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KENNETH P. WHITE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAMES WOODS, an individual,

Plaintiff,

v.

JOHN DOE, ET AL.,

Defendants.

Case No. BC589746

Assigned to: Hon. Mel Recana

NON-PARTY KENNETH P. WHITE'S OPPOSITION TO:

(1) MOTION FOR AN ORDER COMPELLING NON-PARTY KENNETH P. WHITE TO ANSWER DEPOSITION QUESTIONS AND PRODUCE DOCUMENTS; AND
(2) MOTION FOR AN ORDER FOR SANCTION AGAINST NON-PARTY KENNETH P. WHITE IN THE AMOUNT OF $9,040.55

Date: December 22, 2016
Time: 8:30 a.m.
Dept.: 45

[Filed Concurrently Herewith: Non-Party's Response to Plaintiff's Separate Statement]

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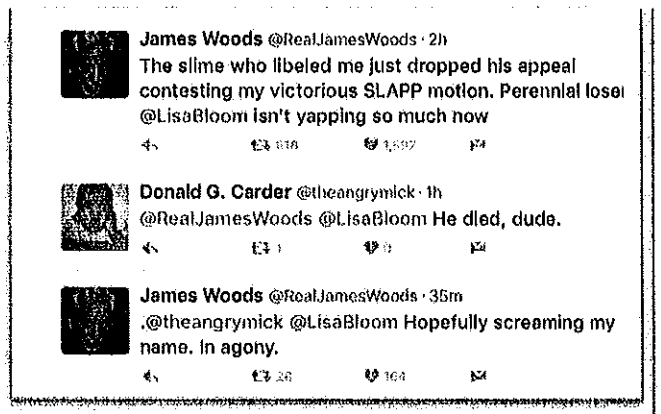
I.

INTRODUCTION

When defendant Abe Doe ("Mr. Woods") died and his personal representative dismissed his appeal of this Court's denial of his anti-SLAPP motion, Plaintiff James Woods gloated and celebrated his death, expressing his hope that Mr. Doe died "screaming [Woods'] name."



Now Mr. Woods seeks to compel Mr. Doe's attorney, non-party Kenneth P. White ("Mr. White"), to disclose Mr. Doe's identity, and to sanction Mr. White almost $10,000 for asserting the attorney-client privilege in response to his questions ("the Motion"). Mr. Woods asserts

that his purpose is legitimate and that he does not seek to harass or abuse Mr. Doe's survivors. But Mr. Woods' own public statements give the lie to that assertion. Mr. Woods wants to do just what he said he wants to do: publicly harass and vilify a dead man and his family.

The Motion is meritless, and is a transparent attempt to abuse the discovery process to exact twisted revenge by harassing Mr. Doe's family. First, contrary to Mr. Woods' arguments, Mr. White expressly premised his refusals to answer questions on one ground – the attorney-client privilege. That assertion was correct. Because the entire purpose of Mr. White's representation of Mr. Doe was to protect Mr. Doe's identity, and because Mr. White only learned Mr. Doe's identity through confidential communications, Mr. Woods cannot force Mr. White to disclose it. Moreover, the record shows that Mr. White forthrightly answered questions when the privilege did not apply or when the privilege had been waived.

Moreover, Mr. Woods' conduct demonstrates that he is engaged in a campaign of harassment rather than discovery. His *very first* action was to subpoena Mr. Doe's attorney; he refused offers to disclose Mr. Doe's identity pursuant to a confidentiality agreement; and he even refused offers to allow a neutral third party to confirm Mr. Doe's death and the amount of his estate (which were the facts he claimed he wanted to confirm). These actions make it clear beyond cavil that Mr. Woods' aim is to abuse the discovery process to learn the identity of Mr. Doe's survivors so he can harass them and encourage his Twitter followers to harass them. It is an unfortunate fact of modern life that online celebrities, including Mr. Woods, can and do wreak havoc on the lives of private individuals by inciting followers to attack them. *See, e.g.,*Jenna Johnson, "This is What Happens When Donald Trump Attacks A Private Citizen on Twitter," *Washington Post*, December 8, 2016 [describing repeated and widespread abuse of private figure attacked by Donald Trump on Twitter].[1]

Mr. Woods' motion is meritless and abuse of the discovery process, and this Court should deny it.

[1] The article may be found at https://www.washingtonpost.com/politics/this-is-what-happens-when-donald-trump-attacks-a-private-citizen-on-twitter/2016/12/08/a1380ece-bd62-11e6-91ee-1adddfe36cbe_story.html?utm_term=.ec9ce1f2c1f2

II.

FACTUAL AND PROCEDURAL HISTORY

This Court is familiar with the background of the case based on past motion practice. Mr. Woods sued Mr. Doe over a "tweet" – that is, a post on social media network Twitter, which allows its users to post 140-character statements to their "followers" and one another. Mr. Woods sought to uncover Mr. Doe's identity.

A. Mr. Doe's Retention of Mr. White To Protect His Identity

Mr. Doe retained non-party attorney Mr. White for the express purpose of protecting his anonymity as the core purpose of the defense, and Mr. White took extraordinary measures to protect that identity, including limiting access to Mr. Doe's file within his own firm. (Declaration of Kenneth P. White ["White Decl."] at ¶¶ 3-4.) Mr. White filed numerous pleadings on Mr. Doe's behalf:

- When Mr. Woods filed an ex parte application for a subpoena to Twitter to uncover Mr. Doe's identity, Mr. White opposed it and the Court denied it.
- When Mr. Woods, in response to Mr. White's anti-SLAPP motion on Mr. Doe's behalf, filed a motion seeking pre-hearing discovery, Mr. White opposed it and this Court denied it.
- Mr. White filed an anti-SLAPP motion on Mr. Doe's behalf seeking to dismiss Mr. Woods' suit. This Court initially issued a tentative ruling granting the motion (Exhibit E) but later issued an order denying the motion (Exhibit F).
- Mr. Doe appealed this Court's denial of his anti-SLAPP motion.

B. Mr. Doe's Death and Mr. White's Work For His Surviving Relative

In August 2016, Mr. White learned from a surviving relative of Mr. Doe that Mr. Doe had died. (White Decl. at ¶ 6.) Mr. Doe's relative, his personal representative, asked Mr. White to continue the representation and once again emphasized that the purpose of the representation was to protect Mr. Doe's identity and the identity of his relatives to defend them from harassment by Mr. Woods. (White Decl. at ¶¶ 6-7.) Mr. Doe's personal representative authorized Mr. White to make several disclosures of information in an effort to settle this

matter. (*Id.*)

Mr. White contacted Mr. Woods' attorneys, informed them that Mr. Doe had died, informed them that Mr. Doe died with very few assets, and offered several approaches to settlement. Mr. White suggested that if Mr. Woods would agree to keep Mr. Doe's identity confidential, he would disclose that identity so that Mr. Woods could confirm that he had died and that he had no significant assets. Alternatively, Mr. White proposed that he disclose Mr. Doe's identity, assets, and proof of death to a mutually acceptable neutral third party, and that the third party could then confirm to Mr. Woods that Mr. Doe was dead and had insignificant assets. *Mr. Woods' attorneys refused both of these proposals*. (White Decl. at ¶¶ 8.)

Mr. White subsequently dismissed Mr. Doe's appeal of this Court's denial of the anti-SLAPP motion.

C. <u>The Subpoena and Deposition</u>

On November 3, 2016, Mr. Woods issued a subpoena to Mr. White seeking documents disclosing Mr. Doe's identity and the identity of his personal representative. (Exhibit B to Woods' Motion.) Mr. White served objections. Those objections stated that Mr. White was declining to produce documents based on the attorney-client privilege, and that the information sought was private and that Woods sought it for the purpose of harassment. (Exhibit C to Woods Motion at 2.)

Mr. Woods subsequently took Mr. White's deposition. A true and correct copy of the entire deposition transcript is attached hereto as Exhibit A. At the deposition, Mr. White refused to disclose the identity of Mr. Doe or his personal representative, and refused to disclose information he had learned only through attorney-client communications. He based his refusal on the attorney-client privilege, as well as preserving objections based on privacy and relevance. (*See, e.g.*, Depo at 7:18-22; 8: 19-23.) Mr. White also answered many questions and made many disclosures. For example:

- When Mr. White did not know or remember the answer to a question, he disclosed that, rather than simply asserting privilege. (Depo. at 15:2-7; 17:16-22; 17:24-7; 19:10-15; 27:18-28:1; 28:10-20; 31:14-20; 38:10-23.)

- Mr. White answered numerous questions when Mr. Doe or Mr. Doe's personal representative had previously waived privilege on that subject matter. Specifically, he acknowledged that the estate would not defend the suit (Depo. at 11:1-10); that Mr. Doe was not married (Depo. at 23:3-16.); that Mr. Doe's Twitter profile was fictitious; that Mr. Doe did not own a house in Los Angeles (Depo. at 27:5-16); that Mr. Doe was not employed at the time the lawsuit was filed (Depo. at 29-3-12); and that Mr. Doe did not work in finance or math and was not a partner in private equity. (Depo. at 5-18.)
- Mr. White answered numerous questions when the privilege did not apply, including confirming that he had never met Mr. Doe in person and had never seen a picture of him (Depo. at 18:9-19:8); that he had talked to Twitter's counsel (Depo. at 19:17-20:20); and that he did not know Mr. Doe prior to the lawsuit (Depo. at 33:18-34:5).

In short, Mr. White did not offer a blanket refusal to answer, but tailored his answers to the details of each particular question.

D. <u>Mr. Woods' Conduct and the Basis For Mr. White's Harassment Concerns</u>

Mr. Doe and his personal representative instructed Mr. White to defend their identity as the core goal of this litigation, expressing concern that Mr. Woods would use his more than 450,000 Twitter followers to harass and abuse them if his identity were revealed. That concern is well-founded.

Mr. Doe demonstrated in his anti-SLAPP motion that Mr. Woods is an enthusiastic Twitter user who relishes insulting people who annoy him. (Anti-SLAPP Motion at 3-4.) When he disagrees with people he calls them "scum" and "clown"; he asserts that he could "shoot this guy in the head and sleep like a baby" based on an opponent's t-shirt; he accuses the publisher of *Rolling Stone* of being a "disgusting piece of shit" who masturbates to fantasies about terrorists; and he calls utter strangers "disgusting, reprehensible liar[s]." (Anti-SLAPP Motion at 3-5, Exhibits E-1 to E-10 to Anti-SLAPP Motion.)

Mr. Woods continued that conduct after Mr. Doe's death. When Mr. Doe's appeal was dismissed he published a celebratory tweet; when Twitter users pointed out that the appeal was

dismissed because Mr. Doe died, Mr. Woods celebrated and gloated over that death, saying he hoped that Doe died "screaming [Woods'] name" "in agony" and that he would follow people "to the bowels of Hell." (Exhibits B and C to White Decl.) He also posted a tweet ridiculing both Mr. White (through his Twitter handle @popehat) and Mr. Doe's additional attorney Lisa Bloom. (Exhibit D to White Decl.)

Concerned about such conduct, Mr. White asked Mr. Woods' attorneys to stipulate that the videotaped deposition of Mr. White would be used only in this case and not publicly disclosed, fearing that Mr. Woods would use the videotape to incite harassment and attacks. (Depo. at 45:4-15.) *Incredibly, Mr. Woods' attorneys refused*, insisting on maintaining Mr. Woods' right to make public use of the deposition. (Depo. at 45:1-3, 46:1-2.)

Mr. White has observed that Mr. Woods' followers celebrate and congratulate his abuse of people he criticizes and denounces, particularly when those denunciations are expressed along political lines. He has observed many instances of Mr. Woods' Twitter followers expressing hostility and insults towards Mr. Doe. (White Decl. at ¶ 14.) This is of grave concern, especially in light of the trend of Twitter users harassing and abusing private individuals "called out" on Twitter by public figures. (*See* footnote 1, *supra.*)

III.

ARGUMENT

A. The Information Sought Is Protected By The Attorney-Client Privilege, And Mr. White Is Legally and Ethically Obligated To Assert It

Mr. Woods seeks to compel and sanction Mr. White for withholding Mr. Doe's identity. But Mr. White's stance is not a whim or a tactic; it is legally and ethically obligatory. An attorney has an ***affirmative legal and ethical obligation*** to assert the attorney-client privilege when asked to disclose attorney-client communications. Evidence Code § 955 provides:

> The lawyer who received or made a communication subject to the privilege under this article ***shall claim the privilege*** whenever he is present when the communication is sought to be disclosed . . . (Evid. Code § 955, emphasis added; *see also* California Rule of Professional Conduct 3-100.)

"Although the privilege belongs only to the client, the attorney's professional obligation requires him to invoke it on his client's behalf, absent other instructions; and he is entitled to assert such privilege in the course of a discovery motion during litigation to which his clients are not parties and in which they have no interest." (*Willis v. Superior Court* (1980) 112 Cal.App.3d 277, 290-91.) Because the attorney-client privilege survives after a client's death (*see, e.g., Swidler & Berlin v. United States.* (1998) 524 U.S. 399, 406-7; Evid. Code § 953, subd. (c)), so does this obligation.

Mr. Woods asserts that Mr. Doe's identity -- and the identity of his personal representative – are not and cannot be privileged because he does not face criminal prosecution if identified. Mr. Woods is wrong. In circumstances like these, where the entire purpose of the representation is defending the anonymity of the client, identity can be privileged.

It is true that the identity of a client is not per-se privileged "when there is a legitimate need for the court to require" disclosure. (*Willis, supra,* 112 Cal.App.3d at 309.) One example – as Mr. Woods concedes – is when revealing the client's identity would implicate the client in a crime. However, California courts have not *restricted* the privilege to those circumstances. The *Willis* court, in describing the circumstances in which a client's identity may be privileged, described them broadly: "Nevertheless, California courts recognize that the rule is not unqualified and that **where disclosure of identity might harm the client by being used against him under circumstances where there are no countervailing factors**, then it would be protected by the privilege." (*Willis, supra,* 112 Cal.App.3d at 292 (emphasis added)). After reviewing cases involving criminal risks, the *Willis* court recapitulated the rule broadly: "It is obvious that a determination of whether a client's name and address and his fee arrangement with his attorney is a privileged communication will depend on an analysis of the facts of the case and the potential for harm to the client if the identification and compensation is compelled." (*Willis, supra,* 112 Cal.App.3d at 293.)

Other California courts have confirmed that a client's identity may be privileged in a broader array of circumstances than criminal ones. Several courts have found that a client's identity can be privileged when its disclose could expose the client to ***civil*** liability. *Hooser v.*

Superior Court (2000) 84 Cal.App.4th 997, 1005 ["There is a recognized exception to this rule, however, where known facts concerning an attorney's representation of an anonymous client are such that the disclosure of the client's identity would implicate the client in unlawful activities, thus exposing the client to potential investigative action or criminal ***or civil liability.***" [emphasis added]], citing *Hays v. Wood* (1979) 25 Cal.3d 772, 785.)

Moreover, a client's identity can be privileged when "the disclosure of the client's identity would betray personal, confidential information regarding the client." [*Hooser, supra*, 84 Cal.App.4th at 1005.] For instance, in *Rosso, Johnson, Rosso & Ebersold v. Superior Court* (1987) 191 Cal.App.3d 1514, the court upheld a law firm's assertion of privilege in the face of a subpoena seeking the identity of potential clients who had responded to an advertisement about intrauterine device litigation. Because disclosure of the list would reveal that the people named on it had concerns about a particular medical condition, and thus reveal the reason for the representation and the content of a communication, the court held that the names were privileged. (*Id.* at 1519.)

This case meets the exception identified by *Willis, Hooser,* and *Rosso.* Mr. Doe (and later his personal representative) retained Mr. White specifically for the purpose of protecting his identity. (White Decl. at ¶¶ 4-6.) Revealing his identity would subject Mr. Doe (or now, his estate) to civil liability by revealing that he was the one who posted the tweet that Mr. Woods sued over. It would necessarily reveal the purpose for which he sought legal advice by revealing that he is the anonymous person who sought to have his identity protected. It would harm him by exposing him to public ridicule and attack by Mr. Woods, as set forth above in Section II(D) and below in Section III(C). All of these harms are of the sort that triggers Mr. White's legal obligation to protect the identities of Mr. Doe and his personal representative. (*Willis, supra*, 112 Cal.App.3d at 293; *Hooser, supra*, 84 Cal.App.4th at 1005; *Rosso, supra,* 191 Cal.App.3d at 1519.)

Moreover, Mr. Woods has not shown the "legitimate need" or "countervailing factors" that those courts require to compel disclosure of identity. Mr. Woods has not shown, or even tried to show, that he has exhausted other methods of discovering Mr. Doe's identity. In fact,

Mr. Woods has a pending subpoena to Twitter seeking account details. (White Decl. at ¶ 19.) The Court should not countenance Mr. Woods using the most extreme method – subpoenaing an attorney and demanding that he reveal confidential communications – when he has not shown that other methods won't work.

Finally, Mr. Woods' Motion deceitfully attempts to conflate two types of questions – questions that directly ask Mr. Doe's identity and questions that seek information that Mr. White only learned through confidential communications. Whether or not client identity per se is privileged is a case-specific inquiry, but confidential attorney-client communications are always privileged. They do not *lose* that privilege when they might tend to reveal a client's identity that the opposing party seeks.. Mr. Woods asked Mr. White numerous questions that sought information Mr. White testified he learned only through confidential attorney-client communications. Those communications are privileged, period. The fact that the information sought would help Mr. Woods learn Mr. Doe's identity does not lessen the privilege one iota. For example:

- Where Mr. Doe died. Mr. White explained he only knew the answer through a confidential communication. (Depo at 15:16-19.)
- How old Mr. Doe was when he died. Once again, Mr. White explained that he only knew the fact through confidential communication. (Depo at 17:17-22.)
- Whether Mr. Doe was married. Mr. White confirmed that he had previously disclosed in a settlement discussion that Mr. Doe was not married, waiving the privilege to that extent. However, he said he could not disclose further because he only knew the information through confidential communications. (Depo at 23:4-16.)
- Whether Mr. Doe lived in Los Angeles. Mr. White explained he only knew the answer based on confidential communications. (Depo. at 26:15-20.)
- Whether Mr. Doe lived in Los Angeles when he died. Mr. White explained he only knew the answer through confidential communications. (Depo. at 26:23-27:3.
- Whether Mr. Doe had other Twitter accounts. Mr. White explained he only knew the answer through confidential communications. (White Decl. at 39:9-14.)

Thus, while Mr. Woods cites cases to support his assertion that Mr. Doe's identity is not confidential, he is missing the point: confidential attorney-client communications *are* confidential, and Mr. Woods cites no authority for the bizarre proposition that he is entitled to disclosure of confidential attorney-client communications *because* they would help him learn Mr. Doe's identity. Mr. Woods' argument that these are "facts" is inapt; Mr. White explained that he only knows some of these "facts" through confidential communications. California courts reject such attempts to evade the privilege. (*See, e.g., Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 601 [rejecting argument that questions to client about facts learned from lawyer were not privileged because they were only "factual" and affirming assertion of privilege].) The legal point is simple: an attorney-client communication about an otherwise discoverable fact is still an attorney-client communication. [2]

Therefore, Mr. White's assertion of the privilege was correct, and this Court should uphold it.

B. <u>Mr. Woods' Purpose Is To Harass, Not To Discover Admissible Evidence</u>

The facts before the Court show that Mr. Woods' purpose is not to uncover potentially relevant information, but to harass Mr. Doe's surviving relatives and Mr. White, which is not a legitimate goal of discovery.

Mr. Woods has not submitted any evidence that he has tried any other methods of discovering Mr. Doe's identity. He is demanding Mr. Doe's identity *though his attorney* even though Mr. White had already offered to disclose that identity in settlement discussions if Mr. Woods would agree to keep it confidential. (White Decl. at ¶ 8.) There is only one reason for Mr. Woods to reject that offer and demand the right to publicize the names of Mr. Doe and his family members – to maintain the freedom publicly to harass and incite harassment against Mr. Doe's family.

[2] By Mr. Woods' strange logic, litigants would be entitled to depose one another's attorneys in any case and demand disclosure of confidential attorney-client communications regarding all discoverable facts. For instance, because a defendant's location on a particular date is a "fact," a plaintiff in a wrongful death case could depose opposing counsel and demand "where was your client the night of the murder."

Similarly, Mr. Woods' attorneys – who brag about being "pit bulls" and "attack dogs" for clients – inexplicably refused to stipulate to use Mr. White's deposition video only in this case.[3] (White Decl. at ¶¶ 16-17.) Once again, they offered no legitimate explanation, and their purpose is clear: they want to use Mr. White's deposition video to publicly attack and vilify Mr. White, and to inspire Mr. Woods' followers to join in the attack. Mr. Woods himself bragged that he pursues people who insult him "to the bowels of Hell" and publicly gloated at Mr. Doe's death, expressing hope that Mr. Doe died screaming Mr. Woods' name and ridiculing Mr. Doe's attorneys. (Exhibits B-D to White Decl.)

These facts show plainly that Mr. Woods and his attorneys are taking this course to inflict maximum expense, risk of abuse, and humiliation on Mr. Doe's surviving relatives and lawyers. That is not a legitimate purpose of discovery, and the Court should not permit it.

C. **Mr. Doe's Right To Privacy Survives Death**

As is set forth above, Mr. White explicitly stated that he was asserting Mr. Doe's right to privacy in order to preserve it as an objection, and that his refusals to answer were premised on the attorney-client privilege. (Exhibit C to Motion at 2.) Mr. White acknowledges that, by denying Mr. Doe's anti-SLAPP motion, this Court necessarily rejected the privacy argument already. The objection was stated so as not to waive it for appeal.

However, Mr. Woods is simply wrong that Mr. Doe's right to privacy and anonymity died with him. In fact, multiple authorities show that the right to anonymity survives death. In *McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334, 345, the United States Supreme Court held that Ohio's statutory prohibition against distribution of any anonymous campaign literature violated the First Amendment. (*Id*). There, like in this case, the author of the pamphlet died during the pendency of the litigation. (*Id.*at 340.) The passing of the author did not diminish her right to remain anonymous. The Supreme Court explained that the author's choice to remain anonymous was as protected by the First Amendment as any other components of the publication's content. (*Id.* at 345.) The court further reasoned that

[3] Indeed, the specific request Mr. Woods' attorneys refused was the request that they use the deposition video "for legal purposes only."

identification of the author against her will would be particularly intrusive. *(Id.* at 355.)

Similarly, in *Powell v. U.S. Dep't of Justice* (N.D. Cal. 1984) 584 F. Supp. 1508, 1526, the court held that a person's death does not extinguish his privacy interests in non-disclosure of his name. *(Id).* In *Powell,* the court analyzed the privacy interests at stake with respect to disclosure of the names of certain FBI agents and persons under investigation by the FBI. (*Id.*) The court reasoned that the disclosure of people's identities, even after death, may cause reputational harms to them and their families. (*Id.*) The court further explained that while these privacy interests may diminish with time, they are at their peak in the period soon after a person's death. (*Id.*)

Courts have also recognized a family's interest in the privacy of a decedent's information. For example, in *Nat'l Archives & Records Admin. v. Favish* (2004) 541 U.S. 157, 171, the United States Supreme Court held that the decedent's family's privacy interest in nondisclosure of details about their relative's death outweighed the public's interest in disclosure. *(Id.)* In this case, it is beyond dispute that whatever Mr. Woods learns, he will exploit for maximum public humiliation of Mr. Doe's family.

California courts have likewise recognized that privacy interests can persist after death. In *Catsouras v. Dep't of California Highway Patrol* (2010) 181 Cal. App. 4th 856, the court held that the right of privacy does not invariably die along with the person who is the subject matter of the publication. The court held that the decedent's family members had an actionable privacy interest in photos of the decedent. Relying on *National Archives*, the court explained that surviving relatives of a deceased person have an interest in protecting his memory, and protecting their feelings. (*Id.* at 872.)

Because Mr. White expressly premised his refusals to answer on the attorney-client privilege, and only asserted the privacy objection to preserve it, this issue is not dispositive. However, the authority above demonstrates that Mr. White's preservation of the objection was in good faith and based on legitimate authority.

D. Even If The Court Overrules Mr. White's Assertion of the Privilege, Sanctions Are Inappropriate

Mr. Woods demands $9,040.55 in sanctions for Mr. White's obligatory assertion of the attorney-client privilege. This demand is utterly without merit even if this Court ultimately overrules the assertion of the privilege.

As Mr. Woods concedes, discovery sanctions are only appropriate when a witness engages in "misuse" of the discovery process or acts in "bad faith" or "without substantial justification." (Motion at 11, citing Cal. Code Civ. Pro. §§ 2023.030(a), 2025.480, 2023.010(d).) No such misuse or bad faith conduct took place here. Instead, as is set forth above, Mr. White attempted to comply with his legal and ethical obligation to assert the attorney-client privilege as to confidential information that was at the heart of his representation – indeed, that was the *purpose* of his representation. As is discussed above, the legal authority on the issue of privilege is – at the very least – conflicting, making sanctions in appropriate. (*Diepenbrock v. Brown* (2012) 208 Cal. App. 4th 743, 749 [sanctions inappropriate when counsel relied on conflicting authority].)

Moreover, Mr. White took numerous steps to narrow and limit his assertion of the attorney-client privilege, demonstrating good faith and showing that his purpose was to comply with his professional obligations, not to delay or obstruct. Specifically:

- Mr. White expressly stated that his refusal to answer questions was premised on the attorney-client privilege, and that he was articulating the privacy objection only to preserve it. (Exhibit C to Motion at 2-3.) He answered questions required to establish the foundation of the privilege – for instance, by specifying which attorneys and staff at his firm were part of the communications. (Depo. at 21:17-23:2.)
- Mr. White analyzed and responded to questions on a question-by-question basis, answering when the privilege had been waived as to particular subjects based on Mr. Doe's past instructions. For instance:
    - Based on a prior authorized waiver Mr. White acknowledged that Mr. Doe's estate would not be defending this suit. (Depo. at 11:1-10.)
    - Mr. White confirmed that in a settlement communication he had disclosed that

Mr. Doe was not married. (Depo. at 23:3-16.)

- Mr. White confirmed that he had previously been authorized to disclose that Mr. Doe's Twitter profile was fictitious and that Mr. Doe did not own a house in Los Angeles, and based on that previous waiver responded that Mr. Doe did not own a house in Los Angeles. (Depo. at 27:5-16.)
- Mr. White confirmed that he had previously been authorized to disclose that Mr. Doe did not have a job at the time this lawsuit was filed, and based on that waiver responded that Mr. Doe was not employed at the time the lawsuit was filed. (Depo. at 29-3-12.)
- Mr. White confirmed that he had previously been authorized to disclose that Mr. Doe did not work in finance or math and was not a partner in private equity, and on that basis acknowledged that Mr. Doe did not do those things. (Depo. at 5-18.)

- Mr. White clarified when he did not know the answer to the question even when the answer, if he knew it, would be privileged. (Depo. at 15:2-7; 17:16-22; 17:24-7; 19:10-15; 27:18-28:1; 28:10-20; 31:14-20; 38:10-23.)
- Mr. White answered questions not arguably covered by the attorney-client privilege:
  - He confirmed he had never met Mr. Doe in person and never saw a picture of him (Depo. at 18:9-19:8);
  - He answered questions about his conversations with counsel for Twitter (Depo. at 19:17-20:20);
  - He confirmed that he did not know Mr. Doe prior to the lawsuit (Depo. at 33:18-34:5.)

This careful, case-by-case application of the privilege demonstrates that Mr. White was not acting in bad faith or seeking to abuse the process, and answered every question he ethically could. He was caught between a demand for answers and threat of sanctions, on the one hand, and an ethical and legal obligation to assert the privilege if he had a basis to do so, on the other hand. Even if the Court disagrees with the basis for his assertion, it would be fundamentally

unfair and unjust to penalize Mr. White for complying with his core ethical duties as an attorney, and preserving his objections so that the matter could be brought to this Court for resolution.

IV.

CONCLUSION

For the foregoing reasons, Non-Party Kenneth P. White respectfully requests that the Court deny Plaintiff's Motion to Compel and Motion for Sanctions..

Dated: December 9, 2016

Respectfully submitted,

BROWN WHITE & OSBORN LLP

By _____

KENNETH P. WHITE
CALEB E. MASON
Attorneys for Non-Party
KENNETH P. WHITE

DECLARATION OF KENNETH P. WHITE

I, KENNETH P. WHITE, declare:

1. I am an attorney licensed to practice law in California, and am a Partner at Brown White & Osborn LLP, attorneys for Defendant Abe Doe and after his death his personal representative.

2. I make this Declaration in support of my Opposition to Mr. Woods' motion to compel me to respond to questions. Because this declaration is for a limited purpose, it does not include all information that I know about the case.

3. Mr. Doe hired me to represent him in this case shortly after Mr. Woods filed it. The premise of my retention was explicitly to defend Mr. Doe's anonymity and prevent his identity from being disclosed. Without revealing the contents of attorney-client communications, this was the explicit core purpose of the representation and main goal of the defense, based on Mr. Doe's express fear that Mr. Woods and Mr. Woods' aggressive Twitter followers would harass him and his family if his identity were disclosed.

4. Based on these instructions I took unusual measures to protect Mr. Doe's identity. I assured that the file of his case did not bear his name and that the file was electronically protected from access by anyone other than me, a select paralegal, and the person responsible for generating bills. I took pains not to use his name in communications and did not disclose it to third parties. When he retained another attorney, Lisa Bloom, to assist in some aspects of the case, I made sure that his name was not disclosed to her. I limited direct communication with Mr. Doe to myself.

5. Mr. Doe authorized me to disclose some personal information about him early in the case – specifically, that most of the information in the profile of his Twitter account were fictional, and that he did not have assets to satisfy Mr. Woods even if Mr. Woods won. To the extent I disclosed such facts at Mr. Doe's prior permission, I answered questions about them at my deposition.

6. In approximately August 2016 I learned from Mr. Doe's surviving relative and personal representative that Mr. Doe had recently died. The personal representative asked me to continue to represent Mr. Doe's estate in this action, and emphasized again that preserving Mr. Doe's identity and the identity of his family in order to protect them from harassment and abuse was the express purpose

of my continued representation and the core goal of the defense.

7. Mr. Doe's personal representative authorized me to make several disclosures about Mr. Doe for the purposes of attempting to negotiate a settlement. Specifically I received authorization to disclose that the estate would no longer defend the case, that the estate lacked assets sufficient to satisfy any significant judgment, and that several of Mr. Woods' beliefs about Mr. Doe (for instance, the belief he was married) were untrue and based on a fictional Twitter profile.

8. Using this information I attempted to settle the matter with Mr. Woods' attorneys in a manner that would protect Mr. Doe's identity and the identity of his surviving relatives. Specifically, I proposed that I would disclose Mr. Doe's identity for purposes of a settlement discussion if that identity could be protected by a confidentiality agreement so that Mr. Woods could not publicly disclose it. I also proposed alternatively that Mr. Woods' attorneys and I select a mutually acceptable neutral third party to whom I could disclose Mr. Doe's identity and proof of his death and lack of assets, and that the third party could then confirm to Mr. Woods that Mr. Doe had died and lacked assets. Mr. Woods rejected those proposals.

9. Based on the express instructions of Mr. Doe's personal representative, I asserted the attorney-client privilege to refuse to disclose Mr. Doe's identity or his personal representative's identity. However, I did not make blanket objections, and disclosed information when the privilege had been waived or when the information was not privileged. Specifically, I answered that I did not remember or did not know when that was the case (even when the answer would have been privileged if I had known it), I answered questions on subjects on which I had already waived privilege at Mr. Doe's or his personal representative's instructions, and I answered questions about communications with third parties and other non-privileged issues. I also expressly clarified that though I was asserting Mr. Doe's privacy rights to preserve that objection, I was basing my refusal to answer on the attorney-client privilege.

10. Attached as Exhibit A is a true and correct copy of the full transcript of my deposition.

11. Attached as Exhibit B is a true and correct copy of a screenshot of an exchange on Twitter between Mr. Woods and another Twitter user concerning Mr. Doe and another one of Mr. Doe's attorneys, Lisa Bloom.

12. Attached as Exhibit C is a true and correct copy of a screenshot of an exchange on Twitter between Mr. Woods and another Twitter user concerning Mr. Doe and another one of Mr. Doe's attorneys, Lisa Bloom.

13. Mr. Woods, or someone controlling his Twitter account, deleted the incendiary tweets regarding Mr. Doe shortly after he made them. I personally observed the tweets in their original form and have since confirmed, by searching Mr. Woods' account, that they are now deleted.

14. Attached as Exhibit D is a true and correct copy of another tweet by Mr. Woods.

15. In the course of this lawsuit I have spent a significant amount of time reviewing Mr. Woods' Twitter conduct and the response of the more than 450,000 people who follow him on Twitter. I have observed on multiple occasions that his followers – that is, people who have used their Twitter accounts to follow (and therefore read) his account on Twitter – celebrate and congratulate his abuse of people he criticizes and denounces, particularly when those denunciations are expressed along political lines. I observed many occasions of Mr. Woods' Twitter followers expressing hostility and insults towards Mr. Doe. I am concerned that Mr. Woods would publish Mr. Doe's personal information and the information of his relatives, and that his followers would take that as a signal to harass and abuse Mr. Doe's survivors – including offline, through calls and other communications. That concern is premised on more than ten years writing about and observing internet culture, and observations of recent events when public figures with large followings attack individuals on Twitter. For instance, see "This is What Happens When Donald Trump Attacks A Private Citizen on Twitter," Washington Post, December 8, 2016 at https://www.washingtonpost.com/politics/this-is-what-happens-when-donald-trump-attacks-a-private-citizen-on-twitter/2016/12/08/a1380ece-bd62-11e6-91ee-1adddfe36cbe_story.html?utm_term=.ec9ce1f2c1f2.

16. At my own deposition, I asked Mr. Woods' attorneys to stipulate that the deposition video would only be used in the course of this litigation, and not otherwise publicly released. I did that because I was concerned that Mr. Woods would publish the video to incite his followers to attack me or my family. His attorneys refused to so stipulate.

17. I am particularly concerned because Mr. Woods' attorneys proudly advertise themselves as "attack dogs" on behalf of their celebrity clients. On Lavely & Singer's website, they feature a 2000

Los Angeles Magazine article referring to them as "bad cop," "stealth Rottweiler," "pit bulls."

18. Exhibit E is a true and correct copy of this Court's tentative ruling granting my anti-SLAPP motion on Mr. Doe's behalf. Exhibit F is a true and correct copy of this Court's later order denying the motion.

19. I have reviewed a new subpoena Mr. Woods has served upon Twitter seeking Mr. Doe's account details and other information Twitter stores about him.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 9, 2016, in Los Angeles, California.

KENNETH P. WHITE

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAMES WOODS, an individual,

Plaintiff,

vs. Case No. BC589746

JOHN DOE a/k/a "ABE LIST" and
DOES 2 through 10, inclusive,

Defendants.

VIDEOTAPED DEPOSITION OF KENNETH P. WHITE

Monday, November 14, 2016

11:00 a.m. - 11:59 a.m.

2049 Century Park East, Suite 2400

Los Angeles, California

Reported By:
PAMELA A. STITT
CSR No. 6027

APPEARANCES:

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STAN BEVERLY
U.S. LEGAL SUPPORT

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RECESSES

(11:47 a.m. - 11:51 a.m.)
(11:56 a.m. - 11:57 a.m.)

INFORMATION REQUESTED

(None)

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WITNESS: KENNETH P. WHITE

James Woods vs. John Doe

Monday, November 14, 2016

Pamela A. Stitt, CSR No. 6027

LOS ANGELES, CALIFORNIA

MONDAY, NOVEMBER 14, 2016, 11:00 A.M.

(Deposition Exhibit 1 was marked.)

THE VIDEOGRAPHER: Good morning. We are on the record. This is the recorded video deposition of Kenneth P. White in the matter of James Woods versus John Doe taken on behalf of the plaintiff. This deposition is taking place at 2049 Century Park East, Los Angeles, California on November 14, 2016 at approximately 11:00 a.m.

My name is Stan Beverly. I am the videographer with U.S. Legal Support located at 11845 West Olympic Boulevard, Los Angeles, California.

Video and audio recording will be taking place unless all counsel have agreed to go off the record.

Would all present please identify themselves beginning with the witness.

THE WITNESS: My name is Kenneth White and I am the deponent.

MR. MASON: I am Caleb Mason. I am here representing Mr. White.

MS. MOLNAR: I am Lindsay Molnar representing plaintiff.

THE VIDEOGRAPHER: The certified court reporter

is Pam Stitt. Would you please swear in the witness.

KENNETH P. WHITE,

having been first duly sworn, was examined

and testified as follows:

EXAMINATION

BY MS. MOLNAR:

Q. Good morning, Mr. White. How are you?

A. Good morning. I'm well, thank you.

Q. Would you mind stating the name of your firm?

A. It is Brown White & Osborn LLP.

Q. And what is your position at the firm?

A. I am a partner and general counsel.

Q. How long have you been with the firm?

A. Since its inception.

Q. And what year was that?

A. In its original form in July of 2005.

Q. Okay. I am going to turn to Exhibit 1, which you have a copy of in front of you now.

A. I do.

Q. Can you tell me what is in front of you?

A. It is -- appears to be the complaint in this action Woods versus John Doe.

Q. Okay. And will you confirm that your client is

the defendant referenced in Exhibit 1 as John Doe a/k/a Abe List?

A. Yes. I will confirm that the person named here, the person whose conduct is described here was my client.

Q. You say "was." He is no longer your client?

A. He is deceased.

Q. Okay. What is the legal name of your client?

MR. MASON: We are going to object on several grounds that I think Mr. White -- I'm happy to have him articulate -- but they boil down to attorney-client communications, they are privileged, and we believe that the underlying purpose of the question is not reasonably calculated to lead to admissible evidence and it's purpose is to harass, intimidate third parties and/or deceased people, which we do not believe is an appropriate function of the litigation process, but Mr. White is an attorney and I'm happy to let him explain all of that.

THE WITNESS: I am going to follow my attorney's admonition and I would only add factually that the core purpose of representation of Mr. Doe was to protect his identity and that is part of the basis of the assertion of the attorney-client privilege.

MS. MOLNAR: Okay. Are you aware of any legal authority that supports your position?

MR. MASON: Yes.

MS. MOLNAR: Do you know any of it off the top of your head?

THE WITNESS: No. And as deponent I think it would be work product.

BY MS. MOLNAR:

Q. So are you still in an attorney-client relationship with your client now that he is deceased?

A. I am in an attorney-client relationship with his heir.

Q. And is his heir a male or a female?

A. Male.

Q. What is the name of his heir?

MR. MASON: Again, we would object to that question for the same reasons articulated earlier.

If Mr. White wants to expand on his reasons, he is free to do so but we are objecting to the question. He is not going to give you a substantive answer as to the name.

THE WITNESS: I would only add that the specific reason for the continuing representation of the interest of the late Mr. Doe was to protect his identity and the identity, therefore, of his heirs.

BY MS. MOLNAR:

Q. So who is your client now?

A. I would say that it is the estate of John Doe.

Q. And do you have a retainer agreement with them -- with the estate?

A. No.

Q. So you represent the estate?

A. I represent the remaining interest --

First of all, I'm not here in my capacity as representing Mr. Doe. I'm here in my capacity as a third-party witness being subpoenaed. I am giving advice to Mr. Doe's heirs in their capacity, I understand, as the representative of the late Mr. Doe.

Q. So just to be clear, has there been a court that has appointed a personal representative of Abe List's estate?

A. Yes.

Q. Can you tell me the name of that court?

A. Well, I can tell you, first of all, that the matter has since been dismissed so there is no current pending such matter.

Q. Can you tell me what court it was pending in?

MR. MASON: At this point I think I need to start interjecting objections for the purpose, if nothing else, of preserving the record. As Mr. White has indicated the purpose of the representation was expressly to preserve the anonymity of the client so our position is that questions directed at obtaining information from Mr. White

the attorney about the identity of the client are questions that seek directly to invade the attorney-client privilege and are therefore improper, and we also believe that all such questions seek to obtain information to be used for purposes of harassment rather than proper legal purposes.

So my advice to Mr. White is that he is free to answer questions without invading the province of the attorney-client communications and he has -- he is prepared to do that up to the point at which answers would tend to reveal the identity of the client or confidential attorney-client communications.

THE WITNESS: I think I can answer that it is a California Superior Court.

BY MS. MOLNAR:

Q. Okay. So the judge that it was before?

A. No, I am not going to reveal information that would tend to reveal the identity of my client, which is the purpose of my retention.

Q. Okay. Is there a substitution of counsel that is going to be filed in the action pending between James Woods and Abe List?

MR. MASON: Again, I would object to that question insofar as it appears calculated to invade the attorney-client and work-product privileges.

As I heard the question it seemed to ask about potential future legal decisions that might be made by the client or the law firm. That strikes me as attorney-client material.

If you understand the question and you can answer without violating the privilege, you can do so.

THE WITNESS: I believe I can answer without violating the work-product privilege in that I have previously disclosed to you that there would be no substitution or going forward by the estate.

BY MS. MOLNAR:

Q. Okay.

A. And to the extent that I have disclosed that to you, I do again without waiving any other work product or communication.

Q. You had mentioned earlier that there was a proceeding that was filed with respect to Mr. Abe List's estate and that it subsequently had been dismissed.

When was that filed?

MR. MASON: I want to note the same objection for the record to all questions that seek to invade the attorney-client or work-product privileges with respect to actions taken by Mr. Doe's attorneys in the performance of their representation which was expressly intended to maintain his anonymity.

If you understood the question and you can answer without revealing such communications, you may do so.

THE WITNESS: I can answer that I don't remember a date, and I can point out what is obvious in public, that it was after the time that I contacted you and let you know the situation. Beyond that I couldn't even nail it down as to a precise date, and otherwise I will follow my attorney's advice and decline to answer.

BY MS. MOLNAR:

Q. I believe we spoke in August about Abe List's passing.

Do you recall if it was during the month of August?

A. I do not.

Q. Okay. I want to go back to how you found out about Abe List's passing.

When did you find out? If you could, an exact date would be helpful.

MR. MASON: So I again want to interpose the same objection which I can keep doing it or we can just have it as a standing objection. The objection is that questions that go toward extracting from Mr. White the substance of communications with his client seek to and do invade the attorney-client privilege. And the second objection is that we believe these questions are being asked not for

legitimate litigation purpose but for purposes of harassing and posthumously attacking the reputation and name of John Doe. The representation by Mr. White was expressly intended to prevent his identity from being revealed.

With that said, I mean, we could do -- we can do a standing objection to all of it.

MS. MOLNAR: So you want to --

So every question I ask you want to --

MR. MASON: No. No. But I mean, I could say "same objection" or something like that and just make the record a little shorter.

MS. MOLNAR: Yes.

MR. MASON: Is that okay?

MS. MOLNAR: That would be fine.

MR. MASON: So I think the same objection, the one I just articulated would go to that.

And as always, Mr. White, if you can answer the question without invading the confidential communications, you are free to do so.

THE WITNESS: I do not remember the date. I remember that it was proximate in days not weeks to when I reached out to you on the matter.

BY MS. MOLNAR:

Q. Do you recall when you reached out to me?

A. I don't but I did it in writing.

Q. And who informed you that Abe List had passed?

MR. MASON: Same objections.

THE WITNESS: The person I now am instructed by as the representative of the late Mr. Doe, a family member is the one who contacted me.

BY MS. MOLNAR:

Q. Would that be Abe List's father?

MR. MASON: Same objections.

THE WITNESS: I am going to stick with that.

BY MS. MOLNAR:

Q. You are not going to answer that question?

THE WITNESS: Yes, I am going to decline to.

BY MS. MOLNAR:

Q. So just to be clear, you are not going to give me the name of the personal representative of Abe List's estate?

A. That's correct.

Q. Were you informed the date that Abe List passed away?

MR. MASON: I would go vague as to grammar and also the same objections. Informed of the date or informed on the date?

MS. MOLNAR: I can strike that.

MR. MASON: Yes. Just add a preposition.

BY MS. MOLNAR:

Q. When did Mr. Abe List pass away?

MR. MASON: That one I am going to interpose the same objections we had previously.

THE WITNESS: I do not remember the date; however, if I did, I would stand by the objections as articulated by counsel.

BY MS. MOLNAR:

Q. I believe you previously had informed us that it was the month of August; is that correct?

A. I believe that in settlement communications, specifically denominated as such, I made a reference to that general time range, yes. Outside of settlement communications I would decline to answer.

Q. Where did Mr. Doe pass away?

MR. MASON: Same objections.

THE WITNESS: I am going to decline to answer because I think it would reveal confidential communications.

BY MS. MOLNAR:

Q. And just to be clear for the record when I refer to Mr. Doe and Abe List, it's interchangeably, I am referring to your client.

A. I understand.

Q. Did you ever view a death certificate for Abe

List?

MR. MASON: Same objections.

THE WITNESS: Did I ever view a death certificate?

BY MS. MOLNAR:

Q. Yes. Did you see one? Were you provided with one?

MR. MASON: So, right, same objections and I think also the question is vague. Can you --

MS. MOLNAR: I can rephrase.

MR. MASON: Yeah.

BY MS. MOLNAR:

Q. Have you seen Abe List's death certificate?

A. I have not reviewed a death certificate of Abe List. I have not read one.

Q. Have you asked for one?

A. I didn't --

MR. MASON: Well, yeah, as to that question again as phrased I would go with vague, particularly as to the object of the verb "asked." Depending on how it was phrased that could reveal attorney-client communications so I think as phrased I would say same objections as previous.

THE WITNESS: Now that I think about it, I think I have to decline to answer that on the basis of

attorney-client communications.

MR. MASON: Generally what we are going for here is -- the position that we are taking and I understand that you guys have a different view of the legal merits of this position and we will litigate that in the appropriate forum, but Mr. White is declining to answer questions that ask him to reveal steps that he took or legal communications that he had that would tend to reveal the identity of John Doe in this case. I understand that you guys want to know the name and we don't want to tell it to you.

MS. MOLNAR: Right. And that we obviously disagree with your position.

MR. MASON: Exactly.

MS. MOLNAR: Okay.

Q. How old was Abe List when he passed away?

MR. MASON: Same objections.

THE WITNESS: I only know that fact through attorney-client communications, so on that ground I decline to answer.

And for the record I don't remember the exact number anyway.

BY MS. MOLNAR:

Q. What was the cause of Abe List's death?

MR. MASON: Same objections. Also foundation,

also calls for speculation, also calls for expert opinion.

THE WITNESS: I'm going to without waiving any of the objections that my counsel has stated indicate that I do not know the exact cause of death or what was determined by anyone to be the cause of death, and beyond that I will assert that it was in an attorney-client communication, discussion that the subject happened.

BY MS. MOLNAR:

Q. Did you ever meet Abe List in person?

MR. MASON: Same objections.

THE WITNESS: I think I can answer that.

Are you going to be mad if I disagree with you?

MR. MASON: No, not at all. And, in fact, I think that one is worth speaking about. Did you ever meet him or her in person? Sure.

THE WITNESS: I did not.

MS. MOLNAR: It's not a communication.

Q. You did not?

A. I never met him personally.

Q. Have you --

Have you ever seen a picture of Abe List?

MR. MASON: We are getting closer. This is a good exercise, though. We are going to walk up to the line. I think we are okay with, "Did you ever meet that person in person?" No. Did you ever see a picture? I

reckon that is of the same species so, Ken, I'm going to say I don't see that one as objectionable unless you saw any picture within the context of an attorney-client communication in which case it would be.

THE WITNESS: I did not.

MR. MASON: Okay.

THE WITNESS: I do not recall seeing a picture of him.

BY MS. MOLNAR:

Q. Do you know where Abe List was born --

MR. MASON: I think that --

BY MS. MOLNAR:

Q. -- county and state?

MR. MASON: Same objections.

THE WITNESS: I do not.

BY MS. MOLNAR:

Q. Did you ever discuss Abe List with counsel for Twitter?

MR. MASON: Same objections. I would say for the record I don't think that it would make a legal difference. If you think it would, we can confer on that. I think other than --

MS. MOLNAR: I don't see how communications between Mr. White and Twitter would be deemed attorney-client.

THE WITNESS: This would be my answer. I discussed the case with counsel for Twitter, but I never answered any of the questions you've given me or gave Twitter any information with which they could identify him.

BY MS. MOLNAR:

Q. So during these --

Just to be clear, these conversations with Twitter Abe List's legal name was never disclosed by you; is that correct?

A. That is absolutely correct.

Q. Did they ask you to disclose his legal name?

MR. MASON: Vague --

THE WITNESS: They did not.

MR. MASON: Vague as to "they."

Attorneys for Twitter?

THE WITNESS: I'm sorry.

MR. MASON: That's all right. And the answer is they did not?

THE WITNESS: They did not.

MR. MASON: Okay.

BY MS. MOLNAR:

Q. Have you ever discussed Abe List with anyone that is not your client?

A. Discussed in what way?

MR. MASON: Yeah. So the objection would be vague. Do you mean reveal the name or discuss the case? I mean --

MS. MOLNAR: Reveal the name.

MR. MASON: Okay.

BY MS. MOLNAR:

Q. Have you ever revealed Abe List's legal name to anyone other than your client?

A. Yes.

MR. MASON: I mean, again, as phrased I think it does seek to invade work product. I don't -- I don't think that -- Well, I mean, you can ask the question in various ways and we will see how it goes. But I think you are talking about outside of the attorney-client relationship context?

MS. MOLNAR: Generally. If he has ever said --

Q. Just to be clear, if you ever said the legal name of Abe List at all outside of -- I'm sorry. Strike that.

Did you ever discuss Abe List's legal name with anyone that is not your client, whether it be in the context of this case or otherwise?

A. Okay. I have only disclosed his name to a co-counsel, not this one, and one staff member for purpose of opening the case. That staff member being within the scope of attorney-client privilege and privacy.

Q. Can you give me the name of the co-counsel that you had disclosed Abe List's legal name to?

A. I think that would be --

MR. MASON: I would at least want to interpose the objection Mr. White is general counsel of our firm. He can opine on this as well. But I think that asking about communications between attorneys at the same firm regarding a case I would place that in the heartland of attorney-client privilege. So I would direct him not to answer about internal communications within the firm with respect to the case.

THE WITNESS: I would classify it as work product --

MR. MASON: Work product, yes.

THE WITNESS: -- in that it reveals which of my partners -- it could have a tendency to reveal the nature of the communication and that type of thing. But it was to a partner in the firm with an equal obligation and charge to maintain the confidentiality.

BY MS. MOLNAR:

Q. Okay. It wasn't clear to me that your co-counsel was within your firm.

A. I'm sorry.

Q. I had also understood that you had possibly -- that Mr. Doe had possibly engaged Lisa Bloom as well?

A. He did. And to my knowledge his identity was withheld from her.

Q. Okay. Was Abe List married?

MR. MASON: Same objections.

THE WITNESS: I only know the answer to that question based on an attorney-client communication and on that basis I think I have to refuse to answer.

Let me think about that for a second. I think that during a discussion with you which -- I will confirm that in a discussion that I would characterize as a settlement discussion with you, not a successful one, but a settlement overture I told you that he had not been married at any time relevant to this case. And I will confirm that I did that in a settlement context. I believe that would be covered by 1152. That aside I cannot reveal anything more than that.

MS. MOLNAR: Okay. I am going to mark this as, I believe, Exhibit 2.

(Deposition Exhibit 2 was marked.)

BY MS. MOLNAR:

Q. Mr. White, can you describe to me what we have just marked as Exhibit 2?

MR. MASON: For the record has there been -- forgive my ignorance, has there been discovery in this case? Should I be looking for a Bates stamp or anything?

THE WITNESS: No.

MS. MOLNAR: No discovery.

MR. MASON: Okay. Got it.

THE WITNESS: This appears to be a printout from the Twitter account Abelisted, that's @ a-b-e-l-i-s-t-e-d. It shows his profile and it shows a small number of tweets.

BY MS. MOLNAR:

Q. And will you just confirm that "abelisted" referenced in Exhibit 2 was your client?

A. Yes. The person who created this account was my client and is the person named in the complaint.

Q. I'm going back to the question I had asked you about whether Mr. Abe List was married. And the reason I wanted to ask you more about it is because I believe that it is publicly available information, and as you can see in his brief description underneath his profile picture it says that he is married to @ s-t-e-q-u-u-s.

A. Uh-huh. I see that.

Q. Do you know who this person is that is referenced herein as @ s-t-e-q-u-u-s?

A. I do not.

MR. MASON: Same objection.

THE WITNESS: I do not actually.

MR. MASON: I want to get the objection in first

even if the answer is "no."

THE WITNESS: I apologize.

BY MS. MOLNAR:

Q. And this profile also references the fact that Mr. Abe List is located in Los Angeles, California or was located.

Do you know if that was true?

MR. MASON: Same objections.

THE WITNESS: I do know whether or not that was true. Let me think for a moment to see if it has been revealed whether or not it is true in any way that is not privileged.

BY MS. MOLNAR:

Q. Other than in this exhibit?

A. Right. But you are asking me whether that is true and that's -- you're asking me to confirm whether that is true.

MR. MASON: Hang on. The question was: Do you have the knowledge? And I think your answer was yes, you had the knowledge.

THE WITNESS: Yes.

MR. MASON: The next question is going to be please tell me if it is true.

THE WITNESS: Okay.

MR. MASON: And as to that we need to

interpose --

MS. MOLNAR: But I haven't asked yet.

MR. MASON: I understand that. But rather than speculate on the record, I mean, if you learned the fact relevant to the question through the attorney-client -- through attorney-client communications or attorney work-product, then that would fall within the same objections that we have been interposing throughout the case. So with that caution we can listen attentively for the next question.

THE WITNESS: Okay.

BY MS. MOLNAR:

Q. Is that true, does Mr. -- did Mr. Abe List live in Los Angeles, California?

A. On that one part of the profile I do not remember a nonprivileged source of information or a place where it has been disclosed so I am unable to answer that part of the profile -- I'm unable to answer based on the attorney-client privilege. I do know the answer. I'm unable to disclose it.

Q. Okay. And outside the profile did Abe List live in Los Angeles, California, when he passed away?

MR. MASON: Same objections.

THE WITNESS: Right. My same objection. I know the answer to the question, but I only know as to that

particular one from an attorney-client source and that is not one where I think it has been revealed elsewhere by me or by the client.

BY MS. MOLNAR:

Q. Okay. Did Abe List own a house in Los Angeles at the time of his death?

MR. MASON: Same objections. Also foundation, calls for speculation.

THE WITNESS: This one -- Let me lay the foundation for why I think I can answer it. At the very beginning of the case I informed lead counsel for Mr. Woods that the profile of Mr. List was completely fictitious and that -- I remember saying a few things that weren't true, one of which was being that he owned any property. Given that deliberate disclosure in the past I think I'm able to answer no, he did not.

BY MS. MOLNAR:

Q. Okay. And going back on Exhibit 2 it also referenced that Abe List has a link to Harvard, which would imply that he went to Harvard at some point.

Did he graduate from Harvard?

MR. MASON: Same -- Same objections.

THE WITNESS: Without waiving -- If I knew the answer to the question, I would refuse to answer on the basis of the attorney-client privilege. I do not

presently remember, no, the answer to the question.
BY MS. MOLNAR:
Q. And just to be clear, you don't know whether he graduated or whether he even went to Harvard?
MR. MASON: Same objections.
THE WITNESS: I do not remember the answer to that question. I will tell you without waiving that I would object and refuse to answer if I did remember.
BY MS. MOLNAR:
Q. And just to make the record clear I am going to ask you again: Did Abe List go to Harvard?
MR. MASON: Same objections.
THE WITNESS: You are asking me whether he attended Harvard?
BY MS. MOLNAR:
Q. Correct.
A. I do not remember -- I don't remember whether I knew at one point or not. If I did remember, I would assert the attorney-client privilege and decline to answer.
Q. Okay. Did Abe List have a job when he passed away?
MR. MASON: Same objections.
THE WITNESS: I could answer that question as to the time of the beginning of the lawsuit. I cannot answer

it as to the time when he passed away.

BY MS. MOLNAR:

Q. Okay. So to be clear the lawsuit was filed on July 29, 2015. So when the lawsuit was filed on July 29, 2015 did Abe List have a job?

A. He did not. And, again, that was one of the things that I told your colleague in communications with him at the beginning of the lawsuit.

MR. MASON: Okay. So for the record that is the basis for answering that question.

THE WITNESS: That it was previously disclosed.

MR. MASON: Okay.

BY MS. MOLNAR:

Q. Then from July 29th, 2015 to the date of his death did he ever have a job?

MR. MASON: Same objections.

THE WITNESS: Because I made no subsequent disclosure on that subject that would operate as a waiver, I have to assert the attorney-client privilege after that point where I made the disclosure.

BY MS. MOLNAR:

Q. What was Abe List's profession?

MR. MASON: Same objections.

THE WITNESS: I guess that I would have to assert the attorney-client privilege too.

MR. MASON: I wanted to add to our same objections vague and foundation.

THE WITNESS: Sure.

BY MS. MOLNAR:

Q. Going back to Exhibit 2 he indicated -- Abe List in his profile indicates that he's a math dork in finance, partner in private equity. Is that true?

MR. MASON: Same objections.

THE WITNESS: Again, in the conversation with your colleague at the first hearing in the case I told him some things and among them would be a disclosure that he is not -- was not a partner in private equity, that he was not in finance and that he was not in math. I don't recall whether I specifically disclaimed "dork," but I said words to the substance that everything claimed against him was -- about him and who he was was made up so I can answer that question based on that prior disclosure that no, that's not true.

BY MS. MOLNAR:

Q. Are you familiar with Abe List's tweet history meaning the type of topics that he had previously tweeted on?

A. Somewhat.

MR. MASON: Hang on.

THE WITNESS: Okay. Sorry.

MR. MASON: I was making an objection, facial expression. I would go with our same objections and also vague and foundation, it calls for speculation --

THE WITNESS: Let me think about that.

MR. MASON: -- asking about tweet history.

THE WITNESS: I'm sorry. I'm going to withdraw my answer and say that I think that asking me that invades attorney work-product. You are asking me what I did in the course of investigating the case.

MR. MASON: That's what it sounds like to me.

THE WITNESS: And on that ground I will decline to answer.

BY MS. MOLNAR:

Q. What was Abe List's residential address when he passed away?

MR. MASON: Same objections.

THE WITNESS: I will -- I will say that I do not remember the address but without -- I will say that without waiving the objection, which I would invoke if I knew the answer.

BY MS. MOLNAR:

Q. Did you e-mail Abe List?

MR. MASON: Same objections. Same objections.

THE WITNESS: I think I have to -- as to the methodology of contact I think I have to assert the

attorney-client privilege and work-product.

BY MS. MOLNAR:

Q. So you are declining to let me know whether or not you had e-mails with your client, to be clear?

MR. MASON: I think so. Yeah. Same objections. Questions about how you communicated with your client I think seek to invade the attorney-client communications.

THE WITNESS: Yes, I agree with that. I will assert my -- assert the privilege as to that.

BY MS. MOLNAR:

Q. Do you know his e-mail address?

MR. MASON: Same objections.

THE WITNESS: I'm just trying to figure out in my head --

MR. MASON: The objection is if you learned the fact through the attorney-client relationship, through a privileged communication with the client or through attorney work-product activities, then the question seeks to invade privileged communications and/or privileged information and therefore it's improper.

MS. MOLNAR: I think we should try and limit the speaking objections here.

MR. MASON: I'm sorry about that. I was trying to with "same objections" but my client had a look on his face like he wanted to contemplate it.

THE WITNESS: My only question is whether a "yes" or "no" answer to that without revealing the e-mail address itself would invade the attorney-client privilege or the work-product privilege and I would ask my counsel's guidance on that.

MR. MASON: I mean, we can confer outside of the room. My general principle has always been that you err on the side of protecting the privilege and I would hate to not do that in this case.

THE WITNESS: Okay.

MR. MASON: So if it is a fact that you learned in the context of the attorney-client relationship, I think the fact is privileged and the question seeks to invade that privilege.

THE WITNESS: I will decline to answer based on the objection stated by my counsel.

BY MS. MOLNAR:

Q. Okay. Did you know Abe List prior to being retained by him in order to defend him in connection with this lawsuit?

A. This whole thing is like the law school exam.

MR. MASON: That one was a very good final question. I actually kept my mouth shut on it. I think it was an answerable one.

THE WITNESS: I believe it also is. The answer

is no, I did not know him -- I did not know him to my knowledge before that. I can't exclude the possibility that there was some Twitter interaction with him somewhere over the years but I was not aware of him and did not know him prior.

BY MS. MOLNAR:

Q. I know you are also an avid Twitter user, Mr. White.

A. That's a polite way to put it.

Q. Were you friends or did you follow Abe List at any point?

A. No. Wait. I take that back. There might have been --

MR. MASON: Let me do an objection on that one too. I think that's -- First of all, are we limiting the scope temporally as you did in the previous question?

MS. MOLNAR: "At any point" so it would be before or after the lawsuit was filed.

MR. MASON: Without a temporal limitation that excludes the period of representation it strikes me as the question is phrased it seeks to invade potentially attorney-client communications. I think it is also vague at least to people -- vague as to the verbs in question, "followed," "friends," et cetera.

THE WITNESS: This is my answer. Before I did

not, I did not follow him on Twitter, I was not his friend on any social media.

After it seems to me that if I did something public, like follow his account, then that would be something that was not itself confidential. I believe the answer is I might have for a day or two but I do not believe I did over the long term.

MS. MOLNAR: Okay. I am going to mark this as -- I believe this is Exhibit 3.

(Deposition Exhibit 3 was marked.)

BY MS. MOLNAR:

Q. I am going to represent to you, Mr. White, that this is a post from Abe Contraire. Are you familiar with that user name?

A. I am.

Q. Is Abe Contraire the same person that is Abe List which is your client -- which was your client?

MR. MASON: Same objections as to that.

THE WITNESS: As to that I am --

If you showed me posts or things in Abe Contraire's profile, I could look at them and acknowledge them, but I'm not able to answer the question without attorney-client communication. On that basis I have to declare -- decline to do so. Also, this document is confusing to me. But I will let that --

BY MS. MOLNAR:

Q. The point of the document is really to point out that the Twitter handle Popehat, is that you, Mr. White?

A. That is. Me individually in my private capacity --

Q. Correct.

A. -- not as an attorney.

Q. Do you share that account with anyone else?

A. I did for a time.

Q. Okay. And I believe you also have a blog called Popehat; is that correct?

A. That's correct.

Q. All right. That's it on this exhibit.

A. I just want to make sure that I haven't said anything that you think suggests that I think this is an accurate exhibit. It appears to me to be cobbled together from different things.

Q. I disagree. But the point of the exhibit was just to see if you know who Abe Contraire is, number one --

A. Okay.

Q. -- and, number two, if Popehat was your Twitter name and if that was you.

A. All right. So long as my answers are not taken to confirm that this is an accurate exhibit, then I'm

fine.

MR. MASON: Could we do the standard foundational question, have you seen this before, do you know what it is?

MS. MOLNAR: I don't think I need to.

MR. MASON: I think what he is saying --

MS. MOLNAR: I -- This is not something that I'm going to be offering into evidence. It is more based on getting some facts.

MR. MASON: Awesome. Would you mind if I asked him?

MS. MOLNAR: Go ahead.

MR. MASON: Mr. White, have you seen Exhibit 3 before?

THE WITNESS: I have not.

MR. MASON: Do you know what Exhibit 3 is?

THE WITNESS: I don't know exactly. It appears to be a screen shot that seems to put together different tweets to make them look like they are together.

MR. MASON: Okay. Thank you.

BY MS. MOLNAR:

Q. I know you have said that you did not to your knowledge know Abe List before you were retained to represent him in the current lawsuit.

Do you represent him or did you represent him in

any other legal matters other than the current lawsuit?

MR. MASON: I think the same objections as to that.

THE WITNESS: I have to assert the attorney-client privilege as to that, as to whether the answer is "yes" or "no."

BY MS. MOLNAR:

Q. Are there any other lawsuits pending with Abe List as a plaintiff or defendant?

MR. MASON: Vague, foundation, same objections.

THE WITNESS: If I knew the answer to the question based on attorney-client communications, I would have to assert the attorney-client privilege and decline to respond. I do not know the answer to the question.

BY MS. MOLNAR:

Q. Okay. Did Abe List ever file for bankruptcy?

MR. MASON: Same objections. Also foundation, also calls for speculation.

THE WITNESS: If I knew the answer to the question, I would need to assert the attorney-client privilege because the only way I could know is through communications with my client. However, I do not know the answer to the question.

BY MS. MOLNAR:

Q. Do you know if Abe List had any other Twitter

accounts?

MR. MASON: Same objections.

THE WITNESS: When you say "any other Twitter accounts," what are you including and excluding?

BY MS. MOLNAR:

Q. Other than the handle "Abelisted" are there any other Twitter accounts under other handles that were owned by or managed by Abe List?

MR. MASON: Same objections. Also foundation, calls for speculation.

THE WITNESS: I have to assert the attorney-client privilege because the only way I know the answer to that question is by attorney-client communication.

BY MS. MOLNAR:

Q. Did Abe List have a website?

MR. MASON: Same objections. Also foundation, also calls for speculation.

THE WITNESS: If I knew the answer to the question, I would need to assert the attorney-client privilege and decline to answer it because the only way I would know would be by attorney-client communications; however, I do not know the answer to the question.

MS. MOLNAR: Could we take a five-minute break?

MR. MASON: You bet.

THE WITNESS: Sure. Thank you.

THE VIDEOGRAPHER: The time is approximately 11:47 a.m. and we are going off the record.

(Recess taken from 11:47 a.m. to 11:51 a.m.)

THE VIDEOGRAPHER: The time is approximately 11:51 a.m. and we are back on the record.

MS. MOLNAR: I just have a couple more questions and then we can wrap up.

MR. MASON: Sure.

THE WITNESS: I should have shaved better today.

THE VIDEOGRAPHER: It doesn't show up.

THE WITNESS: Huh?

THE VIDEOGRAPHER: It doesn't show up.

BY MS. MOLNAR:

Q. Mr. White, have you had conversations with people outside of your firm and outside the context of this case regarding James Woods?

A. Yes.

Q. And can you give me the names of the people that you spoke with?

A. Wait. Did you say outside the context of this case?

MR. MASON: I heard the question as outside of what I would object to as -- on the same objections so if

that's --

THE WITNESS: I wasn't listening carefully.

MS. MOLNAR: Outside, yes.

THE WITNESS: Could I ask you to restate the question.

MS. MOLNAR: Could you read it back, would you mind.

(Record read as follows:

"Question: Have you had conversations with people outside of your firm and outside the context of this case regarding James Woods?")

MR. MASON: So the caution remains the same with respect to revealing attorney-client communications or work product. As I understand the question it is not seeking to elicit any such responses.

THE WITNESS: And as I understand "outside the context of this case," I have had conversations with people about the case. I don't recall ever having had a conversation about Mr. Woods that was not related to this case.

BY MS. MOLNAR:

Q. Okay.

A. It's -- It's possible that at some point or other I made some comment on Twitter about him prior to this

case but I don't remember having done so.

Q. Did Abe List have any children?

MR. MASON: Same objections.

THE WITNESS: I would only know that through attorney-client communications and therefore I have to assert the attorney-client privilege. I don't believe that was something that was discussed in my initial conversation with your colleague so there's no waiver.

BY MS. MOLNAR:

Q. Just to confirm, you do know whether or not he had children?

MR. MASON: Same objections as to that question too. I mean, if it's something that you learned during the course of the attorney-client relationship through attorney-client communications, the question is objectionable.

THE WITNESS: I will follow my attorney's recommendation.

BY MS. MOLNAR:

Q. This is just a "yes" or "no," whether you know it or not.

I'm not asking you now whether he does.

Is that within your knowledge?

A. But you are asking me in effect did my client convey to me in a confidential communication whether or

not he has children and by answering your question I would be conveying that confidential communication and that's the basis on which I have to decline.

Q. Okay. But it is certainly possible that you learned that he had children not through your client but through other means possibly.

A. I suppose it's hypothetically possible but I did not.

Q. Okay. Did Abe List have any siblings?

MR. MASON: Same objections.

THE WITNESS: That I'm quite certain I only know the answer to that question based on confidential communications with my client and therefore I have to assert the attorney-client privilege.

MS. MOLNAR: I think we're done.

THE WITNESS: Okay.

MR. MASON: So I have one request before we wrap up. I wonder if the parties could agree here while we are on the record that the transcript and the video of this deposition be used only for legal purposes within this case.

We can specify what those are, obviously, but obviously filing with the court or, you know, supporting any kind of brief or argument in the litigation, but that the video and transcript not be released in other public

fora such as by Mr. Woods in any of his online -- whatever he uses -- Twitter, Facebook, et cetera -- that the parties agree to restrict the use of this deposition to the litigation at hand.

MS. MOLNAR: I would have to consult with Mr. Weinsten on that before I can answer that question.

THE WITNESS: We are happy to wait.

MS. MOLNAR: Do you want to wait and then we will go back on the record?

THE WITNESS: That would be fine. Or we can stay on the record and not say anything for a couple of minutes.

MS. MOLNAR: Let's go off the record and take a five-minute break. Let me see if I can --

THE VIDEOGRAPHER: Microphone, please.

MS. MOLNAR: I'm sorry?

THE VIDEOGRAPHER: Your microphone.

MS. MOLNAR: Well, I was just going to walk away and rip your whole equipment off. I hope you don't mind.

THE VIDEOGRAPHER: The time is approximately 11:56 a.m. and we are going off the record.

(Recess taken from 11:56 a.m.
to 11:57 a.m.)

THE VIDEOGRAPHER: The time is approximately 11:57 a.m. and we are back on the record.

MS. MOLNAR: So we are not prepared to agree to that but we can discuss it further. I am going to close the deposition and discuss it after.

THE WITNESS: I would like to just make, then, a statement, make the record for why I would like the stipulation at least as to the video. Okay.

So I am concerned that Mr. Woods will post portions of the video in an effort to incite harassment of me, my firm or my family. I believe that the vividness of using a video medium makes it more likely that that will be successful than the cold transcript. I believe that the timing is particularly inopportune because of the extremely strong feelings in the country right now by the people who follow Mr. Woods and the type of behavior they address and he encourages them to address towards others.

MS. MOLNAR: Okay. I think that this should be more than enough. I think we should --

MR. MASON: That's fine. For our purposes I think the next step for us is if we can't reach an agreement, we will most likely need to seek some kind of protective order --

MS. MOLNAR: Okay.

MR. MASON: -- really from the court.

Could we agree that, you know, at a minimum pending the parties' discussion --

MS. MOLNAR: I'm not going to agree to anything right now.

THE WITNESS: Okay.

MR. MASON: All right.

THE WITNESS: I made my record. Thank you.

MS. MOLNAR: Thank you.

THE VIDEOGRAPHER: This concludes today's video deposition of Kenneth White. The total number of media used was one. The time is approximately 11:59 a.m. and we are going off the record.

(ENDING TIME: 11:59 A.M.)

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EXHIBIT B

James Woods
RealJamesWoods

Follow

When the slime who libeled me retained a diet guru (@lisabloom) and a guy who calls himself @Popehat, I felt pretty good about the lawsuit.

RETWEETS LIKES
409 1,814

12:15 AM - 21 Oct 2016

EXHIBIT C

James Woods @RealJamesWoods · 2h

The slime who libeled me just dropped his appeal contesting my victorious SLAPP motion. Perennial loser @LisaBloom isn't yapping so much now

Donald G. Carder @theangrymick · 1h

@RealJamesWoods @LisaBloom He died, dude.

James Woods @RealJamesWoods · 35m

.@theangrymick @LisaBloom Hopefully screaming my name. In agony.

EXHIBIT D

James Woods @RealJamesWoods 1h

The slime who libeled me just dropped his appeal contesting my victorious SLAPP motion. Perennial loser @LisaBloom isn't yapping so much now

Rustic Baller @ByYourLogic 42m

@RealJamesWoods he's dead you fucking geriatric retard

James Woods
@RealJamesWoods

.@ByYourLogic Screaming my name, I hope. Learn this. Libel me, I'll sue you. If you die, I'll follow you to the bowels of Hell. Get it?

9:27 PM · 20 Oct 16

86 RETWEETS **378** LIKES

Mark The Cop @OBCOP 31m

@RealJamesWoods @ByYourLogic #Savage

Reply to James Woods

EXHIBIT E

Superior Court of California
County of Los Angeles

JAMES WOODS,

Plaintiff,

vs.

JOHN DOE, ET AL.,

Defendants.

Case No.: BC589746

DEPARTMENT 45

[TENTATIVE] ORDER

Complaint Filed: 7/29/15
Trial Date: None set

Hearing date: February 6, 2016
Moving Party: Defendant John Doe aka "Abe List"
Responding Party: Plaintiff James Woods

Special Motion to Strike (Civ. Proc. 425.16)

The Court considered the moving papers, opposition, and reply.

The motion is GRANTED.

Defendant John Doe aka "Abe List" requests that the court strike the complaint on the grounds that it constitutes a strategic lawsuit against public participation ("SLAPP") within CCP section 425.16. Defendant contends that his speech is protected by the statute and plaintiff cannot show a probability of prevailing on the merits.

Plaintiff filed a complaint against John Doe aka "Abe List" and Does 2 through 10 for (1) defamation and (2) invasion of privacy by false light. Plaintiff alleges that his claims arise out of and are for damages with respect to a false and defamatory statement which was initially published on or about 7/15/15 by an unidentified anonymous person who created and who operates a Twitter account under the name "Abe List." ("AL") [Twitter is a social media

platform on which users send "tweets"—statements of up to 140 characters—visible to other users who "follow" them.] The owner of this Twitter account has thousands of followers and, since at least December 2014, has undertaken to engage his followers with a campaign of childish name-calling targeted against Woods. In the past, AL has referred to Woods with such derogatory terms as "prick," "joke,""ridiculous,""scum" and "clown-boy." Complaint, 8. On 7/15/15, and for the sole and intentional purpose of harming Woods, AL concocted and posted on his Twitter account the outrageous, baseless, false and defamatory statement "cocaine addict James Woods still sniffing and spouting." In doing so, AL intended to, and did, convey to thousands of AL's followers and others with access to the internet the false claim that Woods is addicted to cocaine, a controlled substance. Id., 9.

Plaintiff further alleges that an unidentified person operates and utilizes the AL Twitter Account which is displayed at or with the uniform resource locator ("URL") <https://mobile.twitter.com/abelisted?p=s>, and which is continually maintained and is included in and appears prominently in current Google.com and other search engine results. Indeed, a search on Google.com for "Abe List James Woods" yields the outrageous statements from the AL Twitter Account as the top two results, including one that calls Woods "a ridiculous scum clown-boy." Id., 10. AL published, and/or caused to be published or authorized to be published, the false statement on the AL Twitter Account and in current (as of the date of this Complaint) Google.com search engine results, causing the false statement to be viewed thousands of times and possibly even hundreds of thousands of times. AL posted the false statement in response to a Twitter post by Woods. Thus, the false statement has been seen not only by defendants' thousands of followers, but possibly by Woods' 238,512 followers on his Twitter account. Id., 11.

To rule on a section 425.16 motion to strike, the court employs a "two-step process: First, the court decides whether the defendant has made a threshold showing that the challenged

cause of action is one arising from protected activity." Vargas v. City of Salinas (2009) 46 Cal. 4th 1, 16; Taus v. Loftus (2007) 40 Cal. 4th 683, 703; Rusheen v. Cohen (2006) 37 Cal. 4th 1048, 1056; Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal. 4th 53, 67. "If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." Vargas, 46 Cal. 4th at 16; Taus, 40 Cal. 4th at 703; Rusheen, 37 Cal. 4th at 1056; Equilon, 29 Cal. 4th at 67. The plaintiff demonstrates a probability of prevailing by showing that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. Hutton v. Hafif (2007) 150 Cal. App. 4th 527, 537; Wang v. Wal-Mart Real Estate Business Trust (2007) 153 Cal. App. 4th 790, 799; Roberts v. Los Angeles County Bar Ass'n (2003) 105 Cal. App. 4th 604, 613; Chavez v. Mendoza (2001) 94 Cal. App. 4th 1083, 1087. "The defendant has the burden on the first issue; the plaintiff has the burden on the second." Gallimore v. State Farm Fire & Casualty Ins. Co. (2002) 102 Cal. App. 4th 1388, 1396.

Step One: Defendant's Moving Burden

In order to invoke Section 425.16, a defendant need only demonstrate that a suit "arises from" the defendant's exercise of free speech or petition rights. See CCP section 425.16(b); City of Cotati v. Cashman (2002) 29 Cal. 4th 69, 78. This is determined by the "gravamen or principal thrust" of the action. Episcopal Church Cases (2009) 45 Cal. 4th 467, 477. See also Martinez v. Metabolife International, Inc. (2003) 113 Cal. App. 4th 181, 188 (the gravamen of the plaintiff's cause of action determines whether Section 425.16 applies). In making this determination, the court analyzes "whether the defendant's act underlying the plaintiff's cause of action itself was an act in furtherance of the right of petition or free speech. Accordingly, we focus on the specific nature of the challenged protected conduct, rather than generalities that might be abstracted from it." Dyer v. Childress (2007) 147 Cal. App. 4th 1273, 1279. "In

making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." Code Civ. Proc. §425.16(b)(2).

The preamble to section 425.16 states its provisions are to be construed broadly to safeguard the constitutional right of free speech. §425.16(a). Broad construction must therefore be given to the phrase "an issue of public interest." Tamkin v. CBS Broadcasting, Inc. (2011) 193 Cal. App. 4th 133, 143.

On 7/15/15, plaintiff tweeted from his Twitter account @RealJamesWoods, "USATODAY app features Bruce Jenner's latest dress selection, but makes zero mention of Planned Parenthood baby parts market." In response, Abe List tweeted, "cocaine addict James Woods still sniffing and spouting."

Defendant's 7/15/15 tweet falls under CCP section 425.16(e)(3) "any written or oral statement made in a place open to the public or a public forum in connection with an issue of public interest" and 425.16(e)(4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Twitter is a public forum. The tweets were made in connection with issues of public interest.

Defendant has met his burden.

Step Two: Plaintiff's Responding Burden

"We decide this step of the analysis on consideration of the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (§425.16(b).) Looking at those affidavits, '[w]e do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law.'

(Grewal v. Jammu (2011) 191 Cal. App. 4th 977, 989.) This is because the anti-SLAPP statute does not require the plaintiff 'to prove the specified claim to the trial court'; rather, so as to not deprive the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim. (Mann v. Quality Old Time Service, Inc. (2004) 120 Cal. App. 4th 90, 105.) 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."' (Oasis West Realty, LLC v. Goldman (2011) 51 Cal. 4th 811, 820.) If the plaintiff can show a probability of prevailing on any part of [his or her] claim, the cause of action is not meritless and will not be stricken; once a plaintiff shows a probability of prevailing on any part of [his or her] claim, the plaintiff has established that [his or her] cause of action has some merit and the entire cause of action stands. (Oasis, supra, 51 Cal. 4th at 820, quoting Mann, supra, 120 Cal. App. 4th at 106.)." Burrill v. Nair (2013) 217 Cal. App. 4th 357, 378-79 (citations omitted). Plaintiff must present admissible evidence to make this showing, however, and cannot rely solely on the allegations of the complaint. Roberts v. Los Angeles County Bar Association (2003) 105 Cal. App. 4th 604, 613-14; see Evans v. Unkow (1995) 38 Cal. App. 4th 1490, 1497-98 (proof cannot be made by declaration based on information and belief).

The tort of defamation involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." Taus v. Loftus (2007) 40 Cal. 4th 683, 720. "If the person defamed is a public figure, he cannot recover unless he proves, by clear and convincing evidence, that the libelous statement was made with '"actual malice" — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.'" Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244. "Libel is defined by Civil Code section 45 as 'a false and unprivileged publication by writing, . . . 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.' . . . In determining whether a statement is libelous we look to what is explicitly stated as well as what insinuation and implication can be reasonably drawn from the communication." Forsher v. Bugliosi (1980) 26 Cal.3d 792, 802-803.

"Whether published material is reasonably susceptible of an interpretation which implies a provably false assertion of fact—the dispositive question in a defamation action—is a question of law for the court." Couch v. San Juan Unified School Dist. (1995) 33 Cal. App. 4th 1491, 1500. The question is to be resolved by determining how the "'average' reader" would interpret the material. Id.; San Francisco Bay Guardian, Inc. v. Superior Court (1993) 17 Cal. App. 4th 655, 658-59 and by considering the "totality of the circumstances." Seelig v. Infinity Broadcasting Corp. (2002) 97 Cal. App. 4th 798, 809; Sanders v. Walsh (2013) 219 Cal. App. 4th 855, 862. "Statements do not imply a provably false factual assertion and thus cannot form the basis of a defamation action if they cannot 'reasonably [be] interpreted as stating actual facts' about an individual. Thus, 'rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of . . . contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection." Ferlauto v. Hamsher (1999) 74 Cal. App. 4th 1394, 1401; Seelig, supra; Greenbelt Pub. Assn. v. Bresler (1970) 398 U.S. 6, 14.

In considering the context of a statement, courts examine the "knowledge and understanding of the audience to whom the publication was directed." Seelig, supra. In Seelig, the court considered the "irreverence" of a morning radio program "which may strike some as humorous and others as gratuitously disparaging" in determining that "no reasonable listener" could take the challenged statements as factual pronouncements." Id. at 811. "Where potentially defamatory statements are published in a . . . setting in which the audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may well assume the

character of statements of opinion." Gregory v. McDonnell Douglas Corp. (1976) 17 Cal. 3d 596, 601. For example, "online blogs and message boards are places where readers expect to see strongly worded opinions rather than objective facts." Summit Bank v. Rogers (2012) 206 Cal. App. 4th 669, 696-97.

Plaintiff alleges that on 7/15/15, AL falsely accused plaintiff of being a "cocaine addict" on Twitter.

Defendant argues that his tweet is not a statement of provable fact; rather, it is clear rhetorical hyperbole based on an examination of the context, the understanding of the audience, and the totality of the circumstances. Defendant contends that Twitter is known for hyperbole. Twitter users will not be inclined to view heated tweets as stating provable facts. Defendant is known for insult and hyperbole. His audience knows that he uses rhetorical accusations of drug and alcohol abuse as a way to express disagreement with political positions. He also reacts with anger to homophobia. Further, plaintiff is known for insult and hyperbole. His followers know that he is routinely at the center of heated political rhetoric. Defendant argues that his audience will not expect heated exchanges with him to contain provable statements of fact. Further, defendant's tweet came as part of a pattern of insult towards plaintiff. The tweet was the latest in a series of insults. Moreover, the tweet echoed a Twitter in-joke. Twitter users routinely use the "cocaine" insult to respond to plaintiff's political rants. Further, the insult was not offered in the abstract; it came in response to plaintiff's statement suggesting that the media should be concerned with abortion and not Catlin Jenner's dress selection. Plaintiff referred to Caitlyn by her former name, Bruce Jenner, making the "expression more pungent to a gay rights activist like Mr. Doe." Defendant also argues that as he is anonymous and tweets under a pseudonym, California courts recognize that statements by anonymous internet sources are less likely to be seen as statements of fact. His tweet was not formal—it was a sentence fragment, not a carefully crafted and grammatical statement. The tweet did not include any indicia of reliability.

In opposition, plaintiff contends that the tweet is a statement of provable fact. Plaintiff contends that Twitter "boasts it is 'an easy way to discover the latest news related to subjects you care about.'" Weinsten decl., Exh. C. And, that 63% of Twitter users say that the platform serves as a source of news about events and issues for them." Weinsten decl., Exh. D. Plaintiff argues that Twitter has been adopted by the mainstream media and public at large as a reliable source of information, and that it has had an extremely influential impact not only on society, but society's perceptions and beliefs. While conversations on Twitter can and do include opinion, jokes, and hyperbole, it cannot be ignored that people believe what they read on Twitter. As to his own Twitter account, he contends that he is a prolific user of Twitter and regularly tweets his opinions on entertainment, social and political issues of general interest. His followers include newscasters, entertainment celebrities, professionals, employers, friends, enemies, fans, and others interested in his views. Defendant AL is also an avid user of Twitter. He tweets on various subjects including politics, economics, gay rights, and national and international news, events, and issues. Plaintiff contends that AL has openly shared on Twitter his disdain for plaintiff. As to whether the statement is "hyperbole," hyperbole is an exaggeration of fact. The tweet was not an exaggeration of anything, "just a plain and false statement that Mr. Woods is a cocaine addict." See also declaration of Prof. Edward Finegan, an expert linguist, who states in his declaration that "nothing in the Tweeted words 'cocaine addict James Woods still sniffing and spouting' suggests that it should be interpreted as hyperbolic."

Plaintiff further argues that the statement is not provable false because he is not now nor has he ever been a "cocaine addict." He has never used cocaine. He also contends that the tweet was not "anonymous" but was made under a false name.

In reply, defendant argues that plaintiff's purported expert testimony on a question of law is inadmissible. Further, the testimony focuses only on plaintiff's tweet and defendant's tweet in response. The testimony does not address the totality of the circumstances. Defendant reiterates

that his tweet is a figurative insult, not a statement of fact. Further, defendant argues that, plaintiff's own words and tone on Twitter are not irrelevant because they are part of the larger context. As an example, in 2013, someone tweeted "@RealJamesWoods Have never heard logical argument against Obama just slogans and labels from you, Jon Voight, Giuliani, all RW shit-heads," and in response, plaintiff tweeted, "Well, put down your crack pipe, and retread my timelines. You'll find plenty there." Twitter is a place where plaintiff also "constantly and vigorously insults and engaged in inflammatory language, to the point that he's been widely branded a 'troll.'" Reply, at 6.

Defendant's objections to the declaration of Edward Finegan, Ph.D and the declaration of Michael Weinsten are SUSTAINED as improper legal opinion and opinion evidence on a question of law. "There are limits to expert testimony, not the least of which is the prohibition against admission of an expert's opinion on a question of law." Summers v. A.L. Gilbert Co. (1999) 69 Cal. App. 4th 1155, 1178. See also Nevarrez v. San Marino Skilled Nursing & Wellness Ctr. (2013) 221 Cal. App. 4th 102, 122 ("an expert may not testify about issues of law or draw legal conclusions.").

Plaintiff's objections are OVERRULED.

The court finds that as a matter of law, in consideration of the totality of the circumstances, the tweet at issue is not a statement of fact but rather "rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of contempt and language used in a loose, figurative sense" that does not support a defamation action. Seelig, supra. The tweet cannot be reasonably interpreted as stating actual facts about James Woods. Both tweets were in the context of expressing inflammatory opinions. There were no indicia of reliability as to defendant's tweet.

Plaintiff has not met his burden of showing a probability of prevailing.

The motion is GRANTED. Defendant is entitled to his attorney's fees.

It is so ordered.

Dated: February 2, 2016

MEL RED RECANA
Judge of the Superior Court

EXHIBIT F

CALIFORNIA SUPERIOR COURT
COUNTY OF LOS ANGELES, CENTRAL DISTRICT
DEPARTMENT 45

JAMES WOODS VS. JOH DOE, ET AL
BC589746

ORDER

The Court had issued a tentative order but after oral arguments, took the matter under submission.

After reconsidering the parties' pleadings and arguments, the Court now rules:

The Court affirms its ruling that defendant has met his burden in the 1st Prong. However, it reverses its Order as to the 2nd Prong. The Court finds that plaintiff has met his burden of showing a probability of prevailing.

As contended by plaintiff: Applying the totality of circumstances test, and examining the plain language of the Tweet, it is clear that any reader of the AL False Statement could and indeed must view it as a statement of *fact*. As described by Professor Finegan, AL's use of a prenomial characterization (i.e. "cocaine addict") followed by a proper noun (i.e., "James Woods") is a well-established linguistic structure widely used to characterize people with shorthand ***factual*** information. Prof. Finegan's opinion that "many if not all readers of the 'cocaine addict' Tweet will understand and interpret Abe List to be making a factual claim about James Woods – namely that he is a cocaine addict' is on an issue of fact. His opinion is sufficiently beyond common experience and assists the trier of fact.

Defendant's objections are overruled.

Therefore, defendant's Special Motion to Strike (CCP 425.15) is DENIED.

IT IS SO ORDERED.
DATED: Feb. 8, 2016

MELVRED RECANA
Judge

C E R T I F I C A T E O F M A I L I N G

L.A. Superior Court Central

Civil Division

JAMES WOODS VS. JOHN DOE ET AL	BC589746

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 333 South Hope Street, 40th Floor, Los Angeles, California 90071.

On December 9, 2016, I served the following document(s) described as: **NON-PARTY KENNETH P. WHITE'S OPPOSITION TO: (1) MOTION FOR AN ORDER COMPELLING NON-PARTY KENNETH P. WHITE TO ANSWER DEPOSITION QUESTIONS AND PRODUCE DOCUMENTS; AND (2) MOTION FOR AN ORDER FOR SANCTION AGAINST NON-PARTY KENNETH P. WHITE IN THE AMOUNT OF $9,040.55** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Michael E. Weinten
Evan N. Spiegel
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Lavely & Singer, P.C.
2049 Century Park East, Ste. 2400
Los Angeles, CA 90067

Tel.: 310.556.3501
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Attorneys for Plaintiff
James Woods

☒ **BY MAIL:** I deposited such envelope in the mail at 333 South Hope Street, 40th Floor, Los Angeles, California 90071. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 213/613-0550. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.

☐ **BY OVERNIGHT DELIVERY:** I served such 5ized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.

☐ **BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles, California, I caused each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated below. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 9, 2016, at Los Angeles, California.

Letty Perez

4833-1291-3725, v. 1