

1 ANN A. P. NGUYEN [SBN 178712]
anguyen@messner.com
2 LINDSEY V. PHO [SBN 291881]
lpho@messner.com
3 MESSNER REEVES LLP
160 W. Santa Clara Street, Suite 1000
4 San Jose, California 95113
Telephone: (408) 298-7120
5 Facsimile: (408) 298-0477

6 Attorneys for Defendant
SAN FRANCISCO SCIENCE FICTION
7 CONVENTIONS, INC.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11 JONATHAN DEL ARROZ,
12 Plaintiff,

13 v.

14 SAN FRANCISCO SCIENCE FICTION
CONVENTIONS, INC. (“SFSFC”) aka
“WORLDCON76” David W. Gallaher (2019),
15 President; David W. Clark (2020), Vice
President; Lisa Detusch Harrigan (2020),
16 Treasurer; Kevin Standlee (2018), Secretary;
Sandra Childress (2019); Bruce Farr (2018),
17 Chair; 2018 SMOF Con Committee; Cheryl
Morgan (2020); Kevin Roche (2018), Chair;
18 2018 Worldcon (Worldcon 76) Committee;
Cindy Scott (2018); Randy Smith (2019),
19 Chair; New Zealand 2020 Worldcon Agent
Committee; Andy Trembley (2020); Jennifer
20 “Radar” Wylie (2019), Chair; CostumeCon
2021 Organizing Committee; Lori
21 Buschhaum; Susie Rodriguez and DOES 1
through 30, inclusive.,

22 Defendants.
23

Case No. 18-CV-334547

**DEFENDANT’S SEPARATE
STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

*[Filed Concurrently with Notice of Motion,
Memorandum of Points and Authorities,
Declaration of Kevin Roche, Declaration of
Lindsey Pho, and Request for Judicial Notice,
along with accompanying exhibits]*

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

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

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1 Defendant San Francisco Science Fiction Conventions, Inc. (“SFSFC” or “Defendant”),
 2 pursuant to California Rules of Court rule 3.1350, hereby submits its Separate Statement of
 3 Undisputed Material Facts in support of its contemporaneously filed Motion for Summary
 4 Judgment, as follows:

5 **ISSUE NO. 1**

6 **PLAINTIFF'S DEFAMATION CLAIM FAILS BECAUSE THE STATEMENT DOES NOT**
 7 **CONTAIN A FALSE STATEMENT OF FACT**

<u>Moving Party's Undisputed Material Facts and Supporting Evidence:</u>	<u>Opposing Party's Response and Supporting Evidence:</u>
10 1. SFSFC is a California 501(c)(3) non-profit corporation that organizes science 11 fiction conventions and other functions to promote and develop science fiction and 12 fantasy art and literature. 13 Supporting Evidence: Declaration of Kevin Roche (“Roche Dec.”), ¶3.	1.
14 2. Worldcon, i.e., the World Science Fiction Convention, is the annual conference of the 15 World Science Society. It is the foremost gathering of the world’s science fiction fans, 16 is held at a different location each year, with the local fan community bidding on and then 17 organizing the event. Worldcon is in some ways much like the World’s fair, a weekend- 18 long international gathering of fans, artists, authors, and other creators who share an 19 interest in science fiction and fantasy (in any medium) and meet to socialize, discuss, 20 exhibit and share their works and interests. There are panels, lectures, demonstrations, 21 dramatic productions, dances, an art show and vendors area, a media program and some 22 unique events like the on-stage costume competition called the Masquerade. The first 23 one was held in 1939 in New York City. The one held in San Jose in 2018 was the 76th 24 convention, thereby named WorldCon 76. 25 Supporting Evidence: Roche Dec., ¶4.	2.
26 3. Worldcon is built on a participatory “membership” model rather than a passive 27 audience “ticket” model. Supporting members are entitled to participate (remotely, 28 via mail or online) in the selection of the Hugo	3.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>Awards, and in the site selection processes for future Worldcon locations. Attending members are entitled to come to the conference and participate in-person.</p> <p>Supporting Evidence: Roche Dec., ¶5.</p>	
<p>4. The WorldCon 76 Committee within SFSFC was responsible for all aspects of WorldCon 76, including finding a venue, maintaining a website, selling memberships, scheduling programming, recruiting guests and volunteers, and drafting and enforcing WorldCon 76's code of conduct.</p> <p>Supporting Evidence: Roche Dec., ¶6-7.</p>	4.
<p>5. SFSFC was aware of strife within the science fiction community, specifically relating to the issue of diversity among authors, artists, actors and creators as well as diversity among the characters in their works.</p> <p>Supporting Evidence: Roche Dec., ¶8.</p>	5.
<p>6. There has also been an increased demand by convention attendees that conventions protect them from harassment and that they create inclusive spaces free from hate.</p> <p>Supporting Evidence: Roche Dec., ¶8.</p>	6.
<p>7. These demands affected all aspects of hosting conventions, from the selection of guests, the drafting and enforcement of codes of conduct, and even the presentation of the Hugo Awards.</p> <p>Supporting Evidence: Roche Dec., ¶8.</p>	7.
<p>8. SFSFC wrote its code of conduct in 2016 with certain goals in mind, focusing on the safety of its members, with zero tolerance for the sort of trolling, harassment, and bullying it had witnessed online and at past conventions.</p> <p>Supporting Evidence: Roche Dec., ¶8.</p>	8.
<p>9. WorldCon's Code of Conduct can be found on its website and was posted publicly on WorldCon's website in 2017.</p>	9.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>3 Supporting Evidence: Roche Dec., ¶7; 4 Response to Request for Admissions (“R- 5 RFAs”) No. 1, Exh. F to Declaration of 6 Lindsey Pho (“Pho Dec.”).</p>	
<p>6 10. The Code of Conduct states that 7 "Harassment is any behavior that annoys other 8 persons, aggravates them, or makes them feel 9 unsafe. This includes but is not limited to: 10 unwanted or threatening physical contact, 11 unwanted or threatening verbal contact, 12 following someone in a public area without a 13 legitimate reason, and threatening physical 14 harm in any way." It also states, "WorldCon76 15 does not tolerate discrimination in any form - 16 including through cosplay - based on but not 17 limited to gender, race, ethnicity, religion, age, 18 sexual orientation, gender identity, or 19 physical/mental health conditions. And, "[w]e 20 reserve the right to revoke a membership at 21 our discretion at any time." 22 23 Supporting Evidence: R-RFAs No. 3, 7, 8, 24 Exh. F to Pho Dec.</p>	10.
<p>16 11. From August 16-20, 2018, WorldCon 76 17 took place at the San Jose Convention Center. 18 At final count, WorldCon had a total of 7,812 19 members, including both attending and 20 supporting members. 21 22 Supporting Evidence: Roche Dec., ¶18.</p>	11.
<p>20 12. On December 20, 2017, Plaintiff posted 21 publicly on Twitter “I’m excited to go to their 22 con suite at Worldcon!” and “I will be 23 recording with a bodycam for anyone thinking 24 of hijinx :)” 25 26 Supporting Evidence: RFA No. 39 (Exh. W), 27 attached to Pho Dec., Exh. E; JDA Deposition 28 transcript of J.Del Arroz (“JDA Depo”) 61:16- 62:14; 64:4-65:7, Exh. G to Pho Dec.</p>	12.
<p>26 13. SFSFC interpreted this as Plaintiff’s 27 express intention that he was going to attend 28 the Convention, as well as into a private suite, wearing a small hidden video recording device</p>	13.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>3 to record people without their knowledge or 4 consent.</p>	
<p>5 Supporting Evidence: Roche Dec., ¶14.</p>	
<p>6 14. Plaintiff had knowledge of the Worldcon’s Code of Conduct.</p>	14.
<p>7 Supporting Evidence: RFA No. 2, Exhs E & F to Pho Dec.</p>	
<p>8 15. Plaintiff registered for WorldCon 76 on 9 December 24, 2017.</p>	15.
<p>10 Supporting Evidence: JDA Depo 73:8-19 (Exh 2), attached as Exh. G to Pho Dec.</p>	
<p>11 16. When Plaintiff registered for WorldCon 12 76, he agreed to abide by the rules and policies of the Convention.</p>	16.
<p>13 Supporting Evidence: JDA Depo, 74:7-14, 14 Exh. G to Pho Dec.</p>	
<p>15 17. After much deliberation, SFSFC made the 16 decision to convert Plaintiff’s membership from attending to supporting, so that he would not be allowed to attend the convention.</p>	17.
<p>17 Supporting Evidence: Roche Dec., ¶16.</p>	
<p>18 18. On January 2, 2018, SFSFC posted the 19 following statement (“the Statement”) on its social media websites explaining the decision to convert Plaintiff’s membership:</p> <p>20 <i>Worldcon 76 has chosen to reduce Jonathan</i> 21 <i>Del Arroz’s membership from attending to</i> 22 <i>supporting. He will not be allowed to attend</i> 23 <i>the convention in person. Mr. Del Arroz’s</i> 24 <i>supporting membership preserves his rights to</i> 25 <i>participate in the Hugo Awards nomination</i> 26 <i>and voting process. He was informed of our</i> 27 <i>decision via email. We have taken this step</i> 28 <i>because he has made it clear that he fully</i> <i>intends to break our code of conduct. We take</i> <i>that seriously. Worldcon 76 strives to be an</i> <i>inclusive place in fandom, as difficult as that</i> <i>can be, and racist and bullying behavior is not</i> <i>acceptable at our Worldcon. This expulsion is</i> <i>one step toward eliminating such behavior</i></p>	18.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<i>and was not taken lightly. The senior staff and board are in agreement about the decision and it is final.</i>	
Supporting Evidence: Complaint, Exh A to Pho Dec.	

ISSUE NO. 2

PLAINTIFF’S DEFAMATION CLAIM FAILS BECAUSE THE STATEMENT WAS PRIVILEGED AND PLAINTIFF CANNOT PROVE MALICE

Because part of Defendant’s arguments in support of this issue is based primarily on the Statement and the circumstances surrounding the publication of the Statement, Defendant hereby incorporates by reference all of Facts 1 through 18 set forth above, as if fully set forth herein for this Issue No. 2.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
19. Plaintiff's own tweets posted on Twitter are examples of “post[ing] exciting rhetoric that triggers their side or brings morale to our side.”	19.
Supporting Evidence: RFA2 No. 16 (Exh D), R-RFA2 No. 16, attached as Exhs. E & F to Pho Dec.	
20. Plaintiff believes social media is for "attacking," "defending" and "promotion" [sic].	20.
Supporting Evidence: JDA Depo 104:20-105:20 (Exh 10); RFA2 No. 17 (Exh E), R-RFA2 No. 17, attached as Exhs. E & F to Pho Dec.	
21. In Plaintiff’s own words, "shitposting works as marketing.”	21.
Supporting Evidence: RFA2 No. 18 (Exh F), R-RFA2 No. 18, attached as Exhs. E & F to Pho Dec.	

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>22. Plaintiff's Twitter account was suspended. Twitter claimed it was hate speech.</p> <p>Supporting Evidence: JDA Depo 205:16-19, 207:12-208:2, attached as Exh. G to Pho Dec.; R-RFA2 No. 12, Exh F to Pho Dec.</p>	22.
<p>23. Plaintiff's Facebook account was suspended in 2017.</p> <p>Supporting Evidence: JDA Depo 205:16-19, 22-24, attached as Exh. G to Pho Dec.</p>	23.
<p>24. Plaintiff's YouTube account has been suspended.</p> <p>Supporting Evidence: JDA Depo 205:16-19, attached as Exh. G to Pho Dec.</p>	24.
<p>25. Plaintiff has what he calls a "hate following" where people follow him with the intention of getting "angry over free speech."</p> <p>Supporting Evidence: JDA Depo 124: 2-13, attached as Exh. G to Pho Dec.</p>	25.
<p>26. In response to a blog post Plaintiff wrote in 2017, a science fiction gossip website called 770 published an article about Plaintiff. Cat Rambo, president of the Science Fiction Writers Association ("SFWA"), and other professionals in the industry, commented on File 770. Per Plaintiff, Cat Rambo called Plaintiff's writings "egregious stupidity" which led to some back and forth between Plaintiff and Rambo.</p> <p>Supporting Evidence: JDA Depo 129:17-131:10, attached as Exh. G to Pho Dec.</p>	26.
<p>27. The incident with Cat Rambo led to Plaintiff posting on Twitter a screenshot of an email from Cat Rambo that said "Your e-mails are unwanted and unsolicited. This and any further e-mails will be forwarded to my attorney", along with a tweet from Plaintiff that said "I don't like to air private</p>	27.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>1 communications, but the amount of vitriol</p> <p>2 I've faced because of her is out of control.”</p> <p>3</p> <p>4</p> <p>5 Supporting Evidence: JDA Depo 129:6-19;</p> <p>6 131:2-10 (Exh 17), attached as Exh G to Pho</p> <p>7 Dec.; RFA No. 26 (Exh N), attached as Exhs.</p> <p>8 E & F to Pho Dec.</p>	
<p>7 28. Plaintiff tweeted a meme of a photograph</p> <p>8 from the movie “Mean Girls” with the words</p> <p>9 “Do you hate men? Join SFWA today!” on it,</p> <p>10 and captioned his tweet “New advertising</p> <p>11 campaign for @SFWA under @CatRambo’s</p> <p>12 leadership.”</p> <p>13</p> <p>14 Supporting Evidence: RFA No. 25 (Exh M),</p> <p>15 attached as Exhs. E & F to Pho Dec.</p>	28.
<p>12 29. In 2017, Plaintiff came to SFSFC’s</p> <p>13 attention when he responded poorly to a</p> <p>14 request by another Bay Area science fiction</p> <p>15 convention, Baycon, that he take the year off</p> <p>16 from participating as a panelist at that</p> <p>17 convention.</p> <p>18</p> <p>19 Supporting Evidence: Roche Dec., ¶9.</p>	29.
<p>17 30. Rotating panelists every year is a standard</p> <p>18 request sent to many professionals and part of</p> <p>19 Baycon's policy of promoting new authors and</p> <p>20 professionals in the industry.</p> <p>21</p> <p>22 Supporting Evidence: Roche Dec., ¶9.</p>	30.
<p>21 31. Plaintiff responded to the request by</p> <p>22 harassing the volunteer that sent him the</p> <p>23 email. This was all made public on social</p> <p>24 media.</p> <p>25</p> <p>26 Supporting Evidence: Roche Dec., ¶9.</p>	31.
<p>25 32. Because of this harassment, the 2018</p> <p>26 Worldcon Committee began monitoring</p> <p>27 Plaintiff's online behavior and archiving his</p> <p>28 social media posts.</p> <p>Supporting Evidence: Roche Dec., ¶9.</p>	32.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>33. In monitoring Plaintiff's online behavior, SFSFC became aware of Plaintiff's numerous online and activities regarding other science fiction industry professionals on social media.</p> <p>Supporting Evidence: Roche Dec., ¶10.</p>	33.
<p>34. Plaintiff encouraged his followers to commence an operation and, in his words, "Troll The Shit Out of SJW Sci-Fi Authors On Twitter."</p> <p>Supporting Evidence: Roche Dec., ¶10; R-RFA No. 34 (Exh R), Plaintiff admitting he authored the post, attached as Exh F to Pho Dec.</p>	34.
<p>35. Plaintiff called another member of the science fiction community a "Sperg," which is a derogatory term to refer to someone with Asperger's Syndrome.</p> <p>Supporting Evidence: Roche Dec., ¶10; R-RFA No. 36, Plaintiff admitting he authored the post RFA No. 36 (Exh. T), attached as Exhs E & F to Pho Dec.; See also JDA Depo 162:17-23, attached as Exh G to Pho Dec.</p>	35.
<p>36. In a blog posting he authored, titled "How To Lose A Guy In Any One Of 10 Questions," Plaintiff made statements deeming Black Lives Matter to be "a terrorist group," implying that people who have different gender and sexual orientation are "unhealthy," supporting the deportation of undocumented individuals, and calling for the "forceable conversion to Christianity" of Muslim Americans and non-Muslim people from Islamic countries.</p> <p>Supporting Evidence: Roche Dec., ¶10; R-RFA No. 38, Plaintiff admitting he authored the blog in RFA No. 38 (Exh. V) attached as Exhs E & F to Pho Dec.</p>	36.
<p>37. Plaintiff made derogatory comments about people he considered to be on the "left" and stated that they "just slurp up their Half-Black</p>	37.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>Gay Transgender Spider-Jizz from Disney and take it.”</p> <p>Supporting Evidence: Roche Dec., ¶10; R-RFA No. 41, Plaintiff admitting he authored the post in RFA No. 41 (Exh. Y) attached as Exhs E & F to Pho Dec.</p>	
<p>38. SFSFC received complaints from people in the science fiction community, including members who planned to attend WorldCon 76, who had observed Plaintiff’s behavior and were afraid of confronting such harassing and disruptive conduct at the convention.</p> <p>Supporting Evidence: Roche Dec., ¶11.</p>	38.
<p>39. In light of Plaintiff’s expressed intentions and his past behavior, SFSFC feared that he would come to the convention and would deliberately violate the Code of Conduct, which in turn would require the convention organizers to ask him to leave, thereby giving him what he wanted--an opportunity and platform to create more controversy, disrupt the convention and generate more publicity for himself.</p> <p>Supporting Evidence: Roche Dec., ¶16.</p>	39.
<p>40. Due to the ongoing controversy surrounding harassment in the science fiction community and the significant concerns raised by Plaintiff’s activities, the Committee deemed it necessary to make a statement regarding its decision.</p> <p>Supporting Evidence: Roche Dec., ¶17.</p>	40.

ISSUE NO. 3

PLAINTIFF IS A PUBLIC, OR LIMITED PUBLIC FIGURE AND CANNOT PROVE BY CLEAR AND CONVINCING EVIDENCE DEFENDANT ACTED WITH MALICE, THEREFORE SUMMARY JUDGMENT IS WARRANTED

Because part of Defendant’s arguments in support of this issue is based primarily on the Statement and the circumstances surrounding the publication of the Statement, Defendant hereby

1 incorporates by reference all of Facts 1 through 40 set forth above, as if fully set forth herein for
 2 this Issue No. 3.

<u>Moving Party's Undisputed Material</u> <u>Facts and Supporting Evidence:</u>	<u>Opposing Party's Response and</u> <u>Supporting Evidence:</u>
41. Plaintiff contends that he <u>is not</u> a “nobody.” Supporting Evidence: Exh 23 to JDA Depo 149:5-14, attached as Exh G to Pho Dec.	41.
42. In 2010, Plaintiff ran for U.S. Congress. Supporting Evidence: JDA Depo 146:5-7 (See also Exh 21), Exh G to Pho Dec.	42.
43. Plaintiff is a #1 Amazon Bestselling author. Supporting Evidence: RFA2 No. 15 (Exh. C), admitted in R-RFA2 No. 15, Exhs. E & F to Pho Dec.; JDA Depo: 21:24-22:11, Exh. G to Pho Dec.	43.
44. Plaintiff has been recognized by PJMedia.com as the “leading Hispanic voice in science fiction.” Supporting Evidence: R-RFA2 No. 13, attached as Exh F to Pho Dec.; RFA2 No. 14 (Exh B), attached as Exh E to Pho Dec.; JDA Depo 27:3-12, Exh. G to Pho Dec.	44.
45. Plaintiff was a “winner of the 2018 CLFA Book Of The Year Award.” Supporting Evidence: RFA2 No. 15 (Exh C- Bio), attached as Exhs E & F to Pho Dec.; JDA Depo 32:6-15, Exh. G to Pho Dec.	45.
46. According to Plaintiff, he has been “employed by three major media outlets that have bigger readership bases than any science fiction book period because of how niche the market’s gotten.” Supporting Evidence: JDA Depo 149:5-14 (Exh 23), attached as Exh. G to Pho Dec.	46.
47. In Plaintiff’s own words, he is “a popular journalist and cultural commentator.”	47.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>3 Supporting Evidence: RFA2 No. 15 (Exh C- Bio), attached as Exhs E & F to Pho Dec.;</p> <p>4 JDA Depo 38:9-18, 43:17-24, Exh. G to Pho</p> <p>5 Dec.</p>	
<p>6 48. Plaintiff believes himself to be an expert</p> <p>7 on the subject of “cancel culture,” where</p> <p>8 people generate social media outrage about</p> <p>9 someone in order to try and ruin their lives.</p> <p>10 Supporting Evidence: JDA Depo 44:5-18,</p> <p>11 Exh. G to Pho Dec.</p>	48.
<p>12 49. Plaintiff has been interviewed by the</p> <p>13 Wall Street Journal on the subject of cancel</p> <p>14 culture.</p> <p>15 Supporting Evidence: JDA Depo 44:2-6,</p> <p>16 Exh. G to Pho Dec.</p>	49.
<p>17 50. In April 2017, he published an article for</p> <p>18 The Federalist entitled “Forcing Political</p> <p>19 Correctness on Employees is Killing Marvel</p> <p>20 Comics,” which made him somewhat of a</p> <p>21 cultural authority in the comic industry.</p> <p>22 Supporting Evidence: JDA Depo 28:15-20,</p> <p>23 29:12-16, Exh. G to Pho Dec.</p>	50.
<p>24 51. Since his first article in April 2017,</p> <p>25 Plaintiff has since published over 10 articles</p> <p>26 for The Federalist.</p> <p>27 Supporting Evidence: JDA Depo 31:1-6,</p> <p>28 Exh. G to Pho Dec.</p>	51.
<p>52. In September 2017, Plaintiff was</p> <p>interviewed by PJ Media, in relation to his</p> <p>April 2017 Federalist article. The interview</p> <p>was about industry professionals attempting</p> <p>to harm a conservative comic reviewer,</p> <p>Richard C. Meyer’s, career by banning him</p> <p>from conventions.</p> <p>Supporting Evidence: JDA Depo 30:1-25,</p> <p>Exh. G to Pho Dec.</p>	52.
<p>53. “Comicsgate” began when Plaintiff</p> <p>uncovered screenshots from a Facebook</p> <p>thread of individuals discussing goading Mr.</p> <p>Meyer into throwing a punch at New York</p>	53.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>Comic Con. Plaintiff started #Comicsgate on Twitter, referring to this scandal in the comic book industry.</p> <p>Supporting Evidence: JDA Depo 166:7-17, Exh G to Pho Dec.</p>	
<p>54. Plaintiff's theory is that there is or was a "concerted effort to... harass... conservative-libertarian-leaning authors" who are deemed too controversial.</p> <p>Supporting Evidence: JDA Depo 71:6-17, Exh G to Pho Dec.</p>	54.
<p>55. Plaintiff has been interviewed by PJ Media multiple times. He has been interviewed by media channels "a lot." He solicits media channels to be interviewed.</p> <p>Supporting Evidence: JDA Depo: 28:23-25; 30:14-17; 209:11-16, Exh G to Pho Dec.</p>	55.
<p>56. Plaintiff published his first book in 2016.</p> <p>Supporting Evidence: JDA Depo 51:15-17, Exh G to Pho Dec.</p>	56.
<p>57. Plaintiff has written 16 books.</p> <p>Supporting Evidence: JDA Depo 50:13-14, Exh G to Pho Dec.</p>	57.
<p>58. Plaintiff set up his website www.delarroz.com in 2014, which is used for marketing his books.</p> <p>Supporting Evidence: JDA Depo 19:12-20; 21:13-21, Exh G to Pho Dec.</p>	58.
<p>59. As of 2018, Plaintiff had around 3,000 Twitter followers. As of January 2021, Plaintiff has 5,800.</p> <p>Supporting Evidence: JDA Depo 157:5-14, Exh G to Pho Dec.</p>	59.
<p>60. Plaintiff has a Facebook account. He livestreams from time to time, and he did a Facebook Live the day he went to WorldCon</p>	60.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>76. As of January 13, 2021, Plaintiff had about 3,500 followers on Facebook.</p> <p>Supporting Evidence: JDA Depo 95:18-24; 204:17-19, Exh G to Pho Dec.</p>	
<p>61. Plaintiff has a YouTube channel where he posts videos. As of January 13, 2021, he had 2,077 followers on his YouTube channel.</p> <p>Supporting Evidence: JDA Depo 204:2-5, Exh G to Pho Dec.</p>	61.
<p>62. Plaintiff has a Patreon account, to write short stories or give books and other content to paid subscribers.</p> <p>Supporting Evidence: JDA Depo 201:1-9, Exh G to Pho Dec.</p>	62.
<p>63. Plaintiff has an Indiegogo account, which he set up in 2018.</p> <p>Supporting Evidence: JDA Depo 201:14-18, Exh G to Pho Dec.</p>	63.
<p>64. Plaintiff used to have a Reddit account, up until around 2018.</p> <p>Supporting Evidence: JDA Depo 202:8-17, Exh G to Pho Dec.</p>	64.
<p>65. Plaintiff has a Gab account where he posts regularly.</p> <p>Supporting Evidence: JDA Depo 109:2-6; 110:13-17, Exh G to Pho Dec.</p>	65.
<p>66. Plaintiff has been publishing blog posts on his website daily, since 2016.</p> <p>Supporting Evidence: JDA Depo 38:19-39:2, Exh G to Pho Dec.</p>	66.
<p>67. Plaintiff posts things “redundantly” and tries to “get on every platform that [he] can conceivably find that exists, and then [he] post[s] everything everywhere just for maximum exposure, because at the end of the day, [he’s] trying to use [his social</p>	67.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>media] accounts to garner a following to sell books.”</p> <p>Supporting Evidence: JDA Depo 109:18-23 (See also Exh 11), Exh G to Pho Dec.</p>	
<p>68. Plaintiff posted on Gab: “I post everywhere. Maximizes exposure for everything. If they ban me (which I assume they will)... then that’s just a news story and I win, is how I look at it.</p> <p>Supporting Evidence: JDA Depo 109:24-110:2 (Exh 11), Exh G to Pho Dec.</p>	68.
<p>69. Plaintiff published comic book reviews for a company called Comic Related, from 2015-2017.</p> <p>Supporting Evidence: JDA Depo 36:19-37:6, Exh G to Pho Dec.</p>	69.
<p>70. Plaintiff claims he has received death threats, and was sent an exploding confetti package to his home.</p> <p>Supporting Evidence: JDA Depo 64:10-24, Exh G to Pho Dec.</p>	70.
<p>71. On January 2, 2018, after the Statement was published, Plaintiff and SFSFC exchanged email correspondence. SFSFC informed Plaintiff of its decision to convert his membership.</p> <p>Supporting Evidence: JDA Depo (Exh. 4), attached as Exh G to Pho Dec.</p>	71.
<p>72. Despite being banned, Plaintiff came to the San Jose Convention Center on August 16, 2018 (the first day of the convention) and attempted to gain admittance. He was unable to do so and was asked to leave the Convention Center, which he did. Plaintiff recorded his entire encounter with WorldCon 76 volunteers and posted it on the Internet with commentary.</p> <p>Supporting Evidence: Roche Dec., ¶19;</p>	72.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
JDA Depo 91:17- 92:6, Exh G to Pho Dec.	
73. In the lead-up to WorldCon 76, Plaintiff used SFSFC's decision to ban him from attending the convention and organized a protest to take place outside the Convention Center. Supporting Evidence: Roche Dec., ¶20; JDA Depo 100:7-20, Exh G to Pho Dec.	73.
74. Concerned about violence from the protestors, the San Jose Police Department reached out to SFSFC and opted to have most convention center entrances locked and guards posted during the protest, with additional officers staged to respond quickly in the event of any such escalation. Supporting Evidence: Roche Dec., ¶20	74.
75. On August 18, 2018, the protest organized by Plaintiff took place. Plaintiff did not attend the protest. Supporting Evidence: Roche Dec., ¶20; JDA Depo 100:7-20, Exh G to Pho Dec.	75.

ISSUE NO. 4

THE CASE IS A DEFAMATION PER QUOD CASE, AND PLAINTIFF CANNOT PROVE SPECIAL DAMAGES, THEREFORE SUMMARY JUDGMENT IS WARRANTED

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
76. Plaintiff admits he has not been accused of a crime. Supporting Evidence: JDA Depo 65:19-20, Exh G to Pho Dec.	76.
77. Plaintiff has no evidence that Defendant's conduct caused him to sell less books in 2018. Supporting Evidence: See R-SRogs No. 64, attached as Exh D to Pho Dec.; JDA Depo 177:13-178:6; 179:3-24 (Exh 29), Exh G to	77.

<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
Pho Dec.	
78. Plaintiff has no evidence that his inability to put his book “The Stars Entwined” into any science fiction magazine or blog was because of Defendant. Supporting Evidence: See R-SRogs No. 64, attached as Exh D to Pho Dec.	78.
79. Plaintiff has no evidence that publishers would not work with him because of Defendant. Supporting Evidence: See JDA Depo 169:17-24, Exh G to Pho Dec.	79.
80. Plaintiff claims he was expecting to sell 60-100 books, at about \$16 each, at WorldCon 76, based on his sales at previous conventions, but has no evidence to support his prior sales, or his anticipated sales. Supporting Evidence: See R-SRogs No. 62, attached as Exh D to Pho Dec.; Depo 171:23-172:14; 173:7-11; 175:13-16, Exh G to Pho Dec.	80.
81. Plaintiff’s social media following has increased since 2018. Supporting Evidence: JDA Depo 204:2-205:15, Exh G to Pho Dec.	81.
82. Plaintiff has spoken and written about his banning from WorldCon 76. Supporting Evidence: JDA Depo 97:16-22; 98:19-99:12, Exh G to Pho Dec.	82.
83. Plaintiff has spoken and written about this instant lawsuit. Supporting Evidence: JDA Depo 97:13-20; 99:23, Exh G to Pho Dec.	83.
84. Plaintiff posts on multiple social media sites in order to garner a following to sell books.	84.

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<u>Moving Party's Undisputed Material</u>	<u>Opposing Party's Response and</u>
<u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
Supporting Evidence: JDA Depo 109:18-23, Exh G to Pho Dec.	

ISSUE NO. 5

EVEN IF PLAINTIFF PRESENTS EVIDENCE TO CREATE A TRIABLE ISSUE OF MATERIAL FACT FOR ALL ELEMENTS FOR DEFAMATION, TRUTH IS A COMPLETE DEFENSE

Because part of Defendant’s arguments in support of this issue is based primarily on the Statement and the circumstances surrounding the publication of the Statement, Defendant hereby incorporates by reference all of Facts 3 through 40 and 71 through 75 set forth above, as if fully set forth herein for this Issue No. 5.

Dated: February 19, 2021

MESSNER REEVES LLP

By: _____



ANN A. P. NGUYEN
LINDSEY V. PHO

Attorneys for Defendant
SAN FRANCISCO SCIENCE FICTION
CONVENTIONS, INC.