

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 71

24STCV05072

RACHEL LEVISS vs THOMAS SANDOVAL, et al.

July 11, 2024

8:30 AM

Judge: Honorable Daniel M. Crowley

Judicial Assistant: A. Danelian

Courtroom Assistant: D. Major

CSR: Linda Comstock, CSR # 3741

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Bryan J. Freedman and Jason H. Sunshine (In Person) and Mark Geragos, Jennifer Hisel, and Kimberly Casper Via LACourtConnect

For Defendant(s): Tara Karamians for Varand Gourjian Via LACourtConnect; Margo Arnold and Jordan Susman for Ariana Madix Via LACourtConnect

NATURE OF PROCEEDINGS: Hearing on Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion); Case Management Conference

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Linda Comstock, CSR # 3741, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The above matters are called for hearing.

The Court has read and considered all documents filed hereto regarding the above-captioned Motion. Counsel are given the opportunity to argue. After hearing oral argument, the Court rules as follows:

The Court takes the Hearing on Special Motion to Strike under CCP Section 425.16 (AntiSLAPP motion) under submission.

Case Management Conference is held and the following dates are set:

Status Conference is scheduled for 05/07/2025 at 08:30 AM in Department 71 at Stanley Mosk Courthouse.

Counsel are ordered to file a Joint Status Report is due on or before 04/30/2025.

Final Status Conference is scheduled for 10/24/2025 at 09:30 AM in Department 71 at Stanley Mosk Courthouse.

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Parties are ordered to appear in person for the Final Status Conference hearing. Parties are ordered to deliver their trial binders to the department on 10/22/2025. Parties are directed to review the Final Status Conference procedures posted on the Court's website.

Jury Trial (5-6 Day Estimate) is scheduled for 11/03/2025 at 10:00 AM in Department 71 at Stanley Mosk Courthouse.

Jury fees are to be paid within 14 days from today. Trial by jury will be deemed to have been waived if fees are not posted.

Notice is waived.

****LATER****

The Court having taken the Special Motion to Strike under CCP Section 425.16 (AntiSLAPP motion) under submission, now rules as follows:

Defendant Ariana Madix's special motion to strike Plaintiff Rachel Leviss' 2nd, 3rd, and 4th causes of action alleged against her in Plaintiff's Complaint is denied.

Defendant Ariana Madix ("Madix") ("Moving Defendant") moves for a special motion to strike the three causes of action alleged against her in Plaintiff Rachel Leviss' ("Leviss") ("Plaintiff") Complaint, namely, the 2nd (violation of Civil Code §1708.85), 3rd (invasion of privacy), and 4th (intentional infliction of emotional distress) causes of action. (Notice of Motion, pgs. 2-3; C.C.P. §425.16.) Moving Defendant moves on the grounds that the causes of action alleged against her are barred by C.C.P. §425.16 because (1) they arise from Madix's constitutionally protected right of free speech; and (2) Plaintiff cannot establish, by evidence admissible at trial, a reasonable probability of prevailing on the causes of action alleged against Madix. (Notice of Motion, pg. 2.)

CRC Violations

CRC Rule 3.1354(b) provides, in part:

All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections to specific evidence must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement. *Each written objection must be*

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numbered consecutively.

(CRC, Rule 3.1345(b), emphasis added.)

Plaintiff's objections are in violation of CRC, Rule 3.1345(b) because they are not numbered consecutively. To avoid confusion, the Court numbers Plaintiff's objections consecutively.

Evidentiary Objections

Plaintiff's 6/27/24 evidentiary objections to the Declaration of Margo Arnold ("Arnold") are overruled as to Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, and 25, and sustained as to Nos. 1, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 26.

Madix's 7/3/24 evidentiary objections to the Declaration of Rachel Leviss ("Leviss") is sustained as to Nos. 1, 2, 3, 4, 5, and 6, and overruled as to Nos. 7, 8, 9, 10, and 11.

Background

Plaintiff filed her initial Complaint February 29, 2024, against Madix and Non-moving Defendant Thomas Sandoval ("Madix") (collectively, "Defendants") alleging four causes of action: (1) eavesdropping (Pen. Code §§632, 637.2); (2) revenge porn (Civ. Code §1708.85); (3) invasion of privacy; and (4) intentional infliction of emotional distress, arising from Plaintiff's involvement as a former cast member on "Vanderpump Rules," a reality television show. (*See* Complaint.)^[1]

Plaintiff alleges she is a former cast member of "Vanderpump Rules," ("Series" or "Show") a reality television show produced by Evolution Media ("Evolution") and broadcast by Bravo Media ("Bravo"), an asset of NBCUniversal ("NBC") (collectively, "Bravo"), which premiered in 2013. (Complaint ¶¶1, 13.) Plaintiff alleges the series revolves around the staff at Lisa Vanderpump's ("Vanderpump") restaurants in West Hollywood: SUR Restaurant & Lounge, Pump Restaurant, and Tom Tom Restaurant & Bar. (Complaint ¶13.) Plaintiff alleges Vanderpump, a British restaurateur and former "Real Housewives of Beverly Hills" cast member, is the central figure of the series, which focuses on her employees' drama-filled personal and professional lives. (Complaint ¶13.) Plaintiff alleges the show has aired continuously for over a decade, and its 11th season premiered on January 30, 2024. (Complaint ¶13.)

Plaintiff alleges she was a cast member on "Vanderpump Rules" from 2016 to 2023. (Complaint ¶14.) Plaintiff alleges she made her first appearance on "Vanderpump Rules" as the girlfriend of cast member James Kennedy ("Kennedy"), a DJ prone to violent outbursts and grappling with long-standing substance abuse issues and emotional dysregulation. (Complaint ¶15.) Plaintiff alleges Kennedy would regularly berate Plaintiff, falsely accuse her of cheating, and act in a generally unhinged manner. (Complaint ¶15.) Plaintiff alleges some of this was

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captured on camera, and some was not. (Complaint ¶15.) Plaintiff alleges she eventually warned Kennedy that she would leave him if he did not stop drinking. (Complaint ¶15.) Plaintiff alleges soon after, she learned Kennedy's behavior was not solely a function of alcohol abuse. (Complaint ¶15.) Plaintiff alleges at Thanksgiving with her family in Arizona, Kennedy erupted at Plaintiff's mother and father and kicked her family dog four times in an uncontrollable rage. (Complaint ¶15.)

Plaintiff alleges in 2021, she ended her relationship with Kennedy and broke off their engagement. (Complaint ¶15.) Plaintiff alleges Kennedy's history of violent and dangerous behavior was well-known by Bravo, Evolution, and the cast. (Complaint ¶15.) Plaintiff alleges Kennedy once physically assaulted then-cast member Kristin Doute on camera; however, the footage never aired. (Complaint ¶15.) Plaintiff alleges Kennedy has not faced any repercussions for his actions, which, at a minimum, would be grounds to fire him, due in part to the intervention of Vanderpump, his ally who has served as his protector. (Complaint ¶15.)

Plaintiff alleges in 2021, after three seasons as a recurring character, she was cast as a lead on the Show. (Complaint ¶16.) Plaintiff alleges at the same time, she was in a vulnerable state due to the breakdown of her engagement with Kennedy, which was catalyzed by Kennedy's chronic substance abuse, emotional instability, and controlling behavior. (Complaint ¶16.) Plaintiff alleges that while she had previously moderated her alcohol intake because of Kennedy's heavy drinking, she began drinking much more heavily in the aftermath of her breakup with Kennedy. (Complaint ¶16.) Plaintiff alleges production and Sandoval encouraged her to increase her drinking because they believed it would make for better television, and readily provided alcohol for her consumption. (Complaint ¶16.)

Plaintiff alleges that by Season 10 of the Series, Kennedy had resumed drinking again and picked up a new girlfriend weeks after his breakup with Plaintiff. (Complaint ¶17.) Plaintiff alleges all of this caused untold harm to her mental health, inducing her to drink more and leaving her vulnerable to what followed. (Complaint ¶17.)

Plaintiff alleges she began confiding in Sandoval, a former bartender at Vanderpump's restaurant, SUR, and a cast member since Season 1 of the Show. (Complaint ¶18.) Plaintiff alleges Sandoval had been in a relationship with another cast member, Madix, since 2014. (Complaint ¶18.)

Plaintiff alleges that she was emotionally raw and affected by alcohol when she began to rely heavily on Sandoval for emotional support. (Complaint ¶19.) Plaintiff alleges that in turn, Sandoval began confiding in her about the dire state of his relationship with Madix, describing it as a business partnership and casting its end as foregone. (Complaint ¶19.) Plaintiff alleges, notwithstanding, Sandoval and Madix had been living together in Valley Village, Los Angeles. (Complaint ¶19.) Plaintiff alleges on or about August 10, 2022, she and Sandoval began sleeping together. (Complaint ¶20.) Plaintiff alleges her affair with Sandoval continued apace as Sandoval's relationship with Madix further deteriorated. (Complaint ¶20.)

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Plaintiff alleges that although her affair with Sandoval was purportedly a secret, it was in fact well known to many cast members and suspected by others. (Complaint ¶21.) Plaintiff alleges she and Sandoval were not particularly discrete. (Complaint ¶21.) Plaintiff alleges on information and belief that Madix knew about the affair as early as Fall 2022. (Complaint ¶21.) Plaintiff alleges in December 2022, Madix scolded Plaintiff and Sandoval for being handsy in public and admonished them to save the story for Season 11 of the Series. (Complaint ¶21.)

Plaintiff alleges at that time, “Vanderpump Rules” was facing an uncertain future. (Complaint ¶22.) Plaintiff alleges interest among the public had waned and the Show’s plot had grown stale. (Complaint ¶22.) Plaintiff alleges Madix was reportedly at risk of being cut from the Show. (Complaint ¶22.) Plaintiff alleges in the absence of a sticky new storyline, there is every reason to believe “Vanderpump Rules” would have been canceled. (Complaint ¶22.) Plaintiff alleges Madix was as aware of these pressures as Sandoval, and both were heavily invested financially and reputationally in the show remaining on the air. (Complaint ¶22.) Plaintiff alleges by extension, if Madix’s and Sandoval’s relationship was already on the rocks and if Sandoval was intent on brazenly carrying out an illicit affair with Plaintiff, then Madix and Sandoval had every incentive to leverage these salacious threads into the storyline “Vanderpump Rules” so desperately needed. (Complaint ¶22.) Plaintiff alleges that is precisely what happened. (Complaint ¶22.)

Plaintiff alleges on or about March 1, 2023, Sandoval was performing with his cover band at Tom Tom, a venue in West Hollywood, when his phone purportedly fell from his pocket and slid, unlocked or otherwise fully accessible, into the crowd. (Complaint ¶23.) Plaintiff alleges Sandoval’s phone was reportedly retrieved by a venue attendee and handed over to Madix, who searched Sandoval’s phone and found sexually explicit videos of Plaintiff. (Complaint ¶23.) Plaintiff alleges on information and belief that the explicit videos were recorded by Sandoval without Plaintiff’s knowledge or consent in or around February 2023. (Complaint ¶24.) Plaintiff alleges the two videos Plaintiff has seen depict Plaintiff in a state of undress and masturbating. (Complaint ¶24.) Plaintiff alleges given Sandoval’s apparent practice of secretly recording their video calls, Plaintiff has every reason to assume there are additional illicit videos and/or photographs of her that she has not yet seen. (Complaint ¶24.)

Plaintiff alleges on information and belief that Madix obtained at least two illicit videos of Plaintiff and distributed them and/or showed them to others without Plaintiff’s knowledge or consent. (Complaint ¶25.) Plaintiff alleges at a minimum, Madix circulated the illicit videos to herself and Plaintiff. (Complaint ¶25.) Plaintiff alleges Madix also immediately informed production about what she had found. (Complaint ¶25.) Plaintiff alleges many other individuals have demonstrated intimate familiarity with the videos’ contents, leading Plaintiff to believe the circle of recipients is wider. (Complaint ¶25.)

Plaintiff alleges on the night of March 1st, she was in New York with another cast member, Scheana Shay (“Shay”), taping the show, “Watch What Happens Live with Andy

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Cohen.” (Complaint ¶26.) Plaintiff alleges after filming, Plaintiff and Shay were at a bar when Plaintiff received a text from Madix that said, “you are DEAD TO ME[.]” (Complaint ¶26.) Plaintiff alleges alongside the message were the two videos of Plaintiff that Madix had purportedly discovered on Sandoval’s phone. (Complaint ¶26.) Plaintiff alleges she experienced a swirl of emotions in response, including shock and fear. (Complaint ¶26.) Plaintiff alleges she felt shock because she did not know Sandoval had recorded pornographic videos of her, and she felt fear because these videos were now in the hands of someone who hated her and was out for blood. (Complaint ¶26.) Plaintiff alleges she was terrified Madix would leak the videos on the internet. (Complaint ¶26.)

Plaintiff alleges that Shay then violently assaulted Plaintiff in a reaction to the revelation out of shock and anger. (Complaint ¶27.) Plaintiff alleges Shay shoved her into a brick wall, punched her in the face, and threw Plaintiff’s phone into the street. (Complaint ¶27.) Plaintiff alleges Shay’s blow to Plaintiff’s face caused a rupture above her left eyebrow and severe swelling and bruising above her left eye. (Complaint ¶27.) Plaintiff alleges she was told by a treating physician that her busted brow would permanently scar. (Complaint ¶27.) Plaintiff alleges that after, she was shaken and flew home the next day and told her family about what was happening. (Complaint ¶28.)

Plaintiff alleges news of the affair and its aftermath, dubbed “Scandoval,” broke on March 3, 2023, when TMZ first reported on the affair. (Complaint ¶29.) Plaintiff alleges this initial reporting was quickly followed by a torrent of follow-up stories. (Complaint ¶29.) Plaintiff alleges by March 4th, tabloids had already begun reporting on the pornographic videos of Plaintiff, citing unnamed sources. (Complaint ¶29.)

Plaintiff alleges that although filming for Season 10 had already wrapped, Bravo and Evolution had a camera crew ready for filming the following day. (Complaint ¶30.) Plaintiff alleges “Scandoval” captured the public’s attention in a massive way, went completely viral, and injected new life into “Vanderpump Rules.” (Complaint ¶31.) Plaintiff alleges “Scandoval” also caused mayhem in Plaintiff’s life, culminating in months-long in-patient treatment at a mental health facility and her departure from the show. (Complaint ¶31.) Plaintiff alleges Bravo and Evolution, in conjunction with the cast, fomented her unprecedented public skewering and Plaintiff became, without exaggeration, one of the most hated women in America. (Complaint ¶31.)

Plaintiff alleges on March 4, 2023, the day after news of the affair had broken, production directed Plaintiff to film with Sandoval at her Los Angeles apartment. (Complaint ¶32.) Plaintiff alleges that, on camera, she confronted Sandoval for secretly recording pornographic videos of her and storing them unprotected on his phone. (Complaint ¶32.) Plaintiff alleges Sandoval had not only invaded her privacy and breached her trust but had also left her enormously vulnerable to a nightmare scenario of the videos leaking on the internet. (Complaint ¶32.) Plaintiff alleges Sandoval responded to Plaintiff’s fury with cowardice and lies, claiming

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falsely that he had obtained permission to record her. (Complaint ¶32.) Plaintiff alleges that after Sandoval saw that Plaintiff was having none of it, Sandoval ultimately offered a reluctant admission and a sheepish apology. (Complaint ¶32.)

Plaintiff alleges Sandoval was clearly rattled because after filming ended, Sandoval was erratic, unsettled, and refused to leave Plaintiff's apartment in spite of her requests. (Complaint ¶33.) Plaintiff alleges she was forced to have her sister and brother-in-law pick her up and drive her to their home. (Complaint ¶33.) Plaintiff alleges that day, she retained an attorney to mitigate the risk of the illicit videos leaking. (Complaint ¶33.) Plaintiff alleges once at her sister's home, she turned off her phone for two days, hoping the heat would die down. (Complaint ¶33.)

Plaintiff alleges media reports suggest Sandoval was in a panic over the on-camera confrontation with Plaintiff. (Complaint ¶34.) Plaintiff alleges Sandoval was concerned that being accused of recording nonconsensual pornography would "paint him in a negative light." (Complaint ¶34.) Plaintiff alleges he reportedly threatened to cease all further filming for the show unless he was granted editing rights over the scene. (Complaint ¶34.) Plaintiff alleges Bravo and Evolution shockingly obliged Sandoval's demand. (Complaint ¶34.) Plaintiff alleges the scene was selectively edited to omit any mention of Sandoval's illicit recording or Plaintiff's lack of consent. (Complaint ¶34.) Plaintiff alleges this was part of a pattern and practice of Bravo and Evolution throwing Plaintiff under the bus in favor of Sandoval. (Complaint ¶34.)

Plaintiff alleges on March 7th, her attorneys sent out cease and desist letters to the cast regarding the distribution of the nonconsensual illicit videos. (Complaint ¶35.) Plaintiff alleges the letters promptly leaked. (Complaint ¶35.) Plaintiff alleges she also filed a police report and applied for a temporary restraining order against Shay, the cast member who had assaulted her on March 1st. (Complaint ¶35.) Plaintiff alleges despite initially bragging about having punched Plaintiff, Shay began to adamantly deny it in public. (Complaint ¶36.) Plaintiff alleges Shay accused Plaintiff of lying and abusing the court system. (Complaint ¶36.) Plaintiff alleges Shay's accusations were in spite of Shay's own private and televised admissions of guilt and Plaintiff's visible facial injuries. (Complaint ¶36.)

Plaintiff alleges by March 10th, Plaintiff decided to check herself into a mental health facility. (Complaint ¶37.) Plaintiff alleges Sandoval, for his part, tried to talk her out checking into the mental health facility and begged Plaintiff to participate in the "Vanderpump Rules" reunion. (Complaint ¶37.) Plaintiff alleges she reluctantly agreed to wait on the condition that a mental health professional be on the set of the "Vanderpump Rules" reunion in case things got out of hand, given her fragile mental state and the fury brewing among the cast. (Complaint ¶37.) Plaintiff alleges Bravo agreed, then changed its mind. (Complaint ¶37.) Plaintiff alleges she then requested her publicist and confidante, Juliette Harris ("Harris"), be permitted to attend. (Complaint ¶37.) Plaintiff alleges Bravo agreed, then again changed its mind. (Complaint ¶37.) Plaintiff alleges by that point, the reunion was the next day—too soon for Plaintiff to pull

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out—and she had no reasonable alternative but to participate. (Complaint ¶37.) Plaintiff alleges she also feared the legal implications of refusing to appear, given the draconian terms of her contract. (Complaint ¶37.) Plaintiff alleges she attended the “Vanderpump Rules” reunion, but without the support she felt she needed, and that Bravo had previously offered to provide. (Complaint ¶37.)

Plaintiff alleges at the same time, press coverage was decidedly against her, and she became an object of scorn and ridicule. (Complaint ¶38.) Plaintiff alleges other “Vanderpump Rules” cast members were vilifying Plaintiff in interviews and waging a public campaign against her on social media. (Complaint ¶38.) Plaintiff alleges the other cast members could not have done so without the blessing of Bravo, which pre-approves all cast media appearances and exercises tight control over public messaging. (Complaint ¶38.) Plaintiff alleges Bravo had clearly decided this feeding frenzy was good for ratings. (Complaint ¶38.) Plaintiff alleges various cast members and Bravo itself also released their own “Scandoval” merchandise to cash in on the explosion of interest, including an “I SURVIVED SCANDOVAL” long-sleeve shirt currently available for sale on Bravo’s website. (Complaint ¶38.)

Plaintiff alleges Bravo deliberately sacrificed her for the sake of its commercial interests from its refusal to allow her the opportunity to tell her side of the story and defend herself, which she repeatedly begged for permission to do. (Complaint ¶39.) Plaintiff alleges that without exception her pleas fell on deaf ears. (Complaint ¶39.) Plaintiff alleges as a result of this asymmetrical coverage, the public was not made aware of the extent to which she was victimized by the ordeal or the toll it was taking on her mental state. (Complaint ¶39.) Plaintiff alleges as the feeding frenzy reached a crescendo, Plaintiff was subjected to a gag order prohibiting her from discussing Sandoval’s gross invasion of her privacy, Madix’s vengeful response, Bravo’s cover-up, or the veracity of her allegations of physical assault against Shay, who was publicly calling her a liar, accusing her of playing the victim, and being falsely backed up by others. (Complaint ¶39.) Plaintiff alleges that while the rest of the cast savaged Plaintiff’s reputation and lied about her in the press, drumming up not only interest in “Vanderpump Rules” but also hatred of Plaintiff, Plaintiff herself was involuntarily silent because she was muzzled by Bravo for the sake of its ratings. (Complaint ¶39.) Plaintiff alleges while all of this may have been good for ratings, it was catastrophic for Plaintiff, who was forced into hiding and subjected to death threats directed at her and her family. (Complaint ¶39.) Plaintiff alleges Sandoval, on the other hand, received a development deal from Bravo for a job well done, along with a pay raise. (Complaint ¶39.)

Plaintiff alleges the “Vanderpump Rules” reunion was a train wreck for Plaintiff. (Complaint ¶40.) Plaintiff alleges Bravo and Andy Cohen (“Cohen”) had full knowledge of Plaintiff’s then-dire mental state and took not steps to mitigate the abuse of Plaintiff, even as Cohen himself expressed concern about Plaintiff’s mental health going into the “Vanderpump Rules” reunion. (Complaint ¶40.) Plaintiff alleges one fellow cast member, Katie Maloney

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(“Maloney”), had been openly threatening to “light [Plaintiff] on fire”; another, Shay, had violently assaulted her. (Complaint ¶40.) Plaintiff alleges during the reunion itself she was on the receiving end of unrelenting missives: “diabolical, demented, subhuman”; a “poo poo head”; “Fuck yourself with a fucking cheese grater. You fucking suck, you’re disgusting and I wish nothing but the worst fucking shit that could ever happen to a person on you!” (Complaint ¶40.) Plaintiff alleges as she was berated, abused, and dehumanized by the rest of the cast—above all Madix—Plaintiff remained largely silent and stoic in apparent shock. (Complaint ¶40.) Plaintiff alleges that later, Cohen remarked that he “did not know how long [she] would last on set” and chalked up her apparent stoicism to being “really medicated[.]” (Complaint ¶40.) Plaintiff alleges Cohen and Bravo already knew that Plaintiff was indeed medicated, something neither surprising nor remotely funny in light of what was happening to her. (Complaint ¶40.)

Plaintiff alleges shortly after the “Vanderpump Rules” reunion, she checked into a mental health treatment facility and remained there for three months. (Complaint ¶41.) Plaintiff alleges even in treatment, however, she could not escape from the claws of Bravo and Evolution because she was warned repeatedly by them not to breach her confidentiality obligations, which contain no exceptions for medical treatment or therapy. (Complaint ¶41.) Plaintiff alleges as a result she was fearful of facing legal repercussions for her honesty and was forced to walk on eggshells. (Complaint ¶41.) Plaintiff alleges this caused her extreme stress and severely stunted her progress in treatment. (Complaint ¶41.)

Plaintiff alleges that when she checked into treatment, she gave her dog, Graham, to her parents for safekeeping. (Complaint ¶42.) Plaintiff alleges Graham was traumatized by years of abuse at the hands of Kennedy and was not an easy dog to manage. (Complaint ¶42.) Plaintiff alleges after a number of incidents, including one in which Graham bit Plaintiff’s mom down to the bone and caused her permanent nerve damage, keeping Graham became untenable. (Complaint ¶42.) Plaintiff alleges her family handed Graham over to a no-kill rescue organization and requested its discretion, given the intense public scrutiny of Plaintiff. (Complaint ¶42.) Plaintiff alleges instead of re-homing Graham as promised, the rescue organization, knowing full well that Kennedy had a history of animal abuse, contacted Vanderpump, who gave Graham back to Kennedy. (Complaint ¶42.)

Plaintiff alleges all of them, with Bravo’s blessing, then seeded a false and malicious narrative that Plaintiff had tried to get the dog “put down.” (Complaint ¶43.) Plaintiff alleges at around this time, rumors were circulating—also seeded by Bravo and the cast—that Plaintiff was actually on vacation and had faked her hospitalization. (Complaint ¶43.) Plaintiff alleges Bravo refused to publicly acknowledge that Plaintiff was, in fact, in in-patient mental health treatment, presumably for fear such disclosure would undermine the storyline. (Complaint ¶43.) Plaintiff alleges that not only would they not do so; Bravo prohibited Plaintiff (through her publicist) from doing so. (Complaint ¶43.) Plaintiff alleges all of this caused even more public scorn of Plaintiff, further unjustified harm to her reputation, and increased threats to her and her family’s

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physical safety. (Complaint ¶43.)

Plaintiff alleges Bravo and Evolution wanted Plaintiff to return for Season 11 of the Series. (Complaint ¶44.) Plaintiff alleges it was abundantly clear that Bravo and Evolution completely failed to understand or appreciate the toll “Scandoval” had taken on her. (Complaint ¶44.) Plaintiff alleges they warned her (unironically) that she *must* return to avoid having her story told by others and reaffirmed her prohibition against speaking to the press on her own terms. (Complaint ¶44.) Plaintiff alleges the depths of Plaintiff’s mistreatment in Season 10 went far beyond what is acceptable even in reality television, and Plaintiff knew that returning to the show meant risking a descent back into the depths of despair from which she had just emerged. (Complaint ¶44.)

Plaintiff alleges in the meantime, everyone else got what they wanted. (Complaint ¶45.) Plaintiff alleges “Vanderpump Rules” remains on the air, continuing to milk the storyline Plaintiff catalyzed. (Complaint ¶45.) Plaintiff alleges Sandoval emerged with significantly higher pay and a development deal with Bravo. (Complaint ¶45.) Plaintiff alleges Madix has become a bona fide darling of pop culture, has a new boyfriend, and is starring on Broadway. (Complaint ¶45.) Plaintiff alleges her future is less rosy, and she brings this suit to vindicate her legal rights if not to restore her sullied reputation. (Complaint ¶46.)

On April 26, 2024, Madix filed the instant motion. On June 27, 2024, Plaintiff filed her opposition. On July 3, 2024, Madix filed her reply.

Special Motion to Strike

“Litigation of an anti-SLAPP motion involves a two-step process. First, ‘the moving defendant bears the burden of establishing that the challenged allegations or claims ‘aris[e] from’ protected activity in which the defendant has engaged.’ [Citation.] Second, for each claim that does arise from protected activity, the plaintiff must show the claim has “at least ‘minimal merit.’ [Citation.]” (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009, citations omitted.) As to the second step inquiry, a plaintiff seeking to demonstrate the merit of the claim “may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.” (*Sweetwater Union High School District v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940, citations omitted.)

A defendant opposing a special motion to strike has the burden to “state [] and substantiate [] a legally sufficient claim.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 & 93.) “Put another way, the defendant “must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the defendant is credited.” [Citations.]” (*Id.* at pgs. 88-89.) To that end, the defendant must present competent evidence, “that would be admissible at trial.” (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) “[D]eclarations may not be based upon ‘information and belief’ [citation]” and documents submitted without the proper

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foundation will not be considered. (*Id.*) The complaint, even if verified, is insufficient to carry the plaintiff's shifted burden. (*Roberts v. Los Angeles County Bar Association* (2003) 105 Cal.App.4th 604, 614; *Karnazes v. Ares* (2016) 244 Cal.App.4th 344, 354 ["pleadings do not constitute evidence"]; *see also* Burke, Anti-SLAPP Litigation (The Rutter Group, Civil Litigation Series 2018 §5:13) ["To satisfy prong two, the plaintiff must submit admissible evidence that if credited is sufficient to sustain a favorable judgment against the legal theories asserted by the defendant."].)

Prong One: Arising from Protected Activity

"A cause of action is subject to a special motion to strike if the defendant shows that the cause of action arises from an act in furtherance of the defendant's constitutional right of petition or free speech in connection with a public issue and the plaintiff fails to demonstrate a probability of prevailing on the claim. [Citations.]" (*Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 883.)

"An 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' is defined by statute to include '(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.' [Citation.] If the defendant shows that the cause of action arises from a statement described in clause (1) or (2) of section 425.16, subdivision (e), the defendant is not required to separately demonstrate that the statement was made in connection with a 'public issue.' [Citation.]" (*Id.*)

"A cause of action is one 'arising from' protected activity within the meaning of section 425.16, subdivision (b)(1) only if the defendant's act on which the cause of action is based was an act in furtherance of the defendant's constitutional right of petition or free speech in connection with a public issue. [Citation.] In deciding whether the 'arising from' requirement is satisfied, 'the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' [(C.C.P. §425.16(b)(2).)] Whether the 'arising from' requirement is satisfied depends on the 'gravamen or principal thrust' of the claim. [(*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477, quoting *Martinez v. Metabolife International, Inc.* (2003) 113 Cal.App.4th 181, 193.)] A cause of action does not arise from protected activity for purposes of the anti-SLAPP statute if the protected activity is merely incidental to the cause of action. [(*Martinez*, 113 Cal.App.4th at pg. 188.)]" (*Digerati Holdings,*

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ERM: None

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LLC, 194 Cal.App.4th at pgs. 883-884.) To show that a claim arises from protected activity under §425.16(b)(1), it is not sufficient to show that the claim “was filed after, or because of, protected activity, or when protected activity merely provides evidentiary support or context for the claim.” (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621.) “Rather, the protected activity must ‘supply elements of the challenged claim.’ [Citation.]” (*Id.*, citations omitted.)

“At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, *the unprotected activity is disregarded at this stage.*” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396, emphasis added.)

Madix argues her conduct alleged in Plaintiff’s Complaint concerned an issue of public interest and therefore satisfies the test in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal. 5th 133, 144, which, therefore, establishes that the challenged conduct arises from protected activity. (Motion, pgs. 6-9.)

Conduct in Furtherance of the Exercise of the Constitutional Right of Petition or the Constitutional Right of Free Speech in Connection with a Public Issue or an Issue of Public Interest (C.C.P. §425.16(e)(4))

Madix fails to meet her burden to demonstrate her conduct alleged in Plaintiff’s Complaint arises from an “act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue.” (C.C.P. §§425.16(b), (e).)

Plaintiff’s cause of action for Revenge Porn (Civ. Code §1708.85) is based on the allegation that “[o]n or about March 1, 2023, Madix discovered sexually explicit videos of Levis on the mobile phone of Sandoval.” (Complaint ¶54.) Plaintiff alleges the videos depict her in a state of undress and engaged in a sexual act within the meaning of the statute. (Complaint ¶55.)

Plaintiff alleges Sandoval recorded the videos without the knowledge or consent of Plaintiff, who had a reasonable expectation of privacy that their private communications were not being recorded and would stay private. (Complaint ¶56.) Plaintiff alleges on information and belief that Madix obtained the videos of Plaintiff from Sandoval’s mobile phone without Sandoval’s authorization. (Complaint ¶57.) Plaintiff alleges on information and belief that Madix obtained the videos of Plaintiff from Sandoval’s mobile phone and distributed and disseminated them to others, including but not limited to Madix herself, Plaintiff, and other individuals whose identities are not currently known to Plaintiff. (Complaint ¶58.) Plaintiff alleges on information and belief that Madix displayed the videos or disclosed their contents to individuals who may not have received them directly, including but not limited to Bravo,

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Evolution, members of the Vanderpump Rules cast, and other individuals whose identities are not currently known to Plaintiff. (Complaint ¶59.)

Plaintiff alleges she was not aware that such illicit videos had been captured by Sandoval and thus could not have consented to their distribution. (Complaint ¶60.) Plaintiff alleges Madix distributed, disseminated, shared, and publicized the illicit videos intentionally and knew or reasonably should have known that she did not have Plaintiff’s consent to do so. (Complaint ¶61.) Plaintiff alleges she has suffered grave emotional, psychological, financial, and reputational harm as a result of Madix’s distribution, dissemination, and publicization of the illicit videos. (Complaint ¶62.) Plaintiff alleges the illicit videos were recorded when she was in a private residence where her reasonable expectation of privacy was at its zenith. (Complaint ¶63.) Plaintiff alleges as a direct and proximate result of Madix’s actions, Plaintiff has suffered and will continue to suffer general and special damages alleged herein in an amount to be proven at trial. (Complaint ¶64.)

Plaintiff’s cause of action for invasion of privacy alleges “Madix invaded Levis’s privacy by, among other things, (a) obtaining the illegally recorded, sexually explicit footage of her without authorization and (b) distributing, disseminating, and publicizing it in a manner highly offensive to a reasonable person.” (Complaint ¶71.)

Plaintiff’s cause of action for intentional infliction of emotional distress alleges “Sandoval’s and Madix’s acts were at all times extreme and outrageous and intended to cause Levis emotional distress or performed with reckless disregard for the probability of causing such emotional distress.” (Complaint ¶80.)

Here, the gravamen of Plaintiff’s causes of action against Madix arise from Madix’s alleged theft and distribution of private and sexually explicit recordings of Plaintiff. (*See* Complaint ¶¶53-82.)

Madix’s conduct is not protected under the anti-SLAPP statute because the alleged conduct was illegal as a matter of law. The term “illegal” means criminal, rather than merely violation of a statute or common law standard (as alleged in every complaint). (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654 [stating even if disclosure of information regarding registered sex offender to prospective employer violated applicable statute, it was not criminal conduct beyond protection of anti-SLAPP statute]; *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 806-807; *Dziubla v. Piazza* (2020) 59 Cal.App.5th 140, 150-151.)

If a plaintiff claims that a defendant’s speech or petitioning activity is illegal and thus not protected, “*plaintiff bears the burden of conclusively proving the illegal conduct*”; a defendant need not prove its conduct was legal in order to meet its burden under the first prong of the anti-SLAPP statute. (*Cross v. Cooper* (2011) 197 Cal.App.4th 357, 385, emphasis added [“As in *Flatley v. Mauro* (2006) 39 Cal.4th 299], the *Paul [for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356] court emphasized the narrow circumstances in which a defendant’s assertedly

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protected activity could be found to be illegal as a matter of law. ‘In order to avoid any misunderstanding as to the basis for our conclusions, we should make one further point. *This case, as we have emphasized, involves a factual context in which the defendants have effectively conceded the illegal nature of their election campaign finance activities for which they claim constitutional protection. Thus, there was no dispute on the point and we have concluded, as a matter of law, that such activities are not a valid exercise of constitutional rights as contemplated by section 425.16. However, had there been a factual dispute as to the legality of defendants’ actions, then we could not so easily have disposed of defendants’ motion.* [¶] As we have noted, a defendant need only make a prima facie showing that the plaintiff’s suit arises ‘from any act of [defendant] in furtherance of [defendant’s] right of petition or free speech under the United States or California Constitution in connection with a public issue.’ [Citation.] If the plaintiff contests this point, and . . . cannot demonstrate as a matter of law that the defendant’s acts do not fall under section 425.16’s protection, then the claimed illegitimacy of defendant’s acts is an issue which plaintiff must raise and support in the context of the discharge of plaintiff’s burden to provide a prima facie showing of the merits of plaintiff’s case.”], emphasis added.)

Here, Plaintiff has *conclusively* demonstrated Madix’s conduct alleged in the three causes of action was illegal. Madix’s declaration establishes that she accessed Sandoval’s phone without Sandoval’s knowledge and consent. Her declaration indicates that she had previously accessed Sandoval’s phone with his knowledge and consent, but makes no reference to her having Sandoval’s consent to do so on this occasion. (Decl. of Madix ¶¶5-6 [“Because we had been in a committed relationship for so long, and because we trusted one another and presumably did not keep secrets from one another, I knew many of Mr. Sandoval’s passcodes, including the one for his phone. I had previously accessed Mr. Sandoval’s phone on other occasions with his knowledge and consent. [¶] For reasons I still do not know, call it a woman’s intuition, when the set ended, I felt the need to check Mr. Sandoval’s phone and went to the women’s room for privacy.”]).

Madix’ secreting herself to access the phone is evidence of her lack of Sandoval’s consent to do so. (Decl. of Madix ¶¶7-8 [“In a locked stall, I accessed Mr. Sandoval’s phone and saw text conversations between Mr. Sandoval and Plaintiff that appeared incomplete because portions of them had been deleted, which made me suspicious. [¶] While other women waited to use the toilet, I opened the photo app on Mr. Sandoval’s phone and was shocked to find a video of a Facetime call between Mr. Sandoval and Plaintiff that showed Mr. Sandoval’s face in the upper corner while the main image was of Plaintiff masturbating. I hurriedly took out my own phone and made two recordings of the Facetime video.”].)

Madix’ declaration provides further evidence that Sandoval had not consented to her accessing the videos: when she confronted Sandoval about their presence on his phone, he forcibly took the phone from her and deleted the videos. (Decl. of Madix ¶¶14-16.) Sandoval’s

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reaction to Madix’ having accessed his phone confirms his lack of consent to her doing so.

Penal Code §502 makes it a criminal offense for a person to knowingly access and, without permission, use any data, computer, computer system, or computer network in various ways. Penal Code §502 provides in part:

1. Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

...

1. Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

...

- (7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(Pen. Code §502(c).) The Ninth Circuit concluded that the term “access,” as defined in the statute, includes “logging into a database with a valid password and subsequently taking, copying, or using the information in the database improperly.” (*United States v. Christensen* (9th Cir. 2015) 828 F.3d 763, 789.)

Here, Madix declares that she accessed Sandoval’s phone surreptitiously and made a copy of the data from the phone—the FaceTime videos—without Sandoval’s authorization in the privacy of a women’s bathroom stall. (Decl. of Madix ¶¶7-8.) Madix declares she accessed data on Sandoval’s phone that Sandoval did not intend for her to access. (*See id.* at ¶7.) Madix declares that Sandoval did not consent to her surreptitious access of the FaceTime video on his phone; Madix declares Sandoval grabbed Madix’s phone and ran away from her in an effort to delete her recording of the FaceTime video from her phone. (*See id.* at ¶¶14-16.)

Plaintiff has *conclusively* demonstrated Madix’s conduct alleged in the three causes of action was illegal. Therefore, Defendant cannot meet her burden to make a prima facie showing that Plaintiff’s suit arises “from any act of [defendant] in furtherance of [defendants’] right of petition or free speech under the United States or California Constitution in connection with a public issue” because the alleged conduct is illegal and, therefore, not protected by the First Amendment or the anti-SLAPP statute.

At the hearing, Madix’ counsel’s raised *Baral v. Schnitt* (2016) 1 Cal.5th 376, which first was not cited in their papers, and second does not bolster Madix’ argument that her conduct alleged in the complaint constitutes protected activity. *Simmons v. Bauer Media Group USA, LLC*, is instructive in distinguishing *Baral* from the instant matter. In *Simmons*, the plaintiff,

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famous fitness personality Richard Simmons, asserted privacy-related claims against Bauer Media Group USA LLC (“Bauer”), the owner of the tabloid *In Touch Weekly*. (*Simmons v. Bauer Media Group USA, LLC* (2020) 50 Cal.App.5th 1037, 1041-1042.) Bauer filed an anti-SLAPP motion in response, arguing that Simmons’ claims were based on protected newsgathering activity. (*Id.* at pg. 1042.) The Court of Appeal stated:

The issue here is whether the first amended complaint takes aim at activity by Bauer in furtherance of its free speech rights. The anti-SLAPP statute applies “only if the speech or petitioning activity itself is the wrong complained of, and not just . . . a step leading to some different act for which liability is asserted.” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060 [217 Cal. Rptr. 3d 130, 393 P.3d 905] (*Park*)). As noted, Bauer characterizes its protected activity as “newsgathering,” by “engaging an independent contractor to take news photographs” of a celebrity for a potential news story. But resolving an anti-SLAPP motion requires courts to “consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.” (*Park, supra*, 2 Cal.5th at p. 1063.) Our examination of each of the pleaded theories of liability reveal none of the causes of action asserted against Bauer arise from Bauer’s or In Touch Weekly’s mere hiring of Mathews to photograph Simmons outside Cedars-Sinai Medical Center on April 17, 2018. (*See id.* at p. 1062 [“A claim arises from protected activity when that activity underlies or forms the basis for the claim.”].) Thus, to the extent the newsgathering activity claimed by Bauer qualifies for First Amendment protection, this lawsuit does not chill it.

(*Id.* at pg. 1045.)

Here, as in *Simmons*, none of Plaintiff’s pleaded theories of liability against Madix arise from her public comments regarding Plaintiff’s and Sandoval’s secret relationship, which is not chilled by this lawsuit. Instead, the theories of liability asserted in the Complaint against Madix arise from private conduct that occurred between Plaintiff, Sandoval, and Madix, despite Plaintiff’s speculation that Sandoval and Madix may have disseminated the FaceTime recording to other unknown individuals.

Accordingly, the burden does not shift to Plaintiff to demonstrate a probability of prevailing on the causes of action alleged against Madix.

Conclusion

Based on the foregoing, Madix’s special motion to strike Plaintiff’s 2nd, 3rd, and 4th causes of action alleged against her is denied.

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[1] The Court notes the operative pleading in this case is the First Amended Complaint (“FAC”), filed by Plaintiff on June 13, 2024, after Sandoval’s demurrer to the Complaint was heard on May 24, 2024. This Court sustained Sandoval’s demurrer with 20 days leave to amend as to the 4th cause of action and overruled the demurrer as to the 1st and 3rd causes of action. (5/24/2024 Minute Order.)

Subject to the trial court’s discretion under C.C.P. §425.16(f) to permit late filing, a defendant must move to strike a claim within 60 days of service of the earliest complaint that contains that cause of action. The anti-SLAPP statute “is not a vehicle for a defendant to obtain a dismissal of claims in the middle of litigation; it is a procedural device to prevent costly, unmeritorious litigation at the initiation of the lawsuit. (*Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, 645, 230 CR3d 408, 414; *Starview Property, LLC v. Lee* (2019) 41 Cal.App.5th 203, 206 [stating where amended complaint is based on same facts as alleged in original complaint but pleads new claims for relief, anti-SLAPP motion may be filed within 60 days of service of amended complaint if it addresses newly pled claims].) Because an anti-SLAPP motion is intended to limit potentially unnecessary litigation, it is appropriate for this Court to rule on Madix’s motion as it applies to the initial Complaint rather than the operative FAC.

The Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) filed by Ariana Madix on 04/26/2024 is Denied.

The clerk is directed to give notice.

Certificate of Mailing is attached.