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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18 SOUTHERN DIVISION

19 TREVOR BAUER,  
20 Plaintiff,

21 v.

22 LINDSEY C. HILL and NIRANJAN  
FRED THIAGARAJAH,  
23 Defendants.  
24

Case No. 8:22-cv-00868-JVS-ADS  
Assigned for all purposes to the Hon.  
James V. Selna

**PLAINTIFF’S REQUEST FOR ORAL  
ARGUMENT ON DEFENDANT  
NIRANJAN FRED THIAGARAJAH’S  
SPECIAL MOTION TO STRIKE  
PLAINTIFF’S COMPLAINT**

Hearing Date: October 3, 2022  
Hearing Time: 1:30 p.m.  
Department: 10C

Action Filed: April 25, 2022

1 On September 28, 2022, the Court issued a tentative ruling granting  
2 Defendant Niranjan Fred Thiagarajah’s special motion to strike the complaint  
3 pursuant to Cal. Civ. Code § 425.16 (the “anti-SLAPP” statute). ECF No. 32.  
4 Plaintiff Trevor Bauer respectfully requests that the Court permit argument on the  
5 motion prior to entering its final ruling.

6 The Court recognized that “[w]here, as here, an anti-SLAPP motion is  
7 brought on the grounds that the plaintiff’s claim is legally deficient,” the familiar  
8 Rule 12(b)(6) standard governs. Tentative Ruling at 7 (citations omitted). This  
9 requires that the Court “take all well-pleaded allegations as true and dismiss with  
10 leave to amend.” *Id.* (citation omitted).

11 The Court should grant argument because the Tentative Ruling misapplied  
12 the Rule 12(b)(6) standard to Mr. Thiagarajah’s statement that “there’s no doubt  
13 that Mr. Bauer just brutalized [the woman].” The Court recognized that this  
14 assertion is a statement of fact susceptible to being proven true or false; it is not a  
15 statement of opinion. *Id.* at 12. However, the Tentative Ruling erred in concluding  
16 that the only fact to be proven or disproven was whether Mr. Thiagarajah’s  
17 statement mischaracterized the findings of the trial judge after the DVRO trial. On  
18 its face, and in context, Mr. Thiagararah’s statement asserted that Mr. Bauer had *in*  
19 *fact* brutalized Ms. Hill, which itself is a fact subject to proof or disproof, and  
20 which the Complaint alleges to be false. Compl. ¶¶ 146–49, 158, 161. Even if the  
21 Court ultimately holds that Mr. Thiagarajah’s statement was a fair characterization  
22 of Judge Gould-Saltman’s ruling, which Mr. Bauer disagrees with, it is nevertheless  
23 defamatory per se if, as the Complaint alleges, Mr. Bauer did not assault nor  
24 brutalize Ms. Hill.

25 The Complaint pleads that Mr. Thiagarajah’s statement that “there’s no doubt  
26 that Mr. Bauer just brutalized [the woman]” can be understood as a statement of  
27 fact about what *actually* occurred between Mr. Bauer and Ms. Hill, rather than a  
28 characterization of the state court judge’s findings in the DVRO proceeding.

1 Compl. ¶¶ 146–49.<sup>1</sup> The immediate context supports that reading. The DVRO  
2 proceeding occurred in August 2021, but Mr. Thiagarajah made his statements to  
3 *The Washington Post* in February 2022, immediately following the District  
4 Attorney’s declination to prosecute. And the assertion that “there’s no doubt that  
5 Mr. Bauer just brutalized [the woman]” directly follows Mr. Thiagarajah’s  
6 comments about the reasons for the District Attorney’s declination to prosecute in  
7 the article itself. *See* Thiagarajah Mot. Ex. 1 (*The Washington Post* article) (ECF  
8 No. 33-1). In that context, the statement that Mr. Bauer brutalized Ms. Hill would  
9 be understood by the average reader as referring to something Mr. Bauer did, not to  
10 findings in the DVRO proceeding which involved different evidence than the  
11 evidence that the District Attorney would have considered in making a charging  
12 decision. The Complaint, in turn, alleges that Mr. Thiagarajah’s statement is false  
13 because no “brutalization” occurred in the real world. Compl. ¶¶ 146–49, 158, 161.  
14 Under the Rule 12(b)(6) standard, the Court must accept Mr. Bauer’s allegations as  
15 true that no “brutalization” ever occurred. Thus, taking Mr. Bauer’s allegations as  
16 true and construing them in the light most favorable to Mr. Bauer, the Court should  
17 find that Mr. Thiagarajah’s statement that “there’s no doubt that Mr. Bauer just  
18 brutalized [the woman]” is a false statement of fact about whether Mr. Bauer  
19 brutalized Ms. Hill.<sup>2</sup> As such, the Complaint cannot be stricken on the basis in the  
20 Court’s Tentative Ruling.

21 The Court also cannot conclude as a matter of law before discovery that Mr.  
22 Thiagarajah’s statement was true. The Pasadena Police Department recently  
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24 <sup>1</sup> Mr. Bauer makes this point in his opposition to Mr. Thiagarajah’s motion.  
25 Opp. at 15 (ECF No. 40) (stating “[t]he pleaded truth is that Mr. Bauer did not  
26 sexually assault Ms. Hill” and “[t]he gist of his statements is that Mr. Bauer  
sexually assaulted Ms. Hill”).

27 <sup>2</sup> For this reason, the Court’s analysis of the fair reporting privilege is not  
28 applicable to this statement because the statement was not purporting to  
characterize any underlying judicial proceeding.

1 produced a video made by Ms. Hill that was concealed from Mr. Bauer, his  
2 attorneys, and the court in the DVRO proceeding. The video was taken  
3 approximately five hours after the second sexual encounter. It depicts a smiling Ms.  
4 Hill in bed next to a sleeping Mr. Bauer. Ms. Hill has none of the injuries to her  
5 face depicted in the later photos that were the subject of the state court judge's  
6 comments other than a small red mark to her lip.<sup>3</sup> The discovery of this video is  
7 consistent with the Complaint's allegations that Mr. Thiagarajah knew that Ms. Hill  
8 had concealed and deleted material information that disproved her claims. Compl.  
9 ¶ 149. Mr. Thiagarajah represented Ms. Hill not only in the DVRO proceeding, but  
10 also in the Pasadena Police Department's and the District Attorney's respective  
11 investigations, making it likely that Mr. Thiagarajah knew about this specific video  
12 evidence exonerating Mr. Bauer when he told *The Washington Post* reporter that  
13 Mr. Bauer brutalized Ms. Hill. At bottom, discovery is needed on this point. With  
14 the benefit of such discovery, it will be a question of fact for the jury as to whether  
15 Mr. Thiagarajah made his allegedly defamatory statement despite: (i) having  
16 concrete evidence in his possession disproving it; and (ii) actively concealing that  
17 evidence from the state court and from Mr. Bauer.

18 Mr. Bauer would also like the opportunity to be heard on the Court's  
19 statement that "Bauer conspicuously omits a key portion of Thiagarajah's statement  
20 throughout his complaint and in his present briefing." Tentative Ruling at 13–14.  
21 Mr. Bauer had no intention of obfuscating any portions of Mr. Thiagarajah's  
22 statements. Rather, his intention was to focus on the portions of Mr. Thiagarajah's  
23 statements that he believes are false and defamatory.

24 Finally, under Rule 15, leave to amend should be granted freely when justice  
25 so requires. If the Court ultimately strikes Mr. Bauer's claims against Mr.

26 \_\_\_\_\_  
27 <sup>3</sup> The video has been manually filed with the Court in connection with Mr.  
28 Bauer's motion to dismiss Ms. Hill's counterclaims. *See* ECF No. 53 (notice of  
manual filing of the video).

1 Thiagarajah, Mr. Bauer intends to amend his Complaint to include allegations about  
2 the newly-discovered video, as well as to clarify (if the Court finds it necessary for  
3 him to so do) that Mr. Bauer understood Mr. Thiagarajah’s statement that “there’s  
4 no doubt that Mr. Bauer just brutalized [the woman]” to be about whether this  
5 occurred in real life, not about what the state court judge found in the DVRO  
6 proceeding. Mr. Bauer respectfully requests that if the Court strikes his claims  
7 against Mr. Thiagarajah, it does so without prejudice and permits Mr. Bauer to file  
8 an amended pleading.

9 As these aforementioned issues were not addressed in the Court’s Tentative  
10 Ruling, Mr. Bauer requests a hearing on the motion. Mr. Bauer’s attorneys are  
11 available for argument either in-person or via Zoom at the Court’s convenience.  
12

13 Dated: October 4, 2022

/s/ Blair G. Brown  
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28