IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BAILEY BROADRICK, Plaintiff, v. NICHOLAS GILROY, Defendant.	Case No. 3:24-cv-01772

PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE

Defendant, Nicholas Gilroy, engaged in a campaign to terrorize the plaintiff, Bailey Broadrick. From the beginning of their relationship, Gilroy weaponized an imbalance of power between himself and Broadrick to coerce her into sending him nude photos. She did so, relying on his promise that they would all be kept private. After Broadrick broke up with Gilroy, he launched an online campaign to terrorize her. Gilroy posted the private photos online, expressing his desire to "expose" her all over the Internet. *See* Complaint at ¶ 48; ECF No. 1-11. From this, Broadrick discovered that Gilroy had photographed her naked while she was unconscious, sleeping off the exhaustion from cancer treatment, and he posted these photos online as well. Complaint at ¶ 85; ECF No. 1-46. He did not stop there. Gilroy created and published deepfakes of Broadrick engaged in sexual acts to further humiliate her. *See* Complaint at ¶ 89; ECF No. 1-47 & 1-48. He also solicited people to message Broadrick on LinkedIn, and shared identifying information in screenshots to make his desired harassment easier. *See* Complaint at ¶ 40; ECF No. 1-6. He even reached out to her family to send the photos to them, to further disgrace and embarrass her. *See* Complaint at ¶ 92; ECF No. 1-49.

Gilroy has been on a lengthy willful and malicious campaign of retaliation against

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Broadrick. To seek justice, Broadrick has brought the following claims against Gilroy in her Verified Complaint: 1) Disclosure of Intimate Images (15 U.S.C. § 6851); 2) Negligent Infliction of Emotional Distress; 3) Intentional Infliction of Emotional Distress; 4) Unreasonable Publicity Given to Private Life; 5) False Light; and 6) Promissory Estoppel. Rather than answering these claims, Gilroy filed a motion to strike under Fed. R. Civ. P. 12(f) (ECF No. 25). There is nothing redundant, immaterial, impertinent, or scandalous about the Verified Complaint save for it truthfully relaying Gilroy's own offensive conduct. The motion should, therefore, be denied.

1.0 Legal Standard

Recently, the Court summarized the requirements to prevail on a Rule 12(f) motion as follows:

> Federal Rule of Civil Procedure 12(f) provides: "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Motions to strike are generally "disfavored and granted only if there is strong reason to do so." *Holland v. Chase Bank United States, N.A.*, 475 F. Supp. 3d 272, 275 (S.D.N.Y. 2020) (citation omitted). "'Immaterial' matter is that which has no essential or important relationship to the claim for relief, and 'impertinent' material consists of statements that do not pertain to, and are not necessary to resolve, the disputed issues." *Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217, 225 (E.D.N.Y. 2015) (citation omitted). "A scandalous allegation is one that reflects unnecessarily on the defendant's moral character, or uses repulsive language that detracts from the dignity of the court." *Id.* (citation omitted).
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> "To prevail on a 12(f) motion, the moving party must demonstrate that: '(1) no evidence in support of the allegations would be admissible; (2) that the allegations have no bearing on the issues in the case; and (3) that to permit the allegations to stand would result in prejudice to the movant.'" *Id.* (*quoting Roe v. City of New York*, 151 F. Supp. 2d 495, 510 (S.D.N.Y. 2001)). A showing of prejudice is a necessary part of a Rule 12(f) motion to strike. *See Gssime v. Nassau Cnty.*, 2014 U.S. Dist. LEXIS 26122, 2014 WL 810876, at *2 (E.D.N.Y. Feb. 28, 2014) (citing cases).

Jordan v. Dep't of Corr., No. 3:23-cv-855 (VAB), 2024 U.S. Dist. LEXIS 194828, at *3 (D. Conn. Oct. 25, 2024); *see also Salgado v. United States Liab. Ins. Co.*, No. 3:23-cv-01233 (VAB), 2024 U.S. Dist. LEXIS 122722, at *6 (D. Conn. July 12, 2024) quoting *Lamoureux v. AnazaoHealth*

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Corp., 250 F.R.D. 100, 102 (D. Conn. 2008) ("Striking a pleading has been described as a 'drastic remedy' and 'to prevail on a motion to strike, the movant must clearly show that the challenged matter has no bearing on the subject matter of the litigation and that its inclusion will prejudice the movant.'"). Gilroy fails to make the necessary showing.

2.0 Analysis

Gilroy's motion reads more like a Connecticut Practice Book § 10-35 request to revise than a motion to strike—it is conclusory and provides almost no argument in support of the requested relief. The first nine provisions Gilroy seeks to strike merely say the relevant paragraphs are immaterial and impertinent—thus, they should not be stricken for failure to demonstrate that (1) no evidence in support of the allegations would be admissible; (2) that the allegations have no bearing on the issues in the case; and (3) that to permit the allegations to stand would result in prejudice to Gilroy. Similarly, the paragraphs identified in numbers 10-15 are all based on the same theory—that it is improper to cite the law in the Verified Complaint, none of which relates to the factors required under Rule 12(f). In fact, Gilroy does not even claim such are redundant, immaterial, impertinent, or scandalous matter. As to number 16, Gilroy seeks to strike Count VI, but it is argued more as if it there were a failure to state a claim, rather than show that it is prejudicial or otherwise meets the requirements of Rule 12(f). None of the arguments have merit.

2.1 There is Nothing Immaterial or Impertinent

Gilroy claims that the Introduction and paragraphs 20, 25, 97, and 100-105 are immaterial and impertinent. They are not.

The Introduction reads as follows:

> *"Exposing Bailey Broadrick's nudes without her consent makes me cum so fucking hard."*

That is what the Defendant wrote when posting the Plaintiff's photos. *See* **Exhibit 1**.

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> One could have a moral compass pointing straight to Dante's Ninth Circle of Hell and still be appalled by the Defendant's conduct. Mr. Gilroy weaponized an imbalance of power between himself and Ms. Broadrick to coerce her into sending him nude photos. She did so, relying on Gilroy's promise that they would all be kept private. But he was not content to collect photos he could coerce out of her. Gilroy went to a shocking level of depravity by taking surreptitious nude photos of Broadrick when she was unconscious, sleeping off the exhaustion from cancer treatment.
>
> Up to that point, Gilroy seems to have only collected these photos for his own enjoyment. That changed after Broadrick dumped Gilroy. After that, he began publishing the photos online, and he ramped up the humiliation by creating and publishing deepfakes of Broadrick engaged in sexual activity. He also solicited people to message Plaintiff Broadrick on LinkedIn, and shared identifying information in screenshots to make his desired harassment easier. Not content with this level of harassment, he even sent the photos to her family.
>
> Gilroy wrote: "Bailey Broadrick would be in tears if she knew how many guys were jerking to her naked body." He was right. She was in tears. She was beaten down. But she is now fighting back and wants justice for what Gilroy did to her.

As previously set forth, "'Immaterial' matter is that which has no essential or important relationship to the claim for relief, and 'impertinent' material consists of statements that do not pertain to, and are not necessary to resolve, the disputed issues." *Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217, 225 (E.D.N.Y. 2015) (citation omitted). The Introduction provides an overall summary and purpose for the lawsuit, placing Gilroy's confessed misdeeds front and center. Courts do not typically strike an introduction without a demonstration of prejudice, and Gilroy does not even *argue* prejudice. *See, e.g., Oswalt v. Rekeweg*, 2017 U.S. Dist. LEXIS 184138, at *4-5 (N.D. Ind. Nov. 7, 2017) ("Defendants' failure to describe, with particularity, how [Defendants] would be prejudiced by the [three-page introduction] is fatal to their motion to strike."); *Mark Andy, Inc. v. Cartonmaster Int'l (2012), Inc.,* 2014 U.S. Dist. LEXIS 171886, at *4 (E.D. Mo. Dec. 12, 2014) ("At most, the Introduction is redundant, because it includes some facts that are addressed later in enumerated paragraphs. However, the Court does not find that this redundancy alone warrants striking the Introduction in the absence of some prejudice to

Defendants.") As Gilroy does not specify which part of the Introduction he finds problematic, and fails to even attempt to assert prejudice, the request to strike the Introduction should be denied.

Paragraph 20 states: "In 2020, Defendant flew to Arizona to visit Plaintiff while she was undergoing treatment and chemotherapy for cancer." This paragraph is neither impertinent nor immaterial, as it sets forth the circumstances under which Defendant exploited Plaintiff's trust when she was at her most vulnerable and engaged in interstate commerce for the purpose of committing his egregious actions. Plaintiff's testimony about these facts will demonstrate to the jury that the injuries were not merely the betrayal of trust that accompanies all revenge porn cases, but that Defendant's actions were especially harmful. Similarly, although revenge porn in and of itself may be extreme and outrageous conduct in support of Plaintiff's claim for intentional infliction of emotional distress, the circumstances here should leave no doubt they are extreme and outrageous. *See Carrol v. Allstate Ins. Co*., 262 Conn. 433, 443 (2003) (setting forth elements of IIED claim). They also, otherwise, set forth the opportunity Gilroy had to procure images without her knowledge or consent. The request to strike ¶ 20 should be denied.

Paragraph 25 states: "Plaintiff began dating someone else. She cut ties with Defendant and ceased communicating with him." This paragraph is neither impertinent nor immaterial, as it sets forth the likely motive Gilroy had to harm Broadrick. Common-law punitive damages are recoverable "when the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights." *Vandersluis v. Weil*, 176 Conn. 353, 358, 407 A.2d 982 (1978). Demonstrating his motive will demonstrate Gilroy's actions were intentional and wanton. The request to strike ¶ 25 should be denied.

Paragraph 97 states: "Upon retaining counsel, Plaintiff felt empowered for the first time in years." This paragraph is neither impertinent nor immaterial, as it sets forth the method by which

Plaintiff has mitigated her emotional distress damages. Similarly, it would tend to undermine any defense of laches, should one be asserted. *See, e.g., Romag Fasteners, Inc. v. Fossil, Inc*., 29 F. Supp. 3d 85, 104 (D. Conn. 2014) (subsequent appellate history on other grounds omitted). The request to strike ¶ 97 should be denied.

Paragraph 100 states: "Upon receiving the slightest bit of pushback and the slightest sign of Plaintiff Broadrick's refusal to be a defenseless victim, Defendant decided to retreat from his sociopathic campaign to harass Plaintiff Broadrick." This paragraph is neither impertinent nor immaterial, as it sets forth the method by which Plaintiff has mitigated her damages. Similarly, it would tend to undermine any defense of laches, should one be asserted. The request to strike ¶ 100 should be denied.

Paragraph 101 states: "While it was always obvious that Defendant Gilroy was the individual who posted these photographs of Plaintiff online, Defendant Gilroy's response to Broadrick's act of defiance confirmed his identity as the perpetrator of the campaign to terrorize her." This paragraph is neither impertinent nor immaterial, as it sets forth the method by which Plaintiff confirmed Gilroy was the tortfeasor. The request to strike ¶ 101 should be denied.

Paragraph 102 states: "Broadrick's defiance continues in the form of this lawsuit, as Defendant must be held accountable for his actions. Despite having locked the photos the moment he met resistance, his prior actions require injunctive relief lest he disturb the status quo and republish them or otherwise distribute them. Additionally, Defendant's posts still populate on online searches." This paragraph is neither impertinent nor immaterial, as it sets forth the need for injunctive relief sought in the matter—the harm is ongoing. "To obtain standing for injunctive relief, a plaintiff must show that there is reason to believe that he would directly benefit from the equitable relief sought." *Plumley v. Landmark Chevrolet, Inc*., 122 F.3d 308, 312 (5th Cir. 1997).

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Thus, this paragraph shows that a permanent injunction would redress Plaintiff's injuries. The request to strike ¶ 102 should be denied.

Paragraph 103 states: "Plaintiff does not know if Defendant has published the photos elsewhere." This paragraph is neither impertinent nor immaterial, as it elucidates the need for the injunctive relief sought. It leaves open the possibility that damages and injunctive relief are not to be cabined to the publications of which Plaintiff is aware, which may be further determined through discovery, if Gilroy is cooperative. The request to strike ¶ 103 should be denied.

Paragraph 104 states: "Plaintiff is currently in remission from ovarian cancer. During recent doctor visits, her treating physician informed her that stress is causing her cancer markers to increase." This paragraph is neither impertinent nor immaterial, as it sets forth the physical manifestation necessary to meet the elements of negligent infliction of emotional distress, *i.e.* the emotional distress was severe enough that it might result in illness or bodily harm. *See Carrol v. Allstate Ins. Co*., 262 Conn. 433, 444 (2003). The request to strike ¶ 104 should be denied.

Paragraph 105 states: "Gilroy's unlawful, harassing, and sociopathic actions are the most significant source of stress in Plaintiff's life, and the only source of stress severe enough to cause her cancer markers to increase. Gilroy knows that the Plaintiff is in this physical condition, and his harassment campaign is knowing and willful and done for the purpose or harming Plaintiff. This is not mere negligence, this is knowingly and willfully causing harm." This paragraph is neither impertinent nor immaterial, as it sets forth the harm and intent to harm, relevant to both her IIED claim and for punitive damages, *i.e.* a reckless indifference to Broadrick's rights or an intentional and wanton violation of those rights. The request to strike ¶ 105 should be denied.

2.2 The Court Should Not Strike Statements of the Governing Law

Gilroy claims paragraphs 123, 131, 132, 143, 144, and 151 of the Verified Complaint should be stricken (Requests to Strike Nos. 10-15) because they "do[] not state facts but rather a

conclusion of law found in a prior case" and are, therefore, improper under Fed. R. Civ. P. 10(b).

Paragraph 123 sets forth the elements of a claim for negligent infliction of emotional distress. Paragraphs 131 & 132 set forth the elements of a claim for intentional infliction of emotional distress, highlighting that revenge porn is routinely determined to meet the element of "extreme and outrageous" conduct. Paragraphs 143 & 144 set forth the elements of a clam for invasion of privacy through publicity concerning private life, highlighting that revenge porn satisfies these elements. And ¶ 151 sets forth the elements of false light invasion of privacy.

Notably, none of Gilroy's arguments are addressed to the requirements of Rule 12(f), even though the motion is otherwise brought thereunder. Thus, for failure to argue, let alone demonstrate, that they should be stricken, the motion to strike these paragraphs should be denied.

There is nothing improper about pleading the applicable legal framework. It helps guide the Court and the parties as to what the plaintiff expects he/she must plead and prove in the case. As Judge Easterbrook put it, "A drafter who lacks a legal theory is likely to bungle the complaint (and the trial); you need a theory to decide which facts to allege and prove. But the complaint need not identify a legal theory, and specifying an incorrect theory is not fatal." *Bartholet v. Reishauer A.G.*, 953 F.2d 1073, 1078 (7th Cir. 1992). Although Gilroy argues that Rule 10(b) "prescribes that a party state its claim limited to the circumstances that support the cause of action alleged[,]" it says nothing about whether one can plead the law; it is solely about numbering paragraphs and keeping them simple. It reads:

> Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

Fed. R. Civ. P. 10(b). The law is part of the circumstances that give rise to a claim. While one is

not required to plead it, Gilroy offers nothing to suggest a plaintiff is prohibited from pleading the law. Moreover, "[a]lthough that Rule contains important guidelines for the form of pleadings in federal court, we hold that harmless violations of the Rule should be excused so that claims may be resolved on their merits." *Phillips v. Girdich*, 408 F.3d 124, 125 (2d Cir. 2005). Merely stating applicable law in a complaint, assuming *arguendo* it violates the rule, is harmless. Under Rule 10(b), "where the absence of numbering or succinct paragraphs does not interfere with one's ability to understand the claims or otherwise prejudice the adverse party, the pleading should be accepted." *Phillips, supra* at 128. Gilroy does not argue any prejudice. Thus, the Verified Complaint should be accepted as-is and the motion should be denied.

2.3 The Promissory Estoppel Count Should Not be Stricken

Gilroy asks, in his sixteenth request, that Count VI, for promissory estoppel, be stricken because he says the allegations sound under federal statute or common law tort. Once more, this argument is not properly a Rule 12(f) argument, as there is nothing impertinent, immaterial, or otherwise objectionable about the allegations of that cause of action, and there is not argument of prejudice. In essence, Gilroy is *sub silentio* moving to dismiss under Rule 12(b)(6).

As the Court recently put it:

> In reviewing a complaint under Rule 12(b)(6), a court applies a "plausibility standard" guided by "[t]wo working principles." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). First, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.; see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." (alteration in original) (citations omitted)). Second, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679. Thus, the complaint must contain "factual amplification . . . to render a claim plausible." *Arista Records LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) (*quoting Turkmen v. Ashcroft*, 589 F.3d 542, 546 (2d Cir. 2009)).

Raymond v. Manchester Police Dep't, No. 3:24-cv-1098 (VAB), 2024 U.S. Dist. LEXIS 221033, at *4 (D. Conn. Dec. 6, 2024). Broadrick has properly stated a claim for promissory estoppel.

Gilroy promised Broadrick he would hold the intimate images of her in confidence. *See* Complaint at ¶ 12. He broke that promise and is liable to Broadrick for it. To claim promissory estoppel in Connecticut, a plaintiff must plead and ultimately prove "(1) the promisor has failed to honor a clear and definite promise that (2) the promisor reasonably should expect to induce detrimental action or forbearance on the part of the promisee or a third person, and (3) the promise does, in fact, induce detrimental action or forbearance in reasonable reliance on the promise." *Int'l Supply, LLC v. Hudson Meridian Constr. Grp., LLC*, 2024 U.S. Dist. LEXIS 29294, *11 (D. Conn. 2024); *see also Kent Literary Club v. Wesleyan Univ.*, 338 Conn. 189, 210 (2021). Broadrick and Gilroy made clear and definite promises to one another that the photographs posted to their shared iCloud album would not be shared with any third parties. *See* Complaint at ¶ 159. Broadrick would not have shared those photographs if not for Gilroy's clear and definite promise, and she relied upon this clear and definite promise not to disseminate her photographs to third parties when she shared intimate photos with Gilroy. *See* Complaint at ¶ 160. Gilroy knew or should have known Broadrick relied on his promise because she made it clear that the promise was a condition to her agreement to share intimate photos. *See* Complaint at ¶ 161. Gilroy induced detrimental action or forbearance in Broadrick by agreeing to Broadrick's condition of confidentiality to share intimate photos. *See* Complaint at ¶ 162. Gilroy did not keep his clear and definite promise to Broadrick and instead disseminated the intimate photographs of her to third parties. *See* Complaint at ¶ 163. Thus, Broadrick properly alleged facts in support of her claim for promissory estoppel.

Gilroy is correct that a claim for promissory estoppel sounds in contract. *See Collins v. S. New Eng. Tel. Co.*, 617 F. Supp. 2d 67, 81 (D. Conn. 2009). A plaintiff is not prohibited from

raising claims that sound in both tort and contract. *Compare Diamond v. Calaway*, 2019 U.S. Dist. LEXIS 186674, at *19 (S.D.N.Y. Oct. 25, 2019) ("Plaintiff's causes of action sound in both contract and tort. Therefore, the Court examines Plaintiff's damages under the lenses of both contract and tort law.") Rules 8(d)(2) & (3) allow a party to "alternative and inconsistent legal theories." *Zamichiei v. CSAA Fire & Cas. Ins. Co*., No. 3:16-cv-739 (VAB), 2018 U.S. Dist. LEXIS 26956, at *21 (D. Conn. Feb. 20, 2018) "Inconsistency is acceptable because, at the end of the day, only one of these positions can obtain, and the pleader is limited to a single recovery no matter how many different (and conflicting) theories it offers." *Astor Chauffeured Limousine Co. v. Runnfeldt Inv. Corp*., 910 F.2d 1540, 1548 (7th Cir. 1990). There is no prohibition in pleading the claim of promissory estoppel and the claim was properly pled. The motion should be denied.

3.0 Conclusion

Gilroy committed despicable acts and must be held accountable. As part of that accountability, and in order to plead the facts and the law governing Broadrick's claims, the introduction, identified paragraphs, and Count VI were properly asserted. Gilroy offers no meaningful argument as to why any part of the Verified Complaint should be stricken. The Court should require him to answer the Verified Complaint as is.

WHEREFORE Plaintiff respectfully requests this Honorable Court deny the motion to strike.

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Dated: January 15, 2025

Respectfully submitted,

/s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I hereby certify that, on January 15, 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Marc J. Randazza
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