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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

RUSS, AUGUST & KABAT

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12 ARIAN MOWLAVI, M.D., an individual, and
A.M. COSMETIC SURGERY CLINICS, INC., a
13 California corporation d/b/a COSMETIC
PLASTIC SURGERY INSTITUTE,

14 Plaintiffs,

15 vs.

16
17 CHALENE JOHNSON, an individual; TEAM
JOHNSON LLC, a limited liability company; and
18 DOES 1-20, inclusive,

19 Defendants.

Case No. 30-2021-01226133-CU-DF-CJC

Assigned to The Honorable Gregory H. Lewis
Department C26

**PLAINTIFFS’ OPPOSITION TO
DEFENDANTS’ MOTION TO STRIKE
PURSUANT TO CODE OF CIVIL
PROCEDURE § 425.16 AND MOTION FOR
ATTORNEYS FEES OF \$92,565**

RELATED TO ROA # 24

*[Filed concurrently with Declarations of Arian
Mowlavi, M.D.; Antonious Abraham, Christian
Winkle; Claudia Arrue, Cynthia Divinity, Dolphe
Carmichael; Sean Satey M.D., Louis James
Gardner, Monica Vallin, Robert Donnell, Theresa
Saragoza, Sarvnaz Homayounpour; and
Plaintiffs’ Evidentiary Objections]*

Date: January 31, 2022
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Cases

Argentieri v. Zuckerberg,
(2017) 8 Cal. App. 5th 76817

Bently Reserve LP v. Papaliolios
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Brown v. Kelly Broad. Co.
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Eisenberg v. Alameda Newspapers, Inc.
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Equilon Enters. v. Consumer Cause, Inc.
(2002) 29 Cal. 4th 53.....8

FilmOn.com v. DoubleVerify Inc.
(2019) 7 Cal.5th 1339

GetFugu, Inc. v. Patton Boggs LLP
(2013) 220 Cal. App. 4th 14117

Gilbert v. Sykes
(2007) 147 Cal.App.4th 139

Good Gov’t Grp. of Seal Beach Inc., v. Super. Ct.
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Hufstedler, Kaus & Ettinger v. Sup. Ct.
(1996) 42 Cal.App.4th 5515

Hutchinson v. Proxmire
(1979) 443 U.S. 11115

Jarrow Formulas, Inc. v. LaMarche
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Landeros v. Flood
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Mitchell v. Twin Galaxies, LLC
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants’ Motion, much like their online sabotage of Dr. Mowlavi over the last four months, is nothing short of a hit-piece equipped with false and damaging statements and irrelevant, hearsay declarations from third parties who have nothing to do with the conduct at issue in this litigation. Once this information, intended to prejudice the Court against Dr. Mowlavi, is set aside, the core reveals that Defendants have engaged in a consistent course of tortious conduct by defaming Plaintiffs and using them for online content in their quest to take down Dr. Mowlavi and increase their own social media popularity and success. Tragically, almost a million people who engage with Defendant Johnson online have seen her 100+ posts whereby she falsely and repeatedly states *as fact* that, among other things, a patient died on Dr. Mowlavi’s table, Dr. Mowlavi committed malpractice multiple times and lost privileges at hospitals due to bad conduct, has sexually assaulted Johnson and others, and removed truthful negative online reviews to manipulate his rating. As detailed below, each of these statements is provably false and published with utmost malice. Even more tragically, Defendants’ conduct has resulted in Dr. Mowlavi’s livelihood being irreparably damaged, him losing patients, and being harassed and threatened.

Now legally cornered and without justification to back up their click-bait type posts written to create shock-value at Plaintiffs’ expense, Defendants are improperly trying to hide behind the Anti-SLAPP statute and grasping at straws to argue their statements were “substantially true.” The statute does not apply, however, as Defendants’ defamatory statements at issue do not concern a public interest but are rather personal attacks aimed at Dr. Mowlavi. In any event, Plaintiffs easily meet the statute’s minimal merit requirement on their claims, as the evidence shows Defendants’ statements are provably false, manipulated assertions of fact recklessly made to cause Plaintiffs harm. Accordingly, for reasons set forth herein, the Motion, along with its exorbitant fee and inappropriate discovery requests, should be denied.

II. STATEMENT OF FACTS

A. Johnson Pursues Dr. Mowlavi for Plastic Surgery & is Happy with Her Results

Dr. Mowlavi is a board-certified plastic surgeon and successful author, and frequently trains other physicians in high-definition cosmetic surgery techniques. Declaration of Arian Mowlavi (“Mowlavi Decl.”), ¶ 2. Johnson, a self-described “marketing expert” who coaches people how to grow their social-

1 media fan base, sought out Dr. Mowlavi for plastic surgery in July 2021 and underwent her agreed-upon
 2 procedures. *Id.* ¶¶ 3-5. Her procedures were conducted without complication. *Id.* ¶ 3; Declaration of S.
 3 Satey (“Satey Decl.”), ¶ 3. Given the location of her procedures, Johnson had to undress for the
 4 consultation, marking and surgery processes. Mowlavi Decl. ¶ 3. Following her surgery, Johnson took to
 5 her monetized Instagram account of about 700,000 followers (her follower base has since increased upon
 6 using Dr. Mowlavi for content), and podcast, *The Chalene Show* (“Podcast”) to discuss her surgery,
 7 initially declaring “I don’t have any complications, in fact I’m happy quite with my results.”

8 **B. Defendants Engage in Multiple, Repetitive Defamatory & Tortious Acts**

9 In a sudden turn of events, on August 13, 2021, Defendants released a Podcast where Johnson
 10 proceeded to describe her surgery in a manner different from before. In the days and months that
 11 followed, Johnson took to Yelp.com, her Podcast, Instagram, Facebook, and Tik-Tok– basically every
 12 social media and online platform where she boasts hundreds of thousands of followers – to spread false,
 13 defamatory, misleading, and offensive information about Dr. Mowlavi to tarnish his reputation. *Id.* ¶ 4.
 14 Defendants’ postings escalated in frequency (multiple a day, almost every day) as well as in
 15 sensationalism (increasing shock-value). As detailed in the First Amended Complaint (“FAC”) and Dr.
 16 Mowlavi’s declaration paragraphs 8-9, these statements fall into the following categories:

- 17 • A patient “died on Dr. Mowlavi’s table” or Mowlavi “killed someone” or caused her death (FAC
 18 ¶¶ 33, 37, 41, 42, 48, 50, 60). *See* Mowlavi Decl. Exs. 4, 6, 7, 8, 9, 10, 13.
- 19 • Dr. Mowlavi committed malpractice multiple times (FAC ¶¶ 33, 37, 41, 60). *Id.* Exs. 4, 6, 8, 13.
- 20 • Dr. Mowlavi has “lost privileges” at multiple “hospitals” including for “past complications,
 21 infections and patient death” (FAC ¶¶ 41, 48, 50). *Id.* Exs. 8, 10.
- 22 • Implying that Dr. Mowlavi’s anesthesiologist, who participated in her surgery, has two DUIs (FAC
 23 ¶¶ 42, 48, 60). *Id.* Exs. 9, 13.
- 24 • Dr. Mowlavi denied Johnson sterile dressing change (FAC ¶¶ 24, 28). *Id.* Exs. 2, 3.
- 25 • Dr. Mowlavi “has a history of . . . suing people to silence them” (FAC ¶¶ 50, 58). *Id.* Exs. 10, 11.
- 26 • Dr. Mowlavi somehow removed or deleted truthful, negative reviews from patients left on
 27 Yelp.com (FAC ¶¶ 35, 41). *Id.* Exs. 5, 8.

28 ///

- 1 • Dr. Mowlavi ordered Johnson to “get naked when not necessary”, paraded her “in pain on
- 2 painkillers fully nude and invited other staff or clients to view [her] with no right”; and tried to
- 3 “upsell additional surgeries” while she was standing naked pre surgery, and acted inappropriately
- 4 with her (FAC ¶ 24, 28, 50). *Id.* Exs. 2, 3, 10.
- 5 • He engaged in sexual misconduct with Johnson and other “victims” (FAC ¶¶ 37, 42); *Id.* Ex. 6.
- 6 • “after my botched surgery I learned that he had done this to hundreds of women...” (*i.e.* “grabbed...
- 7 breasts with his bare hands and told me he wanted to make me hot”) (FAC ¶ 48). *Id.* Ex. 9.
- 8 • Dr. Mowlavi grabbed the tube that [a patient] was intubated with and yank[ed] it out like a sword...
- 9 This means the patient could die. The Doctor storms off” (FAC ¶ 58). *Id.* Ex. 12.
- 10 • Dr. Mowlavi violated HIPPA by addressing Johnson by “my full name and also sharing some of
- 11 the details of my treatment” (FAC ¶ 42). *Id.* ¶ 9; Hemesath Decl. Ex. M.

12 (Collectively referred to herein as the “Defamatory Statements.”)

13 Johnson also began releasing personal information about Dr. Mowlavi unrelated to her medical
 14 experience, including pictures or information of Dr. Mowlavi, his wife, staff, and office building and
 15 address, and unauthorized videos of Dr. Mowlavi taken without consent. Mowlavi Decl., Exs. 18-19, 23.
 16 Demonstrating her extreme obsession with Dr. Mowlavi, Johnson also posted images of a spreadsheet
 17 she prepared with matters unrelated to her experience with Dr. Mowlavi –from his business registrations,
 18 to traffic infractions, and small claims matters. *Id.* Exs. 4, 5. In the midst are multiple false and
 19 misleading descriptions of “matters” drafted by Johnson such as “Medical Malpractice,” “Patient Surgery
 20 Accident,” and “Patient Death.” *Id.* Johnson’s post omitted, however, that each of these “Medical
 21 Malpractice” notations were not legal findings but actually just allegations either defeated by defense
 22 verdict, voluntarily dismissed, resolved, or pending. *Id.* ¶ 15. Weeks later, she posted a follow up image
 23 of the spreadsheet, this time captioning “I KNOW EVERYTHING ABOUT THIS MAN.” *Id.* Ex. 24.

24 Johnson’s dislike of Dr. Mowlavi and motivation to end his career could not be missed given that
 25 her postings about him were so repetitive and negative, and she described him using terms like “you
 26 POS” (*i.e.* piece of shit), “disgusting”, and “reprehensible.” *Id.* ¶ 3. She even declared her goal, stating,
 27 “SIR . . . GOD HAS ASKED ME TO STOP YOU AND I WILL YOU HAVE MET YOUR MATCH.
 28 . . . I HAVE MADE IT MY MISSION TO STOP YOUR REIGN OF EVIL.” *Id.* Ex. 17. To that end,

1 she even contacted multiple satisfied patients of Dr. Mowlavi in an unsolicited manner who did not
 2 welcome her attempt to turn them against him. *Id.* ¶ 39; Declarations of D. Carmichael and C. Divinity.

3 Johnson has made 100+ negative postings about Dr. Mowlavi, including pleading to her
 4 followers to “take action!” and “put him on blast.” Mowlavi Decl. Ex. 20. As a result, Dr. Mowlavi has
 5 received countless hateful and threatening messages as well as a death threat. *Id.* ¶¶ 32, 36, Exs. 21, 25.
 6 This conduct has resulted in loss of Plaintiffs’ business, as several patients have canceled their surgeries
 7 with Dr. Mowlavi as a direct result of Johnson’s interference and communications. *Id.* ¶¶ 38, 40, 42.

8 **III. THE ANTI-SLAPP MOTION SHOULD BE DENIED**

9 **A. The Anti-SLAPP Standard**

10 The Legislature enacted section 425.16 (the “Statute”) to deter lawsuits brought to chill the *valid*
 11 *exercise* of the constitutional rights of free speech. *Varian Medical Sys., Inc. v. Delfino* (2005) 35 Cal.4th
 12 180, 192. The Statute requires a two-prong analysis. First, defendant must show that the claims at issue
 13 arise from protected activity. *Equilon Enters. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67. Second,
 14 if defendant makes the requisite showing, the burden shifts to plaintiff to establish a probability of
 15 prevailing—i.e. that the complaint is “legally sufficient and supported by a sufficient prima facie showing
 16 of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” *Jarrow*
 17 *Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 741. To prevail, “plaintiff’s cause of action needs to
 18 have only **minimal merit**.” *Cole v. Meyer & Assoc.* (2012) 206 Cal.App.4th 1095, 1105.

19 “An anti-SLAPP-suit motion is not a vehicle for testing the strength of a plaintiff’s case, or the
 20 ability of a plaintiff, so early in the proceedings, to produce evidence supporting each theory of damages
 21 asserted.” *Willbanks v. Wolk* (2004) 121 Cal.App.4th 883, 902-03. “It is enough the plaintiff
 22 demonstrates that the suit is viable.” *Id.* at 905. “The court does not weigh evidence or resolve conflicting
 23 factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made
 24 a *prima facie* factual showing sufficient to sustain a favorable judgment. It accepts plaintiff’s evidence as
 25 true, and evaluates defendant’s showing only to determine if it defeats plaintiff’s claim as a matter of law.”
 26 *Sweetwater Union H.S. Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940. The court “must draw
 27 ‘every legitimate favorable inference’ from the plaintiff’s evidence.” *Cuevas-Martinez v. Sun Salt Sand,*
 28 *Inc.* (2019) 35 Cal.App.5th 1109, 1117.

1 **B. Defendants Fail to Meet the First Prong of the Anti-SLAPP Statute**

2 Plaintiffs do not dispute that Defendants’ statements have been made in a public forum or that,
 3 generally, broad discussions about health care and surgery are of public interest to qualify under the
 4 Statute. The context of Defendants’ postings, however, far exceeded the scope of this interest. A “matter
 5 of public interest” within the Statute requires more than curiosity, should have a degree of closeness
 6 between the challenged statements and the asserted public interest, and the “focus of the speaker’s conduct
 7 should be the public interest rather than a mere effort to gather ammunition for another round of
 8 private controversy.” *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132–33.

9 Defendants summarily cite *Gilbert v. Sykes* and declare that all of their statements fall within the
 10 public interest, but they do not. *Gilbert* involved a website about plastic surgery and offered advice,
 11 information, and a contact page for readers to share experiences. (2007) 147 Cal.App.4th 13. While the
 12 site contained information about the author’s experience with a particular surgeon, that was but an aspect
 13 of a larger consumer-oriented presentation to serve the public interest. *Id.* at 19. Here, Defendants
 14 controlled all statements and focused on their personal vendetta against Dr. Mowlavi. Their postings went
 15 so far as to disclose Dr. Mowlavi’s image and address, identify his wife and her profession, identify his
 16 staff and disclose information about the staff’s child, post spreadsheets that show “everything” about his
 17 life unrelated to the surgery, and post derogatorily about his mannerisms. Mowlavi Decl. ¶¶ 29, 30, 33-
 18 35 35, Exs. 4, 18, 19, 22-24. ***That is all personal and unrelated to any public interest.*** At best, the
 19 Defamatory Statements are the type that generally “refer to a subject of widespread public interest” but
 20 lack “some degree of closeness between the challenged statements and the asserted public interest”
 21 rendering them outside the Statute. *FilmOn.com v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 150. As the
 22 *Weinberg* court stated, “that defendant allegedly was able to vilify plaintiff in the eyes of at least some
 23 people establishes only that he was at least partially successful in his campaign of vilification; it does not
 24 establish that he was acting on a matter of public interest. 110 Cal.App.4th at 1134. The same applies
 25 here. The Defamatory Statements go far beyond an effort to participate in discourse about plastic surgery.

26 **C. Plaintiffs Meet The “Minimal Merit” Requirement on All of Their Causes of Action**

27 Even if the Court deems that Defendants have established that the Statute applies, the Motion still
 28 fails because Plaintiffs exceed the “minimal merit” test.

1 **(1) Plaintiffs’ Claims For Defamation and False Light**

2 Defendants’ statements constitute defamation and false light – *i.e.* false or negative statements
 3 that have a natural tendency to cause special damage. Civ. Code §§ 45, 46; *see Price v. Operating Eng’rs*
 4 *Local Union No. 3* (2011) 195 Cal.App.4th 962, 970 (false light overlaps with defamation except plaintiff
 5 need not show falsity; only that the statement casts him in a light highly offensive to reasonable person).
 6 Where, as here, statements attack a person’s profession, they are defamation *per se* and damages are
 7 presumed. *See Contento v. Mitchell* (1972) 26 Cal.App.3d 356, 358. Defendants do not deny making the
 8 Defamatory Statements but argue that: (1) the statements are true or opinion; (2) Plaintiffs cannot show
 9 actual malice; and (3) the litigation privilege precludes liability. Each of these arguments fails.

10 **i. Defendants’ Statements Are False, Actionable Statements of Fact**

11 “Falsity” of a statement looks to “whether a reasonable fact finder could conclude the published
 12 statement declares or implies a provably false assertion of fact.” *Wong v. Jing* (2010) 189 Cal.App.4th
 13 1354, 1369. Courts look at the totality of the circumstances as to whether a statement “communicates or
 14 implies a provably false statement of fact. . . . Next, the context in which the statement was made must be
 15 considered.” *Id.* at 1370. “Even if the speaker states the facts upon which he bases his opinion, if those
 16 facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still
 17 imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these
 18 implications[.]” *Bently Reserve LP v. Papaliolios* (2013) 218 Cal.App.4th 418, 426. The defense of truth
 19 is defendants’ burden. *Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1382.

20 ***That a Patient “Died on [Dr. Mowlavi’s] Table / Dr. Mowlavi Killed a Patient***

21 Perhaps most egregious and false of Defendants’ statements was that a patient died on Dr.
 22 Mowlavi’s table, and, relatedly, that Dr. Mowlavi killed the patient or caused her death. Mowlavi Decl.
 23 Exs. 4, 6, 7, 8, 9, 10, 13. Each of these statements is false. *Id.* ¶ 14. Defendants base their statements on:
 24 (1) an unverified, disputed and dismissed civil complaint; (2) a notice of settlement (and the amount)
 25 made without any admission of liability; and (3) a pending accusation by the Medical Board which does
 26 not even seek liability against Dr. Mowlavi for death. *See Hemesath Decl. Ex. B.* None of this would
 27 lead a reasonable person to declare AS FACT that a patient died on Dr. Mowlavi’s table or that Dr.
 28 Mowlavi killed a patient. *Defendants even admit in the Motion that the statement that a patient died on*

1 *Dr. Mowlavi’s table is false.* Moreover, a complaint conveys nothing more than an allegation. Similarly,
 2 a settlement of disputed claims, whatever the amount, is likewise not proof of liability and it is reckless to
 3 claim that a physician is guilty just because a case was settled by insurance. Defendants knowingly used
 4 a one-sided allegation and broadcasted it *repeatedly as fact* without qualifying it as unproven or disputed.

5 Defendants’ argument that the false statement that a patient died on Dr. Mowlavi’s table is but a
 6 minor “nuance” or “slight inaccuracy” is absurd. Mtn. at 10-11. This definitive statement is not a nuance
 7 or “substantially true.” Putting aside the falsity of the broader statement that Dr. Mowlavi killed the
 8 patient, the patient did not even die in Dr. Mowlavi’s operating room or office; the patient died days later
 9 in a hospital where Dr. Mowlavi was not present. Mowlavi Decl. ¶ 14. Johnson used “died on the table”
 10 deliberately to shock her audience and paint Dr. Mowlavi in the worst light. *Tuchscher Dev. Enters, Inc.*
 11 *v. S.D. Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1238 (court must “indulge in every legitimate
 12 favorable inference” drawn from plaintiff’s evidence). The Motion should be denied on this basis alone.

13 ***That Dr. Mowlavi used an Anesthesiologist with 2 DUIs on Johnson’s Surgery***

14 On October 2, 2021, Johnson posted a video of *herself* about *her* surgery and stated that the
 15 “anesthesiologist had two DUIs.” Mowlavi Decl. Ex. 9. Then, on October 20 she posted about her plans
 16 to hold up a sign to state “California allows doctors to continue to practice even after 2 DUIs.” *Id.* Ex. 13.
 17 These can only lead a reasonable viewer to believe she was referring to *her* anesthesiologist or *her* doctor
 18 – not some third-party doctor with whom she has no connection. There is no dispute though that the
 19 anesthesiologist who participated in Johnson’s surgery did not have two DUIs. *Id.* ¶ 20. Johnson was
 20 apparently referring to another anesthesiologist and now argues no-harm no-foul because on a different
 21 day and on a different platform (her Podcast), she revealed the anesthesiologist was not hers. This does
 22 not change the falsity of the statement.¹ She knowingly made the statements in a way for a reader to
 23 falsely believe that Dr. Mowlavi subjected her to medical intervention with a doctor who had two DUIs.

24 ***That Dr. Mowlavi Committed “Malpractice” on Multiple Occasions***

25 Dr. Mowlavi has never been found to commit medical malpractice in his entire career. *Id.* ¶ 15;
 26 Declaration of S. Homayoupour (“Homayoupour Decl.”), ¶ 3. Yet, Johnson asserted to hundreds of

27 ¹ Johnson’s post was “liked” by over 10,000 users. Her position requires that these 10,000+ people know and listen to an
 28 hour-long podcast on a different platform and day to obtain an explanation of the statement. That is neither
 reasonable nor plausible, nor would it completely absolve her of liability.

1 thousands of people repeatedly *as fact* that she had discovered he committed malpractice on multiple
 2 occasions, including by posting a spreadsheet with dates of his “medical malpractice.” Mowlavi Decl.
 3 Exs. 4, 6, 8, 13. Her basis for doing so? A “search” of cases filed – *not verdicts* – against Dr. Mowlavi,
 4 the biased opinion of a single competitor plastic surgeon with a history of hostility towards Dr. Mowlavi
 5 (*id.* ¶ 27(a)), and unverified accounts from disgruntled patients. Mtn. at 11-12. Had Defendants actually
 6 done research as they claimed, they would know there was no liability in any case. Mowlavi Decl. ¶ 15.

7 Faced with the fact that their statements are unequivocally false, Defendants argue that it was
 8 opinion or rhetorical hyperbole. Mtn. at 13. That cannot be taken seriously. *First*, neither Defendants
 9 nor any of their declarants are medical experts qualified to form medical opinions. *See Landeros v. Flood*
 10 (1976) 17 Cal.3d 399, 410. *Second*, Defendants stated definitively that their research showed Dr.
 11 Mowlavi committed malpractice and any reasonable viewer seeing their post of spreadsheets listing
 12 “medical malpractice” by date would think that these cases resulted in liability. *Third*, Defendants never
 13 couched these statements as opinion and, even if they had, expressing statements as opinion does not
 14 dispel liability when the statements are clearly based on false “facts.” *See Bently*, 218 Cal.App.4th at 427.
 15 As detailed further in Section III.c.1.ii, *infra*, Defendants’ utmost malice and reckless disregard with
 16 respect to these false statements warrants denial of the Motion on this basis alone.

17 ***That Dr. Mowlavi “Lost Privileges at Several Local Hospitals” Due to Misconduct***

18 Defendants have falsely stated that Dr. Mowlavi “lost privileges” at *multiple* hospitals due to
 19 “past complications, infections and patient death.” Mowlavi Decl. Exs. 8, 10. This is patently false. Dr.
 20 Mowlavi has never “lost privileges” at *any* hospital in his career. *Id.* ¶ 18. He voluntarily resigned from
 21 Mission Hospital (the only hospital they identify). *See id.*, Ex. 14. Johnson has not identified any other
 22 hospital that falls under her alleged group of “multiple” hospitals, nor can she, as none exist. *Id.*
 23 Defendants allege they made these statements because Dr. Kachenmeister told Johnson that Dr. Mowlavi
 24 “no longer has privileges at Mission Hospital.”² *See Mt.* at 13. Defendants did not inquire why or how
 25 Dr. Mowlavi did not have privileges, though surely Johnson could have asked her trusted doctor and chief

26 _____
 27 ² Defendants’ claim that it was improper for Plaintiffs to oppose their subpoena to Mission Hospital is entirely
 28 unfounded. Defendants are supposed to have sufficient justification for their statements *before* they are made, not
after. In any event, Defendants’ subpoena sought intrusive, absolutely privileged information protected by Cal.
 Evid. Code § 1157 and Mission Hospital itself objected to Defendants’ requests and has refused to produce such
 documents.

1 of surgery at Mission. Instead, they recklessly jumped the gun and asserted –as a “shocking fact”³ – that
 2 Dr. Mowlavi had “lost” his privileges not just at one but *multiple* hospitals, leading any reader to
 3 conclude, incorrectly, that the privileges were involuntarily taken away due to wrongful conduct.

4 ***That Dr. Mowlavi Committed “Sexual Misconduct” with Johnson and other Patients***

5 Prior to Defendants making these damaging statements, Dr. Mowlavi had never been accused of
 6 engaging in sexual misconduct with any surgical patient. Mowlavi Decl. ¶ 21. Johnson, however, posted
 7 that she “uncover[ed] the sexual misconduct, corruption” and “learned that he had done this to hundreds
 8 of women...” *Id.* Exs. 6, 9. Such phrasing, particularly combined with vague statements about her
 9 vagina being “sore” after lower abdominal surgery, leads any reasonable reader to believe that Dr.
 10 Mowlavi sexually assaulted Johnson, a blatant falsity. While Johnson may not have liked Dr. Mowlavi’s
 11 bedside manner, that is unrelated to sexual assault. Indeed, Dr. Mowlavi and Johnson’s surgical team
 12 unequivocally declare that his conduct was professional and appropriate.⁴ *See id.* ¶ 21-22; Satey Decl. ¶¶
 13 3-7; Vallin Decl. ¶¶ 4-9; Abraham Decl. ¶¶ 4-8. If a person wants to have breast surgery or lower
 14 abdomens surgery, there is an obvious expectation that a doctor will examine and touch them in those
 15 areas. Indeed, it is not credible that Johnson had the type of experience she is now alleging she had, and
 16 yet proceeded with Dr. Mowlavi anyway, especially when she already had a beloved plastic surgeon
 17 (Kachenmeister) on hand. *See Cuevas*, 35 Cal.App.5th at 1117 (court must credit plaintiff’s inferences).

18 ***That Dr. Mowlavi Pressured Johnson and Inappropriately Cared For Her Post-Op***

19 Johnson has falsely stated that Dr. Mowlavi ordered her to “get naked when not necessary”; tried
 20 to “upsell additional surgeries” while she was nude pre-op, and paraded her nude so “staff or clients to
 21 view [her] with no right.” Mowlavi Decl. Ex. 3. Any reasonable reader would conclude that Dr. Mowlavi
 22 acted in an inappropriate manner to gratify himself and the surgical team. Each statement is provably
 23 false, as corroborated by her surgical team. *See id.* ¶ 21-22; Satey Decl. ¶¶ 3-7; Vallin Decl. ¶¶ 4-9;
 24 Abraham Decl. ¶¶ 4-8. Indeed, Johnson even admits Dr. Mowlavi did not “parade her” around to other
 25 staff or clients, but permitted the two individuals *from her surgery* to view the results. Johnson Decl. ¶

26 ³ Defendants’ posting regarding “lost privileges” leads with “**Shocking facts** I uncovered about my plastic surgeon .
 27 . . .” Mowlavi Decl. Ex.10. Accordingly, Defendants’ argument that their statement is “online expressions,” opinion,
 “critiques of a professional’s performance” or “rhetoric, hyperbole” (Mtn. at 13-14) is disingenuous and implausible.

28 ⁴ Defendants’ third party declarations are not relevant to Johnson’s alleged sexual assault, nor do they account for
 “hundreds of women” or provide probative evidence of sexual misconduct or corruption.

1 15. Accordingly, the implication that Dr. Mowlavi took advantage of Johnson or her body is provably
 2 false. Johnson has also stated that Dr. Mowlavi denied her sterile dressing change (Mowlavi Decl. Exs. 2,
 3 3), which creates the implication that Dr. Mowlavi maintains an unsanitary practice with no regard to the
 4 safety of his patient. This is likewise false, as Dr. Mowlavi never denied Johnson any dressings and in
 5 fact provided it to her at the comfort of her own home. Mowlavi Decl. ¶ 19; Gardner Decl. ¶¶ 3-6.

6 ***That Dr. Mowlavi Removed Truthful Online Reviews***

7 Notably missing from the Motion is any evidence for Johnson’s repeated statements that Dr.
 8 Mowlavi intentionally had truthful negative online reviews from patients deleted, implying that Dr.
 9 Mowlavi was trying to hide these reviews to manipulate his online rating. *See* Mowlavi Decl. Exs. 5, 8.
 10 Dr. Mowlavi has never removed nor deleted reviews from actual patients. *Id.* ¶ 17. Nor does he own or
 11 control review-platforms to even theoretically have the power to do so. *Id.* The fact that the FAC alleges
 12 that Yelp has community guidelines and control to remove fraudulent, illegitimate, postings is not any
 13 “admission” or “concession” of removal of truthful patient posts. Defendants simply try to confuse the
 14 Court knowing that Johnson had absolutely no evidence of any kind to assert such a false statement.

15 ***Other Statements Which Defendants Do Not Even Raise or Dispute in the Motion***

16 Defendants do not appear to take issue with several of the other Defamatory Statements alleged
 17 in the FAC, including: (1) Dr. Mowlavi violated HIPPA by addressing Johnson by my full name and also
 18 sharing some of the details of my treatment”; (2) Dr. Mowlavi “has a history of . . . suing people to silence
 19 them” and (3) Dr. Mowlavi grabbed the tube that [a patient] was intubated with and yank-[ed] it out like a
 20 sword. . . This means the patient could die. The Doctor storms off.” *See id.* ¶ 9, Exs. 11-12. Dr. Mowlavi
 21 likewise meets the “minimal merit” test on each of these, as each statement is provably false. *Id.* ¶¶ 16,
 22 23, 24, Exs. 2, 15, 16; *see also* Homayoupour Decl. ¶¶ 7-11, Exs. A-B.

23 **ii. Defendants’ Statements Were Made With Actual Malice**

24 Defendants attempt to qualify Dr. Mowlavi as a “limited purpose public figure” for purposes of
 25 imposing a requirement that he show “actual malice” behind Defendants’ publication of the Defamatory
 26 Statements, arguing that Dr. Mowlavi has thrust himself into the debate on the merits of plastic surgery
 27 by appearing in articles, writing a book, teaching other surgeons, and having an Instagram account. *See*
 28 Mtn. at 9. But Dr. Mowlavi’s “activities and public profile are much like those of countless members of

1 his profession. His published writings reach a relatively small category of professionals. . . .” *Hutchinson*
 2 *v. Proxmire* (1979) 443 U.S. 111, 135 (published scientist not public figure). Moreover, merely
 3 advertising one’s goods or services does not render them a public figure. *See Hufstедler, Kaus & Ettinger*
 4 *v. Sup. Ct.* (1996) 42 Cal.App.4th 55, 69–70 (“a person in the business world advertising his wares does
 5 not necessarily become part of an existing public controversy”). Nor does presence on social media or
 6 Yelp.com. *See Bently*, 218 Cal.App.4th at 436. Outside of being a skilled doctor and taking business
 7 steps like other doctors, Dr. Mowlavi has maintained a private life. Mowlavi Decl. ¶ 42. He has not
 8 thrust himself into a public debate on malpractice or plastic surgeon conduct or abuses. Accordingly,
 9 Plaintiffs need only show that Defendants were negligent in the making of their Defamatory Statements.
 10 *See Brown v. Kelly Broad. Co.* (1989) 48 Cal.3d 711, 740.

11 Even if the Court were to consider Dr. Mowlavi a limited purpose public figure, he easily shows
 12 that Defendants acted with actual malice – *i.e.* knowledge or reckless disregard as to the falsity of the
 13 information. *Sanders v. Walsh* (2013) 219 Cal.App.4th 855, 873. “[P]laintiff may rely on inferences
 14 drawn from circumstantial evidence to show actual malice.” *See id.* at 874. Factors including failure to
 15 investigate, “anger and hostility toward the plaintiff, reliance upon sources known to be unreliable or . . .
 16 biased against the plaintiff” . . . may . . . indicate that [defendant] had serious doubts regarding the truth of
 17 his publication.” *Id.*; *see also Mitchell v. Twin Galaxies, LLC* (2021) 70 Cal.App.5th 207, 285. As shown
 18 in each circumstance of defamatory conduct, highlighted above, actual malice is easily established:

19 **First**, Defendants outwardly displayed their anger and hostility towards Plaintiffs, calling Dr.
 20 Mowlavi “disgusting,” a “POS”, “reprehensible”, declaring “I HAVE MADE IT MY MISSION TO
 21 STOP YOUR REIGN OF EVIL”, and posting about him in an offensive manner. Mowlavi Decl. Exs. 3,
 22 17, 23. They have also encouraged third parties to “put him on blast” and “take action” against him. *Id.*
 23 Ex. 20; *Sanders*, 219 Cal.App.4th at 874 (hostile attitude supports malice finding).

24 **Second**, Defendants have not once stated anything positive about Dr. Mowlavi despite having
 25 reached out to patients who had positive experiences. *See Carmichael Decl.*; *Divinity Decl.* Nor did they
 26 provide Dr. Mowlavi an opportunity to respond or state his position despite him reaching out to them on
 27 several occasions. Mowlavi Decl. ¶ 7. Instead, they published information as fact taken solely from
 28 disgruntled employees, dissatisfied patients, and worse yet – a competitor doctor with a vendetta --

1 without investigation. These third parties, however, are biased, unreliable, and not credible.⁵ *See e.g. id.*
 2 ¶ 24, 27; Homayounpour Decl. ¶¶ 7-11; Declaration of C. Winkle ¶¶ 4-10. For example, Defendants rely
 3 on Dr. Kachenmeister to provide medical opinions, but he admits he is not a medical expert
 4 (Kachenmeister Decl. ¶ 2) and his lay opinions are therefore irrelevant and objectionable. *See Landeros*,
 5 17 Cal.3d at 410 (malpractice “is a matter peculiarly within the knowledge of experts . . . and can only be
 6 proven by their testimony”). Indeed, Dr. Kachenmeister has never participated in surgery with Dr.
 7 Mowlavi or even been in his operating room, so he has no personal knowledge upon which he can opine.
 8 Mowlavi Decl. ¶ 27(a). His “opinions” on the appropriateness of surgeries obtained third hand are
 9 irrelevant to the Defamatory Statements and objectionable. *See* Plaintiffs’ Evidentiary Objections.
 10 Moreover, like Johnson, Dr. Kachenmeister, too, has hostility towards Mowlavi and has been trying to
 11 tarnish Dr. Mowlavi’s good standing for over 10 years. Mowlavi Decl. ¶ 27(a). Dr. Kachenmeister is a
 12 competitor of Dr. Mowlavi, whose prior patients – including Johnson – have gone to Dr. Mowlavi for
 13 treatment. *Id.* He is therefore anything but impartial, displaying a vested interest in harming Dr. Mowlavi.

14 ***Third***, Defendants knowingly took unproven information, including one-sided stories and mere
 15 allegations, and repeatedly shared each as fact or in a short, manipulated manner to misrepresent Dr.
 16 Mowlavi’s history with litigation, patients, and non-related activity all the while knowing that the
 17 700,000+ followers were relying on them for accurate information. The evidence shows this conduct was
 18 motivated by their dislike towards Dr. Mowlavi and what they stood to gain – and did gain – from further
 19 bashing him: more followers, views, and likes on social media. *See* Mowlavi Decl. ¶ 37, Ex. 26.

20 **iii. The Litigation Privilege Does Not Apply**

21 Defendants absurdly claim that their social media statements referencing this litigation or other
 22 third-party litigation (including FAC ¶¶ 53-54, 58 and 60) are completely protected by the litigation
 23 privilege and non-actionable. Mtn. at 18. This argument defies all California law.

24 The purpose of the litigation privilege is to open channels of communication *in judicial*
 25 *proceedings* by affording litigants freedom of access *to the courts* without fear of derivative actions.
 26 *Silberg v. Anderson* (1990) 50 Cal.3d 205, 213. It protects only those communications (1) made in

27 ⁵ A majority of the declarations submitted by Defendants are not relevant to the truth or falsity of the Defamatory
 28 Statements, and, regardless, do not show when Johnson spoke with such third parties, as would be relevant to
 malice. Moreover, they are riddled with hearsay and have no probative value. *See* Plaintiff’s Evidentiary Objections.

1 judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to
 2 achieve the objects of the litigation; and (4) that have a connection or logical relation to the action. *Id.* at
 3 212. Communications that further the objects of litigation include court pleadings and out of court
 4 statements of identical or similar allegations *between interested parties* such as through demand letters.
 5 *See Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1144. Accordingly, California has long held that
 6 ***communications to non-interested parties, specifically including the media, fall outside of the litigation***
 7 ***privilege and are thus actionable.*** *Id.* at 1143, 1147-49.⁶ Accordingly, under no plausible circumstances
 8 can any of the Defamatory Statements be protected by the litigation privilege.

9 **(2) Tortious Interference and Civil Harassment**

10 Johnson’s conduct also constitutes tortious interference with Plaintiffs’ prospective business
 11 relationships insofar as she knew of the relationships and induced prospective patients to terminate the
 12 relationship by making statements that were either defamatory or placed Dr. Mowlavi in a false light. *See*
 13 CACI 2202. Johnson has admitted that she has spoken with multiple people affiliated with Dr. Mowlavi,
 14 including patients, and has been vocal about dissuading people from having surgery with him. Multiple
 15 women have cancelled their surgeries and/or treatment with Dr. Mowlavi, using Johnson as the reason for
 16 the cancelation. Mowlavi Decl. ¶¶ 38-40. Accordingly, the minimal merit on this claim is met.

17 Johnson’s conduct also constitutes infliction of emotional distress and civil harassment as
 18 Johnson engaged in a course of outrageous conduct intended to harass, annoy, and alarm Dr. Mowlavi
 19 without a legitimate purpose and to cause him distress, which did cause him severe emotional distress.
 20 *See* Cal. Code Civ. Proc. § 527.6; CACI 1600. Johnson has made over 100 negative postings about Dr.
 21 Mowlavi that continue to harass him, and has encouraged her devoted followers to “put him on blast” and
 22 “take action.” Mowlavi Ex. 20. In response, countless people with a direct tie to Johnson have sent Dr.

23 _____
 24 ⁶ *See also Argentieri v. Zuckerberg* (2017) 8 Cal.App.5th 768, 785-87 (statement to press not protected); *Susan A. v.*
 25 *Cty. of Sonoma* (1991) 2 Cal.App.4th 88, 93 (same); *GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th
 26 141, 154 (press release and a tweet not protected). Defendants ignore this slew of decades of legal authority, which
 27 is improper to withhold from the Court. The basis of excluding statements made to the media and on social
 28 platforms from protection is clear and unequivocal: ***they do not serve a necessary or useful step in the litigation***
process but rather are meant to share with non-interested third parties a litigant’s view of the dispute. *Argentieri*
 at 786-87. “While a person’s motives for litigating a dispute may include a desire to be vindicated in the eyes of the
 world . . . this is not what is meant by the term ‘objects of the litigation.’” *Rothman*, 49 Cal.App.4th at 1147. Indeed,
 courts caution litigants that “trial by press” is a “universally condemned” practice (*Susan A.* at 90) and those “who
 wish to litigate their cases in the press do so at their own risk.” *Rothman*, 49 Cal.App.4th at 1148.

1 Mowlavi threatening, demeaning, and harassing direct messages. *Id.* ¶ 36, Ex. 25. Donnell Decl. ¶¶ 3-4.
 2 Dr. Mowlavi has even received a death threat as a result of Johnson’s conduct. Mowlavi Decl. ¶ 32, Ex.
 3 21. Johnson’s conduct serves no legitimate purpose insofar as she has used Dr. Mowlavi for “content” on
 4 her monetized social media page, which has shown to be good for business.⁷ Had she intended to serve a
 5 “legitimate purpose” of alerting the public about Dr. Mowlavi’s medical care, she could have done so
 6 with a single or handful of posts rather than 100+ continuous posts that mock, berate and embarrass him,
 7 or provide third parties with information for him, his family and staff knowing that these people will
 8 attack him, all of which was intended to, and has, caused him great distress. *Id.* ¶¶ 28-42, Exs. 18-25.

9 **D. To the Extent There is Question as to the Credibility of the Evidence Provided by the**
 10 **Parties, the Motion Must be Denied**

11 As stated in Section III.a, *supra*, “[t]he court does not weigh evidence or resolve conflicting
 12 factual claims.” *Sweetwater Union*, 6 Cal.5th at 940. Moreover, if “the allegedly libelous remarks could
 13 have been understood by the average reader” as either fact or opinion, “the issue must be left to the jury’s
 14 determination.” *Good Gov’t Grp. of Seal Beach Inc., v. Super. Ct.* (1978) 22 Cal.3d 672 (fact issue
 15 existed as to malice in article precluding summary judgment). Similarly, whether a statement is true is
 16 normally considered to be a factual one. *Bently*, 218 Cal.App.4th at 435. Defendants have submitted
 17 declarations purporting to show that the Defamatory Statements are true, but Plaintiffs’ declarations
 18 submitted concurrently herewith not only dispute those contentions but show the opposite, and also show
 19 that Defendants’ declarants are unreliable, biased, and lack credibility. *See* Section III.c.ii, *supra*;
 20 Plaintiffs’ Evidentiary Objections. Accordingly, it would be improper for the Court to weigh the
 21 countervailing evidence and witness testimony and make credibility or evidentiary determinations on
 22 these highly conflicting claims. A summary disposition in this case is therefore not appropriate.

23 **IV. DEFENDANTS’ EXORBITANT ATTORNEYS’ FEES SHOULD BE DENIED**

24 Defendants request over \$92,000 in fees for filing the Motion, but have provided no backup of
 25 the fees incurred to justify this exorbitant amount.⁸ Moreover, it appears Defendants are attempting to

26 ⁷ Indeed, Johnson’s follower based has increased by over 45,000 since she began to focus on Dr. Mowlavi as
 27 content, and she receives significantly more “likes” and “comments” on her postings when she is posting about Dr.
 28 Mowlavi as compared to other content. Mowlavi Decl. ¶ 37, Ex. 26. Surely a “marketing expert” who teaches
 courses on how to “grow your Instagram” realizes that posting content about Dr. Mowlavi is good for her business.

⁸ The Notice of Motion seeks an unidentified fee “multiplier”, but such request is unsupported by any authority and
 is inappropriate in connection with an anti-SLAPP Motion. *See* Cal. Code Civ. Proc. § 425.16(c).

1 double-dip fees. Prior to filing this Motion, Johnson filed a similar anti-SLAPP motion in a related TRO
 2 proceeding Dr. Mowlavi has brought against her, which motion seeks about \$52,000 in fees and is in
 3 multiple places substantially similar to this Motion.⁹ Mowlavi Decl. ¶ 43. Indeed, 12 of the 14
 4 declarations filed with this Motion appear identical to the declarations previously filed in the TRO anti-
 5 SLAPP showing that substantially all of Defendants’ evidence is the same and was already prepared. *Id.*
 6 Accordingly, should the Court be inclined to grant the Motion, Plaintiffs request that, prior to the issuance
 7 of any fee award, Defendants produce detailed time records so that their time can be appropriately
 8 analyzed and reduced to account for the duplication in the other proceeding.

9 **V. DEFENDANTS’ BELATED DISCOVERY REQUEST IS INAPPROPRIATE AND**
 10 **INDICATIVE OF THEIR LACK OF SUBSTANTIATION FOR THEIR CONDUCT**

11 Discovery under section 425.16(g) is allowed only upon a showing of good cause. Implicit in
 12 this rule is its applicability *to plaintiff*, not defendant, as it is plaintiff who may need discovery into his
 13 claims in such early stage to oppose the motion. *See Garment Workers Center v. Super. Ct.* (2004) 117
 14 Cal.App.4th 1156, 1162 (factors for good cause all pertain to plaintiff’s ability to oppose). This is obvious
 15 because a defendant sued for defamation, especially like Defendants who are arguing truth and lack of
 16 malice, must have acted with a reasonable basis as to the truth of the statements and not been reckless in
 17 doing so *at that time*. Seeking discovery now about the truth of statements already published reveals that
 18 Defendants did not have a sufficient basis upon which to make the statements in the first place.
 19 Moreover, Defendants’ request is inappropriate because it is not timely. If at all, it should have been
 20 sought by noticed motion supported by good cause before this Motion had been briefed and heard by the
 21 Court. *See* Cal. Code Civ. Proc. § 425.16(g). Defendants’ request should therefore be denied.

22 **VI. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that the Motion be denied in its entirety.

24 Dated: January 18, 2022

RUSS AUGUST & KABAT

25 By: 

26 Stanton L. Stein
 27 Attorneys for Plaintiffs

28 ⁹ The Procedural History section of this Motion is even carelessly copy-pasted into the TRO’s motion in its entirety.

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 12424 Wilshire Boulevard, 12th Floor, Los Angeles, California 90025.

On January 18, 2022, I caused to be served the foregoing document described as **PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO STRIKE PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16 AND MOTION FOR ATTORNEYS FEES OF \$92,565** on the interested parties in this action as follows:

Daniel M. Hodes, Esq
Benjamin T. Ikuta, Esq.
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TEAM JOHNSON LLC

BY ELECTRONIC MAIL: Pursuant to Code of Civil Procedure 1010.6, California Rule of Court 2.251(c)(3) and Orange County Superior Court Local Rule 352, I caused the above referenced document to be sent electronically via the Court’s approved FirstLegal e-filing portal from myearta@raklaw.com to the electronic mail addresses as denoted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 18, 2022, at Los Angeles, California

/s/ Melissa Yearta

Melissa Yearta