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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,

v.

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

Defendants.

Case No. 22STCV07568

DEFENDANT ASHLEY GORE'S REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE COMPLAINT ("ANTI-SLAPP")

Date: December 1, 2022
Time: 10:00 a.m.
Dept. 50
Hon. Teresa A. Beaudet

Action Filed: March 2, 2022

I. INTRODUCTION

In the course of Defendant Illma Gore's work to pass the Phoenix Act and on the documentary *Phoenix Rising,* she spoke numerous women, connecting some with other domestic violence survivors and/or law enforcement. Plaintiff Brian Warner's *ad hominem* attacks, sarcasm, and distortions of "evidence" do not change these, which are fatal to his claims. This Court should grant Gore's anti-SLAPP motion, and reject Warner's effort to weaponize the court system to intimidate and silence Gore for supporting domestic violence survivors.

Warner's Opposition proves that his elaborate conspiracy theories about Gore are baseless. He offers no evidence of a single woman recruited, pressured, or coerced by Gore to make accusations against him. Instead, the communications he offers from Gore explicitly stated there was no pressure to participate in the survivors' support group. That Warner is distressed over facing multiple civil lawsuits and a criminal investigation is not a valid basis for his intentional infliction of emotional distress ("IIED") claim against Gore. This action should not continue to provide a forum for Warner and his attorneys' PR campaign to detract attention from those suits and investigation, and to ward off bad press from *Phoenix Rising*.

Warner's claims based on *Groupie* are equally meritless. There is no evidence—and certainly not clear and convincing evidence—that Gore made any knowingly false statements concerning Warner's unreleased film entitled *Groupie*. Each of Gore's statements concerning *Groupie* are about Jeanette Polard, the person she believes starred in *Groupie.* Warner does not dispute that Polard was underage in 1996 (the year *Groupie* was filmed) and that Polard committed suicide well before Gore made the statements. Gore made no statements about Warner's friend Paula Weiss—who first claimed to be the *Groupie* actress in 2021, *after* his accusers came forward. Weiss' declaration is inadmissible to prove who starred in *Groupie* (or anything else about it), since the video exists and is the best evidence of its contents.

More importantly, there is no evidence that Gore doubted (or had any reason to

doubt) that any of the statements she made about *Groupie* were true, much less that she acted with the actual malice necessary to defame a public figure. Gore's belief that *Groupie* depicts illegal content was based primarily on *Plaintiff's own statements* (that *Groupie* was never released out of fear of criminal prosecution), as well as discussions with Ms. Polard's relative and survivors who had seen the film. Warner cultivated his "shock-rocker" Marilyn Manson persona with years of lewd acts (like urinating on a deaf 17-year-old fan) and violent imagery – he cannot now complain that Gore believed he was capable of conduct entirely consistent with that persona.

Warner's lawsuit against Gore is a classic example of why the anti-SLAPP statute exists: to prevent powerful litigants from abusing the court system for purposes of harassment.[1] Gore's motion should be granted, and her attorneys' fees awarded.

II. THE ANTI-SLAPP STATUTE PROHIBITS WARNER'S IIED CLAIM BASED ON GORE'S OUTREACH TO HIS POTENTIAL VICTIMS.

A. Inviting Women to Participate in a Domestic Violence Support Group in Connection With the Phoenix Act and *Phoenix Rising* Documentary Is Absolutely Protected Conduct Under the Anti-SLAPP Statute.

Plaintiff's Complaint—which controls for this motion, despite his efforts to rewrite it in his Opposition[2] —admits the claims at issue in Gore's motion arise from her outreach work for the Phoenix Act and *Phoenix Rising*, giving her conduct "operative effect" and supplying an "element of his claim[s]." *See, e.g.*, Compl. at 6:3-5 (acknowledging Phoenix Act was a "survivor-led nonprofit . . . that works to end the cycle of domestic violence through *organizing* and passing legislation across the country."); Compl. at 7:21-8:16 & ¶¶ 25-27 (acknowledging Phoenix Act organized meetings with Warner's accusers to

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[1] Warner's attorneys disingenuously suggest Gore's filing of the anti-SLAPP motion somehow concedes the Complaint's other baseless allegations. (Opp. at 1:13-17.) As they know, an anti-SLAPP motion must be brought first. His other meritless claims will be addressed later. Notably, the only apparent violations of the California Computer Fraud & Abuse Act on the record are by his declarant Bryton Gore. *See* Declaration of Paul Zeniewicz at ¶¶ 2-3, Exs. A, B.

[2] Plaintiffs cannot "subvert or avoid a ruling on anti-SLAPP motion by amending the challenged complaint." CCP § 425.16(b)(2); *Contreras v. Dowling*, 5 Cal. App. 5th 394, 411-12 (2016).

meet and share their stories, some of which are featured in *Phoenix Rising*); *id.* ¶ 63(e); *see also Bonni v. St. Joseph Health System*, 11 Cal.5th 995, 1018 (2021). This alone satisfies the first prong of the Anti-SLAPP statute.

Plaintiff's "evidence" in support of the IIED claim further confirms that all of Gore's outreach was either in connection with the Phoenix Act, or in preparation for the support group meeting featured in *Phoenix Rising. See* King Decl., Ex. H (message to McGaffigan explicitly stating it was in connection with the Phoenix Act), Ex. J (unidentified message discussing victim outreach protocol in connection with documentary); Meyer Decl. Ex. A, Balog Decl. ¶ 4, Ex. A; Wood Decl. ¶ 24, Ex. 4; *see also FilmOn.com, Inc. v. DoubleVerify*, 7 Cal. 5th 133, 140 (2019) (context of statements relevant to anti-SLAPP analysis). Gore's outreach efforts are protected activity in connection with and in "furtherance of exercising a constitutional right" that advanced her "ability to speak or petition on matters of public concern." Code Civ. Proc. § 425.16(b), (e); *Bonni*, 11 Cal. 5th at 1022; *Ojjeh v. Brown*, 43 Cal. App. 5th 1027, 1043-44 (2019) (defendants' conduct "in preparing to exercise their right to free speech on a matter of public significance" was protected, including discussing "how the [documentary] might best generate sympathy" for Syrian refugees, and inviting "persons to share their stories" in an online journal, and gathering interview footage of individuals the crisis affected).

Warner erroneously claims Gore focuses on the "wrong acts." Opp. at 12. But the Complaint and Opposition confirm the acts at issue are Gore's *communications* with victims which Warner falsely characterized as "recruiting, pressuring, and coordinating." Just as in *Ojjeh*, Gore's work in preparing a documentary "for a public audience" that would "raise public awareness" about Warner's abuse of women, to be featured in *Phoenix Rising,* was "directly related to" the issue of supporting abuse victims and raising awareness of the allegations against Plaintiff, making them protected.[3]

[3] Unlike the Plaintiffs in *Sipple v. Found. for Nat'l Progress,* 71 Cal. App. 4th 226 (1999) and *Albanese v. Menounos,* 218 Cal. App. 4th 923 (2013), Warner is an "all-purpose"

B. The IIED Claim Based on Alleged Coercion of Victims Is Meritless.

Warner provides no evidence whatsoever that Gore (or Wood) "recruited, organized, and pressured" women to make "false" accusations against him.[4] Instead, the evidence shows Gore invited women to participate in a support group meeting and specifically stated there is "no pressure" to participate. *See* Balog Decl. ¶ 4, Ex. A (Gore inviting Balog to a supportive group discussion related to the Phoenix Act and stating there was no obligation to participate); King Decl. Ex. H at 1, 3 (Gore inviting Kathryn McGaffigan to participate in a survivor's group discussion, but stated "there's no pressure to be involved in anyway [*sic*]");[5] *id*., Ex. J (unidentified message stating victim outreach protocol included stating "no pressure" to participate in support group or documentary).

No False Statement. Public figures suing for IIED based on publications—here, Gore's outreach communications—cannot recover without showing "the publication contains a false statement of fact." *Lam v. Ngo*, 91 Cal. App. 4th 832, 848-49 (2001). Warner fails to show any "false statement" in Gore's invitations to a support group meeting, or that Gore "told" anyone they were victims. *See* Opp. at 14:23-15:3; Balog Dec Ex. A at 1 (inviting Balog to a discussion with others with experiences "*that might be similar* to yours") (emphasis added).

The fact that Warner denies abusing anyone and claims third parties made false statements about abuse is irrelevant to whether *Gore* made false statements. Opp. at

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public figure, and abuse allegations about him are matters of public interest. *Hoang v. Tran*, 60 Cal. App. 5th 513, 527, 536 (2021).

[4] The Complaint's baseless allegations are not evidence, and repeating them does not make the conduct "unprotected." *See* Opp. at 2:14-16; 12:1-5 (citing Complaint); *Soderstedt v. CBIZ So. Cal., LLC*, 197 Cal. App. 4th 133, 154-55 (2011) ("pleadings are allegations, not evidence, and do not suffice to satisfy a party's evidentiary burden."); *Sweetwater Union High School Dist. v. Gilbaine Bldg. Co.* (2019) 6 Cal. 5th 931, 946-47 (anti-SLAPP evidence must have a reasonable possibility that it "will be admissible at trial."); *Contreras v. Dowling*, 5 Cal. App. 5th 3d at 410-11 (plaintiff's framing and "labels" irrelevant because courts focus on defendant's "actual activities); *Cox v. Griffin*, 34 Cal. App. 5th 440, 451 (2019) ("it is axiomatic that argument is not evidence.").

[5] The Court already properly concluded these communications were not outrageous. Supp.l Request for Judicial Notice (filed concurrently herewith), Ex. A, at 10:25-11:5.

14:23-26; Compl. ¶¶ 23, 25, 30, 63(e) (asserting as fact that all the accusations of abuse and violence against him are false). Nor is Warner's speculation about various unauthenticated documents relevant or admissible evidence. Opp. at 14:1-7; *see supra,* fn. 4. Because Warner cannot show any false statements by Gore to victims, the Court need not consider his remaining arguments. But they fail as well.

No Outrageous Conduct. Warner must show that an "average member" of society would be "major[ly] outraged" by Gore's conduct in supporting Plaintiff's accusers. *Cochran v. Cochran*, 65 Cal. App. 4th 488, 494, 496 (1998). The conduct must be "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Id.* at 496; *Hughes v. Pair*, 46 Cal. 4th 1035, 1050-51 (2009).

Warner's insinuation that it was reckless for Gore to believe women who identified themselves as his victims (Opp. at 14:14-15) is outrageous. Not surprisingly, it is supported by no authority whatsoever. *Id.* There is nothing outrageous about organizing a support group. *See, e.g.*, King Decl. Ex. H; *Hughes*, 46 Cal. 4th at 1050-51. Warner's denial of the abuse allegations years later is again irrelevant to assessing Gore's statements. Opp. at 13:26-27.

Not Intentional or Reckless. There is no evidence that Gore's actions were "intended to inflict injury or engaged in with the realization that injury would result." *Hughes*, 46 Cal. 4th at 1051; King Decl., Ex. F at 128:13-25. Gore's conduct was not about Warner—rather, it was about "support[ing] the experience" of his accusers and victims who she met. *See id.* at 20:4-11; 31:18-20; 34:14-15; 128:13-15; 127:20-23.

Emotional Distress. Warner does not show that he meets the "high bar" of such "enduring [distress] that no reasonable person in a civilized society should be expected to endure it." *Hughes*, 46 Cal. 4th at 1051; *see also Wong v. Jing*, 189 Cal. App. 4th 1354, 1377 (2010) (holding loss of sleep, upset stomach, and generalized anxiety did not state an IIED claim); *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 1004 (1993). More importantly, his generalized anxiety is due to the numerous pending civil suits and criminal investigation, not Gore's organization of support groups or her work on *Phoenix*

Rising and the Phoenix Act. See Warner Decl. ¶¶ 8-11.

Allowing Warner's baseless IIED claim against Gore for supporting domestic violence victims would set an extremely dangerous precedent. It must be stricken.

III. WARNER'S CLAIMS BASED ON *GROUPIE* MUST BE STRICKEN

A. Gore's Alleged Statements About *Groupie* Were Made In Connection with Protected Activity.

Warner's Complaint alleges and the evidence shows that Gore's statements about *Groupie* were in connection with her efforts for the Phoenix Act and *Phoenix Rising*, as well as her broader efforts to provide law enforcement with information concerning women who claimed Warner abused minors. *See* Compl. ¶¶ 56, 60-61, 63(d); King Decl. Ex. H at 2-3; *id.,* Ex. F at 125:12-127:6.

Plaintiff concedes that sexual assault is a matter of public interest (Opp. at 5:3-5) and then nonsensically claims that Gore's statements on an undisputed matter of public interest cannot be protected unless they "alerted" or "protected" someone. Not so. *Cross v. Cooper*, 197 Cal. App. 4th 357, 382 (2011) and *M.G. v. Time Warner*, 89 Cal. App. 623, 629 (2001) confirm the *broad* construction given to matters of public interest, not the narrow one Plaintiff offers. As in Plaintiff's cited case, *Grenier v. Taylor*, 234 Cal. App. 4th 471 (2015), the fact that statements concern abuse that occurred years earlier and are not alerting a specific person in danger does not make them unprotected. *Id.* at 483 (comments on blog about child molestation based on years-old conduct was protected).[6]

Gore discussed *Groupie* in the context of the "general topic" of child abuse, which

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[6] *FilmOn* is inapposite because defendant's defamatory statements were "generated for profit, exchanged confidentially, without being party of any attempt to participate in a larger discussion." 7 Cal. 5th at 1098. *Dual Diagnostics Treatment Center, Inc. v. Buschel*, 6 Cal. App. 5th 1098, 1105 is distinguishable because "none of [the] claims [were] directed" at the statements defendant claimed were protected, and the statements were to a narrow audience. Here, Gore's outreach to survivors was not done "for profit," but rather as a volunteer (King Decl. Ex. F at 56:3-5), and was explicitly for the purpose of providing an opportunity "to participate in a larger discussion" with the general public via an HBO documentary. *See Ojjeh*, 43 Cal. App. 5th 1027, 1036, 1039-40.

is matter of "significant and public interest," and protected activity in the context of her work with the Phoenix Act and law enforcement investigations.[7] *M.G.,* 89 Cal. App. 4th at 629; *see also Comstock v. Aber*, 212 Cal. App. 4th 931, 942 (2012); *Ojjeh*, 43 Cal. App. 5th at 1044; *Grenier*, 234 Cal. App. 4th at 479, 483. Gore's statements here warrant protection under the anti-SLAPP statute.

B. Plaintiff's Defamation Claim Based on *Groupie* Is Meritless

Warner's Defamation claims fails because he does not establish that Gore's statements were false and cannot show actual malice.

Each of the statements at issue shows that Gore's statements about *Groupie* were based on her understanding that it starred a woman named Jeanette Polard. King Decl., Ex. H at 2-3; Ex. F at 62:23-63:6; Meyer Decl. ¶ 10 (stating Gore had spoken to *Groupie* actress' relative).[8] At deposition, Gore explained that after first hearing of *Groupie*, she searched online for the actual film and information about it. King Decl., Ex. F. at 50:2-8; 37:2-14, 92:8-13; 113:13-20. She reviewed an interview with Warner about *Groupie*, in which he joked about the actress' age and stated the film was not released after his manager expressed concern it would land him in jail. *Id.,* at 26:15-27:13; 47:4-11, 62:23-63:6, 64:13-17;[9] Supp. Ziemianek Dec., Ex. 9 at 44:8-45:10; *see also* Gore RJN, Exs. 5, 6. Gore viewed Warner's *Dead to the World* video, which featured Polard[10] and includes

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[7] Warner, not Gore, has the burden of proof. The communications introduce her work for the Phoenix Act and explicitly discuss the meeting featured in *Phoenix Rising.* Warner does not deny a search warrant was executed at his home – just whether the investigation was state or federal.

[8] Meyer's declaration is the only support Warner offers for the claim that Gore referred to *Groupie* as "child pornography," apart from his attorney's repeated efforts to put the words in Gore's mouth at deposition. *See, e.g,*, King. Decl. Ex. F at 69:14-16, 72:18-24, 101:7-15. But even Meyer's statement makes clear Gore based the alleged statement on her belief that Polard starred in *Groupie*.

[9] Manson's self-serving statement later in the interview that the actress was "portraying a youngster" does not make it unreasonable for Gore to have relied on the implication of the earlier statement. Opp. at 7:2-3.

[10] Warner admits Polard appears in *Dead to the World*. Warner Decl. ¶ 6. The fact that

a clip from *Groupie* at the end. She noticed that the jewelry on Polard earlier in the film matched the jewelry on the woman in the *Groupie* clip. King Decl. Ex. F at 36:12-18. Around 2018, while Gore was actively engaged in the Phoenix Act, someone reached out to Gore and identified herself as a relative of Jeanette Polard. The person expressed concern that Polard was in *Groupie* as a minor, and relayed that she had committed suicide. *Id.* at 24:2-5, 25:7-11, 26:7-11, 47:13-48:3. Gore found other evidence online that corroborated the relative's claims. *Id.* at 29:23-30:2, 37:5-14. Gore testified that based on this information, she believed at the time of her statements in 2020 that *Groupie* featured Polard, a self-professed groupie known as one of the "Slasher Sisters," who followed Warner on tour as a teenager, was underage in 1996 and committed suicide. *See id*. at 36:12-18, 47:12-48:3.

1. Warner Does Not Dispute Gore's Statements About Polard or Prove That Polard Was Not in *Groupie*.

Warner does not dispute that Gore's statements about *Jeanette Polard*—specifically, that she was underage in 1996 and is dead—are true. Instead, Warner claims the actress in *Groupie* was actually Paula Weiss, who was over 18 in 1996 and is alive. But *Groupie* is a video, to which the best evidence rule applies. *People v. Son*, 56 Cal. App. 5th 689, 696 (noting a video is a "writing" for purposes of the secondary evidence rule). Warner does not contend the video has been destroyed or is unavailable. Weiss' declaration is therefore inadmissible to prove its contents, or that she starred in it.[11] *See* Evid. Code §§ 1521, 1523. Warner cannot prove actual falsity of Gore's statements that Polard starred in the film. *Alnor*, 148 Cal. App. 4th at 82. Nor does Warner show that Gore or anyone else knew or could have determined who was in the *Groupie* film at the time Gore made the statements.

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the credits list Ms. Weiss as one of eighteen people given "special thanks" does not prove Weiss starred in *Groupie*. King Decl., Ex. V at 4, 8.

[11] At least one person who viewed *Groupie* states the actress looks nothing like Weiss. 4/28/22 Kump Decl. Ex. 8 at ¶ 27.

2. Warner Does Not and Cannot Demonstrate Minimal Merit to His Claim That Gore Acted With Actual Malice

Even assuming for the purposes of argument that *Groupie* featured Weiss and not Polard, Warner cannot prove actual malice by clear and convincing evidence, as he must to survive the anti-SLAPP motion. *See Christian Research Inst. v. Alnor*, 148 Cal. App. 4th 71, 81. It is his burden to show "a probability" that he can provide evidence that "command[s] the unhesitating assent of every reasonable mind." *Id.* at 84; *see also Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1166-67 (2004). Actual malice is a "subjective test" that questions the defendant's "actual belief concerning the truthfulness" of the statement at issue. *Reader's Digest Ass'n. v. Sup. Ct.*, 37 Cal.3d 244, 257 (1984). The proper focus is on the "defendant's attitude toward the truth or falsity" of the statement, not her "attitude toward the plaintiff." *Id.* Evidence of ill will is only considerable "to the extent it impacts the defendant's actual belief" about the statement's truth. *Id.; see also Alnor*, 148 Cal. App. 4th at 92.[12]

Warner misrepresents the "recklessness" inquiry for purposes of actual malice. Opp. at 9:19-20. "[R]eckless conduct is ***not*** measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant ***in fact entertained serious doubts as to the truth of his publication***. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice." *Reader's Digest,* 37 Cal. 3d at 256 (citations omitted) (emphasis added). There is no evidence whatsoever that Gore doubted Polard was the *Groupie* actress and that it was not released because it depicted illegal conduct. The evidence uniformly shows she did believe the statements. *See* King Decl., Ex. F at 35:17-36:18; 27:1-13, 86:21-87:1; 123:12-15; 64:13-17.

[12] Warner's counsel repeatedly referred to a tweet Gore posted in March 2022 after learning that Warner had sued her. King Decl. Ex. F at 16:21-22, 20:4-8, 29:18-24, 31:6-13; *id.*, Ex. G] The March 2022 tweet is irrelevant to Gore's state of mind in 2020. There is no evidence that her attitude had any effect on her beliefs about *Groupie.*

Because recklessness is not judged by an objective analysis, it is irrelevant that Warner's attorneys believe Gore "failed to probe the truth" about the identity of the *Groupie* actress. Opp. at 10:18-19; *Reader's Digest.*, 37 Cal. 3d at 256-57 (failure to conduct thorough investigation alone insufficient to prove actual malice). Gore researched and considered various sources of information, and formed a good faith belief that *Groupie* featured Polard. *See supra*, Sect. III-B. Warner identifies no information available to Gore at the time of the statements that should have caused her to believe *Groupie* featured Weiss not Polard. Warner identifies no evidence that Gore believed Polard's relative was "untrustworthy" or "biased or hostile" towards Plaintiff (Opp. at 7:18-19), and there is no evidence suggesting they were. *See Hoang*, 60 Cal. App. 5th at 537-38. Gore's ability to investigate further was limited because Warner never released the film. Supp. King Decl., Ex. F. at 64:18-65:2. In sum, Warner fails to "breath menace" into Gore's belief that the *Groupie* actress was Jeanette Polard, let alone that her belief would cause "major outrage." *Cochran*, 65 Cal. App. 4th at 499.

Finally, even if Gore called *Groupie* child pornography, Warner has not proven that statement is false. The *Dinner for Five* interview suggests that *Groupie* is pornographic (*see* Gore RJN, Ex. 5 at 7), and "child pornography" is not limited to depiction of actual sexual acts on a minor. Cal. Pen. Code § 311.4 ("sexual conduct" defined to include "sexual sadism" or "sexual masochism"). Even Warner's counsel cannot make any representations to the Court concerning *Groupie,* having never seen the film. Supp. King Decl., Ex. F, at 39:23-24. Warner cannot show that any lay understanding Gore expressed is actionable. *Annette F.*, 119 Cal. App. 4th at 1166-67 (stating plaintiff was a convicted abuser not defamatory because based on lay understanding.)

C. Plaintiff's IIED Based on *Groupie* Is Meritless.

Because Warner cannot prove Gore's statements about *Groupie* were false, his IIED claim also fails. *Lam*, 91 Cal. App. 4th at 848-49. The evidence that Gore's statements were made with a good faith belief in their accuracy also undermines any suggestion that they were outrageous or intentionally made to inflict harm.

IV. CONCLUSION

For the foregoing reasons, Defendant Gore requests this Court grant her anti-SLAPP motion and her request for reasonable attorneys' fees.

DATED: November 22, 2022

HANSON BRIDGETT LLP

By: _____

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