SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

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JUDICIAL OFFICER PRESIDING: Layne H. Melzer
CLERK: Lorena Mendez
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-01008497-CU-DF-CJC** CASE INIT.DATE: 07/27/2018
CASE TITLE: **Bellino vs. Judge**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Defamation

EVENT ID/DOCUMENT ID: 72959796

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court issues a final ruling on matters under submission on 12/06/18, a copy of which is attached hereto and included herein by reference.

MO re Bellino v. Judge: Ruling on Submitted matter

Defendants' Anti-SLAPP motions came on regularly for hearing on 12/6/18. In advance of the hearing this Court issued its tentative ruling. That tentative ruling (largely verbatim) is set forth below in section I. After oral argument, the Court took the matter under submission. Having now further considered the matter the Court now modifies its tentative as indicated in section II and issues this minute order as its final ruling on this submitted matter.

I. TENTATIVE RULING

Motions ## 1 & 2

The special motions to strike by defendants Tamra Judge and Shannon Beador are denied. Briefly, the court finds that speech at issue is protected under Code Civ. Proc. § 425.16(e)(3) but that Plaintiffs have shown a likelihood of prevailing on the merits under the relatively low threshold required at this juncture.

The parties' requests for judicial notice are granted.

For Tamra Judge Anti-SLAPP Motion

by Plaintiffs (response by Judge)

As to the Judge motion, Plaintiffs' evidentiary objections are overruled. Judge objects to portions of Plaintiff Bellino's declaration but has not numbered the separate objections. By reference to the paragraphs of the Bellino Decl. objected to, the rulings are: objections sustained as to ¶¶ 3, 4, 5, 17 (partial), 18 (partial), 19 (partial), 22 (partial); otherwise, they are overruled.

For Shannon Beador Anti-SLAPP Motion

by Plaintiff (response by Beador)

Plaintiffs object to exhibits to the Salem Declaration, which attaches articles and postings - ¶¶ 2-30 and Exs. 1 – 29. For the reasons discussed in the RJN section, objections are overruled.

As to the Beador motion, Plaintiffs' objections to the Salem Declaration are overruled. Plaintiffs also objects to portions of the Beador Declaration. These are unnumbered, so are referred to here by the paragraph objected to. The rulings are: objections sustained as to ¶¶ 2 and 3; otherwise, they are overruled.

Beador objects to portions of the Bellino Declaration submitted in opposition to her motion. Objecton no. 8 is sutained; the remaining are overruled.

<u>Anti-SLAPP Motions</u>

Code Civ. Proc. §425.16 provides in relevant part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." This section is to be construed broadly. Cal. Code Civ. Proc. § 425.16(a).

The court's determination of an anti-SLAPP motion is a two-step process. First, the court determines if the party moving to strike a cause of action has met its initial burden to show that the cause of action arises from an act in furtherance of the moving party's right of petition or free speech. Then, if the court determines that showing has been made, the court determines whether the opposing party has demonstrated a probability of prevailing on the claim. *Navelier v. Sletten* (2002) 29 Cal.4th 82, 88.

Step One: Protected Speech?

There are four categories of protected speech for an anti-SLAPP motion (Code Civ. Proc. § 425.16(e)):

1. statements made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
2. statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
3. statements made in a place open to the public or a public forum in connection with an issue of public interest; or
4. any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Defendant Judge contends that categories (3) and (4) apply to her statements, while Defendant Beador asserts protection only under category (3).

Defendants contend that the Irvine Improv, where the public "dish" session took place, is a public forum and Plaintiff is a person in the public eye such that information about him is a matter of public interest.

Although CCP §425.16 does not itself provide any definition for "public interest," case law has established three basic categories of qualifying statements:

(1) statements involving persons in the public eye;
(2) statements which could affect large numbers of people beyond the direct participants;
(3) statements involving a topic of widespread interest.

Carver v. Bonds (2005) 135 Cal. App. 4th 328, 343; *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal. App. 4th 90, 111.

Even in the absence of a public figure, however, there may be a public interest. "The definition

of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. Matters of public interest ... include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals." *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal. App. 4th 468, 479 (internal citations and quotations omitted). The protection applies even where the issue is not of interest to the public at large but to a limited, but definable portion of the public, when the statements are in the context of an ongoing controversy or discussion such that it warrants protection by a statute intended to encourage participation in matters of public significance. *Terry v. Community Church* 131 Cal. App. 4th at 1549-50 ("[section 425.16](e)(4) applies to private communications concerning public interest); *Du Charme v. International Broth. of Elec. Workers, Local 45* (2003) 110 Cal. App. 4th 107, 115-16. Where, however, there is no controversy or on-going discussion giving rise to the speech in question, and the target of the speech (that is, the plaintiff responding to an anti-SLAPP motion) is not a person in the public eye, then the speech is not protected as "public interest" speech. *Du Charme, supra,* 110 Cal. App. 4th at 116-19 (and cases cited there).

Here, there is no real dispute that Defendants' comments were made at a public forum, but Plaintiffs dispute that the comments were on a matter of public interest. Plaintiffs dispute that Bellino is a person in the public eye for purposes of Defendant's comments – that is, to the extent he is in the public eye through his (limited) exposure on the show, Defendant's comments were not about any topic raised by his exposure through the show but were about purely private and/or unrelated matters.

Just because a person is in the public eye, that does not mean that everything about him is a matter of public interest. *Albanese v. Menounos* (2013) 218 Cal. App. 4th 923, 929, 933-34 (*citing D.C. v. R.R.* (2010) 182 Cal. App. 4th 1190, 1214-15.) To be protected, the comment about a person in the public eye should be related to the aspect about the public figure that is of public interest/in the public eye. *Id.* at 933-36 (*noting* in *D.C.* bullying comments about plaintiff were not connected to his limited fame as a singer, so were not a matter of public interest and *distinguishing Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal. App. 4th 1027 where public was particularly interested in the very topic discussed (the internationally famous CEO's wealth and lifestyle)). *See also Seelig v. Infinity Broadcasting Corporation* (2002) 97 Cal. App. 4th 798, 807-08 (finding contestant's participation on TV show "Who Wants to Marry a Multimillionaire" was a matter of public interest *as to that participation*); *Weinberg v. Feisel* (2003) 110 Cal. App. 4th 1122, 1132–1133 (noting curiosity is not enough and there must be connection between comment and asserted public interest).

On the other hand, in *Jackson v. Mayweather* (2017) 10 Cal. App. 5th 1240, the court found that the ex-boyfriend's social media postings and radio interview about the termination of their relationship and his ex-girlfriend's abortion and cosmetic procedures were protected speech "in the public interest" because both of them had routinely sought public attention to their lives and lifestyle. 10 Cal. App. 5th at 1253-54. *See also Hall v. Time Warner* (2007) 153 Cal. App. 4th 1337 (finding that while Brando's housekeeper was a private person, when she became the

beneficiary of the will of such a famous person she became, as far as that aspect of her life, a matter of public interest).

Bellino's situation here is closest to the plaintiff in *Albanese v. Menounos, supra.* There, the stylist sought and obtained public attention to a degree to enhance her professional status and business, but not to the point that she was a celebrity of all-consuming interest to a group of people like the plaintiff in *Nygard.* The record shows that Bellino too has sought public attention – he has his own public website where he posts about some aspects of his life and he chose to appear, at least on some occasions, on the show. He has not sought such pervasive attention to all aspects of his life such that everything about him can reasonably be deemed in the public interest, however.

Accordingly, the question is whether Defendants' comments, or any of them, were connected to that part of Bellino and/or JMCO in the public interest.

Judge said:

(i) Plaintiff is a shady "motherfucker."
(ii) He wants spousal support because "I have a theory. Everything is in her name."
(iii) The Bellinos' marriage and/or divorce was "fake" or a sham. And
(iv) "He's going to jail."

Given Bellino's ex-wife's role on the show as a "housewife" of O.C., along with his appearance on the show as her husband, their divorce, including the nature of the divorce, would be a matter of public interest to those who watched the show. Bellino's character, and whether he is a convicted criminal, would be too. The court finds that the comments by Judge that Bellino is suing on are protected speech under Code Civ. Proc. § 425.16(e)(3).

Beador said:

> "I heard they don't [have the trampoline business anymore] because they were sued. . . I won't let my kids go because people get paralyzed. Apparently that happened."

This one is a closer call. It's less clear how Bellino's business life, and the business itself (JMCO) are implicated in his participation in a reality show. Given the sprawling nature of such a show, however, it would seem how the participants made money would be of interest to those who watch the show. The court finds that the comments by Beador that Bellino is suing on are protected speech under Code Civ. Proc. § 425.16(e)(3).

Step Two: Showing of Probability of Prevailing on the Merits?

To show a likelihood of success in the face of an anti-SLAPP motion, a plaintiff must present evidence that could be admitted at trial. *Fashion 21 v. Coal for Human Immigrant Rights of Los Angeles* (2004) 117 Cal. App. 4th 1138, 1146-47. Accordingly, lack of foundation is not grounds to exclude evidence from consideration on an anti-SLAPP motion but a substantive evidentiary objection, such as hearsay, is. *Id.*

In determining whether the plaintiff has shown a reasonable probability he will prevail on the merits at trial, the court must consider both the legal sufficiency of and evidentiary support for the pleaded claims, as well as defenses to them. *McGarry v. University of San Diego* (2007) 154 Cal. App. 4th 97, 108. The court considers, but does not weigh, the evidence. *Id.* The test is the same as that governing a motion for summary judgment, nonsuit, or directed verdict – that is, whether the plaintiff's evidence, if credited, would be sufficient to meet the burden of proof. *Taus v. Loftus* (2007) 40 Cal. 4th 683, 714. Thus, the showing required "is not high." *Hecimovich v. Encinal School Parent Organization,* 203 Cal. App. 4th 450, 469. The "plaintiff needs to show only a minimum level of legal sufficiency and triability." *Id.* (internal quote marks and citations omitted).

First Cause of Action for Defamation Per Se (by Bellino) against Judge

To prevail on a claim for defamation, a plaintiff must show that: (i) defendant published the statement, (ii) the statement was about plaintiff, (iii) the statement was false, and (iv) the statement was defamatory (that is, it exposed the plaintiff to contempt or ridicule); and, if the statement is not defamatory on its face, (v) plaintiff suffered special damages. *Wong v. Tai Jing* (2010) 189 Cal. App. 4th 1354, 1369. *See also* CACI 1700-01.

When the plaintiff is a public figure or limited public figure, he must also prove malice – that is, that the defendants made the defamatory statements knowing they were false or with doubts as to their truth. *Masson v. New Yorker Magazine* (1991) 501 U.S. 496, 510, 111 S .Ct. 2419, 115 L.Ed.2d 447.

Expressions of opinion do not fall within the category of "false" statements for purposes of libel and slander. *Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal. App. 4th 434, 445; *see also, Summit Bank v. Rogers* (2012) 206 Cal. App. 4th 669, 696. Thus, "'rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of ... contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection." *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal. App. 4th 798, 809.) "Consequently, courts have frequently found the type of name calling, exaggeration, and ridicule ... to be nonactionable speech." *Summit Bank v. Rogers* (2012) 206 Cal. App. 4th 669, 699.

"To ascertain whether the statements in question are provably false factual assertions, courts consider the 'totality of the circumstances.' ... 'First, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense . . . . [¶] Next, the context in which the statement was made must be considered.... [¶] This contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed.' ... This crucial question of whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court." *Seelig v. Infinity Broadcasting Corp.*, 97 Cal. App. 4th at 809-10.) "[C]ourts as well have recognized that online blogs and message boards are places where readers expect to see strongly worded opinions rather than objective facts." *Summit Bank v. Rogers*, 206 Cal. App. 4th at 697; *see also, Chaker v. Mateo* (2012) 209 Cal. App. 4th 1138, 1148.)

For defamation per se, Bellino points to Judge's statement that "He is going to jail."

Judge does not address this statement separately from the others but argues that all of her comments are statements of nonactionable opinion rather than fact. But on its face it is an assertion of fact and Judge does not provide any context that shows it to be merely an expression of opinion. Nor must it be taken as a joke. While Defendants describe the show as designed to be amusing and funny, there is no suggestion that the participants were simply doing a comedy routine. They were "dishing" about the show's participants. Part of the amusement value was from the gossip – the relaying of juicy facts about themselves and others.

Accordingly, if Bellino is not a public figure, he has shown a likelihood of prevailing on the merits of this claim under the applicable legal standard. If he is, he needs to show malice in order to make a prima facie case of defamation per se.

Being "in the public eye" for purposes of "public interest" under Code Civ. Proc. § 425.16(e)(3) or (4) is *not* the equivalent of being a public figure or a partial public figure. *See Hufstedler, Kaus & Ettinger v. Superior Court* (1996) 42 Cal. App. 4th 55, 69–70 (discussing what makes a person a public figure).

Judge contends that Bellino "injected" himself into the controversy -- apparently any controversy -- by voluntarily appearing on the show, where the subject matter was his actual life. But that is just another way of saying he is a full-fledged public figure (that is, anything can be said about him as long as it is said without malice). But a public figure is someone of pervasive fame or notoriety.

Bellino does not fit into that category. Nor is there any evidence that he "injected himself" into a controversy over whether he was (or even should) go to jail.

Second Cause of Action for Defamation (by Bellino) against Judge and Beador

Bellino's second defamation claim is based on the remaining alleged statements by each of Judge and Beador.

Judge's statement that Bellino is a "shady motherfucker" seems to fall squarely within the rubric of "vigorous epithets" rather than asserted or implied fact. "I have a theory, Everything's in her name," too, on its face does not suggest a statement of fact. Bellino would argue that a fact is implied, but taken on its face this is, at most, an opinion.

The remaining comment by Judge is that the Bellinos' divorce is a sham. Bellino alleges this statement is reasonably understood to mean the divorce proceedings were fraudulent or entered into for improper purposes. Again, Judge contends her statements were hyperbole and opinion. This is again a close question but the Court nonetheless finds Bellino has made a sufficient initial showing on this element to survive an anti-SLAPP motion.

As discussed above, the court finds Bellino is not a public figure so need not show malice. The remaining question, then, is whether he has shown resulting damages. The court finds that for purposes of an anti-SLAPP motion, Bellino has presented sufficient evidence, by way of his declaration, of damages.

As for Beador, she said "I won't let my kids go because people get paralyzed. Apparently, that happened." Bellino contends that the suggestion that they had to sell the business because they were sued implies serious misconduct or that something seriously bad happened – which makes it defamatory as well as false.

Bellino has presented evidence that he did not have to sell the business, and no one was paralyzed there – or sued for that reason. Beador argues that his evidence shows her statement was substantially true. He was sued by someone who was seriously injured at a SkyZone trampoline park and has since sold all but one location, including the location where the person was injured. [Reply at 4 (citing Bellino Decl., at ¶ 2).]

Beador also declares she was speaking generally, not specifically to Bellino's business. She said, "it happens," rather than "it happened" – meaning it is a real risk, not that it happened at Bellino's business. As Bellino notes, however, it is not for the court at this point to weigh the evidence or make credibility determinations. Plaintiff has presented sufficient evidence, for purposes of an anti-SLAPP motion, to show a likelihood of prevailing on the merits of this cause of action against Beador.

Beador's notice of motion and motion is to strike the complaint – she does not separately move as to each cause of action. Because one cause of action survives, her whole motion must be denied.

Fourth Cause of Action for False Light

The elements for an invasion of privacy/false light claim are: (1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern. *Taus v. Loftus* (2007) 40 Cal. 4th 683, 717; CACI 1801, 1802.

"When a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action." Eisenberg v. Alameda Newspapers (1999) 74 Cal.App.4th 1359, 1385 n. 13. Accordingly, this cause of action also survives Defendants' motions to strike.

Motion #3

Plaintiffs James Bellino and Jump Management Co.'s motion for order lifting the discovery stay under Code Civ. Proc. § 425.16(g) to permit them to conduct discovery to establish malice by defendants Tamra Judge and Shannon Beador is moot in light of the court's ruling on Defendants' anti-SLAPP motions.

Plaintiff to provide notice.

II. FINAL RULING ON SUBMITTED MATTER

A. Beador's Motion to Strike

During the hearing Beador argued that upon sustaining her objection #8 [challenging the admissibility of Bellino's declaration, 3:5-14], Plaintiff had failed to sustain his burden of establishing "damages" as a result of Beador's alleged defamatory statements. As such, Beador argued Plaintiff's slander per quod (the second cause of action) has no merit for want of damages. Plaintiff countered that although not specifically pled as defamation per se against Beador, he has alleged what would qualify as slander per se under Civil Code §46 because Beador's statements about his business have a tendency "to directly injure him in respect to his trade or business..." i.e., have a natural tendency to lessen his profits. Thus, plaintiff countered proof of damages are unnecessary.

Beador responded that there is a distinction between injury and damages and Plaintiff still had to at least demonstrate the statements caused injury (if not damages). Beador further recited a "due process" concern with Plaintiff taking a statement ostensibly pled as per quod and treating it as per se. Beador also requested that the Court revisit the cases cited at pp. 5-6 of her reply. Beador claims that these more recent cases demonstrate that as a matter of law Bellino's evidentiary submittals are insufficient to establish falsity re the alleged defamatory statements.

The Court does not find Beador's "injury vs damage" dichotomy persuasive. If Beador's statements qualify as slander per se, damages and/or injury are presumed. The Court also does not find the *Industrial Waste* and *Vogel* cases to dictate the result in this case. The Court does however conclude that the evidentiary argument merits further discussion—i.e., as framed by Beador, "because there is no proof of 'special damage' Plaintiff's slander claim against Beador fails."

The most complete recitation of Beador's statement is contained in the notice of lodging filed by Plaintiff which, purports to contain a verbatim transcript of the relevant portions of the Beador/Judge interview. As pertinent to Plaintiff's "slander per se" claim against Beador, the alleged actionable statements are as follows: "I heard they don't [have the trampoline parks anymore] because they were sued....I won't let my kids go [to trampoline parks] because people get paralyzed, and they, and apparently that happens." Upon reflection, the Court does not find these statements to be slander per se pursuant to Civil Code §46 subsection 3 [tending to directly injure one in respect to a trade or business by having a natural tendency to lessen its profits]. As discussed in Regalia v. The Nethercutt Collection (2009) 172 Cal.App.4th 361, 367–370:

> "slander that falls within the first four subdivisions of Civil Code section 46 is slander per se and require no proof of actual damages. [Citations] A Slander that does not fit into those four subdivisions is slander per quod, and special damages are required for there to be any recovery for that slander. [Citations]. [¶] In connection with subdivision (3) of Civil Code section 46, "to be actionable *per se,* a defamatory statement must tend 'directly' to injure the person defamed in respect to his office, profession, trade or

> business...." [Citations] Whether a statement "upon its face ... clearly conveys a meaning" within subdivision (3) [Citation] so as to be a slander per se is a question for the court. [Citations]

The statement in question is equivocal at best and does not directly suggest that someone was paralyzed at Plaintiff's trampoline park. It also does not identify the park in question (Skypark) which is not directly owned by Bellino but an entity (JMCO) in which he has an interest—JMCO is also not mentioned. In context, the statement is one about Beador and the fact that she would not let her children go to a trampoline park because "people get paralyzed." She does not say that this "happened" at Plaintiff's park. Beyond this she states that "she heard" they no longer "have the trampoline parks" because of a lawsuit.

In sum, Beador expresses (1) her view that trampoline parks are dangerous, (2) her belief (based on hearsay) that Plaintiff and his wife were sued, and (3) the lawsuit led to their loss of the trampoline park. Plaintiff presents evidence that no one was paralyzed at Skypark and that Plaintiff continues to own his interest in the entity (JMCO) that controls Skypark. Plaintiff admits that there was a lawsuit "against Skypark" because of an alleged personal injury but he contends it was "meritless." Plaintiff does not dispute that trampoline parks are dangerous. Ultimately, the only factual statement shown to be "false" is that the Bellinos no longer own an interest in any trampoline parks because of a lawsuit.

Regardless, the challenged statements do not "clearly convey a meaning" which "tends to directly injure" Plaintiff's business and which has a "natural tendency to lessen its profits." The Beador statements about trampoline parks or a lawsuit leading to the loss of Plaintiff's business are not "slander per se." While perhaps not reaching the constitutional dimensions asserted by Beador, Plaintiff's choice of pleading is significant. It is apparent Plaintiffs themselves did not view the statements as constituting slander per se inasmuch as these statements were not included in the cause of action labeled "slander per se" but were in the next cause of action which appears reserved for statements alleged to constitute "slander per quod."

As such, these statements require proof of "special damages" by Plaintiff Bellino. Plaintiff has not submitted competent evidence of special damages sufficient to sustain this cause of action against Beador. Indeed, this Court has sustained Beador's objection #8 which essentially eliminates Plaintiffs conclusory claims of damages caused by Beador's statements. *Alpha and Omega Development, LP v. Whillock Contracting, Inc.,* (2011) 200 Cal. App. 4th 656, [declarations that lack foundation or personal knowledge, or that are argumentative, speculative, impermissible opinion, hearsay or conclusory are to be disregarded when considering the plaintiff's probability of prevailing for purposes of an anti-SLAPP motion to strike].

The Court, therefore, concludes that the second cause of action for slander per quod against Beador lacks merit. As previously explained, because Plaintiff has failed to sustain his defamation claim, the fourth cause of action for "false light" similarly fails.

As discussed in the Court's tentative ruling, because Beador brought a motion to strike the entire complaint rather than discrete causes of action, the Court, before it determines whether to grant

Beador's motion, must now address the remaining causes of action alleged against Beador: trade libel and intentional/negligent interference with economic advantage.

Third Cause of Action for Trade Libel (by JMCO) against Beador

"Trade libel is the publication of matter disparaging the quality of another's property, which the publisher should recognize is likely to cause pecuniary loss to the owner." *ComputerXpress, Inc. v. Jackson* (2007) 93 Cal. App. 4th 993, 1010, citing *Leonardini v. Shell Oil Co.* (1989) 216 Cal. App. 3d 547, 572.

CACI 1731 provides the following elements to establish a trade libel claim:

1. That [*name of defendant*] made a statement that disparaged the quality of [*name of plaintiff*]'s [*product/service*];
2. That the statement was made to a person other than [*name of plaintiff*];
3. That the statement was untrue;
4. That [*name of defendant*] [knew that the statement was untrue/acted with reckless disregard of the truth or falsity of the statement];
5. That [*name of defendant*] knew or should have recognized that someone else might act in reliance on the statement, causing [*name of plaintiff*] financial loss;
6. That [*name of plaintiff*] suffered direct financial harm because someone else acted in reliance on the statement;
7. That [*name of defendant*]'s conduct was a substantial factor in causing [*name of plaintiff*]'s harm.

This cause of action essentially mirrors the second cause of action –but is asserted by JMCO rather than Bellino. For the same reasons discussed in the context of the second cause of action, the Court finds this cause of action also lacks merit. Moreover, nowhere in the challenged statements is JMCO or the apparent tradename given the trampoline park, "Skyzone," even mentioned. There is no evidence nor allegation in the pleadings to suggest how or why anyone hearing the statements about Bellino being sued or having sold his interest in his "trampoline park" would presume this to be a statement about JMCO or Skyzone.

Fifth and Sixth Causes of Action for Intentional and Negligent Interference with Prospective Economic Advantage (by JMCO) against Beador

The elements of a cause of action for intentional interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and some third party, with a reasonable probability of future economic benefit or advantage to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153; *Plummer v. Day/Eisenberg* (2010) 184 Cal.App.4th 38, 51.

The elements of a negligent interference with prospective economic advantage are: (1) an economic relationship existed between the plaintiff and the third party which contained a

reasonably probable future economic benefit or advantage to plaintiff; (2) the defendant knew of the existence of a relationship and is aware of should have been aware that if he did not act with due care, his actions would interfere with this relationship and cause plaintiff to lose, in whole or in part, the probable future economic benefit or advantage of the relationship; (3) the defendant was negligent; and (4) such negligence caused damage to plaintiff in that the relationship was actually interfered with or disrupted and plaintiff lost, in whole or in part, the economic benefits or advantage reasonably expected from the relationship. *North American Chemical Co. v. Superior Court*, 59 Cal. App. 4th 764, 786 (1997).

The tort of negligent interference with economic relationship arises only when the defendant owes the plaintiff a duty of care. *LiMandri v. Judkins*, 52 Cal. App .4th 326, 348 (1997). The key component in determining whether the relationship between a plaintiff and defendant gives rise to a duty of care is the foreseeability of the harm suffered by the plaintiff. *Id.* at 349.

As to the interference complained of, to recover for interference with prospective economic advantage, a plaintiff must plead and prove the defendant's interference was wrongful by some measure beyond the fact of the interference itself. *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392-393; *National Medical Transportation Network v. Deloitte & Touche* (1998) 62 Cal.App.4th 412, 440. Wrongful conduct is insufficient if it is merely unfair or immoral or the product of an improper but lawful purpose. Rather, an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159. However, the "wrongful conduct" need not be intentional or even willful. *Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1079.

As to the economic advantage interfered with, a plaintiff must show the existence of an economic relationship with some third party that contains the probability of future economic benefit to the plaintiff. This tort therefore "protects the expectation that the relationship eventually will yield the desired benefit, not necessarily the more speculative expectation that a potentially beneficial relationship will arise. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal. 4th 1134, 1164.

Here, JMCO has not presented evidence of specific actual or prospective economic relationships that disrupted because of Beador's comments about the dangers of trampoline parks. JMCO has failed to present competent evidence that Beador knew of these specific and actual relationships. JMCO has failed to show actual damages or causation. JMCO has thus failed to show a probability of prevailing on the merits of these causes of action.

As explained Gilbert v. Sykes, (2007) 147 Cal. App. 4th 13, 34:

> "The constitutional privilege applies not merely to defamation but to "all claims whose gravamen is the alleged injurious falsehood of a statement." (*Blatty, supra,* 42 Cal.3d at p. 1042, 232 Cal.Rptr. 542, 728 P.2d 1177). Thus, the collapse of Sykes's defamation claim spells the demise of all other causes of action in the cross-complaint such as intentional and negligent interference with economic advantage and intentional infliction of emotional distress, all of which allegedly arise from the same publications on Gilbert's

Web site. (See *Seelig, supra,* 97 Cal.App.4th at p. 812, 119 Cal.Rptr.2d 108.) As the state Supreme Court observed, " 'to allow an independent cause of action for the intentional infliction of emotional distress, based on the same acts which would not support a defamation action, would allow plaintiffs to do indirectly what they could not do directly. It would also render meaningless any defense of truth or privilege.' " (*Fellows v. National Enquirer, Inc.* (1986) 42 Cal.3d 234, 245, 228 Cal.Rptr. 215, 721 P.2d 97, quoting *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 682, 197 Cal.Rptr. 145.)"

Therefore, each cause of action asserted against Beador lacks merit because (among other reasons, as stated) there is no competent evidence submitted by Plaintiff of actual damages. As a consequence, the Court now grants Beador's motion to strike.

B. Judge's Motion to Strike

The Court remains convinced that Plaintiff has presented sufficient evidence to sustain his slander per se cause of action against Judge. Her motion to strike directed at the first cause of action is denied for the reasons expressed in the tentative ruling. For similar reasons, and again consistent with the Court's tentative, the motion to strike is denied as to the fourth cause of action.

As to the second cause of action, beyond the profanities directed toward Plaintiff which this Court has already dispensed with, Plaintiff challenges Judge's commentary regarding the Bellinos' marriage. Here Judge requested that the Court revisit Exh D to Bellino's declaration. She argued that there is no evidence that Judge said the divorce is a sham. The Court has revisited Exh D and (as discussed above) has considered the alleged verbatim transcript of the relevant statements. Judge's statements make limited mention of the Bellino divorce other than to suggest "he wants spousal support" and that "everything is in her name." Judge then, in the very next immediate statement, offers: "he's going to jail."

Thus, Judge's statements about the Bellino marriage seem to be wrapped up with the "slander per se" claims. The divorce comments are ambiguous at best as suggesting any standalone misdeeds. Use of the words "sham" or "fake" divorce were those of the narrator on the website that re-broadcast the interview--not statements by Judge. In context, Judge's statements appear to suggest there is something tactical about the divorce, perhaps even some sort of "pre-conviction" estate planning.

Regardless, the "sham divorce" comments (if that is how they were to be understood) remain at best slander per quod subject to special proof of damages. Again, this is presumably why these statements are not alleged in the first cause of action for "slander per se." But here again, there is no evidence of damages with a nexus to this alleged "slander per quod." Instead, Bellino states that investors learning about the fact that "he's going to jail" will no longer deal with him. (see Bellino Decl. in opposition to Judge's mtn, ¶22.) This, is not evidence that the purported "sham divorce" statements caused special injury.

Consequently, the Court now grants Judge's motion to strike the second cause of action for defamation per quod.

C. Summary

In sum, Beador's motion to strike is granted in its entirety. Judge's motion is granted as to the second cause of action and denied as to the first and fourth causes of action.