Marc J. Randazza, NV Bar No. 12265
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
4974 S. Rainbow Blvd., Suite 100
Las Vegas, NV 89118
Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendants
Spencer Cornelia, Cornelia Media LLC,
and Cornelia Education LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WEALTHY INC., and DALE BUCZKOWSKI, Plaintiffs, SPENCER CORNELIA, CORNELIA MEDIA LLC, and CORNELIA EDUCATION LLC, Defendants.	Case No. 2:21-cv-01173-JCM-EJY **REPLY IN SUPPORT OF DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 AND MOTION FOR SUMMARY JUDGMENT** Consolidated With: Case No. 2:22-cv-00740-JCM-EJY
WEALTHY INC., and DALE BUCZKOWSKI, Plaintiffs, v. JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC, and OPTIMIZED LIFESTYLE LLC, Defendants.	

RANDAZZA | LEGAL GROUP

This Reply is in support of the Anti-SLAPP Motion and Motion for Summary Judgment (ECF Nos. 61 & 62) (the "Motion").

1.0 INTRODUCTION

In this Lanham Act case, Plaintiffs' Opposition (ECF No. 78) ignores the only statements that are actually about Plaintiffs' services, showing that summary judgment is appropriate as to their Lanham Act claim and most of their state-law claims. Instead, the Opposition focuses on unfounded evidentiary objections, ignores the record, and misstates the law. The Opposition also makes it clear that Plaintiffs cannot possibly show actual malice or show any damages attributable to any statements they address. The Court should grant summary judgment in Defendants' favor on all claims and award costs and attorneys' fees under NRS 41.670 and 15 U.S.C. § 1117.

2.0 ARGUMENT

2.1 Defendants' Evidence is Admissible, Authenticated, and Relevant

2.1.1 Defendants' Evidence is Authenticated

Plaintiffs' authentication objections make no sense and seem to be bad faith attempts to multiply the proceedings. They object to printouts from websites, arguing that they are not properly authenticated, but offer no explanation of their position.[1] Every website printout is authenticated by the declaration of Alex J. Shepard (ECF No. 62-4 at 177-197). For each printout, the declaration states the date and time when it was made; where the declarant was when creating it; the internet browser and program used to create it; the URL of the page from which the printout was created; and a description of the page. *Id*. Plaintiffs simply pretend this authentication does not exist. Every exhibit in the Shepard Declaration is properly authenticated. Articles in newspapers and periodicals are also self-authenticating under Fed. R. Evid. 902(6).

[1] Authentication of a printout of a website does not require much. Printouts are properly authenticated where the website, the URL, and the date on which the printout was taken are provided. *See 21st Century Fin. Servs., LLC v. Manchester Fin. Bank*, 255 F. Supp. 3d 1012, 1020 (S.D. Cal. 2017); *Haines v. Home Depot U.S.A., Inc.*, No. 1:10-cv-01763-SKO, 2012 U.S. Dist. LEXIS 47967, *23 (E.D. Cal. Apr. 4, 2012); *Premier Nutrition, Inc. v. Organic Food Bar, Inc.*, No. SACV 06-0827 AG (RNBx), 2008 U.S. Dist. LEXIS 78353, *19 (C.D. Cal. Mar. 27, 2008).

RANDAZZA | LEGAL GROUP

Plaintiffs then object to the authenticity of Exhibits 1 and 32, consisting of Plaintiffs' own Instagram page and promotional material. These are documents that **Plaintiffs themselves produced during discovery**, as shown by their Bates numbers leading with "WEALTHY." If they object to the authenticity of documents that they provided, that would mean that they produced falsified documents in discovery. If so, the Court should issue terminating sanctions for such misconduct and a recommendation for prosecution for perjury. *See Professional Seminar Consultants v. Sino Am. Technology Exch. Council*, 727 F.2d 1470, 1474 (9th Cir. 1984). Similarly, Plaintiffs object to Buczkowski's deposition transcript, without a similar objection to Cornelia's. Their own Opposition attaches Buczkowski's transcript. (*See* ECF No. 78-3).[2]

Plaintiffs object to the authenticity of Exhs. 13, 14, and 16, pleadings from the Longboat Drive asset forfeiture case in which Buczkowski filed a claim, and the criminal complaint against Timothy Lantz stemming from allegations in the Longboat Drive case. These are self-authenticating documents that do not require extrinsic evidence. They are government records and public filings. *See* Fed. R. Evid. 902(4); Fed. R. Evid. 901(b)(7); *Haack v. City of Carson City*, No. 3:11-cv-00353-RAM, 2012 U.S. Dist. LEXIS 120137, *24 (D. Nev. Aug. 22, 2012). Plaintiffs concede that the Court may take judicial notice of their existence. (ECF No. 78 at 25).

Next, Plaintiffs claim that Exhibits 10 and 31 are not authenticated. Exhibit 10 is a transcript of a portion of a video posted on John Mulvehill's YouTube channel. Exhibit 31 is a transcript of a video interview Mulvehill conducted with an individual named "Rohit." A declaration properly authenticates these transcripts. As for Exhibit 10, Brittani Holt provides details as to when and where she viewed the video, the URL where the video is located, and she declares that she created the transcript herself. *See* ECF No. 62-4 at 200, ¶ 4. As for Exhibit 31, Ms. Holt testifies that she viewed the "Rohit Derek" video and identifies it by Bates number, and

[2] However, it is true that the excerpts of these transcripts do not include the certification page from the court reporter. These excerpts, with the certification page included, are attached as **Exhibits 1 (for Cornelia) & 2 (for Buczkowski)**.

RANDAZZA | LEGAL GROUP

that she personally created the transcript. *Id*. at ¶ 5. Cornelia's declaration also details how and when he received and viewed the "Rohit Derek" video, identifies it by Bates number, and testifies that the exhibit is a true and correct transcript of it. ECF No. 62-3 at 114, ¶ 9.

Finally, Plaintiffs claim that Exhibit 30 is not authenticated. This exhibit consists of numerous YouTube comments posted in response to the First Video. Cornelia testifies that these are true and correct copies of comments that were posted in response to the First Video. (ECF No. 62-3 at 117, ¶ 21). This exhibit is also properly authenticated.

2.1.2 Defendants' Evidence is Relevant and Admissible

Plaintiffs also object to several exhibits on hearsay and relevance grounds, but they either mistake the purpose for which these exhibits are offered, or again, try to multiply the proceedings.

Exhibit 5-1 contains media articles about Plaintiffs. These are not offered for the truth therein. The very existence of the coverage is what is relevant. This proves that Plaintiffs are public figures. Every word in the articles could be false. *It is that these prominent publications thought Plaintiffs newsworthy that matters*. When the *existence* of a statement itself is relevant, it is offered for a non-hearsay purpose and is admissible.[4]

Plaintiffs argue some of these articles are irrelevant because they were published after the videos were. But Plaintiffs get this backwards. Except perhaps in the case of an involuntary public figure, public figure status does not happen overnight, and press coverage does not by itself make one a public figure. As shown in the Motion, Plaintiffs made deliberate, sustained efforts to seek out fame. The press coverage about them is *evidence* of their success in this, not the *cause* of it. Accordingly, press coverage following the publication of the videos at issue is relevant to Plaintiffs' public figure status, at the very least for articles that were published shortly after the

[4] *See Ciampi v. City of Palo Alto*, 790 F. Supp. 2d 1077, 1091 (N.D. Cal. 2011) (newspaper articles admissible to show publication of statements); *Asetek Danmark A/S v. CMI USA, Inc.,* No. 13-cv-00457-JST, 2014 U.S. Dist. LEXIS 197078, *6 (N.D. Cal. Nov. 19, 2014) (internet pages admissible to show existence of laudatory statements). Courts take judicial notice of website articles and publications for this purpose under Fed. R. Evid. 201(b). *See, e.g., United States v. Kane*, No. 2:13-cr-250-JAD-VCF, 2013 U.S. Dist. LEXIS 154248, *9 (D. Nev. Oct. 28, 2013).

RANDAZZA | LEGAL GROUP

videos.[5] It is especially odd for Plaintiffs to complain that these exhibits are not relevant when they have claimed to have sought this media attention specifically to counter the alleged damage caused by identical statements Mulvehill published starting in May 2020. Transcript of deposition of Wealthy Inc. 30(b)(6) witness ("Wealthy Trans."), ECF No. 163-1 & 164-1, at 172:10-174:3; Transcript of January 27, 2023 deposition of Dale Buczkowski ("Buczkowski 3rd Trans."), ECF No. 162-2, at 130:4-22, 131:18-132:12. The following objected-to exhibits were published before or shortly after the Second Video (February 19, 2021) and are thus relevant:

- **Exhibit 5-A**, *Entrepreneur Magazine* article, published on February 20, 2021.
- **Exhibits 5-G and 5-H**, *Playboy Australia* and *Maxim* articles, published April 3, 2021.
- **Exhibit 5-L**, *Business Insider* article, published February 25, 2021.
- **Exhibit 5-Q**, *Deadline News* article, published January 19, 2021.
- **Exhibit 5-R**, *Disrupt Magazine* article, published June 12, 2020.
- **Exhibit 5-T**, *FHM* article, published March 19, 2021.
- **Exhibit 5-W**, the *Future Sharks* article, published April 12, 2021.
- **Exhibit 5-X**, *IB Times* articles, published on January 16, 2021 and June 18, 2020.
- **Exhibit 5-Y**, *Influencive* article, published April 22, 2021.
- **Exhibit 5-AB**, *LA Weekly* article, published August 19, 2019.
- **Exhibit 5-AL**, *SF Weekly* article, published January 2, 2021.
- **Exhibit 5-AN**, *American Reporter* article, published June 12, 2020.
- **Exhibit 5-AS**, *Travelers Today* article, published January 15, 2021.
- **Exhibit 5-AT**, *USA Today* article, published March 25, 2021.

[5] Not all of the dates of publication for these articles are provided in the exhibits, either because creating the printout removed the date of publication or because the article itself does not list the date of publication. However, during the course of discovery, Plaintiffs provided a list of these articles, including dates of publication. (*See* Plaintiffs' Fifth Supplement to Initial Disclosures Pursuant to F.R.C.P. 26, attached as **Exhibit 3**).

RANDAZZA | LEGAL GROUP

Plaintiffs similarly claim that **Exhibits 8, 11, and 12** are irrelevant because they post-date the videos. Plaintiffs are wrong. While the printouts of these Reddit posts do not show their exact date of publication, this information is available by hovering one's cursor over the text of how long ago they were posted. The "In Defense of derek Moneyberg" post, **Exhibit 8** to the Motion, was published on December 27, 2020. *See* screenshot showing exact date of publication, attached as **Exhibit 4**. The "DEREK MONEYBERG SCAMMED THIS KID" post, **Exhibit 11** to the Motion, was published on December 29, 2020. *See* screenshot showing exact date of publication, attached as **Exhibit 5**. The "Derek Moneyberg EXPOSED AGAIN" post, **Exhibit 12** to the Motion, was published on November 30, 2022. *See* screenshot showing exact date of publication, attached as **Exhibit 6**. These posts thus pre-date either all of the videos or the Second and Third Videos, and are relevant. Even to the extent the articles do not pre-date all of the comments, they still show Buczkowski's public figure status. Would *USA Today* or *Maxim* publish an article about anyone who had not attained notoriety or fame?[6]

2.2 Plaintiffs Do Not Even Argue that Many of the Statements are False

Plaintiffs make no effort to show that two of the categories of statements at issue are false: The statements regarding Plaintiffs' services (ECF No. 1 at ¶¶ 76-78) and Defendants nominating Buczkowski for a "Charlatan of the Year" award (*Id*. at ¶¶ 80-84). The Motion explains how the "Charlatan of the Year" video is not actionable (ECF No. 62 at 34), that there was no actual malice in these statements (*id*. at 35-36), and that Plaintiffs provided no evidence that the statements about their services were false. (*id*. at 25). Plaintiffs ignore these issues in the Opposition. They provide

[6] As for **Exhibits 28 and 29**, Plaintiffs misrepresent the record. **Exhibit 28** is an email chain produced by Plaintiffs showing that one of their customers, starting in November 2020 (before any of the videos were published) complained about Plaintiffs engaging in the same tactics that Mulvehill discussed in the videos. Defendants do not offer it to show Plaintiffs were public figures, but rather to show that they had a reputation for engaging in the acts which Mulvehill discussed. **Exhibit 29** is a message exchange between Mulvehill and Cornelia starting before any of the videos were published and concluding before the Second Video was published, thus making all such messages relevant to Defendants' lack of actual malice.

RANDAZZA | LEGAL GROUP

no argument or evidence that any of these statements are false or otherwise actionable. Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment also explains how testimony provided during discovery in the consolidated *Mulvehill* case shows the substantial truth of many of these statements. ECF No. 162 at 11-12. Plaintiff is required to prove falsity to prevail. *Pegasus v. Reno Newspapers, Inc*., 118 Nev. 706, 718 (2002). The Plaintiff doesn't get to just claim "these statements are false" and then shift the burden to the Defendants. Therefore, the Court *must* grant summary judgment in Defendants' favor as to these categories of statements. The failure to challenge these statements makes it impossible for Plaintiffs to show a genuine dispute of material fact as to actual malice or even negligence.

2.3 Plaintiffs' Lanham Act Claim Fails as a Matter of Law

The Motion sets out the elements of Plaintiffs' Lanham Act claim, which Plaintiffs do not dispute: (1) commercial speech, (2) a false or misleading statement of fact, (3) for the purpose of influencing consumers to buy defendant's goods or services, and (4) sufficient dissemination. (ECF No. 62 at 21-22). None of these elements have been satisfied.

2.3.1 The Complained-of Statements are Not Commercial Speech

The Motion lays out the relevant multi-factor test for determining whether speech is commercial: (1) the speech is an advertisement; (2) referring to a particular product; and (3) the speaker has an economic motivation. (ECF No. 62 at 22).

Plaintiffs' commercial speech argument fails. They identify nothing that could be construed as any kind of advertisement. Plaintiffs argue the statements *included* advertisements because a subsequent Google search result for Defendants' YouTube page contains text that Cornelia has "two mentorship programs: 1) House Hack Expert – I teach people how to live for free 2) First 1,000 subscribers – I teach people how to attain their first . . . ." (ECF No. 78-6). The argument appears to be that, because Defendants advertise goods and services anywhere, even though the statements at issue make no reference to them, then the statements at issue are commercial speech. This makes no sense at all.

RANDAZZA | LEGAL GROUP

Tobinick v. Novella, 848 F.3d 935 (11th Cir. 2017) is on point. The defendant was a neurologist, while the plaintiff was a doctor who treated some of the same kinds of patients as the defendant. *Id*. at 940. The defendant published a science-based medicine blog and wrote about the plaintiff's claims about the efficacy of a medical procedure. *Id*. at 940-41. In finding that the articles were not advertisements, the appellate court found that "[t]he articles 'communicate[] information, express[] opinion, [and] recite[] grievances, . . ." *Id*. at 950 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964)). In finding that the articles were not advertisements, it noted that "[t]he first article makes no mention of Dr. Novella's practice or medical services," just as the videos here make no mention of Defendants' services. *Id*. 951.

Plaintiffs argue that the videos are "advertisements" because Mulvehill says in the First Video "you do some real estate stuff on the side," and Cornelia responds "Right." (ECF No. 78-4 at WEALTHY000062). This argument is absurd. Nobody mentions anything about these goods or services. Merely acknowledging off-handedly that one provides a service is not an "advertisement."[9] Plaintiffs do not explain their argument or provide support for it. They have failed to show there is a genuine factual dispute on the issue of commercial speech.

By the same token, none of the statements refer to *Defendants'* services. There are multiple statements about the *quality of Plaintiffs' services* in the videos, but Plaintiffs provided no evidence that these statements are false. Plaintiffs claim, with no support, that "[t]hese false accusations that Wealthy sales team members coerce customers to get credit cards just to purchase their mentorship programs are disparaging to Plaintiffs' services." ECF No. 78 at 13. Plaintiffs attempt to show

[9] Plaintiffs' citation to *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107 (9th Cir. 2021) does not help them. That case dealt with a motion to dismiss, not summary judgment, where the complaint alleged that the defendant was engaged in "a sham marketing ploy intended to boost [their] products." *Id*. at 1115. Its reference to social media posts that "may not have the indicia of a traditional advertisement" yet are advertisements was (1) non-binding dicta, and (2) referring to social media influencers, who are paid to promote a product or service. *Id*. at 1116. Just because some hypothetical factual scenario *may* exist in which something which appears not to be an advertisement is an advertisement does not mean that *the videos at issue* are advertisements.

RANDAZZA | LEGAL GROUP

that five categories of statements, none of which have to do with Wealthy Inc. or Plaintiffs' services, are false. Plaintiffs cannot refer to non-actionable statements in a video and then claim that they are evidence of completely different statements being commercial speech.

Plaintiffs fail to show that Defendants had an economic motivation for the videos. Plaintiffs identify services that Defendants provide, none of which are mentioned in the videos, and claim that the existence of such services means that Defendants had an economic motivation. Not so. *See Novella*, 848 F.3d at 952 (finding that "[e]ven if Dr. Novella receives some profit for his quasi-journalistic endeavors as a scientific skeptic, the articles themselves, which never propose a commercial transaction, are not commercial speech simply because extraneous advertisements and links for membership may generate revenue"). Plaintiffs fail to show anything other than a theoretical incidental economic benefit which does not make speech commercial. *See Alfasigma USA, Inc. v. First Databank, Inc.*, 525 F. Supp. 3d 1088, 1099 (N.D. Cal. 2021).[10]

2.3.2 The Complained-of Statements Were Not Made to Influence Consumers to Purchase Defendants' Goods or Services

None of the statements in the videos were made to entice consumers to purchase Defendants' services. These services are not mentioned in the videos. Plaintiffs have no argument that Defendants published the videos to entice consumers to purchase their goods or services. Instead, they repeat their commercial speech argument and blithely claim Defendants are competitors. They claim, with no support, that "[b]y publishing statements that mischaracterize Plaintiffs' services as 'scams,' Defendants influenced their viewers to look for an alternative program for real estate mentorship." (ECF No. 78 at 15). This argument is simply sad. Plaintiffs provide no argument or evidence that calling their services a "scam" is false or actionable. They provide no evidence that anyone who viewed the videos looked for an alternative mentorship

[10] To remove any doubt on this issue, Mulvehill testified that he has never had any kind of financial relationship with Defendants, he never paid Defendants, and he has never been paid by Defendants. ["Mulvehill Trans."], attached as **Exhibit 7**, at 285:5-25. He did propose an affiliate relationship with the Cornelia Defendants, but Cornelia declined. *Id*. at 285:13-19.

RANDAZZA | LEGAL GROUP

program. They cite no evidence that Defendants published the videos for the purpose of redirecting customers to them. The only thing they cite is a statement from Cornelia that, *in completely separate videos*, he believed he referred to some of his products.

2.3.3 The Statements Were Not Disseminated to the Relevant Public

Plaintiffs address the sufficient dissemination requirement in conclusory terms. They provide no evidence that Defendants engaged in an advertising campaign (advertising *what* is unclear since their services are mentioned nowhere in the videos) to ensure any market penetration. They provide no evidence that any portion of Plaintiffs' potential audience actually viewed or was likely to view these videos. There is publication on a single website. This is not adequate to show sufficient dissemination to the relevant purchasing public, and Plaintiffs fail to show otherwise.[12]

2.4 Defendants' Speech is Protected Under the Anti-SLAPP Statute

2.4.1 Defendants' Speech – Directly Connected to an Issue of Public Interest

As explained in the Motion, the videos at issue are primarily concerned with discussing the quality of Plaintiffs' services, their credibility as a business, and legal and ethical problems with the services they provide. This is of significant interest to the millions of people who follow Plaintiffs on Instagram and their thousands of customers. Plaintiffs argue that the videos are not connected to this interest, however, because the statements were made on YouTube instead of in complaints to a consumer protection bureau, citing *Kevin Zhang v. Rozsa*, 2021 U.S. Dist. LEXIS 79916, *9 (C.D. cal. Jan. 27, 2021). But *Rozsa* is inapposite; the court's cited discussion was specifically about a body of California case law regarding statements published for the purpose of providing "consumer protection information." This does not mean a defendant must complain to the state to enjoy Anti-SLAPP protection. And in any event, Defendants published the "Authentic or Charlatan" YouTube series, which the videos at issue were part of, "to discuss very prominent

[12] Plaintiffs' Lanham Act claim additionally fails because they cannot prove any damages resulting from the complained-of statements, for the reasons discussed in (ECF No. 162 at 25-28) and (ECF No. 171 at 18-19), which are incorporated by reference.

RANDAZZA | LEGAL GROUP

social media influencers and I wanted to do a deep dive into . . . whether they were authentic to being a real guru or possibly not." (**Exhibit 1** at 59:14-21). The video series was a consumer watchdog story in the function it provided to the consumer public – warning them of a charlatan.

Plaintiffs ignore the *Piping Rock* factors adopted by in *Shapiro v. Welt*, 133 Nev. 35, 39 (2017), conceding that these mandatory factors favor Defendants. (*See* ECF No. 62 at 28-29). And while their argument relies on case law interpreting the California Anti-SLAPP statute, Plaintiffs ignore the most recent case law on the first prong analysis from California, *Geiser v. Kuhns*, 13 Cal. 5th 1238 (2022). The plaintiff evicted the defendants. *Id*. at 1243-44. The defendants protested outside the plaintiff's property. *Id*. at 1244-45. The purpose was "to protest unfair and deceptive practices" used by the plaintiff. *Id*. at 1245. The Court enunciated the rule that, for the first prong of the analysis, speech implicates a matter of public interest so long as it, "considered in light of its context, may reasonably be understood to implicate a public issue, even if it also implicates a private dispute." *Id*. at 1253-54. Because the purpose of the demonstration was to protest the plaintiff's business practices, rather than *only* the defendants' specific grievance, it implicated broader concerns of unfair foreclosure practices and was thus connected to an issue of public interest. *Id*. at 1250-51. The demonstration furthered discussion on these broader public issues, and was thus protected under the Anti-SLAPP statute. *Id*. at 1255. If a small eviction protest is connected to an issue of public interest because it implicates broader public issues, then certainly Defendants' videos, which directly concern an issue of interest to millions of people internationally, is also connected to an issue of public interest.

As with their actual malice argument, Plaintiffs ignore their Complaint and focus only on categories of statements which they claim are not within this public issue. But by Plaintiffs' own telling (and as Mulvehill and JAL explain), the statements about his involvement in a drug operation, money laundering, and his education credentials are all directly related to the quality of Plaintiffs' services, and Plaintiffs' status as a scam artist – a public controversy in which Plaintiffs have voluntarily placed themselves, because they implicate Plaintiffs' business qualifications and

RANDAZZA | LEGAL GROUP

trustworthiness. *See* ECF No. 78 at 28; ECF No. 171 at 24-25. Plaintiffs even admit that these were issues of public interest, because they engaged in an advertising blitz to discuss the alleged negative effects of the same statements published by Mulvehill starting in May 2020. Wealthy Trans. at 172:10-174:3; Buczkowski 3rd Trans. at 130:4-22 & 131:18-132:12. Plaintiffs cannot avoid public figure status by trying to define the relevant public controversy artificially narrowly.[13]

2.4.2 Defendants' Speech Was Made in Good Faith

Defendants did not have actual knowledge that any of the statements at issue are false at the time of publication. ECF No. 62 at 14-20 & 29-30. As with all other discussions, Plaintiffs do not even argue that the statements about their services or the statements in the Third Video are false, instead focusing on the narrower categories of statements they actually address. They also ignore the plain, black-letter law of the "good faith" requirement. A moving party must show that they made the statements at issue without *actual knowledge* of falsity; this is not a recklessness inquiry. Cornelia's deposition testimony and declaration establish that he did not publish with knowledge of falsity, to the extent that the statements were factual and not expressions of opinion or rhetorical hyperbole.[14] Plaintiffs provide no evidence or argument that Defendants knew the statements were false at the time of publication, instead simply arguing actual malice.

[13] Furthermore, the statements that Plaintiffs actually address in their Opposition are inextricably intertwined with the statements regarding Plaintiffs' services and their receipt of a "Charlatan of the Year" award. This makes Plaintiffs' claims "mixed" causes of action for Anti-SLAPP purposes. These "mixed cause[s] of action [are] subject to the Anti-SLAPP statute if **at least one of the underlying acts is protected conduct**, unless the allegations of protected conduct are merely incidental to the unprotected activity." *Lauter v. Anoufrieva*, 642 F. Supp. 2d 1060, 1109 (C.D. Cal. 2008) (emphasis added); *see also Salma v. Capon*, 161 Cal. App. 4th 1275, 1287 (2008) (holding that a cause of action based on both protected and unprotected activity under the Anti-SLAPP statute is subject to an Anti-SLAPP motion); *Peregrine Funding, Inc. v. Sheppard Mullin*, 133 Cal. App. 4th 658, 675 (2005) (because plaintiffs' claims "are based in significant part on [defendant's] protected petitioning activity," the first anti-SLAPP prong was satisfied").

[14] Opinion or hyperbole cannot be "false" for purposes of the "good faith" inquiry. *See Stile v. Korb*, 2022 Nev. Unpub. LEXIS 220, *6 (Nev. Ct. App. 2022) (calling a surgeon a "butcher," a "class act sociopath" who had "ruined so many women's bodies," and that he had "botched a simple breast implant swap" was not actionable.

RANDAZZA | LEGAL GROUP

Plaintiffs also attempt to distinguish *Williams v. Lazer*, 495 P.3d 93 (2021) by misrepresenting that case's facts. The defendant's statements there did not consist only of "generalized statements" of unethical and unprofessional behavior. She made specific factual claims bolstering her opinions. *Id*. at 96. Due to a lack of evidence that Williams *knew* her statements were false, her statements were in good faith. *Id*. at 98. Plaintiffs identify some distinctions without a difference. It does not matter that Defendants did not have personal knowledge of Plaintiffs or their services prior to publishing; if anything, this obviates any possible implication of knowing falsity, because someone with no personal knowledge *cannot* know with certainty one way or another whether a statement is true or false. And, Plaintiffs claim (without support) that Defendants had reason to doubt Mulvehill as a source of information, but this is an argument regarding actual malice, not subjective knowledge of falsity. With a complete lack of evidence of knowledge of falsity, the "good faith" analysis here is indistinguishable from *Williams*. Defendants satisfied their burden under the first prong of the Anti-SLAPP law.

2.5 Plaintiffs' Defamation Claim Fails as a Matter of Law

2.5.1 Most of the Statements are Not Even Capable of Being Defamatory

The context of a statement is critical to determining whether it is likely to be viewed as one of opinion or fact. (ECF No. 62 at 32). Plaintiffs claim that the context helps their position because "the entire tone of the videos containing the statements was disparaging to Plaintiffs," but they miss the point of this analysis. (ECF No. 78 at 23). It is precisely *because* Mulvehill had such a hyperbolic and disparaging tone that viewers are more likely to view his statements as highly opinionated.[15] A viewer expects non-factual statements from someone who uses such loose

[15] The presence of "loose, figurative, or hyperbolic language" negates the impression that a statement is factual. *Morningstar v. Superior Court*, 23 Cal.App.4th 676, 689 (1994). It is important that the statements at issue were published on an online forum, YouTube, a context in which there is a lesser expectation that statements will be factual. *See Krinsky v. Doe 6*, 159 Cal. App. 4th 1154, 1173, 1178 (2008) (in a chat room setting, hyperbole is to be expected); *see also James v. San Jose Mercury News, Inc.*, 17 Cal. App. 4th 1, 12, 14 (1993) (calling lawyer "sleazy" and "unethical" fell into "protected zone of 'imaginative expression' or 'rhetorical hyperbole'").

RANDAZZA | LEGAL GROUP

language and insults.[16] And Plaintiffs also completely ignore Cornelia's opening statement of the First Video, in which he tells viewers to "make sure to do your own research, and everything is just allegations at this point."[17] ECF No. 62-3 at **Exhibit 23**, WEALTHY000059.[18] This disclaimer is fatal to the claims. *See ZL Techs., Inc. v. Gartner, Inc.*, 709 F. Supp. 2d 789, 797 (N.D. Cal. 2010) (finding that disclaimer in allegedly defamatory publication that defendant's "opinions expressed herein are subject to change" "contribute[d] to a 'general tenor of the entire work [that] negates the impression that [defendant] was asserting an objective fact'").

2.5.1.1 Statements Regarding Buczkowski's Degree

Mulvehill stated that Buczkowski took an online program at the University of Chicago to get his MBA. Buczkowski admits that he took a non-traditional part-time course and graduated in 3.5 to 4 years. ECF No. 62-1 at **Exhibit 4**, transcript pages 12:9-13:13; Additional excerpts from Buczkowski 3rd Trans., attached as **Exhibit 8**, at 11:13-12:9. This is not an insignificant difference. The acceptance rate for the school's traditional, full-time MBA program was 14%, with an average

[16] *See McDougal v. Fox News Network, LLC*, No. 1:19-cv-11161 (MKV), 2020 U.S. Dist. LEXIS 175768, *14-16 (S.D.N.Y. Sept. 23, 2020) (finding that Tucker Carlson's claim that plaintiff was an extortionist was protected opinion and rhetorical hyperbole because statements are especially likely to be viewed as hyperbole "in the context of commentary talk shows like the one at issue here, which often use 'increasingly barbed' language to address issues in the news"); *see also Herring Networks, Inc. v. Maddow*, 445 F. Supp. 3d 1042, 1053 (S.D. Cal. 2020) (finding that "[f]or [MSNBC host Rachel Maddow] to exaggerate the facts and call OAN Russian propaganda was consistent with her tone up to that point, and the Court finds a reasonable viewer would not take the statement as factual given this context. The context of Maddow's statement shows reasonable viewers would consider the contested statement to be her opinion").

[17] Defendants do not contend that these are "magic words" that transform everything into non-actionable opinion, as Plaintiffs appear to contend in their reply. *See* ECF No. 172 at 12. Rather, this disclaimer helps to set the audience's expectations and to let them know the statements in the video are not *necessarily* proven as factual.

[18] Plaintiffs also respond, in their own summary judgment reply, to the argument that Defendants are not liable for Mulvehill's statements by attempting to distinguish *Corsi v. Infowars LLC*, No. A-20-CV-298-LY, 2021 U.S. Dist. LEXIS 98486 (W.D. Tex. May 24, 2021). ECF No. 172 at 11-12. But they ignore that the court found Alex Jones, the owner and host of the program on which allegedly actionable statements were published, and who actually made some of the statements at issue, was not liable for the statements made by his on air guest, Roger Stone.

RANDAZZA | LEGAL GROUP

GMAT score of 729. "Chicago Booth Full-Time MBA Class of 2024 Profile," <chicagobooth.edu>.[19] The part-time program had an average GMAT score of 691, 38 points lower than full-time students. "Part-Time MBA Class Profile," <chicagobooth.edu>.[20] It is well-known that part-time MBA programs are easier to get accepted into than full-time programs. *See, e.g.,* Maria Greeley, "Weigh if a Part-Time MBA Program Is the Right Fit," U.S. News & World Report (Mar. 29, 2018)[21] ("In general, even the most competitive part-time programs tend to be easier to get accepted to than their full-time counterparts"). Buczkowski attended a less prestigious and less rigorous program than full-time students, which a reasonable viewer could see as meaning he did not obtain a "real" degree, *i.e.,* a degree on part with full-time students. This is a non-actionable statement of opinion.

2.5.1.2 Statements Regarding Alleged Money Laundering and Involvement in an Illegal Drug Operation

Mulvehill's statement (again, not even a statement made by Defendants) that Larson Consulting *could be* a front for laundering money and the statements that Buczkowski *may have been* involved in an illegal drug operation are protected opinion based on disclosed facts, namely the lack of any online presence for the company and the allegations in the Longboat Drive drug operation case in which Buczkowski was involved. (ECF No. 62 at 32-33). Even an unreasonable opinion or unwarranted conclusion is fully protected. *Lewis v. Time, Inc.*, 710 F.2d 549, 555 (9th Cir. 1983).[22] Plaintiffs do not challenge this, instead making a semantic argument that because the Motion used the word "conclude" these statements were factual. (ECF No. 78 at 24-25). This is nonsense. Plaintiffs' argument boils down to a mere disagreement with the conclusions that

[19] Available at: https://www.chicagobooth.edu/mba/full-time/admissions/class-profile.
[20] Available at: https://www.chicagobooth.edu/mba/part-time/admissions/class-profile.
[21] Available at: https://www.usnews.com/education/best-graduate-schools/top-business-schools/articles/2018-03-29/weigh-if-a-part-time-mba-program-is-the-right-fit#:~:text=In%20general%2C%20even%20the%20most,percent%20of%20part%2Dtime%20applicants.
[22] Plaintiffs attempt to distinguish this case on the fact, but miss the point of this citation. It is black-letter law that an opinion based on disclosed facts, no matter how unreasonable or unwarranted, is protected.

RANDAZZA | LEGAL GROUP

Mulvehill and Defendants drew based on disclosed facts.[23] Even these "illogical inferences," as Plaintiffs call them, are protected opinion that cannot form the basis for a defamation claim.[24]

2.5.1.3 Plaintiffs' Business Practices and Cornelia Nominating Buczkowski for a "Charlatan of the Year" Award

As explained in Section 2.2, *supra*, Plaintiffs do not even argue that the statements regarding their business practices and Cornelia nominating Buczkowski for a "Charlatan of the Year" award are false. This is obviously a statement of opinion that cannot be defamatory. (ECF No. 62 at 34). By waiving argument, Plaintiffs concede that these statements are not defamatory. Even without this waiver, discovery following the filing of this Motion shows that many of the statements about Plaintiffs' business practices are true or substantially true. *See* ECF 162 at 11-12.

2.5.2 Plaintiffs are Public Figures and Must Satisfy Actual Malice

Plaintiffs, ignoring the mountain of evidence that they are (at least) limited-purpose public figures, argue that they are not public figures merely by virtue of an aggressive advertising campaign. They are correct that merely *trying* to become well-known in a field is not sufficient to show public figure status. They fail to notice that Plaintiffs actually achieved the notoriety they sought when dozens of media outlets published articles, podcasts, and videos about them. (*See* ECF No. 62-2 and 62-3 at **Exhibits 5 and 5-1**). They claim to have obtained this media attention specifically to counter the alleged negative effects of the exact same complained-of statements originally published by Mulvehill, acknowledging the existence of a public dispute prior to any of

[23] Plaintiffs concede that the Court may take judicial notice of the existence of the filings in the Longboat Drive case and the criminal complaint against Timothy Lantz. Their existence, and the fact that Defendants reviewed them before publishing, are the only things relevant here. The truth of the allegations does not matter, only that Defendants were aware of them. Plaintiffs do not argue that there was anything implausible or inaccurate about these allegations, either, only that Defendants should have drawn a different conclusion from them.

[24] Plaintiffs claim that they have shown the statements regarding Larson Consulting are false due to Plaintiffs' own testimony that RSD was Larson's biggest client. ECF No. 172 at 10. But the legitimacy of Larson is still an open question, given that it provided false information to the Nevada Secretary of State, its claimed address on its tax returns is the residential address of Carlos Huerta (who has nothing to do with the business), and Larson does nothing at this address.

RANDAZZA | LEGAL GROUP

Defendants' videos being published. Wealthy Trans. at 172:10-174:3; Buczkowski 3rd Trans. at 130:4-22 & 131:18-132:12.[25]

A public debate regarding the quality of Plaintiffs' services did exist because Plaintiffs themselves made this an issue and these media outlets shone a spotlight on their claims. Multiple Circuit Courts, including this Circuit, have found that such an "advertising blitz" makes one a public figure. *See Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 268-69 (9th Cir. 2013) (plaintiff was a limited-purpose public figure because its "aggressive advertising campaign . . . invited public attention, comment, and criticism"); *see also Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 273-74 (3d Cir. 1980) (widespread advertising campaign by plaintiff showed that it "voluntarily injected itself into a matter of public interest – indeed, it appears to have created a controversy – for the purpose of influencing the consuming public").

Plaintiffs argue that they are not public figures and attempt to distinguish the above cases, limiting that analysis to the select categories of statements that they actually address in their Opposition, thereby conceding that they are public figures as to all other statements. (ECF No. 78 at 26). But Plaintiffs then argue that the statements about his involvement in a marijuana grow operation, money laundering, and his education credentials are all directly related to the quality of Plaintiffs' services and whether Plaintiffs can be trusted, a public controversy in which they

[25] Plaintiffs proudly advertise these media appearances. (*See* ECF No. 62-1 at **Exhibits 1** and **3**; ECF No. 62-2 at **Exhibit 5**; ECF No. 62-3 at **Exhibits 5-1** and **7**). They have a millions-strong social media following. (*See* ECF No. 1 at ¶¶ 20-21; ECF No. 62-1 at **Exhibits 1 and 4**). They advertise their services through numerous social media outlets and advertise directly to clients via email and SMS texts. Wealthy Trans. at 55:17-57:21. Buczkowski also aggressively marketed his "dating coach" services and there was plenty of internet commentary about Plaintiffs' services and the specific complained-of statements prior to publication of the videos. (*See* ECF No. 62-3 at **Exhibits 7-12**). Buczkowski's notoriety as a dating coach with RSD is highly relevant to Wealthy as well, given that Plaintiffs still advertise and provide dating coach services and consider there to be significant overlap between these clients and wealth coaching clients. Wealthy Trans. at 51:1-13, 52:12-18, 59:17-60:12, 60:16-23, 62:3-13; Buczkowski 3rd Trans. at 119:25-121:20. They even went so far as to poach RSD clients by giving such clients credits for their own dating coach services. Wealthy Trans. at 104:5-106:1.

RANDAZZA | LEGAL GROUP

voluntarily placed themselves. (*See* ECF No. 78 at 28). As with their arguments on the relevant issue of public interest, Plaintiffs cannot avoid public figure status by trying to cherry-pick the relevant public controversy.

2.5.3 Defendants Did Not Publish with Actual Malice

Plaintiffs must show with clear and convincing evidence that Defendants published with actual malice – knowledge of falsity or reckless disregard for the truth. (ECF No. 62 at 34-35).[26]

Plaintiffs simply handwave actual malice. They claim that "[t]he videos are riddled with obscenities and disdain for Plaintiffs and Defendants demonstrated a reckless disregard for the veracity of the statements through failure to responsibly research . . . or verify the statements." (ECF No. 78 at 27). But they fail to explain how a video "riddled with obscenities and disdain" shows actual malice on the part of Defendants, *who did not make these statements*, nor do they explain how Defendants' alleged failure to investigate shows actual malice given that Defendants were not required to perform any investigation at all.[27] They also cite Mulvehill's animosity toward Buczkowski. ECF No. 78 at 27-28. But Cornelia testified that this animosity did not affect his opinion of Buczkowski's credibility. ECF No. 62-3 at **Exhibit 6**, transcript pages 74:22-75:6. Despite Mulvehill's alleged bias, Cornelia found Mulvehill's statements believable because Mulvehill's prior videos about Plaintiffs, which contain the same statements, were still available on YouTube months after publication. (ECF No. 62-3 at **Exhibit 6**, transcript pages 75:3-76:4,

[26] The defendant must have published with a subjective high degree of awareness of the statement's probable falsity. *Pegasus*, 118 Nev. at 719. A mere failure to investigate is not sufficient, and a defendant may rely on third-party sources unless there is an obvious reason to doubt their reliability. *Reader's Digest Assn. v. Superior Court*, 690 P.2d 610, 619 (Cal. 1984).

[27] "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." *Murray v. Bailey*, 613 F. Supp. 1276, 1280 (N.D. Cal. 1985); *see St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) (finding that defendant's reliance solely on a possibly hostile source when making accusations of criminal conduct did not constitute actual malice).

RANDAZZA | LEGAL GROUP

79:16-80:9, 86:21-87:12).[28] Plaintiffs also failed to address Cornelia's reasonableness in finding Mulvehill credible because of Mulvehill's claims and evidence regarding the poor quality and fraudulent nature of Plaintiffs' services. By failing to show that any of these statements were false or that any of this evidence was unreliable, Plaintiffs admit that Mulvehill was a credible source, and they fail to explain how this evaluation of credibility should not apply to Cornelia trusting him as to the other statements at issue.[29]

2.6 The Intentional Infliction of Emotional Distress Claim Fails

Plaintiffs' IIED claim fails for both a lack of extreme or outrageous conduct and a lack of any severe emotional distress. Plaintiffs fail to provide any authority or evidence that the statements at issue were extreme or outrageous; they simply make the allegation with no support. Allowing a person to make claims in a video is not extreme or outrageous behavior that is "outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4 (1998). It is commonplace for a self-professed wealth coach who actively seeks out and achieves widespread media attention to be scrutinized.

There is also no dispute that Buczkowski has suffered no emotional distress. Buczkowski has provided no evidence of emotional distress and, throughout the course of discovery, has only identified alleged economic and reputational harm. There is not a scintilla of evidence, admissible or otherwise, of distress. All Plaintiffs point to is an allegation in their Complaint, which cannot defeat a motion for summary judgment. The IIED claim must be dismissed.

---

[28] In addition to Cornelia's unequivocal testimony regarding his lack of actual malice, Mulvehill testified that (1) Mulvehill never told Cornelia that the information on which his statements were based was unreliable or that he didn't believe them; (2) Mulvehill did not provide false statements to Cornelia regarding the facts stated in the videos; (3) Mulvehill never told Cornelia that Cornelia shouldn't consider Mulvehill's statements to be reliable; (4) Mulvehill had no reason to believe Cornelia thought Mulvehill was lying, mistaken, or otherwise being dishonest in any of the videos; and (5) Cornelia had no reason not to trust Mulvehill. Mulvehill Trans. at 284:2-285:4 & 286:1-3.

[29] Another fatal defect with the defamation claim is that Plaintiffs cannot establish damages, as discussed in Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment (ECF No. 162 at 25-28) and Mulvehill and JAL's Motion for Partial Summary Judgment (ECF No. 171 at 18-19).

RANDAZZA | LEGAL GROUP

2.7 Plaintiffs' Business Disparagement Claim Fails

As discussed in the Motion, Plaintiffs' business disparagement claim fails for the same reasons the defamation claim fails. Indeed, this claim *must* be dismissed in light of Plaintiffs' Opposition. They have failed to provide any argument or evidence that the only statements actually regarding the quality of their goods or services are false. And as explained in the Opposition to Plaintiffs' Motion, there is no non-speculative evidence that the only statements actually addressed by Plaintiffs caused any damages. ECF No. 162 at 25-28; ECF No. 171 at 18-19).

3.0 CONCLUSION

The Court should grant summary judgment in Defendants' favor on all claims and award costs and attorneys' fees under NRS 41.670 and 15 U.S.C. § 1117.

Dated: March 20, 2023.

Respectfully Submitted,
/s/ Marc J. Randazza
Marc J. Randazza, NV Bar No. 12265
Alex J. Shepard, NV Bar No. 13582
Randazza Legal Group, PLLC
2764 Lake Sahara Drive, Suite 109
Las Vegas, Nevada 89117

Attorneys for Defendants
Spencer Cornelia, Cornelia Media LLC,
and Cornelia Education LLC

RANDAZZA | LEGAL GROUP

Case No. 2:21-cv-01173-JCM-EJY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 20, 2023, 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 being served via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Marc J. Randazza
Marc J. Randazza

RANDAZZA | LEGAL GROUP