DEPARTMENT 40 LAW AND MOTION RULINGS

Case Number: 21STCV07836 **Hearing Date:** September 14, 2021 **Dept:** 40

MOVING PARTY: 1) Defendants Clifford Harris and Tameka Harris

2) Defendant Shekinah Jones Anderson

Plaintiff Sabrina Peterson, an activist/entrepreneur, alleges that she has been defamed by Defendants Shekinah Jones Anderson, a hairdresser/reality television personality, and Defendants Clifford Harris ("Clifford" or "TI") and Tameka Harris ("Tameka" or "Tiny") (collectively, "the Harrises"), popular rappers/producers. The Complaint alleges:

1) Defamation (Libel Per Se);

2) Defamation (Trade Libel);

3) Invasion of Privacy (False Light);

4) Intentional Interference with Prospective Economic Advantage;

5) Negligent Interference with Prospective Economic Advantage;

6) Intentional Infliction of Emotional Distress;

7) Negligent Infliction of Emotional Distress.

THE HARRISES' SPECIAL MOTION TO STRIKE

Evidentiary Objections

Defendants Harrises Objections

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Declaration of Sabrina Peterson:

No. 1: OVERRULED

No. 2: OVERRULED

No. 3: OVERRULED

No. 4: OVERRULED

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Declaration of Diggs: SUSTAINED

No. 2 (as numbered of a single or sole objection): SUSTAINED

Relevant Facts

The Court notes that Clifford's and Tameka's stage names are TI and Tiny, respectively. Peterson was previously friends with Tameka.

On January 26, 2021, Peterson wrote on Instagram that several years before, Clifford aimed a handgun against her head, threatening "Bitch I'll kill you." This occurred during a dispute she was having with Mr. Harris' assistant. (Complaint, ¶ 11.) After this post, several women wrote Plaintiff, revealing her of their own sexual/abuse experiences against the Harrises: Peterson shared these with her Instagram followers.

Then apparently, in response, on January 26, 2021, Tameka Harris wrote her own Instagram message to directly to Plaintiff:

> "Hold up... So you [Peterson] want your abuser to train your sons? He was just uncle 2 years ago ... now when did you say my husband assaulted you? Did you change your mind or change it back? What's up wit you today Pooh? I'm confused Stop Harassing My Family. You strange. Everybody know you been special (face slicing seminar lady). Please Get help. But LEAVE US ALONE¿¿"
>
> (Complaint, ¶ 16; underscore added.)

This post also included a photograph of Clifford Harris with Ms. Peterson's son.

That same day, (January 29, 2021), Tameka's friend, Defendant Anderson, made an Instagram Live video questioning Plaintiff's motives:

> "if Tiny was paying hoes some attention, she wouldn't be even on tour right now with TI. [Peterson's] looking for fucking attention. She wants Tiny. She has sex with Tiny, she wants Tiny to be her girlfriend. Now listen, this is my thing, he came out and TI pulled a gun on her. How do we change

from- TI is not the victim no more, TI is the victim and Tiny now is the legend? How do we go from there? She got mad at Tamika for taking her motherfucking husband, he got the whole god damn thing.

She has a problem. She ain't talking about how she fucked Tamika too. I said what I said. Why she ain't talking about she done sucked his dick and fucked her in her pussy, why we ain't talking about that? Let's get into it. Ya'll want someone to get into it. I'm trying to figure out why she ain't tell ya'll about how much pussy she ate? Why she didn't tell ya'll about she wanted the women who used to go recruit the bitches for him to fuck?

What's up? Hey? Hey? Now there goes the real shit. Go ask her why she ain't tell you she didn't get fucked and she went to the apartment? Why she didn't tell ya'll if she done had somebody that did too? Why she didn't tell ya'll? She's talking about I'll arrest people around here for, why she ain't tell you she's been fucked. I'm serious because Tamika- I guess Tiny, I don't know, I've never fucked Tiny. I swear to God."

(Complaint, ¶ 18.)

The Harrises published a statement denying Peterson's allegation (also on the same date: January 29):

"Mr. and Mrs. Harris want to be on record and, more importantly, want the public to know they emphatically deny in the strongest way possible the egregiously appalling allegations being made against them by Sabrina Peterson."

(Complaint, ¶ 20.)

Later the same day, Clifford wrote his own Instagram message:

"Women who have been victimized deserve to be heard. Women, black women, in particular, should be supported, protected, defended, and uplifted. However, evil has no gender. People with evil intentions have no gender. A threat comes in all shapes and sizes. I would never treat a woman the same way I would treat a threat. I think that that has to be distinguished....

But I will say this. Whatever we ever have done has been done with consensual adults who into what we into and like what we like. We want something, we know exactly where to go to get it.

We ain't never forced nobody, we ain't never drugged nobody against their will. We ain't never held nobody against their will. We never made nobody do anything. We never trafficked anything. Well, sexually traffic, anything. I ain't ever raped nobody. Never raped nobody….

I also want you to know there's evil at play. I'm talking about evil. I'm talking about evil. There's been a history. We've had a history in dealing with the particular individual in question. We had a history of it, man. Had a history of it." (Complaint, ¶ 22.)

Standard

The anti-SLAPP statute or special motion to strike, allows defendants to challenge against claims arising from the exercise of free speech or petition rights. In ruling on a defendant's special motion to strike, the trial court uses a summary-judgment-like procedure at an early stage of the litigation. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 192.

This is a two-step process. First, the defendant must show that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue." (CCP § 425.16(b)(1).) Second, if the defendant carries that burden, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the claim. (CCP § 425.16(b)(3).)

In making both determinations, the trial court is to consider "the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (CCP § 425.16(b)(2).)

Analysis

Preliminarily, the Court notes an issue between what is alleged in the Complaint and in Peterson's opposition.

In her opposition to the motion, Peterson attributes the statements Anderson made to the Harrises, declaring that on May 2, 2021, about two months after the Complaint was filed, Anderson told her that Tameka was present when Anderson made the statement above and that it was Tameka who was telling her what to say in the video. (Decl. Diggs, ¶ 6, Ex. A.) This information may be true, but this is not alleged in the Complaint and a "review of a special motion to strike pursuant to section 425.16, the Court must take the complaint as it is." Jackson v. Mayweather (2017) 10 Cal.App.5th 1240, 1263. As such, the Court may only consider the Harrises' statements, not Anderson's statement in analyzing the motion. (Peterson's counsel has indicated an intent to file a motion for leave to amend, which will be considered should it be filed.)

First Prong

To satisfy the first prong of the analysis, the defendant's acts underlying the cause of action must themselves have been in furtherance of the right of petition or free speech. City of Cotati v. Cashman (2002) 29 Cal.4th 69, 76-78. The defendant's acts are protected activity – that is, made in furtherance of protected petition or free speech in connection with a public issue – if they fit into one of the categories of section 425.16(e).

The Harrises argue their statements are protected under Code of Civil Procedure §§ 425.16(e)(3) and (e)(4), which protect: "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest" and "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."

There is case law finding that celebrity stories qualify as an issue of public interest. (See Hall v. Time Warner, Inc. (2007) 153 Cal.App.4th 1337, 1347 [finding that suit by Marlon Brando's former housekeeper against a television show that broadcast an interview about her being named in his will was an issue of public interest because of the public's "fascination with Brando and widespread public interest in his personal life"; see also Jackson v. Mayweather (2017) 10 Cal.App.5th 1240, 1254 (finding that suit by the boxer's ex-girlfriend involved a matter of public interest because both parties were "high profile individuals who were subject to extensive media scrutiny" and there is "[a] public issue is implicated if the subject of the statement or activity underlying the claim ... was a person or entity in the public eye."].)

Here, the Harrises are well-known musicians whose albums have reached the top spots of the U.S. Billboard Hot 100 chart (Complaint, ¶¶ 6, 7), each with millions of followers on Instagram. (Complaint, ¶¶ 15, 21.) The accusations here have been reported in Variety, E! News, and The Hollywood Reporter. (RJN Exs. K, L, Q.) Moreover, Peterson is a "limited purpose" public figure because she voluntarily made the abuse accusation against Clifford to her 267,000 Instagram followers. Any reasonable person with her following would know that accusing a well-known celebrity of threatening her with a gun would stir the relevant media group significantly: The controversy involves the entertainment industry and sexual abuse to which public audiences have shown great interest.

And the Harrises' responsive statements were equally of interest to the public

The Court will now consider the second prong of the anti-SLAPP analysis, Peterson's probability of prevailing.

Second Prong

Peterson must respond by showing a probability of prevailing on her claims. "To establish a probability of prevailing, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. For purposes of this inquiry, the trial court considers the pleadings and evidentiary

submissions of both the plaintiff and the defendant; though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291.

Defendant Tameka Harris' statement that Peterson was "strange" and "special" is a non-actionable opinion that cannot be proven or disproven. Peterson also alleges that she feared for her and her son's safety when Anderson revealed her address and Tameka posted a picture of her son. Again, this information contained in the opposition Defendant's motion--not in the Complaint itself. Therefore, the only defamatory statements in contention here are the Harrises comments surrounding the accusation that Peterson was lying about the gun to the head threat.

First Cause of Action, Defamation: DENIED

Truth is a complete defense to a defamation claim. Smith v. Maldonado (1999) 72 Cal.App.4th 637, 646. Because the Harrises were public figures and because Peterson herself is a limited public figure, she must show that the Harrises' statements were made with actual malice, i.e., knowledge that they were false or with reckless disregard of whether they were false or not. Reader's Digest Ass'n v. Superior Court (1984) 37 Cal.3d 244, 256.

Peterson declares that Clifford put a gun to her head. (Decl. Peterson, ¶ 8.) The Harrises respond by citing Peterson's general criminal record, which raise issues of credibility. It is undisputed that Peterson pleaded guilty to providing a false and fraudulent material statement to law enforcement (18 U.S.C. § 1001(a)(2)). (Decl. Brettler, Ex. B.)

The Court finds that Peterson has shown a probability of prevailing on this claim. Peterson has provided sufficient evidence—her testimony—that Clifford put a gun to her head. The Harrises questions about Peterson's credibility is not relevant in this stage of the case. The Court does not weigh the credibility or strength of the evidence. Clifford denies he pulled a gun on Peterson, while she declares the complete opposite: this cannot be disproved as a matter of law.

Second Cause of Action, Trade Libel: GRANTED

The Court finds that Peterson has not shown a probability of prevailing on this claim. Peterson focuses on the allegation that the Harrises libeled her based on Anderson's sexual allegations against her. As previously discussed, the Complaint in its current state does not attribute Anderson's statements to the Harrises. Therefore, Peterson cannot meet her burden. Also, Peterson cannot prevail because trade libel is concerned with false facts about the quality of a business's services or goods to harm the business. Barnes-Hind, Inc. v. Superior Court (1986) 181 Cal.App.3d 377, 381. Peterson argues that she operates Glam U, a company dedicated to helping motivate and coach women interested in entrepreneurship. Therefore, Anderson's sexual allegations have damaged her reputation and cost her over 30% of her business. Indeed, Anderson's

allegations are a general attack on Peterson's character. But they do not attack or defame Peterson's services or Glam U. This is not trade libel scenario.

Third Cause of Action, False Light: DENIED

The parties concede that this claim is derivative of the defamation cause of action. Accordingly, the Court finds that Peterson has shown a probability of prevailing on this claim.

Fourth and Fifth Causes of Actions, Intentional & Negligent Interference

with Prospective Economic Advantage: DENIED

The elements for intentional interfere are (1) the existence between the plaintiff and some third party of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc. (2017) 2 Cal.5th 505, 512. The elements for negligent interference are the same except that it only requires a negligent act instead of an intentionally wrongful act.

The Harrises argue that Peterson uses her criminal history as a part of her "rags to riches" story. (Decl. Brettler, Ex. M.) Therefore, the assault allegation and ensuing controversy have only helped promote her business.

The Court finds that Peterson has provided sufficient evidence showing a probability of prevailing on these claims. As discussed previously, Peterson has shown a probability of prevailing in her defamation claim, which would constitute the wrongful act. The Harrises were purportedly aware of Peterson's women empowerment activism—through entrepreneurism— and Glam U. Here, Peterson's declaration is evidence that she has been damaged as she declares that "she has lost over 30% of my personal clients and clients of Glam U" and that she has "been unable to attract investors to [her] business." (Decl. Peterson, ¶¶ 20, 22.) Peterson has met her burden in this analysis.

Sixth and Seventh Causes of Actions, Intentional & Negligent Infliction

of Emotional Distress: GRANTED

The Court finds that Peterson has not shown a probability of prevailing on these two claims. Negligent infliction of emotional distress is a subspecies of negligence and shares the same elements: duty, breach, causation, and damages. Arista v. County of Riverside (2018) 29 Cal.App.5th 1051, 1063. The Harrises argue that Peterson cannot show that they owed her a duty. Regarding duty, Peterson relies on Anderson's sexual

allegations, which cannot be attributed to the Harrises. Thus, she has not shown she can prevail on her negligent infliction of emotional distress claim.

To prevail on the intentional infliction of emotional distress claim, Peterson must show that the Harrises engaged in "extreme and outrageous conduct," which was "'so extreme as to exceed all bounds of that usually tolerated in a civilized community.'" Hughes v. Pair (2009) 46 Cal.4th 1035, 1050-1051. Again, Peterson alleges that it was outrageous for the Harrises to make up the false sexual allegations they had Anderson say. But the Court is not considering that statement in this motion. Also, Peterson alleges that she was afraid because the Harrises posted her address and a picture of her son. This allegation is not the Complaint, which only alleges that Tameka's January 26 post contained a photo of Peterson's son. (Complaint, ¶ 14.) By itself, using a photo of Peterson's to make a rhetorical point—that Peterson had allowed Clifford near her children despite the alleged abuse—is not extreme and outrageous conduct. There is no evidence that Tameka posted the photo to direct vitriol against Peterson's son, nor has evidence been provided showing that Peterson's son was subject to abuse because of the post. Thus, Peterson has not demonstrated a probability of prevailing on her intentional infliction of emotional distress claim.

CONCLUSION

The Harrises' Special Motion to Strike is GRANTED IN PART as to the Second, Sixth, and Seventh Causes of Action.

ANDERSON'S SPECIAL MOTION TO STRIKE

Timeliness

The Court notes Anderson's motion is timely as it was filed (July 1, 2021) within 60 days of when she was served (June 1, 2021) with a copy of the summons and Complaint. (CCP § 425.16(f).)

First Prong

Anderson argues that her Instagram video—about Peterson having sex with the Harrises—is protected under Code of Civil Procedure §§ 425.16(e)(3) and (e)(4), which protect: "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest" and "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." Anderson contends that her statement was about an issue of public interest because of the context behind it. After Peterson's initial post—about Clifford brandishing a gun—she posted statements purportedly from other women alleging sexual abuse by the Harrises. A widely reported controversy ensued and Anderson questioned Peterson's motive in making the accusations against the Harrises.

The Court finds that Anderson's statement is protected activity. Anderson's Instagram video was made in a public forum because websites accessible to the public are "public forums" for purposes of the anti-SLAPP statute. Barrett v. Rosenthal (2006) 40 Cal.4th 33, 41, at fn. 4. To a certain extent, Peterson is "in the public eye" as she is an Instagram celebrity with a substantial number of followers. Similarly, Clifford and Tameka Harris are famous musicians, and Anderson is a known Instagram influencer and reality television star. Anderson's statement involved conduct—the Harrises' sexual abuse of women and the potential motive behind the accusation—conduct that could affect many people. Sexual abuse is a topic that the public has shown great interest in since "Me Too." Peterson argues that no public issue was involved in her post about the brandishing as she was just recounting her previous trauma. But Peterson, by accusing a well-known celebrity of threatening her, "voluntarily subjected herself to inevitable scrutiny and potential ridicule by the public and the media." Seelig v. Infinity Broadcasting Corp. (2002) 97 Cal.App.4th 798, 808. Peterson further involved herself with the ensuing controversy by sharing statements made by alleged victims of Clifford's sexual conduct. Anderson questioning Peterson's motives was part of the controversy and of interest to the public. Accordingly, the Court will move on to analyzing the second prong of the analysis.

Second Prong

Preliminarily, the Court notes that on May 2, 2021, Anderson made an Instagram video in which she discussed how her friendship with Tameka ended. Apparently, Anderson declared that the last straw was when Tameka, who was in the same room as her, told her what to say in her January 29 Instagram video. (Decl. Diggs, Ex. A.) Anderson said, "this girl [Tameka] don't f-k with you— Sitting here and telling me what to say about a god damn lady [Peterson]." (*Ibid.*)

In her reply, Anderson argues that this Instagram video is hearsay, and the only evidence of its existence is defense counsel's transcription and a news article about it. The Court notes that a YouTube link—containing the statement—provided by defense counsel is no longer available.

First Cause of Action, Defamation: DENIED

Anderson attempts to argue that her statement was mere opinion and hyperbole. Opinions are not actionable as defamation. GetFugu, Inc. v. Patton Boggs LLP (2013) 220 Cal.App.4th 141, 155. Similarly, hyperbole is generally nonactionable. Beilenson v. Superior Court (1996) 44 Cal.App.4th 944, 951-952.

The Court finds that Peterson has shown a probability of prevailing on defamation. Because Peterson is a public figure, she must show clear and convincing evidence that Anderson acted with actual malice. Christian Research Institute v. Alnor (2007) 148 Cal.App.4th 71, 81. Peterson has met that burden. It is one thing for an individual to offer their opinion on a controversy based on their knowledge and experience. It is entirely different for an individual to act as a mouthpiece for someone else's words. Here, Anderson attempted to discredit Peterson through salacious sexual allegation, which she had no basis for. Anderson merely parroted what Tameka told her to say without regard to whether it was true or false.

Second Cause of Action, Trade Libel: GRANTED

As discussed in the other motion, Peterson cannot prevail on this claim because trade libel is about publishing false facts about the quality of a business's services or goods with the intent to harm the business. Barnes-Hind, Inc. v. Superior Court (1986) 181 Cal.App.3d 377, 381. The statements Anderson made in the video were not about the quality of Peterson's services or Glam U.

Third Cause of Action, False Light: DENIED

The parties concede that this claim is derivative of the defamation claim. Accordingly, the Court finds that Peterson has shown a probability of prevailing on this claim.

Fourth and Fifth Causes of Actions, Intentional & Negligent Interference

with Prospective Economic Advantage: DENIED

Anderson argues that Peterson cannot show that her statement was an independently wrongful act or disrupted an economic relationship. Anderson states that instead of losing business, Peterson has likely gained social media attention from her accusation against Mr. Harris.

The Court finds that Peterson has shown a probability of prevailing on her economic advantage claims. Anderson's statement qualifies as defamation, which is an independently wrongful act because it is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." Winchester Mystery House, LLC v. Glob. Asylum, Inc. (2012) 210 Cal.App.4th 579, 596. Anderson was also allegedly aware of Peterson's activities in women's empowerment activism and her Glam U company. There is evidence—Peterson's testimony—that the statements made against her have caused her business to lose 30% of its clients. (Decl. Peterson, ¶ 20.) Peterson may have benefited from the controversy, but for this motion, there is sufficient evidence of harm.

Sixth and Seventh Causes of Actions, Intentional & Negligent Infliction

of Emotional Distress: GRANTED

Intentional emotional distress requires that the defendant's conduct be extreme and outrageous. Hughes v. Pair (2009) 46 Cal.4th 1035, 1050. Anderson argues that her statement was not extreme and outrageous conduct and cites Jackson v. Mayweather (2017) 10 Cal.App.5th 1240, 1252, in which the court found that defendant Floyd Mayweather's statement that his ex-girlfriend had "killed our twin babies" by having an abortion did not constitute outrageous conduct.

Meanwhile, the parties' arguments regarding negligent infliction of emotional are underdeveloped. Anderson merely reiterates that there is no separate negligent infliction of emotional distress tort, and thus, the well-known elements of negligence apply. Arista v. Riverside (2018) 29 Cal.App.5th 1051, 1063. On the other hand, Peterson also does not discuss negligent infliction of emotional distress and merely discusses intentional infliction of emotional distress.

The Court finds that there is a high bar for extreme and outrageous conduct. In Jackson, Mayweather's statement and the "posting of Jackson's sonogram and summary medical report" were insufficient to find extreme and outrageous conduct. (*Jackson, supra*, 10 Cal.App.5th at p. 1265.) Here, Anderson's statement that Peterson had sex with Tameka by itself does not rise to the level of extreme and outrageous conduct.

CONCLUSION

Anderson's Special Motion to Strike is GRANTED IN PART as to the Second, Sixth, and Seventh Causes of Action.