Frederic M. Douglas (Calif. State Bar # 212778)
Attorney At Law
15333 Culver Drive, Suite 340
Irvine, California 92604-3051
Tel: (949) 293-0442
Fax: (949) 203-8768
fdouglas@cox.net

Attorney for Plaintiffs
MESIKA MAGIC & YIGAL MESIKA

**THE UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**
**WESTERN DIVISION**

MESIKA MAGIC, a California corporation, YIGAL MESIKA, an individual

Plaintiffs,

vs.

PENGUIN MAGIC, INC., a Nevada corporation, CRAIG PETTY, a resident of the United Kingdom, DOES 1-10, inclusive,

Defendants

Case No.: 2:25-cv-07943-MWF-(MBKx)

**Opposition to Defendant Craig Petty's Motion to Dismiss Second Amended Complaint**

Date: June 10, 2026
Time: 10:00 A.M.
Judge: Hon. Michael W. Fitzgerald
Courtroom: 5A, 5th Floor

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**Cases**

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs MESIKA MAGIC and YIGAL MESIKA (collectively, "Plaintiffs") respectfully oppose the Defendant PENGUIN MAGIC, INC.'s ("Penguin Magic") Motion to Dismiss the Second Amended Complaint (the "Motion"). Penguin Magic moves under Federal Rules of Civil Procedure 12(b)(6) and to strike several causes of action under California's Anti-SLAPP statute.

As shown below, Penguin Magic's Motion is insufficient and fails for three independent reasons.

For the reasons herein, the Court should deny Penguin Magic's Motion in full.

## II. FACTUAL BACKGROUND

### *A. Yigal Mesika's Reputation*

Plaintiff Mesika Magic is a California magic-product company founded by Plaintiff Yigal Mesika, an inventor internationally known for innovations such as LOOPS®, the Tarantula device, and other proprietary magic apparatus.[1] Plaintiffs' products *had* a strong reputation in the magic community with consistent sales *before* Defendants trashed their reputation with a coordinated campaign of defamation, disruption of Plaintiffs' business,[2] and market manipulation.[3] Still, Plaintiffs are private entities, not public officials, not all-purpose public figures, and not limited-purpose public figures, as they have not interjected themselves into matters of public controversy, but were dragged into a spectacle created by Defendants, in an effort to

[1] See, SAC, Dkt. No. 43, paragraph 79.
[2] See, *Id.*, paragraph 139.
[3] See, *Id.*, paragraphs 84, 105, 112, 120, 152, 183.

trash Plaintiffs' reputation.[4]

A California court found that plaintiffs who make equipment for a niche market, but do not advertise or sell to the general public, were found not to be all-purpose public figures as they lacked pervasive involvement in the affairs of society.[5] Mesika's reputation is tied to the commercial sale of his inventions within a niche community, which does not amount to the general fame or notoriety required to strip Plaintiffs of private figure protections.

If this Court finds differently, Plaintiffs show below how Defendants acted with actual malice.

### *B. The Videos at Issue*

#### a. "The Desolation of Yigal Mesika" – July 14, 2025[6]

Defendants go into great detail in their Motions describing the contents of the three-hour video. They attempt to reference a text message exchange between Craig Petty and Yigal Mesika, but studiously avoid providing the full contents of the text message chain. Filed concurrently is the Declaration of Yigal Mesika, producing that text message conversation. Below, the details of that conversation, wherein Petty acknowledged that Yigal Mesika's patent application did indeed cite prior art that he claims in the later video Mesika intentionally hid and thus Mesika's invention was "stolen." Petty knew the falsity of his statements as of June 27, 2025, but contemplated the video for two weeks, then published knowingly false statements on July 14, 2025.

Petty could have produced the text message conversation in full, but strategically

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[4] See, *Id.*, paragraphs 41, 84, 105, 112, 120, 139, 152, 183.

[5] See, *Varian Medical Systems, Inc. v. Delfino*, 6 Cal.Rptr.3d 325, 344, 113 Cal.App.4th 273 (Cal. App. 2003).

[6] Petty published a "trailer" for this "documentary" video on July 13, 2025.See, SAC, Dkt. No. 43, paragraph 4.

did not. This is not the first time that Petty strategically burdened this Court while withholding evidence contrary to his assertions.

**b. "Craig Petty Discusses Controversy With Yigal Mesika" – July 25, 2025**

This video is presented as a podcast, The Penguin Magic Podcast with Erik Tait," hosted by Erik Tait of Penguin Magic. In this video, Erik Tait makes several statements, all of which are made within the scope of his employment with Penguin Magic. This video links to "The Desolation of Yigal Mesika," and reviews that video by Craig Petty with an interview of Craig Petty. Penguin Magic directed, controlled, and ratified Petty's speech in this video rather than merely "hosting" Petty for their podcast.[7]

The description of this video publishes a defamatory statement against Plaintiffs, "Erik Tait, for the first time, shares a story of when he wrote ad copy for Yigal and how it didn't end the way he had hoped." The Penguin Magic video, and the channel overall, is branded with Penguin Magic's branded marks, is monetized through YouTube and embedded links, linked directly to Penguin Magic's product pages, including products competing with Plaintiffs and used to drive traffic to Penguin Magic's platform and sales funnels.[8] This video also republishes Craig Petty's defamatory "The Desolation of Yigal Mesika" video via the displayed active link, and excerpts from Petty's video.

The Penguin Magic video was published on their official Penguin Magic YouTube channel that prominently displays Penguin Magic's name and logo, and that links viewers directly to Penguin Magic's retail website and product pages. Beneath or near the videos, viewers are encouraged to visit Penguin's site, and links to products,

[7] See, SAC, Dkt. No. 43, paragraph 5.
[8] See. *Id.*, paragraph 45, Exhibit M to SAC.

including Craig Petty's releases and competing products, appear in the description or on the same page.[9]

False statements made in the Penguin Magic video are provided in Exhibit C to the SAC, Dkt. No. 43-3, and discussed below.

### *C. The Parties and Penguin's Commercial Marketplace*

Plaintiff Mesika Magic is a California magic-product company founded by Plaintiff Yigal Mesika, an inventor internationally known for innovations such as LOOPS®, the Tarantula device, and other proprietary magic apparatus.

Petty is a magician, entertaining and teaching, while selling products in the magic industry. Petty announces commercial activities in the magic industry in cooperation with Penguin Magic, Inc.[10] Penguin Magic, Inc. is a commercial online retailer that sells magic products, operates retail channels, produces monetized social-media content, produces online videos promoting magic products, and has introduced house-brand products, including "TIES" that directly compete with Plaintiffs' products.[11]

Penguin Magic floods the market with loss leaders and below market prices for its TIES knockoff product to unfairly compete with LOOPS by selling TIES for less than its own cost, including many free, unsolicited products to customers not ordering TIES.[12] Penguin Magic further floods the market with TIES packets with larger number of items per packet at a cost that is not sustainable unless Penguin Magic seeks to force Plaintiffs out of the market as they cannot sell LOOPS at such a low price or at the same price with more items per packet sold.[13]

So long as Penguin Magic, Inc. sells inferior counterfeit products at below market prices to the detriment of the "LOOPS" product and their "TIES" name associated with those inferior knockoff products, Plaintiffs' business is affected

[9] See, *Id.*, paragraph 93.

negatively.[14]

### *D. Penguin's Co-Production and Promotion of the Challenged Content*

The challenged videos were not produced independently by co-defendant Craig Petty.[15] Instead, they were hosted on Penguin Magic's official YouTube channel; introduced and promoted by a Penguin Magic employee host;[16] branded with Penguin Magic's marks;[17] monetized by Penguin Magic through YouTube and embedded links;[18] linked directly to Penguin Magic's product pages, including competing products;[19] used to encourage boycotts of Plaintiffs' LOOPS products;[20] and used to drive traffic to Penguin Magic's platform and sales funnels.[21]

### *E. Penguin's Martketplace Manipulation and Product Copying*

The Second Amended Complaint ("SAC") further alleges that Penguin Magic: copied Plaintiffs' product concepts and designs to create knockoff competing products;[22] used Plaintiffs' sales metrics and performance data to guide its own product

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[10] See, SAC, Dkt. No. 43, paragraph 4.
[11] See, e.g., Penguin Magic's website, listing "TIES" at https://www.penguinmagic.com/p/17608. See, SAC, Dkt. No. 43, paragraphs 14, 37, 116, 117, and 124.
[12] See, SAC, Dkt. No. 43, paragraph 114.
[13] See, *Id.*
[14] See, *Id.*, paragraph 115.
[15] See, *Id.*, paragraph 27, and 61.
[16] See, *Id.*, paragraphs 5, 42, 45, and Exhibit M.
[17] See, *Id.*, paragraphs 45, 60, 85.
[18] See, *Id.*, paragraphs 43, 45, 52, 54.
[19] See, *Id.*, paragraphs 45, 93, 103, 127.
[20] See, *Id.*, paragraphs 31, 33, 62, 100, 151, 160, 168, 176, 182.
[21] See, *Id.*, paragraphs 45, 52.
[22] See, *Id.*, paragraphs 39, 41, 57, 60, 102-104, 108, 109, 113-115, 118, 120, 121, 125-127, 210, 213, and 215.

development;[23] manipulated search placement to suppress Plaintiffs' products and prioritize Penguin Magic's competing offerings;[24] engaged in keyword hijacking and misleading advertising;[25] and caused actual lost sales,[26] distributor cancellations,[27] and consumer confusion.[28]

## III. LEGAL STANDARDS

### A. *Rule 12(b)(6)*

A claim survives dismissal when it alleges sufficient factual matter, accepted as true, to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). All reasonable inferences are drawn in the Plaintiff***s***' favor. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

### B. *Anti-SLAPP Under Federal Procedure*

California's Anti-SLAPP statute applies in federal court only to the extent it does not conflict with FRCP 8, 12, or 56. *Metabolife*, 264 F.3d at 845–46; *Planned Parenthood*, 890 F.3d at 833. Courts may not require plaintiffs to provide "summary-judgment-type evidence" without discovery. *Metabolife*, 264 F.3d at 846. Determining the internal scope of Erik Tait's employment with Penguin Magic, the exact contractual relationship with Craig Petty, and Penguin Magic's internal monetization and algorithmic online marketplace suppression metrics requires discovery that Plaintiffs cannot obtain yet, but would be in the hands of Defendants.

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~~23~~ See, *Id.*, paragraphs 109, 125.
[24] See, *Id.*, paragraphs 14, 35, 57, 108, 113, 124.
[25] See, *Id.*, paragraphs 14 103, 188, 196, 200, 204, 217.
[26] See, *Id.*, paragraphs 31, 57, 96, 97, 99, 105, 108, 129, 134, 160, 168, 176, 209.
[27] See, *Id.*, paragraphs 96, 129, 134, 141, 214.
[28] See, *Id.*, paragraphs 88 and 215.

## IV. THE ANTI-SLAPP MOTION MUST BE DENIED

### *A. Section 425.17(c) Commercial-Speech Exemption Applies*

California Code of Civil Procedure Section 425.17(c) exempts any claim arising from:

1. A statement by a person **primarily engaged in selling goods or services**,
2. About a **business competitor's goods or services**,
3. Made for the purpose of **promoting or securing sales**, or
4. Made in the course of delivering the person's goods or services.

(*Simpson Strong-Tie Co. v. Gore*, 49 Cal. 4th 12, 30 (2010).)

Penguin Magic and Petty satisfies every element:

1. Penguin operates an online retail marketplace.[29]
2. Plaintiffs sell competing magic products.[30]
3. The challenged videos and posts disparage Plaintiffs' inventions and professional reputation.[31]
4. The videos promoted Penguin's competing products, including TIES,[32] with embedded product links and monetized content.[33]

Penguin Magic is a direct commercial competitor[34] and Petty is aligned in business with Penguin Magic.[35] The videos were not "public interest journalism," they were monetized commercial content, wrapped in Penguin Magic's branding, designed to

[29] See, *Id.*, Dkt. No. 43, paragraphs 14, 37, 63, 94, 101, 103, 104, 108, 109, 116-125, 134.
[30] See, *Id.*, Dkt. No. 43, paragraphs 9, 60, 93, 94, 100, 101, 123,
[31] See, *Id.*, Exhibits B (Dkt. No. 43-2, C (Dkt. No. 43-3), and N (Dkt. No. 43-14).
[32] See, e.g., Penguin Magic's website, listing "TIES" at https://www.penguinmagic.com/p/17608; See, SAC, Dkt. No. 43, paragraphs 57, 60, 62, 101-103, 106, 107, 204.
[33] See, *Id.*, paragraphs 23, 43, 45, 52, 54, 141.
[34] See, *Id.*, paragraphs 42, 43, 45, 60. 61, 63, 205.
[35] See, *Id.*, paragraph 41 (discussing Defendants' conspiracy).

disparage Plaintiffs' competing LOOPS products and drive sales to Penguin Magic's house-brand TIES products via embedded commercial links.[36]

This statutory exemption alone mandates denial of the Anti-SLAPP motion.

### *B. The Motion Conflicts with Federal Procedure (Metabolife)*

Under *Metabolife* and *Planned Parenthood*, the Court **may not** impose a summary-judgment evidentiary burden where discovery has not occurred. This independently requires denial.

### *C. Even if Anti-SLAPP Applied, Penguin Fails Prong One*

Prong one requires Defendants to show that the claims "arise from" protected activity. A California Court of Appeal instructed courts to examine the principal thrust or gravamen of the claim. *Hecimovich v. Encinal Sch. Parent Teacher Org.*, 203 Cal. App. 4th 450, 466 (2012).

Here, the gravamen is commercial conduct, including marketplace manipulation; product copying; suppression of searches; algorithmic steering; misappropriation of data; and commercial exploitation of Plaintiffs' likeness. These acts are not protected activities under § 425.16.

Moreover, the challenged statements constitute commercial advertising and promotion, not political or public discourse, failing prong one under *Coastal Abstract Serv., Inc. v. First Am. Title*, 173 F.3d 725, 735 (9th Cir. 1999) ("While the representations need not be made in a "classic advertising campaign," but may consist instead of more informal types of "promotion," the representations (4) must be disseminated sufficiently to the relevant purchasing public to constitute "advertising" or "promotion" within that industry.").

[36] See, *Id.*, paragraphs 14, 40, 57, 60, 62, 100, 101-103, 106, 107, 113-115, 126-128, 204, and Exhibit Q, Dkt. No. 43-17 and Exhibit R, Dkt. No. 43-18.

### *D. Penguin Magic Fails Prong Two: Plaintiffs Easily Show a Probability of Prevailing*

Petty's video features Craig Petty falsely claiming that Mesika does not credit "Rinky Dinky" as part of a history of not crediting other creators, while Mesika publicly credited the "Rinky Dinky" as prior art in his published patent application.[37]

Under *Roberts v. McAfee, Inc.*, 660 F.3d 1156, 1163 (9th Cir. 2011), this showing of false statements above exceeds the "potential merit" standard and defeats prong two. Further details regarding false statements are provided below.

Erik Tait is the designated voice of Penguin Magic,[38] a producer, and the gatekeeper who admits on the record that his job is to "help sort of move forward products to market with Penguin Magic."[39] Erik Tait holds himself out as the person who helps select products for Penguin Magic.[40] Erik Tait disparaging Mesika over a prior payment issue was not a personal deviation for Mr. Tait, but a fulfillment of his corporate role to suppress Penguin Magic's competitor.[41]

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[37] See, Exhibit C to SAC, Dkt. No. 43-3, page 2, lines 16-19. See, also, Exhibit B, Dkt. No. 43-2, time stamp 1:54, where the false claim that Mesika's patent application is a copy of the "rinky dinky." Compare with paragraphs 46, 67-70 of SAC, Dkt. No. 43, and Exhibit A (Dkt. No. 43-1) thereto, demonstrating that Mesika disclosed the "rinky dinky" in the patent application openly. See, Exhibit 1 to the Mesika Declaration, filed concurrently.

[38] See, Exhibit J, Dkt. No. 43-10, page 2, "as well as the voice on the 'Penguin Magic Podcast.' He also helps magic creators bring their products to market."

[39] See, SAC, Dkt. No. 43, paragraphs 35, 36, 59, and Exhibit J, Dkt. J, Dkt. No. 43-10.

[40] See, *Id.,* paragraphs 35-38, and Exhibit J, Dkt. No. 43-10, entitled, "Erik's Tait's 'Submitting Your Magic Invention for Production' Interview."

[41] See, Exhibit K, Dkt. No. 43-11, and SAC, Dkt. No. 43, paragraphs 37 (describing his role at Penguin Magic and that his statements were made within the scope of his employment with Penguin Magic) and paragraphs 38-40 (describing further his role with Penguin Magic, his statements discrediting Mesika, Tait's prior praise for Mesika, and the commercial pivot of attack once Penguin Magic came out with TIES).

Craig Petty is not an independent actor in the scheme to disparage Mesika and divert sales to Penguin Magic's TIES product. As shown in Exhibit G, Dkt. No. 43-7, a transcript of Craig Petty's own video, "Penguin Magic At Blackpool 2026," from February 14, 2026, he told the public, "come over to the Penguin booth, see me and Eric" (about 43:22) and Tait stated, "Yep. You and I are on the booth." About 39:27.[42]

Petty also publicly stated in his own video, "FISM Roundup, Video Takedowns & LTS of Convention News," Petty established his role as a company insider/agent by using the corporate "we" when stating, "there was no Penguin booth on Monday at all because we had nothing to sell uh Tuesday we're going into it with nothing either."[43] Petty stated in this July 22, 2025 video that he was representing Penguin Magic. Specifically, from about 19:45 through 20:17, he stated, "Um I'll be on the Penguin booth. So, I'm actually going to be there on behalf of Penguin Magic on the Penguin booth.[44] Petty himself proves that he and Penguin Magic have a deeply integrated commercial partnership, not a mere vendor relationship.

## V. THE SAC STATES ALL CLAIMS UNDER RULE 12(b)(6)

### *A. Defamation, Trade Libel, and False Light*

#### a. Public Figure Issue

Public figures in the context of those needing to prove actual malice defamation may be public officials, general-purpose public figure, or a limited-purpose public

[42] See also, SAC, Dkt. No. 43, paragraph 26.
[43] See, *Id.*, paragraph 16.
[44] See, *Id.*, paragraphs 15-17, and Exhibits G, Dkt. No. 43-7, and S, Dkt. No. 43-19.

figure.[45] A public official, for example, California Governor Gavin Newsom, may still validly allege actual malice.[46]

Yigal Mesika is a private individual, well-known in the niche magic industry, but not a general-purpose public figure, nor even a limited-purpose public figure in relation to the allegations by Defendants that Mr. Mesika must show actual malice in relation to a matter of public interest.

"Unlike the 'all purpose' public figure, the '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*, 208 Cal.Rptr. 137, 142, 37 Cal.3d 244, 253-254, 690 P.2d 610 (Cal. 1984).

Plaintiffs who make equipment for a niche market, but do not advertise or sell to the general public, were found not to be all-purpose public figures as they lacked pervasive involvement in the affairs of society.[47] Mesika's reputation is tied to the commercial sale of his inventions within a niche community which does not amount to the general fame or notoriety required to strip Plaintiffs of private figure protections.

The Supreme Court established the legal standard to define limited-purpose public figures as those who "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."[48] Plaintiffs did not interject themselves into any public controversy, Petty dragged them into

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[45] *Mosesian v. McClatchy Newspapers*, 233 Cal.App.3d 1685, 1694 (1991).
[46] *Newsom v. Fox News Network, LLC*, N25C-06-251 SPL, slip opinion, (Del. Super., Apr 30, 2026)("Thus, under the standard applicable here, the facts are reasonably susceptible to a finding of actual malice").
[47] See, *Varian Medical Systems, Inc. v. Delfino*, 6 Cal.Rptr.3d 325, 344, 113 Cal.App.4th 273 (Cal. App. 2003).
[48] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974).

public controversy he decided to manufacture.[49] Even if one considers Petty's issue to be a public issue, "[a] private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Wolston v. Reader's Digest Ass'n, Inc.,* 443 U.S. 157, 167 (1979). Thus, the Defendants "must show more than mere newsworthiness to justify application of the demanding burden of [pleading the heightened actual malice standard]." *Id.* at 167-68.

Petty co-produced, edited, branded, curated, promoted, and monetized the content. It was foreseeable by Petty that the false statements would be shared further, as Penguin Magic actually republished the Craig Petty video and his own further videos to the public on YouTube and on other platforms, with thousands of views. This satisfies republisher liability. *Jackson v. Paramount Pictures Corp.*, 68 Cal.App.4th 10, 26, 80 Cal.Rptr.2d 1 (Cal. App. 1988) ("[W]hen a party repeats a slanderous charge, he is equally guilty of defamation, even though he states the source of the charge and indicates that he is merely repeating a rumor.") (Internal citation omitted).

**a. Public Interest Issue**

Defendants' defamation was not a matter of journalistic reporting, as neither Erik Tait of Penguin Magic, nor Petty have any journalism credentials, nor was the content of the videos part of any pre-existing genuine public interest debate. Instead, Defendants conspired to make a coordinated, bad-faith commercial attack to destroy Plaintiffs' reputation so that Penguin Magic and Petty could step into the void when Mesika's sales are depleted and Penguin Magic can sell house-brand knockoffs at the conventions and other events Erik Tait and Petty jointly operate.[50] Petty holds himself out as a Penguin Magic insider/agent.[51]

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[49] See, Declaration of Yigal Mesika (the "Mesika Declaration"), filed concurrently, paragraphs 29, 36, and Exhibit 1 to the Mesika Declaration, June 25-27, 2025 text message conversation.

[50] See, SAC, Dkt. No. 43, paragraphs 41, 58. See, *Id.*, paragraph 54 ("the joint effort by

Defendant Petty does not identify a valid matter of widespread public interest, but a matter of a dispute between Plaintiffs and Defendants and maybe, Mark Bennett.[52] See, *Dyer v. Childress*, 147 Cal.App.4th 1273, 1280, 55 Cal.Rptr.3d 544 (Cal. App. 2007) ("The fact that 'a broad and amorphous public interest' can be connected to a specific dispute" is not enough.). The "Defendants cannot merely offer a 'synecdoche theory' of public interest, defining their narrow dispute by its slight reference to the broader public issue." *Filmon.com, Inc.*, at 152. In other words, Defendants cannot expand the tree of their specific dispute with Plaintiffs as a matter of public interest about the entire forest.

**b. The Statements are Provably False**

Exhibits B (Dkt. No. 43-2, C (Dkt. No. 43-3), and N (Dkt. No. 43-14) to the SAC, provide tables referencing a portion of the false statements published by Craig Petty and Penguin Magic, and republished by Penguin Magic.

Petty made statements in his July 14, 2025 "The Desolation of Yigal Mesika" video that Mesika's published patent application, US-2024-0416255-A1 at Exhibit A to the SAC, Dkt. No. 43-1, that Mesika stole the idea of the invention without crediting the creator of the "Rinkey Dinky" device.[53]

As shown in Paragraphs [0006] and [0007] of the published application in Exhibit A to the SAC, Mesika's patent application publicly referenced the "Ring Flight

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Craig Petty and Penguin Magic to disparage and harm Plaintiff and Plaintiffs' business activities to gain an unfair advantage over Penguin Magic's competitors, the Plaintiffs.").

[51] See, *Id.*, paragraphs 16-19 (referencing a Petty video where he views himself as part of the Penguin Magic corporate team). See, *Id.*, paragraphs 27-29, 54

[52] See, Mesika Declaration, concurrently filed, paragraphs 32 ("we're working out an amicable path forward. No drama, no lawsuits."), 34 ("I haven't threatened litigation."), and 35 ("I know you aren't threatening to sue Mark."). See Declaration of Yigal Mesika, Dkt. No. 28-1 ("Mesika Declaration"), paragraphs 19-28, 30-38.

[53] See, SAC, Dkt. No. 43, paragraphs 89-90.

Revolution" and the "Rinkey Dinkey" device in the section entitled, "Description of Related Art." It is without question that these two prior devices were volunteered to the Patent Office, publicly in Mesika's patent application, filed on June 13, 2024, and published on December 19, 2024.

Petty acknowledged as much in his text communications with Yigal Mesika in June 25-27, 2025.[54] On June 26, 2025, as shown in these text messages, Mesika acknowledged the existence of the Ring Flight device and told Petty that the "version I developed isn't just another Ring Flight-it's a complete redesign with specific innovations that were recognized and protected under patent law after a long and detailed review process."[55]

Further in this text message chain Craig Petty confirmed on June 26, 2025 that "I've looked at your patent application and I see the innovations you are referencing especially in comparison to AirFlight."[56] Petty confirmed that he saw in the published application that Mesika's application mentioned the prior art.

Further on June 26, 2025 Mesika told Craig Petty that he had been communicating with Mark Bennett and that "Everyone recognizes the overlap, and we're working out an amicable path forward. No drama, no lawsuits-just professionals sorting out a similarity."[57]

Mesika further stated to Petty that "Also air flight is mentioned at my patent even before it's exists."[58]

Yet further on June 26, 2025 Mesika stated, "I haven't threatened litigation."[59]

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[54] See, Declaration of Yigal Mesika (the "Mesika Declaration"), filed concurrently, paragraphs 29, 31, and 36, and Exhibit 1 to the Mesika Declaration, June 25-27, 2025 text message conversation.
[55] See, Mesika Declaration, paragraph 30, and Exhibit 1 to the Mesika Declaration.
[56] See, *Id.*, paragraph 31 and Exhibit 1 thereto.
[57] See, *Id.*, paragraph 32, and Exhibit 1 thereto.
[58] See, *Id.*, paragraph 33, and Exhibit 1 thereto.
[59] See, *Id.*, paragraph 34, and Exhibit 1 thereto.

In response, Craig Petty stated "I know that your patent mentions an AirTag towards the end." He later stated in the same text message, "I know you aren't threatening to sue Mark."[60] Petty confirmed on June 27, 2025 that he understood that Mesika was not threatening litigation against Mark Bennett, contradicting his and Penguin Magic's later allegations that Mesika is a litigious bully[61] and a patent terrorist[62] or a magic terrorist.[63]

Despite this clear acknowledgement that Mesika did not "steal" his invention, did not hide the prior art, such as Airflight and Rinkey Dinky, and that Mesika was not threatening litigation, on July 14, 2025 Petty made knowingly false statements contrary to his knowledge, and he repeated those false statements in Penguin Magic's July 25, 2025 video republishing and ratifying those false statements.

Petty's video features Craig Petty falsely claiming that Mesika does not credit "Rinky Dinky" as part of a history of not crediting other creators, while Mesika publicly credited the "Rinky Dinky" as prior art in his published patent application.[64]

It is without question that Craig Petty made these statements; the statements were false, and Plaintiffs have a high likelihood of prevailing in proving the falsity of these statements.

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[60] See, *Id.,* paragraph 35, and Exhibit 1 thereto.
[61] See, SAC, paragraphs 22, 34, 64, and 136.
[62] See, *Id.,* paragraph 50
[63] See, *Id.,* paragraph 51, 86.
[64]See, Exhibit B to the SAC, Dkt. No. 43-2, timestamp 1:54, where Petty publishes the false claim that Mesika's patent application is a copy of the "rinky dinky. See, Exhibit C to the SAC, Dkt. No. 43-3, page 2, lines 16-19 ("Petty states that Mesika has a history of not crediting other creators, specifically mentioning that he never credited Dave Bonsil or Rinky Dinky on the tutorial for his ring flight, despite mentioning "another guy in England that put a a ring flight in a key". Compare with paragraphs 46, and 68-70 of SAC, and Exhibit A thereto, demonstrating that Mesika disclosed the "rinky dinky" in the patent application openly.

The false statements do not stop there. Petty republished false statements from third parties, as shown in Exhibits B, C, and N to the SAC. Petty himself stated at 1:18 of his video that Mesika is a "patent troll" and "takes intellectual property by stealing it. They're claiming it theirs and then they go after any possible entity that might have something to do with the knowledge that's inside that pack."[65] Petty knew from the July 25-27, 2025 text message conversation, as he conceded, that Mesika was not threatening litigation.

At 2:39 Petty states that Mesika was "Magic's biggest litigious bully that for the last three decades has been financially and legally bullying creators into submission behind closed doors."[66]

Petty represented to the public that he was bringing facts, not merely opinions.[67]

At 3:55, Petty claimed that Mesika "is now trying to sue anyone who brings out their own ring flights," and that Mesika never will have a patent approved. He knew for a fact that Mesika was not trying to sue Mark Bennett. At 4:50 Petty states that Mesika's invention "was stolen in the first place" and that he was bullying people. He knew that Mesika was not bullying Mark Bennett, and that he had no other knowledge of any alleged "bullying" of any other person.

At 5:40 Petty maintains that he consulted with a lawyer before recording the video, which, if true, shows that he followed Mesika's admonition to seek legal counsel before making his claims publicly.[68] This statement, if true, shows that Petty had doubts, but proceeded recklessly, or with full knowledge that his statements would

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[65] *Id.*
[66] *Id.*
[67] See, *Id.*, at 3:32 ("Today, I am bringing facts, upon facts.").
[68] See, Mesika Declaration, paragraph 37 ("that's what qualified legal counsel is for. I highly recommend you consult one before publishing anything that could be defamatory or legally damaging to yourself."), and Exhibit 1 thereto.

be defamatory, further showing actual malice. Indeed, he states at 6:53 that he deliberated over two weeks before completing the video.

At 16:30 Petty says that Mesika's Ring Flight came out in 2025, while he was told on June 26, 2025 in their text message conversation that Mesika publicly released his product "around February 2024."[69] Mesika's patent application, filed on June 13, 2024, and published on December 19, 2024, claiming priority from a June 13, 203 provisional patent application. It is noted that when Petty's Motion claims that "Mesika apparently released his device several months before filing his patent application,"[70] Petty makes no reference to the filing date of the published application, nor his concession in June 2025 to Mesika's representation that his application filed before Mesika released his device. Petty could have, and should have, reviewed his text messages, the published application, and the SAC before he made again this false statement. If Petty had reviewed Exhibit B to the SAC, Dkt. No. 43-2, he would have understood that his statement repeating this lie at 1:33:39 was false, as explained in the parenthetical statement in that Exhibit regarding the patent application filing date. He certainly should have reviewed the filing date before his July 14, 2025 video, which he pondered for over two weeks. At 1:45:57 Petty again makes this false statement, stating that Yigal Mesika's product was released "months before the patent was actually filed."

At 21:51 Petty stated regarding Mesika's patent applications, "most of them aren't granted most of them are never granted." Petty's Exhibit D to his Motion, Dkt. No. 50-4 claims to be a quick patent search shows thirteen issued patents. This evidence alone represents the falsity of Petty's statement. In fact, Mesika has more

[69] See, Mesika Declaration, filed concurrently, Exhibit 1, text message of June 26, 2025 at 8:12 pm.

[70] Petty Motion, Dkt. No. 50, page 14 of 35 (internal page 6), lines 10-11.

than fifteen issued patents.[71] At 1:18:41 Petty maintains again that "A lot of the patents that Yigal puts through never get granted." So, the reckless nature of Petty's tirade shows that he accuses Mesika of using his superior power to get patents to bully others, but he is incompetent at obtaining patents to perform that bullying.

At 1:35:45 Petty falsely states that Mesika had "dozens of patent applications, few granted," when his own Exhibit shows a maximum of 32 patent documents, some being merely the published application before issue of the same invention.

At 1:39:29 Petty refers to Mesika's invention, talking directly toward Mesika as if he was present, "You didn't even credit the person that most people would consider to be the godfather when it comes to ring flights."

On June 9, 2025 Mesika, through his patent counsel, filed an Information Disclosure Statement (IDS) disclosing to the United States Patent and Trademark Office (USPTO) an Al Koran "Ring Flight" document from 1968, a Sumag "Magic Ring Flight" document from 1967, and an Al Koran "Rinkey Dinky" document from 1967.[72] This document was publicly available as of June 9, 2025, before Petty's text message conversation with Mesika June 25-2025, and before Petty's July 14, 2025 "The Desolation of Yigal Mesika" video.

In the June 25, 2025 Penguin Magic video, Craig Petty made additional false, defamatory statements. He stated that regarding Mark Bennett, "legal action was threatened."[73] As shown above, in reference to the Mesika Declaration and the text message conversation of June 25-27, 2025, this statement was false, and Petty knew that it was false. Petty continues his reckless disregard by claiming that Mesika gets

[71] See, SAC, paragraph 47, listing issued patents of various types and in various jurisdictions. See, Exhibit N to the SAC, Dkt. No. 43-14, in the last row of the table, listing numerous issued Mesika patents.

[72] See, Declaration of Frederic M. Douglas, (the "Douglas Declaration") paragraphs 4-7, and Exhibit 1 thereto.

[73] See, Exhibit C to the SAC, Dkt. No. 43-3, page 1, lines 17-18.

patents issued to bully others, but "Hardly any of them that get granted. And the ones that do get granted, he just he allows them to expire."[74]

Petty repeats his other false statement claiming that Mesika's invention was "commercially advertised on the Magic Café up to a year and a half before the patent was even filed."[75]

Petty makes the audience believe that he is speaking from knowledge gained from reviewing documents, when he states that Mesika "has a documented history over the last 20 years of using fake patents and patent applications and legally bullying and intimidating people to try and force his will onto them." Petty has not reviewed twenty years of documents that support his false statement, and he wanted his audience to believe that he gained such "knowledge" from reviewing a "documented history."[76]

Erik Tait, employee of Penguin Magic, Inc., in conspiracy with Craig Petty,[77] joins in the defamation by falsely claiming that Mesika failed to pay him properly for some work years before.[78] All statements attributed to Erik Tait in the SAC were made in the scope of Erik Tait's employment by Penguin Magic.[79]

Petty states the Mesika is "the most litigious person in magic who's got a habit of habitually suing people."[80] As shown in Exhibit N to the SAC, Dkt. No. 43-14, in reference to Petty's claim that Mesika is the "biggest litigious bully . .. for the last three

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[74] See, *Id.*, page 1, lines 26-27.
[75] See, *Id.*, page 1, lines 28-29. See, SAC, Dkt. No. 43, paragraphs 56-59.
[76] See, *Id.*, page 2, lines 4-6.
[77] See, *Id.*, paragraph 54 ("the joint effort by Craig Petty and Penguin Magic to disparage and harm Plaintiff and Plaintiffs' business activities to gain an unfair advantage over Penguin Magic's competitors, the Plaintiffs.").
[78] See, Exhibit C to the SAC, Dkt. No. 43-3, page 2, lines 20-23. See, SAC, Dkt. No. 43, paragraphs 56, 60-61, 73.
[79] See, SAC, Dkt. No. 43, paragraphs 5, 26, 29, 35-39, 42, 43, 45, 54,56, 59-61, 63, and 73.
[80] See, Exhibit C to the SAC, Dkt. No. 43-3, page 2, lines 27-28.

decades, the last column of the table provides a lengthy list of lawsuits in the magic industry. Mesika has not achieved the distinction of being the most litigious person in magic, let alone for three decades.

Erik Tait underscores Petty's lies by summarizing these accusations as showing that Mesika's actions are "used in an abusive way."[81]

Under *Roberts v. McAfee, Inc.*, 660 F.3d 1156, 1163 (9th Cir. 2011), this showing of false statements above exceeds the "potential merit" standard and defeats prong two.

Courts determine whether a statement is actionable fact by applying a "totality of the circumstances" test. *Franklin v. Dynamic Details, Inc.,* 116 Cal.App.4th 375, 385 (Cal. App. 2004) (*Franklin*). Courts first examine the language of the statement to determine whether the words are understood in a defamatory sense. (*Id.*). *See*, *Bently Reserve LP v. Papaliolios,* 218 Cal.App.4th 418, 428 (Cal. App. 2013) (*Bently Reserve*) (where name-calling is combined with statements of fact about the plaintiff, the comments are actionable). Language disclosing incorrect, incomplete, or an erroneous assessment of facts and not "cautiously phrased in terms of the author's impression" is more likely to be actionable. *See Dickinson v. Cosby* 37 Cal.App.5th 1138, 1163-1164 (2019) (*Dickinson*). Courts then consider the context in which the statement was made, reviewing "the audience to whom the statement was directed." (*Id.*). "[T]he dispositive question is whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact. [Citations.]" (*Franklin,* at p. 385.).

It is well established that false light claims are subject to similar legal standards as a libel claim. *Briscoe v. Reader's Digest Assn.*, 4 Cal.3d 529, 543, 93 Cal.Rptr. 866, 483 P.2d 34 (Cal. 1971)*, overruled on other grounds in Gates v. Discovery*

[81] *See*, *Id.,* Dkt. No. 43-3, page 2, line 31. *See, also*, *Id.*, paragraph 43.

*Communications, Inc.* (2004) 34 Cal.4th 679, 696, fn. 9 [21 Cal.Rptr.3d 663, 101 P.3d 552.

**c. Statements of and Concerning Mesika Magic**

Defendants might have thought that their disparagement actions and anti-competitive conduct only affected Yigal Mesika, but they also damages Mesika Magic, a corporation. Plaintiffs seek damages from the Defendants for all damages attributable to their torts.

**a. Opinion can be Actionable**

The *Newsom v. Fox News* opinion, which explicitly applies California law, held that statements of opinion on matters of public concern "are not categorically shielded from actionability."[82] Instead, an opinion constitutes actionable defamation if it can "reasonably be interpreted as stating or implying defamatory facts about an individual that are provably false."[83] Prefacing a statement with, "in my opinion," does not provide immunity. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, 110 S.Ct. 2695 (1990) (" 'In my opinion John Jones is a liar' ... implies a knowledge of facts which lead to the conclusion that Jones told an untruth."). When a speaker discloses the facts underlying their opinion, they can still be held liable **"if the disclosed facts themselves are false and defamatory."** *Dickinson v. Cosby*, 17 Cal.App.5th 655, 686 (2017) (Emphasis supplied).[84]

**a. Malice is Adequately Alleged**

Recklessness or doubt which gives rise to actual or constitutional malice is a

[82] *Newsom v. Fox News Network, LLC*, N25C-06-251 SPL, slip opinion, p. 22 (Del. Super. Apr 30, 2026).
[83] *Id.*
[84] See, Petty Motion, Dkt. No. 50, page 23 of 35 (internal page 15), lines 19-21.

subjective test. *Melaleuca, Inc. v. Clark* 66 Cal.App.4th 1344, 1365 (Cal. App. 1998). "This may be demonstrated through circumstantial evidence, including a failure to investigate, anger and hostility toward the plaintiff, or reliance on unreliable sources." *Tilkey v. Allstate Insurance Company*, 56 Cal.App.5th 521, 554-5 (2020). Actual malice "does not require that the reporter hold a devout belief in the truth of the story being reported, only that he or she refrain from either reporting a story he or she knows to be false or acting in reckless disregard of the truth." (*Jackson*, *supra*, 68 Cal.App.4th at p. 35.).

Defendants argue that, at most, Plaintiffs have only alleged that Defendants must personally investigate the falsity or reckless disregard of their statements, which Defendants claim does not equate to actual malice under *St. Amant* and *Reader's Digest*. While a mere failure to investigate is not enough, "a speaker cannot purposefully avoid the truth and then claim ignorance."[85] If a plaintiff offers direct evidence that the statement was probably false, "the Court may infer that the defendant intended to avoid the truth."[86] Defendants' own cited case, *St. Amant,* helps to show how to establish actual malice.[87]

Defendants did not merely fail to investigate, but they purposefully avoided the truth by publishing statements that Mesika "hid" prior art, while willfully ignoring the publicly available patent application[88] that explicitly disclosed the "Ring Flight

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[85] *Newsom v. Fox News Network, LLC*, N25C-06-251 SPL, slip opinion, p. 22, lines 8-11 (Del. Super. Apr 30, 2026).
[86] *Id.*, at p. 11-13.
[87] *St Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968) ("There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.").
[88] Exhibit A to the SAC, Dkt. No. 43-1.

Revolution," "Rinkey Dinky," and "Air Tag" device.[89]

The Superior Court of Delaware applied substantive California defamation law[90] to recognize that actual malice can be proven through an "accumulation"[91] of circumstantial factors, specifically including "financial motive"[92] and a "preconceived false narrative."[93]

The Delaware Court evaluated the complaint under Delaware's highly permissive "conceivability" standard while in the instant federal litigation, the stricter "plausibility" standard applies under *Twombly* and *Iqbal*. Plaintiffs submit that the detailed exhibits and factual allegations meet the federal "plausibility" threshold.

Defendants, Craig Petty, and Penguin Magic, through its employee Erik Tait, advanced a falsity about Mesika to fulfill their own preconceived commercial narrative. Tait praised Mesika's LOOPS products in 2021,[94] but suddenly flipped to a hostile narrative calling them "garbage" and "stolen" only after Penguin Magic had a financial motive to sell their competing TIES product.[95] Like in the Newsom case, this demonstrates an internal mission "to purposely avoid the truth in service of a preconceived narrative."

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[89] See, SAC, Dkt. No. 43, paragraphs 68-70, and Exhibit 1, Dkt. No. 43-1, Paragraphs [0006]. [0007], and [0027].

[90] The Delaware Court evaluated the complaint under Delaware's highly permissive "conceivability" standard while in the instant federal litigation, the stricter "plausibility standard applies under *Twombly* and *Iqbal*. Plaintiffs submit that the detailed exhibits and factual allegations meet the federal "plausibility" threshold.

[91] *Celle v. Filipino Reporter Enterprises Inc.*, 209 F.3d 163, 183 (2d Cir. 2000).

[92] *Communications, Inc v. Connaughton*, 491 U.S. 657, 689 fn. 36, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989);
*US Dominion, Inc. v. Fox News Network, LLC*, 293 A.3d 1002, 1043 (Del. Super. 2023)

[93] *Newsom v. Fox News Network, LLC*, N25C-06-251 SPL, slip opinion, p. 25, lines 10-18 and p. 26, lines 1-2 (Del. Super. Apr 30, 2026); *Palin v. New York Times Co.*, 940 F.3d 804, 813 (2d Cir. 2019).

[94] See, *Id.*, paragraph 39.

[95] See, *Id.*, paragraph 40.

### *B. Misappropriation of Likeness (§ 3344 and Common Law)*

Petty used Plaintiffs' likenesses in monetized videos and product promotion. This is commercial misappropriation, not news. *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1001 & n. 2 (9th Cir. 2001). The Cal. Civ. Code § 3344(d) "public affairs" exception does not apply to disguised advertisements. Id., at 1002

### *C. Unfair Competition (§ 17200) and False Advertising (§ 17500)*

The SAC alleges Counts 8-10 against Penguin Magic, but not Craig Petty.

### *D. Lanham Act § 43(a)*

Penguin Magic's videos and product pages constitute "commercial advertising or promotion." *Coastal Abstract*, 173 F.3d at 734-35.

### E. *Intentional Interference*

Penguin Magic knew of Plaintiffs' economic relationships and disrupted them through marketplace suppression, defamatory publications, and knockoff sales, knowing that the interference was certain or substantially certain to occur due to its action. This satisfies *Korea Supply Co. v. Lockheed Martin*, 29 Cal. 4th 1134, 1153 (2003) distinguished on other grounds by *Lee v. Luxottica Retail N. Am., Inc.*, 65 Cal.App.5th 793, 803, 280 Cal.Rptr.3d 230, 237 (Cal. App. 2021).

## 5. CONCLUSION

For all the foregoing reasons, the Court should:

1. DENY the Motion to Dismiss;
2. DENY the Special Motion to Strike;
3. Permit discovery to proceed;
4. Award attorney fees; and
5. Grant leave to amend, if necessary.

May 20, 2026

Respectfully submitted,

__/s/ Frederic M. Douglas_____

Frederic M. Douglas
Attorney for Plaintiffs
MESIKA MAGIC and YIGAL MESIKA

The undersigned counsel of record for Plaintiffs certifies that this brief contains 6,986 words, which complies with the word limit of L.R. 11-6.1.

__/s/ Frederic M. Douglas_____

Frederic M. Douglas
Attorney for Plaintiff
MESIKA MAGIC and YIGAL MESIKA
May 20, 2026