

1 DEBORAH S. MALLGRAVE, State Bar No. 198603

DMallgrave@GGTrialLaw.com

2 **GREENBERG GROSS LLP**

650 Town Center Drive, Suite 1700

3 Costa Mesa, California 92626

Telephone: (949) 383-2800

4 Facsimile: (949) 383-2801

5 KAREN BARTH MENZIES, State Bar No. 180234

kbm@ClassLawGroup.com

6 JEFFREY KOSBIE, State Bar No. 305424

jbk@ClassLawGroup.com

7 **GIBBS LAW GROUP LLP**

505 14th Street, Suite 1110

8 Oakland, CA 94612

Telephone: (510) 350-9700

9 Facsimile: (510) 350-9701

10 Attorneys for Defendant Michaela Higgins

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

13 JASHA TULL an individual,

14 Plaintiff,

15 v.

16 MICHAELA HIGGINS, an individual a/k/a
17 CAELI LA; and DOES 1 through 10 inclusive,

18 Defendants.

Case No. 4:21-cv-01566-DMR

[Related to Case No.: 4:21-cv-01574-DMR]

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS**

[Filed Concurrently with Motion to Strike,
and Motion to Dismiss and Motion to Strike
in Related Case]

Date: June 10, 2021

Time: 1:00 p.m.

Dept.: 4

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 10, 2021, at 1:00 p.m., or as soon thereafter as the matter may be heard at the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California, Courtroom 4, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Michaela Higgins (“Defendant” or (“Michaela”), by and through her attorney of record herein, will, and hereby does, move this Court for an Order to Dismiss the Complaint (“Complaint”) and all of the claims asserted in this action, on the basis that each fails to state a claim for which relief can be granted.

This Motion will be based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities and all legal authority cited therein, the Court’s files and records in the instant action (the “Action”), the Court’s files and records in the related action Case No.: 4:21-cv-01574, matters of which the Court may take judicial notice, and such further evidence as may be presented to the Court at the time set for the hearing on this Motion.

DATED: April 28, 2021

GREENBERG GROSS LLP

By: /s/ Deborah S. Mallgrave
Deborah S. Mallgrave

GIBBS LAW GROUP LLP
Karen Barth Menzies
Jeffrey Kosbie

Attorneys for Defendant Michaela Higgins

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. INTRODUCTION.....	1
4	II. FACTUAL ALLEGATIONS IN COMPLAINT	2
5	A. The Parties	2
6	B. Jasha Sexually Assaults Michaela.....	2
7	C. Jasha Continues his Emotionally Abusive Behavior Towards Michaela.....	3
8	D. Jasha Accused of Sexual Assault By Others	3
9	E. Michaela Seeks Accountability from Jasha	4
10	F. Michaela Contacted C3 and Herman Tull for Help Seeking Accountability from Jasha	4
11	G. More of Jasha’s Sexual Assault Survivors Come Forward.....	5
12	H. Jasha and His Parents File Lawsuits Against Michaela	5
13	III. ARGUMENTS	7
14	A. Jasha Fails to State a Claim for Defamation.	7
15	1. Jasha is a Public Figure.	7
16	2. The Complaint Insufficiently Pleads Actual Malice.	9
17	B. Plaintiffs’ Civil Harassment Claim Fails to Plausibly Allege a Lack of Legitimate Purpose.	11
18	C. Jasha’s Civil Stalking Claim Fails to Allege a Pattern of Conduct or Credible Threat.	12
19	1. Jasha Does Not Plausibly Allege Pattern of Conduct With the Intent to Harass	13
20	2. Michaela’s Gun Photo Does Not Give Rise to a Credible Threat.....	13
21		
22	IV. CONCLUSION	14
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Ampex Corp. v. Cargle</i> , 128 Cal.App.4th 1569 (2005).....	8
<i>Annette F. v. Sharon S.</i> , 119 Cal. App. 4th 1146 (2004).....	10
<i>Avila v. Cate</i> , 2011 WL 2680844 (E.D. Cal. 2011)	11
<i>Bolton v. City of Berkeley</i> , No. 19-CV-05212-WHO, 2019 WL 6250927 (N.D. Cal. Nov. 22, 2019).....	13
<i>Brekke v. Wills</i> , 125 Cal.App.4th 1400 (2005).....	11
<i>Byers v. Cathcart</i> , 57 Cal.App.4th 805 (1997).....	12
<i>Cepeda v. Cowles Magazines & Broad., Inc.</i> , 392 F.2d 417 (9th Cir. 1968).....	8
<i>Crenshaw v. Lister</i> , 556 F.3d 1283 (11th Cir. 2009).....	11
<i>Curtis Pub. Co. v. Butts</i> , 388 U.S. 130 (1967)	8
<i>D.A.R.E. Am. v. Rolling Stone Magazine</i> , 101 F.Supp.2d 1270 (C.D. Cal. 2000).....	10
<i>D.A.R.E. Am. v. Rolling Stone Magazine</i> , 270 F.3d 793 (9th Cir. 2001).....	10
<i>Gertz v. Robert Welch, Inc.</i> , 418 U.S. 323 (1974)	7
<i>Hanna v. Moreira</i> , No. E070310, 2019 WL 3933564 (Cal. Ct. App. Aug. 20, 2019).....	11
<i>Harte-Hanks Communications v. Connaughton</i> , 491 U.S. 657 (1989)	9, 10
<i>Leidholdt v. L.F.P. Inc.</i> , 860 F.2d 890 (9th Cir. 1988).....	8

1	<i>McCoy v. Hearst Corp.</i> ,	
2	42 Cal. 3d 835 (1986).....	9
3	<i>New York Times Co. v. Sullivan</i> ,	
4	376 U.S. 254.....	7, 9
5	<i>Nicosia v. De Rooy</i> ,	
6	72 F. Supp. 2d 1093 (N.D. Cal. 1999)	9
7	<i>Primetime's Solano v. Playgirl, Inc.</i> ,	
8	292 F.3d 1078 (9th Cir. 2002).....	8
9	<i>Principe v. Curry</i> ,	
10	No. 817CV00608JLSKESX, 2018 WL 1406912 (C.D. Cal. Jan. 3, 2018)	12
11	<i>Reader's Digest Assn. v. Superior Court</i> ,	
12	37 Cal.3d 244 (1984).....	7
13	<i>Resolute Forest Prod., Inc. v. Greenpeace Int'l</i> ,	
14	302 F.Supp.3d 1005 (N.D. Cal. 2017)	9
15	<i>Schild v. Rubin</i> ,	
16	232 Cal.App.3d 533 (1991).....	12
17	<i>Taus v. Loftus</i> ,	
18	40 Cal.4th 683 (2007).....	7
19	<i>Widener v. Pacific Gas & Electric Co.</i> ,	
20	75 Cal.App.3d 415 (1977).....	9
21	<i>Wynn v. Chanos</i> ,	
22	75 F. Supp. 3d 1228 (N.D. Cal. 2014)	9
23	Statutes	
24	Cal. Civ. Code §§ 45–46	7
25	Code Civ. Proc. § 527.6(b).....	11
26	Code Civ. Proc. § 1708.7	12
27	Code Civ. Proc. § 1708.7(a)(3)(A).....	13
28	Code Civ. Proc. § 1708.7(b)(1)	13
	Code Civ. Proc. § 1708.7(b)(2)	13
	Tenn. Code § 39-13-506 (2012).....	4

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As is evident from even a cursory review of the Complaint, Defendant Michaela Higgins (“Michaela”)¹ believes that Plaintiff Jasha Tall (“Jasha”) sexually assaulted her and, from that assault, an exploitative sexual relationship—with further assaults—arose. Unfortunately, Michaela’s experience with Jasha is not unique. Before Michaela had the strength and courage to come forward, other women were coming forward and sharing their stories. And when Michaela finally shared her experience publicly on her Instagram account, @evidenceagainstspacejesus, numerous other women came forward. Jasha might resent the notoriety in this form (as compared to his talents as a DJ), and the effect it is having on his ability to perform during the pandemic—if at all), but that does not turn Michaela’s righteous conduct into claims for defamation, civil harassment, or stalking. Jasha’s lawsuit is a not-so-veiled attempt to intimidate Michaela, as well as other survivors, from speaking out about their experiences with Jasha and silence them from attempts to hold him accountable. Neither Jasha’s tactic nor his lawsuit have any merit, or even the plausibility required to support his alleged claims.

As set forth below, Jasha’s defamation claim fails as Jasha, as a public figure, has failed to plead, with plausibility, the element of actual malice (as the very exhibits attached to Jasha’s complaint clearly indicate, Michaela believes she was sexually assaulted and there are no allegations to suggest Michaela had any basis on which to believe the other women claiming to be sexually assaulted were not telling the truth); the civil harassment claim fails because it does not plausibly allege a lack of legitimate purpose to Michaela’s conduct; and Jasha has not alleged facts to plausibly suggest Michaela’s conduct constitutes civil stalking. Accordingly, Jasha’s complaint, and every claim for relief stated therein, should be dismissed in its entirety.

¹ As three of the parties referenced herein have the same last name, and two of these are both doctors, for ease and clarity all parties are referred to herein by their first names, including defendant. No disrespect is intended.

1 **II. FACTUAL ALLEGATIONS IN COMPLAINT**

2 **A. The Parties**

3 Jasha is a “musical artist and producer who performs under the stage name ‘Space Jesus’,
4 and has done so for over a decade.” (Docket No. 1 (“Compl.”), ¶ 12). Jasha is “a leading
5 performer in the electronic music subgenre known as ‘Bass music.’” (*Id.*) Jasha’s music “has
6 accumulated tens of millions of plays on the music streaming platform Spotify, with over a quarter
7 of a million individuals listening to his music per month, on that platform alone as of March 2021.”
8 (*Id.*) Jasha is “one of the leading performers in the subgenre of electronic music in which he
9 performs,” and a “renowned musician, touring constantly” with a reputation reaching “his fans and
10 the broader electronic music community.” (*Id.*, at ¶¶ 70, 73.) When he’s not travelling, Jasha
11 claims to reside with his parents in New Jersey. (*Id.*, at ¶ 12.)

12 Michaela is a performer herself, and is a hired dancer for many of the same music festivals
13 at which Jash plays. Her stage name is Caeli La. Michaela also performs tantra massage and has a
14 PR and promotions business. (Ex. E, p. 2–3.) As alleged in the Complaint, Michaela currently
15 resides in Healdsburg, California. (*Id.*, at ¶ 2.)

16 **B. Jasha Sexually Assaults Michaela**

17 As alleged in the complaint, Jasha and Michaela had an exploitative sexual relationship
18 from around June 2016 through the late summer/early fall of 2016. (Compl. ¶¶ 13–14.) As
19 Michaela contends, the first time Jasha and Michaela “got together,” Jasha sexually assaulted
20 Michaela. (Ex. H., p. 8.) As they were kissing, Jasha penetrated Michaela without her consent, and
21 so quickly that Michaela did not know what was happening until it was too late and over. (*Id.*)
22 (Jasha “pulled my underwear aside (I was wearing a dress), and entered me without a condom . . .
23 [and] so fast”). In another instance, Jasha forced Michaela to continue having sex with him, after
24 his friends had walked in on them, even after she told him to stop and tried to push him off of
25 her. (Ex. H, p. 5–6.) Asserting his dominance and humiliating Michaela, Jasha even bragged to his
26 friends that he “was inside her right now.” (*Id.*) In addition to his sexually assaultive actions, Jasha
27 was also verbally and emotional abusive to Michaela. (Ex. E, pp. 6, 9, 18.)
28

As the “relationship” with Jasha ended, Michaela felt Jasha used her and cast her aside. (Compl. ¶ 18.) To say the least, the ending was not a clean one. Michaela felt Jasha tried to control her by forcing her into a non-monogamous relationship and denying her any compassion or understanding.² (Ex. E, p. 16.) At one point, Jasha even accused Michaela of sexually abusing him. (Ex. A, ¶ 18(b)–(d); Ex. E, pp. 15, 22.) As the result of the tumultuous relationship and Jasha’s abusive behavior, Michaela ended up in therapy and treatment for PTSD. (Ex. E., pp. 9, 11, 41; Ex. H., p. 10.)

It was during therapy and this treatment that Michaela realized Jasha sexually assaulted her. (Ex. E, p. 6; Ex. H, p. 8.) Even though Michaela knew Jasha’s assaults were wrong, she justified them both at the time and for months afterwards both because of Jasha’s bullish and manipulative tactics and his abuse of his power and influence as a popular performer. (*Id.*)

C. Jasha Continues his Emotionally Abusive Behavior Towards Michaela

About four months after their exploitive relationship ended, in around February 2017, Jasha texted Michaela and asked her to unblock him from social media. (Ex. E., p. 9, Ex. H, pp. 10–11.) Michaela did. (*Id.*) As Jasha and Michaela were both playing at an upcoming festival, Jasha suggested they meet up. (*Id.*) In a subsequent message, Jasha told Michaela he had gotten back together with his ex-girlfriend. (*Id.*) Among other things, knowing Jasha’s girlfriend would not be okay with Jasha and Michaela meeting up, she declined to meet up with Jasha. (*Id.*) Jasha instantly turned on Michaela, threatening to tell the festival security guards that she was a “deranged stalker” and threatened to destroy her career. (*Id.*) Jasha also shamed Michaela by telling her that his dad, Herman, says he can tell that Michaela did not go to college by the way she speaks. (Ex. E, pp. 14, 51–52.)

D. Jasha Accused of Sexual Assault By Others

On March 15, 2018, Dancing Astronaut published a story with the headline “Breaking: Datsik and Space Jesus Accused of Sexually Assaulting Multiple Victims.” (Ex. H, p. 11.) While

² Jasha complains about the number of text and email communications and yet it would seem “[a]lmost [] the entire breakup went down over text or email.” (Compl., Ex. A, ¶ 18(a); Ex. E, p. 20.) As a victim of sexual assault, Michaela can get “nervous and tongue tied” when speaking. (Ex. E, pp. 2, 14, 21.)

1 Jasha denied the allegations, and Dancing Astronaut withdrew the allegations a few days later,
 2 multiple people posted their stories and information that Jasha had given drugs and alcohol to
 3 underage girls, before having sex with them. (*Id.*) One such account was posted by Lilly
 4 Anderson, who wrote of her 17-year-old friend who had sex with Jasha in Tennessee.³ (Ex. E., p.
 5 11; Ex. F, pp. 6–9.) Jasha admits to having sex with a person he “believed to be over eighteen then
 6 but later learned was likely seventeen,” though he claims it was in Oklahoma. (Ex. A, ¶ 21.)

7 **E. Michaela Seeks Accountability from Jasha**

8 Following the backlash from the allegations of sexual assault rocking Jasha and Datsik,
 9 Jasha announced plans to perform at a “consent benefit” to raise awareness about consent.
 10 Michaela was “physically pain[ed]” to see Jasha “paint himself as an ally and supporter now” when
 11 he had never taken responsibility for his own actions relating to “consent and the perpetuat[ion of
 12 the] rape culture that that brings up.” (Ex. E., p. 9.) Michaela contacted both Jasha and the
 13 sponsoring organization to bring the hypocrisy to everyone’s attention. (Ex. A, ¶ 25; Ex. E, pp. 7–
 14 10, 17; Ex. H, p. 11.) Michaela did not demand money, just responsibility and accountability. (*Id.*)
 15 In the end, Jasha and Michaela talked, Jasha apologized to Michaela, and seemingly claimed he
 16 would take responsibility and accountability for his actions. (Ex. E., p. 11.) Convinced Jasha had
 17 seen the error of his ways, Michaela withdrew her objection to his performing at the benefit. (*Id.*;
 18 Ex. A, ¶ 44.) After Jasha failed to keep a promise to talk with Michaela on the Monday after the
 19 consent benefit, Michaela spent the following weeks and months asking Jasha to make good on his
 20 promises to her, but Jasha did not appear to be holding himself accountable for his past behavior or
 21 making amends. (*Id.*)

22 **F. Michaela Contacted C3 and Herman Tull for Help Seeking Accountability from**
 23 **Jasha**

24 Still seeking to hold Jasha accountable, in January 2019, Michaela contacted Jasha’s
 25 management team at C3, notifying them of both her and the 17-year old’s sexual assault allegations.
 26 (Compl., ¶¶ 27–33, 35, Ex. F, pp. 6–29.) In the months that followed, Michaela and C3 exchanged
 27

28 ³ The age of consent for sexual activity in Tennessee is 18 years old. *See* Tenn. Code § 39-13-506 (2012).

multiple emails as C3 claimed to be investigating the situation. (*Id.*) Michaela would at times forward her communications to C3 to Jasha and/or his father, Herman, or include Herman as blind carbon copy (bcc) recipient on the communications. (*Id.*) Needless to say, the situation was not resolved.

G. More of Jasha’s Sexual Assault Survivors Come Forward

Thereafter (on or about April 5, 2019), Michaela learned of a protest organized outside of one of Jasha’s shows, by young women who said they had witnessed similar sexual misconduct. (Ex. H, p. 14.) Both Michaela and, separately, a woman who goes by the names Dia and Kiki were inspired by this protest to come forward regarding their own experiences, and, on or around June 20, 2019, Kiki posted on social media about rape culture in EDM, specifically mentioning her experience with Jasha. (Ex. H, p. 14; *see also* Ex. 2 attached hereto.) Michaela saw Dia/Kiki’s post and “found that [Jasha] had done the same thing to Dia/Kiki the first time they had sex [non-consensual penetration], and also threatened to destroy her dance career shortly after she broke things off with him, [Michaela] realized that a private, internal resolution [with Jasha] was not possible. (*Id.*) As Michaela wrote on her post, “[t]he only way to protect young, vulnerable, even underage fans and others from [Jasha’s] well-established pattern of abuse is sharing [their] stories.” (*Id.*)

In the summer of 2020, Michaela started @evidenceagainstspacejesus and went public with her story. (Compl. ¶¶ 36–37, Ex. H.) After she did so, more victims came forward to share their stories of Jasha’s sexual assaults, aggressive behavior, and substance abuse, including with underage girls. (Ex. H, p. 4.)

H. Jasha and His Parents File Lawsuits Against Michaela

Framing Michaela’s efforts to educate and seek accountability for sexual assault offenders as a “campaign of harassing, defaming, bullying, threatening, cyber-stalking and intimidat[ing]” conduct towards Jasha and his parents, Herman and Lekha, all three have filed claims against Michaela for defamation, civil harassment, and civil stalking. (Compl. ¶ 17; *see also* related Case No.: 4:21-cv-01574, Docket No. 1.)

Jasha bases his defamation claim on 14 statements posted by Michaela to her Instagram accounts (either @evidenceagainstspacejesus or @xxeyesaxx) or her Twitter account, between June 20, 2020, and September 12, 2020.⁴ (*Id.*, at ¶¶ 41–55.) Almost all of the statements alleged relate to allegations of sexual assault, either by Michaela or another survivor. (*Id.*) At least three of the statements identified concern personal opinions (June 26, 2020 - “You’re an actual, factual psychopath @spacejesus”; June 29, 2020 - “Whatever personality disorder Trump has (is it psychosis? megalomania? just straight up soul-less?), jasha has it too,”; and September 12, 2020 – “Only a truly evil psychopath would charge people for a free COVID test, let alone their son’s friends.”) (*Id.*, at ¶¶ 47–49); and three of the statements are not from Michaela at all, but retweets from other third-party Twitter users (July 3, 2020, July 5, 2020, and August 9, 2020 tweets). (*Id.* at ¶¶ 50, 52, 54.)

As shown above and throughout the numerous email, text messages, and social media posts identified and submitted with the Complaint, Michaela believes in the truth of her statements—that Jasha sexually assaulted her—and Jasha does not allege any facts by which one could infer Michaela had any reason to believe that the statements of others who allege Jasha sexually assaulted them might be false.

As to fear for his physical safety, Jasha alleges that Michaela has threatened to “ruin” Jasha, made escalating public rhetoric against Jasha, and made a “recent social media post “with a firearm.” (Compl. ¶ 90.) As attached in Exhibit I, the recent “firearm post” was made on November 29, 2020, and is mostly a headshot of Michaela, holding a hunting rifle, with the text “Proud member of the Socialist Rifle Association,” which Jasha combines with another post, made two weeks later, showing Michael stretching in a sunlit forest, and identifies her location as in Long Island, New York (which, according to Jasha, is about 50 miles from his family home). (Compl. ¶ 57; Ex. I.)

⁴ Plaintiff identifies that the following statements form the basis for his defamation claim: June 20, 2020 (Compl. ¶ 41); July 19, 2020 (¶ 42); July 19, 2020 (¶ 43); August 5, 2020 (¶ 44); August 5, 2020 (¶ 45); September 12, 2020 (¶ 47); June 26, 2020 (¶ 48); June 29, 2020 (¶ 49); July 3, 2020 (¶ 50); July 4, 2020 (¶ 51); July 5, 2020, (¶ 52); August 5, 2020 (¶ 53); August 9, 2020 (¶ 54); and September 11, 2020 (¶ 55).

The only alleged altercation between Jasha and Michaela allegedly occurred over four and half years ago, on or about the week of September 4, 2016, when Michaela allegedly showed up at the Tull residence unannounced and uninvited, and screamed at Jasha so profusely, the neighbors ask about the incident to this day. (*Id.*, ¶¶ 15–16.) In attempting to diffuse the situation, Jasha alleges the family invited Michaela into their home, cooked for her, and then Lekha secured a booking change to an airline ticket to send Michaela to Portland, Oregon. (*Id.*, at ¶ 15.) The booking confirmation email attached to the complaint, however, was sent on August 31, 2016 (before the weekend in question), and reflects a September 11, 2016 flight to Portland, Maine (not Portland, Oregon). (Ex. G, p. 3.) Also attached to the Complaint is an email dated that same week, sent on September 5, 2016, from Herman to Michaela, attaching a beach photo of Herman, Lekha, Jasha, and Michaela all together and smiling. (Ex. F, p. 3.)⁵

III. ARGUMENTS

A. Jasha Fails to State a Claim for Defamation.

Defamation requires “[1] a publication that is [2] false, [3] defamatory, [4] unprivileged, and that [5] has a natural tendency to injure or that causes special damage.” *Taus v. Loftus*, 40 Cal.4th 683, 720 (2007); *see* Cal. Civ. Code §§ 45–46. If the person allegedly defamed is a public figure/limited public figure, he cannot recover unless he proves, by clear and convincing evidence that the libelous statement was made with actual malice. *Reader's Digest Assn. v. Superior Court*, 37 Cal.3d 244, 256–257 (1984) (*citing New York Times Co. v. Sullivan*, 376 U.S. 254, 285–286). Jasha, as a public figure, fails to plead a plausible claim for defamation because none of the allegations support a showing of actual malice.

1. **Jasha is a Public Figure.**

Plaintiff is a public figure due to his status as an electronic musician and producer with a large fan base. Whether an individual is a public figure is a question of law that must be assessed through a totality of the circumstances. *See Reader's Digest Ass'n v. Superior Court*, 37 Cal.3d 244,

⁵ As attached to the Complaint, Herman’s email to Michaela, sending her the beach photo, does not contain the actual photograph sent. A complete copy of the email, with the photograph, is attached hereto as Exhibit 1.

208 (1984). “In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). Alternatively, an individual is a limited purpose public figure if: (1) a public controversy exists; (2) the individual voluntarily acts seeking to influence the resolution of the public issue in controversy; and (3) the alleged defamation is germane to the individual’s participation in the controversy. *Ampex Corp. v. Cargle*, 128 Cal.App.4th 1569, 1577 (2005).

Public figures for defamation purposes include, “artists, athletes, business people, dilettantes, anyone who is famous or infamous because of who he is or what he has done.” *Cepeda v. Cowles Magazines & Broad., Inc.*, 392 F.2d 417, 419 (9th Cir. 1968); *see Primetime’s Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1081 (9th Cir. 2002) (television actor was a public figure); *Leidholdt v. L.F.P. Inc.*, 860 F.2d 890, 893 (9th Cir. 1988) (leader in the anti-pornography movement, who had participated in numerous news article and public debates on the topic of pornography, was a public figure); *see generally Curtis Pub. Co. v. Butts*, 388 U.S. 130, 164 (1967) (finding “as a class these ‘public figures’ have as ready access as ‘public officials’ to mass media of communication, both to influence policy and to counter criticism of their views and activities”).

Along with his musical skill and abilities, Jasha has amassed a following within the electronic music realm, resulting in “tens of millions of plays on the music streaming platform Spotify, with over a quarter of a million individuals listening to his music per month, on that platform alone as of March 2021.” (*Id.*, at ¶ 12.) Indeed, Jasha admits to his fame as “one of the leading performers in the subgenre of electronic music in which he performs,” and a “renowned musician, touring constantly” with a reputation reaching “his fans and the broader electronic music community.” (*Id.*, at ¶¶ 70, 73.) Jasha is a public figure because he is an artist who is famous for his musical talents.

Further, on March 15, 2018, Dancing Astronaut published a story that called out Jasha and another artist, Datsik, for various acts of sexual assault. (Ex. H, p. 11.) Multiple people posted stories and information suggesting Jasha had given drugs and alcohol to underage girls, before having sex with them. (*Id.*) In response, Jasha voluntarily made statements regarding this controversy by publicly denying these statements in attempts to influence the resolution of the

1 sexual misconduct allegations. (*Id.*) Additionally, Jasha remained within this controversy by
 2 announcing plans to perform at a “consent benefit” to raise awareness about consent. Now, Jasha
 3 challenges Michaela’s statements regarding his alleged sexual assault of her.

4 Whether as a “renowned musician”, or an individual who has previously participated in a
 5 relevant controversy, Jasha is a public figure. As such, succeeding on his defamation claim requires
 6 Jasha to make a showing of actual malice.

7 **2. The Complaint Insufficiently Pleads Actual Malice.**

8 As a public figure, Jasha fails to adequately plead the actual malice required for all of
 9 Michaela’s allegedly defamatory statements. (Compl. ¶¶ 41–55.)

10 Actual malice requires the defamatory statement to have been made with “knowledge that it
 11 was false or with reckless disregard of whether it was false or not.” *New York Times v. Sullivan*,
 12 376 U.S. 254, 279–80 (1964). Actual malice directs attention to the “defendant’s attitude toward
 13 the truth or falsity of the material published . . . [not on] the defendant’s attitude toward the
 14 plaintiff.” *Widener v. Pacific Gas & Electric Co.*, 75 Cal.App.3d 415, 434 (1977), *disapproved on*
 15 *other grounds*, by *McCoy v. Hearst Corp.*, 42 Cal. 3d 835, 846 (1986). To survive a motion to
 16 dismiss, plaintiffs must meet the “demanding burden” of alleging non-conclusory facts that render
 17 their actual malice claim plausible. *Resolute Forest Prod., Inc. v. Greenpeace Int’l*, 302 F.Supp.3d
 18 1005, 1018 (N.D. Cal. 2017); *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1239 (N.D. Cal. 2014). “[T]he
 19 actual malice standard is not satisfied merely through a showing of ill will or ‘malice’ in the
 20 ordinary sense of the term . . . [instead, it] requires at a minimum that the statements were made
 21 with a ‘high degree of awareness of . . . probable falsity,’ . . . or [the defendant] must have
 22 ‘entertained serious doubts as to the truth of [her] publication.’” *Harte-Hanks Communications v.*
 23 *Connaughton*, 491 U.S. 657 (1989) (*quoting St. Amant v. Thompson*, 390 U.S. 727 (1968)).

24 Actual malice is not properly plead with purely conclusory allegations that defendants had a
 25 particular state of mind in publishing the statements, *Resolute Forest Prod., Inc.*, at 1017–18; by
 26 alleging the defendant fabricated statements, disregarded information contrary to the statement, or
 27 had no reliable information on which to base the accusations against plaintiff, *Wynn v. Chanos*, 75
 28 F. Supp. 3d at 1239; by alleging the defendant should have known the truth, *Nicosia v. De Rooy*, 72

1 F. Supp. 2d 1093, 1109 (N.D. Cal. 1999); by “merely through a showing of ill will or ‘malice’ in
 2 the ordinary sense of the term,” *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657
 3 (1989) (quoting *St. Amant v. Thompson*, 390 U.S. 727 (1968)); or by a showing of the defendant’s
 4 motives for publication of statements with a particular slant, *D.A.R.E. Am. v. Rolling Stone*
 5 *Magazine*, 101 F.Supp.2d 1270, 1285-86 (C.D. Cal. 2000), *aff’d sub nom. D.A.R.E. Am. v. Rolling*
 6 *Stone Magazine*, 270 F.3d 793 (9th Cir. 2001).

7 While he asserts the falsity of Michaela’s statements, Jasha’s facial challenges to the
 8 statements fail to illustrate actual malice. In fact, Plaintiff’s pleading of actual malice is at best
 9 conclusory. (See Compl. ¶ 29 (Michaela “falsely claimed”); *id.*, at ¶ 39 (“true and correct copies of
 10 defamatory and other objectional social media postings”); *id.*, at ¶ 40 (“all of these false accusations
 11 are anonymous, second-hand, or both”); *id.*, at ¶ 66 (Michaela “knew, or had reasonable cause to
 12 believe, [the statements] were false and defamatory, whether by personal knowledge or by reckless
 13 disregard of the statements’ falsity”); *id.*, at ¶ 67 (Michaela “knew, or had reasonable cause to
 14 believe, that [Jasha] had not done [the acts in the statements], as [Michaela] knew, or had
 15 reasonable cause to believe, that [Jasha] did not commit said acts”)). In the same vein, Jasha’s
 16 categorization of certain statements as unattributable or second-hand also fails to illustrate that
 17 Michaela made the statements with a ‘high degree of awareness of . . . probable falsity,’ . . . [or that
 18 she] ‘entertained serious doubts as to the truth of [her] publication[s],’” *Harte-Hanks*
 19 *Communications v. Connaughton*, 491 U.S. 657 (1989). (See Compl., ¶ 28 (“unattributable or
 20 second-hand”); *id.*, at ¶ 40 (“all of these false accusations are anonymous, second-hand, or both”)).

21 Instead, Jasha spends a considerable portion of the Complaint describing Michaela’s
 22 “malign” intentions, “violent threats” and “wrongful accusations”. These attempts to portray
 23 Michaela as a vengeful person are equally as unavailing in pleading actual malice. Indeed, these
 24 allegations, taken as true, at best illustrate ill will or “malice” in the ordinary sense of the term.
 25 *Harte-Hanks Communications*, 491 U.S. at 666. While actual malice may be proved by
 26 circumstantial evidence, it will not be inferred “solely from evidence of personal spite, ill will or
 27 bad motive.” *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1167, 1169 (2004). Even if
 28 Michaela held “malign” intentions toward Jasha—which she did not—these allegations do not

1 illustrate actual malice. Instead, Jasha’s Complaint suggests a contrary conclusion: that Michaela
 2 believed her statements to be true. In fact, around the time of his “consent benefit” concert, Jasha
 3 spoke to Michaela and apologized to her, seemingly taking responsibility and accountability for his
 4 actions. (Ex. E., p. 11.)

5 Simply put, Jasha has not, and is unable to plead a plausible claim that Michaela made the
 6 alleged defamatory statements with a reckless disregard of their truth, nor knowledge of their
 7 falsity. Given Jasha’s inability to sufficiently plead the requisite element of actual malice, Michaela
 8 respectfully requests this Court dismiss the first cause of action for defamation in its entirety.

9 **B. Plaintiffs’ Civil Harassment Claim Fails to Plausibly Allege a Lack of**
 10 **Legitimate Purpose.**

11 To plead a claim for civil harassment under California Code of Civil Procedure Section
 12 527.6, Plaintiffs must plausibly allege “a knowing and willful course of conduct directed at a
 13 specific person that seriously alarms, annoys, or harasses the person, *and that serves no legitimate*
 14 *purpose.”*⁶ Code Civ. Proc. § 527.6(b) (emphasis added); *see Brekke v. Wills*, 125 Cal.App.4th
 15 1400, 1413–1414 (2005). Here, the alleged course of conduct to which Jasha complains as
 16 harassing, as evidenced from the communications themselves, focuses almost entirely on
 17 Michaela’s efforts to educate and seek accountability from sexual assault offenders for herself and
 18 others and to clarify and understand the disparaging remarks that Plaintiff was making about
 19 Michaela. When the attached exhibits contradict the allegations in the complaint, the contents of
 20 the exhibits trump the pleadings. *See, e.g., Crenshaw v. Lister*, 556 F.3d 1283, 1292 (11th Cir.
 21 2009); *Avila v. Cate*, 2011 WL 2680844, *5 n. 1 (E.D. Cal. 2011). Plaintiff’s conclusory
 22 allegations to the contrary (that Michaela’s conduct serves no legitimate purpose) are insufficient to
 23 plead a plausible legal theory for civil harassment. *See Hanna v. Moreira*, No. E070310, 2019 WL
 24 3933564 (Cal. Ct. App. Aug. 20, 2019) (emails evidencing legitimate purpose on their face
 25 insufficient for harassment claim).

26
 27 ⁶ Under section 527.6(b), a civil harassment claim can also be based on allegations of
 28 unlawful violence or a credible threat of violence, but Jasha does not plead a claim based on any
 such alleged conduct.

Further, the standard for conduct serving as a legitimate purpose is quite low and includes anything from parking one's car in a desired location, to getting exercise, to seeking recourse for a perceived wrong, to information encouraging investigation into a company's business practices. *See, e.g., Byers v. Cathcart*, 57 Cal.App.4th 805 (1997) (parking car in desired location); *Schild v. Rubin*, 232 Cal.App.3d 533 (1991) (playing basketball and getting exercise); *Hanna v. Moreira*, No. E070310, 2019 WL 3933564 (Cal. Ct. App. Aug. 20, 2019) (seeking recourse for a perceived wrong); *Principe v. Curry*, No. 817CV00608JLSKESX, 2018 WL 1406912 (C.D. Cal. Jan. 3, 2018) (social media posts informing public about company and encouraging investigation into its business practices). Certainly, Defendant's stated purposes for the alleged communications, in seeking accountability, preventing sexual assaults, and clarifying and understanding Jasha's disparaging remarks about Michaela, are at least as legitimate as those found in other situations. Plaintiff's conclusory allegations to the contrary, when compared to the legitimate purposes of the communications as identified within the very communications attached to the Complaint, are insufficient to *plausibly* allege that the communications have no legitimate purpose.

C. Jasha's Civil Stalking Claim Fails to Allege a Pattern of Conduct or Credible Threat.

To plead a claim for civil stalking, a plaintiff must plausibly allege: (1) the defendant engaged in a pattern of conduct the *intent of which was to harass the plaintiff*;⁷ (2) the plaintiff reasonably feared for his or her safety or the plaintiff suffered from substantial emotional distress and the reasonable person would suffer substantial emotional distress; (3) the defendant made a credible threat with the intent to place plaintiff in reasonable fear for his safety or with reckless disregard for the plaintiff's safety;⁸ and (4) the plaintiff, on at least one occasion, clearly and definitively demanded that the defendant cease their pattern of conduct. Code Civ. Proc. § 1708.7.

⁷ Under section 1708.7(1), a civil stalking claim can also be based on allegations of a defendant's intent to follow, alarm, or place under surveillance, but Jasha does not plead a claim based on any such alleged conduct.

⁸ Under section 1708.7(3)(B), a civil stalking claim can also be based on the defendant violating a restraining order, but Jasha does not plead a claim based on any such alleged conduct.

1 Here, Jasha does not plausibly allege either a pattern of conduct with the intent to harass plaintiff,
2 or a credible threat to Jasha's safety.

3 **1. Jasha Does Not Plausibly Allege Pattern of Conduct With the Intent to**
4 **Harass**

5 A pattern of conduct is a series of acts over a period of time evidencing a continuity of
6 purpose *to harass* the plaintiff. Code Civ. Proc. § 1708.7(b)(1). As already discussed above, the
7 alleged course of conduct to which Jasha complains as harassing, as evidenced from the
8 communications themselves, focuses almost entirely on Michaela's efforts to educate and seek
9 accountability from sexual assault offenders for herself and others and to clarify and understand the
10 disparaging remarks that Plaintiff was making about Michaela. In light of the actual
11 communications identified within and attached to the Complaint (and incorporated therein), Jasha's
12 allegations that Michaela's conduct did not have a legitimate intent, but served only to harass Jasha,
13 is not plausible.

14 **2. Michaela's Gun Photo Does Not Give Rise to a Credible Threat**

15 A civil stalking claim must also plausibly allege sufficient facts that a defendant "made a
16 credible threat with either (i) the intent to place the plaintiff in reasonable fear for his or her safety
17 or the safety of an immediate family members, or (ii) reckless disregard for the safety of the
18 plaintiff or that of an immediate family member. In addition, the plaintiff must have, on at least one
19 occasion, clearly and definitively demanded that the defendant cease and abate his or her pattern of
20 conduct." Code Civ. Proc. § 1708.7(a)(3)(A). A credible threat is defined as "a verbal or written
21 threat . . . made with the intent and apparent ability to carry out the threat so as to cause the person
22 who is the target of the threat to reasonably fear for his or her safety or the safety of his or her
23 immediate family." Code Civ. Proc. § 1708.7(b)(2).

24 Here, Jasha alleges Michaela made credible threats to "ruin" him, escalating "public
25 rhetoric," and posting a picture of herself in November 2020 with a firearm. (Compl. ¶ 90.) To
26 allege a plausible claim that Michael made a credible threat *towards Jasha with intent* "to place him
27 in reasonable fear," however, Jasha must allege more than merely identifying various encounters
28 with Michaela. *Bolton v. City of Berkeley*, No. 19-CV-05212-WHO, 2019 WL 6250927 (N.D. Cal.

1 Nov. 22, 2019) (dismissal of civil stalking claim for failure to allege credible threat with intent to
 2 place reasonable fear). Jasha’s only allegation that comes remotely close to plausibly indicating an
 3 intent to harm Jatha or cause any fear is Jasha’s allegation concerning Michael’s firearm post. Yet,
 4 that too, falls far short of alleging a legal cognizable claim for civil stalking.

5 The post itself is not directed to Jasha (or his family) in *any* way. It is simply a picture of
 6 Michaela (mostly a head shot), with a rifle, with the text “Proud member of the Socialist Rifle
 7 Association.” (Ex. I.) The second post that Jasha includes is dated two weeks later and is a picture
 8 of Michaela stretching in a sunlit forest, with the location identified as in Long Island, New York.
 9 *Id.* There is absolutely nothing in the second post (Michaela stretching in a forest) to connect it or
 10 link it to the first post (SRA post). That the second post is tagged with a Long Island, New York
 11 location does not magically give rise to some hidden reference to Jasha or his family. In his own
 12 Complaint, Jasha alleges that Michaela “resid[es] partially” in New York, (Compl. ¶ 2.), so it stands
 13 to reason that she would occasionally be in New York. As for Jasha and his family, Jasha alleges
 14 that they live in New Jersey. (*Id.*, at ¶¶ 1, 12.) Two states may be in proximity to each other, but
 15 that does not necessarily mean that standing in one is a veiled threat to the residents in another. To
 16 connect the picture of Michaela stretching in Long Island, to Michaela’s earlier SRA picture/post,
 17 to a presumed intent that Michaela was threatening to harm Jasha or his family (or have cause harm
 18 to them through some form of “mutual aid) is attenuated at best but, at the very, least does not
 19 support a plausible claim for civil stalking.

20 **IV. CONCLUSION**

21 For the above reasons, Defendant respectfully requests that this Court grant her motion to
 22 dismiss in its entirety. Defendant understands that leave to amend is liberally granted in the early
 23 rounds of pleading. However, Defendant requests that this Court consider dismissing Plaintiff’s
 24 frivolous claims with prejudice.

1 DATED: April 28, 2021

GREENBERG GROSS LLP

2
3 By: /s/ Deborah S. Mallgrave
4 Deborah S. Mallgrave

5 GIBBS LAW GROUP LLP
6 Karen Barth Menzies
7 Jeffrey Kosbie

8 Attorneys for Defendant Michaela Higgins
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

From: Herman Tull

Date: September 5, 2016 at 4:29:21 PM PDT

To: Caeli La , "Dr. Lekha Tull" , Space Jesus

Subject: picture



EXHIBIT 2

1 Karen Barth Menzies (SBN 180234)
2 kbm@classlawgroup.com
3 Jeffrey B. Kosbie (SBN 305424)
4 jbk@classlawgroup.com
5 **GIBBS LAW GROUP LLP**
6 505 14th Street, Suite 1110
7 Oakland, California 94612
8 Telephone: (510) 350-9700
9 Fax: (510) 350-9701
10 www.classlawgroup.com

11 *Attorneys for Defendant Michaela Higgins*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 JASHA RUBEN TULL,

16 Plaintiff,

17 v.

18 MICHAELA HIGGINS,

19 Defendant.

Case No. 4:21-cv-01566-DMR

**DECLARATION OF CHRISTINA
RENEE LACOSTE IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

20
21
22
23
24
25
26
27
28
**LACOSTE DECLARATION ISO MOTION TO DISMISS
CASE NO. 4:21-cv-01566**

1 I, Christina Renee LaCoste, declare as follows:

2 1. I make this statement on my own personal knowledge, and if called to
3 testify, I could and would testify competently thereto, except where I make a statement
4 on information and belief, in which case I am informed and believe the statement to be
5 true.

6 2. My name is Christina Renee LaCoste. I am a performer, model and artist. I
7 am known as Dia, @diathedom. My former stage name was Kiki, but I changed my stage
8 name to Dia after the events described below occurred.

9 3. I first met Jasha Tull, aka Space Jesus around 2015 in the Electronic Dance
10 Music (EDM) scene. I performed numerous times while he was DJing at festivals.

11 4. In 2017, I performed at a Halloween show with Jasha. After the show,
12 Jasha asked me to stay and hang out with him at his hotel room. I still had a 4-hour
13 drive ahead of me, but I agreed to stay for a bit. In Jasha's hotel room, everyone was
14 doing drugs and drinking alcohol (though I did not join them, as it's not my scene and I
15 was planning on driving). Jasha pressured me into staying longer and longer, then
16 eventually into staying the night, telling me his group had an extra hotel room that I
17 could use. As it was very late, I decided to stay.

18 5. After Jasha showed me to the extra hotel room, I got into the shower. When
19 I got out of the shower, Jasha was already in the bed and insisted on remaining in the
20 room with me. As I tried to fall asleep, Jasha rolled over and grabbed me. When I
21 protested, Jasha told me I needed to "let loose with him." We started kissing and then,
22 very suddenly, Jasha pulled aside my underwear and stuck his penis in me. Jasha
23 worked fast and "finished" quite quickly, such that by the time my head registered what
24 was going on, it was already over. There was no consent, no condom, and no choice. After
25 I washed off, I told him that was not okay. That I did not give him consent. I was upset
26 and concerned about my own safety, and the safety of other women. I wanted Jasha to
27 promise me that this was the first time he'd ever done that to a woman, to penetrate her
28 without consent.

1 6. I talked with Jasha several times over many months following the sexual
2 assault, but Jasha continued to refuse accountability and at one point, Jasha accused me
3 of cyber-bullying and threatened my career. In addition, I told some personal friends
4 what happened, and the story began to leak out within the EDM industry.

5 7. In or around April 2019, I heard about a protest staged by several young
6 women outside Jasha's April 5, 2019 performance at the UC Theater in Berkeley. I heard
7 that Jasha had threatened these young women, and I was enraged by his actions. I
8 decided to share my own story after hearing about this.

9 8. On June 20, 2019, I posted to Instagram a screen shot of a direct message
10 Jasha had sent me on Twitter on December 4, 2018, claiming to have just recently become
11 aware that I felt that he had crossed the line with me sexually. In response, I posted that
12 I was "[s]evering up my ties with EDM Rave Culture – I mean Rape Culture." Jasha
13 continued to try to silence me, releasing a statement about what happened that was filled
14 with lies.

15 9. Attached as Exhibit A to this declaration is a true and correct copy of my
16 June 20, 2019 post to Instagram.

17 10. Michaela Higgins (Caeli) saw my post that day and messaged me privately.
18 She explained that she went through a very similar situation with Jasha and asked if we
19 could speak over the phone. I agreed to speak with Caeli over the phone, and at the end
20 of our exchange, I commented, "we've been quiet too long."

21 11. Attached as Exhibit B to this Declaration is a true and correct copy of the
22 Instagram direct message conversation between Caeli and me from June 20, 2019.

23
24 I declare under penalty of perjury under the laws of the United States and the
25 State of California that the foregoing is true and correct, executed this 28th day of April,
26 2021, in Seattle, Washington.

Christina Renee LaCoste

Christina Renee LaCoste

EXHIBIT A





EXHIBIT B



☆ # caeli # ☆ she/her

caelislaysdemons · Instagram

7K followers · 109 posts

Follows you

You both follow dancesafe_ and 202 others

[View Profile](#)

JUN 20, 2019

Hey Kiki can we can talk on the phone
sometime soon?

I went through a very similar
experience with Jasha

And there's a lot that's going on right
now I'd like to share with you



Mentioned you in their story

Yes

Can we speak tonight?

You mentioned ☆ # caeli # ☆ she/her in
your story



Message...



<  ☆ # caeli # ☆ she/her  
caelislaysdemons

Yes


Can we speak tonight?

You mentioned ☆ # caeli # ☆ she/her in
your story

It's very important to me as well

 Yes please! I'm free anytime today -


I'm with family currently my young
nephew and can't speak on it rn but
will definitely be contacting you via
phone tonight

 Thank you so much ❤️ you have no
idea how much this means to me right
now!!! So so grateful

So am i

we've been quiet too long



I'm done



As well as livid





Message...



Signature Certificate

Document Ref.: J5EVX-Q7JPF-AH5HU-HQP2Z

Document signed by:

	Christina Renee LaCoste	<i>Christina Renee LaCoste</i>
	Verified E-mail: [REDACTED]	
	[REDACTED]	Date: 29 Apr 2021 02:35:13 UTC
		

Document completed by all parties on:

29 Apr 2021 02:35:13 UTC

Page 1 of 1



Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.



1 DEBORAH S. MALLGRAVE, State Bar No. 198603

DMallgrave@GGTrialLaw.com

2 **GREENBERG GROSS LLP**

650 Town Center Drive, Suite 1700

3 Costa Mesa, California 92626

Telephone: (949) 383-2800

4 Facsimile: (949) 383-2801

5 KAREN BARTH MENZIES, State Bar No. 180234

kbm@ClassLawGroup.com

6 JEFFREY KOSBIE, State Bar No. 305424

jbk@ClassLawGroup.com

7 **GIBBS LAW GROUP LLP**

505 14th Street, Suite 1110

8 Oakland, CA 94612

Telephone: (510) 350-9700

9 Facsimile: (510) 350-9701

10 Attorneys for Defendant Michaela Higgins

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

13
14 JASHA TULL, an individual,

15 Plaintiff,

16 v.

17 MICHAELA HIGGINS, an individual a/k/a
18 CAELI LA; and DOES 1 through 10 inclusive,

19 Defendants.

Case No. 4:21-cv-01566-DMR

[Related to Case No.: 4:21-cv-01574-DMR]

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO STRIKE**

[Filed Concurrently with Motion to Dismiss,
and Motion to Dismiss and Motion to Strike
in Related Case]

Date: June 10, 2021

Time: 1:00 p.m.

Dept.: 4

23 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 PLEASE TAKE NOTICE that on June 10, 2021, at 1:00 p.m., or as soon thereafter as the
25 matter may be heard in Department 4 of the above entitled Court located at 1301 Clay Street, Oakland,
26 California, Courtroom 4, Defendant Michaela Higgins ("Michaela"), by and through her attorney of
27 record herein, will, and hereby does, move this Court for an Order to Strike the following allegations
28

1 in the Complaint (“Complaint”) in this action on the basis that the language is irrelevant, impertinent,
 2 and/or scandalous:

- 3 a. Paragraph 2, page 2, lines 8 through 10 “Plaintiff is informed and believes that
 4 Defendant Higgins was also acting under and/or utilizing the pseudonym or screen
 5 name ‘@sensualintelligence’ on the ‘onlyfans.com’ platform.”
- 6 b. Paragraph 48, page 13, lines 12 through 14, “On or about June 26, 2020, the Twitter
 7 account ‘@caelila’ stated ‘You’re an actual, factual psychopath @spacejesus.’ This
 8 is false and a lie, Plaintiff is not a psychopath.”
- 9 c. Paragraph 49, page 13, lines 15 through 18, “On or about June 29, 2020, the Twitter
 10 account ‘@caelila’ stated that ‘Whatever personality disorder Trump has (is it
 11 psychosis? megalomania? just straight up soul-less?, jasha has it too. They operate
 12 the exact same way.’ This false and a lie, Plaintiff does not have a personality
 13 disorder.”
- 14 d. Paragraph 50, page 13, lines 19 through 23, “On or about July 3, 2020, the Twitter
 15 account ‘@caelila’ retweeted a tweet from ‘Dmoney0101’ stating ‘So disheartening
 16 to see @bassnectar @spacejesus and @NahkoBear exposed as sexual predators all in
 17 one week...’ ‘@caelila’'s adoption and promotion of this statement amounts to an
 18 assertion that Plaintiff is a sexual predator, which is false and a lie.”
- 19 e. Paragraph 52, page 14, lines 1 through 4, “On or about July 5, 2020, the Twitter
 20 account ‘@caelila’ retweeted a tweet from ‘@deadsoonshawty’ stating ‘burnt all our
 21 pedophile merch last night :) FUCK YOU @spacejesus.’ Defendant Michaela
 22 Higgins/Caeli La’s retweet via ‘@caelila’ amounts to an adoption and assertion
 23 Plaintiff is a pedophile, which is false and a lie.”
- 24 f. Paragraph 54, page 14, lines 8 through 11, “On August 9, 2020, ‘@caelila’ retweeted
 25 a tweet from ‘@shambhalaaa888’ stating that Plaintiff had raped Defendant
 26 Michaela Higgins/Caeli La. ‘@caelila’'s adoption and promotion of this statement
 27 amounts to an assertion that Plaintiff raped Defendant Michaela Higgins/Caeli La,
 28 which is a lie.”

1 This Motion will be based upon this Notice of Motion and Motion, the accompanying
2 Memorandum of Points and Authorities and all legal authority cited therein, the Court's files and
3 records in the instant action (the "Action"), the Court's files and records in the related action Case
4 No.: 4:21-cv-01574, matters of which the Court may take judicial notice, and such further evidence
5 as may be presented at the time of the hearing on this Motion.

6
7 DATED: April 28, 2021

GREENBERG GROSS LLP

8
9 By: /s/ Deborah S. Mallgrave
10 Deborah S. Mallgrave

11 GIBBS LAW GROUP LLP
12 Karen Barth Menzies
Jeffrey Kosbie

13 Attorneys for Defendant Michaela Higgins
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. FACTUAL ALLEGATIONS IN THE COMPLAINT	1
III. APPLICABLE LAW.....	3
IV. ARGUMENTS	3
A. The Complaint’s Reference of Michaela’s OnlyFans.com Account Is a Gratuitous Reference with No Legitimate Purpose.....	3
B. Michaela’s Statements About Jasha’s Personality Should Be Stricken as Immaterial, Nonactionable Opinions.	5
C. Michaela’s Twitter Retweets Should Be Stricken Because She Cannot Be Held Liable for Non-Original Internet Content.....	6
V. CONCLUSION	8

TABLE OF AUTHORITIES

		Page(s)
1		
2		
3	Cases	
4	<i>Amini Innovation Corp. v. McFerran Home Furnishings, Inc.</i> ,	
5	301 F.R.D. 487 (C.D. Cal. 2014)	3, 4, 5, 6
6	<i>Barnes v. Yahoo!, Inc.</i> ,	
7	570 F.3d 1096 (9th Cir. 2009).....	7
8	<i>Barrett v. Rosenthal</i> ,	
9	40 Cal. 4th 33 (2006).....	7
10	<i>Campbell v. Jewish Comm. for Pers. Serv.</i> ,	
11	125 Cal.App.2d 771 (1954).....	6
12	<i>Carafano v. Metrosplash.com, Inc.</i> ,	
13	339 F.3d 1119 (9th Cir. 2003).....	7
14	<i>Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.</i> ,	
15	173 F.3d 725 (9th Cir. 1999).....	5
16	<i>Correia v. Santos</i> ,	
17	191 Cal.App.2d 844 (1961).....	6
18	<i>Doe v. MySpace, Inc.</i>	
19	528 F.3d 413 (5th Cir. 2008).....	7
20	<i>Fantasy, Inc. v. Fogerty</i> ,	
21	984 F.2d 1524 (9th Cir. 1993), <i>rev'd on other grounds</i> , 510 U.S. 517 (1994).....	3
22	<i>Hebrew Acad. of S.F. v. Goldman</i> ,	
23	42 Cal. 4th 883 (2007).....	7
24	<i>Heller v. NBCUniversal, Inc.</i> ,	
25	2016 U.S. Dist. LEXIS 193316 (C.D. Cal. 2016)	5, 6
26	<i>Hoesl v. United States</i> ,	
27	451 F. Supp. 1170 (N.D. Cal. 1978), <i>aff'd</i> , 629 F.2d 586 (9th Cir. 1980)	6
28	<i>Lieberman v. Fieger</i> ,	
	338 F.3d 1076 (9th Cir. 2003).....	5, 6
	<i>Mireskandari v. Daily Mail & Gen. Trust PLC</i> ,	
	2013 U.S. Dist. LEXIS 194437 (C.D. Cal. 2013)	4
	<i>Partington v. Bugliosi</i> ,	
	56 F.3d 1147 (9th Cir.1995).....	5

1	<i>Phan v. Pham,</i>	
2	182 Cal.App.4th 323 (2010).....	7
3	<i>Quatela v. Stryker Corp.,</i>	
4	820 F. Supp. 2d 1045 (N.D. Cal. 2010)	3, 4
5	<i>S.E.C. v. Sands,</i>	
6	902 F. Supp. 1149 (C.D. Cal. 1995).....	3
7	<i>Shively v. Bozanich,</i>	
8	31 Cal. 4th 1230 (2003).....	7
9	<i>Sliger v. Prospect Mortg., LLC,</i>	
10	789 F. Supp. 2d 1212 (E.D. Cal. 2011)	3, 5
11	Statutes	
12	Fed. R. Evid. 404.....	5
13	Fed. R. Civ. Proc. 12(f)	1, 3, 5, 6
14	Communications Decency Act of 1996	1, 7
15	Other Authorities	
16	First Amendment.....	5
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Federal Rules of Civil Procedure 12(f), Defendant Michaela Higgins (“Michaela”)¹ moves for an order to strike certain allegations from Plaintiff Jasha Tull (“Jasha”)’s Complaint (the “Complaint”). Michaela brings this motion on the ground that Jasha’s Complaint improperly contains immaterial, impertinent, or scandalous matter referring to Michaela’s OnlyFans.com account, to which Jasha makes no substantively related allegations in the instant action (the “Action”). This material prejudices Michaela by stigmatizing her as promiscuous or sexually provocative based on her choice to engage in legitimate business that has no bearing on and is not relevant to the allegations in the Complaint. Furthermore, Jasha improperly includes immaterial Twitter posts from Michaela that incorrectly assumes her retweets of other Twitter users’ posts and her own Twitter opinions of Jasha’s personality imply liability for defamation.

Included material must be related to the Action, support any material issue in the Action, or, at the very least, not be brought for the purpose of attempting to create prejudice against a party’s character. Thus, Jasha’s inclusion of Michaela’s OnlyFans.com account information fails all three of these considerations, and should be stricken as improper.

Jasha’s allegations referring to Michaela’s Twitter retweets and Twitter opinions of his personality must similarly be stricken. These allegations are non-actionable under established defamation law and under Section 230 of the Communications Decency Act of 1996. Thus, the Court should strike these matters under Rule 12(f).

II. FACTUAL ALLEGATIONS IN THE COMPLAINT

On March 5, 2021, Jasha filed his Complaint against Michaela, alleging claims for defamation, civil harassment, and civil stalking. (Docket No. 1 (“Compl.”).) The background and factual allegations leading to the dispute and identified in the Complaint are set forth at length in

¹ As three of the parties referenced herein have the same last name, and two of these are both doctors, for ease and clarity all parties are referred to herein by their first names, including Defendant. No disrespect is intended.

1 Michaela’s concurrently filed Motion to Dismiss, and for judicial efficiency and convenience will
2 not be restated here, but are incorporated herein by reference.

3 In identifying and describing Michaela as a party, Jasha identifies Michaela’s state of
4 residency and states that she uses various pseudonyms on social media, including @caelila,
5 @caelislaysdemons, @xxeyesaxx, @fuckthekkkops, and @evidenceagainstspacejesus. (*Id.*, at ¶ 2.)
6 These names and pseudonyms are then referenced in various allegations in the Complaint and/or the
7 exhibits attached to the Complaint. For example, Jasha alleges that Michaela’s defamatory and
8 harassing activity came solely from Michaela’s Instagram and Twitter accounts: @caelila,
9 @xxeyesaxx, and @evidenceagainstspacejesus. (*Id.* at ¶¶ 36–59, 61, 65.)

10 At the end of the paragraph describing Michaela, Jasha adds, “[Michaela] was also acting
11 under and/or utilizing the pseudonym or screen name ‘@sensualintelligence’ on the ‘onlyfans.com’
12 platform.”² (*Id.* at ¶ 2.) The Complaint does not refer to or mention this screen name, pseudonym,
13 or website again. Additionally, in reaching out to certain platforms to request the removal of
14 Michaela’s alleged defamatory and harassing statements, Jasha admits his counsel only sent letters
15 to Twitter and Facebook—as owners of Instagram. (*Id.* at ¶ 62.)

16 Jasha also alleges that several of Michaela’s opinions are defamatory. (*Id.* at ¶¶ 48–49.)
17 Namely, on June 26, 2020, Michaela stated “You’re an actual, factual psychopath @spacejesus,”³
18 and on June 29, 2020, Michaela stated “I’ve been saying this for the last 4 years!!! Whatever
19 personality disorder Trump has (is it psychosis? megalomania? just straight up soul-less?), [J]asha
20 has it too. They operate the same exact way. It’s bone chilling, how similar they are?” (*Id.*)
21 Further, Jasha alleges that several of Michaela’s retweeted Twitter posts are defamatory. On July 3,
22 2020, Michaela retweeted another Twitter user’s, @Dmoney0101, post stating “So disheartening to

23 ² OnlyFans.com is an online subscription service that hosts a variety of makers of content,
24 known as “content creators.” Users can subscribe to individual content creators in exchange for a
25 monthly subscription fee and can purchase additional content for an added charge. Content
26 creators can showcase various activities or skills, such as music, art, cooking, photography, or
27 fitness. However, the website is heavily stigmatized due to its overwhelming association with the
sex industry, nude modeling, and pornography—including by popular celebrities, YouTube and
Tik Tok personalities, and adult film performers.

28 ³ Jasha is an electronic musician who performs under the stage name “Space Jesus.”
Compl. ¶ 1.

1 see @bassnectar @spacejesus and @NahkoBear exposed as sexual predators all in one week”
 2 (*Id.* at ¶ 50.) On July 5, 2020, Michaela retweeted another Twitter user’s, @deadsoonshawty, post
 3 stating that he burned some merchandise that he presumably bought from Jasha, and referred to
 4 Jasha as a “pedophile.” (*Id.* at ¶ 52.) On August 9, 2020, Michaela retweeted another Twitter
 5 user’s, @shambhalaaa888, post stating that Jasha raped Michaela. (*Id.* at ¶ 54.)

6 **III. APPLICABLE LAW**

7 Rule 12(f) provides that “[t]he court may strike from a pleading . . . any redundant,
 8 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “‘Immaterial’ matter is that
 9 which has no essential or important relationship to the claim for relief or the defenses being
 10 pleaded. ‘Impertinent’ matter consists of statements that do not pertain, and are not necessary, to
 11 the issues in question. Superfluous historical allegations are a proper subject of a motion to strike.”
 12 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (citations omitted), *rev’d on other*
 13 *grounds*, 510 U.S. 517 (1994). “Scandalous matters are allegations that unnecessarily reflect on the
 14 moral character of an individual or states anything in repulsive language that detracts from the
 15 dignity of the court.” *Quatela v. Stryker Corp.*, 820 F. Supp. 2d 1045, 1050 (N.D. Cal. 2010)
 16 (citations and internal quotation marks omitted).

17 A 12(f) motion is deemed appropriate where it “will make trial less complicated or eliminate
 18 serious risks of prejudice to the moving party, delay, or confusion of the issues.” *Sliger v. Prospect*
 19 *Mortg., LLC*, 789 F. Supp. 2d 1212, 1216 (E.D. Cal. 2011). The grounds for a motion to strike
 20 must appear on the face of the pleading or from matters subject to judicial notice. *See, e.g., S.E.C.*
 21 *v. Sands*, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995).

22 **IV. ARGUMENTS**

23 **A. The Complaint’s Reference of Michaela’s OnlyFans.com Account Is a** 24 **Gratuitous Reference with No Legitimate Purpose.**

25 The Complaint’s inclusion of Michaela’s OnlyFans.com account has no other purpose than
 26 to smear her, and, thus, should be stricken as immaterial, impertinent, and scandalous. Immaterial
 27 matter occurs when it has “no essential or important relationship to the claim for relief.” *Amini*
 28 *Innovation Corp. v. McFerran Home Furnishings, Inc.*, 301 F.R.D. 487, 490 (C.D. Cal. 2014)

1 (citing *Fantasy, Inc.*, 984 F.2d at 1527). Despite the inclusion of Michaela’s “pseudonym or screen
2 name ‘@sensualintelligence’ on the ‘onlyfans.com’ platform,” Jasha does not allege that any of
3 Michaela’s actions or omissions involved her activity on her OnlyFans.com account. (Compl. ¶ 2.)
4 Instead, he alleges that any purported activity came from Michaela’s Instagram and Twitter
5 accounts: @caelila, @evidenceagainstspacejesus, and @xxeyesaxx. (*Id.*, ¶¶ 36–59, 61, 65.) Not
6 only does Jasha fail to reference Michaela’s OnlyFans.com account elsewhere in the Complaint, but
7 he freely admits that his counsel only sent letters to Twitter and Facebook—not to OnlyFans.com—
8 to describe the alleged defamation. (*Id.*, at ¶ 62.) This demonstrates that Michaela’s activity on
9 OnlyFans.com has no bearing in the Action and is not important to his claim for relief, and should
10 be stricken.

11 Jasha’s inclusion of Michaela’s OnlyFans.com account should also be stricken as
12 impertinent. Information is impertinent when it “consists of statements that do not pertain, and are
13 not necessary, to the issues at question.” *Amini Innovation Corp.*, 301 F.R.D. at 490. Jasha fails to
14 allege any issues at question that pertain to OnlyFans.com. He does not allege that any of
15 Michaela’s activity occurred on OnlyFans.com, or that her OnlyFans.com account is factually
16 relevant to the Action. Therefore, the incorporation of Michaela’s OnlyFans.com account is not
17 necessary to the resolution of any issue at question. The Court should strike this statement as
18 impertinent.

19 Lastly, Jasha’s inclusion of Michaela’s OnlyFans.com account should be stricken as
20 scandalous. “‘Scandalous’ matter includes allegations that improperly cast a ‘cruelly derogatory
21 light on a party or person,’” or “which unnecessarily reflect[s] on the moral character of an
22 individual or states anything in repulsive language that detracts from the dignity of the court.”
23 *Quatela*, 820 F. Supp. 2d at 1050; *Mireskandari v. Daily Mail & Gen. Trust PLC*, 2013 U.S. Dist.
24 LEXIS 194437, at *14 (C.D. Cal. 2013). Here, Jasha incorporates Michaela’s OnlyFans.com
25 account to imply an association between her account’s content and OnlyFans.com’s reputation for
26 sex work for credibility and smearing purposes. Referencing Michaela’s OnlyFans.com account is
27 not “directly related” to any of Jasha’s claims, which allege that the actions at issue were comprised
28 of Michaela’s posts to Twitter and Instagram, not to OnlyFans.com. Instead, he attempts to

1 negatively associate her character with the taboo nature of the website for no other purpose than to
 2 degrade her, diminish her moral character, and cast a derogatory light on her for choosing to
 3 conduct legal and legitimate business through the website. The inclusion of this material runs afoul
 4 of federal procedural law and the Federal Rules of Evidence. *See Sliger v. Prospect Morg., LLC*,
 5 789 F.Supp.2d 1212, 1216 (E.D. Cal. 2011) (stating that a court should grant a motion to strike
 6 when “the allegations in the pleading have no possible relation to the controversy and may cause
 7 prejudice to one of the parties”); Fed. R. Evid. 404. Jasha’s reference to Michaela’s OnlyFans.com
 8 account serves no legitimate purpose and should be stricken.

9 **B. Michaela’s Statements About Jasha’s Personality Should Be Stricken as**
 10 **Immaterial, Nonactionable Opinions.**

11 Two of Michaela’s statements calling Jasha a “psychopath” and stating that he has a
 12 “personality disorder” should be stricken because they are immaterial to this matter as
 13 nonactionable opinions. The court may strike such statements under Rule 12 because they have no
 14 “essential or important relationship to the claim for relief.” *Amini Innovation Corp.*, 301 F.R.D. at
 15 490; *see Heller v. NBCUniversal, Inc.*, 2016 U.S. Dist. LEXIS 193316, at *1 (C.D. Cal. 2016)
 16 (granting Rule 12(f) motion to strike on “non-actionable allegations of defamatory conduct”).
 17 While Jasha treats some of Michaela’s opinions as defamatory statements, these allegedly
 18 defamatory statements fail on separate grounds, and thus should be stricken.

19 Opinions “that do not imply facts capable of being proved true or false” are protected by the
 20 First Amendment. *Partington v. Bugliosi*, 56 F.3d 1147, 1153 n. 10 (9th Cir.1995). The allegedly
 21 defamatory statement “must be able reasonably to be ‘interpreted as stating actual facts.’” *Coastal*
 22 *Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 730 (9th Cir. 1999) (citing *Weller v.*
 23 *Am. Broadcasting Co.*, 232 Cal.App.3d 991, 1001 (1991)). Determining whether a statement
 24 implies a factual assertion requires considering the totality of the circumstances. *Lieberman v.*
 25 *Fieger*, 338 F.3d 1076, 1079–80 (9th Cir. 2003). Courts look to (1) whether the general tenor of the
 26 entire work negates the impression that the defendant was asserting an objective fact, (2) whether
 27 the defendant used figurative or hyperbolic language that negates that impression, and (3) whether
 28 the statement in question is susceptible of being proved true or false. *Id.*

1 Colorful expressions or hyperboles constitute opinions, not forming a basis for defamation
 2 claims. *See Lieberman v. Fieger*, 338 F.3d 1076, 1080 (9th Cir. 2003) (“[N]o reasonable viewer
 3 would have taken as factual [Defendant’s] colorful expressions, such as ‘Looney Tunes,’ ‘crazy,’
 4 ‘nuts’ [and] . . . ‘mentally imbalanced.’”). The imputation of a mental disorder that is made in an
 5 oblique or hyperbolic manner is not actionable. *See Correia v. Santos*, 191 Cal.App.2d 844, 853
 6 (1961) (statement made “not to describe the plaintiff as a person who was mentally ill but as one
 7 who was unreasonable in his actions and his demands”); *Campbell v. Jewish Comm. for Pers. Serv.*,
 8 125 Cal.App.2d 771, 773, 775 (1954) (letter implying that mental patient released by hospital
 9 should still be institutionalized is not libelous per se); *cf. Hoesl v. United States*, 451 F. Supp. 1170,
 10 1172–73 (N.D. Cal. 1978), *aff’d*, 629 F.2d 586 (9th Cir. 1980) (holding that an unambiguous
 11 publication to an employer that an employee has a specified mental disorder serious enough to
 12 make him unfit for his job is defamatory on its face).

13 Here, two of Michaela’s statements are opinions that do not imply facts capable of being
 14 proved true or false. Namely, on June 26, 2020, Michaela stated, “You’re an actual, factual
 15 psychopath @spacejesus,” and on June 29, 2020, Michaela stated, “I’ve been saying this for the last
 16 4 years!!! Whatever personality disorder Trump has (is it psychosis? megalomania? just straight up
 17 soul-less?), [J]asha has it too. They operate the same exact way. It’s bone chilling, how similar they
 18 are?” (*Id.* at ¶¶ 48–49.) These statements are the type of colorful expressions that the above-
 19 referenced courts have held to be nonactionable opinions. The Complaint’s inclusion of such
 20 statements should be stricken as immaterial.

21 **C. Michaela’s Twitter Retweets Should Be Stricken Because She Cannot Be Held**
 22 **Liable for Non-Original Internet Content**

23 The Complaint’s three allegations against Michaela arising from her retweets of other user’s
 24 Twitter posts should be stricken as immaterial, since her retweets are not actionable under federal
 25 law. Nonactionable allegations of defamatory conduct can be stricken under Rule 12(f), as they
 26 have “no essential or important relationship to the claim for relief.” *Amini Innovation Corp.*, 301
 27 F.R.D. at 490; *see Heller*, 2016 U.S. Dist. LEXIS, at *1. Jasha attempts to hold Michaela liable for
 28

1 statements made by third party Twitter users that she retweeted. Pursuant to Section 230 of the
2 Communications Decency Act of 1996, no such liability exists.

3 Generally, “each publication of a defamatory statement gives rise to a new cause of action
4 for defamation.” *Shively v. Bozanich*, 31 Cal. 4th 1230, 1242 (2003); *Hebrew Acad. of S.F. v.*
5 *Goldman*, 42 Cal. 4th 883, 891 (2007). Section 230, however, “protects from liability (1) a
6 provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state
7 law cause of action, as a publisher or speaker (3) of information provided by another information
8 content provider. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100–01 (9th Cir. 2009) (citing 47 U.S.C.
9 §§ 230(c) and 230(e)(3)). Section 230 has “been widely and consistently interpreted to confer
10 broad immunity against defamation liability for those who use the Internet to publish information
11 that originated from another source.” *Barrett v. Rosenthal*, 40 Cal. 4th 33, 39 (2006); *Carafano v.*
12 *Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003) (“[R]eviewing courts have treated §
13 230(c) immunity as quite robust.”)); *Doe v. MySpace, Inc.* 528 F.3d 413, 418 (5th Cir. 2008)
14 (“Courts have construed the immunity provisions in § 230 broadly in all cases arising from the
15 publication of user-generated content.”). A defendant’s own acts must materially contribute to the
16 illegality of the Internet message of a third party for the section 230 immunity to be lost. *Phan v.*
17 *Pham*, 182 Cal.App.4th 323, 326 (2010) (citing *Fair Hous. Council of San Fernando Valley v.*
18 *Roommates.Com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008).

19 Here, Jasha attempts to hold Michaela liable for three separate statements she retweeted
20 from third-party Twitter users.⁴ As a Twitter user, Michaela simply retweeted the three statements
21 from other Twitter users without materially contributing to said messages. In fact, Jasha’s decision
22 in not naming the original-tweet users in this action is not only axiomatic of his own animus against
23 Michaela, but also illustrates the controversy regarding Jasha’s sexual misconduct as it existed
24 within the electronic music community.

25
26
27
28

⁴ July 3, 2020, (Compl. ¶ 50); July 5, 2020, (*id.* at ¶ 52); and August 9, 2020, (*id.* at ¶ 54).

1 **V. CONCLUSION**

2 For the foregoing reasons, Defendant Michaela Higgins respectfully requests that this Court
3 grant this Motion to Strike the paragraphs and sentences detailed herein.

4
5 DATED: April 28, 2021

GREENBERG GROSS LLP

6
7 By: /s/ Deborah S. Mallgrave
8 Deborah S. Mallgrave

9 GIBBS LAW GROUP LLP
10 Karen Barth Menzies
Jeffrey Kosbie

11 Attorneys for Defendant Michaela Higgins
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEBORAH S. MALLGRAVE, State Bar No. 198603

DMallgrave@GGTrialLaw.com

GREENBERG GROSS LLP

650 Town Center Drive, Suite 1700

Costa Mesa, California 92626

Telephone: (949) 383-2800

Facsimile: (949) 383-2801

KAREN BARTH MENZIES, State Bar No. 180234

kbm@ClassLawGroup.com

JEFFREY KOSBIE, State Bar No. 305424

jbk@ClassLawGroup.com

GIBBS LAW GROUP LLP

505 14th Street, Suite 1110

Oakland, CA 94612

Telephone: (510) 350-9700

Facsimile: (510) 350-9701

Attorneys for Michaela Higgins

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

DR. HERMAN TULL, PH.D., an individual
and DR. LEKHA TULL, DDS., an individual,

Plaintiffs,

v.

MICHAELA HIGGINS, an individual a/k/a
CAELI LA; and DOES 1 through 10 inclusive,

Defendants.

Case No. 4:21-cv-01574-DMR

[Related to Case No.: 4:21-cv-01566-DMR]

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO STRIKE**

[Filed Concurrently with Motion to Dismiss,
and Motion to Dismiss and Motion to Strike
in Related Case]

Date: June 10, 2021

Time: 1:00 p.m.

Dept.: 4

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 10, 2021, at 1:00 p.m., or as soon thereafter as the matter may be heard at the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California, Courtroom 4, Defendant Michaela Higgins ("Michaela"), by and through her attorney of record herein, will, and hereby does, move this Court for an Order to Strike the following allegation in the Complaint ("Complaint") in this action

1 located in paragraph 3, page 2, lines 16 through 18, on the basis that the language is irrelevant,
2 impertinent, and/or scandalous: “Plaintiffs are informed and believe that Defendant Higgins was
3 also acting under and/or utilizing the pseudonym or screen name ‘@sensualintelligence’ on the
4 ‘onlyfans.com’ platform.”

5 This Motion will be based upon this Notice of Motion and Motion, the accompanying
6 Memorandum of Points and Authorities and all legal authority cited therein, the Court’s files and
7 records in the instant action (the “Action”), the Court’s files and records in the related action Case
8 No.: 4:21-cv-01566, matters of which the Court may take judicial notice, and such further evidence
9 as may be presented to the Court at the time set for the hearing on this Motion.

10
11 DATED: April 28, 2021

GREENBERG GROSS LLP

12
13 By: /s/ Deborah S. Mallgrave
Deborah S. Mallgrave

14
15 GIBBS LAW GROUP LLP
Karen Barth Menzies
16 Jeffrey Kosbie

17 Attorneys for Defendant Michaela Higgins
18
19
20
21
22
23
24
25
26
27
28

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 CONTENTS

Page

I.	INTRODUCTION.....	1
II.	FACTS AND PROCEDURAL HISTORY	1
III.	APPLICABLE LAW.....	2
IV.	ARGUMENTS	3
A.	The Complaint’s Reference of Michaela’s OnlyFans.com Account Is a Gratuitous Reference with No Legitimate Purpose.....	3
V.	CONCLUSION	5

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Amini Innovation Corp. v. McFerran Home Furnishings, Inc.</i> , 301 F.R.D. 487 (C.D. Cal. 2014)	3
<i>Fantasy, Inc. v. Fogerty</i> , 984 F.2d 1524 (9th Cir. 1993), <i>rev'd on other grounds</i> , 510 U.S. 517 (1994).....	2
<i>Mireskandari v. Daily Mail & Gen. Trust PLC</i> , 2013 U.S. Dist. LEXIS 194437 (C.D. Cal. 2013)	4
<i>Quatela v. Stryker Corp.</i> , 820 F. Supp. 2d 1045 (N.D. Cal. 2010)	2, 4
<i>S.E.C. v. Sands</i> , 902 F. Supp. 1149 (C.D. Cal. 1995).....	2
<i>Sliger v. Prospect Mortg., LLC</i> , 789 F. Supp. 2d 1212 (E.D. Cal. 2011).....	2, 4

Other Authorities

Fed. R. Civ. P. 12(f)	1, 2
Fed. R. Evid. 404.....	4

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Federal Rules of Civil Procedure 12(f), Defendant Michaela Higgins (“Michaela”)¹ moves for an order to strike certain allegations from the Complaint (the “Complaint”) of Plaintiffs Dr. Herman Tull, PH.D. and Dr. Lekha Tull, DDS (“Plaintiffs”). Michaela brings this motion on the ground that Plaintiffs’ Complaint improperly contains immaterial, impertinent, or scandalous matter referring to Michaela’s OnlyFans.com account, to which Plaintiffs make no related allegations in the instant action (the “Action”). This material prejudices Michaela by stigmatizing her as promiscuous or sexually provocative based on her choice to engage in legitimate business that has no bearing on and is not relevant to the allegations in the Complaint.

Material included in the Complaint must be related to the Action, support any material issue in the Action, or, at the very least, not be brought for the purpose of attempting to create prejudice against a party’s character. Thus, Plaintiffs’ inclusion of Michaela’s OnlyFans.com account information fails all three of these considerations, and should be stricken as improper.

II. FACTS AND PROCEDURAL HISTORY

On March 5, 2021, Plaintiffs filed the Complaint against Michaela, alleging three claims for civil harassment, and civil stalking. (Docket No. 1 (“Compl.”).) The background and factual allegations leading to the dispute and identified in the Complaint are set forth at length in Michaela’s concurrently filed Motion to Dismiss, and for judicial efficiency and convenience will not be restated here, but are incorporated herein by this reference.

In identifying and describing Michaela as a party, Plaintiffs identify Michaela as a primary resident of California and partial resident of New York, and state that she uses various pseudonyms on social media, including @caelila, @caelislaysdemons, @xxeyesaxx, @fucktheekkkops, and @evidenceagainstspacejesus. (*Id.*, at ¶ 3.) These names and pseudonyms are then referenced in various allegations in the Complaint and or the exhibits attached to the Complaint. For example,

¹ As three of the parties referenced herein have the same last name, and two of these are both doctors, for ease and clarity all parties are referred to herein by their first names, including Defendant. No disrespect is intended.

1 Plaintiffs allege that Michaela’s defamatory and harassing activity came either via text message or
 2 email, or from Michaela’s Instagram and Twitter accounts: @caelila, @xxeyesaxx, and
 3 @evidenceagainstspacejesus. (*Id.* at ¶¶ 29, 31, 33–35, 49.)

4 At the end of his paragraph describing Michaela, Plaintiffs add, “[Michaela] was also acting
 5 under and/or utilizing the pseudonym or screen name ‘@sensualintelligence’ on the ‘onlyfans.com’
 6 platform.”² (*Id.* at ¶ 3.) The Complaint does not refer to or mention this screen name, pseudonym,
 7 or website again. Additionally, in reaching out to certain platforms to request the removal of
 8 Michaela’s alleged defamatory and harassing statements, Plaintiffs admit that counsel for their son,
 9 Jasha Tull, only sent letters to Twitter and Facebook—as owners of Instagram. (*Id.* at ¶ 54.)

10 **III. APPLICABLE LAW**

11 Rule 12(f) provides that “[t]he court may strike from a pleading . . . any redundant,
 12 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “‘Immaterial’ matter is that
 13 which has no essential or important relationship to the claim for relief or the defenses being
 14 pleaded. ‘Impertinent’ matter consists of statements that do not pertain, and are not necessary, to
 15 the issues in question. Superfluous historical allegations are a proper subject of a motion to strike.”
 16 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (citations omitted), *rev’d on other*
 17 *grounds*, 510 U.S. 517 (1994). “Scandalous matters are allegations that unnecessarily reflect on the
 18 moral character of an individual or states anything in repulsive language that detracts from the
 19 dignity of the court.” *Quatela v. Stryker Corp.*, 820 F. Supp. 2d 1045, 1050 (N.D. Cal. 2010)
 20 (citations and internal quotation marks omitted).

21 A 12(f) motion is deemed appropriate where it “will make trial less complicated or eliminate
 22 serious risks of prejudice to the moving party, delay, or confusion of the issues.” *Sliger v. Prospect*
 23 *Mortg., LLC*, 789 F. Supp. 2d 1212, 1216 (E.D. Cal. 2011). The grounds for a motion to strike

25 ² OnlyFans.com is an online subscription service that hosts a variety of makers of content,
 26 known as “content creators.” Users can subscribe to individual content creators in exchange for a
 27 monthly subscription fee and can purchase additional content for an added charge. Content
 28 creators can showcase various activities or skills, such as music, art, cooking, photography, or
 fitness. However, the website is heavily stigmatized due to its overwhelming association with the
 sex industry, nude modeling, and pornography—including by popular celebrities, YouTube and
 Tik Tok personalities, and adult film performers.

1 must appear on the face of the pleading or from matters subject to judicial notice. *See, e.g., S.E.C.*
 2 *v. Sands*, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995).

3 **IV. ARGUMENTS**

4 **A. The Complaint’s Reference of Michaela’s OnlyFans.com Account Is a** 5 **Gratuitous Reference with No Legitimate Purpose.**

6 The Complaint’s inclusion of Michaela’s OnlyFans.com account has no other purpose than
 7 to smear her, and, thus, should be stricken as immaterial, impertinent, and scandalous. Immaterial
 8 matter occurs when it has “no essential or important relationship to the claim for relief.” *Amini*
 9 *Innovation Corp. v. McFerran Home Furnishings, Inc.*, 301 F.R.D. 487, 490 (C.D. Cal. 2014)
 10 (citing *Fantasy, Inc.*, 984 F.2d at 1527). Despite the inclusion of Michaela’s “pseudonym or screen
 11 name ‘@sensualintelligence’ on the ‘onlyfans.com’ platform,” Plaintiffs do not allege that any of
 12 Michaela’s actions or omissions involved her activity on her OnlyFans.com account. (Compl. ¶ 2.)
 13 Instead, they allege that any purported activity came from Michaela’s email, text emssages, or
 14 Instagram and Twitter accounts: @caelila, @evidenceagainstspacejesus, and @xxeyesaxx. (*Id.* ¶¶
 15 36–59, 61, 65.) Not only do Plaintiffs fail to reference Michaela’s OnlyFans.com account
 16 elsewhere in the Complaint, but they freely admits that Jasha Tull’s counsel only sent letters to
 17 Twitter and Facebook—not to OnlyFans.com—to describe the alleged defamation. (Compl., ¶ 62.)
 18 This demonstrates that Michaela’s activity on OnlyFans.com has no bearing in the Action and is not
 19 important to his claim for relief, and should be stricken.

20 Plaintiffs’ inclusion of Michaela’s OnlyFans.com account should also be stricken as
 21 impertinent. Information is impertinent when it “consists of statements that do not pertain, and are
 22 not necessary, to the issues at question.” *Amini Innovation Corp.*, 301 F.R.D. at 490. Plaintiffs fail
 23 to allege any issues at question that pertain to OnlyFans.com. They do not allege that any of
 24 Michaela’s activity occurred on OnlyFans.com, or that her OnlyFans.com account is factually
 25 relevant to the Action. Therefore, the incorporation of Michaela’s OnlyFans.com account is not
 26 necessary to the resolution of any issue at question. The Court should strike this statement as
 27 impertinent.

1 Lastly, Plaintiffs' inclusion of Michaela's OnlyFans.com account should be stricken as
 2 scandalous. "'Scandalous' matter includes allegations that improperly cast a 'cruelly derogatory
 3 light on a party or person,'" or "which unnecessarily reflect[s] on the moral character of an
 4 individual or states anything in repulsive language that detracts from the dignity of the court."
 5 *Quatela*, 820 F. Supp. 2d at 1050; *Mireskandari v. Daily Mail & Gen. Trust PLC*, 2013 U.S. Dist.
 6 LEXIS 194437, at *14 (C.D. Cal. 2013). Here, Plaintiffs incorporate Michaela's OnlyFans.com
 7 account to imply an association between her account's content and OnlyFans.com's reputation for
 8 sex work for credibility and smearing purposes. Referencing Michaela's OnlyFans.com account is
 9 not "directly related" to any of Plaintiffs' claims, which allege that the actions at issue were
 10 comprised of Michaela's text messages, emails, and posts to Twitter and Instagram, not to
 11 OnlyFans.com. Instead, they attempt to negatively associate her character with the taboo nature of
 12 the website for no other purpose than to degrade her, diminish her moral character, and cast a
 13 derogatory light on her for choosing to conduct legal and legitimate business through the website.
 14 The inclusion of this material runs afoul of federal procedural law and the Federal Rules of
 15 Evidence. *See Sliger v. Prospect Morg., LLC*, 789 F.Supp.2d 1212, 1216 (E.D. Cal. 2011) (stating
 16 that a court should grant a motion to strike when "the allegations in the pleading have no possible
 17 relation to the controversy and may cause prejudice to one of the parties");³ Fed. R. Evid. 404.
 18 Plaintiffs' reference to Michaela's OnlyFans.com account serves no legitimate purpose and should
 19 be stricken.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26

27 ³ Plaintiffs' references to the OnlyFans.com account has no relation to the Action and was
 28 included with the sole purpose of prejudicing Michaela by associating her character with sex
 work.

1 **V. CONCLUSION**

2 For the foregoing reasons, Defendant Michaela Higgins respectfully requests that this Court
3 grant this Motion to Strike the following language located in paragraph 3, page 2, lines 16 through
4 18: “Plaintiffs are informed and believe that Defendant Higgins was also acting under and/or
5 utilizing the pseudonym or screen name ‘@sensualintelligence’ on the ‘onlyfans.com’ platform.”

6 DATED: April 28, 2021

GREENBERG GROSS LLP

7
8 By: /s/ Deborah S. Mallgrave
9 Deborah S. Mallgrave

10 GIBBS LAW GROUP LLP
11 Karen Barth Menzies
Jeffrey Kosbie

12 Attorneys for Defendant Michaela Higgins
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DEBORAH S. MALLGRAVE, State Bar No. 198603

DMallgrave@GGTrialLaw.com

2 **GREENBERG GROSS LLP**

650 Town Center Drive, Suite 1700

3 Costa Mesa, California 92626

Telephone: (949) 383-2800

4 Facsimile: (949) 383-2801

5 KAREN BARTH MENZIES, State Bar No. 180234

kbm@ClassLawGroup.com

6 JEFFREY KOSBIE, State Bar No. 305424

jbk@ClassLawGroup.com

7 **GIBBS LAW GROUP LLP**

505 14th Street, Suite 1110

8 Oakland, CA 94612

Telephone: (510) 350-9700

9 Facsimile: (510) 350-9701

10 Attorneys for Defendant Michaela Higgins

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

13
14 DR. HERMAN TULL, PH.D., an individual
and DR. LEKHA TULL, DDS., an individual,

15 Plaintiffs,

16 v.

17 MICHAELA HIGGINS, an individual a/k/a
18 CAELI LA; and DOES 1 through 10 inclusive,

19 Defendants.

Case No. 4:21-cv-01574-DMR

[Related to Case No.: 4:21-cv-01566-DMR]

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS**

[Filed Concurrently with Motion to Strike,
and Motion to Dismiss and Motion to Strike
in Related Case]

Date: June 10, 2021

Time: 1:00 p.m.

Dept.: 4

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 10, 2021, at 1:00 p.m., or as soon thereafter as the matter may be heard at the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California, Courtroom 4, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Michaela Higgins (“Defendant” or “Michaela”), by and through her attorney of record herein, will, and hereby does, move this Court for an Order to Dismiss the Complaint (“Complaint”) and all of the claims asserted in this action, on the basis that each fails to state a claim for which relief can be granted.

This Motion will be based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities and all legal authority cited therein, the Court’s files and records in the instant action (the “Action”), the Court’s files and records in the related action Case No.: 4:21-cv-01566, matters of which the Court may take judicial notice, and such further evidence as may be presented to the Court at the time set for the hearing on this Motion.

DATED: April 28, 2021

GREENBERG GROSS LLP

By: /s/ Deborah S. Mallgrave
Deborah S. Mallgrave

GIBBS LAW GROUP LLP
Karen Barth Menzies
Jeffrey Kosbie

Attorneys for Defendant Michaela Higgins

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3		
4	I. INTRODUCTION.....	1
5	II. FACTUAL ALLEGATIONS IN COMPLAINT	1
6	A. The Parties.....	1
7	B. Jasha Sexually Assaults Michaela.....	2
8	A. Jasha Continues his Emotionally Abusive Behavior Towards Michaela.....	3
9	B. Jasha Accused of Sexual Assault By Others	3
10	C. Michaela Seeks Accountability from Jasha	4
11	D. Michaela Contacted C3 and Herman Tull for Help Seeking Accountability from Jasha	4
12	E. More of Jasha’s Sexual Assault Survivors Come Forward.....	4
13	F. Jasha and His Parents File Lawsuits Against Michaela	5
14	III. APPLICABLE LAW.....	7
15	IV. ARGUMENTS	7
16	A. Plaintiffs Fail to State a Claim for Defamation.....	7
17	1. Michaela’s Statements Concerning Lekha Constitute Nonactionable Opinions	8
18	2. Some of Michaela’s Statements Are Matters of Public Concern.....	10
19	3. Michaela’s Statement Regarding Jasha Is Not “Of and Concerning” Lekha.....	13
20	B. Plaintiffs’ Civil Harassment Claim Fails to Plausibly Allege a Lack of Legitimate Purpose.....	13
21	C. Plaintiffs’ Civil Stalking Claim Fails to Allege a Pattern of Conduct or Credible Threat.....	15
22	1. Herman and Lekha Do Not Plausibly Allege Pattern of Conduct With the Intent to Harass.....	16
23	2. Michaela’s Gun Photo Does Not Give Rise to a Credible Threat.....	16
24		
25	V. CONCLUSION	18
26		
27		
28		

TABLE OF AUTHORITIES**Page(s)****Cases**

" <i>Blatty v. New York Times Co.</i> , 42 Cal. 3d 1033 (1986).....	13
<i>Avila v. Cate</i> , 2011 WL 2680844 (E.D. Cal. 2011)	14
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	7
<i>Bolton v. City of Berkeley</i> , No. 19-CV-05212-WHO, 2019 WL 6250927 (N.D. Cal. Nov. 22, 2019).....	16
<i>Brekke v. Wills</i> , 125 Cal.App.4th 1400 (2005).....	13, 14
<i>Byers v. Cathcart</i> , 57 Cal.App.4th 805 (1997).....	14
<i>Chaker v. Mateo</i> , 209 Cal.App.4th 1138 (2012).....	10
<i>Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.</i> , 173 F.3d 725 (9th Cir. 1999).....	8
<i>Correia v. Santos</i> , 191 Cal.App.2d 844 (1961).....	8
<i>Crenshaw v. Lister</i> , 556 F.3d 1283 (11th Cir. 2009).....	14
<i>D.A.R.E. Am. v. Rolling Stone Magazine</i> , 101 F.Supp.2d 1270 (C.D. Cal. 2000).....	11
<i>D.A.R.E. Am. v. Rolling Stone Magazine</i> , 270 F.3d 793 (9th Cir. 2001).....	11
<i>Dickinson v. Cosby</i> , 37 Cal. App. 5th 1138 (2019).....	13
<i>Ervin v. Ben-Nun</i> , No. D064236, 2014 WL 4257778 (Cal. Ct. App. Aug. 29, 2014)	8
<i>Ferlauto v. Hamsher</i> , 74 Cal.App.4th 1394 (1999).....	8

1	<i>Gallagher v. Connell,</i>	
2	123 Cal.App.4th 1260 (2004).....	10
3	<i>Gregory v. McDonnell Douglas Corp.,</i>	
4	17 Cal.3d 596 (1976).....	8
5	<i>Hanna v. Moreira,</i>	
6	No. E070310, 2019 WL 3933564 (Cal. Ct. App. Aug. 20, 2019).....	14
7	<i>Harte-Hanks Communications v. Connaughton,</i>	
8	491 U.S. 657 (1989)	11
9	<i>Integrated Healthcare Holdings, Inc. v. Fitzgibbons,</i>	
10	140 Cal.App.4th 515 (2006).....	10
11	<i>Johnson v. Riverside Healthcare Sys.,</i>	
12	534 F.3d 1116 (9th Cir. 2008).....	7
13	<i>Kieu Hoang v. Phong Minh Tran,</i>	
14	60 Cal.App.5th 513 (2021).....	8
15	<i>Krinsky v. Doe 6,</i>	
16	159 Cal.App.4th 1154 (2008).....	10
17	<i>Lieberman v. Fieger,</i>	
18	338 F.3d 1076 (9th Cir. 2003).....	8
19	<i>McCoy v. Hearst Corp.,</i>	
20	42 Cal. 3d 835 (1986).....	11
21	<i>New York Times v. Sullivan,</i>	
22	376 U.S. 254 (1964)	11
23	<i>Nicosia v. De Rooy,</i>	
24	72 F. Supp. 2d 1093 (N.D. Cal. 1999)	11
25	<i>Partington v. Bugliosi,</i>	
26	56 F.3d 1147 (9th Cir.1995).....	8
27	<i>Principe v. Curry,</i>	
28	No. 817CV00608JLSKESX, 2018 WL 1406912 (C.D. Cal. Jan. 3, 2018)	14
	<i>Resolute Forest Prod., Inc. v. Greenpeace Int'l,</i>	
	302 F.Supp.3d 1005 (N.D. Cal. 2017)	11
	<i>Ruiz v. Harbor View Community Assn.,</i>	
	134 Cal.App.4th 1456 (2005).....	8
	<i>Schild v. Rubin,</i>	
	232 Cal.App.3d 533 (1991).....	14

1	<i>Starr v. Baca</i> ,	
2	652 F.3d 1202 (9th Cir. 2011).....	7
3	<i>Summit Bank v. Rogers</i> ,	
4	206 Cal.App.4th at 696-697	9
5	<i>Taus v. Loftus</i> ,	
6	40 Cal.4th 683 (2007).....	7
7	<i>Terry v. Davis Cnty. Church</i> ,	
8	131 Cal.App.4th 1534 (2005).....	10, 12
9	<i>Widener v. Pacific Gas & Electric Co.</i> ,	
10	75 Cal.App.3d 415 (1977).....	11
11	<i>Wilbanks v. Wolk</i> ,	
12	121 Cal.App.4th at 900	10, 11
13	<i>Wynn v. Chanos</i> ,	
14	75 F. Supp. 3d 1228 (N.D. Cal. 2014)	11
15	Statutes	
16	Cal. Civ. Code §§ 45–46	7
17	Code Civ. Proc. § 527.6(b).....	13
18	Code Civ. Proc. § 1708.7	15
19	Code Civ. Proc. § 1708.7(a)(3)(A).....	16, 17
20	Code Civ. Proc. § 1708.7(b)(1)	16
21	Code Civ. Proc. § 1708.7(b)(2)	16
22	Tenn. Code § 39-13-506 (2012).....	3
23	Other Authorities	
24	First Amendment.....	8
25	Federal Rules of Civil Procedure Rule 12(b)(6)	7
26	Michaela’s Statement Regarding Jasha Is Not “Of and Concerning”	13
27	<i>What happens when I block someone on Instagram?</i> INSTAGRAM.COM,	
28	https://help.instagram.com/447613741984126 (last visited April 26, 2021).....	18

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As is evident from even a cursory review of the Complaint, Defendant Michaela Higgins (“Michaela”)¹ believes that Jasha Tall (“Jasha”) sexually assaulted her and, from that assault, an exploitative sexual relationship—with further assaults—arose. Unfortunately, Michaela’s experience with Jasha is not unique. Before Michaela had the strength and courage to come forward, other women were coming forward and sharing their stories. And when Michaela finally shared her experience publicly on her Instagram account, @evidenceagainstspacejesus, numerous other women came forward.

Not wanting other women, including minor girls, to suffer through the same experience as herself and the other women who have come forward alleging Jasha sexually assaulted them, Michaela has sought to hold Jasha accountable for his actions—not through money, but through a recognition that his behavior is morally and legally wrong. When that failed, Michaela informed Jasha’s management company, C3, and Jasha’s parents of his behavior. Jasha’s parents might resent Michaela for bringing Jasha’s abusive conduct to their attention, and may have preferred not knowing of all the allegations against their son, but that does not turn Michaela’s righteous conduct (or any of her conduct) into claims for defamation, civil harassment, or stalking.

As set forth below, this Complaint filed by Jasha’s parents, plaintiffs Dr. Herman Tull, Ph.D. and Dr. Lekha Tull, DDS, fails to plead their stated claims with the required plausibility required, and the Complaint, and every claim for relief stated therein, should be dismissed in its entirety.

II. FACTUAL ALLEGATIONS IN COMPLAINT

A. The Parties

Dr. Herman and Lekha Tull are the parents of Jasha Tull, who they allege is a successful musician. (Dkt. 1 (“Compl.”), ¶¶ 1-2, 8.) Plaintiffs reside in New Jersey. (*Id.*, ¶¶ 1-2.) As alleged

¹ As three of the parties referenced herein have the same last name, and two of these are both doctors, for ease and clarity all parties are referred to herein by their first names, including defendant. No disrespect is intended.

1 in the related action, Jasha is a “musical artist and producer who performs under the stage name
2 ‘Space Jesus’, and has done so for over a decade.” (Related Case No.: 4:21-cv-01566, Dkt. 1, ¶
3 12.)

4 Michaela is a performer herself, and is a hired dancer for many of the same music festivals
5 at which Jash plays. Her stage name is Caeli La. Michaela also performs tantra massage and has a
6 PR and promotions business. (Ex. E, p. 2-3.) As alleged in the Complaint, Michaela currently
7 resides in Healdsburg, California. (*Id.*, ¶ 3.)

8 **B. Jasha Sexually Assaults Michaela**

9 As alleged in the complaint, Jasha and Michaela had an exploitative sexual relationship
10 from around June 2016 through the late summer/early fall of 2016. (Compl. ¶¶ 13–14.) As
11 Michaela contends, the first time Jasha and Michaela “got together,” Jasha sexually assaulted
12 Michaela. (Ex. H., p. 8.) As they were kissing, Jasha penetrated Michaela without her consent, and
13 so quickly that Michaela did not know what was happening until it was too late and over. (*Id.*)
14 (Jasha “pulled my underwear aside (I was wearing a dress), and entered me without a condom . . .
15 [and] so fast”). In another instance, Jasha forced Michaela to continue having sex with him, after
16 his friends had walked in on them, even after she told him to stop and tried to push him off of
17 her. (Ex. H, p. 5–6.) Asserting his dominance and humiliating Michaela, Jasha even bragged to his
18 friends that he “was inside her right now.” (*Id.*) In addition to his sexually assaultive actions, Jasha
19 was also verbally and emotional abusive to Michaela. (Ex. E, pp. 6, 9, 18.)

20 As the “relationship” with Jasha ended, Michaela felt Jasha used her and cast her aside.
21 (Compl. ¶ 16.) To say the least, the ending was not a clean one. Michaela felt Jasha tried to control
22 her by forcing her into a non-monogamous relationship and denying her any compassion or
23 understanding.² (Ex. E, p. 16.) At one point, Jasha even accused Michaela of sexually abusing
24 him. (Ex. A, ¶ 18(b)–(d); Ex. E, pp. 15, 22.) As the result of the tumultuous relationship and
25

26
27 ² Jasha complains about the number of text and email communications and yet it would
28 seem “[a]lmost [] the entire breakup went down over text or email.” (Compl., Ex. A, ¶ 18(a); Ex.
E, p. 20.) As a victim of sexual assault, Michaela can get “nervous and tongue tied” when
speaking. (Ex. E, pp. 2, 14, 21.)

1 Jasha's abusive behavior, Michaela ended up in therapy and treatment for PTSD. (Ex. E., pp. 9, 11,
2 41; Ex. H., p. 10.)

3 It was during therapy and this treatment that Michaela realized Jasha sexually assaulted
4 her. (Ex. E, p. 6; Ex. H, p. 8.) Even though Michaela knew Jasha's assaults were wrong, she
5 justified them both at the time and for months afterwards both because of Jasha's bullish and
6 manipulative tactics and his abuse of his power and influence as a popular performer. (*Id.*)

7 **A. Jasha Continues his Emotionally Abusive Behavior Towards Michaela**

8 About four months after their exploitive relationship ended, in around February 2017, Jasha
9 texted Michaela and asked her to unblock him from social media. (Ex. E., p. 9, Ex. H, pp. 10–11.)
10 Michaela did. (*Id.*) As Jasha and Michaela were both playing at an upcoming festival, Jasha
11 suggested they meet up. (*Id.*) In a subsequent message, Jasha told Michaela he had gotten back
12 together with his ex-girlfriend. (*Id.*) Among other things, knowing Jasha's girlfriend would not be
13 okay with Jasha and Michaela meeting up, she declined to meet up with Jasha. (*Id.*) Jasha instantly
14 turned on Michaela, threatening to tell the festival security guards that she was a “deranged stalker”
15 and threatened to destroy her career. (*Id.*) Jasha also shamed Michaela by telling her that his dad,
16 Herman, says he can tell that Michaela did not go to college by the way she speaks. (Ex. E, pp. 14,
17 51–52.)

18 **B. Jasha Accused of Sexual Assault By Others**

19 On March 15, 2018, Dancing Astronaut published a story with the headline “Breaking:
20 Datsik and Space Jesus Accused of Sexually Assaulting Multiple Victims.” (Ex. H, p. 11.) While
21 Jasha denied the allegations, and Dancing Astronaut withdrew the allegations a few days later,
22 multiple people posted their stories and information that Jasha had given drugs and alcohol to
23 underage girls, before having sex with them. (*Id.*) One such account was posted by Lilly
24 Anderson, who wrote of her 17-year-old friend who had sex with Jasha in Tennessee.³ (Ex. E., p.
25 11; Ex. F, pp. 6–9.) Jasha admits to having sex with a person he “believed to be over eighteen then
26 but later learned was likely seventeen,” though he claims it was in Oklahoma. (Ex. A, ¶ 21.)

27
28 ³ The age of consent for sexual activity in Tennessee is 18 years old. *See* Tenn. Code § 39-13-506 (2012).

1 **C. Michaela Seeks Accountability from Jasha**

2 Following the backlash from the allegations of sexual assault rocking Jasha and Datsik,
 3 Jasha announced plans to perform at a “consent benefit” to raise awareness about consent.
 4 Michaela was “physically pain[ed]” to see Jasha “paint himself as an ally and supporter now” when
 5 he had never taken responsibility for his own actions relating to “consent and the perpetuat[ion of
 6 the] rape culture that that brings up.” (Ex. E., p. 9.) Michaela contacted both Jasha and the
 7 sponsoring organization to bring the hypocrisy to everyone’s attention. (Ex. A, ¶ 25; Ex. E, pp. 7–
 8 10, 17; Ex. H, p. 11.) Michaela did not demand money, just responsibility and accountability. (*Id.*)
 9 In the end, Jasha and Michaela talked, Jasha apologized to Michaela, and seemingly claimed he
 10 would take responsibility and accountability for his actions. (Ex. E., p. 11.) Convinced Jasha had
 11 seen the error of his ways, Michaela withdrew her objection to his performing at the benefit. (*Id.*;
 12 Ex. A, ¶ 44.) After Jasha failed to keep a promise to talk with Michaela on the Monday after the
 13 consent benefit, Michaela spent the following weeks and months asking Jasha to make good on his
 14 promises to her, but Jasha did not appear to be holding himself accountable for his past behavior or
 15 making amends. (*Id.*)

16 **D. Michaela Contacted C3 and Herman Tull for Help Seeking Accountability from**
 17 **Jasha**

18 Still seeking to hold Jasha accountable, in January 2019, Michaela contacted Jasha’s
 19 management team at C3, notifying them of both her and the 17-year old’s sexual assault allegations.
 20 (Ex. F, pp. 6–29.) In the months that followed, Michaela and C3 exchanged multiple emails as C3
 21 claimed to be investigating the situation. (*Id.*) Michaela would at times forward her
 22 communications to C3 to Jasha and/or his father, Herman, or include Herman as blind carbon copy
 23 (bcc) recipient on the communications. (*Id.*) Needless to say, the situation was not resolved.

24 **E. More of Jasha’s Sexual Assault Survivors Come Forward**

25 Thereafter (on or about April 5, 2019), Michaela learned of a protest organized outside of
 26 one of Jasha’s shows, by young women who said they had witnessed similar sexual misconduct.
 27 (Ex. H, p. 14.) Both Michaela and, separately, a woman who goes by the names Dia and Kiki were
 28 inspired by this protest to come forward regarding their own experiences, and, on or around June

20, 2019, Kiki posted on social media about rape culture in EDM, specifically mentioning her experience with Jasha. (Ex. H, p. 14; *see also* Ex. 2 attached hereto.) Michaela saw Dia/Kiki's post and "found that [Jasha] had done the same thing to Dia/Kiki the first time they had sex [non-consensual penetration], and also threatened to destroy her dance career shortly after she broke things off with him, [Michaela] realized that a private, internal resolution [with Jasha] was not possible. (*Id.*) As Michaela wrote on her post, "[t]he only way to protect young, vulnerable, even underage fans and others from [Jasha's] well-established pattern of abuse is sharing [their] stories." (*Id.*)

In the summer of 2020, Michaela started @evidenceagainstspacejesus and went public with her story. (Ex. H.) After she did so, more victims came forward to share their stories of Jasha's sexual assaults, aggressive behavior, and substance abuse, including with underage girls. (Ex. H, p. 4.)

F. Jasha and His Parents File Lawsuits Against Michaela

Framing Michaela's efforts to educate and seek accountability for sexual assault offenders as a "campaign of harassing, defaming, bullying, threatening, cyber-stalking and intimidat[ing]" conduct towards Jasha and his parents, Herman and Lekha, all three have filed claims against Michaela for defamation, civil harassment, and civil stalking. (Compl., ¶ 22; *see also* related Case No. 4:21-cv-01566, Dkt. 1.)

Lekha bases her defamation claim on 2 statements: (1) that she is aware of Jasha's sexual assaultive behavior and her words and actions have enabled his behavior or lack of accountability; and (2) that Lekha has wrongfully charged patients for COVID-19 testing. (*Id.*, ¶¶ 58-59.)

For her civil harassment allegations, Lekha alleges harassing conduct arising from a handful of communications and text threads about Lekha's conduct "as the parent of her son" and "of her dentistry practice" and charging Jasha's friends for COVID-19 tests. (*Id.*, ¶¶ 75-76.).

For his part, Herman alleges the harassing conduct arising from a handful of communications "which seek to falsely accuse him of demeaning [Michaela]," and coping Herman on her emails to Jasha's management company, C3. (*Id.*, ¶¶ 70.) The alleged communications, included with the complaint in Exhibit F, amount to ten communications over a period of four

1 years, with the latest occurring on February 2, 2021. (*Id.*, Ex. F.) Of these communications, six of
2 the messages relate to Jasha’s accountability for his sexual assaults, two refer to Michaela’s attempt
3 to clear up the statement Jasha made to Michaela that she had threatened Herman’s job, one refers
4 to Jasha’s substance abuse problem, and one refers to Michaela’s attempt to educate Herman on the
5 correlation between sexual assaults and speech impediments. (*Id.*, Ex. F.) At least one of the
6 alleged communications is not even directed to Herman, and four are to Herman privately. (Ex. F,
7 pp. 2-5, 12-13, 25-30.)

8 As shown above and throughout the numerous email, text messages, and social media posts
9 identified and submitted with the Complaint, Michaela believes in the truth of her statements—that
10 Jasha sexually assaulted her—and Plaintiffs do not allege any facts by which one could infer
11 Michaela had any reason to believe that the statements of others who allege Jasha sexually
12 assaulted them might be false.

13 As to the Plaintiffs’ civil stalking claim, both Lekha and Herman allege fear for their safety
14 and that of their son, from Michaela’s alleged threats to “ruin” Jasha, public rhetoric against Jasha,
15 and her “recent social media post “with a firearm.” (Compl., ¶ 89.) As attached in Exhibit I, the
16 recent “firearm post” was made on November 29, 2020, and is mostly a headshot of Michaela,
17 holding a hunting rifle, with the text “Proud member of the Socialist Rifle Association,” which
18 Jasha combines with another post, made two weeks later, showing Michael stretching in a sunlit
19 forest, and identifies her location as in Long Island, New York (which, according to Plaintiffs, is
20 about 100 miles from their family home). (*Id.*, ¶ 39; Ex. I.)

21 Plaintiffs do not allege a single altercation between them and Michaela. At most, they
22 allege one altercation between Jasha and Michaela that allegedly occurred over four and half years
23 ago, on or about the week of September 4, 2016, when Michaela showed up at the Tull residence
24 unannounced and uninvited, and screamed at Jasha so profusely, the neighbors ask about the
25 incident to this day. (*Id.*, ¶¶ 14-15.) In attempting to diffuse the situation, Jasha alleges the family
26 invited Michaela into their home, cooked for her, and then Lekha secured a booking change to an
27 airline ticket to send Michaela to Portland, Oregon. (*Id.*, ¶ 14.) The booking confirmation email
28 attached to the complaint, however, was sent on August 31, 2016 (before the weekend in question),

1 and reflects a September 11, 2016 flight to Portland, Maine (not Portland, Oregon). (Ex. G, p. 3).
 2 Also attached to the Complaint is an email dated that same week, sent on September 5, 2016, from
 3 Herman to Michaela, attaching a beach photo of Herman, Lekha, Jasha, and Michaela all together
 4 and smiling. (Ex. F, p. 3.⁴)

5 **III. APPLICABLE LAW**

6 Rule 12(b)(6) of the Federal Rules of Civil Procedure states that dismissal of a suit is
 7 appropriate when the plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ.
 8 P. 12(b)(6). Dismissal is appropriate where a complaint lacks a cognizable legal theory or fails to
 9 allege sufficient facts to satisfy a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*,
 10 534 F.3d 1116, 1121 (9th Cir. 2008). For purposes of its inquiry, the Court must accept as true all
 11 well-pleaded factual allegations, as well as “any reasonable inferences drawn from them.” *Id.* at
 12 1122. Despite the benefit of such inferences, however, a complaint must plea “enough facts to state
 13 a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 (2007).
 14 Furthermore, the allegations of a complaint “may not simply recite the elements of a cause of
 15 action, but must contain sufficient allegations of underlying facts to give fair notice and to enable
 16 the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

17 **IV. ARGUMENTS**

18 **A. Plaintiffs Fail to State a Claim for Defamation.**

19 Lekha’s defamation claim is based on two statements made by Michaela. Defamation
 20 requires “[1] a publication that is [2] false, [3] defamatory, [4] unprivileged, and that [5] has a
 21 natural tendency to injure or that causes special damage.” *Taus v. Loftus*, 40 Cal.4th 683, 720
 22 (2007); *see* Cal. Civ. Code §§ 45–46. Lekha fails to plead a plausible claim for defamation because
 23 Michaela’s statements are opinions, not facts; are matters of public concern; and are not “of and
 24 concerning” Lekha.

25
 26
 27 ⁴ As attached to the Complaint, Herman’s email to Michaela, sending her the beach photo,
 28 does not contain the actual photograph sent. A complete copy of the email, with the photograph,
 is attached hereto as Exhibit 1.

1 **1. Michaela’s Statements Concerning Lekha Constitute Nonactionable**
2 **Opinions**

3 For a statement to be defamatory, it must be of fact, not opinion. *Gregory v. McDonnell*
4 *Douglas Corp.*, 17 Cal.3d 596, 600 (1976). Opinions “that do not imply facts capable of being
5 proved true or false” are protected by the First Amendment. *Partington v. Bugliosi*, 56 F.3d 1147,
6 1153 n. 10 (9th Cir.1995); *see Ruiz v. Harbor View Community Assn.*, 134 Cal.App.4th 1456, 1471
7 (2005). The allegedly defamatory statement “must be able reasonably to be ‘interpreted as stating
8 actual facts.’” *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 730 (9th Cir.
9 1999) (*citing Weller v. Am. Broadcasting Co.*, 232 Cal.App.3d 991, 1001 (1991)).

10 Determining whether a statement implies a factual assertion requires the totality of the
11 circumstances. *Lieberman v. Fieger*, 338 F.3d 1076, 1079–80 (9th Cir. 2003). Courts look to
12 (1) whether the general tenor of the entire work negates the impression that the defendant was
13 asserting an objective fact, (2) whether the defendant used figurative or hyperbolic language that
14 negates that impression, and (3) whether the statement in question is susceptible of being proved
15 true or false. *Id.*; *see Ervin v. Ben-Nun*, No. D064236, 2014 WL 4257778 (Cal. Ct. App. Aug. 29,
16 2014) (holding that a wife’s statement that her husband threatened “to shoot his children” and that
17 he physically abused his daughter were not defamatory when the statement was made in a highly
18 volatile situation where angry abusive words were exchanged); *Kieu Hoang v. Phong Minh Tran*,
19 60 Cal.App.5th 513, 532 (2021) (determining the context involves an analysis of each allegedly
20 defamatory statement).

21 Colorful expressions or hyperboles constitute opinions, not forming a basis for defamation
22 claims. *See Lieberman v. Fieger*, 338 F.3d 1076, 1080 (9th Cir. 2003) (“[N]o reasonable viewer
23 would have taken as factual [Defendant’s] colorful expressions, such as ‘Looney Tunes,’ ‘crazy,’
24 ‘nuts’ [and] . . . ‘mentally imbalanced.’”); *Ferlauto v. Hamsher*, 74 Cal.App.4th 1394, 1401 (1999)
25 (hyperbole, rhetoric, epithets, and “lusty and imaginative expressions of contempt and words used
26 in a loose, figurative sense” are not actionable as statements of fact). The imputation of a mental
27 disorder that is made in an oblique or hyperbolic manner is not actionable. *See Correia v. Santos*,

1 191 Cal.App.2d 844, 853 (1961) (statement made “not to describe the plaintiff as a person who was
2 mentally ill but as one who was unreasonable in his actions and his demands”).

3 The vast majority of Michaela’s two statements reflect her opinions about Lekha and
4 Herman. (*See* Compl., ¶ 49; Ex. G, p. 11.) Her use of the following hyperboles and colorful
5 expressions contextually negates a reader’s impression that Michaela was asserting objective facts:

6 @lekhatull should I post the stories from Hannah, Sam, Augstin, Jay, and even Jasha **about**
7 **how badly you abuse Joyce?** I have many texts and emails describing how you have
8 **treated her like dirt** from day 1 simply because she didn’t come from a wealthy family;
9 and ever since she and Janak got engaged, you’ve **apparently been telling anyone who**
10 **will listen that Joyce is only after your family’s money.** Everyone who knows Joyce
11 **knows she is an angel** who most parents would be thrilled to have marrying their son.
12 Everyone can **see how real their love is.** But you don’t care. because **you don’t care about**
13 **love. You only care about power, status, hierarchy, and most of all, money . . .** The first
14 thing Jasha ever said to me about you was ‘she hates Joyce because Joyce came from a poor
15 family.’ I thought he was exaggerating, but you proved it to be true time and time again, and
16 you have apparently only gotten more vocal and **aggressive in your campaign to destroy**
17 **their relationship. Every. Single. Person** who knows Jasha well said they blame you for
18 the **monster** [sic] became, because you are **his biggest enabler BY FAR.** For his entire life,
19 **you taught him that he never has to consequences for his actions.** You never taught him
20 right from wrong. **You only taught him to dominate, manipulate, profit, and exploit.** He
21 never learned how to take responsibility for his actions because you and Herman **never**
22 **taught him how. You spoiled him ROTTEN.** I actually have a lot of compassion for him
23 because I don’t know how anyone who was raised by you could avoid turning out the way
24 he did.

25 (Compl., ¶ 49 (emphasis added).) Michaela’s other statement includes equally as over-the-top
26 hyperboles and expressive, colorful comments, including:

27 **So embarrassed for you watching you like this woman’s posts . . . Only a truly evil**
28 **psychopath** would charge people for a free COVID test, let alone their son’s friends. That’s
just the tip of the iceberg on how Lekha and Jasha have treated you and Sam. **How the fuck**
are you still sucking up to this woman after she publicly attached so many of Jasha’s
victims? **How the fuck can you support his mom after she enabled him so badly, and**
attacked his victims so publicly? And **publicly attached** [sic] every artist who spoke out
about allegations? **How the fuck do you sleep at night Hannah?**

(Ex. G, p. 11.)

23 In addition to language and tenor, the forum where a statement is made may suggest
24 whether an allegedly defamatory statement is merely a nonactionable opinion. Statements posted
25 on Internet forums are more likely to be hyperboles because the reader has “an understanding that
26 they will likely present one-sided viewpoints rather than assertions of provable facts. ‘[A]ny reader
27 familiar with the culture of . . . most electronic bulletin boards . . . would know that board culture
28 encourages discussion participants to play fast and loose with facts.’” *Summit Bank v. Rogers*, 206

1 Cal.App.4th at 696-697 (citations omitted). Internet postings that use “harsh language and
 2 belligerent tone” and engage in “juvenile name-calling” are nothing more than an “irrational,
 3 vituperative expression of contempt” and cannot conceivably be comprehended as stating actual
 4 facts. *Krinsky v. Doe 6*, 159 Cal.App.4th 1154, 1176 (2008). Both of Michaela’s statements were
 5 posted on Instagram.

6 In light of the over-the-top, hyperbolic, colorful expressions, the frustrated tone of
 7 Michaela’s Instagram posts, and the general context of these statements, Lekha is not able to plead
 8 a plausible claim for defamation.⁵ The portions of Michaela’s statements quoted above are
 9 opinions, not facts.

10 **2. Some of Michaela’s Statements Are Matters of Public Concern.**

11 An issue of public concern is defined as an issue that is openly debated and has substantial
 12 ramifications for persons beyond those participating in the debate. *Gallagher v. Connell*, 123
 13 Cal.App.4th 1260, 1275 (2004); *see Wilbanks v. Wolk*, 121 Cal.App.4th at 900 (“[i]n the context of
 14 information ostensibly provided to aid consumers choosing” among different providers, a statement
 15 that was “a warning not to use plaintiffs’ services” was considered to be directly connected with an
 16 issue of public concern); *Chaker v. Mateo*, 209 Cal.App.4th 1138, 1146 (2012) (statements
 17 regarding a plaintiff’s character and business practices are issues of public concern because they are
 18 intended to serve as “a warning to consumers about his trustworthiness”); *Terry v. Davis Cnty.*
 19 *Church*, 131 Cal.App.4th 1534 (2005) (holding that there is a public interest in protecting minors
 20 from sexual predators, particularly in places such as church programs that are supposed to be safe
 21 and “[i]t need not be proved that a particular adult is in actuality a sexual predator in order for the
 22 matter to be a legitimate subject of discussion.”). When an allegedly defamatory statement relates
 23 to a matter of public concern, the plaintiff is required to plead and prove that the statement is false
 24 under the constitutional limitation, *Integrated Healthcare Holdings, Inc. v. Fitzgibbons*, 140

25
 26
 27 ⁵ While Herman is explicitly mentioned in one of Michaela’s allegedly defamatory statements,
 28 Herman’s decision not to bring a defamation claim against Michaela is axiomatic of the nature of
 the statement, and its lack of actionable grounds.

1 Cal.App.4th 515, 528-529 (2006), and to plead actual malice, *Wilbanks v. Wolk*, 121 Cal.App.4th
2 883, 905 (2004).

3 Actual malice requires the defamatory statement to have been made with “knowledge that it
4 was false or with reckless disregard of whether it was false or not.” *New York Times v. Sullivan*,
5 376 U.S. 254, 279–80 (1964). Actual malice directs attention to the “defendant's attitude toward
6 the truth or falsity of the material published . . . [not on] the defendant's attitude toward the
7 plaintiff.” *Widener v. Pacific Gas & Electric Co.*, 75 Cal.App.3d 415, 434 (1977) (disapproved on
8 other grounds by *McCoy v. Hearst Corp.*, 42 Cal. 3d 835, 846 (1986)). To survive a motion to
9 dismiss, plaintiffs must meet the “demanding burden” of alleging non-conclusory facts that render
10 their actual malice claim plausible. *Resolute Forest Prod., Inc. v. Greenpeace Int'l*, 302 F.Supp.3d
11 1005, 1018 (N.D. Cal. 2017); *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1239 (N.D. Cal. 2014). “[T]he
12 actual malice standard is not satisfied merely through a showing of ill will or ‘malice’ in the
13 ordinary sense of the term . . . [instead, it] requires at a minimum that the statements were made
14 with a ‘high degree of awareness of . . . probable falsity,’ . . . or [the defendant] must have
15 ‘entertained serious doubts as to the truth of [her] publication.’” *Harte-Hanks Communications v.*
16 *Connaughton*, 491 U.S. 657 (1989) (quoting *St. Amant v. Thompson*, 390 U.S. 727 (1968)).

17 Actual malice is not properly plead with purely conclusory allegations that defendants had a
18 particular state of mind in publishing the statements, *Resolute Forest Prod., Inc.*, at 1017-18; by
19 alleging the defendant fabricated statements, disregarded information contrary to the statement, or
20 had no reliable information on which to base the accusations against plaintiff, *Wynn v. Chanos*, 75
21 F. Supp. 3d at 1239; by alleging the defendant should have known the truth, *Nicosia v. De Rooy*, 72
22 F. Supp. 2d 1093, 1109 (N.D. Cal. 1999); “merely through a showing of ill will or ‘malice’ in the
23 ordinary sense of the term”, *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657 (1989)
24 (quoting *St. Amant v. Thompson*, 390 U.S. 727 (1968)); or by a showing of the defendant’s motives
25 for publication of statements with a particular slant, *D.A.R.E. Am. v. Rolling Stone Magazine*, 101
26 F.Supp.2d 1270, 1285-86 (C.D. Cal. 2000), aff’d sub nom. *D.A.R.E. Am. v. Rolling Stone Magazine*,
27 270 F.3d 793 (9th Cir. 2001).

1 Statements relating to COVID-19, and the availability of tests are clearly matters of public
 2 concern. In the current climate of a world-wide pandemic, the availability and costs of a test for the
 3 COVID-19 virus are of great importance to a large population, thereby making statements relating
 4 to availability and cost of a COVID-19 test an issue of public concern. Indeed, this statement is
 5 openly debated, as it was posted on a social media platform. (See Exhibit G.) As such, Michaela's
 6 following statements involve matters of public concern, necessitating Lekha to plead actual malice:
 7 "That's why you charge people for covid tests at your office, WHEN COVID TESTS ARE FREE,"
 8 and "So embarrassed for you watching you like this woman's posts after she forced you to drive
 9 hours out of your way to get a COVID test at her office . . . then sent you a bill charging you for the
 10 covid test (COVID TESTS ARE FREE)!!!" (Compl., ¶ 49; Ex. G, p. 11.)

11 While Lekha asserts the falsity of Michaela's statements, her pleading of actual malice is
 12 insufficient. Indeed, Lekha's references to COVID-19 plead actual malice in a conclusory fashion.
 13 (See Compl., ¶ 35 ("erroneously asserting that they are universally free"); ¶ 59 ("knew or had
 14 reasonable cause to believe, these statements were false".) Lekha does not plead that Michaela
 15 made these statements with a reckless disregard for their truth, let alone knowledge of their falsity.
 16 In fact, Lekha's allegations, taken as true, clearly and undeniably illustrate Michaela could not have
 17 made the statements with knowledge of the falsity of her statements because her statements "show
 18 an obvious unfamiliarity with the medical field generally and recent government actions pertaining
 19 to financial responsibility for COVID-19 specifically." (Compl., ¶ 48.)

20 Further, Michaela's statement of "Do ya'll need a reminder that 37 VICTIMS CAME
 21 FORWARD INCLUDING MULTIPLE UNDERAGE GIRLS?" is also a statement concerning
 22 matters of public concern. See *Terry v. Davis Cmty. Church*, 131 Cal. App. 4th 1534 (2005).
 23 Similarly, nothing in Lekha's Complaint suggests Michaela made this statement with actual malice.
 24 With Lekha's inability to show actual malice regarding Michaela's COVID-19 statements and the
 25 sexual assault of minors, Lekha fails to plead a plausible claim for defamation.

1 **3. Michaela’s Statement Regarding Jasha Is Not “Of and Concerning”**
 2 **Lekha**

3 Lastly, a statement is only actionable if the statement is “of and concerning” the
 4 plaintiff. *Dickinson v. Cosby*, 37 Cal. App. 5th 1138 (2019). “The ‘of and concerning’ . . .
 5 requirement limits the right of action for injurious falsehood, granting it to those who are the direct
 6 object of criticism and denying it to those who merely complain of nonspecific statements that they
 7 believe cause them some hurt.” *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1044 (1986).

8 Michaela’s last statement, describing Lekha’s son as a “precious r*pist p*edo son” is not of
 9 and concerning Lekha. Even if this statement possibly hurt Lekha, it relates to Michaela’s feelings
 10 and opinion of Jasha and his actions—not of and concerning to Lekha. As such, it is not actionable.

11 Lekha has failed to plead a plausible claim for defamation based on both of Michaela’s
 12 statements whether as a matter of opinion, public concern, or “of and concerning” Lekha. As such,
 13 Michaela respectfully requests this Court to dismiss the defamation cause of action.

14 **B. Plaintiffs’ Civil Harassment Claim Fails to Plausibly Allege a Lack of**
 15 **Legitimate Purpose.**

16 To plead a claim for civil harassment under California Code of Civil Procedure Section
 17 527.6, Herman and Lekha must plausibly allege “a knowing and willful course of conduct *directed*
 18 *at a specific person* that seriously alarms, annoys, or harasses the person, *and that serves no*
 19 *legitimate purpose.*”⁶ Code Civ. Proc. § 527.6(b) (emphasis added); *see Brekke v. Wills*, 125
 20 Cal.App.4th 1400, 1413-1414 (2005). Here, the alleged course of conduct to which Herman and
 21 Lekha complain as harassing, as evidenced from the communications themselves, focuses on
 22 several entirely different and legitimate purposes, rather than the singular purpose of harassment
 23 alleged in the Complaint. (Compl. ¶¶ 73, 80.)

24 These communications, on their face, identify the legitimate purposes to which they relate--
 25 accountability for and prevention of sexual assaults; maintaining private information as private;

26
 27 ⁶ Under section 527.6(b), a civil harassment claim can also be based on allegations of
 28 unlawful violence or a credible threat of violence, but Plaintiffs do not plead a claim based on any
 such alleged conduct.

1 concern for substance abuse; and the availability of free COVID-19 testing. Herman alleges
 2 Michaela harassed him by sending communications relating to: (1) Herman's alleged demeaning of
 3 Michaela; (2) Michaela's alleged desire to control Jasha's life; (3) Herman's alleged "improper[]
 4 sharing [of Michaela's] personal information," and (4) Jasha's alleged "substance abuse and other
 5 mental health problems."⁷ (Compl. ¶¶ 23-29, 70, 72, and Ex. F.) Lekha alleges Michaela harassed
 6 her by sending her communications relating to (1) Michaela's sexual assault allegations against
 7 Jasha; (2) Jasha's alleged substance abuse problem; (3) Lekha's alleged enabling of Jasha's
 8 behavior; and (4) the transaction in which Lekha allegedly charged Jasha's friends for COVID-19
 9 tests. (Compl. ¶¶ 31-35, 75-76, and Ex. G.)

10 When the attached exhibits contradict the allegations in the complaint, the contents of the
 11 exhibits trump the pleadings. *See, e.g., Crenshaw v. Lister*, 556 F.3d 1283, 1291 (11th Cir. 2009);
 12 *Avila v. Cate*, 2011 WL 2680844 (E.D. Cal. 2011). Plaintiff's conclusory allegations to the
 13 contrary (that Michaela's conduct serves no legitimate purpose) are insufficient to plead a plausible
 14 legal theory for civil harassment. *See Hanna v. Moreira*, No. E070310, 2019 WL 3933564 (Cal.
 15 Ct. App. Aug. 20, 2019) (emails evidencing legitimate purpose on their face insufficient for
 16 harassment claim); .

17 Further, the standard for conduct serving as a legitimate purpose is quite low and includes
 18 anything from parking one's car in a desired location, to getting exercise, to seeking recourse for a
 19 perceived wrong, to information encouraging investigation into a company's business practices.
 20 *See, e.g., Byers v. Cathcart*, 57 Cal.App.4th 805 (1997) (parking car in desired location); *Schild v.*
 21 *Rubin*, 232 Cal.App.3d 533 (1991) (playing basketball and getting exercise); *Hanna v. Moreira*,
 22 No. E070310, 2019 WL 3933564 (Cal. Ct. App. Aug. 20, 2019 (seeking recourse for a perceived
 23 wrong); *Principe v. Curry*, No. 817CV00608JLSKESX, 2018 WL 1406912 (C.D. Cal. Jan. 3, 2018)

24
 25
 26 ⁷ While Herman refers to and includes various communications as the basis for his claim
 27 in Exhibit F, only those communications directed to him can provide plausible support for his
 28 claim and the additional communications included within Exhibit F, not directed to Herman,
 should not be considered in evaluating the sufficiency of his claim (Ex. F, pp. 12-13, 25-29). *See*
Brekke v. Wills, 125 Cal.App.4th at 1413-1414 (communication must be directed at plaintiff
 claiming harassment to be considered part of course of conduct).

(social media posts informing public about company and encouraging investigation into its business practices). Certainly Michaela's stated purposes for the alleged communications, in seeking accountability and preventing sexual assaults, as well as her other stated purposes of keeping her private information private and discussing the availability of free COVID-19 testing, are at least as legitimate as those found in other situations. Plaintiffs' conclusory allegations to the contrary, when compared to the legitimate purposes of the communications as identified within the very communications attached to the Complaint, are insufficient to *plausibly* allege that the communications have no legitimate purpose.

C. Plaintiffs' Civil Stalking Claim Fails to Allege a Pattern of Conduct or Credible Threat.

To plead a claim for civil stalking, a plaintiff must plausibly allege: (1) the defendant engaged in a pattern of conduct the *intent of which was to harass the plaintiff*;⁸ (2) the plaintiff reasonably feared for his or her safety or the plaintiff suffered from substantial emotional distress and the reasonable person would suffer substantial emotional distress; (3) the defendant made a credible threat with the intent to place plaintiff in reasonable fear for his safety or with reckless disregard for the plaintiff's safety;⁹ and (4) the plaintiff, on at least one occasion, clearly and definitively demanded that the defendant cease their pattern of conduct. Code Civ. Proc. § 1708.7. Here, Herman and Lekha do not plausibly allege either a pattern of conduct with the intent to harass plaintiff, or a credible threat to Jasha's safety.

⁸ Under section 1708.7(1), a civil stalking claim can also be based on allegations of a defendant's intent to follow, alarm, or place under surveillance, but Herman and Lekha do not plead a claim based on any such alleged conduct.

⁹ Under section 1708.7(3)(B), a civil stalking claim can also be based on the defendant violating a restraining order, but Herman and Lekha do not plead a claim based on any such alleged conduct.

1 **1. Herman and Lekha Do Not Plausibly Allege Pattern of Conduct With**
 2 **the Intent to Harass**

3 A pattern of conduct is a series of acts over a period of time evidencing a continuity of
 4 purpose *to harass* the plaintiff. Code Civ. Proc. § 1708.7(b)(1). As already discussed above, the
 5 alleged course of conduct to which Herman and Lekha complain as harassing, as evidenced from
 6 the communications themselves, focuses on several entirely different and legitimate purposes,
 7 rather than the singular purpose of harassment alleged in the Complaint. The communications, on
 8 their face, identify the legitimate purposes to which they relate--accountability for and prevention of
 9 sexual assaults; maintaining private information as private; concern for substance abuse; and the
 10 availability of free COVID-19 testing. In light of the actual communications identified within and
 11 attached to the Complaint (and incorporated therein), Herman and Lekha's allegations that
 12 Michaela's conduct did not have a legitimate intent, but served only to harass Herman and Lekha, is
 13 not plausible.

14 **2. Michaela's Gun Photo Does Not Give Rise to a Credible Threat**

15 A civil stalking claim must also plausibly allege sufficient facts that a defendant "made a
 16 credible threat with either (i) the intent to place the plaintiff in reasonable fear for his or her safety
 17 or the safety of an immediate family members, or (ii) reckless disregard for the safety of the
 18 plaintiff or that of an immediate family member. In addition, the plaintiff must have, on at least one
 19 occasion, clearly and definitively demanded that the defendant cease and abate his or her pattern of
 20 conduct." Code Civ. Proc. § 1708.7(a)(3)(A). A credible threat is defined as "a verbal or written
 21 threat . . . made with the intent and apparent ability to carry out the threat so as to cause the person
 22 who is the target of the threat to reasonably fear for his or her safety or the safety of his or her
 23 immediate family." Code Civ. Proc. § 1708.7(b)(2).

24 Here, Herman and Lekha allege that Michaela made credible threats to "ruin" their son,
 25 Jasha, escalating "public rhetoric," and posting a picture of herself in November 2020 with a
 26 firearm. (Compl., ¶ 90.) To allege a plausible claim that Michaela made a credible threat *towards*
 27 *Herman, Lekha, or Jasha with intent* "to place them in reasonable fear," however, Herman and
 28 Lekha must allege more than merely identifying various encounters with Michaela. *Bolton v. City*

1 *of Berkeley*, No. 19-CV-05212-WHO, 2019 WL 6250927 (N.D. Cal. Nov. 22, 2019) (dismissal of
 2 civil stalking claim for failure to allege credible threat with intent to place reasonable fear).
 3 Herman and Lekha’s only allegation that comes remotely close to plausibly indicating an intent to
 4 harm Herman, Lekha, or an immediate family member or cause any fear is Herman and Lekha’s
 5 allegation concerning Michaela’s firearm post. Yet, that too, falls far short of alleging a legal
 6 cognizable claim for civil stalking.

7 The post itself is not directed to Herman or Lekha (or their family) in *any* way. It is simply
 8 a picture of Michaela (mostly a head shot), with a rifle, with the text “Proud member of the
 9 Socialist Rifle Association.” (Ex. I.) The second post that Herman and Lekha include is dated two
 10 weeks later and is a picture of Michaela stretching in a sunlit forest, with the location identified as
 11 in Long Island, New York. (*Id.*) There is absolutely nothing in the second post (Michaela
 12 stretching in a forest) to connect it or link it to the first post (SRA post). That the second post is
 13 tagged with a Long Island, New York location does not magically give rise to some hidden
 14 reference to Herman or Lekha or their family. In their own Complaint, Herman and Lekha allege
 15 that Michaela “resid[es] partially” in New York (Compl., ¶ 3.), so it stands to reason that she would
 16 occasionally be in New York. As for Herman, Lekha, and their family, Herman and Lekha allege
 17 that they live in New Jersey. (*Id.*, ¶ 1, 12.) Two states may be in proximity to each other, but that
 18 does not necessarily mean that standing in one is a veiled threat to the residents in another. To
 19 connect the picture of Michaela stretching in Long Island, to Michaela’s earlier SRA picture/post,
 20 to a presumed intent that Michaela was threatening to harm Herman, Lekha, or their family (or
 21 cause harm to them through some form of “mutual aid) is attenuated at best but, at the very, least
 22 does not support a plausible claim for civil stalking.

23 Herman and Lekha are also required to, on at least one occasion, clearly and definitively
 24 demand that the defendant cease and abate his or her pattern of conduct. Code Civ. Proc. §
 25 1708.7(a)(3)(A). Here, Herman and Lekha failed to allege that they had definitively and clearly
 26 demanded that Michaela cease her conduct. Rather, Herman stated that “[i]n an effort to disengage,
 27 [he] did not respond to these emails.” (Exhibit “C”, ¶ 12.) None of Instagram messages or text
 28 messages show that Lekha definitively and clearly demanded that Defendant stop what Plaintiffs

1 allege is her harassing course of conduct.¹⁰ Thus, Plaintiffs' allegations fall far short of alleging a
 2 legal cognizable claim for civil stalking.

3 **V. CONCLUSION**

4 For the above reasons, Defendant respectfully requests that this Court grant her motion to
 5 dismiss in its entirety. Defendant understands that leave to amend is liberally granted in the early
 6 rounds of pleading. However, Defendant requests that this Court consider dismissing Plaintiffs'
 7 frivolous claims with prejudice.

8
 9 DATED: April 28, 2021

GREENBERG GROSS LLP

11 By: /s/ Deborah S. Mallgrave
 12 Deborah S. Mallgrave

13 GIBBS LAW GROUP LLP
 14 Karen Barth Menzies
 15 Jeffrey Kosbie

16 Attorneys for Defendant Michaela Higgins
 17
 18
 19
 20
 21
 22
 23
 24
 25

26 _____
 27 ¹⁰ Lekha asserts that she has used whatever feature is available on a given social media
 28 platform to "block" the Defendant's accounts. However, according to Instagram, people are not
 notified when you "block" them. *What happens when I block someone on Instagram?*
 INSTAGRAM.COM, <https://help.instagram.com/447613741984126> (last visited April 26, 2021).

EXHIBIT 1

From: Herman Tull

Date: September 5, 2016 at 4:29:21 PM PDT

To: Caeli La , "Dr. Lekha Tull" , Space Jesus

Subject: picture



EXHIBIT 2

1 Karen Barth Menzies (SBN 180234)
2 kbm@classlawgroup.com
3 Jeffrey B. Kosbie (SBN 305424)
4 jbk@classlawgroup.com
5 **GIBBS LAW GROUP LLP**
6 505 14th Street, Suite 1110
7 Oakland, California 94612
8 Telephone: (510) 350-9700
9 Fax: (510) 350-9701
10 www.classlawgroup.com

11 *Attorneys for Defendant Michaela Higgins*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 JASHA RUBEN TULL,

16 Plaintiff,

17 v.

18 MICHAELA HIGGINS,

19 Defendant.

Case No. 4:21-cv-01566-DMR

**DECLARATION OF CHRISTINA
RENEE LACOSTE IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

20
21
22
23
24
25
26
27
28
**LACOSTE DECLARATION ISO MOTION TO DISMISS
CASE NO. 4:21-cv-01566**

1 I, Christina Renee LaCoste, declare as follows:

2 1. I make this statement on my own personal knowledge, and if called to
3 testify, I could and would testify competently thereto, except where I make a statement
4 on information and belief, in which case I am informed and believe the statement to be
5 true.

6 2. My name is Christina Renee LaCoste. I am a performer, model and artist. I
7 am known as Dia, @diathedom. My former stage name was Kiki, but I changed my stage
8 name to Dia after the events described below occurred.

9 3. I first met Jasha Tull, aka Space Jesus around 2015 in the Electronic Dance
10 Music (EDM) scene. I performed numerous times while he was DJing at festivals.

11 4. In 2017, I performed at a Halloween show with Jasha. After the show,
12 Jasha asked me to stay and hang out with him at his hotel room. I still had a 4-hour
13 drive ahead of me, but I agreed to stay for a bit. In Jasha's hotel room, everyone was
14 doing drugs and drinking alcohol (though I did not join them, as it's not my scene and I
15 was planning on driving). Jasha pressured me into staying longer and longer, then
16 eventually into staying the night, telling me his group had an extra hotel room that I
17 could use. As it was very late, I decided to stay.

18 5. After Jasha showed me to the extra hotel room, I got into the shower. When
19 I got out of the shower, Jasha was already in the bed and insisted on remaining in the
20 room with me. As I tried to fall asleep, Jasha rolled over and grabbed me. When I
21 protested, Jasha told me I needed to "let loose with him." We started kissing and then,
22 very suddenly, Jasha pulled aside my underwear and stuck his penis in me. Jasha
23 worked fast and "finished" quite quickly, such that by the time my head registered what
24 was going on, it was already over. There was no consent, no condom, and no choice. After
25 I washed off, I told him that was not okay. That I did not give him consent. I was upset
26 and concerned about my own safety, and the safety of other women. I wanted Jasha to
27 promise me that this was the first time he'd ever done that to a woman, to penetrate her
28 without consent.

1 6. I talked with Jasha several times over many months following the sexual
2 assault, but Jasha continued to refuse accountability and at one point, Jasha accused me
3 of cyber-bullying and threatened my career. In addition, I told some personal friends
4 what happened, and the story began to leak out within the EDM industry.

5 7. In or around April 2019, I heard about a protest staged by several young
6 women outside Jasha's April 5, 2019 performance at the UC Theater in Berkeley. I heard
7 that Jasha had threatened these young women, and I was enraged by his actions. I
8 decided to share my own story after hearing about this.

9 8. On June 20, 2019, I posted to Instagram a screen shot of a direct message
10 Jasha had sent me on Twitter on December 4, 2018, claiming to have just recently become
11 aware that I felt that he had crossed the line with me sexually. In response, I posted that
12 I was "[s]evering up my ties with EDM Rave Culture – I mean Rape Culture." Jasha
13 continued to try to silence me, releasing a statement about what happened that was filled
14 with lies.

15 9. Attached as Exhibit A to this declaration is a true and correct copy of my
16 June 20, 2019 post to Instagram.

17 10. Michaela Higgins (Caeli) saw my post that day and messaged me privately.
18 She explained that she went through a very similar situation with Jasha and asked if we
19 could speak over the phone. I agreed to speak with Caeli over the phone, and at the end
20 of our exchange, I commented, "we've been quiet too long."

21 11. Attached as Exhibit B to this Declaration is a true and correct copy of the
22 Instagram direct message conversation between Caeli and me from June 20, 2019.
23

24 I declare under penalty of perjury under the laws of the United States and the
25 State of California that the foregoing is true and correct, executed this 28th day of April,
26 2021, in Seattle, Washington.

Christina Renee LaCoste

Christina Renee LaCoste

EXHIBIT A





EXHIBIT B



☆ # caeli # ☆ she/her
caelislaysdemons · Instagram

7K followers · 109 posts

Follows you

You both follow dancesafe_ and 202 others

[View Profile](#)

JUN 20, 2019

Hey Kiki can we can talk on the phone
sometime soon?

I went through a very similar
experience with Jasha

And there's a lot that's going on right
now I'd like to share with you



Mentioned you in their story

Yes

Can we speak tonight?

You mentioned ☆ # caeli # ☆ she/her in
your story



Message...



<  ☆ # caeli # ☆ she/her  
caelislaysdemons

Yes


Can we speak tonight?

You mentioned ☆ # caeli # ☆ she/her in
your story

It's very important to me as well

 Yes please! I'm free anytime today -


I'm with family currently my young
nephew and can't speak on it rn but
will definitely be contacting you via
phone tonight

 Thank you so much ❤️ you have no
idea how much this means to me right
now!!! So so grateful

So am i

we've been quiet too long



I'm done



As well as livid





Message...



Signature Certificate

Document Ref.: J5EVX-Q7JPF-AH5HU-HQP2Z

Document signed by:

	Christina Renee LaCoste	<i>Christina Renee LaCoste</i>
	Verified E-mail: [REDACTED]	
	[REDACTED]	Date: 29 Apr 2021 02:35:13 UTC
		

Document completed by all parties on:

29 Apr 2021 02:35:13 UTC

Page 1 of 1



Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.

