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d/b/a TMZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FLORA DUTRA, an individual; MARUBO TRIBE OF THE JAVARI VALLEY, represented by its assigned representatives Enoque Marubo; ENOQUE MARUBO an individual;

Plaintiffs,

vs.

EHM Productions, Inc., a California Corporation dba TMZ; The New York Times Company, a New York Corporation doing business in California; YAHOO INC., a Delaware Corporation doing business in California; Does 1-200, inclusive

Defendants.

Case No. 25STCV14798

Assigned to Hon. Tiana J. Murillo
Department 78

DEFENDANT EHM PRODUCTIONS, INC.'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT PURSUANT TO C.C.P. § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF CHARLES LATIBEAUDIERE AND JORDYN OSTROFF WITH EXHIBITS A THROUGH L

Hearing Date: August 13, 2025
Time: 8:30 a.m.
Dep't: 78

Res. No. 528802921135

TO THE HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 13, 2025 at 8:30 a.m. or as soon thereafter as counsel may be heard in Department 78 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, Defendant EHM Productions, Inc. d/b/a TMZ ("TMZ") will and hereby does move this Court pursuant to California Code of Civil Procedure § 425.16 ("Section 425.16" or the "anti-SLAPP[1] statute") for an order striking, in whole or in part, and dismissing with prejudice and without leave to amend the First Amended Complaint ("FAC"), and each of its causes of action, filed against TMZ by Plaintiffs Flora Dutra, Marubo Tribe of the Javari Valley ("Marubo Tribe"), and Enoque Marubo (collectively, "Plaintiffs").

This Motion is made on the grounds that the FAC is subject to the anti-SLAPP statute because it arises from the exercise of TMZ's right of free speech and conduct in furtherance of its free speech rights in a public forum, in connection with issues of public interest. C.C.P. §§ 425.16(e)(3), (e)(4). Because the anti-SLAPP statute applies to Plaintiffs' FAC and each of its causes of action against TMZ, the burden shifts to Plaintiffs to establish, with admissible evidence, a probability that they will prevail on their causes of action. *Id.* § 425.16(b)(1). Plaintiffs, and each of them, cannot satisfy that burden. Plaintiffs' causes of action, or alternatively, portions thereof[2], should be stricken for the following separate and independent reasons:

- The FAC's first cause of action for defamation fails to the extent the Marubo Tribe is a Plaintiff, because (1) defamation claims based on alleged statements targeting large groups are impermissible, *see Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1046 (1986); and (2) governmental entities may not maintain defamation claims, *see Cayuga Nation v. Showtime Networks, Inc.*, 191 A.D.3d 573, 574 (N.Y. App. Div. 2021) (affirming dismissal of libel

[1] SLAPP is an acronym that stands for "Strategic Lawsuit Against Public Participation." The Legislature enacted the anti-SLAPP statute to check "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition[.]" C.C.P. § 425.16(a). One of the anti-SLAPP statute's core "goal[s] is to eliminate meritless or retaliatory litigation at an early stage." *Seltzer v. Barnes*, 182 Cal. App. 4th 953, 961 (2010).

[2] *See City of Colton v. Singletary*, 206 Cal. App. 4th 751, 774 (2012) ("a portion of a cause of action may be stricken if it falls within anti-SLAPP protections").

claim asserted by Native American tribe) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 291–92 (1964)).

- The FAC's first cause of action for defamation is independently barred, in whole or in part, because TMZ did not publish allegedly defamatory matter as alleged in the FAC, any allegedly defamatory implication from TMZ's speech is not reasonable as a matter of law, and/or is not "of and concerning" Plaintiffs. *Med. Marijuana, Inc. v. ProjectCBD.com*, 46 Cal. App. 5th 869, 893 (2020); *Forsher v. Bugliosi*, 26 Cal. 3d 792, 796–803 (1980); *Blatty*, 42 Cal. 3d at 1042–1045.
- The FAC's first cause of action for defamation is independently barred in whole or in part because TMZ's allegedly defamatory statements are not actionable, as they are constitutionally protected opinion and/or hyperbole. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Baker v. Los Angeles Herald Examiner*, 42 Cal. 3d 254, 260–61 (1986).
- The FAC's first cause of action for defamation is independently barred in whole or in part because, to the extent TMZ's allegedly defamatory statements are verifiable, Plaintiffs cannot establish that they are false and not substantially true. *See Nizam-Aldine v. City of Oakland*, 47 Cal. App. 4th 364, 373–74 (1996).
- The FAC's first cause of action for defamation is independently barred in whole or in part because Plaintiff Enoque Marubo, an elected tribal leader, is a public official and all Plaintiffs are, at a minimum, limited purpose public figures. Plaintiffs cannot establish with the required direct and clear and convincing evidence that TMZ acted with constitutional actual malice. *Reader's Digest Ass'n, Inc. v. Superior Ct*., 37 Cal. 3d 244, 256 (1984).
- The FAC's first cause of action for defamation is independently barred in whole or in part by the wire service defense. *Rakofsky v. Washington Post*, 971 N.Y.S.2d 74 (Sup. Ct. 2013); *Winn v. United Press Int'l*, 938 F. Supp. 39, 44 (D.D.C. 1996)
- The FAC's first cause of action for defamation is independently barred because Plaintiffs are limited to special damages, which they have not sufficiently pled and cannot prove. *See* Civ. C. § 48a.

- The FAC's ancillary claims alleged against TMZ—for false light, negligent infliction of emotional distress, misappropriation, negligence, and violation of Business and Professions Code § 17200—fail for the same reasons the defamation claim fails, because (1) they are superfluous, *see, e.g.*, *Couch v. San Juan Unified*, 33 Cal. App. 4th 1491, 1504 (1995); and (2) the First Amendment circumscribes "all claims whose gravamen is the alleged injurious falsehood of a statement," *Blatty*, 42 Cal. 3d at, 1042–43 (1986).
- The FAC's second cause of action for false light independently fails because Plaintiffs cannot show that TMZ presented them in a "false light" that is "highly offensive to a reasonable person." *De Havilland v. FX Network, LLC*, 21 Cal. App. 5th 845, 868 (2018).
- The FAC's fourth and eighth causes of action for negligent infliction of emotional distress and negligence independently fail because (1) Plaintiffs must show TMZ acted with actual malice—not mere negligence, *Felton v. Schaeffer*, 229 Cal. App. 3d 229, 238–39 (1991); and (2) there is no special relationship between Plaintiffs and TMZ giving rise to a duty as a matter of law*, Huggins v. Longs Drug Stores Cal., Inc.*, 6 Cal. 4th 124, 129 (1993).
- The FAC's fifth cause of action for misappropriation fails because (1) the claim contains no allegations about TMZ, *see* FAC ¶¶ 117–29; (2) Plaintiffs cannot establish a connection between the alleged use of their likenesses and a commercial purpose, *Stewart v. Rolling Stone LLC*, 181 Cal. App. 4th 664, 680, 688–89 (2010); (3) the alleged statements fall within the statutory and common law exemptions for publications in connection with news or matters of public interest, *id.* at 680; and (4) at most, TMZ makes only "incidental use" of Plaintiffs' likenesses, *Hill v. Nat'l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 26 (1994).
- The FAC's ninth cause of action for violation of Business and Professions Code § 17200 independently fails because (1) it is based on the same alleged acts and omissions as their other claims, and thus it fails insofar as those other claims do, *see Cel-Tech Commns. v. Los Angeles Cellular Tel.*, 20 Cal. 4th 163, 182 (1999); (2) Plaintiffs do not plead and are not entitled to the only permissible forms of relief under Section 17200, *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144, 1149 (2003); (3) Plaintiffs' allegations relate only to themselves individually, not a "general business practice" of TMZ that was

"commit[ed] or perform[ed] with frequency" more generally, *Benton v. Allstate Ins. Co.*, 2001 WL 210685, *8 (C.D. Cal. Feb. 26, 2001).[3]

This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the Declaration of Charles Latibeaudiere; the Declaration of Jordyn Ostroff, Esq. with Exhibits A through L; and such further evidence, argument, and judicially noticeable material as may be presented at the hearing on this Motion.

TMZ respectfully requests that this Court strike and dismiss, in whole or, alternatively, in part, Plaintiffs' FAC, and each of its causes of action alleged against TMZ, with prejudice and without leave to amend.[4] TMZ also requests that the Court enter an award of attorneys' fees and costs in its favor and against Plaintiffs as required by Code of Civil Procedure § 425.16(c).[5]

DATED: July 17, 2025

JASSY VICK CAROLAN LLP

KEVIN L. VICK
JORDYN OSTROFF

Counsel for Defendant EHM PRODUCTIONS, INC.

[3] TMZ reserves all arguments, defenses, and positions if this case proceeds beyond the anti-SLAPP stage.

[4] The Court may not permit Plaintiffs to amend the operative complaint in the face of this anti-SLAPP motion. *See, e.g.*, *Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073 (2001); *Med. Marijuana, Inc.*, 46 Cal. App. 5th at 900.

[5] If this Motion (or any part thereof) is granted, then TMZ reserves the right to file a noticed motion to recover attorneys' fees and costs and/or a costs memorandum. *See Am. Humane Ass'n v. L.A. Times Commc'ns LLC*, 92 Cal. App. 4th 1095, 1103 (2001).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

U.S. Constitution

State Statutes

I. INTRODUCTION

On July 2, 2024, the *New York Times* published an article titled "The Internet's Final Frontier: Remote Amazon Tribes, Elon Musk's Starlink has connected an isolated tribe to the outside world, and divided it from within" (the "NYT Article"). The tribe in question, the Marubo Tribe of Brazil, had previously been the subject of media attention focusing on their former isolation and growing interactions with the outside world. The NYT Article focused on the Marubo Tribe's recent connection to the internet, noting greater access to educational materials and emergency assistance, plus the ability to communicate with people worldwide. But internet access also introduced ubiquitous concerns faced by people around the world, including violent and pornographic content and the tendency of some people to spend hours on end glued to their screens.

The NYT Article captured the attention of the public and other media as dozens of articles and countless social media posts discussed the NYT Article and the Marubo Tribe. One instance of that follow-on media coverage is a June 4 and 5, 2024 article and video appearing on TMZ, an entertainment media site known for irreverent takes on celebrity culture and current events (the "TMZ Piece"). The TMZ Piece took a typically lighthearted approach to the Marubo Tribe's new internet access. An underlying theme of the TMZ Piece is that the Marubo Tribe's experience with internet culture mirrors the experience of so many others worldwide.

While the TMZ Piece addresses the Marubo Tribe's experience of the benefits and perils of the internet, Plaintiffs' lawsuit is a turn toward one of the regrettable developments in modern civil litigation: the SLAPP suit. For Plaintiffs' lawsuit is a quintessential SLAPP suit that falls squarely within California's anti-SLAPP statute, Code of Civil Procedure section 425.16. The Legislature enacted the anti-SLAPP statute to create a streamlined mechanism for early disposition of lawsuits that, like Plaintiffs' here, target defendants' speech in connection with issues of public interest. All of Plaintiffs' claims against TMZ should be stricken pursuant to the anti-SLAPP statute. First, all of Plaintiffs' claims arise from TMZ's speech in connection with issues of public interest, i.e., the public's fascination with Plaintiffs themselves and the Marubo Tribe's newfound access to the internet. Second, Plaintiffs cannot meet their burden under the anti-SLAPP statute of proving they have adequately alleged their claims against TMZ and can substantiate those claims with admissible

evidence. All of Plaintiffs' claims against TMZ are squarely barred by the First Amendment and other well-established law. This Court should grant TMZ's Motion in its entirety.

II. STATEMENT OF FACTS

Plaintiff the Marubo Tribe of the Javari Valley ("Marubo Tribe," or "Tribe") is a sovereign indigenous community of approximately 2,000 people spread across remote areas of the Brazilian Amazon. First Am. Compl. ("FAC") ¶¶ 4, 21. Plaintiff Enoque Marubo ("Enoque") is the elected president of the Kapyvanaway Association, which represents the Tribe. *Id.* ¶¶ 4, 5. As early as March 2023, the spread of Starlink satellite internet to tribes like the Marubo Tribe began to receive media attention. *See, e.g.* Declaration of Jordyn Ostroff ("Ostroff Decl."), Ex. F.

In March 2024, the Marubo Tribe invited journalists from *The New York Times* ("NYT") to report on the Tribe's recent connection to the internet. FAC ¶¶ 13–14. The resulting NYT Article described how Enoque and Plaintiff Flora Dutra ("Dutra"), an "internationally recognized" Brazilian journalist, sociologist, and activist, worked to obtain Starlink for the Tribe. *See id.*; FAC ¶ 6. The NYT Article described both the positive and negative effects of the internet on the Tribe. Ostroff Decl., Ex. A. For example, it included statements from Tribe members about how the internet allowed for "video chats with faraway loved ones and calls for help in emergencies," but also made young people "lazy," and resulted in typical online pitfalls like "teenagers glued to phones; group chats full of gossip; addictive social networks . . . and minors watching pornography." *Id.* The NYT Article quotes Enoque acknowledging that the internet brought some "detrimental" change to the Tribe. *Id.* According to Plaintiffs, the article was a popular success for NYT, garnering significant online traffic and gains in subscribers and revenue. FAC ¶¶ 42, 43.

Other news outlets quickly picked up the NYT Article and ran their own reports. *See, e.g.*, Ostroff Decl., Ex. G; FAC ¶ 27 (article "was picked up and amplified by numerous international news outlets"). On June 4 and 5, 2024, following the NYT Article and the resulting media and public interest in the subject, Defendant EHM Productions, Inc. d/b/a TMZ published its own piece sourced from the NYT Article. FAC ¶ 44; Declaration of Charles Latibeaudiere ("Latibeaudiere Decl.") ¶¶ 3, 5, 7; *see* Ostroff Decl., Exs. D, E.

Plaintiffs allege the Marubo Tribe promptly contacted the NYT about allegedly defamatory

statements in the NYT Article. FAC ¶ 27. TMZ did not receive any retraction demand or other communication from Plaintiffs before they filed their lawsuit on May 20, 2025. Latibeaudiere Decl. ¶ 8. Plaintiffs' operative FAC contains nine causes of action—six of which are alleged against TMZ: Claim 1 – Defamation; Claim 2 – False Light; Claim 4 – Negligent Infliction of Emotional Distress ("NIED"); Claim 5 – Misappropriation of Likeness; Claim 8 – Negligence; Claim 9 – California Business & Professions Code § 17200, *et seq. See generally* FAC.

III. THE ANTI-SLAPP STATUTE APPLIES TO PLAINTIFFS' CLAIMS

"Resolution of an anti-SLAPP motion involves two steps." *Baral v. Schnitt*, 1 Cal. 5th 376, 384 (2016). First, a court decides "whether the defendant has made a threshold showing that . . . the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech[.]'" *Equilon Enters. v. Consumer Cause*, 29 Cal. 4th 53, 67 (2002); C.C.P. § 425.16(b)(1). If the defendant satisfies step one, then the burden shifts to the plaintiff to show a probability of success, and if this burden cannot be satisfied, the claim must be stricken in whole or in part. *Baral*, 1 Cal. 5th at 384–92; *City of Colton v. Singletary*, 206 Cal. App. 4th 751, 774 (2012) ("a portion of a cause of action may be stricken if it falls within anti-SLAPP protections"). To satisfy the first step, TMZ need only show that the alleged conduct underlying Plaintiffs' claims "fits one of the [four] categories spelled out in section 425.16, subdivision (e)." *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). Here, Plaintiffs' claims fall within Sections 425.16(e)(3) and (e)(4) because the TMZ Piece reports on matters of public interest. C.C.P. §§ 425.16(e)(3), (e)(4).[1]

The "public interest" component has a "two-part analysis." *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 149–50 (2019) (cleaned up). "First, we ask what 'public issue or [ ] issue of public interest' the speech in question implicates—a question we answer by looking to the content of the speech. Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest." *Id*. (citation omitted). "If a reasonable inference can be drawn that the challenged activity implicates a public issue, then the analysis

[1] Section 425.16(e)(3) also requires that the speech occur in a "public forum," which includes websites. *See Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006). Plaintiffs allege the TMZ Piece was published online. FAC ¶¶ 8, 44. Section 425.16(e)(4) has no "public forum" requirement.

proceeds to *FilmOn*'s second step." *Geiser v. Kuhns*, 13 Cal. 5th 1238, 1254 (2022).

A. The TMZ Piece Addressed Matters of Public Interest for Several Reasons

"Like the SLAPP statute itself, the question whether something is an issue of public interest must be construed broadly." *Hecimovich v. Encinal Sch. Parent Teacher Org.*, 203 Cal. App. 4th 450, 464 (2012); *see also* C.C.P. § 425.16(a). "[A]n issue of public interest … is any issue in which the public is interested." *Nygård, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042 (2008). Courts consider "whether the subject of the speech or activity was a person or entity in the public eye or could affect large numbers of people beyond the direct participants; and whether the activity occur[red] in the context of an ongoing controversy, dispute or discussion." *FilmOn.com*, 7 Cal. 5th at 145-46, 149–50 (cleaned up).

1. The Marubo Tribe, Flora Dutra, and Enoque Marubo are in the Public Eye

There is a public interest in the discussion of persons "in the public eye," *FilmOn.com*, 7 Cal. 5th at 145, *i.e.*, "people who, by their accomplishments, mode of living, professional standing or calling, create a legitimate and widespread attention to their activities," *Stewart v. Rolling Stone LLC*, 181 Cal. App. 4th 664, 677–78 (2010). A plaintiff can reveal herself to be a "public figure" by allegations in her complaint. *Nadel v. Regents of the Univ. of Cal.*, 28 Cal. App. 4th 1251, 1269–70 (1994). Whether someone is a public person is a question decided by courts. *Weingarten v. Block*, 102 Cal. App. 3d 129, 134–35 (1980). Here, in the context of their work on behalf of the Marubo Tribe, both Dutra and Enoque are "in the public eye." The FAC alone establishes this: Dutra is "internationally recognized for her work in … indigenous rights, and technological inclusion in remote communities," she "played a leading role in initiatives that empower indigenous peoples of the Amazon through digital access and advocacy," and her work has "been acknowledged globally" and won awards. FAC ¶¶ 6, 22, 68. The FAC also alleges that Enoque is "the elected leader and international representative of the Marubo Tribe," and the "president of the Kapyvanaway Association who leads 20 forest villages and protects more than 3.5 million hectares of Amazon rainforest." *Id.* ¶¶ 4, 5, 19, 70, 78, 164. Elected officials like Enoque are public figures. *E.g.*, *Issa v. Applegate*, 31 Cal. App. 5th 689, 703 (2019); *Fisher v. Larsen*, 138 Cal. App. 3d 627, 634 (1982).

The media has amply covered the isolated nature of Brazilian indigenous groups like the

Marubo Tribe, as well as Flora's and Enoque's efforts on its behalf, dating back to at least 2023. *See, e.g.* Ostroff Decl., Exs. F, G. Dutra and Enoque created videos in 2023 publicizing their efforts to bring Starlink to the Tribe. *Id.,* Exs. I, K. Dutra's personal website links to a 2023 promotional video, "Starlink in the Amazon Rainforest," depicting her and Enoque handing out Starlink antennas to tribe members. *Id.,* Exs. J, K. Her website also has a 2023 video, "NASA panel for the United Nations General Assembly," depicting her and Enoque describing their work to bring Starlink to the Tribe. Ostroff Decl., Ex. H, I. The NYT Article and follow-on publications only further raised Plaintiffs' already-public profiles. *Id.*, Exs. A–C, G; *see* FAC ¶¶ 27, 41 (NYT Article "triggered a wave of international media amplification, controversy, and public scrutiny"); *id.* ¶ 42.

2. The TMZ Piece Relates to Issues of Ongoing Controversy or Discussion

The issue of public interest requirement is independently satisfied because the TMZ Piece relates to topics of "widespread, public interest, which can be determined by "the fact that the issue[s are] 'of concern to a substantial number of people.'" *Geiser,* 13 Cal. 5th at 1248. These are topics of ongoing "controversy, dispute or discussion," *FilmOn.com*, 7 Cal. 5th at 145. First, there has been extensive media coverage about the effects of increasing internet access and resulting online pornography viewing. *See, e.g.*, Ostroff Exs. L. The public is clearly interested in this issue and the effects on men's sexual health and relationships—an issue the TMZ Piece addresses.[2]

Second, even before the NYT Article, the media reported extensively on the controversial spread of Starlink to remote areas of Brazil. *See, e.g.*, Ostroff Decl., Exs. F. After the NYT Article was published, and before the TMZ Piece was published, public interest in these topics expanded even further. *See* FAC ¶¶ 27, 41–43; Ostroff Decl., Exs. G. As the FAC alleges, the NYT Article generated so much public interest and discussion that the NYT published a follow-up story on June 11, 2024, and then a third article about the Marubo Tribe on July 19, 2024. FAC ¶¶ 28, 31.

[2] The FAC falsely alleges that the TMZ Piece states that Marubo Tribe *minors* are watching pornography; the TMZ Piece says nothing about minors watching or sharing pornography. *See* FAC ¶¶ 46, 75, 80; Ostroff Decl., Exs. D, E. But even if the TMZ Piece did include such statements, "the issue of children's exposure to sexually explicit media content . . . seem[s] to qualify as issues of public interest under section 425.16, subdivision (e)(4)." *FilmOn.com*, 7 Cal. 5th at 152.

B. The TMZ Piece Participated in Ongoing Discourse on Matters of Public Interest

TMZ also satisfies the second part of the *FilmOn* analysis—*i.e.*, whether there is a "functional relationship" between the speech at issue and matters of public interest—which "does not turn on a normative evaluation of the substance of the speech," or "the social utility of the speech at issue, or the degree to which it propelled the conversation in any particular direction"; rather, what matters is "whether a defendant—through public or private speech or conduct—participated in, or furthered, the discourse that makes an issue one of public interest." 7 Cal. 5th at 149, 151. To determine the connection between the speech and the matter(s) of public interest, courts consider the "context—including audience, speaker, and purpose." *Id*. at 152.

Here, the TMZ Piece participated in or furthered the discourse on all of the issues of public interest identified above. First, Plaintiffs acknowledge that the "audience" for the TMZ Piece is a "vast global audience" of online viewers. FAC ¶ 49; *see also id.* ¶¶ 71, 104, 112 (TMZ's and other publications had "an estimated reach of more than 150 million readers worldwide"). Second, the TMZ Piece discusses issues described in Section III.A, which were already subjects of public discussion. For example, the TMZ Piece comments on the spread of internet connectivity to remote populations, including its potential negative and positive effects. It also includes images of Elon Musk as the face of Starlink, which had been spreading in Brazil's remote areas and widely reported on. *See id.* The TMZ Piece directly links to the NYT Article itself, which Plaintiffs admit captured enormous public attention. *See id.*; FAC ¶¶ 7, 42, 43, 148, 164; *see also* Ostroff Exs. D, E.

For all of these reasons, the anti-SLAPP statute applies to Plaintiffs' FAC.

IV. PLAINTIFFS CANNOT SATISFY THEIR ANTI-SLAPP BURDEN

Because TMZ satisfies the first step, the burden shifts to Plaintiffs to show a probability of prevailing on their claims. *Equilon Enters.*, 29 Cal. 4th at 67; C.C.P. § 425.16(b)(1). Under this second step, Plaintiffs must establish that their claims are both "legally sufficient," and that they have "admissible evidence" to support those claims. *Ramona Unified Sch. Dist. v. Tsiknas*, 135 Cal. App. 4th 510, 519 (2005). "In making this assessment, the court must consider both the legal sufficiency of and evidentiary support for the pleaded claims, and must also examine whether there are any constitutional or nonconstitutional defenses to the pleaded claims and, if so, whether there is

evidence to negate those defenses." *Id*. Here, Plaintiffs cannot satisfy their burden.

A. The Defamation Claim Fails as a Matter of Law for Multiple Reasons

1. The Marubo Tribe Cannot State a Claim for Defamation

To the extent Plaintiffs bring their defamation claim on behalf of the entire Marubo Tribe, the claim fails. First, "where the group is large—in general, and group numbering over twenty-five members—the courts in California and other states have consistently held that plaintiffs cannot show that the statements were 'of and concerning them.'" *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1046 (1986); *Bartholomew v. YouTube, LLC*, 17 Cal. App. 5th 1217, 1231 (2017) (dismissing claim based on "generic defamation" of large group). The Marubo Tribe consists of roughly 2,000 people and therefore cannot bring a defamation claim. *See* FAC ¶ 21. Second, a "sovereign indigenous community" like the Marubo Tribe cannot bring defamation claims. FAC ¶¶ 4, 127, 135. "[A] governmental entity cannot maintain a libel claim." *Cayuga Nation v. Showtime Networks, Inc.*, 191 A.D.3d 573, 574 (N.Y. App. Div. 2021) (affirming dismissal of tribe's claim) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 291–92 (1964)); *see also Blatty*, 42 Cal. 3d at 1044.

2. The Allegedly Defamatory Material Was Not Published by TMZ

Actual publication of the alleged statements is an element of defamation claims. *Live Oak Publ'g Co. v. Cohagan*, 234 Cal. App. 3d 1277, 1284 (1991). "[S]tatements alleged to constitute libel must be specifically identified, if not pleaded verbatim, in the complaint." *Med. Marijuana, Inc. v. ProjectCBD.com*, 46 Cal. App. 5th 869, 893 (2020). Where a statement is not expressly set forth, courts set a very high standard for finding defamatory implications and reject such purported implications if they are not reasonable as a matter of law. *See, e.g.*, *Forsher v. Bugliosi*, 26 Cal. 3d 792, 796–803 (1980) (alleged implication not reasonable); *Alszeh v. Home Box Office*, 67 Cal. App. 4th 1456, 1461–64 (1998) (same). Here, Plaintiffs' FAC attributes to the TMZ Piece a number of purported statements that are *not* stated in and cannot be reasonably inferred from the TMZ Piece.

First, Plaintiffs allege that the TMZ Piece "falsely imputed to Plaintiffs criminal behavior, including the facilitation of sexually explicit content to Indigenous minors." FAC ¶ 75; *see also id.* ¶¶ 45–49. But the TMZ Piece never attributes "criminal behavior" to Plaintiffs (or any others). When discussing sexually explicit material, the TMZ Piece refers to "young *men*," the "tribe's

men," "women," "gentlemen" and "some *men* … sharing explicit videos in group chats"—not minors. Ostroff Decl., Exs. D, E (emphases added).[3] One speaker even states, "Imagine discovering porn for the first time when you're like 35, 40 years old," alongside footage of Tribe members who appear middle age to elderly. *Id.* at E at 1:24. The TMZ Piece does not state or reasonably imply that any Plaintiff is guilty of criminal behavior including facilitating the dissemination of sexually explicit content to minors. *See Forsher*, 26 Cal.3d at 803 (courts "must . . . refrain from scrutinizing what is not said to find a defamatory meaning which the article does not convey to a lay reader").

Second, Plaintiffs allege that the TMZ Piece "falsely imputed" that they are guilty of "moral depravity, including the alleged cultural collapse of the Marubo Tribe." FAC ¶ 75; *see also id.* ¶¶ 45–49. Again, the TMZ Piece never accuses Plaintiffs (or anyone else) of "moral depravity" or blames them for any "cultural collapse" of the Tribe. The Piece's tone is irreverent and lighthearted—not moralistic or judgmental. It presents the Tribe as experiencing the same "pros" and "cons" of internet exposure that people all over the world encounter, including both sexually explicit content and its potential effects, and greater access to educational materials and emergency assistance. The TMZ Piece's lighthearted treatment is a far cry from Plaintiffs' allegations that TMZ charged them with "moral depravity" and "cultural collapse." *See Forsher*, 26 Cal. 3d at 803.

Third, Plaintiffs claim the TMZ Piece "falsely imputed" they are guilty of "professional and humanitarian negligence" and "betrayal of the Indigenous communities they serve." FAC ¶ 75. But the TMZ Piece does not state or imply anything about Plaintiffs' professionalism, humanitarianism, or service of Indigenous communities, or accuse them of negligence or betrayal. Rather, it playfully discusses the potential pros and cons of internet access without blaming anyone for the latter.[4]

Fourth, the FAC claims the TMZ Piece states that "Elon Musk's Starlink Hookup Leaves A Remote Tribe Addicted to Porn" and that some "tribe members were 'sending each other really

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[3] The only mention of minors concerns *non*-sexually explicit material: "other issues range from kids playing violent shooter games to chatting with strangers online and getting addicted to their phones for hours." Ex. D. Plaintiffs cannot conflate the TMZ Piece with other media coverage that may have linked Tribe minors to internet porn consumption; the TMZ Piece did no such thing.

[4] The only person alluded to as partly responsible for the Tribe gaining internet access is Elon Musk, whose efforts are described by one commenter as a "good thing," albeit with certain unintended consequences typical of internet use. Ostroff Decl., Ex. E at 1:20.

explicit porn videos, and that this behavior may make them a 'threat to the women.'" FAC ¶ 79. Those statements concerning unspecified individuals' consumption and sharing of pornography are not of and concerning Plaintiffs Dutra or Enoque, or any individual Tribe member, which means they cannot give rise to liability. *See Sullivan*, 376 U.S. 254 at 288, 291–92 (First Amendment and common law require that allegedly injurious statements be "of and concerning" an individual plaintiff); *Blatty*, 42 Cal. 3d at 1042–1045 (plaintiff must show she is "the *direct* object of criticism" and that allegedly injurious statements are "of and concerning" her by name or "clear implication").

3. Under the Totality of Circumstances, Many of the Alleged Statements—Even if They Had Been Published—Would be Non-Actionable Opinion and Hyperbole

Even if TMZ had published the challenged statements, at least three of them would be non-actionable, constitutionally-protected opinion and/or hyperbole. The First Amendment bars defamation claims based on statements that "cannot reasonably be interpreted as stating actual facts about an individual." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990) (cleaned up). "Even if they are objectively unjustified or made in bad faith, . . . statements of *opinion* rather than fact cannot form the basis for a libel action." *Campanelli v. Regents of Univ. of Calif.*, 44 Cal. App. 4th 572, 578 (1996). "The critical determination of whether an allegedly defamatory statement constitutes fact or opinion is a question of law for the court[.]" *Id.* (citation omitted). To make that determination, courts look to the "totality of the circumstances"—*i.e.*, the context and language of the statements. *Baker v. Los Angeles Herald Examiner*, 42 Cal. 3d 254, 260–61 (1986). "[W]hen analyzing the statements in question, courts do so from the perspective of the average reader, not a person trained in the technicalities of the law." *Ferlauto v. Hamsher*, 74 Cal. App. 4th 1394, 1404 (1999). "The 'average reader' is a reasonable member of the audience to which the material was originally addressed." *Couch v. San Juan Unif. Sch. Dist.*, 33 Cal. App. 4th 1491, 1500 (1995).

The contextual setting and medium of a communication can contribute to a finding of non-actionability. For example, courts have recognized that when deciding whether allegedly defamatory speech is actionable, "the discernibly humorous intent of the publisher" may be relevant, and courts can "give weight to the comedic context in which publication occurred." *Polygram Recs., Inc. v. Superior Ct.*, 170 Cal. App. 3d 543, 554 (1985); *see also Baker*, 42 Cal. 3d

at 267 (under totality of the circumstances, the allegedly defamatory statement could not be understood as one of fact based in part on the author's use of "hyperbole," "exaggerated" language and "sarcasm" evincing a "tongue-in-cheek" approach); *Ferlauto*, 74 Cal. App. 4th at 1401.

Here, many of the statements at issue are non-actionable opinion and/or hyperbole. First, as explained above, the TMZ Piece did not "falsely impute" Plaintiffs are guilty of "moral depravity, including the supposed cultural collapse of the Marubo Tribe." FAC ¶ 75. But even if it did, that would be non-actionable. *See McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 116–17 (2007) (calling behavior "immoral" was not actionable because "[b]ehavior that might qualify as immoral to one person" could be "perfectly acceptable to another person," and was thus non-actionable opinion); *James v. San Jose Mercury News*, 17 Cal. App. 4th 1, 12–15 (1993) (statements that plaintiff engaged in "sleazy, illegal, and unethical practices" was not actionable). Second, the supposed statement that Plaintiffs are guilty of "professional and humanitarian negligence" and "betrayal of the Indigenous communities," FAC ¶ 75, is also non-actionable. *E.g.*, *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1105–06 (N.D. Cal. 1999) (statement plaintiff "alienated, betrayed, or lied to everyone in the [] community" was "nonactionable rhetorical hyperbole").[5]

Third, as explained above, the alleged statements "Elon Musk's Starlink Hookup Leaves A Remote Tribe Addicted to Porn" and that some "tribe members were 'sending each other really explicit porn videos, and that this behavior may make them a 'threat to the women,'" FAC ¶ 79, are not "of and concerning" Plaintiffs individually and thus they cannot be the basis of a claim. They also constitute nonactionable opinion and/or hyperbole. The reference to "addiction" was made in the context of TMZ's lighthearted and irreverent Piece, and could not reasonably be considered as a clinical diagnosis of medical addiction.[6] A reasonable TMZ viewer is accustomed to such irreverent

[5] S*ee also Botos v. Los Angeles County Bar Assn.*, 151 Cal. App. 3d 1083, 1088–1090 (1984) (bar association's rating of judge as "not qualified" non-actionable); *Moyer v. Amador Valley J. Union High Sch. Dist.*, 225 Cal. App. 3d 720, 725 (1990) (statement that plaintiff was the "worst teacher" at school was non-actionable "expression of subjective judgment by the speaker").

[6] *See Campanelli*, 44 Cal. App. 4th at 579–81 (statements that college basketball coach made players "physically ill" and caused them "psychological damage" could not support defamation claim as "the general public would not reasonably expect the [speakers] to be making an observation which could be proven true or false in a medical sense"); *Balzaga v. Fox News Network, LLC*, 173 Cal. App. 4th 1325, 1329, 1338–43 (2009) (rejecting defamation by implication

treatment of mainstream news stories and tunes into TMZ for such lighthearted takes. *See Couch*, 33 Cal. App. 4th at 1500 (allegedly defamatory statements evaluated by considering effect on "reasonable member of [defendant's] audience"). Likewise, whether an unspecified Marubo Tribe member who circulates sexually explicit videos to another unspecified member is a "threat to women" is nonactionable. *See Ferlauto*, 74 Cal. App. 4th at 1405 (statements describing people as the "meanest, greediest, low-blowing motherfuckers in Hollywood" were "nonactionable, feisty expressions of permissible opinion," not assertions of fact).

4. Plaintiffs Cannot Prove Falsity

Even if Plaintiffs could show that TMZ published potentially actionable statements, their claim would still fail because they cannot meet their burden of proving such statements are false. *See Nizam-Aldine v. City of Oakland*, 47 Cal. App. 4th 364, 373–74 (1996). A statement is constitutionally protected and cannot be defamation "so long as the imputation is substantially true." *Campanelli*, 44 Cal. App. 4th at 581–82. Courts can decide substantial truth at the anti-SLAPP stage. *Carver v. Bonds*, 135 Cal. App. 4th 328, 347 (2005). As explained, the TMZ Piece does *not* "falsely impute to Plaintiffs"—or anyone else—"criminal behavior, including the facilitation of sexually explicit content to Indigenous minors." FAC ¶ 75; *see supra*, Section IV.A.2. But to the extent Plaintiffs' proffered "implication" is based on their helping facilitate internet access for the Tribe, some of whose members accessed porn, and some of whose members were minors, Plaintiffs cannot meet their burden of proving those premises are false. They concede the Tribe "gained high-speed internet access through Elon Musk's Starlink," a "transformative development was made possible through a humanitarian effort led by Brazilian advocate Flora Dutra, Marubo leader Enoque Marubo," and others. FAC ¶¶ 21–22. And the FAC does not allege and Plaintiffs cannot prove that *no* Marubo Tribe members have ever viewed sexually explicit material on the internet. *See generally* FAC. Similarly, Plaintiffs cannot establish that the statement in the TMZ Piece that some Tribe members were "sending each other really explicit porn videos," *id.* ¶ 79, is false. Indeed, the NYT Article features statements from a Tribe leader acknowledging

because a "defamatory meaning must be found, if at all, in a reading of the publication as a whole," as "[d]efamation actions cannot be based on snippets taken out of context").

that "young men were sharing explicit videos in group chats." Ostroff Decl., Ex. A.

5. TMZ Did Not Make Any Statements with Actual Malice

i. Plaintiffs Must Prove Actual Malice Because They are Public Figures

Here, Plaintiffs are—at a minimum—"limited purpose public figures," who "voluntarily inject[ed] [themselves] . . . into a particular public controversy." *Reader's Digest Ass'n, Inc. v. Superior Ct.*, 37 Cal. 3d 244, 253 (1984) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974)); *see* Section III, *supra*. Both Dutra and Enoque made public statements in YouTube videos and in the NYT Article about bringing Starlink to the Marubo Tribe. *See* Ostroff Decl., Exs. A, I, K. The Tribe itself invited NYT reporters to report on that. FAC ¶¶ 13–15. These "affirmative actions" had the effect of "thrust[ing]" Plaintiffs "into the forefront" of issues addressed by the TMZ Piece, and "into the public eye." *Reader's Digest*, 37 Cal. 3d at 254–55. Moreover, elected officials like Enoque are public figures who must prove actual malice. *E.g.*, *Issa*, 31 Cal. App. 5th at 703. Thus, Plaintiffs must demonstrate with *clear and convincing evidence* that TMZ acted with constitutional actual malice—*i.e.*, with knowledge of falsity or reckless disregard of whether the statements in the TMZ Piece were false. *Reader's Digest*, 37 Cal. 3d at 256.

ii. Plaintiffs Cannot Prove Actual Malice by Clear and Convincing Evidence

To show knowledge of falsity, Plaintiffs must show that TMZ "was actually aware that the contested publication was false." *Woods v. Evansville Press Co., Inc.*, 791 F.2d 480, 484 (7th Cir. 1986). To establish TMZ acted with "reckless disregard" for the truth, they must show TMZ "actually had a 'high degree of awareness of … probable falsity.'" *Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657, 688 (1989). "Reckless disregard" is not measured "by whether a reasonably prudent man would have published, or would have investigated before publishing." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Actual malice focuses solely on the defendant's state of mind "at the time of publication." *Bose Corp. v. Consumer Union*, 466 U.S. 485, 512 (1984). A plaintiff must prove actual malice by "clear and convincing" evidence, meaning evidence that "command[s] the unhesitating assent of every reasonable mind." *De Havilland v. FX Network, LLC*, 21 Cal. App. 5th 845, 856 (2018). "Mere negligence does not suffice," *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510 (1991), nor does "gross or even extreme negligence," *McCoy v.*

Hearst Corp., 42 Cal. 3d 835, 860 (1986). "Actual malice cannot be implied and must be proven by direct evidence." *De Havilland*, 21 Cal. App. 5th at 856.

Here, Plaintiffs cannot prove actual malice because TMZ had a reasonable basis to believe any statements of fact in the TMZ Piece were true. TMZ created the Piece based on the NYT Article. Ostroff Decl., Ex. A; *see also* Latibeaudiere Decl. ¶ 5. At the time TMZ published the Piece, it reasonably believed that the statements in the heavily-reported and sourced NYT Article were true, and TMZ had no reason to doubt the accuracy of NYT's reporting. *Id.* Before publishing the TMZ Piece, TMZ was also aware of the publication of multiple other articles containing the same information contained in the NYT Article. *Id.* ¶ 7. Thus, when TMZ published the TMZ Piece on June 4 and 5, 2024, TMZ did not publish with actual malice. *Id.* ¶ 5; *see Reader's Digest*, 37 Cal. 3d at 258 (no actual malice where defendant had no basis to doubt sources); *see also infra*, Section IV.A.6. Even if Plaintiffs could get past all of the other barriers above (they can't), they must also plead and prove actual malice—with enough evidence to "command the unhesitating assent of every reasonable mind." *De Havilland*, 21 Cal. App. 5th at 856. They cannot do so.

6. The Wire Services Defense Bars Plaintiffs' Defamation Claim

For the same reasons as those articulated above in Section IV.A.5, Plaintiffs' defamation claim independently fails under the wire services defense, which provides that a news outlet does not act negligently when it republishes a story from a major news service, even if the story is not repeated verbatim. *See Rakofsky v. Washington Post*, 971 N.Y.S.2d 74 (Sup. Ct. 2013) (no liability where defendants "summarized" *Washington Post* articles); *Winn v. United Press Int'l*, 938 F. Supp. 39, 44 (D.D.C. 1996) (no defamation where defendant republished edited version of story from established newspaper); *Nelson v. Associated Press, Inc.*, 667 F. Supp. 1468, 1475 (S.D. Fla. 1987) (no liability where magazine relied on *Washington Post*, *Miami Herald*, and other publications).

7. Plaintiffs Failed to Allege and Cannot Prove Any Legally Cognizable Damages

Because Plaintiffs did not make a retraction demand to TMZ after the TMZ Piece was published, Latibeaudiere Decl. ¶ 8, Plaintiffs can only succeed on their defamation claim if they plead and prove special damages. Civ. C. § 48a(a). The FAC fails to sufficiently plead such damages, and in fact, expressly disclaims the need to do so. *See id.* 48a(d)(2); FAC ¶ 83; *see also*

Pridonoff v. Balokovich, 36 Cal. 2d 788, 792 (1951) ("general allegation of the loss of a prospective employment, sale, or profit will not suffice").

B. The Ancillary Claims Necessarily Fall with the Defamation Claim

Plaintiffs' ancillary claims against TMZ for false light, NIED, misappropriation, negligence, and section 17200 violations necessarily fail as well for two reasons. First, if ancillary claims "are based on the same factual allegations as those of a simultaneous libel claim, they are superfluous and must be dismissed." *Couch*, 33 Cal. App. 4th at 1504. Here, Plaintiffs' ancillary claims are all based on the same underlying contentions and allegedly injurious speech as their defamation claim. *See* FAC ¶¶ 44–49, 75, 79 (defamation), 87–88 (false light), 103–104, 111 (NEID), 117, 125 (misappropriation), 154 (negligence), 159–160 (section 17200). Second, even if the claims were not superfluous, the First Amendment applies to "*all* claims whose gravamen is the alleged injurious falsehood of a statement." *Blatty*, 42 Cal. 3d at 1042–43 (emphasis added). "The collapse of [the] defamation claim spells the demise of all other causes of action" in the same complaint "which allegedly arise from the same publication." *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 34 (2007). This is because "liability cannot be imposed on *any* theory for what has been determined to be a constitutionally protected publication." *Reader's Digest*, 37 Cal. 3d at 265 (emphasis added).

C. The Ancillary Claims Also Fail for Other Independent Reasons

NIED and Negligence (4th and 8th Causes of Action). Plaintiffs do not adequately plead and cannot substantiate NIED and negligence claims, which are, in any event, redundant of each other. *See Huggins v. Longs Drug Stores Cal., Inc.*, 6 Cal. 4th 124, 129 (1993) ("negligent infliction of emotional distress is a form of the tort of negligence"). First, their "negligence" claims are premised on the wrong legal standard because, as explained above, Plaintiffs must show TMZ acted with actual malice— not negligence. *See supra* Section IV.A.5; *see also Felton v. Schaeffer*, 229 Cal. App. 3d 229, 238–39 (1991) ("If plaintiffs … were permitted to sue in negligence, we perceive plaintiffs would seek to evade the strictures of libel law and avoid the applicable defenses by framing all libel actions as negligence causes of action"). Second, Plaintiffs cannot establish any cognizable legal duty of care owed them by TMZ. There is no special relationship between them and TMZ giving rise to a duty as a matter of law. *See Huggins*, 6 Cal. 4th at 129.

Misappropriation of Likeness (5th Claim). Plaintiffs fail to allege and cannot substantiate necessary elements of a misappropriation claim under Civil Code section 3344 or the common law. First, although their misappropriation claim contains allegations about Defendant NYT, it does not include *any* allegations about TMZ, let alone sufficient allegations to support misappropriation. *See* FAC ¶¶ 117–29. Second, Plaintiffs must establish a *direct connection* between the use of his or her name or likeness and a *commercial purpose* for a section 3344 claim or a commercial or similar purpose for a common law claim. *Stewart*, 181 Cal. App. 4th at 680. Here, the TMZ Piece is a news story, which does not suffice. *See id.* at 688–89. Third, Section 3344 "has an express exemption for use 'in connection with any news, public affairs, or sports broadcast or account, or any political campaign.' (§ 3344, subd. (d).) This is similar to the [First Amendment-based] exception developed under the common law right for publication of matters of public interest." *Id.* at 680. The TMZ Piece falls within these exemptions. Fourth, at most, the TMZ Piece, which does not mention Plaintiffs by name, makes only "incidental use" of their likenesses and thus cannot support misappropriation. *See Hill v. Nat'l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 26 (1994).

Section 17200 (9th Cause of Action). First, Plaintiffs' Section 17200 claim is based on the same alleged acts and omission as their other claims, and thus it fails insofar as those other claims do. *See supra*, Sections IV.A., B. & C.; *Cel-Tech Commns. v. Los Angeles Cellular Tel.*, 20 Cal. 4th 163, 182 (1999) (plaintiffs cannot "plead around" a "bar to relief" simply "by recasting the cause of action as one for unfair competition"). Second, the only relief Plaintiffs seek for the claim are damages, *see* FAC, Prayer for Relief, 7th Cause of Action, but damages are unavailable under Section 17200, *see Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003). Third, the Section 17200 claim fails because their allegations relate only to themselves individually, not a "general business practice" of TMZ that was "commit[ed] or perform[ed] with frequency" more generally. *Benton v. Allstate Ins. Co.*, 2001 WL 210685 at *8 (C.D. Cal. Feb. 26, 2001).

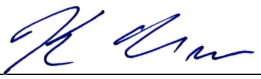
V. CONCLUSION

TMZ's anti-SLAPP Motion should be granted in full and without leave to amend.[7]

[7] Amendment is not permitted in the face of this anti-SLAPP motion. *See, e.g.*, *Med. Marijuana, Inc.*, 46 Cal. App. 5th at 900.

DATED: July 17, 2025

JASSY VICK CAROLAN LLP



KEVIN L. VICK
JORDYN OSTROFF

Counsel for Defendant EHM PRODUCTIONS, INC. d/b/a TMZ

DECLARATION OF CHARLES LATIBEAUDIERE

I, Charles Latibeaudiere, declare as follows:

1. I am over the age of 18. I am an Executive Producer at EHM Productions, Inc. d/b/a TMZ. I submit this declaration in support of TMZ's Special Motion to Strike the First Amended Complaint filed in the matter of *Dutra, et al. v. EHM Productions, Inc., et al.*, Superior Court of the State of California, County of Los Angeles, No. 25STCV14798 (the "Action"). I have personal knowledge of the facts stated herein, and if called upon to testify, could and would testify competently thereto.

2. I have worked at TMZ since 2007, and I have been an Executive Producer at TMZ since 2012. In my capacity as Executive Producer—alongside Executive Producer Harvey Levin—I oversee content that is published on TMZ.com and broadcast on the *TMZ on TV* television show.

3. On June 4, 2024, at 3:59 p.m., TMZ published a piece on TMZ.com titled "Tribe's Starlink Hookup Results in Porn Addiction!!!" The next morning, TMZ produced and aired a television segment addressing the subject matter of the piece, and then added that television segment to the piece on TMZ.com (together, the television segment and written component are the "Piece"). I understand that the Piece is the subject, in part, of the Action.

4. At the time that the Piece was published on TMZ.com I had oversight over content published on TMZ.com.

5. As Executive Producer, I developed the television segment for the Piece. Consistent with the Piece's citation and hyperlink to a June 2, 2024 article published by *The New York Times* titled "The Internet's Final Frontier: Remote Amazon Tribes," I understand that TMZ relied on *The New York Times*'s reporting as the factual basis for TMZ's Piece. TMZ had no reason to doubt the accuracy of the *New York Times*'s reporting in the June 2, 2024 article. Accordingly, at the time that TMZ published the Piece, I did not believe that any of the statements in the Piece were false or probably false.

6. The Piece that TMZ published on June 4 and 5, 2024 takes an irreverent tone. It is my understanding that a reasonable TMZ viewer is accustomed to encountering such irreverent treatment of mainstream news stories on TMZ.com, and tunes into TMZ for such lighthearted takes.

7. Before TMZ published the Piece on June 4 and 5, 2024, I was aware that other media outlets had already published other articles relying on the *New York Times*'s June 2, 2024 article, and that there was generally widespread public interest in that article.

8. I am not aware of TMZ ever receiving a retraction demand or any other communication from Plaintiffs or their representatives regarding the Piece before Plaintiffs filed their lawsuit. Given my position at TMZ, I would expect to be informed promptly if someone else at TMZ had received such a retraction demand or communication.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 7/17/25, in Los Angeles, CA.

Charles Latibeaudiere

DECLARATION OF JORDYN OSTROFF

I, Jordyn Ostroff, declare as follows:

1. I am over eighteen years of age. I am admitted to practice before this Court and before all courts of the State of California. I am an Of Counsel at Jassy Vick Carolan LLP, counsel of record in this action for Defendant EHM Productions, Inc. d/b/a TMZ. The facts I state below are true of my own personal knowledge, except for matters stated on information and belief, which I am informed and believe to be true.

1. Attached hereto as **Exhibit A** is a true and correct copy of the article titled "The Internet's Final Frontier: Remote Amazon Tribes, Elon Musk's Starlink has connected an isolated tribe to the outside world – and divided it from within," published by the *New York Times* on June 2, 2024 (the "NYT Article"). I accessed and downloaded a PDF copy of the article from the following URL on June 23, 2025: https://www.nytimes.com/2024/06/02/world/americas/starlink-internet-elon-musk-brazil-amazon.html.

2. Attached hereto as **Exhibit B** is a true and correct copy of the article titled "No, a Remote Amazon Tribe Did Not Get Addicted to Porn," published by the *New York Times* on June 11, 2024. I accessed and downloaded a PDF copy of the article from the following URL on June 23, 2025: https://www.nytimes.com/2024/06/11/world/americas/no-a-remote-amazon-tribe-did-not-get-addicted-to-porn.html.

3. Attached hereto as **Exhibit C** is a true and correct copy of the article titled "Is She the Oldest Person in the Amazon?" published by the *New York Times* on July 19, 2024. I accessed and downloaded a PDF copy of the article from the following URL on July 15, 2025: https://www.nytimes.com/2024/07/19/world/americas/oldest-person-amazon-indigenous-marubo-tribe.html.

4. Attached hereto as **Exhibit D** is a true and correct copy of the article titled "Elon Musk – Tribe's Starlink Hookup Results in Porn Addiction!!!" first published on TMZ.com on June 4, 2024. I accessed and downloaded a PDF copy of the article from the following URL on July 15,

2025: https://www.tmz.com/2024/06/04/remote-amazon-tribe-elon-musk-starlink-internet-porn-social-media/. **Exhibit E**, lodged concurrently with the Court, is a true and correct copy of the video embedded in that article, which I caused to be downloaded on June 23, 2025.

5. Attached hereto as **Exhibit F** are true and correct copies of the following news articles and other public documents concerning the public interest in the pros and cons of the spread of Starlink internet access to remote tribes such as the Marubo Tribe, all of which I accessed and downloaded PDF copies of on June 30, 2025:

- Fabiano Maisonnave, "Starlink internet spurs schools, movies, and illegal mines in Brazil," *The Christian Science Monitor* (March 16, 2023), *available at* https://www.csmonitor.com/World/Americas/2023/0316/Starlink-internet-spurs-schools-movies-and-illegal-mines-in-Brazil.
- André Duchiade & Catarina Barbosa, "Starlink: 'Elon Musk's internet brings euphoria and fear to the Amazon," *Sumaúma* (Nov. 6, 2023), *available at* https://sumauma.com/en/starlink-a-internet-de-elon-musk-leva-euforia-e-medo-para-a-amazonia/.
- Lua Cruz, "Starlink's Amazonian Adventure: Bridging Gaps of Just Adding Concerns?" *The Green Web Foundation* (Feb. 9, 2024), *available at* https://www.thegreenwebfoundation.org/news/starlinks-amazonian-adventure/.

6. Attached hereto as **Exhibit G** are true and correct copies of a selection of news articles that quickly picked up and re-published the information in the NYT Article, all of which I accessed and downloaded PDF copies of on July 1, 2025:

- Sara Odeen-Isbister, "A remote tribe was given the internet for the first time – here's how it's gone," *Metro* (June 3, 2024) *available at* https://metro.co.uk/2024/06/03/arrival-internet-impacted-a-remote-amazon-tribe-20962811/.
- Anish Vij, "Remote tribe was given internet for the first time and their reaction was incredibly surprising," *LAD Bible* (June 3, 2024), *available at*

https://www.ladbible.com/news/world-news/starlink-marubo-elon-musk-amazon-308871-20240603.

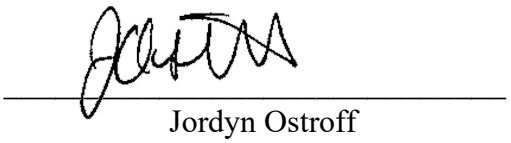
7. Attached hereto as **Exhibit H** is a true and correct copy of Plaintiff Flora Dutra's website, which I accessed and downloaded a PDF copy of from the following URL on June 26, 2025: https://bio.site/floradutra. **Exhibit I**, lodged concurrently with the Court, is a true and correct copy of a video entitled "NASA panel for the United Nations General Assembly," which is embedded and linked to on Plaintiff Dutra's website, and which I caused to be downloaded on June 26, 2025.

8. Attached hereto as **Exhibit J** is a true and correct copy of Plaintiff Dutra's YouTube channel, which is linked to from her website. On July 15, 2025, I caused a PDF copy of her YouTube channel to be downloaded from the following URL: https://www.youtube.com/@floradutra3051/featured. **Exhibit K**, lodged concurrently with the Court, is a true and correct copy of a video featured on Plaintiff Dutra's YouTube channel entitled "Starlink in the Amazon Rainforest." I caused a copy of this video to be downloaded on June 26, 2025.

9. Attached hereto as **Exhibit L** are true and correct copies of a selection of news articles and other public documents concerning the public interest in the increasing use of online pornography resulting from the increase in internet access, and the effects of online pornography use, all of which I accessed and downloaded PDF copies of on July 1, 2025:

- Samuel Bartlett, "Porn use soars in pandemic, prompting fears for younger viewers," *Yahoo! News* (Feb. 16, 2022), available at https://au.news.yahoo.com/porn-use-soars-in-pandemic-prompting-fears-for-young-viewers-075120047.html.
- Zawn Villines, "Porn: Is it bad for you?" *Medical News Today* (June 26, 2023) *available at* https://www.medicalnewstoday.com/articles/is-porn-bad.
- Campbell Ince, et al., "Clarifying and extending our understanding of problematic pornography use through descriptions of the lived experience," *Nature* (Oct. 24, 2023), *available at* https://www.nature.com/articles/s41598-023-45459-8.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 17, 2025, in Los Angeles, California.



Jordyn Ostroff

EXHIBIT A