Tentative Rulings for November 30, 2021
Department 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

21CECG01100 ***A.G. v. Anglican Diocese of San Joaquin*** **(Dept. 503)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***De Santis v. De Santis***
Superior Court Case No. 19CECG01922

Hearing Date: November 30, 2021 (Dept. 503)

Motion: Receiver's Motion to Approve Hourly Rate of Counsel and Pay Fees and Costs of Receiver from Sales Proceeds in Blocked Account

Tentative Ruling:

To grant the receiver's motion for an order approving his counsel's hourly rate, and the motion for his fees and costs to be paid from the proceeds of the sale currently on deposit in a blocked account. (Cal. Rules of Court, rule 3.1183(a).)

Explanation:

With regard to the receiver's attorney's hourly rate, Christopher Seymour has provided his declaration stating his experience, education, and background, which indicates that $435 per hour is a reasonable rate for his services. Mr. Seymour has over 30 years' experience in the legal field, and has been focusing on financial and real property litigation since 2000. (Seymour Decl., ¶ 3.) He now primarily represents creditors in state and bankruptcy court, as well as representing receivers and creditors in commercial, partnership, and agricultural receiverships, and borrowers in some cases. (*Ibid*.) He has also been a member, director, and officer of the California Receivers Forum (CFR) for the last ten years. (*Id*. at ¶ 4.) He was chair of the statewide CRF in 2016, and chair of the CRF Loyola education conference in Los Angeles. (*Ibid*.) In addition, he has served on numerous seminar panels regarding receiverships. (*Id*. at ¶ 5.) Mr. Seymour's hourly rates of $410 per hour in 2020 and $435 per hour in 2021 have been approved in other courts. (*Id*. at ¶ 6.)

Thus, the receiver's counsel has provided substantial evidence in support of his requested hourly rates. Also, there is no opposition to the motion to approve his rates, and, in fact, defendants have indicated that they are not opposed to the requested rates. Therefore, the court grants the request to approve the receiver's counsel's hourly rate of $435.

Also, the receiver's request for an order to release funds from the blocked account to cover his fees and expenses appears to be reasonable. There is only $2,878.94 left in the receiver's operating account, and the estate currently owes the receiver $26,640.29 in fees and expenses. Therefore, it will be necessary to release some of the sales proceeds from the blocked account in order to pay the receiver's bills.

In addition, the receiver requests that the court release an additional $10,000 to act as an operating reserve to cover future fees and expenses. The request appears to be reasonable, as otherwise the receiver will have to incur additional fees and costs to

apply to the court the next time he incurs costs on behalf of the estate, which will only further deplete the sales proceeds. Therefore, the court grants the request to release the full amount of funds requested by the receiver from the blocked account.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KAG on 11/17/2021.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Campos v. Hyundai Motor America***
Superior Court Case No. 21CECG01052

Hearing Date: November 30, 2021 (Dept. 503)

Motion: By Defendant Hyundai Motor America to Compel Arbitration and Stay Action

Tentative Ruling:

To deny.

Explanation:

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Ca1.App.4th 1497, 1505.) "Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute." (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Defendant Hyundai Motor America ("HMA") admits it is not a signatory to the arbitration agreement in question. (Mot., p. 4:27.) "Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it." (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) "The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration." (*Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142, internal quotes and citation omitted.) "However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement." (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352.) Here, HMA contends it may compel arbitration because plaintiff expressly agreed to it, and under the theory of equitable estoppel or, alternatively, as a third party beneficiary of the contract. (*Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486, 496.) These arguments are considered, in turn.

Pertinent Language of Arbitration Agreement

As relevant to the issue of standing to compel arbitration based on either equitable estoppel or as a third party beneficiary, the arbitration agreement included in the Retail Installment Sale Contract ("RISC") that plaintiff signed reads as follows:

> 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
>
> […]
>
> Any claim or dispute, whether in contract, tort, statute or otherwise … between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action.

(Desai Decl., ¶ 6, Ex. A, p. 5.)

The first page of the RISC indicates that the word "you" refers to "the Buyer" (i.e., plaintiff), and the words "we" or "us" refers to the "seller – creditor" (i.e., Lithia Hyundai). (Desai Dec., ¶ 6, Ex. A, p. 1.) HMA is neither of these parties and cannot be said to have "express" authority to compel arbitration under the plain language of the Arbitration Agreement.

Equitable Estoppel

"The *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause." (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 213-214.) Even if a plaintiff's claims touch matters relating to the arbitration agreement, the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action. (*Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541, 552.) "The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract." (*DMS Services, LLC v. Superior Court, supra,* 205 Cal.App.4th at p. 1354.)

None of plaintiff's claims against HMA are intimately founded in the RISC. HMA relies heavily on the fact that plaintiff's claims concern the "condition of the vehicle" and this term is mentioned in the RISC as a potential subject of a claim where arbitration could be compelled. However, plaintiff's claims about the condition of his vehicle clearly do not *depend upon* that language being in the RISC in order to bring them. If she had paid cash for the vehicle, and thus would not have signed the RISC, she still could bring claims under the Song-Beverly Act and under common law concerning the "condition of the vehicle." (See, *e.g., Fuentes v. TMCSF, Inc., supra,* 26 Cal.App.5th at p. 553 [finding no standing to compel arbitration based on equitable estoppel because "[e]ven if he had paid cash for the motorcycle, his complaint would be identical"].) It is accurate to say that plaintiff's claim is intimately founded in "the condition of the vehicle," but the fact that this term can also be pulled from the RISC does not mean the claim is intimately founded *in that contract*. Therefore, it is inaccurate to say that, in plaintiff's causes of

action against HMA, she is "taking advantage of" the RISC, such that it would be equitable to find that she is estopped from avoiding its terms requiring arbitration.

HMA relies on a recent opinion from the Third District Court of Appeal, *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486, in arguing that equitable estoppel is appropriate here because the arbitration clause in that case used the exact same language as used in the RISC here (as quoted above). (See *id.* at p. 490.) In *Felisilda*, the motion to compel arbitration was filed by the dealership (Elk Grove Dodge), and included a request that its co-defendant, manufacturer FCA, US, LLC ("FCA") also be included as a party to the arbitration. (*Id.* at p. 498.) FCA filed a notice of nonopposition. (*Ibid.*) The trial court granted the motion. After the motion was granted, plaintiff dismissed Elk Grove Dodge. (*Id.* at p. 489.) FCA prevailed at arbitration, and the plaintiffs appealed. The appellate court found that it was appropriate to compel arbitration based on the theory of equitable estoppel. (*Id.* at p. 497.) HMA argues that this case controls, and mandates that this court find that it has standing to compel arbitration based on equitable estoppel.

However, there are important distinctions between the facts of that case and the one at bench. The motion there was by the dealership and not the manufacturer, which took no part in the motion beyond filing a notice of nonopposition. Also, the plaintiffs did not dismiss the dealership until *after* the motion to compel was granted, whereas here the court is ruling on the motion at a time when HMA is the only defendant. This makes a difference and limits the application of *Felisilda*. At best, *Felisilda* stands for the proposition that, where a plaintiff buyer files a complaint against both the dealership and the manufacturer, the dealership can compel the plaintiff to arbitrate the claims against both. This is actually consistent with the language of the arbitration agreement, since it provides that any claim or dispute "which arises out of or relates to your … purchase or condition of this vehicle … or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, <u>*at your or our election*</u> be resolved" by arbitration. As defined by the contract, the word "our" means Lithia Hyundai, not HMA. Thus, under the express language of the arbitration clause, arbitration could be compelled <u>*on behalf of*</u> a third party nonsignatory, and there is nothing in this language authorizing it to be compelled <u>*by*</u> a third party nonsignatory.

As the appellate court in *Felisilda* clearly stated, "It is the motion that determines the relief that may be granted by the trial court." (*Felisilda, supra,* 53 Cal.App.5th at p. 498.) The motion before the trial court, and, thus, the issue considered on appeal, was whether the dealership's motion, requesting arbitration to also be compelled <u>*on behalf of*</u> the nonsignatory manufacturer, was correctly granted. Therefore, the court had no cause to consider whether a nonsignatory manufacturer, as sole defendant, could successfully compel arbitration. That was not the posture of the case. As the court summed up its holding, since *the dealership's motion* argued that the claim against both defendants should be arbitrated, "the trial court had the prerogative to compel arbitration of the claim against FCA." (*Id.* at p. 499.) Also, the phrase "had the prerogative" suggests that the court of appeal was supporting the trial court's *use of discretion* in making its ruling, and was not finding that compelling arbitration was mandated under the equitable estoppel theory. In short, it is not clear how the Third District Court of Appeal would have ruled had the trial court ruling emanated from a motion brought by the sole defendant, the nonsignatory manufacturer, as here. This court will not extend *Felisilda* beyond its borders.

Another important distinction between *Felisilda* and the instant case is that, in the former, the plaintiffs' complaint consisted of one combined cause of action against both defendants. (*Felisilda, supra,* 53 Cal.App.5th at p. 491.) No doubt that factor weighed heavily in the court's finding that plaintiffs' claims against the manufacturer were intertwined with their claims against the dealership, such that it was fair to require arbitration to proceed against both. Here, however, plaintiff's complaint states causes of action only against HMA, and, as discussed above, the claims against HMA do not "depend upon," nor are they "intimately found in," the contract plaintiff entered into with the non-party dealership.

Third Party Beneficiary

Third party beneficiaries are permitted to enforce arbitration clauses even if not named in the agreement. (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 856.) The essence of HMA's third party beneficiary argument is that the arbitration agreement expressly states that it applies to "any resulting transaction or relationship (*including any such relationship with third parties who do not sign this contract*)," and HMA is a third party, so the agreement was intended to benefit HMA. (Mot., p. 12:13-15.) However, this reasoning is overly simplistic.

"A third party beneficiary is someone who may enforce a contract because the contract is made expressly for his benefit." (*Jensen v. U-Haul Co. of California*, *supra,* 18 Cal.App.5th at p. 301, citing and quoting *Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 602.) The intent to benefit that third party must appear from the terms of the contract. (*Ibid.*) The third party must show that the arbitration clause was "made expressly for his benefit." (*Fuentes v. TMCSF, Inc.*, *supra*, 26 Cal.App.5th at p. 552.) "A nonsignatory is entitled to bring an action to enforce a contract as a third party beneficiary if the nonsignatory establishes that it was likely to benefit from the contract, that a motivating purpose of the contracting parties was to provide a benefit to the third party, and that permitting the third party to enforce the contract against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (*Hom v. Petrou* (2021) 67 Cal.App.5th 459, citing *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 821.)

As applied to the facts here, simply pointing out that the agreement contains a reference to "third parties" and that HMA is a "third party" does not show that the arbitration clause was expressly intended to benefit any particular third party, much less does it show that this provision was made expressly for HMA's benefit. There is nothing in the RISC indicating that the motivating purpose for the parties to the contract was to benefit HMA, or that allowing HMA to independently compel arbitration was within the parties' reasonable expectations at the time of contracting. The court cannot find HMA to be a third party beneficiary of the arbitration agreement.

Requests for Judicial Notice

Plaintiff filed a request for judicial notice of: (1) seven unpublished federal district court decisions in lemon law cases on motions to compel arbitration by nonsignatory manufacturer defendants based on equitable estoppel, and involving substantially

similar arbitration clauses, and in each of these decisions the court denied the motion to compel (Exs. A-F); (2) a published California appellate opinion upholding a ruling denying a motion to compel by nonsignatory defendants based on third party beneficiary and equitable estoppel theories in the context of an employment arbitration agreement (Ex. G); and (3) a published California appellate opinion upholding a ruling denying a motion to compel by a nonsignatory defendant based on third party beneficiary and equitable estoppel theories, as well as a theory that the nonsignatory was the agent of the signing party to the arbitration clause (Ex. H). No opposition was made to this request for judicial notice, and it is granted.

HMA filed a request for judicial notice with its reply papers, requesting judicial notice of ten superior court rulings from other counties on presumably similar matters. The identified exhibits appear to have been inadvertently omitted from the filing, as there are no attachments to the request for judicial notice. To the extent they are requested to rebut the assertion that there have been no decisions since *Felisilda* compelling arbitration by a nonsignatory defendant, such orders are without precedential value. (See *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 627, fn. 2 [denying request for judicial notice of probate court minute orders because "'[t]rial court decisions are not precedent'"]; *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761["[e]ven assuming ... that the case in question involves the same issue as the case before us ... , a written trial court ruling has no precedential value"]; *Santa Ana Hospital Medical Center* v. Belshe (1997) 56 Cal.App.4th 819, 830-831 ["We first reject appellant's reliance on a trial court opinion in an unrelated case."].) Moreover, the court is unable to take notice as requested, as the documents have not been provided. (Cal. Rules of Court, rule 3.1306(c).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KAG on 11/24/2021 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Salazar et al. v. Whelan et al.***
Superior Court Case No. 21CECG02710

Hearing Date: November 30, 2021 (Dept. 503)

Motion: By Defendants to Specially Strike the Complaint Pursuant to Code of Civil Procedure Section 425.16

Tentative Ruling:

To grant the motion to strike the complaint on the ground it is a strategic lawsuit against public participation (SLAPP) action. (Code Civ. Proc., § 425.16.)

Explanation:

Plaintiffs filed the instant action for five causes of action based on defamation, false light, and interference with prospective economic advantage against defendants. Each cause of action refers to or relies on two types of statements: statements made on a GoFundMe page, and statements made to or reported by various news publications. Defendants now bring a special motion to strike the entirety of plaintiffs' complaint, pursuant to Code of Civil Procedure section 425.16.

Code of Civil Procedure section 425.16 (the anti-SLAPP statute) enables defendants to quickly terminate meritless actions against them that are based on their constitutionally protected rights to speak freely and petition for redress of grievances. (Code Civ. Proc., § 425.16.) The statute is to be broadly construed so that it may best serve its legislative purpose of encouraging continued participation in speech and petitioning activities. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119; Code Civ. Proc., § 425.16, subd. (a).)

In considering a special motion to strike, courts employ a two-step process. (*Park v. Bd. of Trustees of Cal. State Univ.* (2017) 2 Cal.5th 1057, 1061.) In the first step, the defendant must show that the claims challenged are based on conduct "arising from" an act that furthers the defendant's speech or petition rights. (Code Civ. Proc., § 425.16, subd. (b)(1).) This includes, among others, any writing made in connection with an issue under consideration or review by a judicial body, or any other conduct in furtherance of the exercise of a constitutional right of petition or constitutional right of free speech in connection with a public issue or issue of public interest. (Code Civ. Proc., § 425.16, subd. (e)(2), (4).) The critical point to establishing the "arising from" requirement is whether a plaintiff's claim itself was based on an act in furtherance of the defendant's right of petition or free speech. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) In deciding whether the initial "arising from" requirement is met, a court considers the pleadings, and the supporting and opposing affidavits stating the facts upon which the liability or defense is based. (*Id.* at p. 89.) If the defendant can make an initial showing, the burden shifts to the plaintiff in the second step to demonstrate a prima facie case that would enable the plaintiff to prevail on the challenged claims. (Code Civ. Proc., § 425.16, subd. (b)(3).)

In this case, defendants present two bases as to why the statements that are the subject of the instant action arise from acts in furtherance of the right of petition or free speech: that the statements were made in connection with an issue under consideration or review by a judicial body, and the statements were made in a public forum in connection with an issue of public interest. (Code Civ. Proc., § 425.16, subd. (e)(2), (4).)

Acts in Furtherance of the Right of Petition or Free Speech

An action for defamation falls within the anti-SLAPP statute if the allegedly defamatory statement was made with "some relation" with to judicial proceedings. (*Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5.)

The complaint identifies the following as provably false factual assertions as to the GoFundMe statements:

- "On Tuesday June 22, 2021, Mr. Salazar was personally served with the lawsuit [that alleged wrongful termination and pregnancy discrimination against Bobby Salazar and Olive/Broadway]. Less than nine hours later, while parked in front of their house, the three cars owned by Ms. Lopez and her family were blown up by fire bombs."
- Ms. Lopez and her family do not have the resources to replace the "blown-up cars";
- "[T]he Lopez car-bombings are not the first incidents of fire-related crimes tied to legal actions against Mr. Salazar."
- "[O]n May 20, 2020, assailants firebombed the car of another Bobby Salazar employee who exposed a pay-for-testimony scheme organized by Mr. Salazar in an attempt to tamper with witnesses in a separate wrongful termination lawsuit."
- Two months later, on August 17, 2020, assailants attempted to fire-bomb the offices of the attorney [defendants] with incendiary devices akin to a Molotov cocktail."

(Complaint, ¶ 15.)

The complaint identifies the following statements made to news reporters as defamatory:

- "Just to be clear, I'm giving facts as they exist and people can connect the dots for themselves. [] So the facts are, these series of events have taken place, associated with lawsuits that I'm involved in, and, most recently, the facts are that a lawsuit was filed and it was served on Mr. Salazar and within nine hours all three of the cars are blown up." [ABC30]
- "[I]t just lit the side of the building but the wall was cleaned off and repainted. [] Had it gone inside it would have been a major problem." [Fresno Bee]
- "For clarity, I'm telling the facts that they exist and that people can connect the dots themselves. [] The fact is that these series of events have occurred in connection with the proceedings I am involved in.

> Recently, proceedings have been filed and Mr. Salazar has been filed in all proceedings within nine hours. There is a fact. Three cars have been blown up." [California News]

(Complaint, ¶ 18.)

Both types of statements identified by plaintiffs in their complaint have some relation to judicial proceedings. The statements bear some relation to judicial proceedings because the statements demonstrate an effort to intimidate and dissuade witnesses and litigants from engaging in their right to petition. Although plaintiffs argue that the underlying Lopez action seeks redress for alleged employment violations, while the GoFundMe statements are the result of fundraising efforts to replace damaged cars, such statements, as defendants correctly note, speak to the litigation and information-gathering process. That such statements occur on a fundraising page to replace damaged cars does not change the nature of the statements as they pertain to litigation efforts of the underlying suits described, namely in furtherance of the litigation through recitations of dates and occurrences in the various underlying actions identified. Thus, the statements bear a rational connection to litigation. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 820-822, *disapproved on other grounds by Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53.)

Plaintiffs' Probability of Prevailing

Where the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) The complaint will be subject to a special motion to strike, unless the plaintiff establishes that there is a probability of prevailing on the claims. (Code Civ. Proc., § 425.16, subd. (b)(1).) The plaintiff must demonstrate that the complaint is both legally sufficient and supported by a prima facie showing of facts. (*Navellier*, *supra*, 29 Cal.4th at p. 88-89.) In opposing an anti-SLAPP motion, the plaintiff cannot rely on allegations in the complaint, but must bring forth evidence that would be admissible at trial. (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) Thus, declarations may not be based on information and belief, and documents submitted without proper foundation are not to be considered. (*Ibid.*)

Without resolving evidentiary conflicts, the court must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment, defeating the motion. (*Baral*, *supra*, 1 Cal.5th at p. 396.) The court accepts as true the evidence favorable to the plaintiff and assesses the defendant's evidence only to determine if it has defeated the plaintiff's submission as a matter of law. (*HMS Capital, Inc.*, *supra*, 118 Cal.App.4th at p. 212.)

Here, plaintiffs allege three categories of claims: defamation, false light, and interference with prospective economic advantage.

Defamation

Defamation is effected either by libel or slander. (Civ. Code, § 44.) Libel is a false and unprivileged publication by writing which exposes a person to hatred, contempt,

ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injury him in his occupation. (Civ. Code, § 45.) Libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as innuendo, is libel on its face. (Civ. Code, § 45a.) Defamatory language that is not libelous on its face is not actionable unless the plaintiff additionally shows that he has suffered special damages as a proximate result thereof. (*Ibid.*) Special damages for the publication of such libel means all damages that the plaintiff shows in respect to his business. (Civ. Code, § 48a.)

Defamation – Public Figure

The first inquiry of defamation is the nature of the speaker. (*Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1577.) If the speaker is a public figure, either as an all-purpose public figure, or a limited purpose public figure, clear and convincing evidence that the allegedly defamatory statement was made with knowledge of falsity or reckless disregard for truth (sometimes called "actual malice") is additionally required. (*Ibid.*) An all-purpose public figure is one who has achieved such pervasive fame or notoriety that he or she becomes a public figure for all purposes and context. (*Ibid.*) The limited purpose public figure is an individual who voluntarily injects himself or is drawn into a specific public controversy, thereby becoming a public figure on a limited range of issues. (*Ibid.*)

Defendants argue that plaintiff Robert "Bobby" Salazar is an all-purpose public figure, subjecting plaintiffs' claims to a clear and convincing evidence standard to demonstrate actual malice. However, the complaint does not allege that plaintiff Salazar is any sort of public figure. At best, the complaint states that plaintiff Salazar is a successful restaurateur. (Complaint, ¶ 11.) Plaintiff Salazar declares the same. (Salazar Decl., ¶ 1.)

Defendants rely on statements made by plaintiff Salazar in deposition to an unrelated action wherein he affirms that "Bobby Salazar's Mexican Foods" is recognizable throughout the San Joaquin Valley. (Defendants' Compendium of Exhibits, Ex. 13, Depo. of Robert Salazar, pp. 447:19-448:1.) However, neither the complaint, nor the evidence submitted, suggests that plaintiff Salazar has achieved such fame or notoriety that he became a public figure for <u>all purposes and contexts</u>. (*Ampex*, *supra*, 128 Cal.App.4th at p. 1577.)

Neither does the complaint, nor the evidence submitted, suggest that plaintiff Salazar was a limited purpose public figure. A limited public figure plaintiff must have undertaken some voluntary act through which he seeks to influence the resolution of the public issues involved. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 254.) Thus, the court looks for affirmative actions by which purported public figures have thrust themselves into the forefront of particular public controversies. (*Id.* at pp. 254-255.) Nothing in the complaint or the evidence submitted demonstrates any act that plaintiffs undertook to thrust themselves into the forefront of a particular public controversy.

Based on the above, plaintiffs are not public figures subjecting the complaint to an additional showing of defendants' knowledge of falsity or reckless disregard for truth for the defamation claims.

Defamation – Falsehood

There can be no recovery for defamation without a falsehood. (*Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 259.) Thus, to state a defamation claim that survives a First Amendment challenge, the plaintiff must present evidence of a statement of fact that is provably false. (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809.) Whether a statement is one of fact, or nonactionable opinion, is a question of law. (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 601.) The general rule is that the words constituting an alleged libel must be specifically identified, if not pleaded verbatim, in the complaint. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 31.)

Here, the complaint identifies two sources of defamatory statements, a "press release" published in connection with a GoFundMe fundraiser, and general statements made to various news outlets. (Complaint, ¶¶ 15-18.)

The GoFundMe Assertions. As set forth above, the complaint identifies the following as provably false factual assertions as to the GoFundMe statements:

- "On Tuesday June 22, 2021, Mr. Salazar was personally served with the lawsuit [that alleged wrongful termination and pregnancy discrimination against Bobby Salazar and Olive/Broadway]. Less than nine hours later, while parked in front of their house, the three cars owned by Ms. Lopez and her family were blown up by fire bombs."
- Ms. Lopez and her family do not have the resources to replace the "blown-up cars";
- "[T]he Lopez car-bombings are not the first incidents of fire-related crimes tied to legal actions against Mr. Salazar."
- "[O]n May 20, 2020, assailants firebombed the car of another Bobby Salazar employee who exposed a pay-for-testimony scheme organized by Mr. Salazar in an attempt to tamper with witnesses in a separate wrongful termination lawsuit."
- "Two months later, on August 17, 2020, assailants attempted to fire-bomb the offices of the attorney [defendants] with incendiary devices akin to a Molotov cocktail."

(Complaint, ¶ 15.)

Plaintiffs allege that the above assertions are false and unprivileged. In support, plaintiffs submit, among other things, evidence of the GoFundMe page through the declaration of Joanna Ardalan, counsel of record for plaintiffs, to substantiate the above allegations of the complaint.

Defendants object to the Ardalan declaration as to the GoFundMe page for, *inter alia*, lack of authentication. (Defendants' Objections to Plaintiffs' Evidence, No. 7.) Authentication of a writing is required before it may be received in evidence. (Evid. Code, § 1401, subd. (a).) A document is authenticated when sufficient evidence has been produced to sustain a finding that the document is what it purports to be or the establishment of such facts by any other means provided by law. (Evid. Code, § 1400.)

As long as the evidence would support a finding of authenticity, the writing is admissible. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321.) The court sustains objection number 7 as it pertains to the Ardalan declaration for lack of foundation. However, the court nevertheless evaluates Exhibit D attached to that declaration, based on the concurrently filed Salazar declaration. In his declaration, plaintiff Salazar states that he visited the GoFundMe page, at a web address identical to the one of Exhibit D, and responds to statements made therein. (See Salazar Decl., ¶ 4.)[1]

Falsity of the GoFundMe Assertions. Plaintiffs rely exclusively on the Salazar declaration to demonstrate falsity. However, the Salazar declaration makes no effort to demonstrate falsity of the assertion that, on June 22, 2021, plaintiff Salazar was served with a lawsuit, or that three cars owned by Lopez and her family were blown up by fire bombs.[2] Neither does the Salazar declaration make any effort to demonstrate the falsity of the assertion that the Lopez car fires are not the first incident of fire-related crimes tied to legal actions against plaintiff Salazar. Nor does the Salazar declaration make any effort to demonstrate the falsity of the assertion that, on May 20, 2020, assailants set fire to the car of another employee, who exposed a pay-for-testimony scheme organized by plaintiff Salazar in an attempt to tamper with witnesses in a wrongful termination lawsuit. Plaintiff Salazar merely declares that he did not cause any fire bomb or Molotov cocktail to anyone. (Salazar Decl., ¶¶ 4-6.) The Salazar declaration otherwise only makes general conclusory statements that all of the assertions are false. (*Id.*, ¶ 6.)

The Salazar declaration, even assumed as true for the purposes of this motion, would not prove the falsity of the assertions. At best, the Salazar declaration, assumed as true, merely demonstrates that plaintiff Salazar did not cause damage or harm, directly or indirectly to Lopez or her cars, and that he did not cause damage or harm to any former employee. Such statements, however, do not demonstrate how the assertions are provably false.[3]

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[1] Defendants' objection numbers 10 through 15 regarding the Salazar declaration are overruled in their entirety.

[2] Plaintiffs argue that defendants inartfully attribute the fire damage to the Lopez cars as due to fire bombs, where investigations did not support such a conclusion. Plaintiffs rely on the investigation reports submitted as Exhibit B to the Ardalan declaration. Defendants object to Exhibit B as hearsay, for lacking foundation, and for lacking authentication. Defendants' objection numbers 4 and 5 are sustained.

[3] To the contrary, although the burden is on plaintiffs, defendants submit the declaration of Brian Whelan in support of the assertions as provably true. Defendants submit that defendant Whelan caused the summons of Lopez's action to be served on plaintiff Salazar on June 22, 2021, on or around 4:55 p.m. (Whelan Decl., ¶ 12; Defendants' Compendium of Exhibits, Ex. 9.) Defendant Whelan thereafter visited Lopez's residence on the morning of June 23, 2021, where he observed the remains of the vehicles in question. (Whelan Decl., ¶ 13.) Defendants further submit the declaration of Adream Johnson, who declared under penalty of perjury that she had been offered $500 by plaintiff Salazar to make an untruthful statement. (Defendants' Compendium of Exhibits, Ex. 2, Johnson Decl., ¶ 7.) At some unspecified period, Johnson's car also experienced fire damage. (Defendants' Compendium of Exhibits, Ex. 12, Depo. of Robert Salazar, at p. 95:2-25.) Defendant Whelan declared that, on August 18, 2021, he discovered his office had a broken window and the outside of the office was scorched. (Whelan Decl., ¶¶ 8-9.)

Plaintiffs argue that defendants accused and blamed plaintiffs of the underlying acts stated in the assertions. However, a plain reading of the assertions reveals no such accusation of plaintiffs. To the extent that plaintiffs argue that the statements might imply an accusation, the complaint fails to allege the implication, or innuendo, in which the statements were used and understood. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1421; *see also Okun v. Superior Court* (1981) 29 Cal.3d 442, 450 [evaluating the specific innuendo as made in the complaint].) It is necessary for a plaintiff to plead by innuendo the facts upon which he relies to point out the injurious meaning of the writing. (*Bates v. Campbell* (1931) 213 Cal. 438, 442.)

Even had plaintiffs properly alleged that the assertions are innuendo of an accusation that plaintiff Salazar was the cause of the various reported fires, the court finds that such implication is one of nonactionable opinion.[4] Accusations of criminal activity, like any other statements, are not actionable if the underlying facts are disclosed. (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 388.) Here, the unalleged implied statement that defendants blamed plaintiff Salazar for the various reported fires was based on disclosed facts. Thus, the subsequent alleged implied opinion that plaintiff Salazar caused the fires would not be actionable. (*Ibid.*)

Based on the above, even where the court accepts as true all of plaintiffs' admissible evidence, plaintiffs fail to establish how the GoFundMe assertions constitute defamation.

The News Assertions. As set forth above, the complaint identifies the following statements made to news reporters as defamatory:

- "Just to be clear, I'm giving facts as they exist and people can connect the dots for themselves. [] So the facts are, these series of events have taken place, associated with lawsuits that I'm involved in, and, most recently, the facts are that a lawsuit was filed and it was served on Mr. Salazar and within nine hours all three of the cars are blown up." [ABC30]
- "[I]t just lit the side of the building but the wall was cleaned off and repainted. [] Had it gone inside it would have been a major problem." [Fresno Bee]
- "For clarity, I'm telling the facts that they exist and that people can connect the dots themselves. [] The fact is that these series of events

[4] Whether a statement is one of fact or opinion is tested by a totality of the circumstances as a matter of law. (*Baker, supra,* 42 Cal.3d at 260.) The language of the statement is examined. (*Ibid.*) Then, the context in which the statement was made must be considered. (*Id.* at p. 261.) Thus, the test requires the court to determine whether the average reader of defendants' assertions could have reasonably understood that the unalleged innuendo constituted a statement of fact. (*Ibid.*) What constitutes a statement of fact in one context may be treated as a statement of opinion in another, in light of the nature and content of the communication taken as a whole. (*Gregory, supra*, 17 Cal.3d at p. 601.) Accordingly, where potentially defamatory statements are published in a heated labor dispute, or in another setting in which the audience may anticipate efforts by the party to persuade others to their position by use of fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may well assume the character of statements of opinion. (*Ibid.*)

> have occurred in connection with the proceedings I am involved in. Recently, proceedings have been filed and Mr. Salazar has been filed in all proceedings within nine hours. There is a fact. Three cars have been blown up." [California News]

(Complaint, ¶ 18.)

Falsity of the News Assertions. Slander is the false and unprivileged publication, orally uttered, which: (1) charges a person with a crime; (2) imputes in him the existence of an infectious, contagious or loathsome disease; (3) tends directly to injure him in respect to his profession, trade or business, either by imputing to him general disqualifications in those respects which the occupation peculiarly requires, or by imputing something with reference to his profession, trade, or business that has a natural tendency to lessen its profits; (4) imputes to him impotence or want of chastity; or (5) which, by natural consequences, causes actual damage. (Civ. Code, § 46.)

In support of their claim, plaintiffs submit evidence of the three sources through the Ardalan declaration as Exhibit E. Defendants again object to this evidence as hearsay, for lacking foundation, and for lacking authentication. While printed news is generally self-authenticating (Evid. Code, § 645.1), and the statements are excepted from hearsay as a statement by a party-opponent (Evid. Code, § 1220), the Ardalan declaration lacks foundation as to the articles. In contrast to the GoFundMe assertions, the Salazar declaration is silent as to any news articles. Therefore, the court sustains defendants' objections numbers 8 and 9.[5]

However, in his declaration, defendant Whelan acknowledges that he made statements to the Fresno Bee regarding the fires, as well as opining that such fires were somehow linked to litigation involving plaintiff Salazar. (Whelan Decl., ¶ 18.) The substance of the assertions in the Fresno Bee comprises two statements and an opinion: that a fire lit the side of the building up; that the wall was cleaned off and repainted; and that, had a fire gone inside the building, the fire would have been a major problem.

Plaintiffs present no argument, and submit no evidence to support a finding as to why such assertions to the Fresno Bee, as identified in the complaint, constitute slander within the meaning of Civil Code section 46. For the same reasons as set forth in regard to the GoFundMe assertions, to the extent that such statements constitute defamatory innuendo, plaintiffs fail to plead such effect, and in any event the statements would nonetheless constitute nonactionable opinion.

Plaintiffs therefore fail to demonstrate a probability of prevailing on the defamation claims based on assertions made to the news.

False Light

A false light cause of action is in substance equivalent to a libel claim, and should meet the same requirements of the libel claim, including proof of malice. (*Briscoe v.*

[5] The court overrules the remaining objections and notes, in any event, that none are material to the outcome of the motion.

Reader's Digest Assn., Inc. (1971) 4 Cal.3d 529, 543, *overruled on other grounds by Gates v. Discovery communications, Inc.* (2004) 34 Cal.4th 679; *Kappelas v. Kofman* (1969) 1 Cal.3d 20, 35, fn. 16.) As plaintiffs failed to demonstrate merit in their libel claim, plaintiffs fail to demonstrate false light.

Interference with Prospective Economic Advantage

Plaintiffs allege both intentional and negligent interference with prospective economic advantage. Intentional interference with prospective economic advantage has five elements: (1) the existence between the plaintiff and some third party of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant has knowledge of the relationship; (3) intentional wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. (*Roy Allen Slurry Seal, Inc. v. Am. Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) Negligent interference with prospective economic advantage is the same, except instead of intentional wrongful acts designed to disrupt the relationship, the plaintiff must show the defendant's knowledge that the relationship would be disrupted if the defendant failed to act with reasonable care, and that the defendant failed to act with reasonable care. (*Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 1005.) The plaintiff must plead that the defendant engaged in an act that is wrongful apart from the interference itself. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153-1154.)

In this case, plaintiffs make no minimal showing as to any of the above. Plaintiffs instead argue that an anti-SLAPP motion is not a vehicle for testing the strength of the case. While plaintiffs are correct that the anti-SLAPP motion is not a vehicle for testing the strength of the case, the anti-SLAPP motion does test whether the allegations have any merit. (Code Civ. Proc., § 425.16, subd. (b)(1); *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 892.) In addition to plaintiffs presenting no argument or evidence to show the existence of a third-party relationship, to which defendants had knowledge, or that defendants acted in a way designed to disrupt that relationship, the complaint wholly relies on the defamation claim as the wrongful act. (Complaint, ¶¶ 47-48, 53-54.) Such reliance subjects the allegations underlying the cause of action to the anti-SLAPP statute. (Code Civ. Proc., § 425.16, subd. (b)(1).) As plaintiffs failed to demonstrate minimal merit as to the defamation claims, plaintiffs fail to demonstrate minimal merit as to the interference with prospective economic advantage claims.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KAG on 11/24/2021 .
(Judge's initials) (Date)