UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-15-09631-MWF-KS **Date: March 30, 2016**
Title: Gerald E. Heller -*v*- NBCUniversal, Inc., et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER RE DEFENDANTS' MOTIONS TO DISMISS AND STRIKE [20] [21]

Before the Court are Defendants' Motion to Dismiss Claims 1-10 of the First Amended Complaint ("Motion to Dismiss") and Motion to Strike Claims 1 through 8 of the First Amended Complaint ("Motion to Strike"), both filed on February 10, 2016. (Docket Nos. 20, 21). Plaintiff submitted Oppositions to both Motions on February 29, 2016, and Defendants' Replies followed on March 16, 2016. (Docket Nos. 26, 27, 28, 29). The Court reviewed and considered the parties' submissions, and held a hearing on **March 28, 2016**.

The Motion to Dismiss is **GRANTED *in part*** and **DENIED *in part***:

- The Motion is **DENIED** insofar as it seeks to dismiss Plaintiff's claims that do not specify each Defendant's role in producing the motion picture "Straight Outta Compton" (the "Film"). Such specificity is unnecessary at this stage of the proceedings because it is at least plausible that each Defendant was responsible for creating the Film's content.

- The Motion is **GRANTED *with leave to amend*** as to Plaintiff's first claim for relief. To state a plausible claim for defamation in these circumstances, Plaintiff must identify the exact statements made in the Film that he believes are defamatory as well as plead that Defendants made those statements with actual malice.

- The Motion is **GRANTED *without leave to amend*** as to Plaintiff's second and third claims for relief because those claims duplicate the defamation claim.

- The Motion is **GRANTED *without leave to amend*** as to Plaintiff's fourth claim for relief. This misappropriation of likeness claim is barred by the First Amendment because the Film concerns matters of public interest.

- The Motion is **GRANTED *with leave to amend*** as to Plaintiff's seventh and eighth claims for relief. These claims for breach of the non-disparaging clause of a settlement agreement reached in an unrelated action are deficient because Plaintiff does not identify the precise disparaging statements made in the Film.

- The Motion is **GRANTED *with leave to amend*** as to Plaintiff's ninth and tenth claims for relief because the alleged oral contract between Plaintiff and Defendants regarding the ownership of certain screenplays is void under the Copyright Act.

The Motion to Strike is **DENIED *in part as moot*** and **GRANTED *in part***. The Court will rule on a renewed Motion to Strike against the Second Amended Complaint, in which Plaintiff will make allegations about the specific defamatory statements and actual malice. However, because Plaintiff has patently failed to make a sufficient showing with respect to his claims for interference with a prospective economic advantage, his fifth and sixth claims for relief must be dismissed.

I. BACKGROUND

The First Amended Complaint ("FAC") makes the following allegations, which the Court must accept as true for the purposes of ruling on the Motion to Dismiss:

Plaintiff is a highly successful business professional in the music industry. (FAC ¶ 22 (Docket No. 18)). In 1986, Plaintiff met Defendants Eric Wright (p.k.a. "Eazy E"), Andre Young (p.k.a. "Dr. Dre"), and O'Shea Jackson (p.k.a. "Ice Cube"), who

subsequently formed a popular musical group known as N.W.A. (*Id.* ¶¶ 23-24). In early 1987, Defendant Eazy E founded an independent record company called Ruthless Records ("Ruthless"), and hired Plaintiff as the manager. (*Id.* ¶ 23). Ruthless then entered into an exclusive recording contract with the members of N.W.A. (*Id.* ¶ 24). Under Plaintiff's management, N.W.A rose to stardom, generating many millions of dollars in revenue to this day. (*Id.* ¶ 26).

In 2001, Plaintiff entered into an oral agreement with Defendants S. Leigh Savidge, Alan Wenkus, and Xenon Pictures to collaborate on a screenplay relating the story of Ruthless and N.W.A. (*Id.* ¶ 27). These Defendants created four draft screenplays, entitled "Straight Outta Compton," to which Plaintiff retained all rights. (*Id.* ¶ 28). Defendants Savidge, Wenkus, and Xenon agreed to be compensated with a portion of proceeds made from any film based on those screenplays. (*Id* ¶ 28). In 2006, Plaintiff also published a book, titled "Ruthless. A Memoir," with similar content as the screenplays. (*Id.* ¶¶ 29-30).

In August 2015, the Film was released throughout the world. (*Id.* ¶ 31). Although the Film is based on Plaintiff's screenplays and book, Plaintiff was never compensated or even asked whether his name and likeness could be utilized. (*Id.* ¶¶ 32, 34). To make matters worse, the Film is "littered with false statements that harm the reputation of Plaintiff and aim to ridicule and lower him in the opinion of the community." (*Id.* ¶ 35). Such statements are not only defamatory, Plaintiff claims, but they also constitute a breach of a settlement agreement reached in an unrelated action between Plaintiff and Defendants Tomica Woods-Wright (Eazy E's widow) and Comptown Records. (*Id.* ¶ 37).

According to Plaintiff, the Film contains the following defamatory content:

- Plaintiff is the "bad guy" who is solely responsible for the demise of N.W.A.;
- Plaintiff is a sleazy manager who took advantage of Defendants Eazy E, Dr. Dre, and Ice Cube by stealing their money;

- Plaintiff steered Defendants Dr. Dre and Ice Cube away from hiring an attorney to review their agreements with Ruthless;
- Plaintiff intentionally withheld a $75,000 check that rightfully belonged to Defendant Ice Cube;
- Plaintiff induced Defendant Dr. Dre to sign an unfavorable contract;
- Plaintiff made sure he was paid more than his fair share to the detriment of N.W.A.;
- Plaintiff paid himself before paying numerous bills and expenses of N.W.A.;
- Plaintiff abandoned Defendant Dr. Dre and another member of N.W.A. after a car accident, but Suge Knight stepped in to take care of them;
- Plaintiff intentionally kept the members of N.W.A. in the dark regarding the group's finances;
- Plaintiff was enjoying "lobster brunches" while Defendants Dr. Dre and Ice Cube were eating "Fatburger";
- Defendant Dr. Dre accused Plaintiff of stealing money and stated that Defendant Ice Cube was "right" about Plaintiff;
- Defendant Ice Cube stated in an interview at his home that the Jewish Defense League should not condone Plaintiff's behavior;
- Defendant Woods-Wright told Defendant Eazy E that Plaintiff took advantage of him, leaving him with 2-3 years of unpaid bills;
- Defendant Eazy E fired Plaintiff after accusing him of illegal activity.

(*Id.* ¶ 36).

The FAC asserts eleven claims for relief against fifteen Defendants, most of whom are alleged to be "credited producers" of the Film. (*Id.* ¶¶ 41-124). Only one claim—that for copyright infringement—is brought under federal law. (*Id.* ¶¶ 118-24). The remaining state-law claims are as follows: (1) defamation; (2) trade libel; (3) false light; (4) misappropriation of likeness; (5) intentional interference with a prospective economic advantage; (6) negligent interference with a prospective economic advantage; (7) breach of settlement agreement; (8) breach of implied covenant of good faith and fair dealing (settlement agreement); (9) breach of oral contract; (10) breach of implied covenant of good faith and fair dealing (oral contract). (*Id.* ¶¶ 41-117).

Defendants seek to dismiss these state law claims under Rule 12(b)(6) and California Code of Civil Procedure section 425.16, better known as the anti-SLAPP statute. The Court analyzes the merits of Defendants' Motions in turn, beginning with the Motion to Dismiss.

II. MOTION TO DISMISS

In ruling on a motion under Federal Rule of Civil Procedure 12(b)(6), the Court follows *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (citation omitted). "All allegations of material fact in the complaint are taken as true and construed in the light most favorable to the plaintiff." *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 937 (9th Cir. 2008) (holding that a plaintiff had plausibly stated that a label referring to a product containing no fruit juice as "fruit juice snacks" may be misleading to a reasonable consumer). The Court need not accept as true, however, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements . . . ." *Iqbal*, 556 U.S. at 678. The Court, based on judicial experience and common-sense, must determine whether a complaint plausibly states a claim for relief. *Id.* at 679.

A. Group Pleading

Defendants challenge Plaintiff's first six claims for relief on the ground of improper "group pleading." (Motion to Dismiss at 6). Those claims, Defendants argue, lump twelve of the fifteen Defendants together without specifying their individual roles in the production of the Film. (*Id.*). Such lumping, in Defendants' view, violates the notice and plausibility requirements of Rule 8 by making it impossible to tell which Defendant did what in creating the Film's allegedly defamatory content. (*Id.*).

The Court is not convinced. Plaintiff alleges that each of the twelve Defendants "was responsible for the publication of the false, unprivileged statements in the Film." (*See, e.g., id.* ¶ 42). Defendants cannot reasonably contend that these allegations leave them in the dark as to the conduct at issue in this action. It is not necessary for Plaintiff to allege precisely how the Film was produced, and in what way each producer contributed to the defamatory statements, in order for Defendants to formulate appropriate defenses and conduct meaningful discovery. Any reasonable reader of the FAC would understand that Plaintiff accuses each Defendant of publishing false, defamatory statements against him. No more is required to provide notice under Rule 8.

Nor is the Court persuaded that Plaintiff's group allegations are implausible. Defendants named in the first six claims for relief are alleged to have participated in "creating, writing, directing, producing, editing and/or distributing" the Film in their roles as "credited producers." (*Id.* ¶¶ 1, 5-6, 8-10, 12-19). While it is doubtful that all credited producers exercised control over the challenged aspects of the Film, the allegations of wrongful conduct are certainly plausible with respect to any given producer chosen at random. Contrary to Defendants' argument at the hearing, nothing in the FAC makes it implausible that Defendant Legendary Pictures, for example, contributed to the content of the Film. If a particular Defendant had nothing to do with the allegedly defamatory statements, he or she or it may bring a prompt motion for summary judgment. Dismissal at this stage, however, is improper.

That the Ninth Circuit has used a heightened pleading standard in cases implicating First Amendment rights does not detract from the Court's conclusion. *See Flowers v. Carville*, 310 F.3d 1118, 1130 (9th Cir. 2002) ("The First Amendment is not irrelevant at the pleading stage. We have held that 'where a plaintiff seeks damages . . . for conduct which is *prima facie* protected by the First Amendment, the danger that the mere pendency of the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required.'") (quoting *Franchise Realty Interstate Corp. v. S.F. Local Joint Executive Bd. of Culinary Workers*, 542 F.2d 1076, 1082–83 (9th Cir. 1976)). As the Court indicated at the hearing, it is simply not possible for Plaintiff to be more specific about the role each Defendant played in producing the Film without discovery. Indeed, if the FAC's allegations were deemed insufficient, any defamation claims against multiple producers of patently defamatory films would have little chance of surviving a motion to dismiss. A pleading burden generating such a result is neither wise nor imposed by current law. All that is necessary for this action to move to discovery is for it to be plausible that each Defendant engaged in wrongful conduct. That requirement is met here.

The district court decisions Defendants cite to the contrary are unpersuasive, let alone binding. In *Harris v. Dillman*, for example, the district court dismissed a defamation claim pleaded against all four defendants, who allegedly "accused [the plaintiff] of having committed crimes, both misdemeanors and felonies, molested female students, padded school attendance figures, embezzled school property and [committed] other offenses." No. 2:08-CV-98-GEB-CMK, 2008 WL 2383939, at *5 (E.D. Cal. June 6, 2008). No plausible allegations, however, indicated that ***each*** of the four defendants disseminated ***each*** of the statements at issue. *Id.* Here, on the other hand, it is plausible that each Defendant contributed to the creation and production of the challenged content of the Film. As discussed at the hearing, this crucial distinction renders Defendants' authority inapposite.

Accordingly, the Motion to Dismiss is **DENIED** insofar as it seeks dismissal of the first six claims for relief on the ground of improper "group pleading."

B. Lack of Specific Defamatory Statements and Actual Malice

1. Allegations of Specific Defamatory Statements

Plaintiff's defamation claim is grounded in allegations of false statements made in the Film. Consistent with the Ninth Circuit's heightened pleading requirements in cases implicating First Amendment rights, "[t]he words constituting libel or slander must be specifically identified, if not pled verbatim." *See Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1314 (N.D. Cal. 1997) (internal quotation marks and citations omitted); *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1216 (C.D. Cal. 2004) ("[T]he defamatory statement must be specifically identified, and the plaintiff must plead the substance of the statement."); *Kechara House Buddhist Ass'n Malaysia v. Does*, No. 15-CV-00332-DMR, 2015 WL 5538999, at *5 (N.D. Cal. Sept. 18, 2015) ("[The] complaint sets forth the statements made on the blogs in unspecific, general terms. . . .These allegations are insufficient as a matter of law, since they are so general that the court can only speculate about the actual words that constitute the alleged defamatory statements."). This obligation ensures that a plaintiff would not base the complaint on his own subjective interpretation of the purportedly defamatory statements when an objectively reasonable interpretation would result in dismissal. *See Thomas v. Los Angeles Times Commc'ns, LLC*, 189 F. Supp. 2d 1005, 1013 (C.D. Cal. 2002) (stating that the plaintiff "must show that the words [Defendant] wrote were reasonably capable of sustaining the alleged defamatory meaning") (alterations and internal quotation marks omitted).

Plaintiff's allegations are deficient in this respect. Most of the "false statements" listed in the FAC constitute Plaintiff's own interpretations of various scenes depicted in the Film. As Defendants correctly point out, Plaintiff must recite the challenged statements or actions of the Film's characters and then explain in what way those statements or actions are defamatory. Only then will the Court be able to evaluate the plausibility of the implications Plaintiff draws from the Film.

Plaintiff does not challenge this conclusion in the Opposition, stating only that his defamation claims concern misstatements of facts. But before the Court can determine whether Plaintiff's interpretation of the Film is plausible, Plaintiff must recite the scenes and dialogue that he believes create false and defamatory implications. The Court views this defect as easily curable through amendment.

2. Allegations of Actual Malice

Plaintiff's defamation and related injurious falsehood claims—however labeled and under whatever legal theory asserted—must comport with the First Amendment. *See Unelko Corp. v. Rooney*, 912 F.2d 1049, 1058 (9th Cir. 1990) (holding that claims sufficiently similar to defamation, such as those for tortious interference with business relationships and product disparagement, "are subject to the same first amendment requirements that govern actions for defamation"). Under the First Amendment, a "public figure" asserting a defamation claim must allege that the defendant made defamatory statements with "actual malice." *See Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 265 (9th Cir. 2013) ("[If] Trump University is a public figure under *New York Times Co. v. Sullivan*[, it] must demonstrate by clear and convincing evidence that Makaeff made her allegedly defamatory statements with 'actual malice'"). One type of "public figure" subject to the actual malice requirement is a "limited purpose public figure," who becomes involved at "'the forefront of particular public controversies in order to influence the resolution of the issues involved.'" *Id.* (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974)). To determine whether a plaintiff is a limited purpose public figure, courts consider whether "(i) a public controversy existed when the statements were made, (ii) whether the alleged defamation is related to the plaintiff's participation in the controversy, and (iii) whether the plaintiff voluntarily injected itself into the controversy for the purpose of influencing the controversy's ultimate resolution." *Id.* at 266.

Defendants argue that all three of these factors point to the conclusion that Plaintiff is a limited purpose public figure. The Court agrees. Plaintiff's own allegations show that his relationship with N.W.A. was the subject of great public

interest that prompted him to write a book recounting his side of the story. (FAC ¶¶ 22-40). The very fact that the members of N.W.A. chose to cast their relationship with Plaintiff in starkly different light shows the existence of a controversy that captured the attention of millions of people throughout the world. By publishing a book on the topic, Plaintiff injected himself into the public arena in an attempt to convince the readers that his version of events is correct. *See Live Oak Publ'g Co. v. Cohagan*, 234 Cal. App. 3d 1277, 1289, 286 Cal. Rptr. 198 (1991) ("Generally, authors are considered to have participated sufficiently in public controversies or otherwise involved themselves in matters of public concern as to be public figures.") (citations and internal quotation marks omitted). Seeing that the alleged defamation relates directly to Plaintiff's central role in this controversy, the Court has no difficulty concluding that he is a limited purpose public figure subject to the actual malice requirement.

As to actual malice, Plaintiff must plead that Defendants created the Film's allegedly defamatory content with knowledge of its falsity or reckless disregard of the truth. *Makaeff*, 715 F.3d at 265 ("Because Trump University is a limited purpose public figure, to prevail on its defamation claim it must establish that Makaeff made her statements with 'actual malice,' i.e., knowledge of their falsity or reckless disregard of their truth."). Plaintiff does not dispute that the FAC fails to make allegations of actual malice but instead argues that he could cure that deficiency in the Second Amended Complaint. (Opposition to Motion to Dismiss at 11-13). The Court will provide Plaintiff an opportunity to do so. *See Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 257, 208 Cal. Rptr. 137 (1984) ("[A]ctual malice can be proved by circumstantial evidence.").

Accordingly, the Motion to Dismiss is **GRANTED *with leave to amend*** as to Plaintiff's first claim for relief.

C. Duplicative Claims

Defendants argue that the second, third, and fifth through eighth claims for relief should be dismissed because they are duplicative of Plaintiff's defamation claim. (Motion to Dismiss at 14). The Court agrees as to Plaintiff's claims for trade libel and false light. These claims are asserted against the same Defendants, are based on the same allegations, and implicate the same evidence as Plaintiff's defamation claim. *See Sarver v. Hurt Locker LLC*, No. 2:10-CV-09034-JHN, 2011 WL 11574477, at *10 (C.D. Cal. Oct. 13, 2011) ("Plaintiff's false light claim and his defamation claims are redundant because they are based on the same publication or utterance."); *Brooks v. Physicians Clinical Lab., Inc.*, No. CIV. S-99-2155WBSDAD, 2000 WL 336546, at *4 (E.D. Cal. Mar. 20, 2000) ("Plaintiff's false light claim is duplicative of his libel claim and should, accordingly, be dismissed."); *Smith v. Santa Rosa Democrat*, No. C 11-02411 SI, 2011 WL 5006463, at *6 (N.D. Cal. Oct. 20, 2011) ("The other claims plaintiff attempts to raise—false light, intrusion on solitude, public disclosure of private facts and civil conspiracy—rest on the same facts as her defamation claim. As such, they are all duplicative and must be dismissed as well.").

But the Court cannot agree that Plaintiff's claims for breach of settlement agreement and interference with a prospective economic advantage are equally redundant. These claims consist of different elements, are based on different allegations, and implicate different types of evidence than the defamation claim.

Accordingly, the Motion to Dismiss is **GRANTED *without leave to amend*** as to Plaintiff's second and third claims for relief. The Motion to Dismiss is **DENIED** as to Plaintiff's fifth through eighth claims for relief, but only insofar as it argues that those claims are duplicative of the defamation claim.

D. Misappropriation of Likeness

Plaintiff brings a "misappropriation of likeness" claim based on the Film's depiction of him without his permission. As all recognize, however, "no cause of action will lie for the publication of matters in the public interest." *Montana v. San*

Jose Mercury News, Inc., 34 Cal. App. 4th 790, 793, 40 Cal. Rptr. 2d 639 (1995) (affirming dismissal of misappropriation of likeness claims under the "public interest" exception). The "public interest" defense to misappropriation of likeness claims is rooted in the First Amendment, which permits film producers to depict matters in the public arena without fear of liability. *See Dora v. Frontline Video, Inc.*, 15 Cal. App. 4th 536, 542, 18 Cal. Rptr. 2d 790 (1993) ("Public interest in the subject matter of [a documentary film chronicling events and public personalities in the early days of surfing] gives rise to a constitutional protection against liability."); *Daly v. Viacom, Inc.*, 238 F. Supp. 2d 1118, 1122 (N.D. Cal. 2002) (dismissing misappropriation of likeness claims because "a defense under the First Amendment is provided where the publication or dissemination of matters is "in the public interest")

As already discussed, the subject matter of the Film involves matters of public interest. The Film concerns a public controversy over Plaintiff's tumultuous relationship with the "hugely successful" N.W.A. (FAC ¶¶ 22-30). Because there is little doubt that N.W.A. has had an immense influence on popular culture both domestically and internationally, the role Plaintiff played in N.W.A.'s rise to stardom is certainly a matter of public interest. The First Amendment, therefore, insulates Defendants of any liability for misappropriation of likeness.

Accordingly, the Motion to Dismiss is **GRANTED *without leave to amend*** as to Plaintiff's fourth claim for relief.

E. Claims for Breach of Settlement Agreement

Plaintiff alleges that Defendants Woods-Wright and Comptown records made "tortious statements" that violated the non-disparagement clause in a settlement agreement they reached with Plaintiff in an unrelated action. (FAC ¶ 94). The non-disparagement clause prohibits these parties from making "any statements, directly or indirectly in writing, orally, or in any other form, which disparage in any way the other." (*Id.*). As is the case with Plaintiff's defamation claim, these claims must be

dismissed because they fail to identify the "statements" Plaintiff interprets to be disparaging or defamatory.

Defendants also contend that the term "disparaging" is unenforceable to its ambiguity, and that the non-disparagement clause was not intended to prohibit First Amendment activity such as film production. (Motion to Dismiss at 21). These arguments, however, are not properly addressed on a motion to dismiss because they will likely implicate extrinsic evidence bearing on the proper interpretation of the settlement agreement.

Accordingly, the Motion to Dismiss is **GRANTED *with leave to amend*** as to Plaintiff's seventh and eight claims for relief insofar as it argues that Plaintiff has not identified specific disparaging statements.

F. Claims for Breach of Oral Contract

Plaintiff claims that Defendants Savidge, Wenkus, and Xenon breached an oral agreement with Plaintiff by selling the screenplays he allegedly owns to a third-party. (FAC ¶ 110).

Defendants argue that the alleged oral agreement is unenforceable under the Copyright Act. "As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection." *Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (citing 17 U.S.C. § 102). The only exception is work made for hire, in which case the copyright vests in "'the employer or other person for whom the work is prepared,' unless there is a written agreement to the contrary." *Id.* (quoting 17 U.S.C. § 201(b)). A "work made for hire" is "'(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, . . . if the parties [so] expressly agree in a written instrument . . . .'" *Id.* (quoting 17 U.S.C. § 101). In all other instances, copyright ownership stays with the author unless it is transferred through a written

agreement. 17 U.S.C. § 204(a). The requirement that every transfer be effected through a written instrument "not only bars copyright infringement actions but also breach of contract claims based on oral agreements." *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772, 774 (9th Cir. 1989).

There is no dispute that Plaintiff did not author the screenplays—Defendants Savidge, Wenkus, and Xenon did. Because no allegations indicate that these Defendants were Plaintiff's employees, the alleged oral contract transferring all rights to the screenplays to Plaintiff is void. Although the Court doubts that Plaintiff can cure this deficiency, it will provide him an opportunity to do so.

The Motion to Dismiss is therefore **GRANTED *with leave to amend*** as to Plaintiff's ninth and tenth claims for relief.

G. Doe Defendants

Finally, Defendants seek to dismiss Doe Defendants 11-100 because Local Rules of this District permit the FAC to include no more than "ten (10) Doe or fictitiously named parties." Local Rule 19-1. Defendants' request is **GRANTED**.

III. MOTION TO STRIKE

Defendants seek to strike Plaintiff's first through eighth claims for relief under California's anti-SLAPP statute, which is codified at Code of Civil Procedure section 425.16. The anti-SLAPP statute "was enacted to allow early dismissal of meritless first amendment cases aimed at chilling expression through costly, time-consuming litigation." *Metabolife Int'l v. Wornick*, 264 F.3d 832, 839 (9th Cir. 2001) (holding that discovery provisions of section 425.16 do not apply in federal court).

The Court notes that the applicability of the anti-SLAPP statute in federal court at all has recently been questioned. *See Makaeff*, 715 F.3d at 274 (Kozinski, C.J., concurring) ("Federal courts have no business applying exotic state procedural rules which, of necessity, disrupt the comprehensive scheme embodied in the Federal Rules,

our jurisdictional statutes and Supreme Court interpretations thereof."). Nonetheless, under existing precedent, Defendants have the right to bring their Motion.

Anti-SLAPP motions are evaluated in two steps:

First, the movant must make a threshold showing that the act or acts giving rise to the claim were in furtherance of the right of petition or free speech, or in connection with a public issue. *See, e.g.*, *Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2010) (applying California's anti-SLAPP law to suit regarding greeting cards using a public figure's likeness).

If the movant is successful, the burden shifts to the nonmovant to show a probability of prevailing on the challenged claim. *Id.* A nonmovant satisfies this burden by making an evidentiary showing that the claim is legally sufficient. *See Navellier v. Sletten*, 29 Cal. 4th 82, 88–89, 124 Cal. Rptr. 2d 530 (2002) ("[I]n order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the [nonmovant] need only have stated and substantiated a legally sufficient claim.") (citation and quotation omitted). "The anti-SLAPP statute requires only a minimum level of legal sufficiency and triability." *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728, 738, 3 Cal. Rptr. 3d 636 (2003) (internal citations and quotation marks omitted).

A. Alleged Conduct Falls within the Scope of anti-SLAPP

The first substantive element of an anti-SLAPP Motion requires the movant to establish that her conduct falls within the scope of the statute. In evaluating this requirement, the anti-SLAPP statute is to be construed broadly. Cal. Code Civ. Proc. § 425.16(a) ("[T]his section shall be construed broadly"). "In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity" that is connected to a "public issue." *Navellier*, 29 Cal. 4th at 89. California courts have identified three types of "public issues": those involving (1) an individual who is "in the public eye"; (2) "conduct that could affect a large number of people beyond the direct participants,"; and (3) "a topic

of widespread, public interest." *Rivero v. Am. Fed'n of State, Cty., & Mun. Employees, AFL-CIO*, 105 Cal. App. 4th 913, 924, 130 Cal. Rptr. 2d 81 (2003).

It cannot be reasonably disputed that Defendants' conduct falls into at least the first and third categories described in *Rivero*:

As the Court already discussed in connection with the Motion to Dismiss, there is little doubt that Plaintiff is an individual "in the public eye." *Rivero*, 105 Cal. App. 4th at 924. It bears repeating that Plaintiff was at the epicenter of the rise and fall of N.W.A., a group so popular that Plaintiff's memoir describes it as the "black Beatles." (Declaration of Vincent H. Chieffo ("Chieffo Decl."), Ex. 2). It is perplexing that Plaintiff would even attempt to argue that he was never in the "public's eye," given that he wrote the memoir to tell the "truth" about his management of N.W.A. and to respond to the public criticism he had received. (*Id.*).

Plaintiff's role in N.W.A., moreover, is patently a topic of public interest. The internal dynamics of the group, and the way in which Plaintiff influenced those dynamics, are of immense significance to the public in light of the impact N.W.A. has had on American popular culture. *See Stewart v. Rolling Stone LLC*, 181 Cal. App. 4th 664, 677, 105 Cal. Rptr. 3d 98 (2010) (holding that a five-page editorial about indie rock concerned topics of public interest simply because it discussed "an extremely popular genre of music [and included] commentary on the many bands whose musical works have contributed to the development of the genre"); *Sarver v. Chartier*, 813 F.3d 891, 902 (9th Cir. 2016) (concluding that a film's portrayal of the Iraq War implicated matters of public concern). The relationship between Plaintiff and members of N.W.A. also raises public issues concerning inter-racial and inter-generational relations depicted in the Film. An older, white man with extensive experience in the music business is contrasted with young, black men who feel underpaid, undervalued, and exploited. Even Plaintiff's memoir acknowledges that his relationship with N.W.A. has been characterized as being "one of plantation master and field slave, oppressor and oppressed, exploiter and victim." (Chieffo Decl., Ex. 2). Those types of issues permeate our society, including the entertainment sector, as shown by the recent #OscarsSoWhite controversy, which itself arose in part because of the Film.

Accordingly, the Court concludes that Plaintiff's public persona places his claims within the scope of the anti-SLAPP statute.

B. Likelihood of Success on the Merits

Under the second prong of the anti-SLAPP test, the burden shifts to Plaintiff to show that the complaint is both legally sufficient and supported by an adequate prima facie showing of facts. *See Wilson v. Parker, Covert & Chidester*, 28 Cal.4th 811, 821, 123 Cal. Rptr. 2d 19 (2002) (discussing the second prong of the anti-SLAPP analysis). "[T]hough 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." *Id.*; Cal. Code Civ. Proc. § 425.16(b)(2); *See also Navellier*, 29 Cal. 4th at 88–89 ("[I]n order to establish the requisite probability of prevailing under (§ 425.16 (b)(1)), the [nonmovant] need only have stated and substantiated a legally sufficient claim.") (citation and internal quotation marks omitted); *see also Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 699, 61 Cal. Rptr. 3d 29 (2007) (stating that the nonmovant's burden in establishing a probability of prevailing is not onerous); *Gallagher v. Connell*, 123 Cal. App. 4th 1260, 1275, 20 Cal. Rptr. 3d 673 (2004) (holding that a nonmovant "need only make a minimal showing" to withstand an anti-SLAPP motion).

1. Defamation Claims

The issue is whether Plaintiff's defamation and related injurious falsehood claims carry a "minimum level of legal sufficiency." *Jarrow Formulas, Inc.*, 31 Cal. 4th at 738. If these claims were already sufficiently pleaded, then the Court ***might*** deny the Motion. Contrary to Defendants' suggestion, most of the implications Plaintiff derives from the Film are grounded in fact, not opinion. It is true, of course, that the Film is a docudrama and not a documentary. And as the Ninth Circuit has explained,

> Docudramas, as their names suggests, often rely heavily upon dramatic interpretations of events and dialogue filled with rhetorical flourishes in order to capture and maintain the interest of their audience. We believe that viewers in this case would be sufficiently familiar with this genre to avoid assuming that all statements within them represent assertions of verifiable facts. To the contrary, most of them are aware by now that parts of such programs are more fiction than fact.

Partington v. Bugliosi, 56 F.3d 1147, 1155 (9th Cir. 1995). Indeed, when an "author writing about a controversial occurrence fairly describes the general events involved and offers his personal perspective about some of its ambiguities and disputed facts, his statements should generally be protected by the First Amendment. Otherwise, there would be no room for expressions of opinion by commentators." *Id.*

But even permitting Defendants some breathing room as to the events portrayed in the Film, the implications the Film seems to make could at least possibly support a meritorious claim for defamation. Plaintiff testifies, for example, that in stark contrast to the Film's alleged implications:

- He did not steal money from Defendants Eazy E, Dr. Dre, and Ice Cube;
- He did not steer Defendants Dr. Dre and Ice Cube away from hiring an attorney to review their contracts;
- He did not withhold a $75,000 check from Defendant Ice Cube;
- He did not induce Defendant Dr. Dre to sign an unfavorable contract;
- He did not overpay himself to the detriment of N.W.A.;
- He did not intentionally keep the members of N.W.A. in the dark regarding finances;

- He did not take advantage of Eazy E by leaving him with 2-3 years of unpaid bills; and

- He was not fired from his position as the manager of Ruthless.

(Declaration of Gerald Heller ¶ 5 (Docket No. 26-1)).

There is no point in ruling on the Motion as to these claims in the absence of allegations of specific defamatory statements and actual malice. The Court will therefore rule on a renewed Motion directed at the Second Amended Complaint.

2. Claims for Interference a With Prospective Economic Advantage

To state a claim for intentional interference with a prospective economic advantage, a plaintiff must satisfy the following elements:

> (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) defendant's knowledge of the relationship; (3) the defendant's intentional acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's acts.

O'Connor v. Uber Techs., Inc., 58 F. Supp. 3d 989, 996 (N.D. Cal. 2014). The elements are the same for negligent interference, except the plaintiff must also allege that the defendant owed her a duty of care, and that the defendant was negligent, rather than intentional, in its conduct. *J'Aire Corp. v. Gregory*, 24 Cal. 3d 799, 805, 157 Cal. Rptr. 407 (1979) (analyzing negligent interference claims).

Even assuming that the Film's portrayal of Plaintiff negatively affected his future job prospects, Plaintiff neither alleges nor presents any evidence showing that (1) some specific relationship with a third-party was harmed due to the Film; (2) Defendant knew of that unidentified relationship; (3) the relationship was actually

harmed. Plaintiff does not address any of Defendants' arguments, in effect abandoning his claims.

The Motion to Strike is therefore **GRANTED** as to Plaintiff's fifth and sixth claims for relief.

IV. CONCLUSION

For the reasons stated above, the Motions are **GRANTED *in part*** and **DENIED *in part***. Plaintiff shall file a Second Amended Complaint on or before **April 25, 2016.** Any amendments in the Second Amended Complaint will be for the sole purpose of correcting the deficiencies identified in this Order. The addition of any new parties or claims must be approved pursuant to Rules 15 and 16.

While there may be a Second Amended Complaint, there will be no Third. Any future successful motion to dismiss will granted without leave to amend.

IT IS SO ORDERED.