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PLAINTIFF *IN PRO SE*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - UNLIMITED

DESIRÉE GUERRIÈRE TOWNSEND, an individual,

Plaintiff,

v.

MARIO LOPEZ, an individual; DOES 1 through 50, inclusive,

Defendant.

Case No.: 25NNCV04089

ASSIGNED FOR ALL PURPOSES TO THE HON. ASHFAQ G. CHOWDHURY, DEPT. E

OPPOSITION TO DEFENDANT MARIO LOPEZ'S SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT

[*Filed concurrently with Declaration of Desiree Townsend; Request for Judicial Notice; Notice of Lodging; and Evidentiary Objections to the Declaration of Daniel Tapetillo*]

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Plaintiff Desiree Townsend ("Ms. Townsend") opposes the Special Motion to Strike Plaintiff's First Amended Complaint (the "Motion") by Defendant Mario Lopez ("Lopez"):

I. INTRODUCTION

Lopez's Motion is riddled with contradictions and falsehoods. The only declaration submitted—by his counsel, Daniel Tapetillo, and not by Lopez himself—is directly refuted by judicially-noticeable documents, including sworn testimony and a Petition filed in the related matter, *Lopez v. Townsend*, Los Angeles Superior Court, Case No. 25STRO03858 (2025). (See Request for Judicial Notice ("RJN"), Exhibits A and B; Declaration of Desiree Townsend ("Townsend Decl.") ¶ 11).

Neither Lopez nor his lead attorney, Alexandra Kazarian, provided a declaration, despite being in the best position to attest to the supposed "facts" at issue. Their silence speaks volumes: they could not swear under oath without risking perjury.

Defendant's own pleadings further undercut his Motion. In his Answer filed on August 12, 2025, Lopez asserted that his conduct fell within the "scope of employment" as a broadcaster, an admission that his Instagram post was not "classic rhetorical hyperbole" (Motion, p. 5), but a factual communication tied to his role as a news professional. This defense cannot be reconciled with his claim that the post was mere opinion, nor does it negate the evidence from the related matter establishing a coordinated smear campaign against Plaintiff. In that proceeding, the **exact same language** appearing in social media pages and posts was replicated verbatim in the Petition filed in *Lopez v. Townsend*. (FAC ¶¶ 18–24, 43–46; RJN, Ex. A, pp. 7, 16, 18–20; RJN, Ex. B, pp. 101–102, 115–116).

Lopez's caption describing the symptoms of Plaintiff's neurological disability as an "#OscarWorthy" "performance" was factual, specific, and false. (FAC ¶ 12). The defamatory message did not remain confined to his Instagram account—it was replicated, amplified, and escalated (FAC Ex. D) across multiple platforms (FAC ¶¶ 18–24), including a TikTok account @walking_backwards. That account not only boasted that Defendant paid "50k alone, just for the retainer fee" in the related proceeding, but also doxed Plaintiff's personal cell phone number. (FAC ¶ 46). In sworn testimony, both Mario Lopez and his wife Courtney Lopez admitted that the individual Plaintiff believes is behind this account was working in concert with their attorney. (RJN, Ex. B, pp. 101–102, 115–116; Townsend Decl.

¶¶7-11).

Mr. Lopez's post and the ensuing smear campaign were broadcast to his "significant online following" (Motion, p. 1) and then disseminated across multiple platforms and accounts, reaching millions more. Plaintiff does not attribute "anonymous internet activity to Defendant" based merely on the "timing and nature" of posts (Motion, p. 1), but on judicially-noticed filings and sworn testimony of Defendant and his wife. (RJN, Exs. A & B). These false statements were assertions of fact, not opinion, and certainly not speech intended to further debate on "vaccine safety or viral misinformation" as Defendant claims. (Motion, p. 5) Rather, they were coordinated with Defendant's own attorney. (RJN, Ex. B, pp. 101–102, 115–116).

Defendant's conduct demonstrates malice of the highest order. What began as a reckless Instagram post metastasized into a coordinated smear campaign, fueled by his position as a national broadcaster for NBCUniversal and aided by both his employer and his legal team, as reflected in his Answer and in the testimony in the related matter, *Lopez v. Townsend*. Rather than acting responsibly, Mr. Lopez exploited his platform to ridicule Plaintiff's medical disability, to brand her a fraud before millions, and to incite further harassment across social media. This was not debate. It was not opinion. It was targeted humiliation—calculated to destroy Plaintiff's credibility, her safety, and her dignity. Such conduct constitutes the very essence of actionable defamation. Accordingly, Defendant's Motion must be denied. He fails to meet the threshold showing that this action arises from protected activity, while Plaintiff more than satisfies the minimal merit standard required under the anti-SLAPP statute.

II. FACTUAL BACKGROUND

A. Lopez's Fabricated Narrative Accusing Plaintiff Of Malingering A Neurological Disability

On or about June 19, 2024, Defendant Mario Lopez published a statement about Plaintiff on his official Instagram account (FAC ¶ 12), which he has described as having a "significant online following." (Motion, p. 1) At the time, the account reached more than three million followers. Lopez captioned a Paramount Global video clip with the words: "There's gotta be some kind of award for this performance… #MethodActor #OscarWorthy." (FAC ¶ 12). That same month, Plaintiff was engaged in

discussions with members of UCLA regarding a potential collaboration with her company at the time, which were abruptly cut off following Defendant's post. (Townsend Decl. ¶ 4).

The Paramount Global segment is subject of a separate defamation lawsuit currently pending in federal district court in California. (FAC ¶ 20; See *Townsend v. Paramount Global*, No. 2:25-cv-04077 (C.D. Cal. filed May 7, 2025)). The video segment was not generally accessible to the public. It originated from Paramount Global's copyright-protected digital platforms and was at some point removed. (FAC ¶ 55) Such content is ordinarily circulated within the industry only through licensing arrangements and archival sharing among major networks, including NBCUniversal. (FAC ¶ 26) On or about August 2023, NBC News aired an updated segment about Plaintiff that reused clips from the same footage appearing on Lopez's account. (FAC ¶ 29).

On or about August 2023, NBC News broadcast a human-interest segment about Plaintiff, which aired nationally and, upon information and belief, was internally circulated and pitched for broader coverage across multiple NBCUniversal-affiliated programs, including *Access Hollywood*. (FAC ¶ 29; Townsend Decl. ¶ 11a) At all relevant times, Lopez was employed by NBCUniversal as a host of *Access Hollywood*. Given Defendant's longstanding professional affiliation with NBCUniversal, it is reasonable to infer that he obtained the *Inside Edition* footage through internal media channels rather than public access. (FAC ¶ 27) This is further supported by his Answer filed on August 12, 2025 in this matter, asserting as his twelfth affirmative defense that "he was acting as an agent for his employer or a third-party entity, and that any statements at issue were not his, but those of the employer or third party for whom he was performing labor or services."

In a public appearance on *The Candace Owens Show*, and in his testimony in *Lopez v. Townsend*, Defendant described his Instagram presence as being "all about the 5 F's: family, faith, food, fitness, and fun." (FAC ¶ 15, RJN, Ex. B, p. 119). On or about August 5, 2025, Mr. Lopez testified under oath that his TikTok account is operated "sometimes" by him, but the "majority of the time" by "someone that works for me does." (RJN, Ex. B, p. 117). He further testified that he personally "handle[s] [Instagram] a little bit more." (RJN, Ex. B, p. 118).

In light of the 2023 update to Plaintiff's story aired by NBC News (FAC ¶ 29), Defendant's

employment with NBCUniversal and access to industry footage not publicly available (FAC ¶¶ 26–27), and his testimony that others managed his social media accounts on his behalf (RJN, Ex. B, pp. 117–118), the circumstances demonstrate that the *Inside Edition* clip was accessible to Defendant and posted through his professional role as a news broadcaster. The same narrative accusing Plaintiff of malingering a neurological disability appeared first on Defendant's Instagram account (FAC ¶ 12) and was later repeated and circulated across additional platforms and accounts believed to be operated by individuals working for Defendant (FAC ¶¶ 18–24, 43–46). Many individuals who viewed these posts came to believe the false narrative that Plaintiff fabricated her condition. (Townsend Decl. ¶¶ 4 & 5).

B. Lopez's Coordinated Campaign Of Threats And Defamation To Silence Plaintiff

On or about March 10, 2025, Plaintiff discovered Defendant had published statements about her to his Instagram stating that "There's gotta be some kind of award for this performance…" and "#MethodActor #OscarWorthy." (FAC ¶ 12). Plaintiff posted two comments in response to Defendant's post: (1) "You are so f-ing gross @mariolopez. I have been constantly harassed for having a rare disease, I have considered suicide multiple times including this time last year and thank god I never saw this then because I may have done something I could not come back from. I hope you lose your job an never work again. AND I PROMISE YOU I will file a defamation case against you soon and your employers @accesshollywood;" and (2) "How you think it is appropriate to insinuate I am somehow lying or performing when I have the very same disease as Celine Dion to millions of your followers is beyond appalling and defamatory." (FAC ¶ 12). Defendant, in his Motion, characterized the comments to his post as "hostile and inflammatory" and as using "profanity and expressing clear ill will toward Defendant." (Motion, p. 1).

On or about March 13, 2025, approximately three days after Plaintiff publicly commented twice on Defendant's Instagram with her intention to pursue litigation for his statements, a Reddit account operating under the handle "Top-Strategy-1261" commented on multiple existing threads regarding the Plaintiff referring to the Plaintiff as "mentally ill" and "obsessed with Mario Lopez." (FAC ¶¶ 18-19).

On or about April 4 and 5, 2025, less than a month after Plaintiff publicly commented on her intention to pursue litigation, two separate TikTok accounts posted the same difficult-to-access *Inside*

Edition clip. One of the accounts added defamatory commentary portraying Plaintiff as deceptive and untrustworthy in connection with her medical history. (FAC ¶ 20.) As a result, Plaintiff was subjected to weeks of online harassment, with the videos appearing in the feeds of millions, including members of her family and several co-workers. (Townsend Decl. ¶ 5).

On or about June 9, 2025, an individual who identified himself as Angel Mendez ("Mendez"), using the TikTok handle @city_of_angels_la, sent a direct message to Plaintiff offering to personally serve Defendant at his workplace. (FAC ¶ 40). This individual provided a phone number that was later confirmed to be the same number associated with the individual identified in sworn testimony by Mario Lopez and his wife, Courtney Lopez, as working with their attorney, Alexandra Kazarian. (FAC ¶¶ 40–46; RJN, Ex. B, pp. 101, 116; Townsend Decl. ¶¶ 6–11).

On or about July 7, 2025, the individual disclosed through text messages that his intent was to feed Plaintiff a fabricated "false narrative" designed to portray her as "unhinged," and that he was working with Defendant's attorney, Alexandra Kazarian. (FAC ¶ 41; Townsend Decl. ¶ 8.) Around the same time, on or about June 30, 2025, a TikTok account believed to belong to Ms. Kazarian interacted with and "liked" a video Plaintiff had posted discussing the sexual harassment rumor involving Defendant, which had been provided by Mendez. The same account believed to belong to Ms. Kazarian also "liked" a second video on or about July 8, 2025, in which Plaintiff described the use of a third party to harass and intimidate her and displayed photos of him. (FAC ¶¶ 44–45).

The TikTok account @walking_backwards was created using the same copyright-protected video content owned by Paramount Global. The account included statements such as, "Mario paid 50k alone, just for the retainer fee," in reference to the Petition filed in *Lopez v. Townsend* through Geragos & Geragos. (FAC ¶ 46.) The account publicly posted Plaintiff's new phone number, which was known only to a handful of individuals, including Mendez. (FAC ¶ 46; Townsend Decl. ¶ 8.)

On or about July 12, 2025, Defendant's verified TikTok account engaged with a video by "liking" it and adding it to favorites. The video referenced Geragos & Geragos being granted a continuance by the judge in the *Lopez v. Townsend* matter. (FAC ¶ 45.) Defendant Mario Lopez testified under oath that his TikTok account is operated "sometimes" by him, but "most of the time" by "someone that works for

me." (RJN, Ex. B, p. 117.)

In support of the present Motion, Defendant submitted only the Declaration of his counsel, Daniel Tapetillo, who stated that "Defendant did not create, direct, authorize, or have any knowledge of the creation of these postings. I have no personal knowledge of the identity of the individuals responsible for such postings, and no evidence has been presented to me suggesting Defendant's involvement." (Decl. Tapetillo ¶ 6). Neither Defendant Mario Lopez nor his co-counsel Alexandra Kazarian submitted a declaration in support of this Motion.

III. ARGUMENT

A. Lopez's Motion Directly Contradicts His Own Defamatory Allegations In The Related Case, *Lopez v. Townsend*

In the related proceeding, Lopez and his counsel advanced a narrative that Plaintiff was "obsessed," "delusional," "unhinged," and suffering from a "mental health illness." (RJN Ex. A, pp. 7, 16, 17, 20, 29; Ex. B, pp. 100, 105, 107). That same narrative was echoed on anonymous and semi-anonymous social media accounts (Reddit and TikTok) using the same *Inside Edition* footage and themes alleged in the FAC. (FAC ¶¶ 18–23; Townsend Decl. ¶ 5). The timing, tone, and sourcing mirrored the restraining-order allegations and disseminated them to millions of viewers.

Judicial estoppel "prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181). The doctrine is intended "to protect the integrity of the judicial process" and to prevent a party from "speak[ing] out of both sides of [its] mouth with equal vigor and credibility." (*Cleveland v. Policy Management Systems Corp.* (5th Cir. 1997) 120 F.3d 513, 517, fn. omitted). Despite Lopez's present assertion in his Motion that Plaintiff's claims "rest on speculation" and "conclusory allegations" (Motion, p. 5), Lopez previously relied on and promoted the very same accusations of "obsession," "delusion," and "mental illness" in open court. (RJN Ex. A, pp. 7, 16, 17, 20, 29; Ex. B, pp. 100, 105, 107). These clearly inconsistent positions, affirmatively pressing a factual narrative in one proceeding while disavowing actionable statements in another, are precisely the type of inconsistency "especially appropriate for judicial estoppel where a party has taken inconsistent positions in separate

proceedings." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181).

Lopez cannot represent to one court that Plaintiff is "obsessed," "unhinged," and mentally ill, and then represent to another court that no actionable statements beyond a single Instagram post exist or that Plaintiff's showing is "speculation." The positions "must be clearly inconsistent so that one necessarily excludes the other" and here, they are. (*Coleman v. Southern Pacific Co.* (1956) 141 Cal. App. 2d 121, 128 [296 P.2d 386]). Nothing in this record suggests the first position was taken due to "ignorance or mistake." (Ibid.) Rather, the restraining-order filings and testimony were deliberate litigation choices.

B. Lopez's Motion Relies On Counsel's False And Improper Declaration Instead Of Lopez's Own Testimony

Defendant's Motion is fatally under-evidenced because it substitutes counsel Daniel Tapetillo's assertions for admissible testimony. Counsel asserts, without foundation, that the post was "commentary in the nature of opinion" and that the account "regularly features commentary on viral media." (Tapetillo Decl., ¶ 5.) These are statements about Lopez's intent, practice, and state of mind—subjects only Lopez himself could attest to under oath. It is well established that arguments in briefs are not evidence, and an attorney declaration lacking personal knowledge carries no evidentiary weight. (*Colt v. Freedom Commc'ns, Inc.* (2003) 109 Cal.App.4th 1551, 1561; Evid. Code § 702). On an anti-SLAPP motion, the moving party bears the burden to support factual predicates with competent evidence. (CCP § 425.16, subd. (b)(1)). Counsel's unsupported assertions cannot satisfy that burden.

Counsel's Declaration also overreaches into improper, and contradicted, testimony. For example, the claim that "Defendant did not create, direct, authorize, or have any knowledge" of certain postings. Only Lopez can swear to what he knew or authorized. (See Evid. Code § 702). And events in this case belie counsel's denial: in open court on August 8, 2025, co-counsel Alexandra Kazarian was compelled to produce text messages reflecting coordination with the very individual identified in the FAC as tied to the fake account that doxed Plaintiff's phone number. (Townsend Decl. ¶10). Lopez himself declined to submit a declaration swearing he had "no knowledge" of those postings. Under Evid. Code § 413 (adverse inference from suppression or failure to produce stronger evidence) and CACI 204, the Court may draw an inference that Lopez's missing declaration would not have helped him. Together, counsel's improper

assertions and Lopez's strategic silence confirm the defense has offered no competent evidence.

Daniel Tapetillo was present at the August 5, 2025 hearing when Mr. Lopez and his wife testified regarding an individual working with their attorney. (RJN, Ex. B, pp. 101, 116; Townsend Decl., ¶¶ 6–11). Tapetillo was also present at the August 8, 2025 hearing when co-counsel Alexandra Kazarian was compelled by the Court to produce text messages reflecting her communications with a third party engaged in gathering information about Plaintiff and disseminating false information. (Townsend Decl., ¶¶ 10–11). Plaintiff further believes this individual was operating on behalf of Mr. Lopez and his counsel in creating the fake accounts used to defame her. Tapetillo's Declaration in support of Lopez's Motion therefore rises to the level of outright perjury. (See CACI 107 ["If you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said"]; Evid. Code § 780, subd. (i).

C. Lopez Fails To Show That This Action Arises From Protected Activity – His Statements Were False, Malicious, Targeted Attacks, Not Matters of Public Concern

A motion may only be brought pursuant to Section 425.16 as to a cause of action that arises from conduct "in furtherance of the [defendant's] right of petition or free speech ... in connection with a public issue." Code Civ. Proc. § 425.16(b); *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062. The defendant bears the burden of first establishing that a claim arises from speech on a "public issue." *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 820; *Turnbull v. Lucerne Valley Unified School District* (2018) 24 Cal.App.5th 522, 531. Unless the defendant satisfies this requirement, a court does not consider the merits of the claim. *Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1388 ("Arguments about the merits of the claims are irrelevant to the first step of the anti-SLAPP analysis"); *Freeman v. Schack* (2007) 153 Cal.App.4th 719, 733. To meet his burden, Lopez must establish that Plaintiff's claim arises from "free speech in connection with a public issue or an issue of public interest" Code Civ. Proc. § 425.16(e)(4).

1. Lopez's Statements Focus On A Private Medical Condition, Not A Public Issue Tied To Vaccine Safety And Viral Misinformation

Lopez has failed to show that Plaintiff's claims arise from protected activity. His statements were

not directed at a matter of public concern, which requires that "the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion." *Du Charme v. International Brotherhood of Workers* (2003) 110 Cal.App.4th 107, 119. Lopez's June 19, 2024 Instagram post — "There's gotta be some kind of award for this performance… #MethodActor #OscarWorthy" — was not commentary on a public controversy. It was a direct and false attack on Plaintiff's private, medically documented neurological condition. Plaintiff's illness has been treated for years by physicians, required invasive procedures including a feeding tube, and has placed her in intensive care on multiple occasions. (Townsend Decl. ¶12.) **This is a deeply private medical condition, not a matter for public debate.**

There was no ongoing public discussion about Plaintiff in 2024 when Lopez chose to publish his statements. Any limited media coverage of Plaintiff's condition had long since ended, and it was Lopez himself who revived a 2010 *Inside Edition* segment, not otherwise circulating, in order to broadcast a defamatory attack against a private individual to more than three million people. *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132 ("a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest" and "the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy"). Lopez's post was not about informing the public on a matter of importance, but about humiliating Plaintiff by falsely portraying her as dishonest about a life-threatening disability.

Lopez has offered no declaration of his own in support of this Motion. The only declaration submitted is from his counsel, which cannot establish Lopez's personal knowledge, intent, or state of mind. Lopez's Instagram post was not made to inform the public or contribute to any legitimate public discussion. Rather, it was a personal attack aimed at Plaintiff, mocking her private medical disability and portraying her as dishonest. Any contention that such attacks "contribute to or further the public discussion on an issue of public interest" is unsupported and demonstrably false.

2. Plaintiff Is Not A Public Figure Or Limited-Purpose Public Figure

Plaintiff is a private individual who, until Defendant's defamatory conduct, lived outside the public eye for more than a decade. Any notoriety arising from the 2009 "flu shot cheerleader" coverage

had long since subsided. (Townsend Decl. ¶¶ 3, 11a.) Plaintiff did not seek, invite, or engage in publicity concerning her medical disability in 2024. Rather, it was Defendant's June 2024 Instagram post that reignited public attention and thrust Plaintiff involuntarily into the spotlight. A defendant cannot manufacture publicity through defamation and then claim the victim is a public figure because of the very attention he created. The characterization of "public figure" falls into two narrow categories: the all-purpose public figure, and the limited-purpose or "vortex" public figure. (*Gertz v. Robert Welch, Inc*. (1974) 418 U.S. 323, 351; *Reader's Digest Ass'n v. Superior Court* (1984) 37 Cal.3d 244, 253). An all-purpose public figure is one who has achieved "pervasive fame or notoriety" and is a public figure for all purposes. A limited-purpose public figure is one who "voluntarily injects" into a specific public controversy, seeking to influence its resolution. (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845–846).

None of these elements are present here. First, the defamation does not arise out of any true "public controversy." To qualify, the issue must be debated publicly and have foreseeable and substantial ramifications for nonparticipants. (*Copp*, supra, at p. 845.) Defendant mischaracterizes the case as concerning a broad "vaccine safety" debate. In reality, the defamatory post accused Plaintiff personally of malingering a neurological disability—a false assertion stated as fact, not commentary on public policy. (FAC ¶ 12; RJN Exs. A–B.) Second, Plaintiff did not voluntarily thrust herself into this supposed controversy. California courts consistently hold that limited-purpose public figure status requires "voluntary" injection into a matter of public concern. (*Reader's Digest*, supra, 37 Cal.3d at 254; *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1577–1578). Plaintiff has made no such effort. Her private medical condition was weaponized without her consent by Defendant's defamatory post.

Third, the defamatory accusations are not "germane" to any public controversy Plaintiff participated in, as required under *Copp*. Instead, they were a personal smear designed to ridicule and discredit her. Accordingly, Plaintiff is neither an all-purpose public figure nor a limited-purpose public figure. She remains a private individual entitled to the standard protections of California defamation law. Even if the Court were to apply the heightened "actual malice" standard applicable to public figures, Defendant's conduct would still satisfy it. Lopez's false statements of fact were deliberate, calculated, and coordinated with others, as demonstrated by judicially-noticeable testimony and documentary

evidence. (RJN, Ex. B, pp. 101–102, 115–116.) Defendant acted with knowledge of falsity—or at minimum, reckless disregard for truth—when he published and amplified the defamatory claim that Plaintiff fabricated her disability. Thus, under any standard, Plaintiff's claims survive.

D. Assuming Arguendo Even If The Anti-SLAPP Statute Applies, The Elements Of Defamation Are Met

Only if a defendant satisfies his burden does a court consider if there is a probability of success. Code Civ. Proc. § 425.16(b). A plaintiff need only show a **"minimum level of legal sufficiency and triability."** *Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 989 (emphasis added); *Collins v. Waters* (2023) 92 Cal.App.5th 70, 78 ("we must accept the plaintiff's proof, we do not resolve conflicts in the evidence, and we cannot settle credibility contests"). "The task is to evaluate the defense showing only to determine if it defeats the plaintiff's claims as a matter of law." *Id.* at 80. "If the lawsuit has even minimal merit, the motion fails and the suit proceeds." *Id.* Plaintiff's First Amended Complaint and evidence easily satisfy that "minimal burden."

There is no dispute that Lopez published the Instagram post about Plaintiff to his millions of followers. (FAC ¶ 12; Motion at p. 1.) The evidence is more than sufficient to support the inference that Lopez's post, and the coordinated amplification of that post through additional accounts including @walking_backwards, formed part of a broader smear campaign designed to discredit and silence Plaintiff. (FAC ¶¶ 18–24, 40–46; RJN, Ex. B, pp. 101–102, 115–116.) Lopez's caption describing Plaintiff's neurological disability as an "#OscarWorthy" "performance" carried the factual connotation that Plaintiff fabricated or feigned her medical condition. (FAC ¶ 12). Such an accusation is not rhetorical hyperbole but an assertion that imputes dishonesty, malingering, and lack of integrity to Plaintiff. As with accusations of criminal or professional misconduct, this constitutes classic defamation per se. (Civ. Code § 46; *Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 385 [false statements that injure one in their profession are actionable without proof of special damages]).

Malice need not be shown because Plaintiff is a private figure. (*M.G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 636). Nor must damages be proven, since Lopez's statements qualify as defamation per se, imputing fraudulent conduct and professional dishonesty to Plaintiff. (Civ. Code § 46). In any

event, both damages and malice are demonstrated in the record: Plaintiff's business opportunities were disrupted in direct proximity to Lopez's post (Townsend Decl. ¶ 4), and judicially noticeable testimony shows Lopez's attorneys coordinated with individuals engaged in the smear campaign. (RJN, Ex. B, pp. 101–102, 115–116).

E. Falsity Is Easily Proven

Lopez's argument that falsity cannot be established is baseless. Plaintiff has never fabricated or feigned her neurological disability. (Townsend Decl. ¶ 12.) The Paramount Global segment reposted by Lopez is the subject of a separate defamation action now pending in federal court, underscoring its contested and defamatory nature. (FAC ¶ 20.) Lopez's Instagram caption describing Plaintiff's symptoms as an "#OscarWorthy" "performance" was not protected opinion, but a provably false assertion of fact—that Plaintiff was malingering a disability. That falsehood did not remain confined to Lopez's post. It was replicated and amplified through a coordinated smear campaign that labeled Plaintiff "unhinged," "obsessed with Mario," and suffering from a "mental illness," first across anonymous and semi-anonymous social media accounts using the same *Inside Edition* footage and themes (FAC ¶¶ 18–23.) and then in the restraining-order filings and testimony (RJN Ex. A, pp. 7, 16, 17, 20, 29; Ex. B, pp. 100, 105, 107). The campaign escalated on TikTok, where associated accounts doxed Plaintiff's personal cell phone number which was later tied back to Lopez's legal team. (RJN Ex. B, pp. 101–102, 115–116.) Accordingly, the accusation that Plaintiff "performed" her symptoms is false. Plaintiff's sworn testimony, the publications themselves, and the noticed court records are more than sufficient to establish falsity.

F. Lopez's Statements Are Not "Classic Rhetorical Hyperbole" Or Opinion – They Are Provable False Facts

In one breath, Lopez admits that his statements concerned issues of "vaccine safety and viral misinformation" and were made within the scope of his employment, while in the next he argues they were nothing more than "classic rhetorical hyperbole" and "protected opinion." (See Defendant's Answer; Notice of Motion; Motion, p. 2.) Such contradictory positions are meritless. **Nonetheless, courts have long rejected any notion of a wholesale defamation exemption for "opinion."** *Milkovich v. Lorain Journal Co.* (U.S. 1990) 497 U.S. 18-19 (accusation of perjury was actionable, since it was

"sufficiently factual that it is susceptible of being proved true or false"); *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 704. "The dispositive question a court needs to answer in determining whether a false statement is actionable is: Could a reasonable trier of fact conclude the published statements imply a provably false factual assertion?" *Edwards v. Hall* (1991) 234 Cal.App.3d 886, 902. For instance, the statement that an employee was "incompetent," has been held sufficiently factual to support a claim for defamation, because it "implies a knowledge of facts which lead to this conclusion and further is susceptible of being proved true or false." *Gill v. Hughes* (1991) 227 Cal.App.3d 1299, 1309; see also, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256 (statement that a company "had obtained the resignation" of an employee who "had denied wrongdoing" was factual and defamatory). Courts consider the totality of the circumstances in evaluating whether such statements carry a factual connotation. *Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 687- 88 (accusations of dishonesty in an attorney letter were actionable when they were "not phrased cautiously," failed to "disclose all of the facts on which the opinion is based," were based on "facts" that were themselves false, and implied additional defamatory facts that were not stated).

Furthermore, Lopez cannot recast false attacks on Plaintiff's disability as "rhetorical hyperbole" after admitting they were statements of fact made in coordination with his employer and tied to matters of vaccine safety and misinformation. Defendant argues that his post was "classic rhetorical hyperbole, a subjective viewpoint about a long-publicized controversy, posted in a forum known for informal commentary and debate," and that it "contains no verifiable factual assertion that could be proven true or false." (Motion, p. 5.) Yet in his Answer filed on August 12, 2025, Defendant asserts as his twelfth affirmative defense that he was "acting as an agent for his employer" and that "any statements at issue were not his, but that of his employer."

Lopez is employed by a national recognized news organization owned by NBCUniversal. When the public views a statement by a news broadcaster addressing a subject as serious as vaccines, they reasonably perceive it as factual reporting connected to his professional role—not as "classic rhetorical hyperbole," as Defendant now characterizes it. Moreover, accusing a private individual of fabricating her medical condition as an "#OscarWorthy" "performance" is not rhetorical hyperbole, nor is it consistent

with the themes Defendant himself has described as defining his Instagram presence: "family, faith, food, fitness, and fun." Lopez's statements were not opinion.

Lopez cites *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669 and *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, but both cases are inapposite. In Summit Bank, the statements—criticizing the bank's management, suggesting depositors should "move their accounts before it's too late" or "before they close"—were found to be vague predictions or opinions that lacked verifiable factual content. (*Id.* at p. 700.) Likewise, in *ComputerXpress*, online statements accusing the company of running a "scam" or "suckering people" were deemed hyperbolic rhetoric, based on their informal tone and lack of objective verifiability. (*Id.* at pp. 1012–1013.)

Here, by contrast, Lopez's caption—"There's gotta be some kind of award for this performance… #MethodActor #OscarWorthy"—did not resemble loose prediction or colorful insult. It conveyed to millions of viewers that Plaintiff fabricated her neurological disability, a plainly false assertion of fact. Unlike *Summit Bank* or *ComputerXpress,* Lopez's statement was made in the authoritative context of his official Instagram account as a national broadcaster, reinforced by the use of Paramount's copyrighted news footage to give the claim credibility. As the court explained in *Seelig v. Infinity Broadcasting Corp.* (97 Cal.App.4th 798, 809–10), rhetorical hyperbole protects only "lusty and imaginative expressions of contempt" that "cannot reasonably be interpreted as stating actual facts." Lopez's caption, read in its professional and media context, falls squarely outside this protection. His defamatory message was factual, specific, and false, and is therefore actionable.

Thus, Defendant's suggestion that his statements were merely "opinion" is without merit. In the only supporting declaration to Defendant's Motion, counsel Daniel Tapetillo asserts that "The post itself consisted of a verbatim repost of an existing news segment without alteration to the underlying factual content and accompanied by commentary in the nature of opinion." (Tapetillo Decl., ¶ 5.) Leaving aside that the segment itself is the subject of a separate defamation lawsuit involving Paramount Global, the segment was presented to viewers as a "news segment." Defendant is a professional broadcaster employed by a national news organization. When he posts a "news segment" concerning vaccines, and adds commentary that Plaintiff's medical condition was a "performance" that was "#OscarWorthy," his

audience does not perceive it as mere opinion but as a factual assertion about Plaintiff.

To be an opinion, statements should be "broad, unfocused and wholly subjective," rather than make particular allegations about particular events. *Burrill v. Nair* (2013) 217 Cal.App.4th 357, 386 (accusations of extortion, perjury, and prescribing medicine without a license were specific and factual, not generalized opinion); *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1472 (accusation that an attorney "acted unconscionably and in violation of his ethical duties" was not mere opinion because, among other reasons, it focused on specific conduct). Lopez further argues that because his statements were made on social media, they constitute protected speech. This contention is unavailing. Lopez is a high-profile individual who made specific false accusations as fact under his own name as a broadcaster for NBCUniversal. The fact that he did so on social media does not shield him from liability. See, e.g., *Sanders v. Walsh* (2013) 219 Cal.App.4th 855, 864 ("online commentators" are not "immune from defamation liability," and statements on the internet that a plaintiff committed perjury and took bribes were "specific factual claims"); *Briganti v. Chow* (2019) 42 Cal.App.5th 504, 510 (statements on Facebook that plaintiff "was a convicted criminal" who had stolen the identities of thousands of people – are plainly defamatory in character").

G. Malice Need Not Be Shown – But Strong Evidence Of Malice Exists In The Record

"Absent clear evidence of general fame or notoriety in the community and pervasive involvement in ordering the affairs of society, an individual should not be deemed a public figure for all aspects of his life." *Gertz v. Robert Welch* (1974) 418 U.S. 323, 324. "More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." Id. at 351. A "'limited purpose' public figure loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to his role in a public controversy." *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 254. Merely filing a lawsuit is not sufficient. Id. ("a person or group should not be considered a public figure solely because that person or group… has sought certain relief through the courts; or merely happens to be involved in a controversy that is newsworthy," but rather "must have undertaken some voluntary act through which he seeks to influence the resolution of the public issues involved"); *Time, Inc. v. Firestone* (1976) 424 U.S.

448, 453.

Plaintiff has not attained "pervasive fame or notoriety" that would render her an all-purpose public figure. Nor has she voluntarily thrust herself into any public controversy relevant to this case. Defendant Lopez has offered no evidence demonstrating otherwise. *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1577. Malice is not required. Yet even if it were, malice is clearly established, as Defendant acted with knowledge of falsity or reckless disregard for the truth. "Actual malice may be proved by direct or circumstantial evidence." *Mitchell v. Twin Galaxies, LLC* (2021) 70 Cal.App.5th 207, 218. "Factors such as failure to investigate, anger and hostility, and reliance on sources known to be unreliable or biased may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication." Id.; *Antonovich v. Superior Court* (1991) 234 Cal.App.3d 1041, 1052-54 ("purposeful avoidance of the truth" will "support a finding of actual malice"); *Collins v. Waters* (2023) 92 Cal.App.5th 70 (the defendant ignored contrary evidence and was "on notice of a considerable risk that conclusive evidence wholly disproved her accusations" but "kept repeating these allegations without checking").

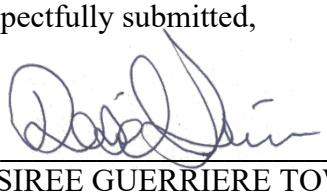
Defendant has not submitted a declaration of his own, despite being the only individual in a position to attest to the truth of the statements at issue. Instead, his Motion relies solely on counsel's defective and contradictory declaration, which cannot substitute for first-hand testimony. The refusal of Defendant to swear under oath to the narrative underlying his post — whether cast as commentary on "vaccine safety," "misinformation," or "rhetorical hyperbole" — strongly suggests he could not do so without risking perjury. A reasonable trier of fact may infer that Defendant knew his accusations were false, or at minimum acted with reckless disregard for their truth, by delegating the narrative to counsel while avoiding personal accountability. In these circumstances, Defendant's professed belief in the truth of his defamatory post is not plausible. His silence, contrasted with the sweeping accusations made in his name, is itself powerful evidence of actual malice. There is more than enough for a trier of fact to conclude that Defendant knowingly disseminated false statements to millions in order to damage Plaintiff's reputation, and then sought to shield himself from responsibility by refusing to submit his own sworn testimony.

IV. CONCLUSION

The Motion should be denied. If the Court concludes that Plaintiff's First Amended Complaint or evidence is lacking in any respect, Plaintiff should be afforded discovery or an amendment.

Dated: September 8, 2025

Respectfully submitted,



By:_____
DESIREE GUERRIERE TOWNSEND
PLAINTIFF *IN PRO SE*

PROOF OF SERVICE
Case No. 25NNCV04089
State of California, County of Los Angeles

Defendant's counsel has consented to electronic service in this matter. Accordingly, I caused the foregoing documents, entitled **OPPOSITION TO SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT** to be served electronically on the interested parties in this action as follows:

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Executed on September 8, 2025 in New York, NY.

By:_____
DESIREE GUERRIERE TOWNSEND