HEARING DATE: **December 19, 2024** TRIAL DATE: Not set.

CASE: **Francis Ford Coppola v. Variety Media, LLC, et al.**

CASE NO.: **24STCV23459**

RULING RE:

SPECIAL MOTION TO STRIKE (CIV. PROC. CODE, § 425.16)

MOVING PARTY: Defendants Variety Media, LLC, Brent Lang and Tatiana Siegel

RESPONDING PARTY(S): Plaintiff Francis Ford Coppola

Plaintiff alleges that Defendants published defamatory statements in the entertainment publication *Variety* about Plaintiff regarding his on-set behavior as director of the major motion picture *Megalopolis*.

Defendants Variety Media, LLC, Brent Lang and Tatiana Siegel bring an anti-SLAPP special motion to strike pursuant to Civ. Proc. Code, § 425.16.

RULING

Defendants Variety Media, LLC, Brent Lang and Tatiana Siegel's anti-SLAPP special motion to strike pursuant to Civ. Proc. Code, § 425.16 is DENIED.

Moreover, Plaintiff is granted leave to amend to more specifically allege actual malice and special damages.

ANALYSIS

Defendants' Evidentiary Objections

Declaration of Francis Ford Coppola

No. 1: SUSTAINED. Irrelevant.
No. 2: SUSTAINED. Irrelevant.
No. 3: OVERRULED. Permissible lay opinion based on experience as a director; relevant.
No. 4: OVERRULED. Permissible lay opinion based on experience as a director; relevant.

No. 5: OVERRULED, Permissible and corroborated by Defendants' concession of actual malice for purposes of this motion.
No. 6: SUSTAINED. Irrelevant.
No. 7: OVERRULED. Permissible lay opinion based on experience as a director; relevant; goes to weight.
No. 8: OVERRULED. Relevant to damages.

Declaration of Eric Jager

No. 9: SUSTAINED. Jager's opinion does not impact how a reasonable reader would construe the article—that is for the jury to determine. To the extent Jager is opining on a question of law, i.e., whether the statements are capable of defamatory meanings of falsity, that is a question for the court to decide. An expert may not opine on an issue of fact for a jury or an issue of law for the court to decide.

> ". . . **The cited rule does not, however, authorize an 'expert' to testify to legal conclusions in the guise of expert opinion. Such legal conclusions do not constitute substantial evidence**. [Citation.] **'The manner in which the law should apply to particular facts is a legal question and is not subject to expert opinion**. [Citation.]' [Citation.]
> . . .
>
> **Expert opinions which invade the province of the jury are not excluded because they embrace an ultimate issue, but because they are not helpful (or perhaps too helpful). "[T]he rationale for admitting opinion testimony is that it will assist the jury in reaching a conclusion called for by the case. 'Where the jury is just as competent as the expert to consider and weigh the evidence and draw the necessary conclusions, then the need for expert testimony evaporates**.' [Citation.]" (People v. Torres (1995) 33 Cal. App. 4th 37, 47 [39 Cal. Rptr. 2d 103]; see 1 McCormick on Evidence, supra, § 12, p. 49, fn. 11 ["The fact that an opinion or inference is not objectionable because it embraces an ultimate issue does not mean, however, that all opinions embracing the ultimate issue are admissible. . . . Thus, an opinion that plaintiff should win is rejected as not helpful."].) **In other words, when an expert's opinion amounts to nothing more than an expression of his or her belief on how a case should be decided, it does not aid the jurors, it supplants them**.

(*Summers v. A. L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1179, 1183 [bold emphasis added].)

Nos. 10 – 17: SUSTAINED. *See* above at No. 9.

Declaration of Rose Locke

No. 18: SUSTAINED. Irrelevant.
No. 19: SUSTAINED. Irrelevant.

02/21/2025

No. 20: SUSTAINED. Irrelevant.
No. 21: OVERRULED. Sufficient foundation/personal knowledge; goes to weight; not hearsay—not a statement.
No. 22: OVERRULED. Relevant.

Declaration of Amir A. Torkamani

No.23: OVERRULED. The "Best Evidence Rule" was repealed in 1998 and replaced by the Secondary Evidence Rule, which allows proof of the content of a writing through secondary evidence with narrow exceptions not present here. Moreover, the hearing transcript was attached, so there is no harm in counsel summarizing the contents thereof.
No. 24: OVERRULED. Relevant; the "Best Evidence Rule" was repealed in 1998 and replaced by the Secondary Evidence Rule, which allows proof of the content of a writing through secondary evidence with narrow exceptions not present here. Moreover, the hearing transcript was attached, so there is no harm in counsel summarizing the contents thereof.
No. 25: OVERRULED. Permissible legal conclusion/argument by counsel; the "Best Evidence Rule" was repealed in 1998 and replaced by the Secondary Evidence Rule, which allows proof of the content of a writing through secondary evidence with narrow exceptions not present here. Moreover, the hearing transcript was attached, so there is no harm in counsel summarizing the contents thereof.

Request For Judicial Notice

Defendants request that the Court take judicial notice of the following:

(1) Exhibit A USB flash drive containing videos embedded in Variety's July 26, 2024, news article (the "Article"), which is attached to the Complaint and identified and linked to at paragraph 12.

(2) Exhibit B May 14, 2024, article in The Guardian that is discussed and linked to in the Article.

(3) Exhibit C Publications about the motion picture "Megalopolis."

(4) Exhibit D Complaint in Pagone v. Coppola et al., Fulton County, Georgia Superior Court Case No. 24CV011373.

(5) Exhibit E Publications about the Pagone lawsuit.

(6) Exhibit F Publications about Plaintiff Francis Ford Coppola.

(7) Exhibit G Publications about sexual harassment and the treatment of women in the entertainment industry.

Requests Nos. 1 – 3, 5 – 7 are DENIED. These are evidentiary matters of which the Court may not take judicial notice pursuant to Evid. Code, § 452.

> Nor may we take judicial notice of the truth of the contents of the Web sites and blogs, including those of the Los Angeles Times and Orange County Register. (See Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1141, fn. 6 [119 Cal. Rptr. 2d 709, 45 P.3d 1171] ["The truth of the content of the articles is not a proper matter for judicial notice ... ."]; Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A. (2009) 174 Cal.App.4th 883, 888, fn. 4 [94 Cal. Rptr. 3d 672] [statements of facts contained in press release not subject to judicial notice].) The contents of the Web sites and blogs are "plainly subject to interpretation and for that reason not subject to judicial notice." (L.B. Research & Education Foundation v. UCLA Foundation (2005) 130 Cal.App.4th 171, 180, fn. 2 [29 Cal. Rptr. 3d 710].)

(*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194.)

However, the Court will consider these as evidence subject to objections.

Request No. 4 is DENIED as irrelevant to the disposition of this motion. 7 The Court need only take judicial notice of relevant materials. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled in part on other grounds noted in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.) The Court may deny a request for judicial notice of material unnecessary to its decision. (*Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, 713.)

Plaintiff requests that the Court take judicial notice of the following:

1. Coppola's Complaint filed in this action on September 11, 2024;

2. The Answer filed by Defendants Variety Media, LLC, Brent Lang, and Tatiana Siegel (collectively, "Defendants") in this action on October 11, 2024;

3. Defendants' Opposition to Plaintiff's Motion for Leave to Conduct Discovery and Continue Hearing on the Anti-SLAPP Motion filed in this action on November 5, 2024.

4. The Reply in Support of Plaintiff Francis Ford Coppola's Motion for Leave to Conduct Discovery and Continue Hearing on the Anti-SLAPP Motion filed in this action on November 8, 2024.

Requests Nos. 1 – 4 are GRANTED per Evid. Code, § 452(d)(court records).

Discussion

Anti-SLAPP Special Motion To Strike

Plaintiff alleges that Defendants published defamatory statements in the entertainment publication *Variety* about Plaintiff regarding his on-set behavior as director of the major motion picture *Megalopolis*. Defendants Variety Media, LLC, Brent Lang and Tatiana Siegel bring an anti-SLAPP special motion to strike pursuant to Civ. Proc. Code, § 425.16.

In ruling on a defendant's special motion to strike, the trial court uses a "summary-judgment-like procedure at an early stage of the litigation." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) This is a two-step process. First, the defendant must show that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue. (Code Civ. Proc., § 425.16(b)(1).) Second, if the defendant carries that burden, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the claim. (Code Civ. Proc., § 425.16(b)(3).) The defendant has the burden on the first issue, and the plaintiff on the second. (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 928; *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 919.) In making both determinations the trial court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Code Civ. Proc., §425.16(b)(2); *Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

The Defendant's act underlying the cause of action must itself have been in furtherance of the right of petition or free speech. (*City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 76-78.) The defendant's acts are protected activity – that is, made in furtherance of protected petition or free speech in connection with a public issue – if they fit into one of the following categories under the section 425.16, subdivision (e) categories: (1) oral or written statements made before a legislative, executive, judicial or any other official proceeding; (2) oral or written statements made in connection with an issue under consideration or review by a legislative, executive, judicial body, or any other official proceeding authorized by law; (3) written or oral statements made in a place open to the public or in a public forum in connection with an issue of public interest; and (4) any other conduct in furtherance of the exercise of the constitutional rights of petition or free speech in connection with a public issue or an issue of public interest. (Code Civ. Proc., § 425.16(e).)

If such a showing is made, the burden now shifts to Plaintiff to show a probability of prevailing on the claim. (Code Civ. Proc., § 425.16(b)(1).) To establish a probability of prevailing on the merits, the Plaintiff 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 plaintiff is credited. (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.) In making this assessment it is the court's responsibility to accept as true the evidence favorable to the plaintiff. (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal. App. 4th 204, 212.) The Complaint needs only to establish that his or her claim has minimal merit (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89) to avoid being stricken as a SLAPP. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 738.)

"For purposes of this inquiry, 'the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (Code Civ. Proc., § 425.16, subd. (b)(2)); though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.' (Citation omitted.)" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.)

1. Re: Whether the Causes of Action Are Subject To Being Stricken Pursuant to Civ. Proc. Code, § 425.16.

A. First and Only Cause of Action (Libel).

Plaintiff's Complaint contains a single cause of action for libel. The anti-SLAPP motion filed by Defendants argues that this cause of action is subject to being stricken pursuant to Civ. Proc. Code, § 425.16(e)(3)(public forum and issue of public interest) and Civ. Proc. Code, § 425.16(e)(4)(public issue or issue of public interest) as statements published on the *Variety* website, regarding Plaintiff who is a renowned movie director.

Here, *Variety's* online publication/website is a public forum:

> Here, it is undisputed that the two reports published by Muddy Waters were posted to an Internet website available to the public. This court has previously concluded that Internet postings on websites that "'are open and free to anyone who wants to read the messages'" and "accessible free of charge to any member of the public" satisfies the public forum requirement of section 425.16. (Citation omitted).) Multiple Courts of Appeal and the California Supreme Court have reached this same conclusion. (Citations omitted.) Plaintiff suggests that the facts in this case are distinguishable because the website at issue did not allow for public response or comment. Plaintiff has identified no authority for the proposition that a forum ceases to be public simply because interested [*918] persons may not be able to respond. Nor do we believe an individual's right to free speech should be limited or curtailed based upon the ability of another person to respond.

(*Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 917-18.)

Moreover, "tabloid" or "celebrity gossip" issues have been held to been entitled to anti-SLAPP protection as being matters of public interest. (*See Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042-44, citing *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798 and *Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226.)

The Court finds that the libel cause of action arises out of written statements in a public forum, *Variety*, in connection with an issue of public interest, i.e., a major motion picture directed by a renowned director. (Civ. Proc. Code, § 425.16(e)(3).) As such, the cause of action is subject to being stricken pursuant to § 426.16.

The Court proceeds to the second prong of the anti-SLAPP analysis.

2. Re: Whether Plaintiff Has Established That There Is A Probability He Will Prevail On The Claims – Civ. Proc. Code, § 425.16(b)(1).

On this second prong of the anti-SLAPP analysis, the burden shifts to the plaintiff to show a probability of prevailing on the claim. (Civ. Pro. Code, § 425.16(b)(1).)

> [W]hen called upon to make a determination of public figure status, courts should look for evidence of affirmative actions by which purported "public figures" have thrust themselves into the forefront of particular public controversies.

(*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 252-55.)

The Court has no issue finding that Plaintiff is a public figure due to his long-acclaimed status as a director, thereby triggering the actual malice standard.

> "'The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage.'" (Citations omitted.) "In general, ... a written communication that is false, that is not protected by any privilege, and that exposes a person to contempt or ridicule or certain other reputational injuries, constitutes libel." (Citation omitted].) The defamatory statement must specifically refer to, or be "'of [or] concerning,'" the plaintiff. (Citation omitted)
>
> "If the person defamed is a public figure, he cannot recover unless he proves, by clear and convincing evidence ... , that the libelous statement was made with '"actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.'" (Citations omitted].) "The rationale for such differential treatment is, first, that the public figure has greater access to the media and therefore greater opportunity to rebut defamatory statements, and second, that those who have become public figures have done so voluntarily and therefore 'invite attention and comment.'" (Citation omitted.)

(*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1260.)

> "**Though mere opinions are generally not actionable," a "statement ... that implies a false assertion of fact is actionable**." (Citations omitted].) "'[I]t is not the literal truth or falsity of each word or detail used in a statement which determines whether or not it is defamatory; rather, **the determinative question is whether the "gist or sting" of the statement is true or false, benign or defamatory, in substance**.'" (*Issa*, at p. 702; cf. *Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 486 [183 Cal. Rptr. 3d 867] ["rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of contempt and language used in a loose, figurative sense will not support a defamation action"].)
>
> "The 'pertinent question' is whether a 'reasonable fact finder' could conclude that the statements 'as a whole, or any of its parts, directly made or sufficiently implied a false assertion of defamatory *fact* that tended to injure' plaintiff's reputation." (*Issa, supra*, 31 Cal.App.5th at p. 703.) "We apply a '"totality of the circumstances"' test to determine whether a statement is fact or opinion, and whether a statement declares or implies a provably false factual assertion; that is, courts look to the words of the statement itself and the context in which the statement was made." (*Ibid.*) Under this test, '"'[f]irst, the language of the

statement is examined. For words to be defamatory, they must be understood in a defamatory sense. ... [¶] Next, the context in which the statement was made must be considered."' [Citation.] Whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court." (*Ibid.*) With this legal foundation in mind, we turn to the content of the publications.

(*Billauer v. Escobar-Eck* (2023) 88 Cal.App.5th 953, 966-67 [bold emphasis added].)

The Court notes that the instant motion involves arguments typically raised through a demurrer, rather than an anti-SLAPP motion.

At Page 22 of the motion, in footnote 10, Defendants cite *Barry v. State Bar of California* (2017) 2 Cal.5th 318, 328 for the proposition that a SLAPP motion may raise arguments that also would be appropriate for a demurrer. However, the *Barry* court did not so broadly hold. Rather, the *Barry* court held that a demurrer is not the only vehicle **for raising a subject matter jurisdictional challenge, and that a SLAPP motion may also raise that issue.**

> Finally, plaintiff argues that the correct vehicle **for raising a jurisdictional challenge** is a demurrer, rather than a special motion to strike. But as we have recognized, a **demurrer is not the only mechanism for raising a challenge to a court's subject matter jurisdiction**. (See *Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1036 [25 Cal. Rptr. 2d 539, 863 P.2d 784] ["A challenge to the subject matter jurisdiction of a court is properly brought by demurrer to the complaint. It may also be raised by a motion to strike; motion for judgment on the pleadings; motion for summary judgment; or in an answer." (Citations omitted.)].)
>
> And contrary to plaintiff's argument, **there is no rigid rule that requires a court to consider a jurisdictional challenge raised in a demurrer before, or in lieu of, considering such a challenge in the context of a special motion to strike under Code of Civil Procedure section 425.16**. (Cf. *Lin v. City of Pleasanton* (2009) 176 Cal.App.4th 408, 426 [96 Cal. Rptr. 3d 730] [rejecting conclusion that anti-SLAPP motion must be denied when the trial court would have sustained demurrer to same cause of action[1]].)
>
> Indeed, to adopt such a rule would defeat the anti-SLAPP statute's central purpose of preventing "'"SLAPPs by ending them early and without great cost to the SLAPP target."'" (*Varian Medical*, *supra*, 35 Cal.4th at p. 192.) To that end, the statute not only provides a mechanism for compensating the defendant for its litigation expenses in Code of Civil Procedure section 425.16, subdivision (c), but it also requires a court to hear the special motion to strike within 30 days of filing (Code Civ. Proc., § 425.16, subd. (f)) and provides for an automatic stay of discovery pending resolution of the anti-SLAPP motion (*id.*, subd. (g)). In addition, the Courts of Appeal have placed limitations on plaintiffs' ability to

[1] This is not a holding that a SLAPP motion may serve as a demurrer.

amend their complaints in order to avoid or frustrate a hearing on an anti-SLAPP motion. (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1055 [18 Cal. Rptr. 3d 882], citing *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073–1074 [112 Cal. Rptr. 2d 397]; cf. *Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858, 871 [90 Cal. Rptr. 3d 205]**.) These procedural protections would be lost if we were to adopt plaintiff's proposed rule requiring all jurisdictional challenges to be resolved on demurrer, rather than in the context of a special motion to strike.**

III.

A court that lacks subject matter jurisdiction over a plaintiff's claims has the power to resolve an anti-SLAPP motion on jurisdictional grounds. Because the court has the power to resolve the anti-SLAPP motion, it also has the power to award attorney's fees to the defendant that prevails on such a motion. We therefore reverse the judgment of the Court of Appeal.

(*Barry v. State Bar of California* (2017) 2 Cal. 5th 318, 328-329 [bold emphasis and underlining added].)

Barry did not hold that a party may file a SLAPP motion that is essentially a demurrer and force a court to engage in a demurrer-like analysis testing the sufficiency of the pleadings. Instead, on an anti-SLAPP motion, if the Court proceeds to the second prong of the analysis, the Plaintiff must demonstrate with evidence a probability of prevailing on the claim.

> " ' " 'The burden on the plaintiff is similar to the standard used in determining motions for nonsuit, directed verdict, or summary judgment.'" [Citation.]' [Citation.] Thus, 'The plaintiff need only establish that his or her claim has "minimal merit" [citation] to avoid being stricken [pursuant to Code of Civil Procedure section 425.16]. [Citation.]'" (Citation omitted3.) In determining whether the plaintiff has made a prima facie evidentiary showing on the second prong of the anti-SLAPP inquiry, we consider the pleadings **and the evidence adduced on the motion**. (Code Civ. Proc., § 425.16, subd. (b)(2).) We neither weigh the credibility nor compare the probative strength of competing evidence (Citation omitted]), and we disregard declarations lacking in foundation or personal knowledge, or that are argumentative, speculative, impermissible opinion, hearsay, or conclusory (Citation omitted).
> §

(*Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 714 [bold emphasis added].)

A. Re: A False and Defamatory Publication.

Here, the statement that Plaintiff was "often inadvertently inserting himself into the shot and ruining it. . . ." (Complaint, ¶ 14) is susceptible to a defamatory meaning, because inadvertently ruining a shot in this manner suggests incompetence as a director. Indeed, this is pled at ¶ 14 of the Complaint. Plaintiff also pleads why the statement was false. (Complaint, ¶ 15.)

> "A statement is defamatory when it tends 'directly to injure [a person] in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office ... peculiarly requires, or by imputing something with reference to his office ... that has a natural tendency to lessen its profits.' (Civ. Code, § 46, subd. 3.) Statements that contain such a charge directly, and without the need for explanatory matter, are libelous per se. [Citation.] A statement can also be libelous per se if ... a listener could understand the defamatory meaning without the necessity of knowing extrinsic explanatory matter." (Citation omitted.) If the false statement is not libelous per se, a plaintiff must prove special damages. (Citation omitted.)

(*Balla v. Hall* (2021) 59 Cal. App. 5th 652, 675-76.)

Thus, because Plaintiff pleads a statement that is defamatory per se, he need not plead and prove special damages. However, Plaintiff takes issue with the absence of any allegations that Plaintiff suffered special damages. In that instance, the Court will grant Plaintiff leave to so allege as to any statements which are not defamatory per se. The propriety of granting leave to amend as to allegations to are pertinent to the second prong of the anti-SLAPP analysis is discussed below.

Plaintiff also alleges at ¶ 17 that the statement in the article that Plaintiff "tried to kiss some of the topless extras" was false. Plaintiff disputes that he ever hugged or kissed an actress "who was topless." (Coppola Declaration, ¶ 17.) Whether Plaintiff implicitly admits to hugging and kissing actresses/extras who were **not** topless still does not render the statements in the article true. Although Defendants published video purporting to show Plaintiff hugging and kissing women on the set, the video may not clearly show kissing (as opposed to maybe leaning in and whispering). In this regard, statements from sources that Plaintiff kissed women serve to supplement what is depicted in the video. A reasonable trier of fact could conclude that the published statements imply a provably false factual assertion. (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1048.) Further, even if Plaintiff did kiss the women, whether or not they were uncomfortable and thus did not welcome hugging and/or kissing—a defamatory implication that Plaintiff was committing unwanted touching (battery)—is something that can only be ascertained through witness statements, and thus presents a question of fact.

> "The allocation of functions between court and jury with respect to factual content is analogous to the allocation with respect to defamatory meaning in general. On the latter issue, the court must first determine as a question of law whether the statement is reasonably susceptible of a defamatory interpretation; if the statement satisfies this requirement, **it is for the jury to determine whether a defamatory meaning was in fact conveyed to the listener or reader**. [Citations.] Similarly, it is a question of law for the court whether a challenged statement is reasonably susceptible of an interpretation which implies a provably false assertion of actual fact. If that question is answered in the affirmative, **the jury may be called upon to determine whether such an interpretation was in fact conveyed**." (Kahn v. Bower, supra, 232 Cal.App.3d at p. 1608.)

(*Bently Reserve LP v. Papaliolios* (2013) 218 Cal.App.4th 418, 428 [bold emphasis added]

Indeed, although not quoted in the Complaint, certain sentences published in the *Variety* article (attached as an Exhibit to the Complaint) could be found to be defamatory. For instance, the *Variety* article suggests that Plaintiff inadvertently inserted himself into the shot and ruined it because he "kept leaping up to hug and kiss several women." This statement is attributed to a source, who said it was unusual. (Complaint, Exhibit, *Variety* article, Pages 2 – 3. The source is attributed as saying it was unusual to see a director touch an actor. (*Id.* at Page 3.)

Moreover:

> The source said that after multiple takes, Coppola got on a microphone and announced in earshot of everyone in the room, "Sorry, if I come up to you and kiss you. Just know it's solely for my pleasure."

(*Id.* at Page 3.)

This statement is provably false: either Plaintiff said this or he didn't. Moreover, it is capable of a defamatory meaning: that Plaintiff was engaging in inappropriate kissing for his personal pleasure, not any directorial purpose.

Moreover, the article attributes the following statement to an unidentified source:

> However, sources dispute [Mariela Comitini's] depiction of a "professional environment." During the shooting of the nightclub scene, crew members looked at each other uncomfortably as Coppola kissed and embraced the background actors, but one source says no one publicly objected to his behavior or tried to stop it. That may have something to do with how much control Coppola was able to exert since there wasn't an outside studio or streamer with its own HR department involved with the production.

(Complaint, Exhibit, *Variety* article, Page 4.)

Again this sets forth provably false statements: either crew members were uncomfortable because Plaintiff was engaging in kissing and hugging which created a hostile/sexually harassing work environment, or not. This would tend to injure Plaintiff in his profession as a director. The fact that the statements were couched as opinions, i.e., being uncomfortable with Plaintiff's behavior, does not immunize them from being defamatory:

> To be libelous, a " 'statement must contain a provable falsehood ...' " and, to this end, " 'courts distinguish between statements of fact and statements of opinion for purposes of defamation liability.' " (Citation omitted.) **Not all statements that appear to be opinions, however, are immunized**. (Citation omitted.) "In *Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 17 [111 L.Ed.2d 1, 110 S.Ct. 2695] (*Milkovich*), the United States Supreme Court moved away from the notion that defamatory statements categorized as opinion as opposed to fact enjoy

wholesale protection under the First Amendment. Significantly, the court recognized that 'expressions of "opinion" may often imply an assertion of objective fact.' (*Milkovich*, at p. 18.) The court went on to explain: 'If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications ... .' (*Id.* at pp. 18–19.)" (Citation omitted..)

"Thus a false statement of fact, whether expressly stated or implied from an expression of opinion, is actionable. (Citation omitted.) The key is not parsing whether a published statement is fact or opinion, but 'whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact.' (Citation omitted.) For example, "an opinion based on implied, undisclosed facts is actionable if the speaker has no factual basis for the opinion" but "[a]n opinion is not actionable if it discloses all the statements of fact on which the opinion is based and those statements are true." (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1471 [37 Cal.Rptr.3d 133 (*Ruiz*).)

To decide whether a statement expresses or implies a provably false assertion of fact, courts use a totality of the circumstances test. (Citation omitted.) "[A] court must put itself in the place of an average reader and determine the natural and probable effect of the statement ... ." (Citation omitted.) Thus, a court considers both the language of the statement and the context in which it is made. (Citation omitted.) "The contextual analysis requires that courts examine the nature and full content of the particular communication, as well as the knowledge and understanding of the audience targeted by the publication." (Citation omitted.)

The " 'crucial question of whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court.' " (Citation omitted.) But if a statement is "ambiguous and cannot be characterized as factual or nonfactual as a matter of law," a jury must determine whether the statement contains an actionable assertion of fact. (Citations omitted.)

(*Bently Reserve LP v. Papaliolios* (2013) 218 Cal. App. 4th 418, 426-428 [bold emphasis added].)

Defendants' argument that the article as a whole negates any defamatory meaning is not persuasive. The fact that the article (attached to the Complaint) notes that *Megalopolis* came in on time, on budget and quotes other sources saying it was an honor to work with Plaintiff as director, does not necessarily eliminate or negate a defamatory implication for other statements in the article. While allegedly defamatory portions of a publication must be read in the context of the whole article, "the test of libel is not quantitative; a single sentence may be the basis for an action

in libel even though buried in a much longer text...." (*Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1338.) Contextual analysis of allegedly defamatory statements is an inquiry into whether the statements, in the context of the entire publication, are reasonably susceptible to a defamatory meaning as alleged by the plaintiff. (*Id.*) Although Defendants argue that Plaintiff's theory overplays the significance of isolated snippets, Defendant's own arguments overplay the significance of positive or complimentary statements in the article. Comments about the production of *Megalopolis* being on time and on budget, or other positive statements in the article, do not shed further light on whether the work environment was sexually harassing or whether Plaintiff's directorial skills were lacking.

Defendants' argument that the First Amendment does not permit a libel claim to arise from subjective conclusions a reader might draw from disclosed facts, citing *Partington v. Bugliosi* (9th Cir. 1995) 56 F.3d 1147, 1156, is not persuasive. *Partington* addressed the non-actionability of the speaker's[2] (not the reader's) subjective views, interpretations, theories rather than objectively verifiable facts. (*Id.*) By contrast, claiming that Plaintiff engaged in unwanted touching of female extras is not merely the author's subjective opinion, but can be ascertained by surveying the reaction to Plaintiff's conduct on set. Nowhere does the article express the author's subjective opinion as to whether Plaintiff engaged in unwanted touching, but rather sets it forth as a fact that can be proven true or false by determining whether those whom Plaintiff approached were offended or made uncomfortable by his actions.

For the reasons discussed above, the specific statements attributed to the anonymous source are capable of conveying a defamatory meaning. (*Glassdoor, Inc., supra,* 9 Cal.App.5th at 634-35.)

The Court does not address the lack of an HR department/traditional checks and balances aspect of the article because the Court does not deem this to be defamatory nor false.

As discussed above, at least some of the statements attributed to the anonymous source may be proven false, and Plaintiff disputes the truth of those statements regarding hugging and kissing topless actresses.

> 17. These days, especially in Hollywood, making baseless allegations of sexual harassment can be devasting to the accused's career. At no time on the set of *Megalopolis* did I ever hug or kiss an actress who was topless. The videotape publicized by Variety in its article of July 26, 2024, confirms that, despite Variety's knowingly false statements to the contrary.

(Coppola Declaration, ¶ 17.)

Defendants argue that the article states that the videos "would appear to corroborate" a prior published report in the Guardian that Plaintiff tried to kiss topless female extras. "Corroborate" could mean lends credence to the claim, or it could mean that it actually depicted,

[2] "[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." (*Partington v. Bugliosi* (1995) 56 F.3d 1147, 1156.)

Plaintiff approaching topless female extras. It is for a jury to decide how a reasonable reader would construe "corroborate" in the context of the article and linked videos.

Further, if the Guardian's claim that Plaintiff tried to kiss topless female extras is defamatory, Defendants' repetition of that statement may itself be defamation:

> When one person repeats another's defamatory statement, he may be held liable for republishing the same libel or slander. (*Gilman* v. *McClatchy* (1896) 111 Cal. 606, 612 [44 P. 241]; *Arditto* v. *Putnam* (1963) 214 Cal.App.2d 633, 639, fn. 2 [29 Cal.Rptr. 700]; Rest. 2d Torts, § 581A, com. e.)

(*Frommoethelydo v. Fire Ins. Exch.* (1986) 42 Cal. 3d 208, 217.)

Plaintiff also implicitly denies that he had created a hostile/sexually harassing work environment, indicating that he "attempted to motivate people and create a mood [that] was vivacious." (Coppola Declaration, ¶ 13.)

Moreover, Plaintiff disputes that his appearances in scenes ruined the day's shoot, which may be a provable false fact:

> 11. When shooting a motion picture, I often use multiple cameras. On my latest picture, Megalopolis, for the scene reported on by Variety, I used four cameras simultaneously. Three of the cameras were hand-held and the camera crews moved around the action to obtain a variety of perspectives. Because of the number of cameras and the length of the shots (up to 13 minutes per take), at various times I or some members of the camera crews and assistant directors appeared in some of the shots. That was to be expected and unavoidable. Those appearances most certainly did not "ruin" the shots. Over the years, I have often used what others consider "mistakes" in filming to achieve success artistically. Indeed, in my film Apocalypse Now, there is a scene in which I appear directing some of the ongoing action. That was not a "mistake," and it did not "ruin" the scene. It became iconic.

(Coppola Declaration, ¶ 11.)

The Court finds Plaintiff has a reasonable probability of demonstrating the elements of false and defamatory statements in the *Variety* article.

B. Actual Malice.

At the hearing on Plaintiff's motion to lift the discovery stay, Defendants stipulated for purposes of the instant motion that Plaintiff could meet his evidentiary burden with regard to the allegations of actual malice. (Reporter's Transcript of November 14, 2024 Proceedings, Page 20:24 – 21:1, attached as Exhibit F to Opposition.) Defendants argue that Plaintiff fails to sufficiently plead that Defendants acted with actual malice, other than by boilerplate allegations.

As for whether actual malice is pled in the Complaint, paragraph 16 alleges, in general

terms, that Defendants acted with actual malice in publishing the defamatory statements and intended to cause him harm. Paragraph 23 of the Complaint alleges that Defendants' libel was made with knowledge of falsity or with reckless disregard of the truth. More substantively, paragraphs 14 and 15 allege that Defendants "claimed to have 'sources' on the set of Megalopolis" during the scene in which the article describes Plaintiff "inserting himself into the shot and ruining it." Plaintiff alleges in the Complaint that his appearance in the scene was intentional, and his declaration in opposition to the motion explains that this was a choice that was intended to evoke the presence of celebrities at the Studio 54 nightclub in New York. (Coppola Decl., ¶ 12.) Pointing to the article's statement that the article writers' sources were present during the filming of the scene, Plaintiff asserts that Defendants either knew their description of the scene was false, or acted recklessly with regard to the truth or falsity of their account of the scene's filming. This pleading of a factual basis for actual malice goes beyond simple recitation of the legal standard of actual malice under *New York Times Co. v .Sullivan* (1964) 376 U.S. 254, 280.

Because Defendants have conceded, for purposes of this motion, that Plaintiff can support the Complaint's allegations of actual malice with evidence, leave to amend the Complaint to plead additional facts regarding actual malice is appropriate because such amendment goes to the second prong of the anti-SLAPP analysis and would not have the effect of removing the allegations from the scope of § 425.16:

> **Defendant contests the trial court's order authorizing plaintiff to amend her complaint with the foregoing facts presented at the anti-SLAPP hearing. The trial court couched its ruling as an order granting defendant's motion to strike, but with leave for plaintiff to amend her complaint to cure any deficiency concerning actual malice**. Pending this appeal, plaintiff has not filed her amended complaint, nor did she appeal the trial court's order granting the strike motion. Nevertheless, we conclude the trial court's ruling is properly before us. A plaintiff authorized to amend would have—as exemplified here—no incentive to appeal an order granting the strike motion. But **authorizing an amendment under these circumstances is tantamount to denying the strike motion, and we therefore reach the propriety of the ruling based on defendant's challenge.** (§ 425.16, subd. (i) [orders granting or denying strike motion are appealable].)
>
> **Defendant relies on *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068 [112 Cal. Rptr. 2d 397] (*Simmons*) for the proposition that a complaint may not be amended after a motion to strike is filed, but we find *Simmons* inapposite**. In *Simmons*, Allstate sued a chiropractor and his related business entities for unfair business practices based on an insurance scam involving fraudulent medical bills, unnecessary treatments, and other misdeeds. When Simmons cross-complained alleging defamation, Allstate brought an anti-SLAPP motion to strike showing the allegedly defamatory statements "arose out of statements in connection with issues under consideration by a judicial or executive body, as well as issues of public interest." (*Simmons*, at p. 1071.)

Specifically, the statements were related to or made at an ongoing state disciplinary action against Simmons. At the hearing on the motion, Simmons sought leave to amend the cross-complaint to pare allegations bringing it within the scope of the anti-SLAPP statute. (*Id.* at p. 1073.) Simmons argued leave to amend should be liberally granted, comparing the strike process to a demurrer.

The trial court denied leave to amend, which the appellate court upheld on grounds that **an anti-SLAPP motion is more like a summary judgment motion than a demurrer because of the evidentiary showing required and the shifting burdens**. (*Simmons, supra*, 92 Cal.App.4th at p. 1073; accord, *Lam, supra*, 91 Cal.App.4th at p. 843 [noting strike motion is "akin to a summary judgment motion"].) Observing the anti-SLAPP statute made no express provision for amendments, the *Simmons* court concluded permitting an amendment to thwart the defendant's initial prima facie showing of protected activity would undermine section 425.16's "quick dismissal remedy." (*Simmons*, at p. 1073.) The court explained: "Instead of having to show a probability of success on the merits, the SLAPP plaintiff would be able to go back to the drawing board with a second opportunity to disguise the vexatious nature of the suit through more artful pleading. ... [¶] By the time the moving party would be able to dig out of this procedural quagmire, the SLAPP plaintiff will have succeeded in [the] goal of delay and distraction and running up the costs of his opponent." (*Id.* at pp. 1073–1074.)

***Simmons* is inapposite. Unlike the plaintiff in *Simmons*, in seeking amendment here plaintiff did not attempt to void defendant's showing on the first prong of the anti-SLAPP inquiry. Specifically, plaintiff's amendment had nothing to do with defendant's assertion his statements were made in connection with his right of petition or free speech**. Rather, **assuming that showing had been made, and in conjunction with her burden on the second prong to show a probability of prevailing on the merits, plaintiff sought to amend the complaint to plead specifically that defendant harbored the requisite actual malice as shown by the evidence presented for the hearing on the strike motion**.

As *Simmons* noted, the anti-SLAPP statute is silent on the question of amendment. Our purpose in construing section 425.16 is to discern and effectuate the Legislature's intent. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118 [81 Cal. Rptr. 2d 471, 969 P.2d 564].) Consequently, we look to "'the statute as a whole, which includes the particular directives.'" (*Ibid.*) Those directives include the requirement that the parties may not rely merely on pleadings or argument in supporting or opposing the motion, but must present facts in the form of affidavits. (§ 425.16, subd. (b)(2); *HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 211–212 [12 Cal. Rptr. 3d 786] [plaintiff must make prima facie showing of facts establishing probability plaintiff

will prevail].) Additionally, "although discovery is stayed until the notice of entry of the order ruling on the motion, discovery may be conducted if good cause is shown, and such discovery is limited to the issues raised in the special motion to strike." (*Slauson Partnership v. Ochoa* (2003) 112 Cal.App.4th 1005, 1021 [5 Cal. Rptr. 3d 668] (*Slauson*); see *Paterno, supra*, 163 Cal.App.4th at pp. 1345–1346; § 425.16, subd. (g).) Accordingly, the *Slauson* court concluded "nothing in the statute or case law suggests that the factual analysis for ruling on the motion must be frozen in time on the date the complaint is filed." (*Slauson*, at p. 1021.) We agree.

The purpose of section 425.16 is to unmask SLAPP actions "'masquerad[ing] as ordinary lawsuits.'" (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 927 [116 Cal. Rptr. 2d 187].) As *Simmons* observed, "In enacting the anti-SLAPP statute, the Legislature set up a mechanism through which complaints that arise from the exercise of free speech rights 'can be evaluated at an early stage of the litigation process' and resolved expeditiously. [Citation.] Section 425.16 is just one of several California statutes that provide 'a procedure for exposing and dismissing certain causes of action lacking merit.' [Citation.]" (*Simmons, supra*, 92 Cal.App.4th at p. 1073.) **By definition, however, when the plaintiff demonstrates a probability of prevailing on the merits, his or her complaint is not a SLAPP. With nothing to unmask, the policy concerns implicated by the anti-SLAPP statute dissipate, and the action proceeds as an ordinary lawsuit.**

True, a plaintiff may not avoid or frustrate a hearing on the anti-SLAPP motion by filing an amended complaint (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049 [18 Cal. Rptr. 3d 882]) **but where, as here, the evidence prompting amendment is found in the declarations already submitted for the hearing, there is no risk the purpose of the strike procedure will be thwarted with delay, distraction, or increased costs.** (Cf. *ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc.* (2006) 138 Cal.App.4th 1307, 1323 [42 Cal. Rptr. 3d 256] [plaintiff cannot amend pleading to avoid pending anti-SLAPP motion]; *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 772 [131 Cal. Rptr. 2d 201] [plaintiff cannot use "eleventh-hour amendment" to plead around anti-SLAPP motion].)

***Simmons* rightly foresaw a "procedural quagmire" in allowing amendment to defeat the movant's showing on the first prong of the anti-SLAPP statute.** (*Simmons, supra*, 92 Cal.App.4th at p. 1074.) Amendment in that circumstance would necessitate "a fresh motion to strike," triggering "inevitably another request for leave to amend," and thereby abetting the SLAPP plaintiff "in his goal of delay and distraction and running up the costs of his opponent. [Citation.] Such a plaintiff would accomplish indirectly what could not be accomplished directly, i.e., depleting the defendant's energy and draining his or her resources. [Citation.]

This would totally frustrate the Legislature's objective of providing a quick and inexpensive method of unmasking and dismissing such suits. [Citation.]" (*Simmons, supra*, 92 Cal.App.4th at pp. 1073–1074.) **But the concerns expressed in *Simmons* are not implicated where the plaintiff's request for amendment to meet her burden on the second prong is founded upon timely submitted facts already before the court. In such cases, there is no need for a "fresh motion to strike**" (*Simmons, supra*, 92 Cal.App.4th at p. 1073); rather, the trial court need only rule on the motion and facts already under consideration.

To the extent *Simmons* suggests section 425.16 erects an absolute bar to amendment, we disagree and find *Slauson*'s analysis more persuasive. In *Slauson*, a pastor, Ochoa, sought to shut down an adult entertainment strip club through protests by his congregation and other persons outside the business, located in a small shopping center. (*Slauson, supra*, 112 Cal.App.4th at p. 1009.) The club and its landlord filed suit to bar the protesters from the shopping center, and Ochoa responded with an anti-SLAPP motion to strike. Several months before the hearing on the motion, the parties stipulated to a temporary injunction authorizing the protestors to use a private sidewalk near the club, but limiting the number of protesters and confining their activity to "'normal polite protest conduct'" without bullhorns, shouting or sitting, and no physical contact with the club's employees or patrons. (*Id.* at pp. 1014–1015.) The injunction did not restrict protestors' activities on public sidewalks farther away from the club.

Seeking to modify the injunction, the plaintiffs submitted evidence showing the protestors violated the injunction by marching within eight feet of the club, gathering in the parking lot, congregating in numbers beyond the stipulated agreement, yelling and blowing loud whistles, continuing the protest beyond midnight, and engaging in harassing conduct, including placing video cameras on the private sidewalk with signs stating, "'You are being videotaped, it can be used against you in a court of law.'" (*Slauson, supra*, 112 Cal.App.4th at p. 1015.)

The trial court heard the motion to strike before reaching the plaintiffs' request to modify the injunction but, in denying the motion, relied on the plaintiffs' evidence concerning violations of the injunction. On appeal from the denial of his motion, Ochoa argued consideration of the protestors' postcomplaint activities amounted to amendment of the complaint prohibited by *Simmons*. *Slauson* pointed out, however, that although the plaintiffs had not utilized discovery procedures to obtain evidence showing the protesters violated the injunction, the discovery provision in section 425.16, subdivision (g), demonstrated "further development of the factual record is contemplated by the anti-SLAPP statute, and not expressly prohibited by it ... ." (*Slauson, supra*, 112 Cal.App.4th at p. 1021.) Accordingly, the *Slauson* court concluded "it was not error for the trial court to rely on evidence of events occurring subsequent to the filing of the complaint." (*Id.* at pp. 1021–1022.)

> Here, plaintiff demonstrated a probability of prevailing at trial if she could amend her complaint. As the trial court observed, "Disallowing an amendment would permit defendant to gain an undeserved victory, undeserved because it was not what the Legislature intended when it enacted the anti-SLAPP statute." The Legislature declared its purpose in enacting section 425.16 was to protect "the *valid* exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a), italics added.) **But false statements uttered with actual malice serve no public interest, and where the strike opponent has demonstrated the requisite probability of success in showing such malice, as here, her complaint falls outside the purpose of the anti-SLAPP statute—indeed, it is not a SLAPP suit at all**. Simply put, the **Legislature did not intend to shield statements shown to be malicious with an unwritten bar on amendment in the circumstances here. Consequently, the trial court did not err in permitting plaintiff to amend her complaint to plead actual malice in conformity with the proof presented at the hearing on the strike motion.**

(*Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858, 869-73 [bold emphasis and underlining added].)

C. Special Damages.

> "Special damages" means all damages that plaintiff alleges and proves that he or she has suffered in respect to his or her property, business, trade, profession, or occupation, including the amounts of money the plaintiff alleges and proves he or she has expended as a result of the alleged libel, and no other.

(Civ. Code § 48a(d)(2).)

The Court agrees with Plaintiff that Plaintiff does not plead special damages. As discussed above, because Plaintiff pleads defamation per se, special damages need not be pled. However, leave to amend to allege any special damages which Plaintiff sees fit is also proper. (*Nguyen-Lam, supra*, 171 Cal.App. at 869-73.)

Conclusion

Plaintiff has demonstrated a reasonable probability of prevailing on his libel claim. As such, the anti-SLAPP special motion to strike is DENIED. Moreover, to avert a motion for judgment on the pleadings as to the Complaint, Plaintiff is granted leave to amend to more specifically allege actual malice and special damages, as per the Court's ruling above.

FEB 19 2025

DATE

CHRISTOPHER K. LUI
JUDGE, LOS ANGELES SUPERIOR COURT

02/21/2025