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IN 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-MBK **Defendant Craig Petty's Reply in Support of Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) and for Relief Under Cal. Code Civ. Proc. § 425.16** Hearing Date: June 10, 2026 Hearing Time: 10:00 a.m. Courtroom: 5A

Defendant Craig Petty files his Reply in support of his Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) and for Relief Under Cal. Code Civ. Proc. § 425.16 (the "Anti-SLAPP Motion") (ECF No. 50).

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1.0 INTRODUCTION

Defendant Craig Petty published a video about Yigal Mesika, a public figure within the magic community, criticizing him for his history of litigious bullying and abuse of patent law to claim ownership of commonly used devices and methods for magic tricks. To prove that he was not a litigious bully, Mesika and his company filed a SLAPP suit against Petty.

Petty published videos seeking further information from the community about this controversy. Plaintiffs sued him for these additional videos as well. Plaintiffs prove the truth of Petty's statements in bringing this suit and doubling down on their meritless claims for the transparent purpose of censoring protected speech on an issue of public interest.

Plaintiffs' Opposition (ECF No. 53) to the Anti-SLAPP Motion addresses only one of his several claims with any detail, conceding that the rest should either be dismissed outright or must share the same fate as his defamation claim. Their argument that Petty's statements constitute "commercial speech" exempt from the scope of California's Anti-SLAPP law is completely undeveloped, presumably because there is no substance behind it. Even when we get to the meat of their arguments, they try to premise their defamation claim on statements and evidence mentioned nowhere in the Second Amended Complaint ("SAC") (ECF No. 43). They then rely on mischaracterizations of Petty's statements while ignoring the videos themselves, and fail to explain or even allege how the disclosed facts on which Petty based his opinions are false. Assuming, *arguendo*, any of Petty's

statements are potentially actionable, Plaintiffs are public figures who have alleged nothing more than a claim of incomplete investigation, falling short of their burden to plead actual malice. They are even further from showing a possibility of proving actual malice by clear and convincing evidence, which is constitutionally required.

The Court should dismiss all claims asserted against Petty in the SAC. This dismissal should be with prejudice, in keeping with the Court's admonition to Plaintiffs in ECF No. 42 at 13. And in accordance with California's Anti-SLAPP law, the Court should grant Petty his costs and attorneys' fees related to his Anti-SLAPP Motion, to be substantiated in a separate motion.

2.0 ARGUMENT

2.1 Prong One: Petty's Statements are on an Issue of Public Interest

The Motion discusses how Petty's videos were on an issue of considerable interest to the international magic community, as Mesika is trying to stifle innovation within the magic industry to enrich himself. Rather than address this issue, Plaintiffs claim "the gravamen is commercial conduct, including marketplace manipulation; product copying; suppression of searches; algorithmic steering; misappropriation of data; and commercial exploitation of Plaintiffs' likeness." ECF No. 53 at 14. What "gravamen" means in this context is unclear, and in any event, Plaintiffs do not allege Petty engaged in almost any of the listed conduct. Courts look to the specific conduct on which liability is premised, rather than the label affixed to a cause of action, to determine whether the Anti-SLAPP statute is implicated. *Martinez v. Metabolife Internat., Inc.*, 113 Cal. App. 4th 181, 188 (2003) ("We conclude it is the *principal thrust or gravamen* of the plaintiff's cause

of action that determines whether the anti-SLAPP statute applies . . . ."). Here, the only conduct Petty allegedly engaged in was publishing three videos on his public YouTube channel about Mesika – a famous figure in the magic community. Plaintiffs could have argued that these videos were not in connection with an issue of public interest, but they chose not to, thus conceding this issue.[1]

2.2 Prong One: The Commercial Speech Exception Does Not Apply

The commercial speech exemption to the Anti-SLAPP law "should be narrowly construed." *Simpson Strong-Tie Co. v. Gore*, 49 Cal. 4th 12, 22 (2010). Section 425.17(c) was enacted "for the purpose of exempting from the reach of the anti-SLAPP statute cases involving comparative advertising by businesses." *Mendoza v. ADP Screening & Selection Services, Inc.*, 182 Cal.App.4th 1644, 1652 (2010). The plaintiff bears the burden of showing this exemption applies. *Simpson*, 49 Cal. 4th at 26.

The commercial speech exemption applies when "(2) the cause of action arises from the statement or conduct by that person consisting of representations of fact about that person's or a business competitor's business operations, goods, or services; [and] (3) the statement or conduct was made either for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services or in the course of delivering the person's goods or services." Cal. Code Civ. Proc. § 425.17(c)(3). Neither of these

[1] At the second prong of the Anti-SLAPP analysis, Plaintiffs address the "Public Interest Issue." ECF No. 53 at 19-20. To the extent Plaintiffs are engaged in non-linear argumentation, this issue is further addressed in Section 2.3.2, *infra*.

requirements is satisfied. First, as explained in Section 2.3.1, *infra*, Petty's statements are expressions of opinion based on disclosed facts that Plaintiffs do not allege are false, and so there are no "representations of fact" at issue here. Second, Petty's statements are about Mesika's attempts to use the threat of patent litigation to stifle innovation within the magic community. None of the statements propose that viewers should purchase Petty's goods or services (in fact, none are mentioned in the videos). Petty published a journalistic exposé, not an advertisement for his products. The commercial speech exemption does not apply.

As part of their convoluted theory of commercial speech, Plaintiffs argue that Petty "is aligned with Penguin Magic," referring to paragraph 41 of the SAC in support. ECF No. 53 at 13. But that paragraph contains only the conclusory allegation that "Defendants conspire to enact a coordinated, bad-faith commercial attack designed to destroy the reputation of the market leader, Mesika, so that Tait and Petty could step into the void and sell Penguin's house-brand knockoffs at the conventions they jointly operate." Without any mention of what Petty did beyond "conspire" with Penguin, the SAC fails to allege anything.

Elsewhere, Plaintiffs discuss the "Craig Petty Discusses Controversy With Yigal Mesika" video published by Penguin, but do not explain how it is relevant to the claims against Petty. They do, however, mention that the description for the video encourages viewers "to visit Penguin's site, and links to products, including Craig Petty's releases and competing products . . . ." ECF No. 53 at 8-9. This is the same theory of commercial speech recently rejected in *Wealthy Inc. v. Mulvehill*, 2026 U.S. App. LEXIS 5589 (9th Cir. Feb. 25, 2026). One of the defendants in that

case, Spencer Cornelia, published a series of negative YouTube videos about the plaintiffs. The videos themselves made no mention of Cornelia's products, though Cornelia's YouTube channel provided links to Cornelia's allegedly competing services. The Ninth Circuit found that "[b]ecause none of the videos at issue advertise or promote the *Cornelia* Defendants' products or services, the videos are not commercial speech as a matter of law." *Id*. at *9.

And although *Mulvehill* is unpublished, it is hardly ground-breaking. The commercial speech theory is not just weak on its face, but this is not the first plaintiff to try to use it, and it is universally rejected as invalid. *See Farah v. Esquire Magazine*, 736 F.3d 528, 541 (D.C. Cir. 2013) (holding that a satirical article about a book in a magazine's online blog was not commercial speech despite there being commercial interests); *Hoffman v. Capital Cities/ABC, Inc.*, 255 F.3d 1180, 1186 (9th Cir. 2001) (an article is not commercial speech even if its intent is to sell copies of the publication); *Edward Lewis Tobinick, MD v. Novella*, 848 F.3d 935, 952 (11th Cir. 2017) (rejecting the argument that a publication not otherwise proposing a commercial transaction could be considered commercial speech "simply because extraneous advertisements and links for memberships may generate revenue"); *Grasshopper House, LLC v. Clean & Sober Media LLC*, 394 F. Supp. 3d 1073, 1097 (C.D. Cal. 2019) (relying in part on *Tobinick*); *Soon v. Garzon*, 2026 U.S. Dist. LEXIS 8607 at *11 (N.D. Cal. Jan. 15, 2026) (citing *Novella* for the proposition that articles that do not discuss products for sale by the defendant are not commercial speech); *Children's Health Defense v. Facebook Inc.*, 546 F. Supp. 3d 909, 937 (N.D. Cal. 2021) (same).

Plaintiffs refer to a video in which Petty and Erik Tait said they are "on the [Penguin] booth" at a convention. ECF No. 53 at 15. This has nothing to do with whether the videos constitute commercial speech. On the same note, Plaintiffs place great emphasis on Petty's use of the word "we" in referring to a Penguin booth at another convention (*id.* at 15-16), but this again has nothing to do with the commercial speech analysis. Petty appearing at a booth for Penguin does not allow for the conclusion that there is some kind of deep commercial entanglement between them, not that any such entanglement would suddenly make any of Petty's statements actionable. Appearing at a booth a few times together is not enough to make anything at issue here commercial speech.

2.3 Prong Two: The Defamation Claim Fails

2.3.1 The Statements are Not Actionable

Petty explains in the Motion how none of the statements at issue can support a defamation claim, as they are either true, substantially true, or expressions of opinion and rhetorical hyperbole. The Motion also explains the well-established principle that context matters: a person is less likely to view a statement as factual if it is couched as opinion or is accompanied by exaggerated and colorful statements. ECF No. 50 at 24-25.[2] None of the statements at issue are factual or false, and thus none of them can support a defamation claim.

[2] Plaintiffs respond to this by emphasizing that Petty said at one point in the Desolation Video that he was "bringing facts, upon facts" as establishing that everything in the video is factual. ECF No. 53 at 23. They selectively ignore, however, the numerous times where Petty says his conclusions about Mesika are expressions of opinion (while supplying the facts upon which he bases the

The crux of the defamation claim is that Petty is "*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*." ECF No. 53 at 15, 20. Plaintiffs materially mischaracterize Petty's statements.[3] As explained in the Motion, Petty only ever claimed that Mesika did not credit the creators of Rinky Dinky and Ring Flight Revolution, which is literally true. In a belated attempt to claim Mesika did credit particular inventors, Plaintiffs refer to an Information Disclosure Statement ("IDS") filed in connection with Mesika's ring flight patent application that lists "Al Koran" and "Sumag" (whether these are names of people, companies, or products is not said) from the late 1960s, as "Non Patent Literature Documents." ECF No. 53-1 at 9, 11. This does not solve the problem of Mesika not crediting the numerous other inventors who have created similar devices, including the inventors of the devices cited as prior art in the patent application. Even if that were the case, there is no allegation or evidence that Petty had reviewed the IDS or even knew of its existence at the time of his statements;

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opinions), including the SAC's reference to instances where Petty does so. ECF No. 43 at 25.

[3] This is a pattern throughout the Opposition; Plaintiffs repeatedly refer to their own characterizations of Petty's statements instead of quoting Petty's actual words, despite Petty's videos being in the record. A court is not required to "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see also Chyba v. Green Tree Servicing, L.L.C.*, 586 F. App'x 397, 398 (9th Cir. 2014) (finding dismissal under Fed. R. Civ. P. 12(b)(6) appropriate where allegations in complaint were contradicted by letter attached to complaint). The Court should disregard Plaintiffs' inaccurate and misleading characterizations of Petty's statements, given that Plaintiffs simply re-write the statements to try and save their claims.

indeed, the IDS is mentioned nowhere in the SAC. Even if it were, Petty is under no obligation to pore through Mesika's patent filings, as a layperson, to extrapolate inferred information to serve Mesika's desire to silence him.

Plaintiffs continue to insist that it is factually false to say that many of Mesika's patents are not granted. But this is true. Plaintiffs do not even dispute that the majority of U.S. patents Mesika has filed have not been registered. ECF No. 53 at 24-25. Petty's statements on this issue are either substantially true or a fair characterization of undisputed and publicly available facts. Anyone can review Mesika's patent portfolio on the USPTO website and come to their own conclusion as to whether the word "many" means "a few," "more than half," or something else.

Plaintiffs refer to a statement by Petty that "You didn't even credit the person that most people would consider to be the godfather when it comes to ring flights." ECF No. 53 at 25. Plaintiffs do not argue this statement is false, because they can't; Plaintiffs did not credit this creator. Even so, even a perfunctory analysis of this sentence makes it clear that it cannot support a defamation claim. "Most people would consider to be the godfather" is what? A factual statement? The only factual statements that are even possible when discussing who the "Godfather" of anything is would be if we were discussing Don Vito Corleone or James Brown. Anything else using this honorific is a mere matter of opinion.

The other statements, like calling Mesika a "litigious bully," are obvious expression of opinion as discussed in ECF No. 50 at 25-27. The mere fact that someone would sue another person for calling him a "litigious bully" seems to prove the point, does it not?

Further, all of the statements about Mesika and his reputation are based on disclosed facts, including interviews with other famous magicians like Mark Bennett, Sean Bogunia, and Steve Sheraton. And they all share the opinion that Mesika is a litigious bully who rips off existing technology and claims ownership over them. Mesika disagrees with the *conclusion* that he is a litigious bully, but he does not allege in the SAC that the disclosed facts underlying this conclusion are false. These statements are not actionable.

2.3.2 Plaintiffs are Public Figures

Mesika admits in his Opposition that he is "well-known in the niche magic industry" (ECF No. 53 at 17) and alleges he has both a "fine" and "strong" reputation within this community. ECF No. 43 at ¶¶ 82, 84. He makes the undisputed observation that this does not make him a *general* public figure, which is reserved for household names. But he has argued and alleged himself into the conclusion that, *when it comes to issues related to the magic community*, he is a public figure.

Plaintiffs try to twist this analysis, however, arguing that "[e]nforcing intellectual property rights through private legal channels does not mean that Plaintiffs voluntarily injected themselves into a public controversy," and that Petty "created a public controversy" by publishing the Desolation Video. ECF No. 53 at 18. That is not how the analysis works. Mesika admits he is a prominent figure within the magic community. The magic community, and his reputation therein, are the relevant controversy, and members of the magic community are interested in what Mesika does that may affect them. As Petty explains in the Desolation Video,

this is not merely a private dispute, but rather an attempt to bring to the magic community's attention conduct that, if not stopped, would result in the abuse of patent law to stifle future innovation within the community. ECF No. 50-1 at 1:14:50-1:15:33, 1:35:00-1:35:40, 2:03:20-2:06:15, 2:23:48-2:26:38, 2:54:50-2:59:10. Plaintiffs call this public interest "broad and amorphous," citing cases discussing the prong one Anti-SLAPP analysis (ECF No. 53 at 19-20), but they are wrong; every member of the magic community who will either buy or invent a device would very much like to know about an issue that could affect the future of their entire industry. Plaintiffs also ignore Petty's cases regarding the Anti-SLAPP issue of public interest analysis, which is highly correlated with the public figure analysis. *See Geiser v. Kuhns*, 13 Cal. 5th 1238, 1251-52 (2022) (picketing a local land developer, even when arguably animated by a personal grievance and attended by only a few dozen people, satisfies the first prong when outside observers would view their speech as relating to the broader issues of inadequate housing and foreclosures); *see also Smith v. Zilverberg*, 481 P.3d 1222, 1227-28 (Nev. 2021) (in defamation case dealing with prominent figure in a discrete group (the thrifting community), finding that online, publicly available statements about that public figure's "misogynistic and bullying behavior" were on an issue of public interest).

Even if we were to accept Plaintiffs' overly restrictive framing for the public figure analysis, however, Plaintiffs still fail. The exhibits to the Request for Judicial Notice show that, prior to publication of the Desolation Video, there was public discussion among the magic community about whether Mesika's ring flight product was a ripoff of existing products. ECF Nos. 51-36 to 51-41. There was also an

existing discussion within the community about Petty's threats of patent infringement over this specific product, with individuals within the community specifically accusing Mesika of ripping off prior inventions. *Id*. Plaintiffs ignore this evidence.

By the earliest of Petty's videos, Mesika was a well-known name within the magic community, both in general and specifically in regard to his abuse of the patent system and the originality of his ring flight invention. He (and by extension Mesika Magic, by Plaintiffs' reckoning) is thus a limited-purpose public figure, as Petty's statements were about Mesika's conduct as a prominent member of the magic community and specifically about these pre-existing controversies.

2.3.3 Plaintiffs Failed to Even Allege Actual Malice

Petty's Motion explains how actual malice is a difficult standard to meet, even in a Rule 12(b)(6) motion, as a complaint is subject to dismissal if it does not "provide any specific allegations that would support a finding that [the Defendants] harbored serious subjective doubts as to the validity of [their] assertions." *Resolute Forest Prods., Inc. v. Greenpeace Int'l*, 302 F. Supp. 3d 1005, 1019 (N.D. Cal. 2017). His allegations regarding actual malice fall short of this standard.

Mesika claims Petty published his "Sued for Speaking Out" video with actual malice because he was in possession of text messages "wherein he admitted that Mesika's patent application properly cited prior art that Petty said was hidden, and that Mesika in fact filed his application before public disclosure." ECF No. 53 at 9. Petty acknowledged that Rinkey Dinky was listed as prior art on the patent application, but that was never his claim; he said that Mesika did not credit the

inventor of this device, which Mesika does not address. And while Petty may have acknowledged Mesika's *claim* that he filed his ring flight patent application before releasing the product, Petty acquired and disclosed evidence to the contrary in the Desolation Video. ECF No. 50-1 at 1:13:20-1:14:19, 1:44:00-1:48:10.[4] A defendant is not required to take everything a plaintiff says at face value when conducting their pre-publication investigation. *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 691 n.37 (1989) ("[T]he press need not accept 'denials, however vehement; such denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error'") (quoting *Edwards v. National Audubon Soc.*, 556 F.2d 113, 121 (2d Cir. 1977)). Similarly, Petty was not required to credit Mesika's claim in their pre-publication text exchange that Mesika's ring flight was a brand-new invention, particularly where the creator of the Rinkey Dinky said Mesika's invention was a ripoff of Rinkey Dinky. ECF No. 50-1 at 1:59:34-2:00:50.

Mesika claims Petty acted with actual malice by encouraging viewers to discuss the issues in the "Sued for Speaking Out" video. ECF No. 53 at 9-10. That claim is simply bizarre. Encouraging public discussion of a matter of public concern is not "actual malice." In any event, this argument by Plaintiffs helps establish that Petty was directly inviting further public discussion on this controversial topic, further showing his statements satisfy the first prong of the Anti-SLAPP analysis.

[4] And as explained above, these statements about the timing of the release of Mesika's invention cannot establish defamation liability because the SAC makes no mention of them; they are not statements over which Plaintiffs are suing.

Plaintiffs again refer to an interview with Sean Bogunia incorporated in the Desolation Video in which Bogunia stated a *different patent at issue in a 2009 lawsuit* was "bogus' because '[Mesika] didn't list any prior art of any kind.'" ECF No. 53 at 19 n.45. As explained in the Motion, the SAC is silent as to the validity of the patent at issue in that lawsuit. Plaintiffs are deceptively trying to claim that statements about a different topic are actually about Mesika's ring flight patent.

Plaintiffs refer to statements in the pre-publication text exchange wherein Mesika says he is not planning to sue Mark Bennett, and Petty says "I know you aren't threatening to sue Mark" as evidence of actual malice. ECF No. 53 at 21-22. First, Petty was not required to credit Mesika's claim that he did not intend to sue Bennett, especially when Bennett directly said he had been "threatened and bullied" by Mesika in this dispute. ECF No. 50-1 at 1:10:20-1:10:30. Indeed, this Court recently found that when one witness claims a statement is a threat and another claims it is a joke, a defendant does not publish with actual malice when calling it a threat. *Sandoval v. Lockheed Martin Corp.*, 2025 U.S. Dist. LEXIS 46314, *8-9 (C.D. Cal. Mar. 13, 2025). Second, Petty recognized that there was no longer a need for Mesika to sue Bennett because Mesika's initial threat of litigation was sufficient to cause Murphy's Magic, the wholesaler who was stocking Bennett's product, not to reorder Bennett's product. ECF No. 50-1 at 0:17:45-0:19:10. Bennett discusses this extensively in the Desolation Video and how the threat of patent infringement was bogus (ECF No. 50-1 at 0:33:25-0:38:25, 0:40:00-0:46:50), none of which Plaintiffs address. Finally, as discussed in the Motion, the Desolation Video discussed multiple other incidents in which Mesika made frivolous threats of patent

infringement and actually sued another magician for patent infringement, none of which Plaintiffs address. ECF No. 50 at 15-17. Those other incidents, standing alone,[5] are sufficient disclosed facts to support the conclusion Mesika is a litigious bully and a magic terrorist.[6]

Plaintiffs claim that, somehow, Petty consulting with legal counsel before publishing the Desolation Video establishes actual malice (ECF No. 53 at 23), when in fact it does the opposite, as it shows that Petty carefully considered the truth of his statements prior to publishing.

Plaintiffs make a confusing argument about how Petty must have known a statement about when Mesika's ring flight device was released was false. ECF No. 53 at 23-24. This is irrelevant, however, because the SAC does not allege that this statement is defamatory. Even if it were relevant, Plaintiffs allege nothing more than an inadequate investigation on Petty's part, which as a matter of law is not enough to establish actual malice on its own. An inadequate investigation can only support a finding of actual malice where it amounts to an outright "failure to investigate, which 'was a product of a deliberate decision not to acquire knowledge

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[5] Petty could rest his argument solely on the voicemail Mesika left for Sean Bogunia in which Mesika called Bogunia a "clown," and said Bogunia was "messing with the devil" and that Bogunia will "be a big loser with your piece of shit device." ECF No. 50-1 at 2:47:24-2:47:38. That sounds like bullying behavior, and Plaintiffs ignore it. *See Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 747 (9th Cir. 2025) (concluding a note stating the plaintiff "had been using her university email account to 'harass,' 'bully,' 'intimidate,' and 'threaten' cannot be actionable because they 'merely describe how [the speaker] interpreted Plaintiff's communications'").

[6] Mesika also repeats the allegation that Petty called him a "patent terrorist," despite that phrase appearing nowhere in Petty's videos.

of facts that might confirm the probable falsity of the subject charges . . . .'" *King v. U.S. Bank Nat'l Ass'n*, 53 Cal. App. 5th 675, 702 (2020); *Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 258 (1984) ("The failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy"); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) ("[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication"). There are no such allegations here, and so Plaintiffs have failed to allege actual malice. *Sandoval*, 2025 U.S. Dist. LEXIS 46314 at *9-10.

Plaintiffs argue that Petty dishonestly claimed he reviewed a "documented history over the last 20 years of using fake patents and patent applications and legal bullying and intimidating people to try and force his will onto them." ECF No. 53 at 26. But Petty's claim is true; the Desolation Video contains interviews with and statements from recipients of Mesika's meritless threats of patent infringement, the earliest of which go back to at least 2009. Plaintiffs do not address any of these, other than to try conflating the patent Sean Bogunia was discussing in his interview with Mesika's more recent ring flight patent application.

Plaintiffs claim they have adequately alleged actual malice because they have "alleged and provided significant evidence of the failure to investigate, reliance on biased and unreliable sources, and hostility toward Plaintiffs and their intellectual property rights." ECF No. 53 at 27-28. But even this argument is conclusory, since

the SAC makes no mention of biased or unreliable sources or any facts as to how those sources are biased or unreliable. As a matter of law, failure to investigate is not actual malice. *St. Amant*, 390 U.S. at 731. Relying on biased sources is not actual malice. *Murray v. Bailey*, 613 F. Supp. 1276, 1280 (N.D. Cal. 1985) ("A publisher's failure to make an independent investigation of a story, even when the publisher is aware of the possible bias of its source, does not amount to reckless disregard in the absence of serious doubts about the story's truthfulness"). And hostility is not actual malice. *St. Amant*, 390 U.S. at 731 (finding that defendant's reliance solely on a possibly hostile source when making accusations of criminal conduct did not constitute actual malice).

Of course, even if that were not the case, Petty's allegedly inadequate investigation involved interviewing multiple corroborating sources (ECF No. 50-1 at 23:40-1:13:14, 1:57:30-2:06:15), reviewing interviews with and statements from other corroborating sources (*id*. at 2:23:48-2:26:38, 2:29:30-2:47:38, 2:48:00-2:52:55), and even seeking comment from Mesika himself (*id*. at 1:15:45-1:43:00; ECF No. 53-2 at *Exhibit 1*). There are similarly no allegations about Petty's alleged hostility toward Mesika. This is not even arguably the stuff of actual malice.[7]

[7] Presumably in an attempt to imply Petty has a pattern of dishonesty, Plaintiffs claim that Petty concealed the full text message exchange between him and Mesika by not attaching it to the Motion. ECF No. 53 at 7. Plaintiffs are wrong. Petty identifies the portion of the Desolation Video where the full text message exchange is displayed on screen. He did not separately attach the text message exchange because his Anti-SLAPP motion is being filed as a Fed. R. Civ. P. 12(b)(6) motion, and the text exchange as a separate document is not subject to judicial notice or incorporation by reference. Plaintiffs' attempt to relitigate Petty's previous motion

2.3.4 None of the Statements are Of and Concerning Mesika Magic

Plaintiffs do not provide a legal argument in response to Petty's position in the Motion that none of the statements at issue are of and concerning Mesika Magic. Mesika Magic has not been defamed just because Mesika claims his reputation has been harmed. That would be like a spouse claiming they were a victim of defamation because their partner was defamed, causing a loss of the partner's reputation and earning potential, which then put the spouse in a worse economic position. The salient question is whether any of Petty's statements were *about* Mesika Magic, not whether Mesika Magic claims it was harmed by a statement. None of the statements are of and concerning Mesika Magic, and thus all of its claims against Petty should be dismissed.

2.4 Prong Two: Plaintiffs' Other Claims Fail

Plaintiffs do not discuss their trade libel or false light claims at all, other than to mention them in a subject heading. The Court should construe this as a concession that these claims should be dismissed for the same reasons as the defamation claim.

Plaintiffs do little to defend their common law or statutory misappropriation claims. They simply say that "[t]his is commercial misappropriation, not news" and claim the videos are "disguised advertisements," without elaboration. ECF No. 53 at 29. This threadbare response does not address the arguments in the Motion, and the Court should grant the Motion as to these claims as unopposed.

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for an extension of time to respond to a prior complaint is not well-taken; notice of a suit is not the same thing as proper service under the Hague Service Convention.

Plaintiffs bring a Cal. Bus. & Prof. Code § 17200 claim (Count 6) and § 17500 claim (Count 7) against Petty. ECF No. 43 at 46-48 (noting these claims are brought "As to All Defendants and DOES"). Their Opposition makes no mention of these claims. The Court should thus grant the Motion as to these claims as unopposed.

3.0 CONCLUSION

For the foregoing reasons, the Court should grant Petty's Motion, dismiss all claims asserted against him with prejudice, and award Petty his costs and attorneys' fees, to be substantiated in a separate motion.

Dated: May 27, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Craig Petty, certifies that this brief contains 5,048 words, which complies with the word limit of L.R. 11-6.1.

Dated: May 27, 2026

Respectfully submitted,

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/s/ Marc J. Randazza

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Case No. 2:25-cv-07943-MWF-MBK

CERTIFICATE OF SERVICE

I CERTIFY that on May 27, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notice of Electronic Filing generated by CM/ECF.

Dated: May 27, 2026

Respectfully submitted,

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