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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 BRIAN WARNER, p/k/a MARILYN
12 MANSON,

13 Plaintiff,

14 vs.

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

17 Defendants.

Case No. 22STCV07568
Assigned to Hon. Teresa A. Beaudet, Dept. 50

**REPLY IN SUPPORT OF DEFENDANT
EVAN RACHEL WOOD'S SPECIAL
MOTION TO STRIKE PORTIONS OF
PLAINTIFF'S COMPLAINT PURSUANT
TO CODE OF CIVIL PROCEDURE
§ 425.16 AND FOR ATTORNEYS' FEES**

*[Notice of Lodging, Evidentiary Objections,
Proposed Order re Evidentiary Objections,
and Response to Plaintiff's Evidentiary
Objections filed concurrently herewith]*

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Trial Date: None Set

25 **UNREDACTED VERSION FILED PURSUANT TO CRC 2.551(b)(3)(B)**
26 **AND THE COURT'S DECEMBER 1, 2022 ORDER**
27
28

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1 **I. INTRODUCTION**

2 The Court largely denied Plaintiff’s motion for anti-SLAPP discovery based on findings
3 that (i) Plaintiff’s claim based on the FBI Letter is barred by the litigation privilege; (ii) the *Flatley*
4 exception does not apply; (iii) Plaintiff had no evidence that Defendants engaged in “outrageous”
5 conduct by pressuring women to falsely accuse Plaintiff; and (iv) Plaintiff failed to allege
6 colorable claims against Wood based on statements about *Groupie*. Nothing has changed that
7 should cause the Court to reconsider its prior rulings. Plaintiff has, for the most part, resubmitted
8 the same evidence. The only additional evidence provided is testimony from (a) Meyer, who
9 learned of the FBI Letter from Plaintiff’s counsel and claims no contact with Wood; (b) Kunkel,
10 an IT expert with no percipient knowledge; (c) King, Plaintiff’s lawyer, who fails to establish the
11 admissibility of most of the exhibits he proffers; and (d) Gore, whose testimony establishes that
12 she made the statements about *Groupie* without actual malice, but rather with the reasonable belief
13 that Jeannette Polard, not Pola Weiss, appears in the film. None of Plaintiff’s new “evidence”
14 moves the needle. Wood’s anti-SLAPP motion should therefore be granted in its entirety.

15 **II. THE IIED CLAIM BASED ON THE FBI LETTER SHOULD BE STRICKEN.**

16 **A. Plaintiff’s IIED Claim Arises From Protected Activity.**

17 **1. Wood’s Court Filing Supplies an Essential Element of Plaintiff’s Claim.**

18 Plaintiff recycles his failed argument that his IIED claim does not arise from Wood’s *filing*
19 of the FBI Letter in the parentage action, but on its alleged *fabrication* and purported use outside
20 of the custody proceedings. The argument fares no better the second time around.

21 “To determine whether a claim arises from protected activity, courts must ‘consider the
22 elements of the challenged claim and what actions by the defendant supply those elements and
23 consequently form the basis for liability.’” *Wilson v. Cable News Network, Inc.*, 7 Cal.5th 871,
24 884 (2019). A claim for IIED requires “extreme and outrageous” conduct that was the “actual and
25 proximate cause” of Plaintiff’s distress and was intended to cause Plaintiff’s distress. *Ross v. Creel*
26 *Printing & Publ’g Co.*, 100 Cal.App.4th 736, 744-45 (2002). An allegation that Defendants
27 “falisl[f] correspondence from a fictitious federal agent” (Compl. ¶ 63(c))—standing alone—
28 could never form the basis of an IIED claim. A forged letter, if it never saw the light of day, could

1 not cause emotional distress, nor be intended to do so. Any alleged distress could only be *caused*
2 (and *intended*) through the letter’s *publication*. Plaintiff’s argument that “impersonating an FBI
3 agent” is not protected thus misses the point. Opp. at 5. Where protected activity supplies the basis
4 for *any* element of a claim, the claim arises from protected activity. *See Wilson*, 7 Cal.5th at 884.

5 Here, the Complaint alleges that the FBI Letter was filed in a “custody proceeding,” quotes
6 Wood’s declaration, and cites an article about the court filings. Compl. ¶ 36, n.17. While Plaintiff
7 tries to downplay these allegations, they do not merely provide context, but are *essential* to his
8 IIED Claim. If Plaintiff had no knowledge of the FBI Letter, it could not have caused him distress.

9 Plaintiff claims that the FBI Letter *may have* been used to recruit accusers. But Plaintiff
10 *does not allege* knowledge of the FBI Letter being used with *anyone* outside of the custody
11 dispute. He only alleges—“*[u]pon information and belief*”—that “the forged letter *would be* used
12 to recruit ... people to claim they were being abused by Warner.” Compl. ¶ 37 (italics added).
13 These hypothetical allegations do not supply the required causal nexus between the FBI Letter and
14 Plaintiff’s distress. Nor was this a drafting error. There is *no evidence* the FBI Letter was used
15 outside of the custody dispute; nor does Plaintiff claim knowledge that it was. *See* Section II.B.1.

16 Even if Plaintiff had alleged knowledge of the FBI Letter’s use to recruit accusers (he did
17 not), Wood’s communications with other accusers—including regarding the FBI Letter or FBI
18 investigation—are protected activity for the reasons discussed in Section III.A *infra*.

19 **2. The Narrow Exception for Undisputed Illegal Conduct Does Not Apply.**

20 As the Court already found, the narrow exception excluding *undisputed* illegal conduct
21 from anti-SLAPP protection does not apply. Sept. 27, 2022 Order at 9, *citing Flatley v. Mauro*, 39
22 Cal.4th 299, 320 (2006). There is no reason for the Court to disturb its prior ruling. The *Flatley*
23 exception “applies only where either the defendant concedes the illegality of its [purportedly
24 protected] conduct or the illegality is conclusively shown by the evidence.” *Optional Capital, Inc.*
25 *v. Akin Gump Strauss, Hauer & Feld LLP*, 18 Cal.App.5th 95, 115 n.7 (2017). If there is *any*
26 *factual dispute* whether the defendant’s asserted protected activity was illegal, the *Flatley*
27 exception does not apply. *Zucchet v. Galardi*, 229 Cal.App.4th 1466, 1478-80 (2014) (exception
28 did not apply where defendant disputed alleged perjury and false statements to federal authorities).

1 Here, the asserted protected activity—filing court documents—is not inherently illegal.
2 And Wood has unequivocally denied forging the FBI Letter and declared that she believed it to be
3 authentic when she submitted it to the Court. Wood Decl. ¶ 22. This ends the inquiry. For the
4 *Flatley* exception to apply, Plaintiff would have had to *conclusively* prove that Wood forged the
5 letter, or knew it was forged when she filed it, as “a guilty mind is a necessary element in the
6 indictment and proof of every crime.” *United States v. Wade*, 962 F.3d 1004, 1011 n.3 (7th Cir.
7 2020). Plaintiff does not even attempt to meet this burden; nor could he given Wood’s testimony.

8 Plaintiff’s cases are inapposite. The court in *Gerbosi v. Gaims, Weil, West & Epstein, LLP*,
9 193 Cal.App.4th 435, 446 (2011) held that *wiretapping* does not qualify as protected activity
10 because it is inherently illegal. Here, the assertedly protected activity is *filing court documents*,
11 which is not inherently illegal. Plaintiff’s reliance on *Lefebvre v. Lefebvre*, 199 Cal.App.4th 696,
12 705 (2011)—a case where the defendant “d[id] not contest that she submitted an illegal, false
13 criminal report”—is similarly misplaced since Wood denies engaging in illegal conduct.

14 **B. Plaintiff Has Not Demonstrated a Probability of Prevailing on the Merits**

15 **1. The Litigation Privilege Bars Plaintiff’s Claim Based on the FBI Letter.**

16 Plaintiff’s arguments that the litigation privilege does not apply hinge on the false premise
17 that he can prevail on his claim based solely on the FBI Letter’s use *outside* of the custody dispute.
18 Not so. Plaintiff has offered *no evidence* that he learned of the FBI Letter except through the
19 custody litigation. *None*. If Plaintiff were aware of any use of the FBI Letter *outside* of the custody
20 dispute, he would have said so, as his failure to tie his distress to a *non-privileged* use of the FBI
21 Letter is fatal to his claim. Instead, Plaintiff simply refiled his prior declaration, which claims no
22 knowledge of the FBI Letter’s use outside the custody dispute. Warner Decl. ¶¶ 8-11.

23 Indeed, Wood’s testimony that she *did not* distribute the FBI Letter outside of the custody
24 proceedings remains undisputed. *See* Wood Decl. ¶ 22. While Plaintiff hypothesizes that the FBI
25 Letter could have been used to recruit accusers (Opp. at 1, 5), there is no evidence of that. At best,
26 Plaintiff has presented circumstantial evidence that Gore—who was in contact with the FBI (King
27 Decl. F at Ex. 98:22-99:6, 106:8-107:15, 124:6-125:11) and was Wood’s “romantic partner[]”
28 (Compl. ¶ 14)—may have had a copy at some point (B. Gore Ex. B). But Plaintiff has presented

1 no evidence that Wood gave Gore the letter or that Gore used it to recruit accusers. While Plaintiff
2 claims that “Gore was holding herself out as being involved with the letter” (Opp. at 5), the
3 evidence he cites does not support his claim. Meyer never discussed the FBI Letter with Gore; she
4 only learned of its existence earlier this year from Plaintiff’s counsel (Meyer Decl. ¶¶ 31-32).¹

5 Finally, even if Bryton Gore’s testimony is credited, Wood’s purported statements in late
6 2021 that “the letter was so important to her work against Warner,” and “think of what would
7 happen ... if this ever got out to the media” (B. Gore Decl. ¶¶ 24-25) are neither new, nor
8 evidence that Wood used the FBI Letter outside of the custody dispute, particularly given Wood’s
9 testimony to the contrary (Wood Decl. ¶ 22). The Court cannot draw inferences that require
10 “suspicion, imagination, speculation, surmise, conjecture or guesswork” and cannot “indulge in
11 inferences rebutted by clear, positive and uncontradicted evidence,” like Wood’s sworn testimony.
12 See *Shandralina G. v. Homonchuk*, 147 Cal.App.4th 395, 416-17 (2007). While the Court does not
13 weigh evidence, nor should it disregard Wood’s evidence where there are gaps in Plaintiff’s
14 evidence. *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal.4th 728, 741 n.10 (2003) (courts “should
15 grant the [anti-SLAPP] motion if, as a matter of law, the defendant’s evidence supporting the
16 motion defeats the plaintiff’s attempt to establish evidentiary support for the claim.”).

17 Finally, because there is no evidence that the FBI Letter was used outside of the custody
18 dispute, Plaintiff cannot distinguish Wood’s cases. The litigation privilege bars Plaintiff’s claim
19 based on Wood’s court filings, regardless of whether the FBI Letter was forged. See, e.g., *Kenne v.*
20 *Stennis*, 230 CalApp.4th 953, 971 (2014); *Pettitt v. Levy*, 28 Cal.App.3d 484, 489 (1972).

21 **2. The Claim Is Also Meritless.**

22 **Outrageous Conduct.** There is no evidence that Wood engaged in the alleged outrageous
23 conduct. Wood has unequivocally denied forging the FBI Letter and testified that she believed it
24 to be authentic. Wood Decl. ¶ 22. Plaintiff has offered no admissible evidence to the contrary. And
25 Plaintiff’s continued attempts to cast doubt on the *existence* of the FBI investigation is ridiculous

26 _____
27 ¹ Meyer claims that Wood’s ex and attorney called looking for Agent Langer, but does not
28 claim that any of Plaintiff’s accusers did so. *Id.* ¶¶ 16-18. This bolsters Wood’s testimony that (i)
she believed the letter was authentic, and (ii) only used it in the custody dispute. Wood Decl. ¶ 22.

1 given the testimony offered by Wood and her lawyer. Wood Decl. ¶ 18; Holley Decl. ¶ 2, Ex. A.

2 **Intent.** Wood’s testimony that she did not intend to cause Plaintiff distress and did not
3 know that Plaintiff would learn of the parentage action filings is *undisputed*. Wood Decl. ¶ 23.

4 **Causation and Emotional Distress.** Plaintiff has not met his burden to demonstrate that
5 the FBI Letter caused him “emotional distress of such substantial quality or enduring quality that
6 no reasonable [person] in civilized society should be expected to endure it.” *Hughes v. Pair*, 46
7 Cal.4th 1035, 1051 (2009). Plaintiff claims that “[a]fter being falsely portrayed as a rapist, abuser,
8 and child pornographer, ... [he has] constantly felt anxious, distraught, depressed, worried, frantic,
9 sleepless, and fearful for my and my wife’s physical safety.” Warner Decl. ¶ 11. But Plaintiff ties
10 his distress to the accusations of abuse—not the FBI Letter, which does not name Plaintiff or
11 accuse him of rape, abuse, or child pornography. And his generalized complaints are insufficient
12 to support an IIED claim. *See, e.g., Wong v. Jing*, 189 Cal.App.4th 1354, 1377 (2010) (claimed
13 emotional upset, lost sleep, stomach upset, and generalized anxiety was insufficient evidence of
14 emotional distress in opposing anti-SLAPP motion); *Hughes*, 26 Cal.4th at 1051 (same on MSJ).

15 **III. THE IIED CLAIM BASED ON RECRUITMENT SHOULD BE STRICKEN.**

16 **A. Plaintiff’s Claim Arises From Protected Activity.**

17 Wood need not demonstrate that her alleged conduct “is protected First Amendment
18 activity,” as Plaintiff incorrectly claims. Opp. at 9. “The moving party’s step-one burden does *not*
19 require proof that the targeted conduct was *in fact protected by the First Amendment*.” *Pott v.*
20 *Lazarin*, 47 Cal.App.5th 141, 149 (2020). “Instead, the moving party need only *make a prima*
21 *facie showing*, not prove, that the targeted ‘statements’ were made” in connection with petitioning
22 activity or a matter of public interest. *Ibid.*; C.C.P. § 425.16.

23 **Sexual Abuse by a Celebrity.** Plaintiff argues that not *every* statement about sexual abuse
24 is a matter of public interest; nor is *every* statement about a celebrity. Opp. at 9-10. But Plaintiff is
25 unable to cite a single case where statements about sexual abuse *did not* qualify for anti-SLAPP
26 protection. *See Sipple v. Found. for Nat. Progress*, 71 Cal.App.4th 226, 238 (1999) (“Domestic
27 violence is an extremely important public issue in our society.”). And even Plaintiff would be
28 hard-pressed to argue that accusations of abuse against a world-famous “shock rocker” are not of

1 public interest, particularly in the wake of #MeToo. In fact, the Complaint tacitly admits that the
2 accusations against Plaintiff are a matter of *immense* public interest. *See* Compl. ¶¶ 1, 3, 21-24, 27.

3 As Plaintiff acknowledges, HBO made a two-part documentary about the accusations, and
4 its director said that naming Plaintiff “created a lot more story” for it. *Id.* ¶ 22. Plaintiff also claims
5 the accusations have “derailed [his] career” (*id.* ¶ 24), ignited a “media firestorm” (Warner Decl.
6 ¶ 10), and caused him to be dropped by his agent, record label, and two TV shows and to receive
7 “countless” death threats (*Id.* ¶ 11). Statements that have received far less public attention are
8 routinely deemed matters of public interest for anti-SLAPP purposes. *E.g., Chaker v. Mateo*, 209
9 Cal.App.4th 1138, 1141-42 (2012) (statements accusing ex of being a criminal and deadbeat dad);
10 *Seelig v. Infinity Broad. Corp.*, 97 Cal.App.4th 798, 802-08 (2002) (statements calling contestant,
11 who appeared briefly on *Who Wants to Marry a Millionaire*, a “big skank” and “loser”).

12 ***Criminal Investigations, Legislation, and Lawsuits.*** Likewise, Plaintiff’s own Complaint
13 refutes his contention that Wood’s statements have no connection with criminal investigations,
14 legislation, or civil lawsuits. *Plaintiff alleges* (i) that Wood testified before Congress and the
15 California Senate “in support of proposed legislation” (Compl. ¶¶ 15-16); (ii) that the Phoenix Act
16 is a “survivor led nonprofit ... that works to end the cycle of domestic violence through organizing
17 and passing legislation” (*id.* ¶ 19); (iii) that Defendants “enticed potential accusers” by suggesting
18 they were “amassing evidence for a[n] ... ongoing criminal investigation” (*id.* ¶ 28); (iv) that
19 Defendants used Wood’s activist work to recruit accusers and invited them to “organize” through
20 the “Phoenix Act coalition” (*id.* ¶¶ 20, 25-27); and (v) that purportedly false statements made to
21 other accusers have been repeated in civil lawsuits (*id.* ¶¶ 4, 31, 60). Wood’s declaration confirms
22 her involvement in legislative reform and the criminal investigations. Wood Decl. ¶¶ 9-14, 18.

23 **B. Plaintiff Has Not Demonstrated a Probability of Prevailing on the Merits**

24 ***Outrageous Conduct.*** The Court previously found that Plaintiff had failed to submit
25 admissible evidence substantiating his allegations that Wood engaged in “extreme and
26 outrageous” conduct by pressuring women “to make false accusations against [Plaintiff]” (Compl.
27 ¶ 63(e)). Sept. 27, 2022 Order at 9-11. Plaintiff has not submitted *any additional admissible*
28 *evidence* to support his claim here. Thus, there is no basis for the Court to reach a different result.

1 Wood has denied ever “pressur[ing] anyone to make false accusations against” and has
2 testified that she has “no reason to doubt” Plaintiff’s other accusers. Wood Decl. ¶ 16. None of the
3 evidence submitted by Plaintiff—including his dismissive, general denial of the *dozens of*
4 *accusations* made against him (Warner Decl. ¶ 3)—contradicts that testimony.

5 There is *no evidence* that Gore was ever acting as *Wood’s* agent such that vicarious
6 liability would apply. Regardless, as the Court previously found, Gore’s communications with
7 Balog (Balog Decl. Ex. A) and McGaffigan (King Decl. Ex. H)—which say there is no obligation
8 to be involved—do not demonstrate outrageous conduct. Sept. 27, 2022 Order at 10-11. The
9 purported “protocol” for reaching out to victims likewise includes “let[ing] them know there is no
10 pressure on their end.” King Decl. Ex. J. And the other King exhibits are similarly benign. *Id.* Exs.
11 R, S. Even if any of this new “evidence” were admissible (it is not), none of it substantiates
12 Plaintiff’s allegations that Defendants pressured *anyone* to make false accusations. Nor does the
13 fact that two accusers—including one who did not speak to Wood (Kump Decl. Ex. 9 ¶¶ 41-46)—
14 claim in lawsuits to have recovered repressed memory demonstrate outrageous conduct by Wood.

15 ***Intent/Emotional Distress.*** Plaintiff has offered no evidence that Wood acted with the
16 intent to cause Plaintiff distress. Using the word “victim” to describe those accusing Plaintiff of
17 abuse is not improper or reckless. Wood has no reason to doubt the other accusers. Wood Decl. ¶
18 16. And, as discussed above, Plaintiff has not met his burden to show *severe emotional distress*.

19 ***False Statement/Actual Malice/Common Interest Privilege.*** Plaintiff has failed to identify
20 any specific statement by Wood that he claims is false. Nor has he attempted to demonstrate an
21 ability to produce clear and convincing evidence that Wood made that statement with actual
22 malice. Plaintiff nonsensically argues that it was “against Wood’s interest to confirm
23 [unidentified] people were *not* abused.” Opp. at 12. But the evidence shows that those who did not
24 claim to have been abused were *not* pressured in any way. *See, e.g.*, Balog Decl. ¶¶ 4, 8, Ex. A.

25 **IV. THE CLAIMS BASED ON ALLEGED DEFAMATION SHOULD BE STRICKEN.**

26 **A. Plaintiff’s Claims Arise From Protected Activity.**

27 Plaintiff’s claims based on statements that Plaintiff’s film, *Groupie*, “depicted child abuse
28 and child pornography” (Compl. ¶ 56) arise from protected activity for the reasons discussed in

1 Section III.A. Plaintiff all but concedes that the accusations are of public interest, claiming that
2 they have “*reverberated through the press.*” Compl. ¶ 60. No surprise: “preventing child sexual
3 abuse and protecting children from sexual predators are issues of widespread public interest.”
4 *Cross v. Cooper*, 197 Cal.App.4th 357, 375 (2011). Plaintiff cites no cases finding that accusations
5 of child abuse were *not* protected. And Plaintiff’s notoriety only heightens the public interest in
6 the accusations. *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal.5th 133, 145 (2019) (whether speech
7 concerns a public figure is a primary factor in determining if it is of public interest)

8 Plaintiff tries to divorce the *Groupie* statements from the criminal investigations,
9 legislative reform efforts, and civil lawsuits referenced in his Complaint. *See* Opp. at 12-13;
10 Section II.A *supra*. But the Complaint specifically alleges that Gore’s “defamatory allegations
11 regarding ‘Groupie’ have been repeated in at least one civil complaint filed against Warner.”
12 Compl. ¶ 60. And Gore has testified that she provided information relating to *Groupie* to the FBI
13 and L.A. County Sherriff’s Department. King Decl. Ex. F at 124:6-125:24.

14 **B. Plaintiff Has Not Demonstrated a Probability of Prevailing on the Merits**

15 **1. Plaintiff Has Not Adequately Alleged His Claims Against Wood.**

16 The Court already found that the Complaint’s allegations are insufficient to state IIED or
17 defamation claims against Wood relating to *Groupie*. Sept. 27, 2022 Order at 11-12. The
18 Complaint has not changed. A “plaintiff must demonstrate the complaint is *legally sufficient* and
19 supported by a sufficient prima facie showing of facts to sustain a favorable judgement if the
20 evidence submitted by the plaintiff is credited. *If either of these requirements is not met, the*
21 *motion to strike must be granted.*” *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 823 (1994)
22 (italics added), *disapproved on other grounds by Equilon Enters., LLC v. Consumer Cause, Inc.*,
23 29 Cal.4th 53 (2002). Plaintiff is attempting to hold Wood liable based on the conclusory
24 allegation that “Wood condoned and encouraged Gore to promulgate defamatory falsehoods about
25 Warner in order to further their conspiracy.” Compl. ¶ 61. This is insufficient.

26 For a claim based on a civil conspiracy, the “complaint must allege: (1) the formation and
27 operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage
28 resulting from such act or acts.” *Schick v. Lerner*, 193 Cal.App.3d 1321, 1327-28 (1987). “The

1 sine qua non of a conspiratorial agreement is the knowledge on the part of the alleged conspirators
2 of its unlawful objective and their intent to aid in achieving that objective.” *Id.* at 1328.

3 Here, Plaintiff has failed to allege, *inter alia*, (i) that Wood made a defamatory statement
4 about *Groupie*, (ii) that Wood knew that the statements were being made, (iii) that Wood agreed
5 that the statements should be made, (iv) that Wood committed any wrongful act to further the
6 purported conspiracy to make the statement; or (v) that Wood acted with actual malice. *See*
7 Compl. ¶¶ 56-61, 63(d), 68-75. Plaintiff’s IIED and defamation claims must therefore be stricken.

8 **2. Plaintiff Has No Evidence to Support His Claims.**

9 Plaintiff does not claim that Wood made a defamatory statement about *Groupie* and there
10 is no evidence that she conspired with Gore to do so or acted with actual malice. Plaintiff argues
11 that because *Gore told Wood* that the actress was underage and there is no evidence Wood
12 corrected her (King Decl. Ex. F at 34:7-15; 86:15-90:1), Wood is liable as a co-conspirator. That is
13 absurd. Failing to correct a statement does not demonstrate a conspiracy to defame, particularly
14 absent evidence that Wood knew the statement was false or was being made to anyone else. *See*
15 *Kidron v. Movie Acquis. Corp.*, 40 Cal.App.4th 1571, 1582 (1995) (“[t]he conspiring defendants
16 must ... have actual knowledge that a tort is planned and concur in the tortious scheme with
17 knowledge of its unlawful purpose.”). Moreover, while Plaintiff claims that *13 years ago* he told
18 Wood that Pola Weiss was in *Groupie* (Warner Decl. ¶ 5), there is no evidence that Wood (i)
19 knew how old Weiss was, (ii) remembered the alleged conversation a decade later, or (iii) believed
20 Plaintiff when he said it was Weiss (Wood Decl. ¶ 16). Indeed, another survivor claims that the
21 woman in *Groupie* “did not resemble” Weiss. *See* Kump Decl. Ex. 8 ¶¶ 20-27; Weiss Decl. ¶ 3.²

22 There is no evidence that Gore used *Groupie* to recruit accusers or was acting as Wood’s
23 agent when any statement about *Groupie* was made. Plaintiff only cites Gore’s statements to
24 McGaffigan. Opp. at 14. But McGaffigan is not an accuser and Gore reached out to McGaffigan to
25 ask “if she could confirm whether or not Jeannette Polard ... was in the film,” since McGaffigan
26

27 _____
28 ² Plaintiff argues that the “Dinner for Five” clips in *Phoenix Rising* were misleading (Opp.
at 14) but fails to explain how or show that Wood controlled how the clips were used.

1 was friends with Polard. King Decl. Ex. F at 35:17-37:14, 109:16-110:1; Warner Decl. ¶ 6.

2 Finally, Wood cannot be held liable as a co-conspirator because Plaintiff has not
3 demonstrated a probability of prevailing on his claims against Gore. Having again failed to submit
4 *Groupie*, Plaintiff has no admissible evidence of its contents (including who appears and what
5 happens) and cannot prove that the statements about it were false. *See* Evid. Obj. at 17-18, 21-23;
6 Evid. Code § 1523. And Plaintiff fails to show a probability of proving, *by clear and convincing*
7 *evidence*, that Gore acted with actual malice because all the evidence—including her *pre-litigation*
8 *communications*—shows that Gore believed that (i) Polard appeared in *Groupie*, (ii) Polard was a
9 minor at the time; and (iii) Polard committed suicide. King Decl. Ex. H, I; *Id.* Ex. F at 35:17-
10 37:17, 47:23-48:23, 58:23-59:21, 64:13-17, 65:12-66:18, 92:14-25; 109:21-110:1, 144:5-25.

11 **V. THE CLAIMS ARISING FROM PROTECTED ACTIVITY MUST BE STRICKEN.**

12 Plaintiff tries to end-run the anti-SLAPP statute by asking the Court not to strike his
13 *allegations* regarding the FBI Letter, recruitment, and *Groupie*, even if his *claims* are stricken.
14 That is not the law. Where a plaintiff has failed to establish a probability of prevailing on a claim
15 arising from protected activity, “*the claim and its corresponding allegations must be stricken.*”
16 *Baral v. Schnitt*, 1 Cal.5th 376, 395 (2016) (emphasis added). “[R]efusing to strike any part of a
17 cause of action that rests in part on protected activity defeats the legislative goal of protecting
18 defendants from meritless claims based on such conduct.” *Bonni v. St. Joseph Health Sys.*, 11
19 Cal.5th 995, 1011 (2021). Plaintiff cannot backdoor his stricken claims back into the case by
20 recasting the FBI Letter, recruitment, and *Groupie* allegations as “context” for his swatting,
21 hacking, and impersonation claims. That would subvert the purpose of the anti-SLAPP statute.

22 Nor should the Court decline to strike Plaintiff’s FBI Letter claim if Wood’s prevails on
23 her motion. No matter who is the target of Plaintiff’s IIED claim based on the FBI Letter, the
24 claim is barred by the litigation privilege because Plaintiff only learned of the letter from Wood’s
25 court filings. *See* Section II.A.1 *supra*. Moreover, Plaintiff cites no authority for the proposition
26 that the Court can decline to strike a claim from the Complaint after finding that it arises from
27 protected activity and lacks merit. Such a ruling would run afoul of the anti-SLAPP statute and its
28 protections, which “shall be construed broadly.” C.C.P. § 425.16(a), (b).


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DATED: November 22, 2022

Respectfully submitted,

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By: 

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PROOF OF SERVICE

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 808 Wilshire Boulevard, 3rd Floor, Santa Monica, CA 90401.

On December 5, 2022, I served true copies of the following document(s) described as **REPLY IN SUPPORT OF DEFENDANT EVAN RACHEL WOOD'S SPECIAL MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16 AND FOR ATTORNEYS' FEES - UNREDACTED VERSION FILED PURSUANT TO CRC 2.551(b)(3)(B) AND THE COURT'S DECEMBER 1, 2022 ORDER** on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address MSanks@kwikhlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on December 5, 2022, at Santa Monica, California.



Mary L. Sanks