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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

JONATHAN DEL ARROZ,

Plaintiff,

v.

SAN FRANCISCO SCIENCE FICTION CONVENTIONS, INC. ("SFSFC") aka "WORLDCON76" David W. Gallaher (2019), President; David W. Clark (2020), Vice President; Lisa Detusch Harrigan (2020), Treasurer; Kevin Standlee (2018), Secretary; Sandra Childress (2019); Bruce Farr (2018), Chair; 2018 SMOF Con Committee; Cheryl Morgan (2020); Kevin Roche (2018), Chair; 2018 WorldCon (WorldCon 76) Committee; Cindy Scott (2018); Randy Smith (2019), Chair; New Zealand 2020 WorldCon Agent Committee; Andy Trembley (2020); Jennifer "Radar" Wylie (2019), Chair; CostumeCon 2021 Organizing Committee; Lori Buschhaum; Susie Rodriguez and DOES 1 through 30, inclusive,

Defendants.

CASE NO. 18-CV-334547

PLAINTIFF'S POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

Date May 11, 2021
Time 9:00 a.m.
Dept ~~6~~ 20
Judge Honorable Socrates P.Manoukian

Action Filed: April 16, 2018
Trial Date: June 14, 2021

Table of Contents

I. TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

II. INTRODUCTION

In 2018, Defendant San Francisco Science Fiction Conventions, Inc. ("SFSFC") banned Plaintiff Jonathan Del Arroz ("Del Arroz") from being physically present at the seventy-sixth annual World Science Fiction Convention ("World Con 76"). SFSFC announced on its social media in relevant part that:

> We have taken this step because **he has made it clear that he fully intends to break our code of conduct**. We take that seriously. **Worldcon76 strives to be an inclusive place** in fandom, as difficult as that can be, and **racist and bullying behavior is not acceptable** at our WorldCon. **This expulsion is one step toward eliminating such behavior** and was not taken lightly. (emphasis added.)

Since SFSFC's Code of Conduct defines racial harassment as a serious offense, SFSFC stated to everyone who read its social media that it had banned Del Arroz for planned acts of racial harassment.

This published statement was false. In discovery, SFSFC acknowledges that it banned Del Arroz on the speculation that he might enter the suite of a private party – the Science Fiction Writers of America ("SFWA") - and secretly record in that suite. This speculation had nothing to do with racial harassment. The malice of the statement was compounded by SFSFC's policy encouraging people to record at WorldCon 76 with body cameras, and SFSFC's admitted lack of evidence that Del Arroz intended to enter a private site without permission.

In smearing Del Arroz as a racist bully, SFSFC has subjected Del Arroz to contempt, ridicule, shunning, and injury in his vocation. The evidence of this includes lost book sales at WorldCon 76. The false claim that Del Arroz is a racist harasser forced him to hire a publicist and avoid science fiction conventions in his home region.

SFSFC's response makes light of its libel. It argues that "racism" and "bullying" have no meaning, despite case law applying defamation concepts to those words in concrete situations and notwithstanding its Code of Conduct rule against "racial harassment."

SFSFC also argues that Del Arroz was a "public figure" without showing the extent of his fame or the existence of any public controversy about the subject of its libel.

SFSFC attempts to concoct a defense based on taking statements made by Del Arroz out of context and even though they are not pertinent to SFSFC's defamation.

SFSFC argues that its defamation is protected by the "common interest" privilege. Further, SFSFC ignores the fact it posted the defamation on its social media, which was open for the world

to see, and therefore far beyond the bounds of any "common interest." SFSFC has never shown that the world as a whole had a legally cognizable interest – as opposed to idle or malicious curiosity – in the private membership status of Del Arroz.

Finally, SFSFC ignores the special damages that Del Arroz can show and the fact that it libeled him per se since the defamatory impact of the libel is evident on the face of the announcement.

II STATEMENT OF FACTS

A. JON DEL ARROZ.

Del Arroz began a career in writing around 2010 as the writer of a webcomic. (Plaintiff's Separate Statement of Disputed Material Facts ("DMF") 1.) He produced a novelization of a card game in the fall of 2016. He was asked to speak at two Bay Area science fiction conventions. (DMF 2.) Del Arroz made public his support for candidate Donald Trump's presidential campaign in the summer of 2016. (DMF 3.) He then experienced violent attacks because of his identification as a Trump supporter. (DMF 4.) Within the science fiction community, Del Arroz began to find himself ostracized, vilified, and "canceled" because he supported Trump. (DMF 5.)

Del Arroz released a second science fiction novel and a novella in 2016-1017 as an independent author engaged in self-publishing. (DMF 6.) By self-publishing, Del Arroz released the books directly through Amazon without a publishing house. (DMF 7.) He then self-promoted by engaging readers through his presence on social media, including Twitter, Facebook, and YouTube. (DMF 8.) Thousands of authors use this approach to self-publication, making it difficult for any particular author to get noticed by the general public, much less beyond a small group of readers. (DMF 9.) In his case, Del Arroz wrote for readers of "Steampunk." (DMF 10.) "Steampunk" is a niche market. (DMF 11.)

B. SFSFC/WORLDCON 76.

The "World Science Fiction Convention" ("WorldCon") is an annual event started in 1939 that awards the Hugo award. (UMF 2, 3.) The location of WorldCon is changed annually. (UMF 2, 3.) In 2018, the seventy-sixth annual WorldCon was scheduled to be held in San Jose, California under the authority of SFSFC as the sponsor and was referred to as "WorldCon 76." (UMF 1, 2, 4.) SFSFC sold "memberships," which acted as tickets and allowed purchasers to vote on the Hugo Awards. (UMF 3.)

The person in charge of WorldCon 76 on behalf of SFSFC was Kevin Roche. (DMF 12.) WorldCon 76 had an "Incident Response Team" responsible for dealing with WorldCon's Code of Conduct violations and disputes between convention attendees. (DMF 13.) SFSFC's head of the "Incident Response Team" in 2016-2017 was Lori Buschbaum. (DMF 14.) Buschbaum was also the "ombudsman" of member services with the authority to respond to comments on WorldCon 76's social meda related to member concerns. DMF 15.)

C. SFSFC's WorldCon 76 Social Media Strategy Was To Reach Out Past the Hardcore Science Fiction Community.

Roche's goal was to get more attending members, and, as such, he hoped to reach out past the usual people who attended science fiction conventions. (DMF 16.) For example, Roche promoted WorldCon 76 at drag shows. (DMF 17.) More importantly, Roche made sure that WorldCon 76's web and social presence was part of the project of reaching out beyond the usual group that regularly attended science fiction conventions. (DMF 18.) WorldCon 76's social media included a website and Facebook page. (DMF 19.) The readers of WorldCon 76's social media page included people who had never heard of Del Arroz or who had no concerns about Del Arroz. (DMF 20.)

D. May-August 2017: When Del Arroz Communicated With Roche in 2017 About Going to WorldCon, Roche Was Positive and Encouraging.

On May 16, 2017, Del Arroz emailed Roche to introduce himself. (DMF 21.) Del Arroz offered to organize a group of authors associated with a publisher known as "Castalia House" to give WorldCon 76 more memberships and publicity. (DMF 22.) Roche was concerned because Castalia House was associated with a person named "Vox Day," who sought to bring about the end of WorldCon and the Hugo Awards, which raised a "red flag." (DMF 23.)

Roche's response on June 15, 2017, said nothing about concerns or red flags. (DMF 24.) Instead, he thanked Del Arroz for his patience, told him that Del Arroz's email had been forwarded to the responsible WorldCon 76 officer, and advised that more information would be forthcoming. (DMF 24.)

Del Arroz followed up on July 18, 2017 about lining things to coordinate the other people's attendance. (DMF 25.) Del Arroz expressed his desire for a successful WorldCon. (DMF 25.)

Roche's July 18, 2017 response did not mention concerns or red flags but excused his delay on the grounds of other WorldCon 76 business. (DMF 26.)

On August 21, 2017, Roche sent information to Del Arroz to respond to his original request for information in May 2017. (DMF 27.) Roche did not mention anything about concerns, red flags,

Del Arroz's interactions with others on social media, or any other subject other than responding to Del Arroz's request for information on making WorldCon successful. (DMF 27.)

E. November 2017 – Del Arroz Raises Concerns About Safety But Is Ignored by SFSFC.

On November 2, 2017, Del Arroz emailed Roche to advise that there were possible attendees who had a "serious concern for safety just with the way this year has gone." (DMF 28.) Del Arroz explained that most of the others have bowed out and that he was on the fence. (Id.) Del Arroz further explained that some folks from the Science Fiction Writers Association ("SFWA") had doxed his children on the internet and sent a package to his house. (Id.) The package had a spring-loaded mechanism that caused glitter in the shape of penises to spread everywhere, including places where his small children could see it. (DMF 29.) The glitter bomb told Del Arroz that there were people who knew where he lived and were willing to mess with him at his home. (DMF 30.) Roche knew that Del Arroz had been sent the glitter bomb, which he thought was "horrible." (DMF 31.) Roche could not rule out someone associated with SFWA. (Id.)

Also, 2017 was the first year of the Trump administration, when Trump supporters were being assaulted for wearing MAGA hats. (DMF 31.) Del Arroz had been attacked for wearing a MAGA hat. (DMF 32.) Roche was aware of other assaults on Trump supporters at Trump rally at the same convention center where WorldCon 76 was meeting. (DMF 33.) Del Arroz had also learned of that leftwing science fiction fans had plotted to harass a conservative content creator so that they could get him expelled from a convention. (DMF 34.)

Del Arroz told Roche that science fiction conventions might not be safe for conservative authors, based on Del Arroz's experiences. (DMF 35.)

If this email had come from someone else, such as a transgender activist, Roche would have responded by reaching out to Lori Buschbaum to make the person feel safe. (DMF 36.)[1] However, Roche viewed Del Arroz's concerns as "nonsense" because he had had "spirited discussions" on panels with conservative authors Jerry Pournelle and Larry Niven, who had been winning awards since the 1960s, were public figures in the science fiction field, and were "large and vibrant personalities." (DMF 37.)

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[11] In his deposition, Roche says that there was a "lot of analysis" on where the glitter had come from. (DMF 39.) Roche never asked Del Arroz for his side of the story. (Id.) Roche did not read Del Arroz's Twitter feed. (Id.) He received his information from the posts and comments on File 770, who were opposed to Castalia House authors and would use "extreme" and "intemperate' language" against their opponents. (Id.)

Roche did not ask anyone to investigate Del Arroz's concerns. (DMF 40.) Roche did not respond to Del Arroz's November 2017 email. (DMF 41.)

F. DECEMBER 24, 2017: DEL ARROZ PURCHASES A PARTICIPATING MEMBERSHIP TO WORLDCON 76.

Plaintiff registered for WorldCon 76 on December 24, 2017. (UMF 15, DMF 42.)

G. JANUARY 2, 2017: DEL ARROZ IS BANNED FROM WORLDCON 76 WITHOUT WARNING OR NOTICE BY A PUBLIC ANNOUNCEMENT THAT HE FULLY INTENDED TO BREAK THE CODE OF CONDUCT THROUGH "RACIST AND BULLYING BEHAVIOR."

On January 2, 2018, SFSFC posted the following statement ("the Statement") on its social media websites explaining the decision to convert Plaintiff's membership:

> *Worldcon 76 has chosen to reduce Jonathan Del Arroz's membership from attending to supporting. He will not be allowed to attend the convention in person. Mr. Del Arroz's supporting membership preserves his rights to participate in the Hugo Awards nomination and voting process. He was informed of our decision via email.* ***We have taken this step because he has made it clear that he fully intends to break our code of conduct****. We take that seriously.* ***Worldcon 76 strives to be an inclusive place in fandom, as difficult as that can be, and racist and bullying behavior is not acceptable at our Worldcon****.* ***This expulsion is one step toward eliminating such behavior*** *and was not taken lightly. The senior staff and board are in agreement about the decision and it is final. (UMF 18* (emphasis added.))

In short, SFSFC accused Del Arroz of intended racist bullying behavior at WorldCon 76 based on evidence allegedly in its possession. (DMF 43.)

This announcement came as a surprise to Del Arroz while he was at Disneyland with his family. (DMF 44.) SFSFC never asked Del Arroz about any alleged intent to violate WorldCon 76's Code of Conduct, nor did SFSFC ever warn him that something he planned to do might violate the Code of Conduct. (DMF 45.) SFSFC never explained to Del Arroz what his so-called clear intent to break WorldCon 76's Code of Conduct allegedly involved. (DMF 46.) Neither Roche nor Buschbaum spoke to Del Arroz about the alleged Code of Conduct violation. (DMF 47.)

On January 2, 2018, Del Arroz asked Roche to call him to discuss the issue. (DMF 48.) In that email, Del Arroz provided his phone number to speak directly with each other. (Id.) Roche chose not to respond to Del Arroz. (DMF 49.)

H. THE REASON FOR BANNING DEL ARROZ HAD NOTHING TO DO WITH "RACIST AND BULLYING BEHAVIOR."

Roche decided to ban Del Arroz and publish the announcement that Del Arroz had been banned because of his planned "racist and bullying behavior" in violation of the Code of Conduct.

(DMF 50.) Roche based his decision on "public tweeting of an intention to go to the SFWA suite wearing a body cam to record hijinx, and there was a separate post asking for suggestions in what he could to trigger hijinx." (DMF 51.)[2]

On January 2, 2018, Buschbaum sent an email directly to Del Arroz telling him that he was banned because "on your personal blog you have made it clear that you are both expecting and planning on engendering a hostile environment which we do not allow." (DMF 52.) The email from Buschbaum said nothing about "racism" or "bullying", and although Buschbaum drafted the email with Roche's input, Roche never told Buschbaum that the grounds were supposed to involve "racist bullying." (DMF 53, 54.) Buschbaum's understanding was that Del Arroz was not being expelled for "racist bullying," but because Del Arroz intended to wear a "body cam." (DMF 55.) Before sending the email, Roche had said nothing to Buschbaum about Del Arroz being involved in racist bullying. (DMF 56.) Roche never said anything to Buschbaum about Del Arroz being a racist or a bully, and Buschbaum had no independent reason for believing that Del Arroz was. (DMF 57.)

Del Arroz responded to Buschbaum with an email saying, "What the Hell? This is false 100%" and then he sent a second email saying that he had been "blindsided" and that he apologized for his language and abruptness. (DMF 58.) Del Arroz asked Buschbaum to give him a call, but Buschbaum insisted that their communications be by email so that there would be a record. (DMF 59.) Buschbaum never called Del Arroz. (DMF 60.) Neither Roche nor Buschbaum thought that Del Arroz was racist. (DMF 61.)

I. SFSFC KNEW THAT DEL ARROZ DID NOT INTEND TO VIOLATE THE CODE OF CONDUCT.

SFSFC based its announcement on two suppositions: (a) That Del Arroz was going to wear a bodycam and (b) that he was going to go trespass into the SFWA suite. (DMF 62.)

SFSFC never asked Del Arroz about what he meant about recording with a body cam for anyone who is thinking of hijinx." (DMF 63.) SFSFC did not know if Del Arroz intended to violate the Code of Conduct. (DMF 64.) Del Arroz did not intend to violate the Code of Conduct. (DMF 65.) SFSFC did not advise Del Arroz that it was concerned that he might violate the Code of Conduct. (Id.) SFSFC could have learned from Del Arroz that he intended to carry a cell phone to record anyone who started "hijinks" with him. (DMF 66.) SFSFC knew that Del Arroz was concerned about being attacked, bullied, or provoked at WorldCon76. (DMF 67.)

[2] Del Arroz denies these claims. (Del Arroz Dec., ¶¶16, 43.)

SFSFC had no basis for believing that recording with a body cam infringed on privacy. (DMF 68.) Even though other attendees recorded continuously on recording devices, no one other than Del Arroz was expelled, banned, or had their membership changed. (DMF 69.) SFSFC knew that recording at WorldCon76 was permitted and encouraged by the Code of Conduct. (DMF 70.)

Del Arroz never indicated that he intended to violate the Code of Conduct by wearing a body cam in a private area. (DMF 71.) Roche did not know whether Del Arroz intended to secretly record; that was speculation on his part. (DMF 72.)

Roche did not know if Arroz intended to enter the SFWA without permission. (DMF 73.) There would only have been a violation of the Code of Conduct if Del Arroz entered the SFWA suite without permission. (DMF 74.) SFSFC did not advise Del Arroz that it was concerned that he might violate the Code of Conduct. (DMF 75.) It was not a violation of the Code of Conduct for Del Arroz to go to the SFWA suite. (DMF 76.) At the time, Del Arroz expected to be a member of the SFWA and therefore entitled to enter the SFWA suite as a member. (DMF 77.)

SFSFC's announcement that Del Arroz intended to breach its Code of Conduct was based on speculation. (DFM 78.)

III. STANDARD FOR SUMMARY JUDGMENT

The following rules determine whether a motion for the summary judgment should be granted.

(i) The facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences that can be drawn therefrom are accepted as true. (*Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal. App. 4th 138; *Hersant v. Dep't of Soc. Services* (1997) 57 Cal. App. 4th 997, 1001.)

(ii) The movant has the burden of proving that there are no triable issues of material fact. (See e.g., Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

(iii) Because a motion for summary judgment is disfavored and constitutes an "unusual and drastic remedy," it can only be granted with caution since it will deny the right to trial. (*Carrera v. Maurice J. Sopp & Son* (2009) 177 Cal. App. 4th 366, 377.)[3]

[3] SFSFC argues that pursuant to *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, summary judgment is a favored remedy in defamation cases. However, *Readers Digest* actually said that this point meant that in First Amendment "public figure" cases a higher burden on was imposed with respect to the showing of actual malice. Otherwise, in the abstract, the statement that summary judgment is a favored remedy is meaningless. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 251.)

(iv) Any doubts as to whether the summary judgment should be granted must be resolved against the movant. (*Colores v. Board of Trustees* (2003) 105 Cal. App. 4th 1293, 1305.)

(v) Movant must convince the court that "one or more elements of" the "cause of action" in question "cannot be established," or that "there is a complete defense" thereto. (*Aguilar*, supra, 25 Cal. 4th 826, 850.)

(vi) Respondent does not have to produce any evidence until the movant establishes that there are no triable issues of material fact. (Aguilar, supra, 25 Cal. 4th 826, 850-851.)

(vii) All evidence in favor of the motion must be strictly construed; all inferences must be drawn against the motion. (See *Miles Laboratories, Inc. v. Superior Court* (1982) 133 Cal. App. 3d 587, 594.)

(viii) An absence of a triable issue of material facts cannot be found if any evidence or inference supports the plaintiff's case. (*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 139.)

IV. LEGAL ARGUMENTS.

The elements of a defamation action are: (1) a false and unprivileged statement of fact; (2) published to someone other than the plaintiff; and (3) that injures the plaintiff's reputation or tends to injure the plaintiff in his or her occupation. (Civ. Code §§ 44-46; See e.g., *Jensen v. HewlettPackard Co.* (1993) 14 Cal.App.4th 958, 969.)

A. SUMMARY JUDGMENT IS FAVORED ONLY TO THE EXTENT THAT CLEAR AND CONVINCING EVIDENCE MAY BE REQUIRED TO PROVE ACTUAL MALICE IN A DEFAMATION ACTION BROUGHT BY A PUBLIC FIGURE.

SFSFC declares that summary judgment is a "favored remedy" in defamation cases. This overstates and improperly frames what the California Supreme Court has written in *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 252. In that case, the Court noted that while there was a public interest in resolving First Amendment cases:

> "[t] hat does not mean, however, that a court should grant summary judgment when there is a triable issue of fact as to actual malice. Instead, courts may give effect to these concerns regarding a potential chilling effect by finding no triable issues unless it appears that actual malice may be proved at trial by clear and convincing evidence -- i.e., evidence sufficient to permit a trier of fact to find for the plaintiff and for an appellate court to determine that the resulting judgment 'does not constitute a forbidden intrusion on the field of free expression.' To this extent, therefore, summary judgment remains a 'favored" remedy in defamation cases involving the issue of "actual malice' under the New York Times standard."

(*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 252.)

In other words, summary judgment is "favored" only to the extent that movants meet their burden of showing that there are no triable issues on the issues of "public figure" status and "actual malice." In the abstract, the statement that summary judgment is a favored remedy is meaningless. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 251.)

B. SFSFC's Libelous Statement that Del Arroz was banned because he intended to engage in Racist and Bullying Behavior that Breached WorldCon 76's Code of Conduct is Provably False (and has been admitted as such by SFSFC.)

1. SFSFC's Argument that "Racism" is never used as anything except hyperbolic insult is spurious in the context of SFSFC's announcement and social policy fighting racism.

SFSFC's argument boils down to claiming that its public explanation for banning Del Arroz was mere "hyperbole." However, the statement does not read like hyperbole. On the contrary, SFSFC told the public that it had evidence that Del Arroz planned a specific course of racial harassment for which it was banning him from the convention. Nor was the context of the statement hyperbolic. SFSFC was not posting in a comment thread to score points in an argument. Instead, SFSFC alerts the public that it had evidence that Del Arroz was a racist bully banned to protect WorldCon 76 as "an inclusive place for fandom" from something real that threatened it, namely, racist bullying.

Allegations of racism are not treated as hyperbole when racism is used to explain actual behavior in concrete cases. Racism has been defined as one of the chief threats to America. The Biden White House has announced a number of initiatives to combat racism. (Del Arroz Request for Judicial Notice, Exhibit A, B, and C.) California has enacted laws requiring that employers and public establishments take steps to combat discrimination based on race. (Government Code §12940 et seq., Civil Code §51 et seq.) The legal system deals with issues of racism every day. As observed by the 7th Circuit in *Taylor v. Carmouche* (7th Cir. 2000) 214 F.3d 788, 793-794:

> But whether a given supervisor is a racist, or practices racial discrimination in the workplace, is a mundane issue of fact, litigated every day in federal court. "Felton is a racist" is defamatory, and a person who makes an unsupported defamatory statement may be penalized without offending the First Amendment. Whether that penalty is delivered in a slander action, in a perjury prosecution, in an award of attorneys' fees for making unsubstantiated allegations, or in the workplace by a suspension, is immaterial to the Constitution.

Also, WorldCon 76's Code of Conduct used, and therefore made concrete, the concept of what it was talking about when it linked "racism" and "bullying" to a violation of the Code of Conduct. WorldCon 76's Code of Conduct stated:

> **HARASSMENT AND ASSAULT**
>
> *Harassment* is any behavior that annoys other persons, aggravates them, or makes them feel unsafe. This includes but is not limited to:
>
> - Unwanted or threatening physical conduct,
> - Unwanted or threatening verbal conduct,
> - Following someone in a public area without a legitimate reason, and
> - Threatening physical harm in any way.
>
> Additionally, WorldCon 76 does not tolerate discrimination in any form – including through cosplay – based on but not limited to gender, race, ethnicity, religion, age, sexual orientation, gender identity, or physical/mental health conditions.

(DMF 79; UMF No. 10.)

It is too late in the day for SFSFC to accuse Del Arroz of intending to engage in racist harassment (aka "racist bullying") to expel him and then pretend that the charge of racism has no meaning, that it is a mere bogeyman used only as hyperbole, particularly in SFSFC's public explanation of its decision to ban Del Arroz.[4] (See also *Overhill Farms, Inc. v. Lopez* (2010) 190 Cal.App.4th 1248, 1262 (Accusation of racism is actionable when made to explain behavior in concrete, non-abstract, circumstance.); See also *Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1338 ("This is a rule of reason. Defamation actions cannot be based on snippets taken out of context.").) Given that this was SFSFC's official explanation of its action, SFSFC was not "venting" about abstract racism in America; it was making a factual claim that Del Arroz had threatened to harass someone because of race. (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 389 (Context of communication must be considered to determine if statement is defamatory.)

2. SFSFC Fails to Consider the Defamatory Statement in Context and as a Whole.

One mistake made by SFSFC is its failure to consider the statement in its totality for the gist or sting of the libel. Instead, SFSC divides the announcement into separate segments and then

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[4] In addition, Roche takes racism very seriously as a subject of almost scientific study and is able to discuss intersectionality and whether Del Arroz is a white person or has white privilege. (Roche Dep., p. 79:14-83:5.) Roche differed from Del Arroz with respect to politics and his view of racial intersectionality. (Roche Dep., p. 104:15-25.) Racism, for Roche, is not merely a hyperbolic insult without real content; it is very real in an objective sense.

attempts to parse each element to defeat in detail what readers took in as a complete unit. This approach is improper:

> In reviewing an alleged defamatory meaning, "'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. [Citation.] " '[T]he publication in question must be considered in its entirety; "[i]t may not be divided into segments and each portion treated as a separate unit." [Citation.] It must be read as a whole in order to understand its import and the effect which it was calculated to have on the reader [citations], and construed in the light of the whole scope [of the publication]."
> (*Monterey Plaza Hotel v. Hotel Employees Local 483* (1999) 69 Cal.App.4th 1057, 106; *Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1338.)

Also, "[i]n determining whether statements are of a defamatory nature, and therefore actionable, " 'a court is to place itself in the situation of the hearer or reader, and determine the sense or meaning of the language of the complaint for libelous publication according to its natural and popular construction.' That is to say, the publication is to be measured not so much by its effect when subjected to the critical analysis of a mind trained in the law, but by the natural and probable effect upon the mind of the average reader." (*Morningstar, Inc. v. Superior Court* (1994) 23 Cal.App.4th 676, 688; *Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1338.)

Further, when an allegedly defamatory statement references another publication, that publication has to be considered for the context it provides. (*Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1338.) For example, a headline cannot be read in isolation but must be read in the context of the accompanying news story. (Id.) By discussing only "racism" or "bullying" as "opinion," SFSFC ignores the impact that the statement that Del Arroz's "behavior" was threatening WorlcCon 76 as an "inclusive place" through "racist and bullying behavior" that broke the Code of Conduct. SFSFC tied Del Arroz's alleged "racist and bullying behavior" to a violation of the Code of Conduct, which states that a person can be expelled for threatening physical or verbal conduct based on race. Accordingly, SFSFC made an unequivocal statement that can be falsified by evidence showing that Del Arroz did not intend to engage in such behavior. (DMF 79; UMF No. 10.) This point is made more concrete in that SFSFC has conceded that everyone going to WorldCon 76 knew the Code of Conduct. (UMF 9, 15, 16.)

3. THE GIST OF SFSFC'S STATEMENT IS THAT DEL ARROZ WAS BANNED BECAUSE HE "FULLY INTENDED" TO RACIALLY HARASS BY ACTS OF VERBAL OR PHYSICAL VIOLENCE AT THE WORLDCON 76 WHICH INVOLVES STATEMENTS OF FACT.

Applying these legal principles to SFSFC's statement, the gist of its statement was that (a) Del Arroz was banned because (b) he intended to breach WorldCon 76's Code of Conduct and (c) the specific breach had to do with racist and bullying behavior. These assertions are separately defamatory and they involve factual propositions that can be proven false.

The law no longer recognizes, if it ever did, an absolute dichotomy between non-actionable statements of opinion and actionable statements of fact. (*Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1181 ("[T]here is no wholesale defamation exemption for anything that might be labeled an opinion.").) The statement that "I think Jones is an alcoholic" may be defamatory in that it implies that there is a factual basis for the statement. (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal. App. 4th 375, 387, 10 Cal. Rptr. 3d 429 [stating "I think Jones is an alcoholic" implies speaker knows facts to justify that conclusion, such as Jones goes to a bar every night and drinks multiple martinis].)

In the case at hand, SFSFC's announcement was not an opinion. The announcement stated as a matter of fact that Del Arroz was banned for "racist and bullying conduct" within the Code of Conduct. Such an accusation is clearly injurious to an aspiring science fiction writer smeared as being so racist and dangerous that the preeminent science fiction convention barred him, particularly when the only other person banned by the same convention had been Walter Breen because he had been criminally convicted of pedophilia. (DMF 85.)

The burden of proving the truth of SFSFC's contention is on SFSFC. It is clear from the testimony of Kevin Roche and Lori Buschbaum that they were never concerned with racist harassment; SFSFC just threw that out to falsely cover up its real reasons. Since Del Arroz's expulsion had nothing to do with "racist bullying" aka "racial harassment," the statement was false and there is a triable issue of fact for the jury.

4. SFSFC FALSELY IMPLIED THAT IT HAD EVIDENCE SUPPORTING ITS STATEMENT THAT IT HAD BANNED DEL ARROZ BECAUSE HE ALLEGEDLY INTENDED TO COMMIT RACIAL HARASSMENT AT WORLDCON 76.

A defendant can be held liable under the doctrine of "defamation by implication." (*Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1181.) "If a statement of opinion implies a knowledge of facts which may lead to a defamatory conclusion, the implied facts must themselves be true. Even if the publisher of the opinion states the facts upon which he or she

bases this opinion, if those facts are either incorrect or incomplete, or if the person's assessment of them is erroneous, the statement of opinion may still imply a false assertion of fact." (*Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1181.) As observed in *Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 383-385:

> [s]imply couching such statements in terms of opinion does not dispel these [false, defamatory] implications" (id. at p. 19) because a speaker may still imply "a knowledge of facts which lead to the [defamatory] conclusion" (id. at p. 18). The court explained that expressions of opinion may imply an assertion of objective fact. For example, "[i]f a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact." (Id. at pp. 18–19.) Statements of opinion that imply a false assertion of fact are actionable. (Id. at p. 19.)

(*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 383-385 quoting *Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 21, 110 S.Ct. 2695, 2707, 111 L.Ed.2d 1, 19.)

SFSFC never disclosed the basis of its statement that Del Arroz intended to violate the Code of Conduct by engaging in planned racist harassment. However, discovery established that there was no concern about racial harassment; the purported reason was based on speculation that Del Arroz's statement intended to secretly record after trespassing into the SFWA party room. Even if this speculation were true, it would not not involve racial harassment.

5. California and Other Jurisdictions Recognize That the Accusation of Racism Can be Defamatory When Applied to a Concrete Case.

While SFSFC has cited cases holding that accusations of racism as a general proposition can be qualified as "hyperbole," case law recognizes that accusations of racism in a particular context to explain a person's behavior easily qualify as "defamation." In *Overhill Farms, Inc. v. Lopez* (2010) 190 Cal.App.4th 1248 ("*Overhill*"), several terminated employees publicly protested against their former employer, Overhill Farms, with signs and flyers accusing the employer of firing them for racist reasons, including issuing a press release saying "IMMIGRANT WORKERS PROTEST RACIST FIRINGS BY OVERHILL FARMS." The employer brought an action for defamation against the employees and the employees responded with a SLAPP motion. The SLAPP motion was denied on the grounds that even though the conduct was protected by the SLAPP act, the employer had proven a probability of success with respect to the defamation claim arising from the assertion that it had acted through racist animus. (Accord *Taylor v. Carmouche* (7th Cir. 2000) 214 F.3d 788,

793-794; *Armstrong v. Shirvell* (6th Cir. 2015) 596 F.App'x 433, 442 ("[W]ords like "liar" and "racist" have clear, well-understood meanings, which are capable of being defamatory."); (*La Liberte v. Reid* (2d Cir. 2020) 966 F.3d 79, 92-94 (Applying California law.)

This case falls within the *Overhill* holding. SFSFC accused Del Arroz of "racist harassment" to justify its action in banning him. SFSFC was not proposing an abstract discussion of racism. It accused Del Arroz of being racist in a particular context and as the grounds for its actions. Moreover, SFSFC made it clear that the decision was based on its Code of Conduct, which specifies what counts as "racial harassment." SFSFC is in no position to pretend that its statement was an "abstraction."

C. SFSFC'S DEFAMATORY STATEMENT WAS NOT PRIVILEGED.

SFSFC argues that its defamation was privileged under Civil Code §47(c) as a communication to interested parties. This argument is wrong for two reasons.

First, the communication was made to people who did not know Del Arroz or had no interest in the communication. (DMF 20.) Abusing a privilege by over-publication forfeits the privilege. (*SDV/ACCI, Inc. v. AT&T Corp.* (9th Cir. 2008) 522 F.3d 955, 962 ("The privilege "may be lost if the defendant abuses the privilege by excessive publication or the inclusion of immaterial matter which have no bearing upon the interest sought to be protected . . . ."); *Best Western Int'l, Inc. v. Furber* (D.Ariz. Sep. 5, 2008, No. CV-06-1537-PHX-DGC) 2008 U.S.Dist.LEXIS 70552, at *16-18 (Common interest privilege lost by publication on non-password protected internet site.).) SFSFC excessively published to people with no interest in the issue and it included information which had no bearing on the issue, namely the false grounds that Del Arroz was banned for "racial harassment," rather than the speculation that he might wear a body cam in the SFWA party room if SFWA allowed him to enter of if he was a member. *Brewer v. Second Baptist Church* (1948) 32 Cal. 2d 791, 796-798 "[O]rdinarily the privilege is lost if defendant has no reasonable grounds for believing his statements to be true.").)

Second, SFSFC has failed to show why there was any legally cognizable interest in knowing the false grounds on which Del Arroz was allegedly banned. A "common interest" is not mere general or idle curiosity. (*Hawran v. Hixson* (2012) 209 Cal. App. 4th 256, 287 ("This privilege is recognized where the communicator and the recipient have a common interest and the communication is of a kind reasonably calculated to protect or further that interest.").) SFSFC bears the burden of showing, even if there were some people who had a concern about Del Arroz's attendance, why it was necessary to tell the public that Del Arroz had been banned on the false

ground that it allegedly had information showing that he planned to engage in racial harassment, rather than limiting the communication to the fact that he had been banned.

Nobody other than Roche made the decision to ban Del Arroz. Roche did not consult with the general public through SFSFC's social media about the reasons to ban Del Arroz. There is no reason to believe that anyone had a legally cognizable interest – as opposed to curiosity – in knowing the precise grounds on which SFSFC acted (which turned out to be a lie.)

D. DEL ARROZ WAS NOT A PUBLIC FIGURE.

Two types of public figures must show actual malice to bring defamation claims: (1) "all purpose" public figures, who "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes," and (2) "limited purpose" public figures, who "voluntarily inject" themselves or are "drawn into a particular public controversy and thereby become[] . . . public figure[s] for a limited range of issues." (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 345-351; *Nadel v. Regents of Univ. of Cal.* (1994) 28 Cal.App.4th 1251, 1260.)

1. DEL ARROZ IS NOT A "GENERAL PUBLIC FIGURE."

SFSFC has failed to show that Del Arroz was a "general public figure." Also, whether he was such a figure is a triable issue of fact on the following grounds.

First, Lori Buschbaum, SFSFC's Incident Response Team leader, had never heard of Del Arroz until he was banned, although she was a longtime science fan and in charge of SFSFC's division charged with enforcement of the Code of Conduct. (DMF 82.) If there had been complaints concerning Del Arroz, then she should have been the person to receive them. (DMF 83.)

Second, self-identification and the fact that a "few thousand" people subscribe to Del Arroz's Twitter feed and, presumably, to dozens of others at the same time does not make a person a "general-purpose public figure." The law has been very consistent in characterizing a "general public figure" as "one who is a public personality in all aspects of life." (*Dworkin v. Hustler Magazine*, 867 F.2d 1188, 1197 (9th Cir. 1989); *Isuzu Motors Ltd. v. Consumers Union of United States, Inc.* (C.D.Cal. 1999) 66 F.Supp.2d 1117, 1122.) The United State Supreme Court in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) has defined "public figure" as: "For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. A "general public figure is a well-known 'celebrity,' his name a 'household word.'" *Waldbaum v. Fairchild Publications, Inc.*, 201 U.S. App. D.C. 301, 627 F.2d 1287, 1294 (D.C. Cir. 1980).)

Consistent with this understanding, Trump University, Isuzu Motors, and a large and influential lumber company with substantial expenditures in advertising have been held not to be

"general public figures" despite their notoriety. (*Makaeff v. Trump Univ., LLC* (9th Cir. 2013) 715 F.3d 254, 266; *Resolute Forest Prods. v. Greenpeace Int'l* (N.D.Cal. 2017) 302 F. Supp. 3d 1005, 1016-1017l; *Isuzu Motors Ltd*. supra.) In *Gertz v. Robert Welch* (1974) 418 U.S. 323, 351-352, Gertz was an attorney who was slandered as a Communist after representing a youth in a criminal action. Although Gertz had "long been active in community and professional affairs," had "served as an officer of local civic groups and of various professional organizations," and had "published several books and articles on legal subjects," and was "well known in some circles, he had achieved no general fame or notoriety in the community." Accordingly, the United States Supreme Court held that he was not a "general public figure," and, so, was not required to show actual malice. (See also *Hutchinson v. Proxmire* (1979) 443 U.S. 111, 134 (Plaintiff whose published writing reached a small category was not a general public figure.)

In short, Del Arroz is not a "general public figure" by these standards, either generally or within the science fiction community. SFSFC has not shown that he is a household name. (See *Harris v. Tomczak* (E.D.Cal. 1982) 94 F.R.D. 687, 701 (General public figure definition is to be strictly construed.).) In its opposition, SFSFC offers "undisputed material facts" that provide no context or significance. For example, SFSFC advises that Del Arroz was "number one Amazon best-selling author" without sharing that this was in the small genre of "Steampunk" fiction for one week, in one case, and after he was libeled by SFSFC, which makes this and the other example irrelevant to what it must show. (See Del Arroz's Response to Undisputed Material Facts ("RUMF"), 41-49, 51, 53-55, 57, 59-65, 72-74,

2. DEL ARROZ IS NOT A LIMITED PUBLIC FIGURE.

To be deemed a "limited public figure," the court must conclude that Del Arroz "injected" himself into a "public controversy." (*Harris v. Tomczak* (E.D.Cal. 1982) 94 F.R.D. 687, 703; *Dworkin v. Hustler Magazine, Inc.* (9th Cir. 1989) 867 F.2d 1188, 1197 ("An individual is a public figure not through involvement in mere "controversies of interest to the public," but only through participation in "public controversies" -- i.e., matters of public concern.").)

A "public controversy must be a real dispute, the outcome of which affects the general public or some segment of it." (*Makaeff v. Trump Univ., LLC* (9th Cir. 2013) 715 F.3d 254, 267.) A real dispute must involve a dispute. For example, since there was no "dispute" concerning the desirability of fighting Communism in the 1950s, or fighting organized crime thereafter, people who were linked to such issues have been held as not falling within the definition of "limited public figures." (*Dworkin v. Hustler Magazine, Inc.* (9th Cir. 1989) 867 F.2d 1188, 1197.) Similarly, in the present

case, there was no genuine dispute about the desirability of fighting racial harassment, and SFSFC has not shown that there was.

Correspondingly, SFSFC cannot take a quintessentially private issue, i.e., whether Del Arroz "intended" to comply with SFSFC's Code of Conduct and turn that into a "public controversy." (*Hutchinson v. Proxmire* (1979) 443 U.S. 111, 135; *Time, Inc. v. Firestone* (1976) 424 U.S. 448, 454-455, fn. 3; *Mosesian v. McClatchy Newspapers* (1991) 233 Cal.App.3d 1685, 1702.) Until SFSFC made its announcement that it had banned Del Arroz, there was no public discussion about banning Del Arroz or whether Del Arroz should be allowed to attend World Con 76.

SFSFC has failed to define the so-called "public controversy" and then show how the defamation fell within the scope of that controversy. (*Harris v. Tomczak* (E.D.Cal. 1982) 94 F.R.D. 687, 704.) The only evidence that SFSFC points to in its Separate Statement is a conclusory, self-serving statement by Kevin Roche in his declaration. (Roche Declaration, ¶17; UMF 40.) Roche fails to provide any evidence of public controversy; he offers no newspaper articles, blog threads, blog posts, or the like. On the contrary, the best proof that there was no public controversy surrounding Del Arroz's attendance is Buschbaum's testimony that she had never heard of Del Arroz until Roche's decision to ban him. (DMF 82.) If there had been complaints concerning Del Arroz, then she should have been the person to receive them. (DMF 83.)

E. THERE IS CLEAR AND CONVINCING EVIDENCE OF ACTUAL MALICE.

For First Amendment purposes, "actual malice" requires a showing that the defendant made a false statement "with knowledge that the statement was false or with reckless disregard as to whether or not it was true." (*Hustler Magazine, Inc. v. Falwell* (1988) 485 U.S. 46, 56.) Actual malice may be inferred where a defendant deliberately avoids obtaining information that may undermine the defamation or where there is a failure to investigate contradictory evidence that it knows will likely undermine its statements. (*Harte-Hanks Communications* (1989) 491 U.S. 657, 692.) In *Isuzu Motors Ltd. v. Consumers Union of United States, Inc.* (C.D.Cal. 1999) 66 F.Supp.2d 1117, 1125-1126, the court held that "actual malice" could be inferred from evidence that the defendant had ignored information favorable to the plaintiff in its possession.

There is clear and convincing evidence of actual malice provided by different lines of evidence. (1) SFSFC has admitted that the reason for banning Del Arroz had nothing with what SFSFC libeled Del Arroz with. SFSFC published a statement that Del Arroz had been banned because they had evidence that he intended to violate WorldCon 76's rules by engaging in racial harassment. In fact, though, SFSFC has admitted that the ban had nothing to do with racial

harassment. (2) SFSFC knew that what Del Arroz proposed to do – record at WorldCon 76 and visit the SFWA suite – was allowed by its Code of Conduct. SFSFC had no legitimate reason for claiming that Del Arroz was banned for any violation of its Code of Conduct, as it told the readers of its social media. (3) SFSFC engaged in no investigation of its spurious libel. Despite Del Arroz pleading that SFSFC call him, SFSFC refused to contact him for his side of the story. Given what it knew, SFSFC's failure to investigate creates a triable issue of fact. (*Antonovich v. Superior Court* (1991) 234 Cal.App.3d 1041, 1048–1051 (Actual malice shown where official failed to investigate statement that predecessor destroyed office files; evidence showed he had information about them being left).) (4) Roche and Buschbaum did not consider Del Arroz to be racist (DMF 84), which made the libel malicious. (5) Roche was hostile to Del Arroz because of his association with a publisher named Castalia House and had political differences with Del Arroz. (DMF21, 22, 86.)

In short, there is a triable issue of fact concerning actual malice.

F. SFSFC HAS NOT ESTABLISHED TRUTH AS A DEFENSE.

The gist of SFSFC's libel was that Del Arroz was banned because he intended to violate WorldCon 76's Code of Conduct by racist harassing behavior. SFSFC has failed to present any evidence that (a) this was the reason for banning Del Arroz or (b) he intended to engage in racist harassment at WorldCon 76. Instead, Del Arroz was banned because allegedly he intended to wear a bodycam when he went to the SFWA suite. Under no conceivable circumstances can this conduct be characterized as "racist," and SFSFC has not bothered to connect that conduct and racial harassment.

This explanation is not a defense to Del Arroz's libel suit. It is, in fact, an admission of liability. Even if this explanation was true, which it is not, it does not show the truth of the libel.

Likewise, SFSFC spends a lot of time providing out-of-context statements by Del Arroz. Ironically, statements taken out of context can be defamatory when they are misleading. (*Balla v. Hall* (2021) 59 Cal.App.5th 652, 688.) These out-of-context statement are not germane to the SFSFC's statement that Del Arroz was banned because he intended to violate WorldCon 76's Code of Conduct by engaging in racist harassing behavior. This is obvious from various lines of evidence.

First, SFSFC's collection of out-of-context statements are explained by their context as not being racist, bullying, or harassing.

Second, SFSFC's collection does not contain statements that would support any claim that Del Arroz intended to engage in racist behavior. SFSFC's collection does not provide any evidence of racism, and neither Roche nor Buschbaum believed that Del Arroz was a racist. (DMF 84.)

Third, none of the collection provided by SFSFC supports its contention that Del Arroz was banned because he intended to violate WorldCon 76's Code of Conduct by racist harassing behavior. SFSFC has simply slapped together a slumgullion of some posts that it thinks it can use to poison the will against Del Arroz, but it has not bothered to explain how any of them are germane to its defense.

G. DEL ARROZ HAS PLED DEFAMATION PER SE.

Libel is recognized as either being per se (on its face) or per quod (literally meaning, "whereby"). (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5-6.) If no reasonable reader of a publication could impute to a statement therein a meaning which tended to harm the reputation of the plaintiff in any of the respects enumerated in Civil Code §45, then there is no libel at all. (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal. App. 3d 377, 386.) If a defamatory meaning appears from the language itself without the necessity of explanation or the pleading of extrinsic facts, there is libel per se. (*MacLeod v. Tribune Publishing Co.* (1959) 52 Cal. 2d 536, 549.) If, however, the defamatory meaning would appear only to readers who might be able to recognize it through some knowledge of specific facts and/or circumstances, not discernible from the face of the publication, and which are not matters of common knowledge rationally attributable to all reasonable persons, then the libel cannot be libel per se but will be libel per quod. (*Barnes-Hind, Inc. v. Superior Court*, supra, 181 Cal. App. 3d 377, 387.)

Civil Code §45 provides that "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code § 45.) The definition of libel per se is very broad, included almost any language which, upon its face, had a natural tendency to injure a person's reputation, either generally, or with respect to his occupation. (*Rosenberg v. J. C. Penney Co.* (1939) 30 Cal.App.2d 609, 619; *Washburn v. Wright* (1968) 261 Cal.App.2d 789, 797); *MacLeod v. Tribune Publishing Co.* (1959) 52 Cal.2d 536 (Accusation that person was Communist constituted libel per se.).)

The accusation against Del Arroz that there was evidence that he intended to engage in racist harassment, which might involve racist threats, physical assault, or verbal assault, is the kind that would naturally have subjected him to hatred, ridicule, or contempt, or which would cause him to be shunned or avoided. (Del Arroz Dec., ¶42.) A charge of membership in the Communist Party or Communist affiliation or sympathy is libelous on its face. (*MacLeod v. Tribune Publishing Co.*

(1959) 52 Cal.2d 536, 546.) Racism today occupies the position that Communism occupied in the 1950s; it has been described as the most serious danger America faces today by the President, and efforts to combat racism have been instituted by the executive branch of the federal government. (See Plaintiff's Request for Judicial Notice, Exhibits A, B, C.)

SFSFC seems to be confusing slander with libel. Libel is defamation in writing (Civil Code §45); slander is spoken defamation. (Civil Code §46.) Libel per se allows presumed damages on far broader grounds than allowed in slander cases. (Compare Civil Code §45 with Civil Code §46.)

H. THERE IS A TRIABLE ISSUE OF FACT ON THE ISSUE OF SPECIAL DAMAGES.

If Del Arroz has not pled libel per se, SFSFC's burden is to show that Del Arroz has not suffered "special damages." "Special Damages" are defined as "all damages that plaintiff alleges and proves that he or she has suffered in respect to his or her property, business, trade, profession, or occupation, including the amounts of money the plaintiff alleges and proves he or she has expended as a result of the alleged libel, and no other." (Civil Code §48a(2).) Del Arroz will testify to lost book sales because of the SFSFC's libel and the costs he incurred to counteract SFSFC's libel. (RUMF 77-80.)

V. CONCLUSION

For the reasons advanced above, Del Arroz respectfully requests that the court deny the present motion.

Dated: April 27, 2021

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