DEPARTMENT 50 LAW AND MOTION RULINGS

Case Number: 22STCV07568 **Hearing Date:** May 9, 2023 **Dept:** 50

THERE ARE TWO TENTATIVES:

Superior Court of California

County of Los Angeles

Department 50

BRIAN WARNER p/k/a MARILYN MANSON,

Plaintiff,

vs.

EVAN RACHEL WOOD, et al.,

Defendants.

Case No.: 22STCV07568

Hearing Date: May 9, 2023

Hearing Time: 11:00 a.m.

[TENTATIVE] ORDER RE:

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;

DEFENDANT ASHLEY GORE a/k/a ILLMA GORE'S SPECIAL MOTION TO STRIKE PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16 ("ANTI-SLAPP MOTION")

Background

On March 2, 2022, Plaintiff Brian Warner p/k/a Marilyn Manson ("Plaintiff") filed this action against Defendants Evan Rachel Wood ("Wood") and Ashley Gore a/k/a Illma Gore ("Gore") (jointly, "Defendants"). The Complaint asserts causes of action for (1) intentional infliction of emotional distress, (2) defamation per se, (3) violation of the Comprehensive Computer Data and Access Fraud Act (Penal Code Section 502(c), (e)(1)), and (4) Impersonation over the Internet (Penal Code Section 528.5(a), (e)).

Wood now moves to strike portions of Plaintiff's Complaint pursuant to Code of Civil Procedure section 425.16. Plaintiff opposes.

In addition, Gore moves to strike portions of Plaintiff's Complaint pursuant to Code of Civil Procedure section 425.16. Plaintiff opposes.

Requests for Judicial Notice

The Court grants Wood's request for judicial notice as to Exhibits 6, 7, 8, 9, and 10. As to Item 1 of Wood's request, the Court notes that "[a] party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must: (1) Specify in writing the part of the court file sought to be judicially noticed; and (2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court." (Cal. Rules of Court, rule 3.1306, subd. (c).) Wood has not provided a copy of the material she requests that the Court judicially notice in Item 1 of her request. The Court thus denies Item 1 of Wood's request for judicial notice.

The Court grants Gore's request for judicial notice as to Exhibit 2. The Court denies Gore's request for judicial notice as to Exhibits 1, 3, 4, 5, 6, and 8. As to the news articles, Gore cites to *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194, but in that case the Court of Appeal noted that "[n]or may we take judicial notice of the truth of the contents of the Web sites and blogs, including those of the Los Angeles Times and Orange County Register. The contents of the Web sites and blogs are plainly subject to interpretation and for that reason not subject to judicial notice." (Internal quotations and citations omitted.) As

to the webpages, Plaintiff cites to *All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010) 183 Cal.App.4th 1186, 1198, footnote 12, where the Court of Appeal noted that "[t]he truth of the contents of the article and Web site are not proper matters for judicial notice, and the fact that the article and Web site were published is irrelevant to the issues before us." The Court agrees.

Evidentiary Objections

The Court rules on the Joint Statement Regarding Objections to Evidence Submitted in Connection with Defendants' anti-SLAPP Motions as follows:

Plaintiff's Objections:

Objection No. 1: overruled

Objection No. 2:[1] sustained as to "[o]n information and belief, those investigations are ongoing," overruled as to the remainder.

Objection No. 3: sustained

Objection No. 4: sustained

Objection No. 5: overruled

Defendants' Objections:

Objection No. 6: sustained (not previously offered for the truth of the matter)

Objection No. 7: sustained

Objection No. 8: sustained as to "between Wood and Illma," overruled as to the remainder.

Objection No. 9: overruled

Objection No. 10: overruled

Objection No. 11: overruled

Objection No. 12: overruled

Objection No. 13: overruled

Objection No. 14: overruled

Objection No. 15: overruled

Objection No. 16: overruled

Objection No. 17: sustained as to "part of an intertwined and long-running conspiracy," and "defamed," overruled as to the remainder.

Objection No. 18: sustained as to "and illegal,"" "forged," "likely told Holley and Bell that my phone number belonged to Michelle Langer," "[s]ince Gore failed to fix the issue and provide Bell with the correct phone number for Michelle Langer," "my phone number was used illegally," "illegally using my phone number on a forged FBI letter," "forged FBI letter," "forged FBI letter," "illegally used my phone number," "forged FBI letter," and "illegal use of my phone number," overruled as to the remainder.

Discussion

A. Allegations of the Complaint

In the Complaint, Plaintiff alleges, among other allegations, that Wood was in a romantic relationship with Plaintiff from 2006 to 2010. (Compl., ¶ 2.) Wood and Gore have been romantic partners since approximately 2019. (Compl., ¶ 14.)

Wood serves as the CEO, CFO, and corporate secretary of the "Phoenix Act." (Compl., ¶ 16.) Gore has been employed by the Phoenix Act since approximately 2019. (Compl., ¶ 16.) The Phoenix Act describes itself as a "survivor-led nonprofit created by Evan Rachel Wood that works to end the cycle of domestic violence through organizing and passing legislation across the country." (Compl., ¶ 19.) In 2019, Defendants began working on a documentary film project to chronicle Wood's activities on behalf of the Phoenix Act. (Compl., ¶ 20.)

On February 1, 2021, Wood posted on her Instagram page the claim that Plaintiff had abused her, and that same day, several other women made similar allegations against Plaintiff. (Compl., ¶ 21.) Plaintiff alleges these allegations were false. (Compl., ¶ 21.) Plaintiff contends the allegations against him brought renewed

attention to the Phoenix Act and Wood, and provided more content for Defendants' documentary film project with HBO. (Compl., ¶ 22.)

Plaintiff further alleges that for at least the last two years, Defendants have secretly recruited, coordinated, and pressured prospective accusers to emerge simultaneously with allegations of rape and abuse against Plaintiff. (Compl., ¶ 4.) Plaintiff also alleges that Defendants impersonated an agent of the Federal Bureau of Investigation ("FBI") by forging and distributing a fictitious letter from the agent, to create the false appearance that Plaintiff's alleged victims and their families were in danger, and that there was a federal criminal investigation of Plaintiff ongoing. (Compl., ¶ 4.) Plaintiff alleges that Wood submitted the FBI letter in a California custody proceeding, using it as evidence for why she should be able to move her son to Tennessee. (Compl., ¶ 36.)

Plaintiff also alleges that Defendants provided checklists and scripts to prospective accusers, listing the specific alleged acts of abuse that they should claim against Plaintiff, and that Defendants made false statements to prospective accusers including that Plaintiff filmed the sexual assault of a minor. (Compl., ¶ 4.) [2] Specifically, Plaintiff alleges that Gore had conversations with prospective "accusers" in which she claimed that a 1996 short film made by Plaintiff called "Groupie" depicted child abuse and child pornography. (Compl., ¶ 56.)

B. Legal Standard

The anti-SLAPP statute is "a mechanism through which complaints that arise from the exercise of free speech rights can be evaluated at an early stage of the litigation process and resolved expeditiously." (*Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073 [internal quotations omitted].) Courts use a two-step process for determining whether an action is a strategic lawsuit against public participation, or a SLAPP. First, the court determines whether the defendant has established that the challenged claim arises from protected speech. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) If such a showing has been made, the court "determines whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Ibid.)*

i. Prong One – Arising from Protected Activity

"[T]he only thing the defendant needs to establish to invoke the protection of the SLAPP statute is that the challenged lawsuit arose from an act on the part of the defendant in furtherance of her right of petition or free speech." (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 307.)

An act in furtherance of a person's right of petition or free speech includes the following:

> (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.
>
> (Code Civ. Proc., § 425.16, subd. (e).)

In determining whether a cause of action arises from protected conduct, the court focuses on "the allegedly wrongful and injury-producing conduct that provides the foundation for the claims." (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490-491.) "[T]he critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 (emphasis in original).) In making this determination, the Court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (*Ibid.)* "The anti-SLAPP statute should be broadly construed and a plaintiff cannot avoid operation of the anti-SLAPP statute by attempting, through artifices of pleading, to characterize an action as a garden variety tort claim when in fact the liability claim is predicated on protected speech or conduct." (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 519 [internal citations omitted].)

ii. Prong Two – Probability of Prevailing

"[P]laintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 476 [internal quotations omitted].) In making the prong two determination, "the court shall consider the pleadings, and supporting¿and opposing¿affidavits stating the facts upon which the liability or defense is based."¿(Code Civ. Proc., § 425.16, subd. (b)(2).) "The court does not, however, weigh

[defendant's]¿evidence against the plaintiff's, in terms of either credibility or persuasiveness.¿Rather, the defendant's evidence is considered with a view toward whether it defeats the plaintiff's showing as a matter of law, such as by establishing a defense or the absence of a necessary element."¿(*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 585.)

C. Wood's Motion

Plaintiff's IIED Claim Based on the Alleged FBI Letter

Wood first asserts that Plaintiff's intentional infliction of emotional distress ("IIED") claim based on the alleged FBI letter should be stricken.

In support of his IIED cause of action, Plaintiff alleges, *inter alia*, that Defendants' "conduct was outrageous in that it was so extreme as to exceed all bounds of that usually tolerated in a civilized community," and that such conduct included "falsifying correspondence from a fictitious federal agent claiming that there was concern for the safety of Wood, other alleged 'victims' of [Plaintiff], and their families as well as an ongoing federal criminal investigation targeting [Plaintiff]…" (Compl., ¶ 63(c).) Plaintiff alleges that "Wood submitted the forged letter in a California custody proceeding, using it as supposed evidence for why she should be able to move her son to Tennessee." (Compl., ¶ 36.) As Wood notes, Plaintiff cites an article that discusses the court filings. (Compl., ¶ 36, fn. 17.)

Wood notes that court filings are an example of protected activity. Pursuant to Code of Civil Procedure section 425.16, subdivision (e), "[a]s used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law…" The Court in *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 408-409 noted that, "[u]nder the plain language of section 425.16, subdivision (e)(1) and (2), as well as the case law interpreting those provisions, all communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute."

In the opposition, Plaintiff asserts that "[w]hile there is no dispute Wood filed the letter in court, Compl., ¶ 36, Warner's claim does not arise from that act." (Opp'n at p. 4:16-17.) Plaintiff notes that "the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech. [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." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1063 [internal quotations, citations, and emphasis omitted].) Plaintiff asserts that the challenged portion of the IIED cause of action arises from "forging and distributing a fictitious letter" from a real FBI agent. (Opp'n at p. 4:22-24.) Paragraph 4 of the Complaint alleges that Defendants "impersonated an actual agent of the Federal Bureau of Investigation by forging and distributing a fictitious letter from the agent…" (Compl., ¶ 4.)

Wood counters that "[a] forged letter, if it never saw the light of day, could not cause emotional distress, nor be intended to do so. Any alleged distress could only be caused

(and intended) through the letter's publication." (Reply at p. 5:28-6:2, emphasis omitted.) Indeed, Plaintiff does not point to any allegations of other specific instances in which the letter was published by Wood, other than in the California custody proceeding. (Compl., ¶ 36.) As Wood notes, Plaintiff alleges that "[u]pon information and belief, Gore aided and abetted Wood in forging the letter because the letter *would* help Wood; the forged letter *would* be picked up by the press and draw attention to the Phoenix Act, Wood, and the false allegations against Warner; and the forged letter *would* be used to recruit, encourage, and convince people to claim they were abused by Warner, because they were being led to believe that Warner was a threat to their safety and under federal investigation." (Compl., ¶ 37, emphasis added.) The Court agrees with Wood that these hypothetical allegations do not supply a causal nexus between the FBI Letter and Plaintiff's alleged distress.

Plaintiff also argues that Defendants' alleged forgery of the FBI Letter is illegal, such that the allegations pertaining to such letter are not "protected activity."

Both parties cite to *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320, where the California Supreme Court concluded that "where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the

assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action. *In reaching this conclusion, we emphasize that the question of whether the defendant's underlying conduct was illegal as a matter of law is preliminary, and unrelated to the second prong question* of whether the plaintiff has demonstrated a probability of prevailing, and the showing required to establish conduct illegal as a matter of law—either through defendant's concession or by uncontroverted and conclusive evidence—is not the same showing as the plaintiff's second prong showing of probability of prevailing." (Emphasis added.) The *Flatley* Court thus made this determination in the first step of the anti-SLAPP analysis.

Wood states in her Declaration, "I did not fabricate or forge the FBI Letter. When I received a copy of the FBI Letter, and when I submitted it to the Court, I believed it to be authentic." (Wood Decl., ¶ 22.) Thus, the Court agrees with Wood that there is no uncontroverted evidence that conclusively establishes that the assertedly protected speech or petition activity (related to the letter) was illegal as a matter of law.

Based on the foregoing, the Court finds that Wood has established that Plaintiff's IIED claim based on the FBI Letter arises out of protected activity for purposes of the anti-SLAPP statute. The first prong of the two-step anti-SLAPP analysis is thus satisfied, and the burden now shifts to Plaintiff on prong two.

Wood asserts that Plaintiff cannot establish a probability of prevailing on his IIED claim based on the FBI Letter because it is barred by the litigation privilege. As set forth above, Plaintiff alleges that "Wood submitted the forged letter in a California custody proceeding, using it as supposed evidence for why she should be able to move her son to Tennessee." (Compl., ¶ 36.)

"The litigation privilege in section 47 applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 37 [internal quotations omitted].)

In the opposition, Plaintiff asserts that the litigation privilege does not prohibit any claim based on the FBI Letter. Plaintiff asserts that his "claim is not based on a 'publication or broadcast . . . [i]n [a] . . . judicial proceeding,' Civ. Code § 47(b)…" (Opp'n at p. 7:19-20.) As discussed above, Plaintiff raised a similar argument in connection with the first prong of the analysis. As set forth above, Plaintiff alleges that the FBI Letter was submitted in connection with a California custody proceeding. (Compl., ¶ 36.) As Wood notes, Plaintiff does not allege knowledge of the FBI Letter being used with anyone outside of the custody dispute.

Plaintiff also asserts that "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 proceeding…In each case, a forgery was created for, or arose out of, that proceeding." (Opp'n at p. 7:23-8:2.) But the Court does not find that Plaintiff has shown that the litigation privilege does not apply if a forgery is not "created for" or "arises out of" a proceeding.

Wood cites to *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 971, where the "[p]laintiff's [IIED] claim [was] based upon defendants' alleged conduct in filing false police reports about plaintiff's attempt to serve civil process and in filing and prosecuting two civil harassment petitions…" Similarly here, Plaintiff alleges that "Wood submitted the forged letter in a
California custody proceeding…" (Compl., ¶ 36.) The *Kenne* Court found that "[a]ll of that conduct, however, involved communications that were made during the course of and directly related to judicial proceedings. For example, the allegedly false police reports, irrespective of their alleged maliciousness, constituted defendants' petitioning activity during the course of plaintiff's lawsuit against them for, in part, fraudulent transfers and were directly related to plaintiff's attempt to serve civil process on defendants during the course of plaintiff's lawsuit... Similarly, all the communications concerning the two civil harassment petitions, including the allegedly false declarations, irrespective of their alleged maliciousness, were connected directly to the prosecution of those two petitions. Therefore, because the conduct upon which the intentional infliction of emotional distress claim was based had some logical relationship to the various lawsuits between the parties, that conduct is privileged under Civil Code section 47, subdivision (b)." (*Kenne v. Stennis*, *supra*, 230 Cal.App.4th at p. 971.)

Based on the foregoing, the Court does not find that Plaintiff has demonstrated a probability of prevailing on his IIED claim based on the FBI Letter.[3]

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Plaintiff's IIED Claim Based on Wood "Recruiting, Coordinating, and Pressuring Multiple Women to Make False Accusations Against [Plaintiff]"

Plaintiff's IIED cause of action also alleges that Defendants' "conduct was outrageous in that it was so extreme as to exceed all bounds of that usually tolerated in a civilized community," and that such conduct included "recruiting, coordinating, and pressuring multiple women to make false accusations against [Plaintiff] and to be part of their film project." (Compl., ¶ 63(e).)

Wood asserts that this claim arises from protected activity, including "(3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest," and " (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(3)-(4).)

Wood cites to *Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 230, where "Mother Jones published an article written by [Richard Blow] that is the subject of [the] action. The article focused on a 1992 custody dispute between appellant and his first wife, Regina Sipple…Regina and appellant's second wife, Deborah Steelman…testified at the custody dispute. Both women testified that appellant had physically and verbally abused them." "[A]ppellant filed a verified complaint for (1) libel, (2) intentional interference with contract, and (3) intentional interference with prospective economic advantage against respondents." (*Id.* at p. 231.)

The *Sipple* Court found, "appellant directs our attention to the wife-beating allegations gathered from Blow's interviews, which were not part of the custody hearing. Appellant claims that as to those allegations, section 425.16, subdivision (e)(3) is the pertinent subsection: 'any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.' He asserts that the article should not be privileged because wife-beating is not an issue of public interest. We disagree. Domestic violence is an extremely important public issue in our society. On different levels, the article addresses the issue of domestic violence." (*Sipple v. Foundation for Nat. Progress*, *supra*, 71 Cal.App.4th at p. 238 [internal citation omitted].)

Wood asserts that the "false accusations" referenced in paragraph 63(e) of the Complaint pertain to statements made by Wood and other victims accusing Plaintiff of domestic violence and abuse. Indeed, Plaintiff alleges, *inter alia*, that "for at least the last two years, Gore and Wood have secretly recruited, coordinated, and pressured prospective accusers to emerge simultaneously with allegations of rape and abuse against [Plaintiff], and brazenly claim that it took ten or more years to 'realize' their consensual relationships with [Plaintiff] were supposedly abusive." (Compl., ¶ 4.) Plaintiff alleges that "Gore, with Wood's assistance and/or acquiescence, encouraged prospective accusers to fabricate, change, embellish, and exaggerate their stories, including to make up that they had been raped by [Plaintiff], 'trafficked' by [Plaintiff], and were too scared to speak out." (Compl., ¶ 30.)

Plaintiff asserts that *Sipple* is distinguishable because "[Plaintiff] did not invite public comment regarding his own moral superiority." (Opp'n at p. 10:4-6.) In support of this assertion, Plaintiff cites to *Albanese v. Menounos* (2013) 218 Cal.App.4th 923, 926, where "Plaintiff and respondent Lindsay Albanese, a celebrity stylist and style expert, sued defendant and appellant Maria Menounos, a television personality, for defamation and other torts. Menounos moved to strike the complaint under Code of Civil Procedure section 425.16, the anti-SLAPP statute. The trial court denied the motion on the ground the disputed statements did not involve a public issue or an issue of public interest," and the Court of Appeal affirmed. The *Albanese* Court "distinguish[ed] [the] case from *Sipple, supra*, 71 Cal.App.4th 226, in which the plaintiff, by advising prominent political candidates to campaign against domestic violence, had invited public comment regarding his alleged abusive conduct toward his own ex-wives. There was no similar evidence in this case that Albanese, for example, by publicly promoting her own moral superiority had invited public comment regarding her alleged theft of property from Menounos or Dolce and Gabbana." (*Albanese v. Menounos*, *supra*, 218 Cal.App.4th at p. 936.)

But the *Albanese* Court also concluded that "even assuming that Albanese is a well-known celebrity stylist and fashion consultant, there is no evidence that she was involved in a public controversy or that her fame is so great that her involvement in this private dispute is a matter of public interest. We therefore conclude the public interest requirement of section 425.16, subdivision (e)(4) was not met in this case." (*Albanese v. Menounos*, *supra*, 218 Cal.App.4th at p. 937.) The Court finds that the facts alleged here are different than those in *Albanese*, and agrees with Wood that the IIED claim based on Wood's communications with other victims involves a matter of public interest. Wood notes that "[i]n articulating what constitutes a matter of public interest, courts look to certain specific considerations, such as whether the subject of the speech or activity was a person or entity in the public eye…" (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 145 [internal quotations omitted].)

As Wood notes, Plaintiff alleges that "[i]n the ten years after they split, Wood never once accused Warner of abuse—that is, until she met Gore…With Gore's help, Wood could be rebranded, from someone who still might best be known for dating Marilyn Manson a decade ago, into an outspoken standard bearer for victims of domestic violence or sexual assault—thereby absolving her reputation for having a wild past and her embarrassment for having been in a long-term relationship with Marilyn Manson." (Compl., ¶ 3.)[4] Plaintiff also alleges that "[t]his deluge of allegations against [Plaintiff] brought renewed attention to the

Phoenix Act and Wood—and, in so doing, provided more manufactured content for the HBO project. Its director, Amy Berg, confirmed this fact in an interview with Variety, stating that 'naming Manson obviously created a lot more story for us. It became a two-part film in the edit bay.'…On or around January 12, 2022, it was announced that Part One of the project – titled Phoenix Rising – would premiere at the Sundance Film Festival in January 2022, and that both parts would air on HBO in March 2022." (Compl., ¶ 22, emphasis omitted.)

Based on the foregoing, the Court finds that Wood has established that Plaintiff's IIED claim based on Wood "recruiting, coordinating, and pressuring multiple women to make false accusations against [Plaintiff] and to be part of their film project," arises from protected activity for purposes of the anti-SLAPP statute. The first prong of the two-step anti-SLAPP analysis is thus satisfied, and the burden now shifts to Plaintiff on prong two.

Wood asserts that Plaintiff cannot establish a probability of prevailing on his IIED claim concerning Plaintiff's communications with other victims. "The elements of a cause of action for intentional infliction of emotional distress are: (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress." (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1376 [internal quotations omitted].) "A defendant's conduct is outrageous when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051 [internal quotations omitted].)

As set forth above, Plaintiff alleges that Defendants' outrageous conduct included "recruiting, coordinating, and pressuring multiple women to make false accusations against Warner and to be part of their film project." (Compl., ¶ 63(e).) Wood submits a declaration stating that she "never pressured anyone to make false accusations against [Plaintiff] or to be part of the Phoenix Rising documentary." (Wood Decl., ¶ 16.) Wood states that "[a]fter testifying before Congress, some women contacted [her] who claimed to have experienced similar abuse inflicted by [Plaintiff]," and that "[o]n October 21, 2020, [she] met with some of the other victims of [Plaintiff]." (Wood Decl., ¶¶ 10, 14.) Wood states that "some of the people who attended the meeting did not want to be filmed or did not want to appear in the documentary. We, of course, respected their wishes." (Wood Decl., ¶ 14.)

Wood thus asserts that Plaintiff cannot show "outrageous conduct" by Wood based on her communications with other victims.

Plaintiff counters that his "denial of the alleged abuse is sufficient to show that false accusations of the same are outrageous." (Opp'n at p. 11:2-3.) Plaintiff states in his declaration, "I understand that on or around February 1, 2021, Wood posted to Instagram that I was her 'abuser,' and shortly thereafter a number of other women simultaneously emerged with false public accusations against me of abuse, assault, rape, threats, 'trafficking,' and the like…I never abused, assaulted, raped, threatened, or 'trafficked' any of these women, as they contend. Their accusations against me of abuse, assault, rape, threats, and the like are unequivocally false." (Warner Decl., ¶ 3.) However, Wood notes that Plaintiff's denial in paragraph 3 of his Declaration does not contradict Wood's testimony that she "never pressured anyone to make false accusations against [Plaintiff]…" (Wood Decl., ¶ 16.)

Plaintiff also submits the declaration of Emese Balog, who indicates that Gore sent her an email message indicating, "I know this is a strange way to reach out but my name is Illma, I work with the Phoenix Act I run it alongside Evan Rachel Wood. We were organizing a group of people to meet up in Los Angeles and Zoom/Skype in to talk about experiences they had that might be similar to yours." (Balog Decl., ¶ 4, Ex. A). The purported message indicated that Balog was not "obligated to speak" if she participated. (Balog Decl., ¶ 4, Ex. A.) Wood also notes that Gore's purported message to Katheryn McGaffigan ("McGaffigan"), which Plaintiff seeks to authenticate, indicates that "there's no pressure to be involved in anyway." (King Decl., ¶ 15, Ex. D) The Court agrees with Wood that the purported messages from Gore to

McGaffigan and Balog are not "so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Hughes v. Pair*, *supra*, 46 Cal.4th at pp. 1050-1051 [internal quotations omitted].)

Plaintiff also submits the Declaration of Bryton Gore, who states that Gore gave her a broken iPad as a gift. (Bryton Gore Decl., ¶ 9.) Bryton Gore saw two images of a checklist on the iPad, which state, *inter alia*, "name," "contact," "willing to testify." (Bryton Gore Decl., ¶ 20, Ex. D.) But Plaintiff does not provide evidence that Wood and/or Gore drafted the checklists, or demonstrate how they were used. Bryton Gore also states that she found a piece of paper in Gore's trash, with what appeared to be Gore's handwriting. (Bryton Gore Decl., ¶ 22, Ex. E.) The Court does not find that Exhibits D and E to Bryton Gore's Declaration demonstrate that Wood pressured anyone to make false accusations.

In addition, Plaintiff notes that Exhibit 7 to Wood's counsel's declaration is a copy of the First Amended Complaint for Damages filed on October 25, 2021 in the case entitled *Ashley Walters v. Brian Warner, a.k.a Marilyn Manson et al*., Case No. 21STCV18680. (Kump Decl., ¶ 5, Ex. 7.) Paragraph 108 of Ms. Walter's First Amended Complaint alleges that "[i]n the Fall of 2020, a group of individuals who had been victimized by Warner reached out to Plaintiff to ask about her own experience while working for him. The support group included several of Warner's ex-girlfriends such as Wood…It was during these meetings that Plaintiff recalled the full extent of her experiences and realized that what she suffered during her employment was not only traumatic, but unlawful." (Kump Decl., ¶ 5, Ex. 7, ¶ 108.) Ms. Walters further alleges that "[h]earing the experiences of others unlocked new memories that she repressed long ago as a result of her psychological trauma…" (*Id*. at ¶ 127.) The Court does not find that these allegations demonstrate that Wood pressured Ms. Walters (or others) to make false accusations against Plaintiff, or that they demonstrate outrageous conduct by Wood.

Based on the foregoing, the Court does not find that Plaintiff has demonstrated a probability of prevailing on his IIED claim based on Wood "recruiting, coordinating, and pressuring multiple women to make false accusations against Warner and to be part of their film project…" (Compl., ¶ 63(e).)

Plaintiff's Claims Based on Alleged Defamation

In support of the first cause of action for IIED, Plaintiff alleges that Defendants' conduct was "outrageous in that it was so extreme as to exceed all bounds of that usually tolerated in a civilized community," and that such conduct included "making knowingly false and defamatory statements against Warner, including that the actress in the 'Groupie' video was a minor, and that Warner was manufacturing child pornography…" (Compl., ¶ 63(d).)

Plaintiff also alleges a cause of action for defamation per se. In support of this cause of action, Plaintiff alleges that "Gore stated to persons other than [Plaintiff] that during the filming of 'Groupie,' the actress in the video was a minor, and that the actress was 'dead.' Gore understood the statements to refer to [Plaintiff], and specifically to mean that [Plaintiff's] role in the making of 'Groupie,' e.g., as a child pornography was criminal; indeed, she stated that 'Groupie' was evidence of a felony and that [Plaintiff] would be indicted as a result." (Compl., ¶ 69.) Plaintiff alleges that those statements about "Groupie" were false. (Compl., ¶ 70.)

Wood asserts that Gore's statements about "Groupie" concern a matter of public interest and are protected activity. The Court agrees. Wood cites to *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 364-365, where "Sandra Cross (Cross) leased a house to Stephen and Laura Cooper. As the lease was about to expire, Cross put the house up for sale and entered a contract of sale with prospective buyers. After the prospective buyers backed out, Cross sued the Coopers for interfering with the sale and causing it to fail. In her complaint, Cross asserted several claims based, in part, on allegations that the Coopers disclosed, or threatened to disclose, information that a registered sex offender lived nearby. In response to the lawsuit, the Coopers filed an anti-SLAPP motion under Code of Civil Procedure section 425.16 to strike those claims. The trial court denied the motion, and the Coopers [appealed] from that order." The Court of Appeal "conclude[d] that the trial court erred in denying the motion and remand the matter for further proceedings." (*Id*. at p. 365.)

The *Cross* Court noted that "*M.G.* and *Terry* demonstrate the obvious: preventing child sexual abuse and protecting children from sexual predators are issues of widespread public interest. Thus, insofar as Cooper's disclosure served those interests by alerting prospective buyers of the potential risk to children posed by a registered sex offender who lived nearby, his conduct involved a private communication directly related to an issue of considerable interest to the general public and qualifies for anti-SLAPP protection." (*Cross v. Cooper*, *supra*, 197 Cal.App.4th at p. 375.)

Plaintiff asserts that Wood cannot show that Gore's statements "alerted" or "protected" anyone like they did in *Cross*. However, the Court finds that Plaintiff's allegations that "Gore stated to persons other than [Plaintiff] that during the filming of 'Groupie,' the actress in the video was a minor," and that "[Plaintiff's] role in the making of 'Groupie,' e.g., as

a child pornography was criminal" (Compl., ¶ 69) can be deemed to serve the interests of preventing child sexual abuse and protecting children from sexual predators. The *Cross* Court also noted that "[t]his case…does not involve some broad and amorphous public interest in an issue that one might rationally abstract from Cooper's conversation. As noted, the conversation involved the location of a registered sex offender, a subject specifically and directly related to an issue of compelling and widespread interest." (*Cross v. Cooper*, *supra*, 197 Cal.App.4th at p. 379.) Wood asserts that Plaintiff has conceded that the accusations involving "Groupie" are of public interest, citing to paragraph 60 of the Complaint, which alleges, *inter alia*, that "Gore's defamatory allegations regarding 'Groupie' have been repeated in at least one civil complaint filed against Warner (and consequently have reverberated through the press)." (Compl., ¶ 60.)

Based on the foregoing, the Court finds that Wood has established that Plaintiff's claims based on alleged defamation arise from protected activity for purposes of the anti-SLAPP statute. The first prong of the two-step anti-SLAPP analysis is thus satisfied, and the burden now shifts to Plaintiff on prong two.

Wood asserts that Plaintiff "cannot establish a probability of prevailing on his claims against Wood because (1) there is no evidence that Wood made false statements about *Groupie* or conspired with Gore to make any such statements; and (2) [Plaintiff] cannot meet his burden to demonstrate actual malice." (Mot. at p. 21:11-13.)

"The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Wong v. Jing*, *supra*, 189 Cal.App.4th at p. 1369.) "When a defamation action is brought by a public figure, the plaintiff, in order to recover damages, must show that the defendant acted with actual malice in publishing the defamatory communication." (*Denney v. Lawrence* (1994) 22 Cal.App.4th 927, 933.)

Plaintiff does not dispute that the Complaint does not allege that Wood made false statements about "Groupie." Rather, Plaintiff alleges that "Wood condoned and encouraged Gore to promulgate defamatory falsehoods about [Plaintiff] in order to further their conspiracy." (Compl., ¶ 61.)

Plaintiff cites to *Sheppard v. Freeman* (1998) 67 Cal.App.4th 339, 349, where the Court of Appeal noted that "liability for libel may be imposed on a conspiracy theory." Plaintiff asserts that "[e]ach of Wood's arguments that [Plaintiff] cannot establish various elements of his claims against her has nothing to do with vicarious liability…For Wood to be liable for Gore's misconduct, [Plaintiff] 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." (Opp'n at p. 13:19-23.) Plaintiff cites to *Spencer v. Mowat* (2020) 46 Cal.App.5th 1024, 1037, where the Court of Appeal noted that "[t]he elements of liability under conspiracy are: (1) formation and operation of the conspiracy; (2) wrongful conduct in furtherance of the conspiracy; and (3) damages arising from the wrongful conduct."

As to the element of "formation and operation" of the conspiracy, Plaintiff asserts that Gore "used the falsehood about 'Groupie' to recruit prospective accusers on behalf of Wood and her Phoenix Act entity." (Opp'n at p. 14:1-3.) Plaintiff cites to portions of Gore's October 25, 2022 deposition transcript in support of this assertion. (Opp'n at p. 14:3-4; citing Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at pp. 34:10-11, 34:23-

35:1, 35:17-36:18, 110:2-5, 111:2-5, 111:11-15.) Plaintiff also cites to Gore's testimony that "I've told people that I believed the participant in the video was underage," and when asked "[w]ho have you told that to," Gore responded, "I said that to Katheryn McGaffigan," and "I believe Evan Rachel Wood and Esmé Bianco." (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at pp. 34:7-15.) Plaintiff asserts that Wood saw the film but did not tell Gore the actress was of age. Plaintiff cites to the testimony, "[d]id Ms. Wood ever tell you she had seen the video? A Yes. Q And did she tell you that the actress in the video was underage?...I don't recall the specifics of the conversations about 'Groupie' with Ms. Wood." (*Id*. at pp. 95:11-18.)

Wood counters that "[f]ailing to correct a statement does not demonstrate a conspiracy to defame, particularly absent evidence that Wood knew the statement was false or was being made to anyone else." (Reply at p. 13:13-14.) Wood cites to *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582, where the Court of Appeal noted that the "basis of a civil conspiracy is the formation of a group of two or more persons who have agreed to a common plan or design to commit a tortious act. The conspiring defendants must also have actual knowledge that a tort is planned and concur in the tortious scheme with knowledge of its unlawful purpose." (Internal quotations omitted.) In addition, "[k]nowledge of the planned tort must be combined with intent to aid in its commission. The sine qua non of a conspiratorial agreement is the knowledge on the part of the alleged conspirators of its unlawful objective and their intent to aid in achieving that objective." (*Id.* at p. 1582 [internal quotations omitted].)

The Court does not find that Plaintiff has demonstrated that Wood had "concurred" in Gore's alleged defamatory statements about "Groupie" with knowledge of their unlawful purpose, or that Wood intended to aid in achieving Gore's objective of making such alleged defamatory statements.

Based on the foregoing, the Court does not find that Plaintiff has demonstrated a probability of prevailing on his claims based on alleged defamation against Wood.

Allegations Wood Moves to Strike

Plaintiff notes that Wood moves to strike multiple allegations of the Complaint. (*See* Notice of Mot. at p. 2:5-20.) Plaintiff asserts that the Court should not strike allegations that provide context to other claims.

Plaintiff notes that "[a]llegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." (*Baral v. Schnitt* (2016) 1 Cal.5th 376,

394.) Plaintiff asserts that "[a]llegations describing acts done to further Gore and Wood's campaign against [Plaintiff] supply background and context for the causes of action arising from hacking, 'swatting,' and impersonation of [Plaintiff], which are not challenged in the Motion." (Opp'n at p. 15:8-11.)

Wood counters that "Plaintiff cannot backdoor his stricken claims back into the case by recasting the FBI Letter, recruitment, and *Groupie* allegations as 'context' for his swatting, hacking, and impersonation claims. That would subvert the purpose of the anti-SLAPP statute." (Reply at p. 14:19-21.) Wood notes that "refusing to strike any part of a cause of action that rests in part on protected activity defeats the legislative goal of protecting defendants from meritless claims based on such conduct." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1011.)

Plaintiff also asserts that "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." (Opp'n at p. 15:16-17.) Plaintiff notes that Gore's special motion to strike does not seek to strike allegations involving the FBI Letter. Wood counters that "[n]o matter who is the target of Plaintiff's IIED claim based on the FBI Letter, the claim is barred by the litigation privilege because Plaintiff only learned of the letter from Wood's court filings." (Reply at p. 14:23-25.) In addition, as Wood notes, Plaintiff cites no authority for the proposition that the Court can decline to strike a claim from the Complaint after finding that it arises from protected activity and lacks merit.

Wood also cites to *Baral*, where the Court found that "[t]he scope of the term 'cause of action' in section 425.16(b)(1) is evident from its statutory context. When the Legislature declared that a 'cause of action' arising from activity furthering the rights of petition or free speech may be stricken unless the plaintiff establishes a probability of prevailing, it had in mind allegations of protected activity that are asserted as grounds for relief. The targeted claim must amount to a 'cause of action' in the sense that it is alleged to justify a remedy. By referring to a 'cause of action against a person arising from any act of that person in furtherance of' the protected rights of petition and speech, the Legislature indicated that particular alleged acts giving rise to a claim for relief may be the object of an anti-SLAPP motion. Thus, in cases involving allegations of both protected and unprotected activity, the plaintiff is required to establish a probability of prevailing on any claim for relief based on allegations of protected activity. Unless the plaintiff can do so, the claim and its corresponding allegations must be stricken. Neither the form of the complaint nor the primary right at stake is

determinative." (*Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 395 [internal citation and emphasis omitted, underline added].)

Thus, the Court finds that it is appropriate to strike the allegations identified in page 2:7-20 of Wood's notice of motion, except for paragraph 1, lines 4 through 6; paragraph 3, lines 16 to 17; paragraph 22, and paragraph 24. Wood moves to strike paragraph 64(d) of the First Cause of Action. However, this appears to be a typographical error; the reference should be to paragraph 63(d). Consequently, the Court strikes paragraph 63(d) but not 64(d). The Court does not find that Wood has demonstrated that the foregoing identified allegations correspond to the claims Wood moves to strike.

D. Gore's Motion

In Gore's special motion to strike, Gore asserts that the Court should strike Plaintiff's IIED claim based on Gore's alleged statements related to Plaintiff's "Groupie" video, Plaintiff's IIED claim based on Gore's communications with victims, and Plaintiff's claim for defamation per se, because such claims arise from protected activity. (Mot. at pp. 7:2-3; 10:25-26.)

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Plaintiff's IIED Claim Based on Gore "Recruiting, Coordinating, and Pressuring Multiple Women to Make False Accusations Against [Plaintiff]"

As set forth above, Plaintiff alleges in support of his IIED cause of action that Defendants' "conduct was outrageous in that it was so extreme as to exceed all bounds of that usually tolerated in a civilized community," including "recruiting, coordinating, and pressuring multiple women to make false accusations against [Plaintiff] and to be part of their film project." (Compl., ¶ 63(e).)

Like Wood, Gore asserts that the "false accusations" Plaintiff references are statements made by victims accusing Plaintiff of domestic violence and abuse, and that Courts have held that communications regarding domestic violence and sexual abuse are a matter of public interest. Gore cites to *Sipple v. Foundation for Nat. Progress*, *supra*, 71 Cal.App.4th 226, which is discussed above in connection with Wood's motion to strike.

In the opposition, Plaintiff asserts that Gore focuses on the wrong acts. Plaintiff contends that the acts at issue are Gore's recruiting, pressuring, and coordinating people to make false allegations, not the alleged subsequent allegations those people made. But Plaintiff is alleging a claim for IIED as a result of such alleged "false accusations."

Plaintiff alleges in the Complaint that "[t]he wrongful conduct alleged herein has been invasive, harassing, defamatory, and otherwise injurious to [Plaintiff] and his career, personal life, and well-being." (Compl., ¶ 6.) As set forth above, Plaintiff alleges, *inter alia*, that "for at least the last two years, Gore and Wood have secretly recruited, coordinated, and pressured prospective accusers to emerge simultaneously with allegations of rape and abuse against [Plaintiff], and brazenly claim that it took ten or more years to 'realize' their consensual relationships with [Plaintiff] were supposedly abusive." (Compl., ¶ 4.) Plaintiff alleges that "Gore, with Wood's assistance and/or acquiescence, encouraged prospective accusers to fabricate, change, embellish, and exaggerate their stories, including to make up that they had been raped by [Plaintiff], 'trafficked' by [Plaintiff], and were too scared to speak out." (Compl., ¶ 30.) As noted, the *Sipple Court* found that "[d]omestic violence is an extremely important public issue in our society." (*Sipple v. Foundation for Nat. Progress*, *supra*, 71 Cal.App.4th at p. 238.)

Based on the foregoing, and for the reasons discussed above, the Court agrees with Gore that Plaintiff's IIED claim based on Gore "recruiting, coordinating, and pressuring multiple women to make false accusations against [Plaintiff] and to be part of their film project," arises from protected activity for purposes of the anti-SLAPP statute. The first prong of the two-step anti-SLAPP analysis is thus satisfied, and the burden now shifts to Plaintiff on prong two.

Gore asserts that with respect to the allegations of "recruiting, coordinating, and pressuring multiple women to make false accusations against [Plaintiff] and to be part of their film project" Plaintiff cannot show "outrageous conduct" by Gore based on her communications with other victims.

In the opposition, Plaintiff asserts that he can make a prima facie showing on this claim. The Court notes that Plaintiff's arguments as to the first element of "outrageous conduct," are the same as those raised in opposition to Wood's motion to strike, which are discussed above. The Court does not find that Plaintiff has demonstrated "outrageous conduct" by Gore for purposes of his IIED claim pertaining to Gore "recruiting, coordinating, and pressuring multiple women to make false accusations against Warner and to be part of their

film project." (Compl., ¶ 63(e).) The Court thus does not find that Plaintiff has demonstrated a probability of prevailing on such claim.

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Plaintiffs' Defamation Per Se Cause of Action and IIED Claim Based on Gore's Alleged Statements Related to the "Groupie" Video

As set forth above, Plaintiff alleges in support of the IIED cause of action that Defendants' "conduct was outrageous in that it was so extreme as to exceed all bounds of that usually tolerated in a civilized community," including "making knowingly false and defamatory statements against [Plaintiff], including that the actress in the 'Groupie' video was a minor, and that Warner was manufacturing child pornography." (Compl., ¶ 63(d).)

As also discussed, Plaintiff alleges in support of the second cause of action for defamation per se that "Gore stated to persons other than [Plaintiff] that during the filming of 'Groupie,' the actress in the video was a minor, and that the actress was 'dead.' Gore understood the statements to refer to [Plaintiff], and specifically to mean that [Plaintiff's] role in the making of 'Groupie,' e.g., as a child pornography was criminal; indeed, she stated that 'Groupie' was evidence of a felony and that [Plaintiff] would be indicted as a result." (Compl., ¶ 69.) Plaintiff alleges that those statements about "Groupie" were false. (Compl., ¶ 70.)

Gore asserts that these allegations implicate Gore's exercise of "free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(4).) More specifically, Gore asserts that protecting people from sex offenders is a matter of public interest, citing to *Cross v. Cooper* (2011) 197 Cal.App.4th 357. This case is discussed above in connection with Wood's motion to strike.

In his opposition to Gore's motion, Plaintiff asserts that "unlike *Cross*, which involved a registered sex offender, statements about 'Groupie' provide no basis to 'protect[]' children from [Plaintiff], because the film's actress was not actually underage…and Gore admitted she did not know whether the film in fact depicted illegal activity…" (Opp'n at p. 5:10-13.) The Court finds that this is an argument for the second step of the anti-SLAPP analysis, not the first. On the first step, "[t]he court first decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant must demonstrate that the act or acts of which the plaintiff complains were taken in furtherance of the [defendant's] right of petition or free speech under the United States Constitution or the California

Constitution in connection with a public issue…" (*Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 480 [internal quotations and citations omitted].)

The Court agrees with Gore that Plaintiff's allegations of Gore making defamatory statements about Plaintiff involving the "Groupie" video involve an issue of public interest.

Based on the foregoing, the Court finds that Gore has established that Plaintiff's claims based on alleged defamation arise from protected activity for purposes of the anti-SLAPP statute. The first prong of the two-step anti-SLAPP analysis is thus satisfied, and the burden now shifts to Plaintiff on prong two.

Plaintiff's Defamation Per Se Cause of Action

Gore asserts that Plaintiff cannot establish the merits of a defamation per se claim, because "the statements allegedly made by Ms. Gore are essentially [Plaintiff's] own words, so she would have no reason to believe they were false or that he would be injured by them." (Mot. at p. 11:23-25.) In the motion, Gore cites to Exhibit 5 of Gore's request for judicial notice, a webpage entitled "Video Interview: Marilyn Manson Dinner for Five," at the website "https://www.mansonwiki.com/wiki/Video_Interview:Marilyn_Manson_Dinner_For_Five." As set forth above, the Court denies Gore's request that the Court take judicial notice of Exhibit 5.[5]

Plaintiff asserts that he can make a prima facie showing of defamation. As set forth above, "[t]he elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Wong v. Jing*, *supra*, 189 Cal.App.4th at p. 1369.) [6] "When a defamation action is brought by a public figure, the plaintiff, in order to recover damages, must show that the defendant acted with actual malice in publishing the defamatory communication." (*Denney v. Lawrence*, *supra*, 22 Cal.App.4th 927, 933.)

As to the element of publication, Plaintiff provides the Declaration of Michele Meyer, who states, "Gore also told me that [Plaintiff] had abused underage girls and was involved in the creation and distribution of child pornography. Gore talked to me about a film [Plaintiff] made in the 1990s called 'Groupie'." (Meyer Decl., ¶ 10.)

As to the element of a false statement, Ms. Meyer states in her declaration that Gore told her, *inter alia*, that "the girl in Groupie was underage," "[Plaintiff] knew the girl was underage," and "the film was child pornography." (Meyer Decl., ¶ 10.) Plaintiff submits the Declaration of Paula M. Weiss, who indicates that she acted in the "Groupie" film, and that she was approximately 21-22 years old at the time. (Weiss Decl., ¶ 4.)

Gore counters that "Gore's statements about *Groupie* were based on her understanding that it starred a woman named Jeanette Polard." (Reply at p. 7:9-10.) Indeed, Plaintiff does not specifically assert in the opposition that Gore made statements about Ms. Weiss. In addition, as Gore notes, Plaintiff does not prove that Ms. Polard was not in the "Groupie" film.

Gore notes that she was asked in her October 25, 2022 deposition, "What about the film was communicated to you by the alleged relative that caused you concern?" to which Gore responded, "[a]fter seeing the 'Dinner For Five' interview and the interviews with Brian Warner where he talks about potential prosecution, having a relative of someone whose name had come up in research about 'Groupie' reach out and say that Jeanette had been involved in films with Brian Warner underage, it generally disturbed me that they believed that Jeanette Polard was in the 'Groupie' film." (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at pp. 62:14-63:6.)

As to the element of damage, Plaintiff states that he "suffered severe emotional distress as a result of Wood's and Gore's conduct as alleged in my Complaint." (Warner Decl., ¶ 8.)

As to the element of actual malice, Plaintiff asserts that Gore acted at least "with reckless disregard of whether her defamatory statements were false or not." (Opp'n at p. 9:19-20.)

Plaintiff cites to *Reed v. Gallagher* (2016) 248 Cal.App.4th 841, 861, where the Court of Appeal noted that "[a] public figure suing for defamation must demonstrate actual malice by clear and convincing evidence. Actual malice requires a showing that the allegedly false statement was made with knowledge that it was false or with reckless disregard of whether it was false or not. The reckless disregard standard requires a high degree of awareness of … probable falsity… The question is not whether a reasonably prudent [person] 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." (Internal quotations and references to [Citation.] omitted.)

Plaintiff asserts that Gore has never seen "Groupie" herself. In her deposition, Gore responded, "yes," to the question, "I'm correct that you have never seen the 'Groupie' video; right?" (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at p. 36:22-24.) Plaintiff also notes that Gore was also asked "[s]o no one has ever told you that Brian Warner had sex with this alleged underage actress; correct?" to which Gore responded, "They -- no. They just worried that that is what happened." (*Id.* at p. 60:7-13.) In addition, Gore was asked, "[s]o what illegal activities did you believe were shown in the 'Groupie' video?" to which Gore responded, "I – I'm not

sure. I just know what Brian Warner spoke about in interviews, from his own words, that he could be prosecuted or indicted." (*Id*. at p. 64:13-17.)

Plaintiff asserts that the record here reflects a "decision to avoid facts that might confirm the probable falsity of the challenged statement." (*Mitchell v. Twin Galaxies, LLC* (2021) 70 Cal.App.5th 207, 221.) Plaintiff notes that Gore indicated that an "unidentified sender claimed she was a relative of the actress who was in the film 'Groupie.'" (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at p. 24:2-4.) Gore testified, "[s]hortly after, we had a phone call," and that at "the time of this 45-minute-to-an-hour phone call," Gore did not know who she was speaking to. (*Id*. at p. 24:22; 25:17-19.) Gore did not ask the person's name. (*Id*. at p. 25:20-21.) Gore was also asked, "[o]ther than Jeanette or the actress being underage, was there anything else that you were told by the alleged relative that caused you to conclude there were illegal activities in connection with the 'Groupie' video?" to which Gore responded, "No. It was just my general feeling that she was quite disturbed and upset and believed that something illegal had happened." (*Id*. at p. 65:17-24.) Gore also indicated "No" in response to the question, "Did [Wood] tell you, during these initial communications, that the actress in the video was a minor?" (*Id*. at p. 89:2-19.) Plaintiff asserts that despite this, Gore told Meyer that "Groupie" was child pornography. (Meyer Decl., ¶ 10.)

Gore counters that "[t]here 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." (Reply at p. 9:21-23.)

Gore notes that she testified, in response to the question, "What did you tell Katheryn, in as much detail as you can recall, about the 'Groupie' video?" that "I can't recall exactly. I told her that I said I believed that the participant was a minor, and I repeated Brian Warner's own words from videos about the film. And I would have generally asked -- I believe asked if she could confirm whether or not Jeanette Polard who was in the film." (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo. at p. 35:17-24.) Gore was then asked, "[a]nd why did you believe it was Jeanette Polard who was in the film?" to which she responded, "[f]rom the relative that had reached out to me." (*Id*. at p. 35:25-36:3.)

Gore was also asked, "[a]ny other reason you thought the actress in the 'Groupie' video was Jeanette Polard?" to which Gore responded, "Jeanette Polard was in the -- I believe it was the Dead to the World tour, VHS, and had followed the band, as one of the Slasher sisters, as a teenager. And Jeanette, in the film, had the

same jewelry on as the -- at least the visuals that were shown of 'Groupie' at the end of the VHS." (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at p. 36:9-18.) In addition, Gore was asked, "what is it about the 'Dinner For Five' video that caused you to conclude that Mr. Warner was a rapist pedophile?" (*Id*. at p. 26:21-23.) Gore responded "[i]n the video, the age of the participant is mentioned, and Brian Warner himself talks about potentially being prosecuted or indicted because of the film." (*Id*. at p. 27:1-4.) Gore was further asked, "[w]hat do you recall him saying that caused you to conclude he was a rapist pedophile?" to which she responded, "[t]hat he could be prosecuted if the film was released and that it was generally funny that his manager didn't want him to release it." (*Id*. at p. 27:6-13.)

Gore asserts that "[b]ecause recklessness is not judged by an objective analysis, it is irrelevant that [Plaintiff's] attorneys believe Gore 'failed to probe the truth' about the identity of the *Groupie* actress." (Reply at p. 10:1-3.) Gore cites to *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 258, where the California Supreme Court noted that "[a] failure to investigate, anger and hostility toward the plaintiff, reliance upon sources known to be unreliable, or known to be biased against the plaintiff -- such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication. We emphasize that such evidence is relevant only to the extent that it reflects on the subjective attitude of the publisher. The failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy. Similarly, mere proof of ill will on the part of the publisher may likewise be insufficient." (Internal citations omitted.)

Gore notes that Plaintiff does not identify any evidence that Ms. Polard's relative was unreliable or biased, or that Gore believed that the relative was unreliable or biased. Gore also asserts that her ability to investigate further was limited because Plaintiff never released the film. Gore testified in her deposition that "[t]he 'Groupie' film has not been released publicly…" (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at p. 65:1-2.)

Based on a consideration of the arguments and evidence presented by the parties, the Court does not find that Plaintiff has demonstrated that Gore entertained serious doubts as to the truth of her statements about the "Groupie" film. As set forth above, Gore testified that she believed Jeanette Polard was the actress in the "Groupie" film based on, *inter alia*, conversations with a claimed relative of Ms. Polard, and that Gore believed the participant in the video was underage. Plaintiff only provides evidence that Ms. Weiss stated she

acted in "Groupie" and that she "was approximately 21-22 years old at the time." (Weiss Decl., ¶ 4.) However, Plaintiff does not provide evidence that Ms. Polard was not in the film.

Based on the foregoing, the Court finds that Plaintiff has not demonstrated a probability of prevailing on his cause of action for defamation per se against Gore.

Plaintiff's IIED Claim Based on Gore's Alleged Defamation

In the motion, Gore asserts that "the 'knowingly false and defamatory statements against [Plaintiff], including that the actress in the 'Groupie' video was a minor, and that [Plaintiff] was manufacturing child pornography' allegedly made by Ms. Gore cannot be outrageous conduct, as they virtually repeat comments made by Warner himself…" (Mot. at p. 9:11-14.) Gore also asserts that "protecting people from sex offenders and the issue of child molestation in particular being a matter of public interest, the statements cannot be 'outrageous.'" (Mot. at p. 10:4-6.)

In the opposition, Plaintiff asserts that he can make a prima facie showing of IIED. As set forth above, "[t]he elements of a cause of action for intentional infliction of emotional distress are: (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress." (*Wong v. Jing*, *supra*, 189 Cal.App.4th at p. 1376 [internal quotations omitted].) "A defendant's conduct is outrageous when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Hughes v. Pair*, supra, 46 Cal.4th at p. 1050-1051 [internal quotations omitted].)

As to the first element, Plaintiff asserts that false accusations of child abuse are extreme and outrageous conduct. Plaintiff cites to *Grenier v. Taylor*, *supra*, 234 Cal.App.4th at p. 476, where "Defendants and appellants, Tim Taylor and Alex Grenier, challenge[d] the trial court's denial of their motion to strike the complaint for defamation and intentional infliction of emotional distress filed by plaintiffs and appellants, Bob Grenier and Gayle Grenier, as a strategic lawsuit against public participation (SLAPP)…" The Court of Appeal found that "Bob and Gayle…demonstrated a probability of prevailing on their intentional infliction of emotional distress claims." (*Id*. at p. 486.) The Court noted that "Alex and Tim's statements are not mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. Rather, they accuse Bob of criminal conduct that includes vile and depraved activities, i.e., child molestation…Bob and Gayle made a sufficient prima facie showing that Alex and Tim's conduct was extreme and outrageous…" (*Id*. at p. 486-487.)

Gore asserts that Plaintiff cannot prove that Gore's statements about "Groupie" were false. As discussed, Plaintiff submits the declaration of Paula M. Weiss, who indicates that she acted in the "Groupie" film, that she was approximately 21-22 years old at the time, and that statements that she was "dead or killed" are false. (Weiss Decl., ¶¶ 4, 7.)

As to the second element, Plaintiff argues that "[a]t the very least, Gore recklessly disregarded the likelihood that her defamation would cause him severe emotional distress." (Opp'n at p. 7:10-11.) Plaintiff indicates that at her October 25, 2022 deposition, Gore was asked "[y]ou did understand, at the times you were telling people that Mr. Warner had used an underage actress in a simulated sex scene, that that was a rather serious allegation; right?" to which Gore responded "I understand that that is serious, yes." (Suppl. King Decl., ¶ 4, Ex. F (Gore Depo.) at p. 38:5-13.) Gore also responded "Yes," to the question, "Do you believe that stating that someone has used an underage actress in a simulated sex scene is basically a claim that someone is a pedophile?" (*Id*. at pp. 38:24-39:5.) Gore was also asked at her deposition, "[h]ave you ever done any investigation into whether or not you were incorrect in claiming that Jeanette Polard was the actress in 'Groupie'?" (*Id*. at p. 50:2-4.) Gore's counsel stated, "[w]ell, I'll instruct you to answer only as to investigation that you did prior to making statements because that's consistent with the Court's order," and Gore responded, "No. My -- no, I have not. Then really my investigation was to understand the film and if we could identify any part of the film or anyone in it." (*Id*. at p. 50:18-25.)

Gore counters that "[t]he 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." (Reply at p. 10:25-28.) The Court agrees that the deposition testimony cited by Gore (discussed above in connection with the defamation per se cause of action) undermines Plaintiff's assertion that Gore had a "reckless disregard of the probability of causing emotional distress." (*Hughes v. Pair*, *supra*, 46 Cal.4th at p. 1050.)

Based on the foregoing, the Court finds that Plaintiff has not demonstrated a probability of prevailing on his claim that Gore's outrageous conduct included "making knowingly false and defamatory statements against Warner, including that the actress in the 'Groupie' video was a minor, and that [Plaintiff] was manufacturing child pornography…" (Compl., ¶ 63(d).)

Allegations Gore Moves to Strike

In his opposition to Gore's motion, Plaintiff also asserts that the Court should not strike allegations that provide context to other claims (as was argued in the opposition to Wood's motion). As set forth above, the *Baral* Court noted that "the plaintiff is required to establish a probability of prevailing on any claim for relief based on allegations of protected activity. Unless the plaintiff can do so, the claim and its corresponding allegations must be stricken." (*Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 395.)

Thus, the Court finds that it is appropriate to strike the allegations identified in page 1:9-1:21 of Gore's notice of motion, except for paragraph 1, lines 4 through 6; paragraph 3, lines 16 to 17; paragraph 22, and paragraph 24. The Court does not find that Gore has demonstrated that the foregoing identified allegations correspond to the claims Gore moves to strike.

E. Attorneys' Fees

"[A] prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (Code Civ. Proc., § 425.16, subd. (c)(1).) Here, Defendants are the prevailing parties on their respective motions, so they may file noticed motions pursuant to statutory requirements.

Conclusion

Based on the foregoing, the Court grants Wood's special motion to strike in part. Wood's motion to strike is denied as to paragraph 1, lines 4 through 6; paragraph 3, lines 16 to 17; paragraph 22, and paragraph 24. As noted above, Wood moves to strike paragraph 64(d) of the First Cause of Action. However, this appears to be a typographical error; the reference should be to paragraph 63(d). Consequently, the Court strikes paragraph 63(d) but not 64(d). Wood's special motion to strike is otherwise granted.

The Court grants Gore's special motion to strike in part. Gore's special motion to strike is denied as to paragraph 1, lines 4 through 6; paragraph 3, lines 16 to 17; paragraph 22, and paragraph 24. Gore's special motion to strike is otherwise granted.

Defendants are ordered to give notice of this Order.

DATED: May 9, 2023

Hon. Teresa A. Beaudet

Judge, Los Angeles Superior Court

[1]The Court notes that the material objected to in Objection No. 2 is referenced as paragraph 15 of Ms. Wood's Declaration. However, the material is set forth in paragraph 18 of Ms. Wood's Declaration.

[2]Plaintiff also alleges that Gore solicited Plaintiff's personal information from former employees who were entrusted with such information; hacked Plaintiff's computers, phones, email accounts, and/or social media accounts; created a fictitious email account to manufacture purported evidence that Plaintiff was emailing illicit pornography; and "swatted" Plaintiff to draw further attention to him. (Compl., ¶ 5.)

[3]The Court thus need not and does not address Wood's remaining argument that the IIED claim based on the FBI Letter is meritless. (Mot. at p. 16:6.)

[4]Plaintiff alleges that he is a "musician, writer, filmmaker, and visual artist known professionally as Marilyn Manson." (Compl., ¶ 12.)

[5]Gore also asserts that "in addition to his statements at the Dinner for Five episode, there are numerous examples online about [Plaintiff] and his entourage engaging in sexual and violent acts with minors, making it impossible for him to show that a virtual repetition of his own words, apparently in private, had a tendency to cause him injury or damage." (Mot. at p. 11:25-12:1.) In support of this assertion, Gore cites to Exhibits 4 and 8 to her request for judicial notice. As set forth above, the Court denies Gore's request that the Court take judicial notice of these exhibits.

[6]The Court notes that "[p]ublication means communication to some third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made. Publication need not be to the public at large; communication to a single individual is sufficient."
(*Sanchez v. Bezos* (2022) 80 Cal.App.5th 750, 763 [internal quotations omitted].)

Superior Court of California

County of Los Angeles

Department 50

BRIAN WARNER p/k/a MARILYN MANSON, Plaintiff, vs. EVAN RACHEL WOOD, et al., Defendants.	Case No.: 22STCV07568 Hearing Date: May 9, 2023 Hearing Time: 11:00 a.m. **[TENTATIVE] ORDER RE:** DEFENDANT ASHLEY GORE'S APPLICATION TO FILE UNREDACTED RECORDS UNDER SEAL; PLAINTIFF BRIAN WARNER'S APPLICATION TO FILE UNREDACTED RECORDS UNDER SEAL

Background

On March 2, 2022, Plaintiff Brian Warner p/k/a Marilyn Manson ("Plaintiff") filed this action against Defendants Evan Rachel Wood and Ashley Gore a/k/a Illma Gore ("Gore") (jointly, "Defendants"). The Complaint asserts causes of action for (1) intentional infliction of emotional distress, (2) defamation per se, (3) violation of the Comprehensive Computer Data and Access Fraud Act (Penal Code Section 502(c), (e)(1)), and (4) Impersonation over the Internet (Penal Code Section 528.5(a), (e)).

Gore now applies for an order to file under seal certain portions of an October 25, 2022 deposition transcript of Gore. Plaintiff filed a "partial opposition" to Gore's application.

Plaintiff applies for an order permitting him to file certain portions of the Declaration of Michele Meyer under seal. No opposition to Plaintiff's application was filed.

Discussion

Generally, court records are presumed to be open unless confidentiality is required by law. (¿Cal. Rules of Court, rule 2.550, subd. (c)¿.) If the presumption of access applies, the court may order that a record be filed under seal "¿if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest.¿" ¿(Cal. Rules of Court, rule 2.550, subd. (d)¿.)

Gore's Application

Gore notes that on November 15, 2022, Plaintiff filed his opposition papers to Defendants' anti-SLAPP motions, including a "Supplemental Declaration of Howard E. King." Exhibit "F" to Mr. King's Supplemental Declaration is a copy of excerpts from the October 15,
2022 transcript of the deposition of Gore. (Suppl. King Decl., ¶ 4, Ex. F.)

Gore seeks to seal the following portions of the subject October 25, 2022 deposition transcript:

- 68:11-23
- 74:4-11
- 98:22-108:17
- 122:2-24
- 123:25-126:19
- 138:10-139:6

As an initial matter, in the reply, Gore indicates that as to page 74:4-11 of the deposition transcript, "[t]o the extent Plaintiff represents that his declarant, Ms. Meyer, does not object to any further public scrutiny based on her discussions with Defendant Gore and possible law enforcement investigations, Defendant Gore agrees that this excerpt can be unsealed." (Reply at p. 3:1-4.)

As to the remaining identified portions of the deposition transcript, Gore asserts that there is an overriding interest in protecting the identity of non-party individuals referenced in Gore's deposition, as well as references to communications with law enforcement.

Gore's counsel indicates that "[d]uring the deposition, Ms. Gore testified, among other things, about the bases for her beliefs about the *Groupie* video and the fact that she provided law enforcement agencies with contact information for individuals with potential knowledge relevant to allegations of sexual abuse against

Plaintiff. Various non-party individuals were mentioned and discussed during the deposition in connection with Ms. Gore's alleged statements about *Groupie*." (Ziemianek Decl., ¶ 4.) Gore's counsel further states that "given the notoriety of this case and other pending civil actions involving Plaintiff, I believe that placing the names of these individuals in the public record risks subjecting them to unwarranted public scrutiny, intimidation, and harassment from the media and members of the public." (*Ibid*.) In addition, Gore asserts that "releasing portions of the transcript that identify potential witnesses may jeopardize the integrity of the previously reported criminal investigation of Plaintiff, the current status of which is unknown to [Gore's] counsel." (*Ibid*.)

Gore cites to *McNair v. National Collegiate Athletic Assn*. (2015) 234 Cal.App.4th 25, 33, where the Court of Appeal noted that "[t]urning to the first of the *NBC Subsidiary* findings, in footnote 46 *NBC Subsidiary* listed examples of various interests that courts have identified as potentially constituting an overriding interest to justify closure of courtroom proceedings and by inference sealing otherwise open court documents," which include, *inter alia*, "protection of witnesses from embarrassment or intimidation so extreme that it would traumatize them or render them unable to testify," "ensuring the fair administration of justice," and "preservation of confidential investigative information."

Gore also asserts that the request for sealing is narrowly tailored, as Gore identified only those portions of the transcript that identify third parties and subjects them to unwarranted scrutiny, or that run the risk of compromising a law enforcement investigation. Gore asserts that there is no other way to preserve the information from the deposition transcript pages other than the targeted redactions.

In his partial opposition, Plaintiff states that he does not oppose Gore's application to seal pages 68:12-23, 122:2-24, or 139:5-6 of the subject deposition transcript. However, Plaintiff opposes Gore's application as to the remainder of the testimony Gore seeks to seal. (Opp'n at p. 2:1-5.)

As set forth above, Gore asserts that passages of the deposition transcript containing certain individuals' names should be sealed. Plaintiff asserts that certain of these names are already part of the public record in this case and elsewhere, such that the passages at issue should not be sealed. Gore counters that just because certain names are generally referenced elsewhere does not mean they should be exposed to further scrutiny and potential harassment here.

Gore also seeks to seal references to communications with law enforcement, as set forth above. Plaintiff asserts that such information should not be sealed as it involves certain information already in the public record and Defendants' anti-SLAPP filings. But as set forth above, "interests that courts have identified

as potentially constituting an overriding interest to justify closure of courtroom proceedings and by inference sealing otherwise open court documents" include "protection of witnesses from embarrassment or intimidation," and "preservation of confidential investigative information." (*McNair v. National Collegiate Athletic Assn.*, *supra*, 234 Cal.App.4th at p. 33.)

Gore also asserts that the portions of the deposition transcript she seeks to seal are not relevant to the adjudication of Defendants' anti-SLAPP motions, as no party relies upon or cites the transcript excerpts at issue. This does not appear to be disputed by Plaintiff. Gore cites to *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 96-97, where the Court of Appeal noted that:

> "[t]he Supreme Court in *NBC Subsidiary*, drawing upon prior United States Supreme Court cases and other authorities, identified several policy justifications supporting the constitutional right of access to the courts. The court summarized these rationales as follows: [P]ublic access plays an important and specific structural role in the conduct of such proceedings. Public access to civil proceedings serves to (i) demonstrate that justice is meted out fairly, thereby promoting public confidence in such governmental proceedings; (ii) provide a means by which citizens scrutinize and check the use and possible abuse of judicial power; and (iii) enhance the truthfinding function of the proceeding. It cannot be said that public access to any court-filed civil discovery documents—regardless of their relevance to the issues in the case, the circumstances of their filing, or the extent of their use in the proceedings—promotes any or all of these three objectives. Public access to a discovery document that is not considered or relied on by the court in adjudicating any substantive controversy does nothing to (1) establish the fairness of the proceedings, (2) increase public confidence in the judicial process, (3) provide useful scrutiny of the performance of judicial functions, or (4) improve the quality of the truth-finding process."

(Internal quotations, citations, and emphasis omitted.)

Gore thus argues that as the material is irrelevant to the controversies to be adjudicated by Defendants' anti-SLAPP motions, there is no presumptive right of public access to the material.

As set forth above, Gore agrees that page 74:4-11 of the deposition transcript can be unsealed. Based on a consideration of the arguments presented by the parties, the Court finds that Gore has demonstrated¿good cause¿under¿¿¿California Rules of Court, rule 2.550¿¿¿to¿file the remaining redacted portions of Gore's October 25, 2022 deposition transcript under seal. As to this information, the Court finds that Gore has established that there exists an overriding interest that overcomes the right of public access to the information; the overriding interest supports sealing the information; a substantial probability exists that the overriding interest will be prejudiced if the information is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, rule 2.550.)

Plaintiff's Application

In connection with Plaintiff's opposition to Defendants' anti-SLAPP motions, Plaintiff filed the Declaration of Michele Meyer. Plaintiff moves to file under seal the following portions of Ms. Meyer's Declaration:

- 1:12-13
- 1:19-20
- 1:21
- 1:23
- 1:24
- 1:25
- 1:28[1]
- 2:2
- 2:3
- 2:6
- 4:27
- 5:15
- 7:70[2]
- 7:24
- Indicated portions of Ex. B

Plaintiff asserts that the overriding interest for sealing portions of the subject declaration is the privacy rights of a third party.

Plaintiff's counsel states that "the Declaration of Michele Meyer…contains allegations of wrongdoing against a third party. That third party is not a party to this action and the third party's identity per se is not at issue or relevant to defeating Wood and Gore's anti-SLAPP motions. However, if the third party's identity is revealed through Plaintiff's filing of the unredacted document—a declaration received from third party Meyer—Plaintiff will have caused to become public those matters discussed in the declaration that concern the third party, which may bring harm to the third party, Warner, and/or the declarant, given the nature of the allegations and this action." (Suppl. King Decl., ¶ 10.) Plaintiff cites to *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471. In that case, the Court of Appeal found that "other third-party-identifying information was of scant, if any, relevance to plaintiffs' summary judgment opposition, and the public's understanding of the adjudicative process is not enhanced by the disclosure of this confidential financial information." (*Id*. at pp. 509-10.)

Plaintiff's counsel also states that "[t]he proposed redactions to the declaration received from Meyer are only the third party's name and other identifying information, and thus the proposed sealing is narrowly tailored and no less restrictive means exist to protect the third party privacy interest." (Suppl. King Decl., ¶ 10.)

Based on the foregoing, and in light of the lack of any opposition, the Court finds that Plaintiff has demonstrated¿good cause¿under¿¿¿California Rules of Court, rule 2.550¿¿¿to¿file the subject redacted portions of Ms. Meyer's Declaration under seal, subject to the Court's correction of the identified page numbers set forth in footnotes 1 and 2 of this Order.

Specifically, the Court find that Plaintiff has established that there exists an overriding interest that overcomes the right of public access to the information; the overriding interest supports sealing the information; a substantial probability exists that the overriding interest will be prejudiced if the information is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, rule 2.550.)

Conclusion

Based on the foregoing, Gore's motion is granted as to pages 68:11-23; 98:22-108:17; 122:2-24; 123:25-126:19; and 138:10-139:6 of the October 25, 2022 deposition transcript of Gore. The motion is denied as to page 74:4-11 of the transcript. The Court notes that Exhibit F to Mr. King's Supplemental Declaration is

entirely redacted. Thus, the Court orders Plaintiff to file a partially redacted copy of Exhibit F in accordance with this Order, with pages 68:11-23; 98:22-108:17; 122:2-24; 123:25-126:19; and 138:10-139:6 redacted.

Plaintiff's motion is granted in its entirety, subject to the Court's correction of the identified page numbers set forth above in footnotes 1 and 2 of this Order.

Pursuant to California Rules of Court, rule 2.551, subdivision (e), the Court directs the clerk to file this order, maintain the records ordered sealed in a secure manner, and clearly identify the records as sealed by this order. The Court further orders that no persons other than the Court and Court staff, as necessary, are authorized to inspect the sealed records.

Gore is ordered to provide notice of this Order.

DATED: May 9, 2023

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Hon. Teresa A. Beaudet

Judge, Los Angeles Superior Court

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[1]The Court notes that based upon the redactions to the Declaration of Michele Meyer, it appears Plaintiff intended to refer to page 1:26, not page 1:28.

[2]The Court notes that based upon the redactions to the Declaration of Michele Meyer, it appears Plaintiff intended to refer to page 7:20, not page 7:70.