

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/21/09

DEPT. WEJ

HONORABLE TERRY B. FRIEDMAN

JUDGE

J. CITRON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

A. PUIG, CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

S. MACNEIL #9013

Reporter

8:45 am SC092739

Plaintiff

Counsel

VICTOR DANIELS (X)

JANE DOE

VS

Defendant

RUSSELL SMITH (X)

HOME BOX OFFICE, INC., ET. AL.

Counsel

THEODORE MONROE (X)

**NATURE OF PROCEEDINGS:**

DEFENDANT'S (CHANNEL FOUR TELEVISION CORPORATION)  
MOTION FOR SUMMARY JUDGMENT , OR IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION OF ISSUES;

The Court issues its tentative as follows:

DEFENDANT MOTION FOR SUMMARY JUDGMENT: GRANT

The Court makes the following evidentiary rulings:

- Plaintiff objections

Naik Declaration:

1. sustain lacks foundation
2. sustain lacks foundation
3. sustain irrelevant
4. sustain lacks foundation
5. sustain lacks foundation
6. overrule
7. overrule
8. sustain lacks foundation, hearsay
9. overrule

Shoefield Declaration

1. overrule
2. overrule
3. overrule
4. overrule
5. sustain secondary evidence
6. overrule

Smith Declaration

1. sustain secondary evidence. argumentative

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(X)

**NATURE OF PROCEEDINGS:**

(however, Exhibit 7 admissible)  
 2. sustain secondary evidence, argumentative  
 (however, Exhibits 3-6 admissible)  
 3. sustain argumentative  
 4. sustain secondary evidence, argumentative  
 (however, Exhibit 2 admissible)  
 5. sustain secondary evidence, argumentative  
 (however, Exhibit 1 admissible)  
 6. sustain secondary evidence, argumentative  
 (however, Exhibits 15 and 16 admissible)  
 - Defendant objections  
 Doe Declaration  
 1. sustain speculative  
 Cooper Declaration  
 1. sustain inadmissible hearsay  
 Daniels Declaration  
 1. sustain - argumentative  
 2.-8. moot  
 This Motion for Summary Judgment is directed at the remaining causes of action in Plaintiff's First Amended Complaint (FAC): libel per se, slander per se, fraud, negligence and negligent misrepresentation.  
 The Court first will address the defamation causes of action and negligence causes of action. For reasons set forth below, the Court finds that the alleged defamatory statements are not reasonably understood to be statements of fact and finds that Plaintiff executed a release applicable to the defamation and negligence she alleges against

<p align="center"><b>MINUTES ENTERED</b>                  04/21/09                  COUNTY CLERK</p>
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8:45 am	SC092739  JANE DOE VS HOME BOX OFFICE, INC., ET. AL.	Plaintiff Counsel  Defendant Counsel	VICTOR DANIELS  RUSSELL SMITH THEODORE MONROE	(X)  (X) (X)
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**NATURE OF PROCEEDINGS:**

Defendant. Whether a statement declares or implies a provably false assertion of fact is a question of fact for the court, after considering the totality of the circumstances, unless the statement is susceptible to both an innocent or libelous meaning. [Franklin v. Dynamic Details (2004) 116 CA4th 375, 385; San Francisco Bay Guardian v. Superior Court (1993) 17 CA4th 655, 662]. The Court viewed the excerpt from the Ali G program which is the basis for Plaintiff's action. No reasonable person could consider the statements made by Ali G on the program to be factual. To the contrary, it is obvious that the Ali G character is absurd and all his statements are gibberish and intended as comedy. The actor, Sasha Baron Cohen, never strays from the Ali G character, who is dressed in a ridiculous outfit and speaks in an exaggerated manner of a rap artist. Ali G's statements are similarly absurd. For example, prior to the reference to Plaintiff, while "interviewing" the author Gore Vidal, Ali G refers to the Constitution of the United States as having been written on two tablets, clearly intended to confuse the Constitution with the Ten Commandments. Altogether, the program is obviously a spoof of a serious interview program. No reasonable person could think otherwise.

A second and independent ground for negating the defamation and negligence causes of action is that Plaintiff executed a Release Agreement in 2006 which covered any defamatory or negligent conduct alleged

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Plaintiff

Counsel VICTOR DANIELS (X)

JANE DOE

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Counsel THEODORE MONROE (X)

**NATURE OF PROCEEDINGS:**

against Defendant. The terms of that Release are broad, applying to any actions "whether known, or unknown, now or in the future, arising out of or related to the Program."

Plaintiff seeks to evade the broad scope of the Release by pleading that she executed the Release in reliance on a fraudulent promise by Defendant not to include Plaintiff's name when rebroadcasting the Program. One element of fraud is damages. Yet, Plaintiff attests in discovery responses that he damages all flow from a rebroadcast of the Program which Plaintiff knew about before executing the 2006 Release. Accordingly, no other damages flow from any subsequent rebroadcast in Finland or as a result of YouTube rebroadcasting of the Program. Moreover, negligent misrepresentation is actionable only as to past or existing facts, not future events. [Tarmann v. State Farm Mutual Automobile Insurance (1991) 2 CA4th 153, 158].

Plaintiff requests a continuance in order to complete further discovery. The Court denies the request because further discovery would not affect the reasons upon which the Court grants this Motion. The Court's ruling relies on undisputed evidence, namely the content of the Program and the scope of the 2006 Release.

The Motion for Summary Judgment is granted.

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THEODORE MONROE

(X)

**NATURE OF PROCEEDINGS:**

Attorneys who elect to submit on this published tentative ruling, without making an appearance at the hearing, may so notify the Court by communicating this to the Department's staff before the set hearing time. See, e.g., CRC Rule 3.1308.  
 \*\*\*\*\*END OF TENTATIVE\*\*\*\*\*

Matter is called for hearing.

Counsel argue.

The Court adopts the tentative as its order.

The final status conference set on May 20, 2009 and the trial date set on May 26, 2009 are advanced to this date and vacated.

Defense counsel is to prepare the judgment and give notice.