MICHAEL E. WEINSTEN (BAR NO. 155680)
EVAN N. SPIEGEL, ESQ. (BAR NO. 198071)
LINDSAY MOLNAR, ESQ (BAR NO. 272156)
LAVELY & SINGER
PROFESSIONAL CORPORATION
2049 Century Park East, Suite 2400
Los Angeles, California 90067-2906
Telephone: (310) 556-3501
Facsimile: (310) 556-3615
Email: mweinsten@lavelysinger.com
espiegel@lavelysinger.com
lmolnar@lavelysinger.com

Attorneys for Plaintiff James Woods

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JAMES WOODS, an individual, Plaintiff, vs. JOHN DOE a/k/a "Abe List" and DOES 2 through 10, inclusive, Defendants.	Case No.: BC 589746 [Hon. Mel Recana, Dept. 45) **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT DISCOVERY RE: JOHN DOE'S SPECIAL MOTION TO STRIKE [Cal. Code Civ. Proc. § 425.16(g)]** Date: October 2, 2015 Time: 8:30 a.m. Dept: 45 Complaint Filed: July 29, 2015

TABLE OF CONTENTS

I. INTRODUCTION. 1

II. AL HAS IMPROPERLY EXCEEDED THE 15 PAGE LIMIT FOR AN OPPOSITION. 1

III. THE DISCOVERY REQUESTED BY MR. WOODS IS DIRECTLY RELATED AND NECESSARY TO DEFENDING THE ANTI-SLAPP MOTION. 1

A. As a Public Figure, Mr. Woods Has the Burden of Demonstrating Malice in Connection With the Anti-SLAPP Motion. 1

B. Woods is Also Entitled to Discovery Concerning Context Surrounding AL's Tweet. 3

IV. AL HAS VOLUNTARILY APPEARED IN THIS MATTER AND HAS NO RIGHT TO ANONYMITY. 4

V. AL'S TWEET THAT MR. WOODS IS A "COKE ADDICT" DECLARES OR IMPLIES A PROVABLY FALSE STATEMENT OF FACT 5

A. AL Ignores the Relevant Standard to be Applied by This Court. 5

B. It is Indisputable That AL's Tweet is Subject to a Defamatory Interpretation. 6

C. There is Nothing "Hyperbolic" in AL's False Claim That Woods is a Coke Addict. 6

1. AL's Proposed Definition of Hyperbole is Non-Sensical. 6

2. AL Fails to Cite a Single Case That Would Suggest Calling Someone a Cocaine Addict is Anything Other Than a Factual Statement. 7

D. There is Nothing at All in the Context of How AL's Statement Was Presented That Would Suggest This Was Anything Other Than a False Statement of Fact. 8

VI. THERE IS NO BASIS TO STAY DISCOVERY. 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

1-800 Contacts, Inc. v. Steinberg,
107 Cal.App.4th 568 (2003) 2

AF Holdings LLC v. Doe,
No. 2:12-CV-1066 GEB GGH, 2012 WL 6042635 (E.D. Cal. 2012) 4

Bently Reserve L.P. v. Papaliolios,
218 Cal.App.4th 418 (2013) 2

Burrill v. Nair,
217 Cal.App.4th 357 (2013) 2

Cal W. Nurseries, Inc. v. Superior Court,
129 Cal. App. 4th 1170 (2005) 10

Chaker v. Mateo,
209 Cal.App.4th 1138 (2012) 7

Digital Music News LLC v. Superior Court,
226 Cal.App.4th 216 (2014) 4

Doe v. Kamehameha Schools,
etc., 596 F.3d 1036 (9th Cir. 2010) 4

Garment Workers Ctr. v. Superior Court,
117 Cal.App.4th 1156 (2004) 3

Gilbert v. Sykes,
147 Cal.App.4th 13 (2007) 2

Gregory v. McDonnel Douglas Corp.,
17 Cal.3d 596 (601) 9, 10

Krinsky v. Doe 6,
159 Cal.App.4th 1154 .... 5, 7

Lafayette Morehouse, Inc. v. Chronicle Publ'g Co.,
37 Cal.App.4th 855 (1995) 4

Milkovich v. Lorain Journal Co.,
497 U.S. 1 (1990) 5

Paterno v. Superior Court,
163 Cal.App.4th 1342 (2008) 2

Price v. Stossel,
590 F.Supp.2d 1262 (C.D. Cal. 2008) 3

Reader's Digest Assn. v. Superior Court,
37 Cal.3d 244 (1984) 2

Rosenauer v. Scherer,
88 Cal.App.4th 260 (2001) 7, 8

Rudnick v. McMillan,
25 Cal.App.4th 1183 (1994) 9

Sanders v. Walsh,
219 Cal.App.4th 855 (2013) 5

See Omaha Indem. Co. v. Super.Ct. (Greinke),,
209 Cal.App.3d 1266 (1989) 10

Selig v. Infinity Broadcasting,
97 Cal.App.4th 798 (2002) 9

United States v. Doe,
655 F.2d 920 (9th Cir. 1980) 4

Vogel v. Felice,
127 Cal.App.4th 1006 (2005) 2

Statutes

Cal. Code Civ. Proc. § 425.16 2-3

Civil Code § 45 2

Cal. Rules of Court 3.1113(d) (g) 1

Cal. Rules of Court 3.1300(d) 1

I. INTRODUCTION.

The anonymous "Abe List" ("AL") falsely accused actor James Woods of being a "cocaine addict" to literally hundreds of thousands of Mr. Woods' friends, business associates and fans. The Court should not lose sight of this indisputable fact. While AL's Opposition seeks to twist and distort the First Amendment to fit his needs, the Constitution never has and never will protect this type of actionable speech. Hamstrung and without a legitimate defense, AL appears to have chosen the most cowardly path available- attack the victim, hide in anonymity, obstruct discovery and delay any ruling on the merits at whatever the cost. Indeed, in his Opposition, AL is already threatening an appeal ***despite that the Court has not even ruled.*** AL's actions clearly belie his bald characterizations of this litigation as "frivolous" and "censorious." If, in fact, AL did nothing wrong, he should have nothing to fear. He should submit to a deposition and allow this case to proceed expeditiously on its merits.

The discovery sought by this Motion is targeted, limited and necessary. As explained further herein, Mr. Woods has far exceeded a showing of good cause to lift the stay on discovery.

II. AL HAS IMPROPERLY EXCEEDED THE 15 PAGE LIMIT FOR AN OPPOSITION.

As an initial matter, AL's Opposition is facially defective in that AL improperly attempts to "incorporate by reference" his entire 20-page Anti-SLAPP Motion (including exhibits). Opp. p. 11. In doing so, AL seeks to garner an unfair advantage by exceeding the 15-page limit for his Opposition. *See* CRC Rule 3.1113(d). This Court should not indulge such tactics and should exercise its discretion to disregard any cases, argument and/or "evidence" not included within the Opposition itself. *See* CRC Rule 3.1113(g) and CRC Rule 3.1300(d). To do otherwise would substantially prejudice Mr. Woods, as it is virtually impossible within a ten page reply to address every false fact and misrepresentation of law leveled by AL across ***two*** separate briefs. *See* CRC 3.1113(d).

III. THE DISCOVERY REQUESTED BY MR. WOODS IS DIRECTLY RELATED AND NECESSARY TO DEFENDING THE ANTI-SLAPP MOTION.

A. As a Public Figure, Mr. Woods Has the Burden of Demonstrating Malice in Connection With the Anti-SLAPP Motion.

AL's Opposition seeks to prevent discovery on the issue of malice based on a blatantly ***false*** assertion that the ***only*** issue to be decided by the Anti-SLAPP Motion is whether AL's defamatory tweet

is hyperbole or a statement of fact. Opp. p. 5. AL ignores well-established law which expressly requires that Mr. Woods put forth evidence on the issue of malice. Specifically, an Anti-SLAPP pursuant to CCP § 425.16 requires a ***two-prong*** analysis by the Court. *See Bently Reserve L.P. v. Papaliolios*, 218 Cal.App.4th 418, 425 (2013). Under the first prong, AL has the initial burden to prove that the cause of action arises from "protected activity." *Id.* If AL meets that burden, the burden then shifts to Mr. Woods ***to show a probability of prevailing on the merits of his defamation claim.*** *Id.*

To establish the probability of prevailing, Mr. Woods "is required both to plead claims that were legally sufficient, and to make a prima facie showing, by admissible evidence, of facts that would merit a favorable judgment on those claims, assuming plaintiff's evidence were credited." *1-800 Contacts, Inc. v. Steinberg*, 107 Cal.App.4th 568, 584 (2003). Mr. Woods is, therefore, ***required*** to make a *prima facie* showing on every element of his defamation claim, not just that the AL tweet is subject to defamatory interpretation.[1] *See Burrill v. Nair*, 217 Cal.App.4th 357, 382 (2013); *Civil Code* § 45. Moreover, since Mr. Woods is a public figure, he carries the burden of demonstrating that the statement was made with "actual malice." *See Reader's Digest Assn. v. Superior Court*, 37 Cal.3d 244, 256 (1984).

Indeed, under the framework set up by the courts, ***AL need not address malice at all in his opening brief.*** He can simply sit back and argue on reply that Mr. Woods has failed to meet his burden on this issue- an argument made easier if Woods is denied discovery. As AL refuses to concede the issue of malice (Opp. p. 5, fn. 4), Woods has no choice but to seek discovery on this critical issue. Moreover, the fact that Mr. Woods has already acquired some evidence of malice, does not in any way suggest he is not entitled to discovery so that he can present his best case. AL cites no case otherwise.

In fact, all of the cases on which AL relies either ***support Mr. Woods*** or are inapposite. For example, in *Paterno*, the court held that a plaintiff has shown good cause for discovery on the issue of malice if he or she has made a "prima facie showing that the defendant's published statements contain provably false factual assertions." *See Paterno v. Superior Court*, 163 Cal.App.4th 1342, 1349 (2008). Mr. Woods has clearly met that burden here. *See* Motion pp. 9-14 & Section V below.

[1] Contradicting even himself, AL effectively acknowledges Woods' burden by citing to cases in his Anti-SLAPP where courts evaluated *all* elements of a defamation claim and held that the plaintiffs did not meet their burden under CCP 425.16 because they did not show "actual malice." *See* Anti-SLAPP, p. 7 citing to *Vogel v. Felice*, 127 Cal.App.4th 1006, 1017 (2005)(failure to plead actual malice); *Gilbert v. Sykes*, 147 Cal.App.4th 13, 32 (2007)(failure to show malice).

Garment similarly supports Mr. Woods' position. In *Garment*, the court expressly adopted the *Lafayette* court's holding that, in a libel case, good cause exists for discovery on malice ***prior to a SLAPP*** hearing because defendant "will generally be the principal, if not the only, source of evidence concerning such matters as whether the defendant knew the statement published was false . . ." *Garment Workers Ctr. v. Superior Court*, 117 Cal.App.4th 1156, 1161-1162 (2004) ("we are in general agreement, however, with the *Lafayette* court's analysis of good cause for lifting the ban on discovery while a SLAPP motion is pending.") Although the *Garment* court ultimately denied the discovery motion, it did so on grounds not present here. For example, the court questioned whether malice had to be proven at all since it was unclear whether the alleged statement was made in the context of a labor dispute. *Id.* at p. 1163. The court, therefore, deferred discovery pending resolution of that issue.

Price is simply inapposite. *Price* is a ***federal*** case where the court considered a motion to compel early depositions in anticipation of an Anti-SLAPP motion that was not yet filed. *See Price v. Stossel*, 590 F.Supp.2d 1262, 1265, 1270 (C.D. Cal. 2008). The court expressly held that C.C.P. §425.16(g), ***the statute at issue in this case,*** did not apply to federal cases and used a different standard. More importantly, however, the case had nothing to do with discovery on the issue of malice. Nor did the court even consider the requirement to prove malice, because ***both sides*** apparently agreed to waive that issue. *Id.* at p. 1270. The only discovery sought by plaintiff in *Price* was to the issue of falsity, and the court denied it because the discovery requested was not needed on that issue.

B. Woods is Also Entitled to Discovery Concerning Context Surrounding AL's Tweet.

AL also seeks to prevent discovery related to AL's claim that he is known for "posting blunt and abrasive tweets." Opp. p. 9. AL's position is not well taken, particularly since AL spends pages of his Anti-SLAPP motion on this very subject. *See* Anti-SLAPP, pp. 5-6, 13-14. To be clear, it is AL that put his "twitter habits" at issue—not Mr. Woods. Accordingly, Mr. Woods is compelled to seek discovery necessary to rebut the claim. Contrary to AL's Opposition, Mr. Woods has delineated exactly what discovery is required and why, *i.e.*, (i) AL's "tweet history," and (ii) AL's deposition testimony regarding his Twitter "habits." Motion, pp. 6-9. Further, as explained in Mr. Woods' Motion, there is no other way to retrieve this evidence since AL deactivated his "Abe List" Twitter account. While AL subsequently re-activated his account, it now has privacy protections that prevent Mr. Woods and his

counsel from accessing AL's tweets and tweet history. Under these circumstances, leave to conduct discovery should be liberally granted. *See Lafayette Morehouse, Inc. v. Chronicle Publ'g Co.*, 37 Cal.App.4th 855, 868 (1995).

IV. AL HAS VOLUNTARILY APPEARED IN THIS MATTER AND HAS NO RIGHT TO ANONYMITY.

Next, AL argues that discovery as to his identity would "strip" him of his First Amendment right to remain anonymous. Opp. p. 4. AL cites just two cases in support, *Digital Music* and *Krinsky*, neither of which is helpful to AL's position. For example, *Digital Music* relates only to the right of a ***non-party*** to remain anonymous—not the right of a litigant. *See Digital Music News LLC v. Superior Court*, 226 Cal.App.4th 216, 230 (2014) (wherein the court held "[i]n no sense is [the non-parties'] identity essential to a fair resolution of the UMG lawsuit. This is not a case where the veil of anonymity must be drawn aside to afford a victim redress for the anonymous speaker's defamation. . . .").[2]

Under California law, a litigant who has voluntarily appeared and submitted to the jurisdiction of the court has a very high burden to satisfy in order to remain anonymous. A general "presumption exists that ***cases will be litigated with the true identities of the parties set forth on the record, and a court may not lightly disregard that presumption***." *AF Holdings LLC v. Doe*, No. 2:12-CV-1066 GEB GGH, 2012 WL 6042635, at *2 (E.D. Cal. 2012) (emphasis added) (denying defendant's right to litigate anonymously.) This presumption is based on, among other things, the public interest in an open court system, including the public's right to know the identity of parties to a lawsuit. *See Doe v. Kamehameha Schools etc.*, 596 F.3d 1036, 1042-43 (9th Cir. 2010) ("We are sympathetic to the concerns of the Doe children and their parents, but we recognize the paramount importance of open courts.") Indeed, California courts only allow parties to use pseudonyms in the "unusual case" when nondisclosure of the party's identity "is necessary ... to protect a person from harassment, injury, ridicule or personal embarrassment." *United States v. Doe,* 655 F.2d 920, 922 (9th Cir. 1980) ("We recognize that the identity of the parties in any action, civil or criminal, should not be concealed except in an unusual case, where there is a need for the cloak of anonymity.")

---

[2] The court also noted that the information sought about this anonymous non-party was not likely to lead to discovery of admissible evidence, and it was against this objection, that the court weighed the non-parties' right to privacy. *Id.* at pp. 225-226. No such claim can be made here.

For similar reasons, *Krinsky* (a defamation case in Florida) is equally unavailing to AL. In contrast with the present case, the Doe defendant in *Krinsky* ("Doe No. 6") did not voluntarily subject himself to the Florida court's jurisdiction and, indeed, was never made a party to the case. Doe No. 6 appeared only in a collateral proceeding in California to quash a third-party subpoena on an internet service provider. Regardless, the *Krinsky* court specifically acknowledged that the plaintiff ***would be*** entitled to Doe No. 6's identity so long as the plaintiff could show a *prima facie* case of a libelous statement. *Krinsky v. Doe 6*, 159 Cal.App.4th 1154, 1172 ("When there is a factual and legal basis for believing libel may have occurred, the writer's message will not be protected by the First Amendment.") In so holding, the court further indicated that "[a] plaintiff need produce evidence of only those material facts that are accessible to her." *Id.* Here, Mr. Woods has more than met this burden.

In sum, AL is far from establishing the extraordinary circumstances required for a litigant to remain anonymous. AL makes no claim (and offers no evidence) to establish a legitimate privacy concern, potential harassment, injury, ridicule or personal embarrassment. Instead, AL baldy asserts a generalized First Amendment right to speak anonymously- a right which does not even exist as to defamatory speech. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 22 (1990).

V. AL'S TWEET THAT MR. WOODS IS A "COKE ADDICT" DECLARES OR IMPLIES A PROVABLY FALSE STATEMENT OF FACT.

Remarkably, while AL seeks to block discovery on the false premise that his tweet was "hyperbole," AL complains that Mr. Woods "consumes most of his motion" demonstrating that AL's false statement was one of fact and not hyperbole. Opp. p. 11. AL's position is disingenuous at best.

A. <u>AL Ignores the Relevant Standard to be Applied by This Court.</u>

At the outset, AL's Opposition fails to address the actual standard by which courts determine whether a statement is defamatory or not, *i.e.*, "whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact." *See, e.g., Sanders v. Walsh*, 219 Cal.App.4th 855, 863 (2013). In other words, as long as a reasonable person could understand AL's statement as factual (the ***only*** reasonable interpretation), it is irrelevant that ***some*** might understand it as hyperbole. By failing to address this standard in his Opposition, AL effectively concedes its application.

B. **It is Indisputable That AL's Tweet is Subject to a Defamatory Interpretation.**

AL's Opposition also fails to address ***the plain meaning*** and common usage of the actual words which comprise the defamatory tweet. As explained in the Motion, AL expressly referred to Mr. Woods as a "cocaine addict." These words effectively stood alone, unqualified, and as admitted by AL's own counsel, the message conveyed is "that Mr. Woods ***is*** a 'cocaine addict'." *See* Anti-SLAPP Motion p. 1. AL does not address the actual language used, because it is fatal to his defense.

Indeed, it is hard to imagine how calling someone a "cocaine addict" could be interpreted as anything other than a factual statement. Others reporting on this case appear to agree. *See, e.g.,* *http://www.hollywoodreporter.com/thr-esq/james-woods-sues-twitter-user-812107* (wherein Eriq Gardner of the Hollywood Reporter explains: "but 'cocaine addict' is a statement that could be true or false and possibly qualify as defamation.") *See also*, http://live.huffingtonpost.com/r/highlight/the-first-amendments-implications-on-james-woods-twitter-troll-lawsuit/55ef1c8bfe3444577c000547, at 5:09 min. into video (wherein, Clay Calvert, J.D., Ph.D., Professor of Mass Communications Univ. of Fla., states with respect to AL's tweet: "to say that somebody is a drug addict or cocaine addict ***is a false statement of fact***, if it is false.") (emphasis added).

C. **There is Nothing "Hyperbolic" in AL's False Claim That Woods is a Coke Addict.**

1. **AL's Proposed Definition of Hyperbole is Non-Sensical.**

AL attacks Woods' reference to Merriam-Webster's definition of hyperbole as "rather sneering" (Opp. p. 11), but offers no legitimate reason this Court should not accept the common definition and use of the word, as courts across the country have done. Motion p. 12. Instead, AL attempts to ascribe different meanings to the term that make no sense at all. For instance, AL argues that "Courts have also called it . . . 'rhetorical hyperbole'" (Opp. p. 11), but defining "hyperbole" as "rhetorical hyperbole" is circular at best and utterly meaningless. AL also defines "hyperbole" as "figurative expressions of opinion" (Opp. p. 11), but opinion is an entirely different defense than hyperbole and, in any event, there is nothing to suggest that AL's tweet was in fact an opinion. There is simply no reason for this Court to disregard the common understanding of "hyperbole" taught to every grade school student, *i.e.*, an "extravagant exaggeration." Here, AL was not exaggerating anything. He was stating a false fact.

2. **AL Fails to Cite a Single Case That Would Suggest Calling Someone a Cocaine Addict is Anything Other Than a Factual Statement.**

At page 13 of the Opposition, AL claims that Mr. Woods fails to distinguish hyperbole/opinion cases cited in his Anti-SLAPP Motion, but those cases are so far off point it would serve no purpose to do so.[3] For example, in *Krinsky*, the Court considered whether the accusation of being a "mega scum bag" and "cockroach" could be interpreted as false statements of fact under Florida law. *Krinsky*, 159 Cal.App.4th at 1175-76. Obviously, in stark contrast with an accusation of cocaine addiction, no person would interpret these terms literally, *i.e.*, a reasonable person would not believe a human being is actually a cockroach. *Id.* at p. 1176 (wherein the Court stated "calling her a cockroach obviously cannot be interpreted as a statement of actual fact.")

Chaker v. Mateo, 209 Cal.App.4th 1138 (2012) did not involve hyperbole at all, but rather statements of opinion. In *Chaker*, plaintiff sued his ex-girlfriend and her mother for, among other things, calling him a "deadbeat dad," following a contentious paternity and child support dispute. The court noted "the statements about Chaker were made in the context of the paternity and child support litigation going on . . . The overall thrust of the comments attributed is that [Plaintiff] is a dishonest and scary person. This overall appraisal of Chaker is on its face nothing more than a negative, but nonactionable opinion." *Id.* at p. 1149. Importantly, the court found that the unspecific allegation that plaintiff was a "criminal" could be defamatory, but in that case it was true. Here, AL has not and could not legitimately claim his accusation of cocaine addiction was an opinion.

Finally, in *Rosenauer v. Scherer*, 88 Cal.App.4th 260, 280 (2001), a property owner/developer sued an opponent of his development project for allegedly calling him a "thief" and a "liar" in the course of a heated political argument during a chance confrontation at a shopping center. In contrast with the present case (which specifically identifies Woods as being addicted to a named controlled substance in a writing sent to hundreds of thousands of individuals), there was nothing specific about defendant's outburst in the shopping mall, *e.g*, there was no suggestion that plaintiff actually stole anything in

[3] The Opposition cites just three cases in support of the position AL's tweet was hyperbole. Opp. p. 13. It is fair to presume AL considers these his best cases, so the discussion need not go further than addressing these authorities.

particular and/or had a criminal past. The court acknowledged that its finding would be different if there was a written "false assertion that a person was arrested or had a criminal past." *Id.* at p. 280.

D. There is Nothing at All in the Context of How AL's Statement Was Presented That Would Suggest This Was Anything Other Than a False Statement of Fact.

AL claims that Mr. Woods ignores factors relevant to the context in which AL's defamatory tweet was made. Opp. p. 12. This is incorrect. As demonstrated in the Motion, the statement was made on Twitter, which is widely recognized as a legitimate source of news and information where people believe what they read. Motion pp. 2-3.[4] Woods also testified as to who the audience is, *i.e.*, over 250,000 followers which includes newscasters, entertainment celebrities, professional people, employers, friends, enemies, fans and others. Woods decl. ¶¶ 2-3. The only other applicable *indicia* of context is the fact that AL's tweet was not qualified in any way as hyperbole, joke or opinion. It was presented as a fact to discredit Mr. Woods in response to a tweet about a serious issue, not about Caitlyn Jenner, but about the failure of the media to report on a story important to Mr. Woods. In short, there is no *indicia* to suggest that AL's statement should ***not*** be taken seriously. In fact, it is AL that misrepresents the context in which he tweeted his false statement.

For example, AL argues "his 'cocaine addict' comment was part of a barrage of similar insulting jokes about Mr. Woods." Opp. 12. This claim is both misleading and irrelevant. First, the handful of tweets referenced (which were made months or years earlier) ***were not part of the actual exchange at issue***. Accordingly, they are ***outside*** the context in which AL's defamatory statement was made. AL cites no case that would suggest otherwise (*see* case analysis below). Indeed, there is no evidence anyone reading AL's defamatory tweet would have seen or known about these other tweets. They are simply not related. Moreover, in contrast with AL's factual claim that Mr. Woods is a cocaine addict, most of these other tweets were ***not*** factual in nature. Although a few clearly are, the fact that others may have defamed Mr. Woods is not a defense to AL's defamation of Mr. Woods.

AL also claims that "Mr. Woods is known for hyperbole." Opp. p. 13. Again, what Mr. Woods may have said months or years earlier to others on unrelated topics has nothing to do with the ***context of***

[4] AL claims these authorities support the opposite position because the articles reveal that the stories were false. AL misses the point- which is that people actually believed what they read online.

the exchange at issue, which was quite obviously of a serious nature. No case suggests that ***the victim's*** prior use of hyperbole and/or spicy language is a defense to defamation.

AL next claims that he too is known for hyperbole (Opp. p. 13) but, even if true, there is no evidence that any of Woods' followers would have any reason to know this. To the extent Woods' followers did investigate AL and his history of tweets, they would have seen that AL is a Harvard graduate and partner in a private equity firm who regularly tweets about serious factual issues. Motion p. 4. In other words, he is exactly the type of person one would take seriously.[5]

Perhaps ironic, the very cases cited by AL on the subject of "context" destroy his defense. Opp. pp. 13-14. For example, in *Rudnick v. McMillan*, 25 Cal.App.4th 1183 (1994), the court held that statements made by defendant in a letter to a newspaper to the effect that plaintiff, a rancher, had not properly managed his land were opinion and not fact. In arriving at its conclusion, the court looked at just two things: (1) the language of the letter itself, and (2) the article to which the letter was responding. *Id.* at 1192-1193. Contrary to what AL is asking the Court here to do, the court in *Rudnick* did not investigate prior correspondence by the plaintiff or defendant. Nor did it inquire into their predisposition to hyperbole and/or opinion.

In *Selig v. Infinity Broadcasting*, 97 Cal.App.4th 798 (2002), plaintiff, a contestant on a reality TV show, sued a radio station for derogatory comments made about her during a radio talk show wherein she was called "a local loser," "chicken butt," and a "skank." The court held that none of these terms were defamatory, because they were "too vague to be capable of being proven true or false." *Id.* at p. 810-811. Though the court did (albeit unnecessarily) consider the context in which the statements were made, ***the court looked no further than the language of the actual broadcast itself.*** *Id.* at p. 811. Again, this case supports the opposite of what AL contends.

In *Gregory v. McDonnel Douglas Corp.*, 17 Cal.3d 596, 603 (601), the court considered whether two written statements made ***during a labor dispute*** to the effect that union leaders "were apparently willing to sacrifice the interests of the members of their union to further their own political aspirations" were libelous. After acknowledging that labor disputes involve special first amendment protections, the

---

[5] AL suggests the Court should consider the fact that he is anonymous, but there is no evidence anyone reading his tweet would have any reason to know Abe List is not a real name. It was only after some investigation that Woods discovered Abe List is a fake name.

court held the statements were not factual in nature but rather opinion. *Id.* at p. 603. Again, in *Gregory,* the court made its decision based almost entirely on the language of the statements themselves. *Id.* Most interestingly, the court indicated that while first amendment protections would apply to an attack on motives, no such protection would apply where, as here, there exist "accusations that an individual has committed a crime or is personally dishonest." *Id.* at p. 604.

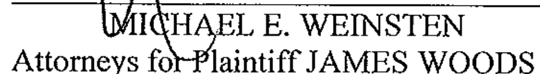
VI. THERE IS NO BASIS TO STAY DISCOVERY.

Finally, AL's threat to appeal and request for a stay should be disregarded as a mere delay tactic. First, AL cites no authority that would permit a stay ***before*** the petition is even filed, and we know of none. In any event, it is extremely unlikely a writ would be granted under the facts of this case, so the threat of filing for a writ should not justify a stay. Indeed, over 90% of petitions seeking extraordinary relief are denied. *See Omaha Indem. Co. v. Super.Ct. (Greinke)*, 209 Cal.App.3d 1266, 1271 (1989). It further goes without saying that AL will incur far greater cost in filing and arguing an appeal, than he would by simply submitting to a short deposition and answering a few narrowly tailored discovery requests. By contrast, Mr. Woods will suffer significant prejudice if not permitted to proceed with limited discovery. Among other things, the hearing on the Anti-SLAPP motion, currently set for February 2, 2016, will likely be pushed into the indefinite future- a fact that is certainly not lost on AL and his counsel. This is necessarily so because AL will have up to two months just to file for a writ of mandate, and it could take many more months before a decision is ultimately rendered. *See Cal W. Nurseries, Inc. v. Superior Court*, 129 Cal. App. 4th 1170, 1173 (2005) ("As a general rule, a writ petition should be filed within the 60–day period that applies to appeals.")

If AL is so confident in his defense, as his lawyer seems to suggest, he should simply allow this case to proceed on its merits- not hide behind tactical measures to delay the inevitable. Mr. Woods should be permitted the requested discovery, and the case should proceed expeditiously to a hearing on the merits.

Dated: September 25, 2015

LAVELY & SINGER
PROFESSIONAL CORPORATION

By: 

MICHAEL E. WEINSTEN
Attorneys for Plaintiff JAMES WOODS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2049 Century Park East, Suite 2400, Los Angeles, California 90067-2906.

On the date indicated below, I served the foregoing document described as:

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT DISCOVERY RE JOHN DOE'S SPECIAL MOTION TO STRIKE

on the interested parties in this action by placing [ ] the original document OR [X] a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Kenneth P. White, Esq. Brown White & Osborn LLP 333 S. Hope Street, 40th Floor Los Angeles, CA 90071-1406 Email: kwhite@brownwhitelaw.com Tel: (213) 613-9446	Attorneys for John Doe (@abelisted)

[ ] BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] BY PERSONAL SERVICE:

[X] I caused such envelope to be delivered by a process server employed by P.R.O.S. Attorney Service, 339 S. Ardmore, Suite 329, Los Angeles, CA 90020.

[ ] I delivered said envelope(s) to the offices of the addressee(s), via hand delivery.

[ ] BY ELECTRONIC SERVICE: I transmitted the foregoing document by electronic mail to the e-mail address(s) stated on the service list per agreement in accordance with Code of Civil Procedures section 1010.6.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 25, 2015, at Los Angeles, California.

Noelia Echesabal