, or in connection with" those investigations, as she asserts. Wood Mot. at 18; *Turnbull*, 24 Cal. App. 5th at 534 (conclusory affidavits do not demonstrate protected activity).

Third, Wood offers nothing to show the alleged conduct was "in connection with issues under legislative review." Wood Mot. at 19. Nor can she—by late 2019 the "Phoenix Act" bill was already signed into law. *See* Ziemianek Decl., ¶ 4.

Fourth, contrary to Wood's assertion, every conversation about a celebrity is not necessarily of "public interest." Wood Mot. at 19; *Albanese*, 218 Cal. App. 4th at 936 (rejecting argument that "any statement about a person in the public eye is a matter of public interest").

Fifth, while Wood suggests her communicated falsehoods were later repeated in civil complaints against Warner, and thus are protected under (e)(1) or (2), Wood Mot. at 19, it is undisputed that *Wood's* statements were neither "before a . . . judicial proceeding" nor, when made, "under consideration or review by . . . a judicial body." CCP § 425.16(e)(1), (2).

2. Warner can establish a probability of success on his claim.

Warner can make at least a *prima facie* showing on his IIED cause of action, defeating

Wood's motion. *See supra*, § IV.A.2(b) (elements of IIED claim).

Outrageous conduct. Warner's denial of the alleged abuse is sufficient to show that false accusations of the same are outrageous. *Siam v. Kizilbash*, 130 Cal. App. 4th 1563, 1582 (2005).

[redacted] King Ex. I. Purportedly on behalf of Wood and her Phoenix Act organization, Gore dangled proximity to Wood, defamatory statements about "child pornography," and a fictitious FBI investigation, to encourage participation. *See, e.g.*, King Exs. D, J, R, S; Balog Ex. A. Some resisted, but others did not. Indeed, some of those dragooned admitted gaining "new memories" of abuse after they met with Gore and Wood. *See, e.g.*, Kump Ex. 7, ¶¶ 108, 127; Kump Ex. 10, ¶¶ 44, 47. And many of their allegations are strikingly similar—no wonder why. *See* B. Gore Exs. D-E (checklists and script); King Ex. U (draft statement received by Gore before coordinated attack on 2/1/21).

It would be improper to conclude now, as a matter of law, that Wood's conduct, as alleged—recruiting, coordinating, and pressuring people to lie that Warner abused them (*see* Gore Mot. at 9-10)—was *not* outrageous. *See Plotnik v. Meihaus*, 208 Cal. App. 4th 1590, 1613-14 (2012). *Comstock*, the only case cited by Wood, is distinguishable on several key facts. 212 Cal. App. 4th at 949-50, 954 (employee reported alleged sexual assault by a coworker to her HR department and a nurse, and alleged attacker did not deny the assault). And Wood's self-serving testimony that she never "pressured" anyone, Wood Mot. at 19, is not coextensive with the claim that she also recruited and coordinated them—or permitted Gore to. *Ralphs*, 17 Cal App. 5th at 266 n.8 (defendant's evidence must "negate" plaintiff's evidence "as a matter of law").

Intentional/reckless conduct. Wood, and Gore acting on Wood's behalf, started from the assumption that the people recruited were, in fact, "victims." *See, e.g.*, Wood Decl., ¶ 14 ("I met with some of the other *victims* of Mr. Warner."); King Ex. J (Gore message to Ashley Walters wanting "standard protocol for reaching out to *victims*")[3]; Balog Decl., ¶ 4 & Ex. A ("We were

[3] Gore solicited, and Walters provided, personal and confidential information—such as Warner's email and social media login credentials—that Walters was entrusted with when working as Warner's personal assistant. *See, e.g.*, King Exs. W, X.

organizing a group of people . . . to talk about experiences they had that might be *similar to yours*."); King Ex. D ("I just wanted to reach out and say there is a group of survivors of violence here with *similar experiences*.") (all emphasis added). This was false. *See, e.g.*, Warner Decl., ¶¶ 2-3; Balog Decl., ¶¶ 7-8; Kump Ex. 7, ¶¶ 108, 127-28; Kump Ex. 10, ¶¶ 44, 47. It was against Wood's interest to confirm these people were *not* abused. *See* Compl., ¶ 23.[4]

False statement. Wood is wrong that "Warner cannot identify any false statement of fact made by Wood." Wood Mot. at 20. While there is no dispute Wood discussed her own alleged abuse by Warner with his "*other victims*," *id.* at 8; Wood Decl., ¶14, Warner offers evidence these statements are false. Warner Decl., ¶¶ 2-3; *see also supra*, § IV.A.2(b); *infra*, § IV.C.2.

Emotional distress. Warner provided a sworn declaration stating that he suffered severe emotional distress caused by Wood's wrongful conduct, which included recruiting, organizing, and pressuring prospective accusers to come forward with false accusations. *See* Warner Decl., ¶¶ 8-11; *Belen*, 65 Cal. App. 5th at 1165; *see also Godfrey*, 128 Cal. App. 3d at 173.

Gore's misconduct on behalf of Wood and the Phoenix Act separately makes Wood liable under principles of vicarious liability, *e.g.*, principal/agent. *See* Restatement (Third) Of Agency § 7.03 (2006); Balog Ex. A (acting for Wood, Phoenix Act); King Exs. D, R, S (same); B. Gore Ex. F (Gore worked for Phoenix Act "to make money").

C. The Court should not strike any portion of the Complaint that arises from Gore's defamatory statements about "Groupie".

1. Wood cannot establish that the defamatory statements about "Groupie" were protected activity.

Wood's shotgun arguments do not demonstrate that calling Warner a child pornographer is "protected activity." Wood Mot. at 20-21; *Turnbull*, 24 Cal. App. 5th at 534. Wood offers nothing to show Gore's defamatory statements were made "in connection with legislative reforms,

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[4] Wood's intentional or reckless disregard for the truth sinks her reliance on Civ. Code § 47(c). Wood Mot. at 20. "Malice" in this context is "established by a showing that the publication was motivated by hatred or ill will toward the plaintiff or by a showing that the defendant lacked reasonable grounds for belief in the truth of the publication." *Hailstone v. Martinez*, 169 Cal. App. 4th 728, 740 (2008) ("If malice is shown, the privilege is not merely overcome, it never arises."). Separately, those who gained "new memories" of abuse could not have had a "common interest" to "process[] the abuse" as Wood claims. Wood Mot. at 20.

criminal investigations, and civil litigation." *Id*. Nor does Wood attempt to explain how statements about a never-released, fifteen-year-old film "concern[ed] a matter of public interest." *Id*. She fails to cite any authority supporting her contention that false allegations of illegal conduct are necessarily "protected activity" if they concern "a public figure." *Id*. Nor can she show Gore's statements, "alerted" or "protected" anyone (they did not), like in *Cross* or *Terry*. *Id.* Gore's statements were not about the general topic of "child molestation," like in *M.G.*, but about specific people. *See, e.g.*, Meyer Decl., ¶ 10. Nothing in Wood's Motion warrants moving past the first step. *Musero v. Creative Artists Agency, LLC*, 72 Cal. App. 5th 802, 823 (2021) ("Because [defendants] did not carry their threshold burden under section 425.16, we need not consider whether [plaintiff] demonstrated a probability of prevailing on the merits of any of his claims[.]").

2. Warner can show his claims have at least "minimal merit."

Wood is wrong that "Warner cannot sue Wood for defamation [or IIED] based on statements that Wood did not make." Wood Mot. at 21. She ignores that "liability for libel may be imposed on a conspiracy theory." *Sheppard v. Freeman*, 67 Cal. App. 4th 339, 348-49 (1998) (terminated employee stated libel claim against coworkers, even though complaint alleged that only one coworker had published libelous statement). "The doctrine is one of vicarious liability; each member of the conspiracy becomes liable for all acts done by others pursuant to the conspiracy." *Spencer v. Mowat*, 46 Cal. App. 5th 1024, 1036 (2020).

Each of Wood's arguments that Warner cannot establish various elements of his claims against her has nothing to do with vicarious liability. *See* Wood Mot. at 21-22. For Wood to be liable for Gore's misconduct, Warner need only show "(1) formation and operation of the conspiracy; (2) wrongful conduct in furtherance of the conspiracy; and (3) damages arising from the wrongful conduct." *Spencer*, 46 Cal. App. 5th at 1037.[5]

Formation/operation. "Due to the secret nature of conspiracies, their existence is often inferentially and circumstantially derived from the character of the acts done, the relations of the

[5] Wood is also liable under other theories of vicarious liability, *e.g.*, principal/agent. *See* Restatement (Third) Of Agency § 7.03 (2006); King Ex. D (referencing Wood and Phoenix Act); B. Gore Ex. F (Gore worked for Phoenix Act "to make money").

parties, and other facts and circumstances suggestive of concerted action." *Id.* [redacted] *See, e.g.*, King Ex. D, Ex. F at 34:10-11, 34:23-35:1, 35:17-36:18, 110:2-5, 111:2-5, 111:11-15. Wood was "speak[ing] about the [G]roupie video" with Gore around this time, [redacted] King Ex. D, Ex. F at 34:13-15. [redacted] *Id.* at 95:11-13, 95:25-96:4. [redacted] *Id*. at 86:15-87:18. Rather than correct this misimpression, Wood condoned it, including by allowing clips from "Groupie" and misleading excerpts from "Dinner for Five" to be used in her movie, to amplify the same falsehood. *See* Wood Decl., ¶ 24 (citing Wood Ex. 4).

Wrongful conduct. Gore defamed Warner to prospective accusers. *See, e.g.*, Meyer Decl., ¶ 10; King Ex. D; King Ex. F at 34:2-15. Neither Wood nor Gore dispute what Gore said.

Damages. False accusations of a crime—*e.g.*, sexual assault of a minor—are libelous *per se*, and thus injury is presumed. *Barnes-Hind, Inc. v. Superior Ct.*, 181 Cal. App. 3d 377, 382, 385 (1986); *Grenier*, 234 Cal. App. 4th at 486 ("False statements that accuse the plaintiff of criminal conduct are defamatory on their face."). Warner has also established harm caused by the conspiracy. *See* Warner Decl., ¶¶ 8-11.

The claims concerning "Groupie" name Wood *and Gore* as defendants. Wood appears to request that the Court strike these claims against both her *and Gore*—but only on the grounds that Wood did not make a defamatory statement. *See* Wood Not. of Mot. at 2 (moving to "strike Warner's claims based on purportedly false and defamatory statements," including "Paragraph 64(d) of the First Cause of Action" and "the Second Cause of Action"). Nowhere does Wood attempt to show that the claims as against Gore lack merit. *See* Wood Mot. at 21-22.

D. The Court should not strike allegations that provide context to other claims.

Wood asks the Court to strike many allegations in addition to portions of two causes of action. Wood Notice of Mot. at 1-2; Kump Decl., ¶ 3, Ex. 5. These allegations should not be stricken, regardless of how the Court rules on the other issues.

First, while Wood states that allegations "based on the FBI Letter, [her] communications with other victims, and the alleged defamation must be stricken," Wood Mot. at 13, she fails to establish all these allegations arise from protected activity *and* "supply elements of the challenged claim[s]." *Park v. Bd. of Trustees of California State Univ.*, 2 Cal. 5th 1057, 1063 (2017).

Second, these allegations cannot be stricken because they provide context and background for the other causes of action that Wood does not seek to strike. *See Baral v. Schnitt*, 1 Cal. 5th 376, 394 (2016) ("Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute."). Allegations describing acts done to further Gore and Wood's campaign against Warner supply background and context for the causes of action arising from hacking, "swatting," and impersonation of Warner, which are not challenged in the Motion. *See* Compl., ¶¶ 1, 4-5, 38, 41, 49-50, 63(a), 63(b), 76, 85. Given that neither Wood nor Gore challenge these other claims, background or conspiracy allegations cannot be stricken even if they concern "protected activity." *See Spencer*, 46 Cal. App. 5th at 1037-40 ("When a tort cause of action is asserted on a conspiracy theory . . . the tort itself that controls, not individual acts that demonstrate the existence of a conspiracy.").

Third, Wood cannot strike all allegations concerning the fake FBI letter because the claim arising therefrom will remain against Gore, regardless of the outcome of Wood's motion. *See* Order, Sept. 27, 2022, at 8 ("Gore's special motion to strike does not concern the 'FBI Letter.'"). More generally, the other allegations Wood seeks to strike "provide context" to the FBI letter claim against Gore, and thus they too "cannot be stricken." *Baral*, 1 Cal. 5th at 394; *see also Spencer*, 46 Cal. App. 5th at 1037-40.

V. CONCLUSION

Because Wood cannot demonstrate that any of the challenged causes of action arose from "protected activity," and, even if she could, Warner's claims have at least "minimal merit," Wood's anti-SLAPP motion should be denied.

DATED: November 15, 2022

Respectfully submitted,

KING, HOLMES, PATERNO & SORIANO, LLP

By: */s/ Howard E. King*
HOWARD E. KING
Attorneys for Plaintiff Brian Warner p/k/a Marilyn Manson

PROOF OF SERVICE

Brian Warner p/k/a Marilyn Manson v. Evelyn Rachel Wood, et al.
Case No. 22STCV07568

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, Twenty-Fifth Floor, Los Angeles, CA 90067-4506.

On November 15, 2022, I served true copies of the following document(s) described as **PLAINTIFF'S OPPOSITION TO DEFENDANT WOOD'S SPECIAL MOTION TO STRIKE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Eweinberger@khpslaw.com to the persons at the e-mail addresses listed in the Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 15, 2022, at Los Angeles, California.

/s/ Eniko Weinberger
Eniko Weinberger

SERVICE LIST
Brian Warner p/k/a Marilyn Manson v. Evelyn Rachel Wood, et al.
Case No. 22STCV07568

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