A168295

IN THE COURT OF APPEALS OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 5

DONGXIAO YUE,

Plaintiff-Appellant

v.

WENBIN YANG,

Defendant-Respondent

Appeal from the Superior Court for the County of Contra Costa

Case No. MSC1601118

Honorable Clare Maier, Judge

APPELLANT'S OPENING BRIEF

DONGXIAO YUE (#319955)
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Self-Represented

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208(d) (1), Plaintiff-Appellant, Dongxiao Yue, self-represented individual, certifies that:

Netbula, LLC, a company founded by Plaintiff Yue, has an interest in the outcome of this case.

Date: 1/16/2024

By: /s/ D. Yue

_____

DONGXIAO YUE

Plaintiff-Appellant Pro Se

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INTRODUCTION AND ISSUES ON APPEAL

This is an appeal of the judgment rendered in favor of Defendant-Respondent Wenbin Yang ("Yang" or "Defendant") subsequent to a brief trial by court in a case of unfair competition and defamation. Plaintiff-Appellant, Dongxiao Yue ("Yue" or "Plaintiff"), commenced the underlying action against Yang and co-defendants Trigmax Solutions, LLC ("Trigmax"), Yeyeclub.com ("Yeyeclub"), Muye Liu ("Liu") in June 2016. The full case was set for trial on March 27, 2023. That day, the trial court dismissed the other defendants for lack of prosecution[1]. The trial proceeded against Yang as the sole remaining defendant. The trial was highly irregular. Plaintiff faced considerable challenges in presenting his evidence. Throughout the trial, the court frequently interrupted Plaintiff's presentation of evidence and raised objections to Plaintiff's examination of Yang. On March 28, the court delivered a discourse and extended an invitation to Yang to request judgment. Yang, requiring the assistance of an interpreter, responded with a simple affirmation, "Yes. Yes, it is." The trial court issued a judgment favoring Yang.

The issues on appeal are:

Issue 1. Should terminating sanctions be entered against Yang

[1] Plaintiff filed a separate appeal of the dismissal of Trigmax, Yeyeclub and Liu. (Case No. A167577.)

for his blatant discovery violations including lying under oath?

Issue 2. Did Yang commit defamation by posting the false statements on the Internet that Plaintiff violated court orders and his family nearly driven to the streets?

Issue 3. Did Yang commit defamation by posting the false statements that Plaintiff attacked Yang with Trojan Viruses?

Issue 4. Did Yang defame Plaintiff by posting the false statements that Plaintiff committed the felony of stealing information using computer viruses?

Issue 5. Was Yang liable for unfair competition in working in concert with the other defendants to harm Plaintiff's business?

Issue 6. Did Plaintiff prove damages caused by Yang's conduct?

Issue 7. Was the trial court's exclusion of evidence and restriction on Plaintiff's examination of Yang proper?

Issue 8. Was the trial proceeding so irregular that it violated principles of fairness, impartiality, and due process under the Constitution of California and the Constitution of the United States?

Issue 9. Did the trial court violate equal protection under the Constitution of California and the Constitution of the United States by focusing on Plaintiff's non-U.S. national origin?

STATEMENT OF THE CASE

I. Pre-Trial Proceedings

Plaintiff commenced the instant action on June 13, 2016, by filing the Verified Complaint ("VC") (AA12-30.) He then made over a dozen attempts to personally serve the summons on Yang at his residence. Yang evaded all these efforts, including the ones made by the Canadian government under the Hague Service Convention. (AA38-45.) Yang was finally served process in September 2018, via substitute service ordered (AA47) by the then presiding Superior Court Judge, the Honorable Steven K. Austin, by posting the Summons and Complaint on the door of and simultaneous mailing to the address of 119 Mintwood Dr., Toronto, Canada ("119 Mintwood").

Default was entered against Yang on November 21, 2018.

On April 30, 2019, Yang filed a motion to set aside default, supported by his declaration that the Summons and Complaint were "posted on a wrong address (119 Mintwood Dr., Toronto)".

Default against Yang was set aside on June 13, 2019.

Yang then moved to quash service of process, challenging California's personal jurisdiction over him. The trial court granted Yang's motion for lack of personal jurisdiction. Plaintiff appealed.

On March 8, 2021, the California Court of Appeal issued a decision reversing the trial court's ruling on Yang's motion to quash. (*Yue v. Yang* (2021) 62 Cal.App.5th 539.)

On April 19, 2021, Yang filed a second motion to quash service of summons, on the ground of defective service.

On May 27, 2021, the trial court denied Yang's second motion to quash service. (AA127-129.)

On June 24, 2021, Yang filed a special Anti-SLAPP motion to strike Plaintiff's complaint, under California Code of Civil Procedure § 425.16. (AA131-149.)

On July 29, 2021, Plaintiff filed an opposition to Yang's Anti-SLAPP motion (AA151-170.)

Yang filed a reply on August 5, 2021.

On August 13, 2021, the court denied Yang's anti-SLAPP motion. (AA172-175.)

On September 8, 2021, Yang filed his answer.

On October 18, 2021, Plaintiff served Yang the first set of discovery requests (AA233-257 (Appendix Vol.2)).

On November 12, 2011, the trial court set the trial date for November 7, 2022

On November 15, 2021, Yang emailed his responses to Plaintiff's first set of discovery requests, which consisted mostly of objections (AA258-297 (Vol.2)).

In December 2021, after Judge Austin's retirement, the case was reassigned to Department 36, with Judge Clare Maier presiding. The trial date of the case remained Nov 7, 2022.

On January 4, 2022, after failing to persuade Yang to "honestly and frankly exchange facts" in discovery, Plaintiff filed a motion to compel further responses from Yang and for sanctions (the "Motion to Compel"). (AA176-325 (Vols.1-2).)

On February 16, 2022, Plaintiff requested Yeyeclub's default, after failing to persuade Yeyeclub to respond to the Complaint.

Previously, in 2018, Yeyeclub filed a motion to quash service but that motion was later taken off calendar. Default was entered against Yeyeclub by the clerk the same day.

On March 9, 2022, Commissioner Gina Dashman, who presided over discovery matters in the case, issued an order directing Yang to provide verified responses to Plaintiff's Requests for Admissions ("RFAs"), Specia Interrogatories, Requests for Production of Documents, and Form Interrogatories without objections, while denying sanctions on Yang. (AA376-378 (Vol.2).)

Despite the court's clear order, most of Yang's amended responses contained various invalid objections and were evasive.

On May 27, 2022, Plaintiff filed a motion to deem the first set of RFAs admitted and requested terminating sanctions to be imposed on Yang, on the ground that Yang failed to obey the court order. (AA379-420 (Vol.2).) The RFAs asked Yang to admit that he used the online identities of "JFF", "iMan", "VOA" and "CH3CH2OH" on various websites.

On June 17, 2022, Yeyeclub filed a motion for sanctions under CCP §128.7 against Plaintiff. Yeyeclub contention was that it had been dismissed from the case already. Yeyeclub's motion did not request the court to set aside default.

On June 29, 2022, the court granted Plaintiff's motion to deem the facts in the first set of RFAs admitted, thus deeming Yang to be the person using IDs of "JFF", "iMan", "VOA" and "CH3CH2OH" on various websites. The court ruled that "Defendant failed to obey the court's order", but denied Plaintiff's

motion for terminating sanctions. (AA467 (Vol.2).)

Yang then served amended responses but largely repeated his previous objections, contending that he "disagree with the Court's ruling on the deem RFA admitted." (AA504 (Vol.2)).

On August 4, 2022, Plaintiff filed an opposition to Yeyeclub's motion for sanctions. (AA469-480 (Vol.2).)

On August 18, 2022, Plaintiff and Yeyeclub's counsel appeared before Judge Maier for the hearing on Yeyeclub's motion for sanctions. The Judge denied Yeyeclub's motion for sanctions. The court also set aside default on its own motion, it re-calendared Yeyeclub's 2018 motion to quash for hearing on September 22, 2022. (AA482-484 (Vol.2).)

On August 25, 2022, Plaintiff filed the second motion for terminating sanctions against Yang. (AA486-519 (Vol.2).)

On September 8, 2022, Plaintiff filed an opposition to Yeyeclub's motion to quash. (AA522-540 (Vol.3).)

On September 22, 2022, the court denied Yeyeclub's motion to quash. (AA542-547 (Vol.3).)

On October 5, 2022, Plaintiff filed his Issue Conference statement for the trial scheduled for November 7, 2022 (AA549-551 (Vol.3).)

On October 12, 2022, Plaintiff attended in person the Issue Conference scheduled that day. Defendant Yang and defense counsel Pohl appeared via Zoom. The trial was continued to March 27, 2023. (AA577-578 (Vol.3) (Minutes).)

On October 19, 2022, the court denied Plaintiff's second motion for terminating sanctions against Yang. (AA580 (Vol.3).)

On January 2, 2023, Plaintiff took Yang's deposition. Yang refused to answer almost all substantive questions by asserting various invalid objections. Yang also failed to bring the requested documents compelled by the court. (AA599-752 (Vol.3) (Depo.).)

On January 19, 2023, Plaintiff filed a motion to compel further deposition of Yang and for sanctions. (AA582-760 (Vol.3).)

On January 24, 2023, after lengthy litigation, the trial court ordered Yeyeclub to respond to discovery.

On January 31, 2023, Mr. Pohl filed a motion to be relieved as counsel for Yeyeclub, stating that he had lost contact with Yeyeclub.

On February 17, 2023, Plaintiff filed his Issue Conference Statement for the issue conference of February 24, 2023. (AA762-765 (Vol.3).)

On February 24, 2023, the issue conference was held. (AA767-768 (Vol.3) (Minutes).)

On March 6, 2023, Plaintiff received the motion to dismiss for lack of prosecution from Mr. Pohl on behalf of Trigmax and Liu.

On March 8, 2023, Plaintiff filed an opposition to Yeyeclub counsel's motion to withdraw. (AA782-788 (Vol.3).)

On March 10, 2023, Plaintiff filed his trial exhibit and witness list. (AA790-799 (Vol.3).)

On March 15, 2023, the court granted in part Plaintiff's motion to compel further deposition of Yang. Sanctions were denied. (AA801 (Vol.3).)

On March 21, 2023, Plaintiff filed his opposition to Defendants' motion to dismiss for lack of prosecution. (AA803-859

(Vols.3,4).)

On March 23, 2023, the trial court granted Mr. Pohl's request to be relieved as counsel for defendant Yeyeclub.com.

Also on March 23, 2023, the clerk entered Yeyeclub's default upon Plaintiff's request.

On the morning of March 27, 2023, the parties appeared remotely for the Court trial. Plaintiff Yue appeared pro se. Defendant Muye Liu, also as the owner of Trigmax, appeared along with his counsel, William Pohl. Defendant Wenbin Yang appeared via Zoom.

The trial court indicated that it had reviewed the motions to dismiss under the five-year statute and intended to grant the Trigmax defendants' motion. The trial court also stated that it found the five-year deadline had not been exceeded against Yang. The trial court dismissed defendants Muye Liu and Trigmax Solutions with prejudice. (AA861-862 (Vol.4) (Minutes).)

The trial court then asked Plaintiff whether he still wished to proceed to the trial against Yang. Plaintiff stated he would proceed to conduct the trial against Yang.

The trial proceeded against the remaining defendant, Wenbin Yang.

II. The Court Trial

Defendant Yang, who had very limited English abilities, mostly spoke through an interpreter.

1. The first day of court trial (March 27, 2023)

Before Plaintiff offered any evidence, the trial court stated that Plaintiff's exhibits "appear to be mostly hearsay exhibits." (AA864 (Vol.4) (Minutes).)

Plaintiff testified about the background of the case, what he observed online, and that he had met local California residents who had read Yang's online attacks on Plaintiff. Plaintiff testified these local California residents knew him personally. (Plaintiff's testimony in this area largely repeated his previous declarations filed with the court.)

The trial court, absent any objections from Yang, struck Plaintiff's testimony as hearsay.

Plaintiff then stated that these were his testimony based on his personal experience. They were not hearsay.

The trial judge warned Plaintiff that "Arguing with the judge is not a good idea." The trial judge also stated that Plaintiff could go to the court of appeal but he was in her court now. Plaintiff had made no comment about appeal at the trial.

Plaintiff then proceeded to offer each of the trial exhibits into evidence by going through the process of identifying the exhibit and laying the foundation.

After a couple of exhibits, the trial court decided that it would be more efficient for the parties to email her a list of exhibits and she then decide their admissibility at once.

A recess was made to allow Plaintiff and Yang to each prepare a list of exhibits to be offered.

Plaintiff then emailed a list of exhibits to be offered as evidence to the court. So did Yang.

Plaintiff essentially wanted all his trial exhibits to be admitted. Among these exhibits, most of them concerned defendants Liu and Yeyeclub.com. Plaintiff contended that even though Liu had been dismissed and Yeyeclub.com was in default, Plaintiff had to introduce these exhibits into evidence to prove Yang's conspiracy with these defendants and Yang's unfair competition. The trial court rejected these arguments and disallowed most of the evidence related to Yeyeclub and Liu.

Plaintiff then offered Yang's online postings made under various usernames, such as "iMan", "VOA", "CH3CH2OH", into the evidence.

Plaintiff repeatedly informed the trial court that Commissioner Dashman had deemed Yang to have admitted that he was the person using those IDs. Specifically, Plaintiff informed the trial judge that Commissioner Dashman had already deemed Yang to be "iMan", "VOA", "CH3CH2OH" and other identities.

The trial court declined to admit the exhibits. At one point, when Plaintiff brought up Commissioner Dashman's order again, the trial judge stated that Commissioner Dashman's ruling did not "dictate" the trial court's decisions at the trial.

After Plaintiff finished his testimony, he called Yang as the witness.

Plaintiff asked Yang whether he used the ID of "iMan" on ZZB, Yang denied that he did.

Plaintiff then brought out Plaintiff's trial exhibit 18, a blog article posted by iMan that included a photo of iMan's wife

performing a medical operation. Plaintiff asked Yang whether he recognized the photograph. Yang's video signal suddenly became unstable. The trial had to be continued to the next day. (AA867 (Vol.4))

At one point in the trial, Plaintiff came to understand that there was no audio recording of the trial.

Plaintiff's testimony and his subsequent examination of defendant Yang were frequently interrupted by the trial judge, who would often object to Plaintiff's presentation of evidence and questioning of Yang.

On the first day of the trial, the following exhibits were admitted: Plaintiff's Trial Exhibits **15, 16, 19, 24, 29, 30, 32, 37, 39, 40, 41, 43, 45, 47**. (AA864-868 (Vol.4).)

On the first day of the trial, the following exhibits were individually offered by Plaintiff but rejected by the trial court: Plaintiff's Trial Exhibits **17, 18, 23, 42, 44, 46**. Exhibits involving Trigmax, Yeyeclub and Liu were summarily rejected by the trial court (AA865-866 (Vol.4).)

2. The second day of the court trial (March 28, 2023)

On the morning of the second day of the trial, Plaintiff hired a court reporter to record the proceeding. The trial court was first reluctant to allow the court reporter on the ground that Plaintiff didn't submit a request before the trial. Eventually, the trial court permitted the court reporter to record the proceeding. The following is a summary of the transcript (AA1390-1427(Vol.6).)

Since the trial court declined to admit key evidence for

Plaintiff's case on the previous day of trial, Plaintiff first sought to identify Yang as “iMan” on ZZB and then link him to the “iMan” on Yeyeclub.

The trial judge again objected to Plaintiff’s questioning of Yang.

Plaintiff requested the trial court to maintain an adversarial proceeding, instead of having the judge object on defendant’s behalf.

The trial judge then made a speech about Plaintiff not being a lawyer trained in the United States, etc.

Plaintiff later requested a judicial notice of Commissioner Dashman's order that deemed Yang admitting that he was the various online IDs.

The judge stated Plaintiff's "failing to do this at the outset is an absurd waste of time", even though Plaintiff had stated numerous times that the court had deemed Yang admitted that he was those IDs, both in pre-trial conferences and on the first day of trial.

Plaintiff then moved again to admit the exhibits that were rejected by the trial court the previous day.

Near the end of the trial, Plaintiff introduced Exhibit 72, the statistics of the ZZB website over the years, which Plaintiff personally prepared and produced to all defendants, along with all supporting data. Again, the trial court asked Yang whether he had objections. Yang said he did not have any objections. Yet the trial court suggested Yang to object. When Yang repeated that he did not object. The judge commented that she “doesn’t see proper

foundation here."

At the close of Plaintiff's case in chief, the trial court asked Yang to make a motion for nonsuit. Yang didn't understand what it was. The trial court explained it to him. Yang merely said "Yes. It is." The rest was an exchange between Plaintiff and the trial court. The trial court made broad legal conclusions without discussing any of the evidence in any detail, twice denied Plaintiff's requests for a briefing on the evidence, and entered judgment in favor of Yang.

On the second day of trial, the following exhibits were admitted into the evidence: Plaintiff's Trial Exhibits **42, 44, 72**. (AA870-872 (Vol.4); AA1390-1427 (Vol.6).)

III. Post-Trial Proceedings

On May 8, 2023, Plaintiff filed the Notice of Appeal for the judgment of nonsuit in favor of Yang. (AA1382 (Vol.5).)

On May 12, 2023, Plaintiff filed the Appellant's Designation of Record on Appeal with the second day's trial transcript attached. (AA1383-1427 (Vol.6).)

On June 1, 2023, the trial court entered the order of judgment in favor of Yang (AA1429 (Vol.6).)

On September 7, 2023, the trial court awarded cost of $2032.65 to Yang as the prevailing party. (AA1431 (Vol.6).)

STATEMENT OF APPEALABILITY

This timely appeal filed on May 9, 2023 is authorized by

California Code of Civil Procedure § 904.1(a)(1) from the order of judgment by the trial court entered on March 28, 2023 (AA873 (Vol.4)) and then on June 1, 2023 (AA1429 (Vol.6).)

STATEMENT OF FACTS

Plaintiff Yue is a resident of the San Francisco Bay Area. He was in the business of developing computer software and web services (AA14).

In June 2012, Yue established a Chinese-language social media website called Zhen Zhu Bay ("ZZB") at the web address zhenzhubay.com. (AA14.)

Trigmax Solutions, LLC ("Trigmax") and Muye Liu ("Liu"), co-defendants of this case, owned, operated and administered a competing website at Yeyeclub.com ("Yeyeclub"). Trigmax is a California limited liability company. Liu is a California resident in the Sacramento area. (AA14-15.) Yeyeclub's office address was also in Sacramento. (AA932-963 (Vol.4) (Trial Ex.9).)

Both ZZB and Yeyeclub targeted the Chinese community in the United States. Many of the bloggers and readers of Yeyeclub and ZZB reside in California. (AA542-547 (Vol.3) (Order denying Yeyeclub's motion to quash for lack of jurisdiction).)

In September 2013, Defendant Yang registered on ZZB and Yeyeclub, using the ID of iMan. (AA997-1001 (Vol.4) (Trial Ex.16).) Unknown to Yue at the time, Yang had been a notorious online character who had a long history of abusing women on the Internet. Yang had also been accused of academic fraud and had been permanently banned by XYS.ORG, a website administered

by Dr. Shimin Fang, a well-known "fraud-buster" residing in San Diego, California. Soon after Yang's appearance on ZZB and Yeyeclub, he engaged in persistent behavior that can be characterized as cyberbullying and online verbal abuse against female members of the two websites. One of Yang's victims was a woman in the San Francisco Bay Area, who knew of Yue. (AA593-760 (Vol.3) (Yue Declaration with the transcript and exhibits of Yang's deposition attached)).

As Yang got more and more abusive, Yue had to apply stricter rules to limit Yang's access to ZZB. Yue also attempted to persuade Yang to behave properly in private message exchanges. (AA992-995 (Trial. Ex.15), AA997-1001 (Trial Ex.16) (Vol.4).)

Still, when someone reposted Yang's family photos on Yeyeclub and Yeyeclub's administrator ignored Yang's request for help, Yue provided Yang suggestions. (AA1017-1019 (Vol.4) (Trial Ex.19.))

Eventually, Yue deleted one of Yang's accounts and banned Yang from ZZB. Yang retaliated by launching an intensive defamation campaign against Yue on Yeyeclub, ZZB and other websites.

Because of Yang's abusive behavior towards others, Yeyeclub's users also voted to ban Yang permanently from that website. (AA739-743 (Vol.3) (Ex.22 of Yang deposition)).

Unbeknownst to Plaintiff, Yeyeclub had long engaged in treacherous and unfair competition against Plaintiff and ZZB[2].

[2] Defendant Muye Liu or his close associate had spread scandalous and defamatory information about Plaintiff, ZZB and other ZZB members on

Instead of banning Defendant Yang as demanded by Yeyeclub's users, Muye Liu and his associates conspired with Yang and launched a larger defamation campaign against Plaintiff. (AA16-22 (VC ¶¶16-36); AA0879-963 (Vol.4) (Trial Exs.1-9); AA969-990 (Vol.4) (Trial Exs.11-14))

In his defamatory statements, Yang emphasized Plaintiff's residence in California. In one online post, Yang stated that he would go to the backyard of Plaintiff's "California" home and "bully" Plaintiff there. In another message, Yang stated that he would destroy Plaintiff in California.

Yang also knew that many Yeyeclub users were in California and communicated with these California residents publicly and privately about Plaintiff. (AA1126-1131 (Vol.5) (Trial Ex. 46.))

On September 20, 2015, Yang published portions of emails between him and certain Yeyeclub users. In these emails, Yang announced that he would be in San Francisco on Friday to meet them. (AA20-21 (VC ¶37); AA1126-31 (Vol.5)) On September 24, 2015, Yang posted a message on Yeyeclub announcing that he arrived in San Francisco and called his collaborators to join him for the meeting that night. (AA21 (VC ¶40).)

On September 22, 2015, Yang, using the ID of "Passwd 123456" published the false statements that "[Plaintiff] disobeyed the court order, and the family was almost thrown out into the street." (AA1075-1079 (Vol.3) (Trial Ex. 37).)

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the web. At the same time, Liu or his associate posed as a woman on ZZB and secretly invited the ZZB members to leave ZZB for Yeyeclub. Once the ZZB members joined Yeyeclub, it would stop the attacks on them.

On October 3, 2015, Yang sent a letter in the English language to Plaintiff, falsely accusing Plaintiff of using an "Internet Virus" on him to steal his data. Yang stated that he would "claim damages resulted from this illegal attack." (AA1095-1097 (Vol.4) (Trial Ex.40)).

Also on October 3, 2015, Yang, using the online ID of "VOA", published the same letter on Yeyeclub.com in a blog post. (AA1085-1093 (Vol.4) (Trial Ex. 39).) Yang later added a "Clarification" stating that he had "not seen anything which indicates" Plaintiff really conducted illegal service. Yang deleted the passage claiming damages from his blog post on Yeyeclub. (AA1088 (Vol.4) (Trial Ex. 39).) Yang also retracted the claim of damages in a fax he sent to Plaintiff (AA1099-1101 (Vol.4) (Trial Ex.41).)

On October 4, 2015, Yang, using the different online ID of "CH3CH2OH", published another blog post on Yeyeclub.com, falsely stating that Plaintiff "used a network virus" and "Trojan horse" to attack others, falsely accusing Plaintiff of committing "cyberhacking" with "cyber viruses" which are "illegal and criminal." (AA1103-1109 (Vol.4) (Trial Ex. 42.))

On October 5, 2015, Yang published another blog article on Yeyeclub titled "Trojans Virus and Burglary Felony of [Plaintiff's full name]". In it, Yang falsely accused Plaintiff of stealing his information using a Trojan Virus, and stated that this was like burglary and was punishable by 2-6 years of imprisonment under "California Penal Code Section 461(1)". (AA1117-1120 (Vol.5) (Trial Ex.44).)

Yang's false accusation of Trojan Virus attack by Plaintiff and other defamatory statements cited in the Complaint generated hundreds of discussions on Yeyeclub over many months, which were displayed on the front page of the website.

ARGUMENT

I. Legal Standards

Libel is defined in Section 45 of the California Civil Code. "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code § 45.) "A libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face." (Civ. Code § 45a.)

"Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645 [85 Cal.Rptr.2d 397].) When "the statements… at issue involved a purely private concern communicated between private individuals, [courts] do not regard them as raising a First Amendment issue." (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 445 [26

Cal.Rptr.2d 305], quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* (1985) 472 U.S. 749, 760 [105 S.Ct. 2939, 86 L.Ed.2d 593].) Truth is an affirmative defense to a claim of defamation, for which a defendant bears the burden of proof. (*Taus v. Loftus* (2007) 54 Cal.Rptr.3d 775, 796.)

"We conclude that permitting recovery of presumed and punitive damages in defamation cases absent a showing of 'actual malice' does not violate the First Amendment when the defamatory statements do not involve matters of public concern." (*Dun & Bradstreet, Inc.*, *supra*, 472 U.S. at p. 763.)

Here, Yang posted numerous false statements on the Internet with the stated intention to harm Plaintiff's reputation and business. The trial court held that the statements targeted Plaintiff as a private figure in a matter of private concern.

"``The doctrine of `law of the case` deals with the effect of the first appellate decision on the subsequent retrial or appeal: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.``" (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491, quoting 9 *Witkin, Cal. Procedure* (4th ed. 1997) Appeal, 895, p. 928.) Under the law-of-the-case doctrine, the determination by an appellate court of an issue of law is conclusive in subsequent proceedings in the same case. (*People v. Boyer* (2006) 38 Cal.4th 412, 441.) "An unpublished opinion may be cited or relied on" when the opinion under the law of the case, res judicata, or collateral estoppel.

California Rule of Court 8.1115.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." (*Greenlaw v. United States* (2008) 554 U.S. 237, 243.) "What makes a system adversarial rather than inquisitorial is . . . the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties." (*Sanchez-Llamas v. Oregon* (2006) 548 US 331, 357 (citing *McNeil v. Wisconsin* (1991) 501 U. S. 171, 181, n. 2.).)

"It is axiomatic that [a] fair trial in a fair tribunal is a basic requirement of due process." (*Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, 876, 129 S.Ct. 2252, 173 L.Ed.2d 1208.) The due process clause of the U.S. Constitution (Fifth and Fourteenth Amendments) and the fair trial rights of parties in both federal and state law require that judges maintain impartiality and avoid any actions that could compromise a fair trial. "The trial of a case should not only be fair in fact, . . . it should also appear to be fair." (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994, 1002 [60 Cal.Rptr.3d 542].) See, also, *Pinter-Brown v. Regents of University of California* (2020) 48 Cal.App.5th 55, *Hernandez v. Paicius* (2003) 109 Cal.App.4th 452, 461, 134 Cal. Rptr.2d 756, *In re Murchison* (1955) 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942. The question is not

whether the judge is actually biased, but whether a reasonable person aware of the facts "would entertain doubts concerning the judge's impartiality." (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841.) "In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack." (*JRS Products, Inc. v. Matsushita Electric Corp. of America (2004) 115 Cal.App.4th 168, 178 [8 Cal.Rptr.3d 840]*; *Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 830 [67 Cal.Rptr.3d 635].)

In California, court trials are governed by CCP § 631 - 636.

II. Standards of Review

"The standard of review after a trial court issues judgment pursuant to Code of Civil Procedure § 631.8 is the same as if the court had rendered judgment after a completed trial — that is, in reviewing the questions of fact decided by the trial court, the substantial evidence rule applies. An appellate court must view the evidence most favorably to the respondents and uphold the judgment if there is any substantial evidence to support it." (*Pettus v. Cole* (1996) 49 Cal.App.4th 402, 424-425.) However, when the Court of Appeal is "called upon to review a conclusion of law based on undisputed facts, we are not bound by the trial court's decision and are free to draw our own conclusions of law." (*Ibid* (citing (*Torrey Pines Bank v. Hoffman* (1991) 231 Cal. App.3d 308, 317 [282 Cal. Rptr. 354].))

Pure questions of law are subject to de novo review. Under this standard, the reviewing court pays no deference to the trial

court's view in examining pure issues of law, such as a trial court's conclusions of law, or statutory meaning, or the scope of a statute's operation. See, e.g., *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 457; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.

Here, Yang's numerous false statements are in the admitted evidence of the trial. There are no other factual disputes. Whether these statements constitute defamation are pure questions of law. Therefore, the issues of defamation are subject to de novo review.

The issue of whether the trial proceeding violates the basic principle of fairness and due process under the California and United States Constitutions is also subject to de novo review. (*In re George T.* (2004) 33 Cal.4th 620, 632.) The transcript of the final day of the trial recorded what happened at the trial. The questions of fairness and due process are pure questions of law.

Trial court exclusion of evidence is reviewed for abuse of discretion. (*City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 900.) "This standard is not met by merely arguing that a different ruling would have been better. Discretion is abused only when in its exercise, the trial court `exceeds the bounds of reason, all of the circumstances before it being considered.' [Citation.]" (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281.) "`"In the absence of a clear showing that its decision was arbitrary or irrational, a trial court should be presumed to have acted to achieve legitimate objectives and, accordingly, its discretionary determinations ought not . . . be set aside on review." [Citation.]'

[Citation.]" (*Ajaxo Inc. v. E*Trade Group Inc.* (2005) 135 Cal.App.4th 21, 45.) It is the appellant's burden to establish an abuse of discretion. (*Shaw*, *supra*, 170 Cal.App.4th at p. 281.) "[W]hen a trial court's decision rests on an error of law, that decision is an abuse of discretion." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311 (citation omitted).)

III. The Trial Court Should Have Imposed Terminating Sanctions Against Yang

After Yang provided evasive responses to nearly all discovery requests with invalid objections. Plaintiff filed a motion to compel further responses from Yang and for sanctions. Yang filed an opposition. Plaintiff filed a reply. (AA176-375 (Vols.1,2).)

On March 9, 2022, the court, by Commissioner Dashman, issued an order on the motion. This order, henceforth referred to as the "March 9 Order," compelled Yang to provide verified responses to Plaintiff's discovery requests, without objections. The March 9 Order declined to impose sanctions on Yang. (AA377 (Vol.2).)

But Yang failed to comply with the March 9 Order. Plaintiff's RFA Nos.1-6 asked Yang to admit that he used the IDs of "JFF", "iMan", "VOA" and "CH3CH2OH" on specified websites (AA234-237 (Vol.2).) In his amended responses, Yang denied under oath that he used the IDs (AA428 (Vol.2), ll.1-3 (Yang's Opposition to Plaintiff's Motion to Compel).) Yang's other responses were again evasive.

On May 27, 2022, Plaintiff filed a motion to deem the first set

of RFAs admitted and requested terminating sanctions to be imposed on Yang. The briefing is at AA380-465 (Vol.2).

On June 29, 2022, the court granted Plaintiff's motion to deem the facts in the first set of RFAs admitted but denied the motion for terminating sanctions (the "June 29 Order"). The Court ruled that "Defendant failed to obey the court's order" with regard to the discovery requests, including special interrogatories, form interrogatories, and requests for documents. (AA467 (Vol.2).)

In the subsequent "Revised Further Response", Yang contended that he disagreed with the court's previous ruling, and simply repeated the same evasive responses to Plaintiff's discovery requests, which the court had already found in violation of the March 9 order.

On August 25, 2022, Plaintiff made a second motion for terminating sanctions against Yang, citing Yang's abuse of the discovery process in his initial response, and his deliberate defiance of both the March 9 and June 29 court orders. Yang's conduct, marked by evasion and intentional violation of court orders, severely prejudiced the Plaintiff's preparations for trial, rendering futile any further attempts to engage him in the discovery process. (AA486-519 (Vol.2), 574-575 (Vol.3).)

Despite Yang's repeated violations of the discovery rules and court orders, the trial court summarily denied Plaintiff's second motion for terminating sanctions on October 19, 2022, without explaining its decision. (AA580 (Vol.3).) Plaintiff is constrained to reiterate the previously raised arguments on appeal.

Yang's persistent abuse of the discovery process is further

exemplified by his refusal to answer nearly all substantive questions during his deposition and failure to bring documents. (AA599-752 (Vol.3) (Depo. transcript).) At the deposition, facing with blog posts he posted with his family photos, Yang refused to answer questions (AA619-622, AA684-693 (Vol.3).)

Yang's blatant and pervasive violation of his duty under the discovery rules necessitated another motion to compel answers and for monetary sanctions. (AA582-760 (Vol.3).)

The trial court partially granted this motion to compel but again denied sanctions. (AA801 (Vol.3).)

Emboldened, Yang "absolutely refuse" to answer the simple question of whether he used the ID of "iMan" at the court trial, only to admit it under questioning by the judge. (Trial Tr. pp.6-7 (AA1395-1396 (Vol.6).))

Yang's discovery responses were outright perjury. In his verified discovery responses and sworn deposition, he denied using the ID "iMan" under oath (AA404 (Vol.2) (Response to RFA), AA610 (Vol.3) (Depo. Tr. p.12)). At trial, when presented with his family photos that he posted using the ID of "iMan", he first denied but eventually admitted to using the ID of "iMan". (Trial Tr. pp.5-7 (AA1395-1396 (Vol.6).))

One of the purposes of the discovery rules is to "enhance the truth-seeking function of the litigation process." (*Juarez v. Boy Scouts of Am., Inc.* (2000) 81 Cal.App.4th 377,389 (citation omitted).) "Those who interfere with the truth-seeking function of the trial court strike at the very heart of the justice system." (*In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 110.) "The

courts will not tolerate such interference." *Ibid*. See, also, *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57 [272 Cal.Rptr.3d 224] (*Kwan*) (denying monetary sanctions an abuse of discretion when improper legal basis was given). Denying sanctions against Yang only served to embolden him to make false testimonies at trial. The following is but one example:

> Q. But then you -- you forgot whether you made posts on Yeyeclub during this time? The accusation was you made posts on Yeyeclub, but you forgot?
>
> A. Regarding your question, I did not post, so I already answer your question --

(Trial Tr. p.11, ll.12-16 (AA1400 (Vol.6).)

Given the above facts and the guiding principles from relevant case law, Plaintiff contends that monetary sanctions and terminating sanctions against Yang were justified and should have been imposed by the trial court.

IV. Yang Committed Per Se Defamation Against Plaintiff in Internet Postings

The following of Plaintiff's exhibits were admitted into the evidence in the two-day trial: Exhibits 15, 16, 19, 24, 29, 30, 32, 37, 39-45, 47, 72. (AA863-873 (Vol.4) (Minutes); AA1390-1392 (Vol.6) (Trial Transcript of the second day of trial).) Plaintiff's Trial Exhibits 1-72 are included at AA875-1380 (Vols.4-5) of the appendix.

1. The statements Yang posted involved a private figure

and private concern

In June 2021, Yang filed an Anti-SLAPP motion to strike, contending that Plaintiff was a public figure (AA131-149 (motion); AA150-170 (opposition)). Judge Austin analyzed the evidence and concluded that 1) "These posts do not show that Plaintiff was in the public eye. Nor do they show that the alleged defamatory statements were a matter could affect large numbers of people beyond the direct participants." 2) "these posts show that Plaintiff has a following on a particular website, but that does not mean that Plaintiff is so well known that he is a person in the public eye." 3) " Defendant does not show the circulation of these stories and in any event, these stories are older and do not show that Plaintiff was in the public eye 2015 when the alleged defamatory statements were made. Similarly, the fact that Plaintiff wrote a book – without more information about book sales – does not make Plaintiff a person in the public eye." (AA175 (Order denying Yang's Anti-SLAPP motion)).

Then the trial court wrote:

> Considering all the admissible evidence presented by Defendant, the Court finds that Plaintiff is a person in the public eye.
>
> The Court finds that Defendant has not met his burden of showing that the alleged defamatory statements are matters of public interest and therefore, Defendant has not met his burden on this motion and the motion is denied.

(AA175.)

The trial court held that there was no evidence that Plaintiff

was a person in the public eye. The sentence "Plaintiff is a person in the public eye" contained a simple typographical error.

The trial court's ruling in this regard was consistent with a previous ruling denying the Trigmax defendants' Anti-SLAPP motion in the same underlying case. This Court of Appeal had reviewed and affirmed that order in the case of *Yue v. Trigmax Solutions* (April 30, 2018) No. A151067, holding the statements made by Yang's co-defendants did not concern a person in the public eye nor were they made in connection with a public issue. The opinion remains the law of the case.

At trial, the trial court and Plaintiff had an exchange about Plaintiff's "theory" of the case. Plaintiff requested the trial court to take judicial notices of the previous orders and stated that the case was a "private matter, private concern". The trial court agreed. Yang raised no objections. (Trial Transcript. pp.24-26. (AA1413-15 (Vol.6)))

Subsequently, the trial court applied California Civil Jury Instruction ("CACI") 1704, further confirming that the case is one of "defamation per se (private figure—matter of private concern)". (Trial Tr. p.30. (AA1416 (Vol.6))

2. Yang committed libel per se by posting false statement that Plaintiff violated court order(s)

On September 22, 2015, Yang, using the ID of passwd123456, posted the following message on zhenzhubay.com.

> "In a society governed by the rule of law,
> court orders cannot be disobeyed!" How

> well YUE, DONGXIAO said that. This is a valuable experience gained with so much blood and tears. Back in the day, YUE savvy disobeyed the court order, and the family was almost thrown into the street. I don't know if everyone remembers. (LOL)"

(AA1075-79 (Vol.4) (Trial Ex. 37.))

Yang's statements were about a copyright case Plaintiff filed against a company named StorageTek back in 2008. (AA173-175.) Yang's statement that Plaintiff disobeyed a court order was false. Yang's statement that Plaintiff's family was almost thrown into the street as a result of disobeying a court order was also false.

Back in February 2021, the trial court analyzed Yang's statements above in denying Yang's Anti-SLAPP motion and concluded that Yang's statements about the StorageTek case are not protected activity. (AA174-175 (Order).)

Yang's statement is injurious. Yang intended to falsely paint Plaintiff as a person disobeying court orders and having been punished as a result.

Yang is liable for libel per se.

3. Yang committed libel per se by posting the false statements that Plaintiff attacked him with internet virus technique

On October 3, 2015, Yang sent a fax written in the English language to Plaintiff, falsely accusing Plaintiff of serving him documents "by Internet Virus Technique". Yang further wrote,

"This is outrageous and scared me! I reserve the right to claim damages resulted from this illegal attack of yours." Yang also stated that he doesn't know "how many Internet Trojans hidden in your emails." (AA1095-97 (Vol.4) (Trial Ex.40).)

Yang later sent a fax titled "Clarification" to Plaintiff (AA1099-1101 (Vol.4) (Trial Ex. 41.)), stating that he hadn't seen anything illegal from Plaintiff and retracted his claim of damages.

Yet, on the same day, using the username "VOA", Yang posted these faxes on Yeyeclub.com, in the English language, thus publishing the false statements to the users of Yeyeclub, a website operated by California resident Muye Liu and had many California users. (AA1085-1093 (Vol.4) (Trial Ex.39).)

Yang's blog posting stated the following:

> "As you confessed in your Complaint and Motion, you once tried to serve me by using Internet Virus Technique (hiding documents in your own website). This is outrageous and scared me!"

(AA1088 (Vol.4) (Trial Ex.39).)

Yang's accusations were knowingly false fabrications. He also admitted that he had not seen any kind of illegal service by Plaintiff, yet he repeated his false claim that Plaintiff used "Internet Virus Technique" on him.

Many users commented on Yang's blog post. (AA1091-1093 (Vol.4) (Trial Ex.39).)

Yang later revised this online posting by removing the sentence for claiming damages from Plaintiff. In addition to

posting the fax accusing Plaintiff of using Internet Virus Technique on him, Yang added the following:

> "I have not seen not seen anything which indicates that you might really conducted [*sic*] that kind of illegal service approach except your claim… I consider it as that you used Internet Virus Technique during the process service."

(AA1088 (Vol.4) (Trial Ex.39).)

Yang committed libel per se by posting the blog article (Trial Ex. 39) falsely accusing Plaintiff of using an Internet Virus on him.

4. Yang committed libel per se by posting the false statements that Plaintiff attacked him with an online virus

On October 4, 2015, Yang posted another blog article on Yeyeclub using a different username "CH3CH2OH". Yang's blog post included the following:

> "Shyster YUE openly presented that he used a network virus to send the Summons as evidence (bury the Summons on the page of his website, and as soon as you visit his website, his Trojan horse will be in your computer. This shows how legally illiterate this shyster is!"
>
> "Even if the IPS company or those share that IP address do not sue YUE for dropping a virus on them, even if YANG does not counteract YUE slander — YUE distributed Summons and Complaints to all those who share that IP address, YUE DONGXIAO himself can't get rid of that cyber hacking crown. People who have

> common sense in the 21st century know that cyber viruses are illegal and criminal… This man's smart aleck, legal literacy and stupidity are really jokes, a state-of-the-art, breathtaking living specimen."

(AA1103-09 (Vol.4) (Trial Ex. 42).)

Several readers posted comments expressing their agreement with Yang, based on Yang's false statements. (AA1105 (Vol.4) (Trial Ex.42).)

The false statements in Yang's blog post (Trial Ex. 42) that Plaintiff "used a network virus" to send documents to Yang and planted "Trojan horse" on people's computers are libel per se. Yang's false accusation of "cyber hacking" and committing "illegal and criminal" activities are also libel per se.

5. Yang committed libel per se by posting the false statements that Plaintiff committed burglary felony using a Trojans virus

On October 5, 2015, using the online ID of "CH3CH2OH", Yang posted yet another blog article on Yeyeclub.com in mixed Chinese and English, titled "Trojans Virus and Burglary Felony of [Plaintiff's full name]".

In the post, Yang falsely accused Plaintiff of "using Trojans Virus" to "steal data from your computer." Yang wrote the following:

> If YUE DONGXIAO can send Summons to V's computer using Trojans Virus as a method, he can send anything to X's computer in the same way. As long as he needs it! For example, a

> hidden monitor, like a secret radio station for a sleeper agent, which can steal all the data from your computer.
>
> A burglar who climbed in through the window committed Burglary Felony, whether he didn't steal a piece of bread or stole a sack of US dollar bills. According to *California Penal Code Section* 461(1), the offence to residential theft is first-degree burglary with a sentence of 2-6 years. If you steal nothing, you will have to go to prison for at least two years, and if you steal a sack of US dollar bills, you will spend up to six years in prison. Life is not fair, but law is.
>
> Definition of Trojans:
> Trojans are malicious programs that perform actions that have not been authorized by the user.
>
> So, does YUE's Summons with the Trojans perform action? Of course! And it executed very important actions, such as display on screen, stealing information of your computer's operating system!

(AA1117-1120 (Vol.5) (Trial Ex.44).)

Yang's statements are false, and aimed to cause harm to Plaintiff. "The charge of commission of some kind of crime is obviously libel per se." 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 542, p. 795. Yang again committed libel per se.

6. Plaintiff has proved damages

Plaintiff has proved that Yang intentionally posted defamatory statements about Plaintiff under various online IDs.

Yang knew his statement was false. Yet he persisted in posting increasingly more injurious false statements about Plaintiff on the Internet under different online IDs, including CH3CH2OH.

The trial court had previously ruled that Yeyeclub, on which Yang posted his defamatory statements, "has a California connection" with "a section specifically on California topics", and Muye Liu, a California resident, was in charge of Yeyeclub. (AA545-46 (Vol.3) (September 22, 2022 Order.)) "The evidence showed Yang targeted his conduct at California: he communicated directly with plaintiff and posted on Yeyeclub, a website owned and operated by a California resident that had a California audience." (*Yue v. Yang* (2021) 62 Cal.App.5th 539,547.)

"Presumed damages 'are those damages that necessarily result from the publication of defamatory matter and are presumed to exist. They include reasonable compensation for loss of reputation, shame, mortification, and hurt feeling. No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for presumed damages, and no evidence of actual harm is required. Nor is the opinion of any witness required as to the amount of such reasonable compensation.'" (*Sommer v. Gabor* (1995) 40 Cal.App.4th 1455, 1472–1473 [48 Cal.Rptr.2d 235] (*Sommer*).)

In *Sommer,* the defendants published false statements about an actress named Elke Sommer, stating that "Ms. Sommer was completely [financially] ruined and broke and also that ... And she would be at least 60 years old." (Id at 461.) There were no

special damages, the jury awarded over three million dollars in general damages and punitive damages against the defendants. Finding the award not excessive, the court of appeal affirmed.

Here, Yang's defamatory statements were far more damaging and he acted with stated malicious intent to harm Plaintiff's reputation and business. Damages are presumed from Yang's false and malicious statements.

Moreover, Plaintiff presented evidence that he suffered losses in his ZZB business, partly due to Yang's defamation and unfair competition. Trial Exhibit 72 shows that soon after Yang and his co-defendants coordinated attacks, Plaintiff's ZZB web business suffered near total loss of visitors and bloggers. (AA1370-1378 (Vol.5).))

7. The trial court's ruling misapplied the law and disregarded established facts

At the close of Plaintiff's evidence, the trial court extended an invitation to Yang to bring a motion for judgment. Yang initially did not understand this invitation. Subsequently, the trial court clarified the nature of the motion and inquired if it *was* indeed Yang's motion. Yang affirmed by merely responding, "Yes, it is." (Trial Tr. p.21, ll.1-22 (AA1410 (Vol.6)).)

Following this, Plaintiff requested a briefing regarding of the motion that the trial court initiated. The trial court denied this request and later stated that the Plaintiff had not proved his case. (Trial Tr. p.22, ll.4-6 (AA1411 (Vol.6)).)

The trial court made the following general points without

analysis:

1. The Plaintiff had failed to provide testimony or evidence disproving the truthfulness of Yang's statements.
2. Many of Yang's statements constituted opinions, which are protected under the First Amendment.
3. Some of Yang's statements were insults, which were also protected under the First Amendment.
4. The Plaintiff had not established any damages resulting from these statements.
5. There was no evidence demonstrating that these statements were made publicly.
6. There was no proof that Yang knew the statements were false or failed to exercise reasonable care in ascertaining their veracity.

(Trial Tr. pp.29:11-30:22 (AA1418-1419 (Vol.6)).)

The trial court referred to California Civil Jury Instruction 1704, defamation per se (private figure—matter of private concern) while making these statements. However, it erroneously applied the instruction. Contrary to the trial court's interpretation, there is no requirement for the Plaintiff to prove the statements were untrue in CACI 1704. Instead, truth is an affirmative defense, and the burden of proof lies with the defendant (CACI, VF-1704).

Plaintiff had presented specific statements in the Complaint that are actionable under defamation law and had proved that Yang had made those statements. (Trial Tr. pp.24-29 (AA1413-

1418 (Vol.6)).) Each of the alleged defamatory statements requires a non-trivial legal analysis. The trial court, however, failed to analyze these alleged defamatory statements in any detail. Instead, it only made broad and general legal conclusions.

Not all insults are protected speech. Insults and defamation are not orthogonal. While some of Yang's statements may have been insulting, combining insults with defamatory statements does not negate the defamatory nature of the latter, nor are insults always immune from defamation claims.

It is axiomatic that defamation is not protected speech. Defamation is not covered by the First Amendment of the Constitution.

As the Plaintiff had pointed out at the trial, damages are presumed in cases of defamation per se. (Trial Tr. p.23, ll.3-19 (AA1412 (Vol.6)).) Furthermore, the Plaintiff had presented evidence of damages. (Trial Tr. pp.23:14-24:2 (AA1412-1413).)

Regarding the issue of publication, Yang's posts on both Yeyeclub and ZZB were evidently public. Other users had commented on Yang's posts on Yeyeclub and ZZB, as shown clearly on the trial exhibits. On ZZB, a user chided Yang for his conduct, telling Yang that "You probably could escape the punishment by claiming you have mental problems." (AA1078 (Vol.4) (Trial Ex. 37).) On Yeyeclub, people believed Yang's false statements. See, e.g., user comments under Yang's blog post, Trial Ex. 42 (AA1103-1109 (Vol.4)). The fact that Plaintiff had downloaded Yang's posts on Yeyeclub.com alone proved that the posts were public. The original URLs of the blog posts were

printed at the bottom of the pages, including the data and time of access. Additionally, Plaintiff testified that his friends in California had seen the blog posts authored by Yang, further establishing their public nature. The trial court had previously ruled that "Yeyeclub has a California connection" with a section of its web page dedicated to California issues. The Yeyeclub website was owned by Muye Liu, a California resident. (AA546 (Vol.3) (Order denying motion to quash).)

Furthermore, in cases involving private individuals and matters of private concern, such as the present one, the trial court's erroneous insistence on the Plaintiff proving actual malice fundamentally misconstrues defamation law. CACI 1704 does not mandate such a requirement. Nonetheless, the Plaintiff has demonstrated that Yang purposefully made the false statements. This was evident from the texts of the blog posts admitted into evidence, which were highlighted by the Plaintiff in the court trial.

V. The Trial Court Erred by Excluding Relevant and Admissible Evidence

1. Plaintiff's testimony about his local California acquaintances was not hearsay

In the first day of trial, Plaintiff testified that some of the ZZB users were local California residents who knew Plaintiff personally, some were Plaintiff's local Californian friends. This testimony was similar to what Plaintiff had made in his declarations in opposing Yang's motion to quash service process.

There, Plaintiff had described a meeting with local California friends who asked about Yang's postings to show that "other California residents `read Yang's defamatory statements` on Yeyeclub." (*Yue v. Yang* (2021) 62 Cal. App. 5th 539, 548.)

Absent any objection from Yang, the trial court struck this testimony as hearsay. (AA864 (Vol.4).)

Hearsay is an out-of-court statement offered to prove the truth of matter asserted. Here, Plaintiff was testifying about his personal experience in court. Plaintiff was not repeating any out-of-court statements. There was no out-of-court declarant. It could not be hearsay.

Plaintiff hadn't reached the point of testifying about his local friends asking him about Yang's posts when the line of testimony was stopped by the court. Had he so testified, it would not have been hearsay either. Local residents asking about Yang's posts were verbal acts that show the publication effects of Yang's posts. It was not offered to prove the truth of the matter stated in the question.

The trial court erred by misapplying the hearsay rule in excluding Plaintiff's testimony about his local California acquaintances being readers of ZZB and Yeyeclub.

2. Evidence identifying Yang as "iMan" should be admitted

As stated above, Yang had denied under oath that he used the ID of "iMan" in his verified discovery responses. On the first day of the trial, Plaintiff offered Trial Exhibit 18 (AA1010-1015 (Vol.4)), which was one of iMan's blog post with a photo of his

wife. The trial court excluded this exhibit from the evidence (AA866-867 (Vol.4).)

This evidence is highly relevant. It not only identifies Yang with "iMan", but also contradicts Yang's prior false testimonies and is evidence of Yang's lack of credibility.

The trial court erred in excluding Trial Exhibit 18 (AA1010-1015 (Vol.4)).

3. Evidence about Yeyeclub and Liu should be admitted for the unfair competition claim

On the first day of the trial, Plaintiff requested to have his trial exhibits involving Yeyeclub and Liu admitted. Plaintiff's request included "almost every exhibit". The trial court rejected these exhibits on the ground that Yeyeclub was in default and the other defendants had been dismissed. (AA865-866 (Vol.4).)

There is no law that because co-defendants are dismissed for lack of prosecution the evidence against them cannot be used against a remaining defendant to prove that they worked in concert.

To prove that Yang and the other defendants worked in concert to harm Plaintiff's business, the evidence of Yang's co-defendants is necessary. Excluding the evidence was equivalent to dismissing the unfair competition claim without a trial.

The trial court erred by the blank rejection of evidence against the co-defendants.

VI. The Trial Was Highly Irregular and Violated Due

Process Under the California and United States Constitutions

"It is axiomatic that [a] fair trial in a fair tribunal is a basic requirement of due process." (*Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, 876, 129 S.Ct. 2252, 173 L.Ed.2d 1208.) In our adversary system, courts "follow the principle of party presentation.. rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." (*Greenlaw v. United States* (2008) 554 U.S. 237, 243.) "[A] judge… does not … conduct the factual and **legal** investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties." (*Sanchez-Llamas v. Oregon* (2006) 548 US 331, 357 (citing *McNeil v. Wisconsin* (1991) 501 U. S. 171, 181, n. 2.) (boldface added). The purpose of the "Anglo-Saxon adversarial system of justice" is "the orderly ascertainment of the truth". (*Simpson v. Brown (*1998*)* 67 Cal.App.4th 914, 79 Cal.Rptr.2d 389, 402).

1. The trial judge advocated on behalf defendant

During the first day of the trial, Plaintiff encountered numerous interruptions from the trial court. Whenever Plaintiff attempted to introduce crucial trial exhibits, the judge would seek objections from Yang. Often, objections were interjected even when Yang had none. When Plaintiff testified about personally encountering local California residents who had read Yang's online attacks against him, the trial court struck Plaintiff's testimony as hearsay, despite the absence of objections

from Yang. Taking exception, Plaintiff stated that this was his personal experience. The trial judge warned Plaintiff against arguing with the court. Throughout Plaintiff's testimony and the subsequent examination of defendant Yang, the trial judge frequently interrupted and raised objections on Yang's behalf.

On the second day of trial, Plaintiff questioned Yang about a private message “iMan” sent to Plaintiff on ZZB. (AA1015-17 (Trial Ex. 19).). In the private message, “iMan” stated that he complained to Yeyeclub about the posting of his family photos on Yeyeclub by another person.

In responding to Plaintiff's question at trial, Yang stated he "absolutely refuse to answer this question". After being warned by the trial court, Yang answered that he did not remember whether he wrote the message. The trial court then stated that Yang had admitted he was "iMan”. Plaintiff then asked Yang how he reported the posting of family photos to the administrator of Yeyeclub. (Trial Transcript, pp.6:15-8:6 (AA1395-1397 (Vol.6)).) As Plaintiff explained, the question was to identify Yang with the names he used on Yeyeclub. (Trial Transcript, p.7 (AA1396 (Vol.6).))

Before Yang had a chance to testify or object. The trial judge told Plaintiff that “you’re now presuming that he wrote this information” and “And you're now presuming that Mr. Yang wrote this information. And you're asking him about the substance. He has testified he does not remember if he wrote this or not.” (Trial Transcript, pp.8:7-8:14 (AA1397 (Vol.6)).)

Even if we assume, for the sake of argument, that Yang did

not commit perjury when he testified about not remembering whether he wrote the private message, his alleged loss of memory regarding the authoring of the message does not extend to how he reported the photo-posting incident to Yeyeclub. The trial court had deemed Yang to be "iMan". Therefore, it had been established that Yang wrote the message. Plaintiff's question to Yang was straightforward, appropriate, and relevant, aimed at identifying various online IDs attributed to defendant Yang across different websites. The question was made in the pursuit of truth in a court trial.

Plaintiff then respectfully requested the trial court to "have an adversarial proceeding" without the judge objecting on the defendant's behalf. This led to a lengthy response from the trial judge, on the basis that Plaintiff was "not a lawyer trained in the United States." (Trial Tr., pp.8:18-10:21 (AA1397-1399 (Vol.6)).)

Plaintiff then asked Yang whether he made any posts on Yeyeclub. Yang stated that he didn't remember. When Plaintiff pressed on the question, Yang then testified that he "did not post." (Trial Tr., p. 11:3-11:21 (AA1400 (Vol.6)).)

Plaintiff then asked Yang:

> "But, Mr. Yang, you denied everything, right? You denied you were iMan, correct?"

(Trial Tr., p.11, lines 22-23 (AA1400).)

The trial court interrupted it, and the trial judge stated:

> "THE COURT: That's been asked and answered repeatedly yesterday. We're moving on. Yes, he previously denied he was iMan, and he is now stating that he is iMan."

(Trial Tr., p.11, lines 24-27(AA1400).)

Yang testified that he did not post on Yeyeclub. Plaintiff asked a valid leading question, attempting to use Yang's prior inconsistent statement to impeach his credibility and as substantive evidence. The exact question was not asked of Yang the day before. Yang could have simply answered "Yes" to the question, thus admitting that he testified falsely before. Because of the judge's interruption, Yang didn't answer the simple question, and the judge's response was not evidence.

Near the end of the trial, Plaintiff offered Trial Exhibit 72, which is the summary of the statistics of ZZB. Defendant Yang stated clearly that he did not object to the evidence. The judge again suggested Yang to object to it. Again, Yang stated unambiguously that he does not object to the exhibit. The trial judge finally received the exhibit into evidence, but with an added comment "I don't see proper foundation here." (Trial Tr., pp.19:28-20:23 (AA1408-1409 (Vol.6)).)

After Plaintiff rested his case, the trial judge made a speech that Plaintiff failed to prove his case and invited Yang to move for non-suit under CCP 631.8. Yang had no idea what the motion was. The trial judge stated:

> "It's similar to a motion for summary judgment… It's a motion at the close of the plaintiff's case for failure to provide sufficient evidence to prove his case. Mr. Yang, is that your motion?"

Yang merely answered:

"Yes. Yes, it is."

(Trial Tr., p.21, lines 1-22 (AA1410 (Vol.6)).)

In the rest of the proceeding covering 10 pages of transcript, Plaintiff twice requested a briefing on the matter. The judge denied the requests. Plaintiff then made very specific arguments based on the admitted evidence, with the judge making broad and general legal conclusions without analyzing any of the evidence. Judgment was for the defendant. Yang did not say a single word. (Trial Tr., pp.21:23-30:22 (AA1410-1419 (Vol.6)).)

The judge's conduct was not to seek the truth. Her advocating for the defendant violated the basic principles of an impartial adjudicator.

2. The episode about the RFAs shows prejudice of the trial judge

Plaintiff had previously informed the trial court on multiple occasions that the court had deemed Yang to be the person responsible for posting the online attacks under various IDs. This was conveyed twice in the Issue Conference Statements submitted by the Plaintiff to the trial judge (AA550; AA764 (Vol.3)). Plaintiff did so to inform the trial court that those issues had been decided.

On the first day of the trial, Plaintiff reiterated multiple times that Commissioner Dashman had ruled that Yang was deemed to be the individual behind those online IDs. However, the trial judge consistently maintained that Commissioner Dashman's ruling did not "dictate" the decisions of the trial court. Needless

to say, this greatly confused Plaintiff.

On the second day of trial, Plaintiff had to request the trial court to take judicial notice of the trial court's own ruling in the case being tried. The trial court reacted by stating that Plaintiff's "failing to do this at the outset is an absurd waste of time". (Trial Tr. p.16 (AA1405 (Vol.6)).) Plaintiff attempted to clarify that he "was under the impression" that the judge knew the Requests for Admission (RFAs) were deemed admitted. In response, the judge stated, "You accuse the court — or to state that the court doesn't understand what a ruling was previously in a case is absurd." (Trial Tr. p.17 (AA1406).)

Plaintiff made no such accusation. It was highly unusual that Plaintiff had to make a formal request for judicial notice of a prior order in the same case. But nothing in the record suggests that Plaintiff hinted at an accusation that the judge didn't understand what a ruling was.

Throughout the proceeding, Plaintiff acted with due respect to the court. Plaintiff's only goal was to protect his rights through the legal system, fairly and truthfully.

3. The comment about Plaintiff not being a lawyer trained in the United States shows bias and prejudice of the trial judge

When Plaintiff asserted that he was simply a litigant seeking to prove his case and requested the judge to have an adversarial proceeding rather than advocating on behalf of the defendant, the judge responded by remarking

> "You are not a lawyer trained in the United States. In fact, you're not a lawyer. You spent a great deal of time yesterday on irrelevant and

> inadmissible material, and you are attempting to do the same today."

(Trial Transcript, p. 9 (AA1398 (Vol.6)).)

The judge then proceeded to expound on these points over several paragraphs.

As the trial continued, the key exhibits initially rejected by the trial judge were ultimately admitted into evidence, as they were highly relevant and admissible.

Assuming that Plaintiff had not been trained as a lawyer in the United States, the trial court should have treated the Plaintiff with impartiality and in a dignified manner. There was no indication in the record to suggest that Plaintiff, who was a licensed attorney and an officer of the court, displayed any discourtesy toward the judge or exhibited disorganization. The apparent bias and prejudice were unwarranted.

During the Issue Conference on February 24, 2023, the trial judge held up three volumes of non-compliant trial exhibit binders, which had been prepared by William Pohl, defense counsel for Yeyeclub. (AA848 (Vol.4)) (Yue Decl.).) Plaintiff's trial binder had only one volume and was in a compliant format. However, in the official Minutes, the trial court erroneously claimed that the Plaintiff had failed to prepare compliant binders. (AA767-768 (Vol.3); AA848 (Vol.4) (Yue Decl.).) Considering the trial judge's conduct throughout the trial, this discrepancy cannot be attributed solely to a clerical error. It rather appears to be indicative of bias, suggesting a lack of competence on the Plaintiff's part solely because of his Chinese

background and non-U.S. training.

VII. The Trial Court Violated Equal Protection Clauses of the California and U.S. Constitutions

Both the California Constitution and the United States Constitution enshrine the principle of equal protection under law. The Fourteenth Amendment of the U.S. Constitution explicitly states, "No State shall... deny to any person within its jurisdiction the equal protection of the laws." This foundational clause establishes that individuals in every state, including California, are entitled to equal treatment under the law. Similarly, Article I, Section 7 of the California Constitution reinforces this principle, affirming, "A person may not be... denied equal protection of the laws." This mirrors the federal mandate, ensuring that all individuals within California are granted the same legal rights and protections. These provisions form the legal backbone of efforts to promote and enforce equality in the United States and within the state of California.

"A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way." (*Shelley v. Kraemer* (1948) 334 US 1 (citing *Ex parte Virginia* (1880) 100 U.S. 339, 347). "[S]tate action in violation of the [Fourteenth] Amendment's provisions is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in the absence of statute." (*Shelley v. Kraemer* (1948) 334 US 1, 16). Here, the trial court's rulings undoubtedly constitute state action.

It is well settled that all racial and national origin

classifications imposed by federal, state, or local governments are subject to strict scrutiny. (*Adarand Constructors, Inc. v. Pena* (1995) 515 U.S. 200, 115 S.Ct. 2097, 132 L.Ed.2d 158.) "[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny." (*Graham v. Richardson* (1971) 403 U.S. 365, 372, 91 S.Ct. 1848, 1852, 29 L.Ed.2d 534, 541-542.) "Classifications based on race or national origin . . . and classifications affecting fundamental rights . . . are given the most exacting scrutiny." (*People v. Wilkinson* (2004) 33 Cal.4th 821, 836 (*Wilkinson*).)

On the second day of trial, Plaintiff questioned Yang about a private message "iMan" sent to Plaintiff on ZZB. In the private message, "iMan" stated that he complained about the posting of his family photos on Yeyeclub. Yang stated he "absolutely refuse to answer this question", and then he testified that he did not remember whether he wrote the message. The trial court then stated that Yang had admitted he was "iMan". Plaintiff then questioned Yang how he reported the posting of family photos to the administrator of Yeyeclub.

Plaintiff's question to Yang was valid and relevant, aimed at identifying various online IDs attributed to defendant Yang across different websites. The question was made in the pursuit of truth in a court trial.

Before Yang had a chance to testify or object. The trial judge stated "you're now presuming that he wrote this information" and "And you're now presuming that Mr. Yang wrote this

information. And you're asking him about the substance. He has testified he does not remember if he wrote this or not."

Plaintiff then respectfully requested the trial court to "have an adversarial proceeding" without the judge objecting on the defendant's behalf.

The trial judge stated, in part:

> "You are not a lawyer trained in the United States. In fact, you're not a lawyer. You spent a great deal of time yesterday on irrelevant and inadmissible material, and you are attempting to do the same today."

(Trial Transcript, p. 9 (AA1398 (Vol.6)).)

The transcript alone could not possibly capture the trial judge's attitude of impatience and disdain. Notably, there was no evidence presented during the trial to support the assertion that Plaintiff was not a lawyer trained in the United States. In fact, in various motions and documents submitted to the trial judge, the Plaintiff consistently identified himself with his California State Bar number.

More importantly, Plaintiff's non-U.S. origin should not factor into a judge's decision-making process. Throughout the trial, the trial judge exhibited prejudgment, prejudice and bias, treating Plaintiff, a taxpayer of California, as a non-U.S. person "wasting" her time.

The trial judge's classification based on national origin is subject to strict scrutiny. In addition, litigants' access to the courts is considered a fundamental right. "[D]ue process requires, at a minimum, that absent a countervailing state interest of

overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." (*Boddie v. Connecticut* (1971) 401 U.S. 371, 377 [28 L.Ed.2d 113, 118, 91 S.Ct. 780].) Denying Plaintiff the opportunity to question a defendant in a civil trial on the ground that Plaintiff was "not a lawyer trained in the United States" violates Plaintiff's fundamental right to equal access to the courts, providing another basis for strict scrutiny of the judge's state action.

As analyzed in the previous section, there was no basis for the judge's assertion that Plaintiff spent a great deal of time on irrelevant and inadmissible material. Most of the rejected material were later admitted. As a licensed attorney and an officer of the court, Plaintiff made every effort to inform the trial court of his legal basis and the court's prior orders.

The judge's stated goal of conserving judicial resources does not constitute a compelling state interest. Judicial injustice erodes public trust in the judiciary and leads to protracted litigation in our enlightened age. During the first day of the trial, when Plaintiff took exception to some of the evidentiary rulings, the trial court stated that Plaintiff could seek relief from the court of appeal. Thus, the trial court had anticipated that the decisions would be appealed, resulting in further consumption of judicial resources. The legal questions of defamation liability and damages could have been resolved through legal briefing, but the trial court twice denied Plaintiff's requests for a briefing on the matter.

CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court of Appeal reverse the trial court's order of judgment in favor of Yang, and order that terminating and monetary sanctions be imposed against Yang. Plaintiff further requests that the case be assigned to a different judge on remand.

Respectfully submitted,

Dated: January 16, 2024

/s/ D. Yue

Dongxiao Yue
Plaintiff-Appellant *Pro Se*

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 12,821 words, including footnotes, in 13-point fonts. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Date: January 16, 2024

/s/ D. Yue

_____

Dongxiao Yue

Plaintiff-Appellant

A168295

IN THE COURT OF APPEALS OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 5

DONGXIAO YUE,
Plaintiff-Appellant

v.

WENBIN YANG,
Defendant-Respondent

Appeal from the Superior Court for the County of Contra Costa

Case No. MSC1601118

Honorable Clare Maier, Judge

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Defendant-Respondent Wenbin Yang ("Yang") is a Canadian resident who verbally abused women on two competing social media websites, operated by two California residents respectively, Zhenzhubay.com (ZZB) by Plaintiff-Appellant Dongxiao Yue of the San Francisco Bay area, and Yeyeclub.com (Yeyeclub) by co-defendant Muye Liu ("Liu") of the Sacramento area. One of Yang's victims was a San Francisco Bay Area woman, who had been an active blogger on both ZZB and Yeyeclub. To protect the vulnerable victims of Yang, Plaintiff imposed restrictions on Yang, deleting one of Yang's accounts on ZZB. In retaliation, Yang launched a massive defamation campaign against Plaintiff on the internet, acting in concert with Liu and Yeyeclub. This litigation seeks to protect the reputation and business interest of a California resident under California law. This appeal asks the Court of Appeal to decide what the law is.

As shown in Appellant's opening brief ("AOB"), Wenbin Yang had testified falsely under oath in his deposition and at trial (see, e.g., AOB at pp.32, 50). Yang now provides numerous unsupported assertions and makes numerous false accusations in his respondent's brief ("RB").

Falsus in uno, falsus in omnibus. (*People v. Cook* (1978) 22 Cal.3d 67, 68 [148 Cal. Rptr. 605, 583 P.2d 130] ("the doctrine is deeply rooted in California civil and criminal law.")). Wenbin Yang's crude language reflects his baseness, his mendacity should earn him no indulgence.

Most of Yang's factual contentions are unsupported by the

record. Most of his legal arguments are unsupported by authorities. On the occasions he cites an authority, a careful reading often reveals that it does not support his legal stance. Moreover, Yang's discourse frequently employs objectionably coarse language. Plaintiff will disregard most of Yang's irrelevant and unfounded assertions as well as inadmissible hearsay, but will endeavor to respond to Yang's arguments to the extent that they are intelligible.

ARGUMENT

I. Yang's Appealability Arguments Are Invalid

Yang cites *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201 for his position that Plaintiff cannot appeal from the Minute Order dating March 28, 2023. Nothing in that case supports Yang's contention. The California Supreme Court has held that such a minute order announcing judgment is appealable. (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 899 (*Alan*) (but if a formal judgment is entered, the deadline for a notice of appeal counts from the date of formal judgment). California Rule of Court 8.104(d) states that "A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment." and "The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment."

Yang's argument that Plaintiff abandoned the appeal because

he did not oppose Yang's post-trial motion for judgment has no merit. The judgment had already been announced in the Minute Order. Yang's purported motion was vacated by the trial court.

Yang's arguments that Plaintiff's filing of the post-judgment Motion to Strike and Tax Costs constituted "acceptance of the judgement[*sic*]" and "this appeal has violated due process four times" have no legal basis.

Yang cites *Southern Pacific Co. v. Oppenheimer* (1960) 54 Cal.2d 784 for his position that Plaintiff cannot appeal the discovery orders. (RB, p.28.) That case was not an appeal from a final judgment. See, CCP § 906.

II. Wenbin Yang Repeatedly Lied Under Oath and the Doctrine of "Falsus in uno, falsus in omnibus" Should be Applied

In his verified discovery responses, Yang denied using the ID "iMan" under oath (AA403-405 (Vol.2)). In response to Plaintiff's motion to compel, Yang stated that "Yang has directly unequivocally **denied** the RFAs **without any objection** in his verified responses… `**Respondent DENIES that he used the ID** (each ID requested to be admitted in the RFAs `**"** (AA426.) (boldfaces original).

In his sworn deposition, Yang also testified that he was not iMan:

> Q. (Through Interpreter) Mr. Yang, did you ever use the ID of iMan on any website?
>
> A. My answer will be no.

(AA610 (Vol.3) (Depo. Tr. p.12))

At trial, Yang again denied under oath that he was iMan. But when presented with Trial Exhibit 18, Yang eventually admitted to using the ID of "iMan". (Trial Tr. pp.5-7 (AA1395-1396 (Vol.6)), Trial Tr. p.11 (AA1400 (vol.6)).)

At trial, when Yang was asked whether he made posts on Yeyeclub.com, the following was the exchange:

> Q. BY MR. YUE: So, Mr. Yang, going back to the question, do -- let me ask another way. Did you use any — did you make any posts on Yeyeclub?
>
> A. I am not very clear on this because this is many years ago and also because it's already closed a lot. It's already closed 3 years.
>
> Q. But, Mr. Yang, you were sued in 2015 -- 2016, correct?
>
> A. Yes.
>
> Q. But then you -- you forgot whether you made posts on Yeyeclub during this time? The accusation was you made posts on Yeyeclub, but you forgot?
>
> A. Regarding your question, I did not post, so I already answer your question —

(AA1400.)

Because Yang admitted that he was iMan, it's also evident that Yang had posted on Yeyeclub.com. iMan's blog post in Trial Exhibit 18 (AA1010-1015) contained disputes among iMan and certain bloggers on Yeyeclub about iMan's wife. Yang lied under oath in testifying that he did not post on Yeyeclub.

Wenbin Yang also lied under oath when he denied using the IDs of VOA and CH3CH2OH on Yeyeclub, in written discovery

responses, in deposition and at trial. Both VOA and CH3CH2OH posted documents, including emails between Yang and Plaintiff, as well as Yang's travel plans, that could only come from Yang.

Defendant Wenbin Yang repeatedly lied under oath, in verified discovery responses, in deposition testimony and at trial.

"*Falsus in uno, falsus in omnibus.*" (*Poor v. W.P. Fuller & Co.* (1916) 30 Cal.App. 650, 655). The Court of Appeal should disregard Yang's factual contentions. Yang's disjointed and spurious writing is hard to follow, Plaintiff will expose some of the misrepresentations in Yang's respondent brief.

III. Yang's False Forgery Allegations are Baseless

Yang makes several "forgery" accusations. They are baseless.

Yang's blog articles and their translations had been provided to Yang long before the trial and admitted into the evidence at trial. The documents had been translated by a third-party translation service called RushTranslate, accepted by the parties and the trial court. Yang raised no objections to the authenticity of his blog articles or the accuracy of their translations at the trial court. He has forfeited any challenges to them. Nevertheless, Plaintiff refutes below Yang's forgery allegations due to the seriousness of the accusation.

1. Trial Exhibit 44

Yang falsely alleges that Plaintiff altered the title of the blog article. The original title Yang wrote for his blog article was "[Plaintiff's full name in Chinese]的木马病毒（Trojans Virus）和入室盗窃重罪（Burglary Felony)" (English text original).

RushTranlsate accurately translated the title to "Trojans Virus and Burglary Felony of [Plaintiff's full name]." (AA1118 (Vol.5)) Yang's accusation of improper translation is false.

2. Trial Exhibits 39 and 41

Yang makes another baseless forgery accusation. He says Trial Exhibit 41 (the fax Yang sent Plaintiff) was not posted, but Trial Exhibit 39 was. Nowhere did Plaintiff say exhibit 41 was a blog post. As Plaintiff testified, Yang initially posted the full content of trial exhibit 40, which included a statement that he would "claim damages resulted from this illegal attack." (original in English). Realizing the false accusations may bring him trouble, Yang sent a "Clarification" fax admitting that there was no attack on him and withdrawing his claim for damages. (AA1099-1101 (Vol.4) (Trial Ex. 41.)) But Yang still kept making the false accusations of Plaintiff "using Internet Virus Technique" in the published blog posts.

3. **Yang admitted that his Trojan virus accusations were false**

In his "Clarification" fax (Trial Ex.41.), Yang stated that "I have not seen not seen anything which indicates that you might really conducted [*sic*] that kind of illegal service approach **except your claim**" (AA1100) (boldface added). In his sworn deposition, Yang testified as follows:

> Q. You wrote here that Mr. Yue tried to serve you by internet virus technique. Did you see anything served on you on the internet, any complaint, any summons served on you on the internet?

A. No, I cannot recall. I don't remember. First of all, I'm not the expert of computer, and I don't really know that I was ever attacked by any viruses. I don't know.

(AA630-631.)

Yang now says that the "your claim" portion of his statement was about Plaintiff sending court summons to Yang by email. Service or sending court documents by email is a lawful method of providing notice. (CCP § 1010.6(a)(1) (C).) Yang stated that he had not seen anything illegal. Yet Yang persisted in defaming Plaintiff on the internet by further blog posts using different pseudo-names. Yang continues to defame Plaintiff in the RB by stating that Plaintiff "sent him Summons using a Trojan virus." (RB, p.35.)

4. Yang's other false accusations of "forgeries" are baseless

Yang made other false accusations of "forgeries" (RB, p.35). They are without any factual support. They are baseless.

IV. Yang's Contentions on the Standards of Review are Invalid

Yang confuses facts and legal conclusions. There was no factual dispute that Yang authored and published the posts. The questions of law are whether any of Yang's statements constituted defamation. Plaintiff is appealing those legal conclusions that Yang recites, which are subject to *de novo* review.

Yang provides no legal authority to support his contention that the constitutional issues are not subject to de novo review.

V. The Trial Court Should Have Imposed Terminating Sanctions on Yang

Despite Yang's repeated defiance of discovery orders, refusal to produce discovery and outright perjury (AA486-499), the trial court summarily denied sanctions against Yang.

The denial of sanctions against Yang emboldened him to lie under oath in his sworn deposition and to lie again in his trial testimony. Yang's failure to properly respond to discovery requests was highly prejudicial to Plaintiff's case.

Yang's argument that discovery orders are not appealable is misguided. This appeal is from a final judgment. CCP § 906 (review may include "any intermediate ruling, proceeding, order or decision"). Yang's argument that Plaintiff "abandoned his legal rights" because Plaintiff did not oppose the tentative rulings is equally misguided. "Submission on a tentative ruling is neutral; it conveys neither agreement nor disagreement with the analysis." (*Mundy v. Lenc* (2012) 203 Cal.App.4th 1401, 1406.)

VI. The Statements Yang Posted Involved a Private Figure and Private Concern

The trial court had held that Yang presented no evidence that Plaintiff was a person in the public eye. (AA175 (Order denying Yang's Anti-SLAPP motion)). Yang has not filed an appeal of this

order. "[A] respondent who has not appealed from the judgment may not urge error on appeal." (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) Yang has forfeited any challenge to the trial court's finding that he presented no evidence that Plaintiff was a person in the public eye.

At the trial, the trial court applied CACI 1704, "defamation per se (private figure—matter of private concern)" to the defamation claims. (AA1419 (Trial Tr. pp. 24-26, 30).) Yang raised no objections at the trial, again forfeiting any challenge on this issue.

Yet in the respondent's brief, Yang impermissibly argues again that Plaintiff was a "limited public figure." (RB, pp.37-38.) The same misguided arguments had already been made by Yang at the trial court (AA131-170) and had been rejected. (AA173-175.)

VII. Plaintiff Alleged Defamation Per Se in the Complaint

Defendant Wenbin Yang falsely states that "defamation per se was never an issue in the trial court" and that "Plaintiff sneakily introduced this new issue into this appeal". (RB, at 30.)

Yang had been placed on notice of Plaintiff's claims of defamation per se in the Verified Complaint ("VC") since 2016. The Complaint alleged that "Defendants' false statements… constitute defamation per se". The prayer for relief further requested holing Defendants liable for defamation per se. (AA24-28 (VC, pp.12-16).)

The trial court applied CACI 1704, which was entitled "Defamation per se—Essential Factual Elements (Private Figure—Matter of Private Concern)". Yang raised no objections to the application of this instruction at the trial. He had forfeited any challenge on this issue.

Yang falsely accused Plaintiff of violating court orders, using internet viruses to steal information, committing burglary felony and violating California penal code by using a "Trojans[sic] virus". In these internet postings, Yang referred to Plaintiff by his full name and place of residence (California). Yang's false accusations of serious, unlawful and even criminal misconduct directly injure Plaintiff and his business. Yang's statements are "defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact." (Civ. Code § 45a.)

VIII. Yang Committed Per Se Defamation Against Plaintiff in Internet Postings

The alleged defamation in this case involved a "private figure, matter of private concern". Plaintiff properly alleged defamation per se. Yang published his blog posts to a California audience.

Yang contends that his statements were opinions and protected by the First Amendment. Yang's position is legally untenable.

1. Yang committed libel per se by posting the false statement that Plaintiff violated court order(s)

Yang online posts admitted as trial exhibit 37 (AA1074-1079)

falsely stated that Plaintiff disobeyed a court order and falsely stated that Plaintiff's family was almost thrown into the street as a result of disobeying a court order.

Yang's statements were about a copyright case Plaintiff Yue filed against a publicly traded company named StorageTek ("STK") (now defunct) back in around 2007. (AA173-175.)

In that case, STK used Plaintiff Yue's PowerRPC technology in its core software for many years without paying the required license fees, falsely informing Yue that they had long stopped using PowerRPC. When Yue found out that STK had been using PoweRPC years later, he sued STK for copyright infringement, fraud and breach of contract. The federal district court dismissed Yue's copyright claim, and awarded STK about $220,000 in attorney's fees under the fee-shifting statute of the Copyright Act. The case was later settled, with the defendant paying undisclosed sums. (AA155-156.)

In his response, Yang attached an online forum post with a purported interview of Plaintiff. Yang's exhibit was never admitted at the trial and is inadmissible hearsay. Plaintiff had previously denied that he made the specific statements in the purported interview. The true events had been explained in a brief Plaintiff filed at the trial court, in response to Yang's Anti-SLAPP motion. (AA155-156.)

But even based on Yang's hearsay exhibit 401 (BB19-21), Yang's statements in Trial Exhibit 37 were knowingly false and fraudulent. Although the forum post in Yang's Exhibit 401 cannot be used to prove the truth of the matter asserted in it, it can be

used to show Yang's intent.

The content in Yang's exhibit 401 shows that STK made an accusation, Plaintiff-Yue denied STK's accusations and provided evidence to the contrary, and the matter was "postponed". Specifically, "the lawyer of the opposing party [STK] provided false evidence." And, "It lacked the evidence to regard him as contempt of court, because the opposite party provided the false evidence… The judge's final ruling was to hold the trial again on Feb.09 next year". (BB19-21). Based on Yang's own exhibit 401, there was no finding that Plaintiff-Yue violated any court order.

"[T]he telling of a half-truth calculated to deceive is fraud." (*Cicone v. URS Corp.* (1986) 183 Cal. App. 3d 194, 201) Yang was not even telling a half-truth. Yang intended to deceive his readers to harm Plaintiff.

Thus, Yang made the fraudulent statements that Plaintiff violated court order[s] and was punished as a result, with the stated intention to harm Plaintiff. See, the full text of Yang's post (AA1075-79 (Vol.4) (Trial Ex. 37.))

Yang claims reliance on inadmissible Exhibit 401 for his truth defense. Instead, Yang has proved that his statements made in Trial Exhibit 37 were fraudulent and knowingly false.

Yang committed defamation per se by using fraudulent statements to harm Plaintiff's reputation and business.

2. Yang committed libel per se by posting the false statements that Plaintiff attacked him with internet virus technique

On October 3, 2015, using the online ID of VOA, Yang published a blog article stating that Plaintiff "confessed in [his] Complaint and Motion" that Plaintiff "tried to serve [Yang] by using Internet Virus Technique". (AA1088 (Vol.4) (Trial Ex.39).)

It's defendant Yang's burden to prove his statement was true as an affirmative defense to a charge of defamation. Plaintiff will nevertheless show that Yang's statement is false.

First, as Yang knew and admitted in his "Clarification" fax (AA1098-1011 (Vol.4) (Trial Ex.41)), Plaintiff never performed any "illegal service" using "Internet Virus Technique" on Yang. Plaintiff merely sent Yang emails with normal hyperlinks to court documents to his imancosmos@gmail.com e-mail address. Contrary to Yang's false allegations in the RB, there was no "embedded spyware code" nor "cross site script" in the email Plaintiff sent to Yang. Sending documents with hyperlinks was a permitted method of electronic notification. (CCP § 1010.6(a)(1)(C)) (permitting e-mails with "a hyperlink at which the served document may be viewed and downloaded.") Whenever a user visits a hyperlink either on a website or in an email, the IP address assigned to the visitor by the network operator is recorded in the web server's log entries. This is the normal and well-known operation of websites and emails.

Yang attempts to falsely characterize Plaintiff's email containing hyperlinks to court documents as viruses and spyware. (RB, p.44). He provides no basis for his assertion that emails containing hyperlinks were viruses or malicious code. (See, CCP § 1010.6(a)(1) (C), *supra*). Yang could have simply produced the

emails Plaintiff sent him and have them examined by an expert to identify anything suspicious. He did not.

Yang accessed the hyperlinks and viewed the Summons Plaintiff sent him. That was what the ZZB server logs showed. And that was why Yang first stated that he was "scared." (AA1095-97 (Vol.4) (Trial Ex.40).) As admitted in his "Clarification" fax, Yang knew there was no "illegal service" using "Internet Virus Technique" on him. (AA1099-1101 (Vol.4) (Trial Ex. 41.))

Yet Yang states that "Yang has never denied the simple fact that Yue sent him Summons using a Trojan virus." (RB., p.35.) Yang fails to maintain self-consistency in telling false stories. In addition to his "Clarification" fax, Yang also testified as follows in his sworn deposition:

> Q. You wrote here that Mr. Yue tried to serve you by internet virus technique. Did you see anything served on you on the internet, any complaint, any summons served on you on the internet?
>
> A. No, I cannot recall. I don't remember. First of all, I'm not the expert of computer, and I don't really know that I was ever attacked by any viruses. I don't know.
>
> Q. So did you see any summons or complaints served on you on the internet?
>
> A. You mean through e-mail?
>
> Q. Through e-mail on a website.
>
> A. Let me put it this way: You been suing me in two cases in

> the last seven and a half years. I have received tons of your document through internet.
>
> (In English) Because basically we're communication always was internet, by e-mail.

(AA630-631 (Yang deposition).)

Yang's statement that Plaintiff "confessed" to using or attempting to use "Internet Virus Technique" is also false. Plaintiff never made such a "confession."

As Yang knew and emphasized in his blog posts, using Internet Virus on others is illegal and is a cybercrime. (See, e.g., 18 U.S.C. § 1030(a)(5)). "The clearest example of libel per se is an accusation of a crime," statements concerning a business that impute "fraud, dishonesty, or questionable business methods" may also constitute libel per se. (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal. App. 3d 377, 385 (*Barnes-Hind*).)

Yang committed libel per se in publishing the blog article shown in Trial Exhibit 39.

3. Yang committed libel per se by posting the false statements that Plaintiff attacked him with an online virus

On October 4, 2015, Yang posted another blog article on Yeyeclub using a different username CH3CH2OH, with even more false accusations that Plaintiff "used a network virus" to send documents to Yang and planted "Trojan horse" on people's computers, Yang further accused Plaintiff of "cyber hacking" and conducting "illegal and criminal" activities. (AA1103-09 (Vol.4)

(Trial Ex. 42).)

As shown previously, Yang's statements were false. Plaintiff never sent any network virus to Yang (or anyone else). Yang's "Clarification" fax admitted that he had not seen any illegal activity by Plaintiff. (AA1098-1101 (Vol.4) (Trial Ex.41).) Yang's deposition testimony cited above also shows that Yang knew e-mail communications were normal. (AA630-631).

Yet in his respondent brief, Yang states that "Yang has never denied the simple fact that Yue sent him Summons using a Trojan virus." (RB., p.35.) Yang is repeating his false statement of fact.

The accusations of "cyber hacking" and conducting "illegal and criminal" activities are not opinions as Yang contends. "Hacking" means "breaking into a computer." (*Chrisman v. City of Los Angeles* (2007) 155 Cal.App.4th 29, 34 [65 Cal.Rptr.3d 701].) Whether Plaintiff conducted "illegal and criminal" activities can be proven false.

Yang's committed libel per se in publishing the blog article shown in Trial Exhibit 42.

4. Yang committed libel per se by posting the false statements that Plaintiff committed burglary felony using a Trojans virus

On October 5, 2015, Yang posted yet another blog article on Yeyeclub.com in mixed Chinese and English, titled "Trojans Virus and Burglary Felony of [Plaintiff's full name]". (AA1117-1120 (Vol.5) (Trial Ex.44).) Such false accusations of criminal conduct are libel per se. (*Barnes-Hind*, *supra*.)

Yang argues that his statements about "Burglary Felony", "cyber hacking" and the expected punishment under "California penal code" were his opinions and "not a statement of fact" and "protected by the First Amendment". (RB, p.50.)

First, Yang did not label his statements as opinions in his blog article. To a reasonable reader, his article clearly accused Plaintiff of committing Burglary Felony and "cyber hacking", and stated that both were "illegal and criminal". Nowhere did Yang indicate that he was making a "metaphoric" comparison.

Second, there is no "wholesale defamation exemption for anything that might be labeled `opinion.`" (*Milkovich v. Loarin Journal Co.* (1990) 497 U.S. 1 (*Milkovich*)). Rejecting "an artificial dichotomy between opinion and fact," the U.S. Supreme Court gave an example, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar." (*Id*. at 18-19.) Yang's statements were not made in "loose, figurative, or hyperbolic language" (*Id*. at 21), but with dictionary definitions and citations to California code. Even if Yang's statements were construed to have an implied "opinion" label, his statement would still "imply an assertion" that those specific crimes were committed by Plaintiff.

Yang also argues that the words such as "Burglary Felony", "cyber hacking" and "illegal and criminal" were mere insults. They are not. They are weighty words used in law books, legal codes, and judicial decisions.

Yang committed libel per se by his statements in Trial Exhibit 44 (AA1117-1120 (Vol.5)).

5. Plaintiff has proven damages

"[I]t is … well-settled that in an action for damages based on language defamatory per se, damage to plaintiff's reputation is conclusively presumed and he need not introduce any evidence of actual damages in order to obtain or sustain an award of damages." (*Contento v. Mitchell* (1972) 28 Cal. App. 3d 356, 358.) There was no requirement to prove "hurt feelings or shame or reputation or mortification" to recover presumed damages.

As for Plaintiff's loss of business, Plaintiff gave testimony on the first day of trial, that his ZZB business suffered because of Defendants' unlawful conduct.

Yang agrees that graphs in Exhibit 72 (AA1370-1378) show that ZZB suffered reductions of readership and active blogger count since 2012. (RB, p.42.) Thus, the tables and graphs in Trial Exhibit 72 were clear to a reasonable fact-finder without any further explanations or testimony.

As alleged in the Complaint, the Yeyeclub defendants started their unlawful acts back in 2012. Yang's observation of ZZB's loss of readership starting in 2012 does not preclude Yang's defamation in 2015 causing further losses to ZZB. The data show that in September 2015, ZZB still had 1.46 million monthly views. It dropped to 0.6 million in June 2016. Yang is jointly and severally liable for such losses.

Plaintiff proved damages caused by Yang's libel per se.

6. Plaintiff had proved Yang's required level of intentions and the trial court's ruling misapplied the law

In a case of defamation per se involving a private figure and private concern, truth is an affirmative defense that the defendant bears the burden of proof. (Restatement (Second) of Torts § 581A.) Plaintiff has no burden to prove the alleged statements are untrue. See, *Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 202 [35 Cal.Rptr.2d 740] ("in a defamation action the burden is normally on the defendant to prove the truth of the allegedly defamatory communications.") Nor does a private plaintiff have the burden to prove "actual malice." (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254)

Element 4 of CACI 1704 instruction cannot be construed as requiring that Plaintiff prove that the statements were untrue and actual malice, only that the defendant "failed to use reasonable care to determine the **truth** or **falsity** of the statement(s)" (boldface added).

Instead of proving negligence by Yang, Plaintiff had proved Yang's intentions at a much higher standard. As Plaintiff pointed out at the trial:

> MR. YUE: And another one is Exhibit 39, and the main gist of the post was again that a Trojan virus was used to attack Mr. Yang's computer by Plaintiff, and there was another -- and that was completely untrue, and actually Mr. -- in another message actually Mr. Yang admitted that he didn't see any attack, but nevertheless —
>
> THE COURT: Where is that message, Mr. Yue, where Mr. Yang purportedly admitted that it was untrue that you used a Trojan horse to attack his computer? It's the first I've heard of it.
>
> MR. YUE: It's on Exhibit 41. So Mr. -- on Exhibit 41, Mr.

> Yang stated, "Not seen anything which indicates that Yue might really conduct such kind of illegal attack except your claim" --
>
> MR. YUE: -- "and I do not understand the technical details of Internet virus and only have" --
>
> THE INTERPRETER: Go ahead, Mr. Yue.
>
> MR. YUE: -- "and only have common knowledge that any computer could get virus by viewing websites or opening e-mails."
>
> So Mr. Yang admitted that he didn't see any -- any such thing indicating there was any attack on him by Plaintiff using a virus, nevertheless, he continues -- the date of this fax is October the 3rd, 2015.
>
> THE INTERPRETER: What year, Mr. Yue, 20?
>
> MR. YUE: '15. The date of the other posts, Exhibit 42, 43, 44, are dated after October the 3rd, so therefore Mr. Yang knew he wasn't attacked by a virus back in October, yet he continues to post all these defamatory statements saying Plaintiff engaged Trojan virus attack against him and committed serious crimes under California law.

(Trial Tr. pp.27-28 (AA1416-1417 (Vol.6)))

Yang admits to lacking an understanding of the technical aspects of Internet viruses, acknowledging only a basic awareness that computers can become infected through websites or emails. Additionally, he has not observed any evidence suggesting an illegal attack, aside from the fact that Plaintiff sent him emails containing document links, allowed by CCP 1010.6(a)(1) (C). Yang did not make a reasonable effort to determine the truth or falsity of his accusations of virus attacks, yet he persisted in his false accusations of serious criminal

conduct.

Yang's claim of a virus attack is deliberately deceptive. His acknowledgment of his insufficient technical understanding of internet viruses reveals that he was aware his accusation had no factual foundation. Furthermore, his admission that he observed no evidence to support the occurrence of such an attack indicates that he knew his allegations were baseless fabrications intended to harm the accused.

Plaintiff had shown that Yang was not only negligent by his own admission, Yang purposefully defamed Plaintiff with the full knowledge that his statements were false.

IX. The Trial Court Erred by Excluding Relevant and Admissible Evidence

1. Plaintiff's testimony about his local California acquaintances was not hearsay

As Plaintiff testified at trial, which largely repeated his prior declarations, many bloggers and reader of ZZB were local California residents. It was natural that Plaintiff would invite his local acquaintances to join Plaintiff's social media website ZZB.

Yang's accusation that these local acquaintances were "fabricate[d]" "ghosts" (RB at 21-22) is false. As Wenbin Yang knew, one of them was a California Bay Area woman whom Yang verbally abused. Yang's conduct towards this Bay Area woman included sexual verbal assault (AA16, lines 17-22 (Verified Complaint); AA61 (Yue Decl. 16.)) and asking her for her nude photos. (AA59-60 (Yue Decl. 6-12)) Plaintiff's declaration referred

to her as W. She later informed Plaintiff that she telephoned San Francisco FBI to inquire whether certain obscene picture posted by Yang constituted child pornography (AA61 (Yue Decl. 14.)) (Yang used an image of a small child in a sexual act as his profile image). Yang's conduct led to his iMan identity being banned from both ZZB and Yeyeclub. It was Plaintiff's restrictions on Yang's various accounts due to his abusive conduct that eventually triggered Yang's defamation campaign and this lawsuit. (AA59-67.)

When Yang made posts on Yeyeclub, W sometimes commented below Yang's post. For instance, using the ID of TZZ, W posted the text of California Civil Jury Instruction 1704, in response to Yang's post made with the ID of CH3CH2OH. See, AA90-91.

However, due to Yang's false and defamatory posts about Plaintiff, even W started to express sympathy for Yang. (AA65-66 (Yue Decl.).) Plaintiff further stated that during a lunch with two local friends, they asked Plaintiff about Wenbin Yang's posts. The name of one of these Californians, Mr. Feng, was in one of the trial exhibits. (AA974 (Trial Ex. 12).)

Plaintiff's testimony that he heard locals questioning him about Yang's posts was not hearsay, it was just what Plaintiff heard. Such questions were not even assertions, but inquiries. They were offered to show the effect of Yang's posts.

2. Evidence identifying Yang as "iMan" should be admitted

Yang had denied under oath that he used the ID of "iMan" in his verified discovery responses, in his under-oath deposition and

at trial. On the first day of trial, Plaintiff offered Trial Exhibit 18 (AA1010-1015 (Vol.4)), which was one of iMan's blog posts with a photo of his wife. This evidence not only identifies Yang with "iMan", but also contradicts Yang's prior false testimonies and is evidence of Yang's lack of credibility.

Yang argues because he later admitted he was iMan, the evidence was redundant. It was not. It was the crucial evidence that linked Yang with other online identities and exposed his perjury.

At Yang's deposition, he first denied that he was iMan. (AA610.) When Plaintiff used the same exhibit as Trial Ex. 18 to examine Yang, Yang refused to answer questions. (AA620-621.)

On the first day of trial, Yang again falsely testified that he was not iMan. Plaintiff then examined him with Trial Exhibit 18. Yang again attempted to evade the question. Eventually, in front of a judge, Yang reluctantly admitted that he made the post and he was iMan.

Thus, Trial Exhibit 18 was the crucial evidence that identified Yang with iMan at the trial and was also the evidence that caught Yang lying all this time.

Although the trial court had deemed Yang to be iMan, Yang persisted in denying that he was those IDs, claiming to this day he was deemed to be those online usernames due to his "mistakes" in discovery. Yang's claim of innocence would certainly affect the damages to be awarded due to the alleged tortious acts. Trial Exhibit 18 is crucial in establishing the fact that Yang was the real tortfeasor and that he had lied under oath

in denying he was.

Trial exhibit 18 should have been admitted into evidence.

3. Evidence about Yeyeclub and Liu should be admitted for the unfair competition claim

"The complaint alleged Yang posted on ZZB and Yeyeclub. Plaintiff removed Yang's `sexually explicit, violent and insulting` posts from ZZB. Liu, however, encouraged Yang to continue posting on Yeyeclub. Thereafter, Yang began making `defamatory attacks` on plaintiff on Yeyeclub. According to the complaint, Yang and Liu worked together to attack plaintiff on Yeyeclub and `induced many ZZB bloggers to join` Yeyeclub." (*Yue v. Yang* (2021) 62 Cal. App. 5th 539) This Court of Appeal summarized the Complaint tersely.

The trial court should not have rejected all evidence against Yeyeclub and Liu *en bloc*. Yang's assertion that Plaintiff's position is "nonsense" is unsubstantiated.

X. The Trial Was Highly Irregular and Violated Due Process Under the California and United States Constitutions

1. The trial judge advocated on behalf defendant

California Evidence Code Section 353 requires a party to raise a timely objection to evidence being offered with specific grounds. When no objection was made by the party, the challenge is forfeited. (*SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 563 [party forfeited

evidentiary "challenge by failing to make an objection below that satisfies the requirements of Evidence Code section 353"].)

During the trial, the trial judge frequently intervened on behalf of defendant Yang, often injecting objections where none were made by the defense. On multiple occasions, the judge suggested to Yang that he object to evidence, to which he had not made objections.

This conduct by the trial judge deviated markedly from the expected impartiality and neutrality of the courts, undermining our adversarial system of justice and compromising Plaintiff's ability to present his case effectively. It "resulted in the miscarriage of justice." (Cal Evid. Code § 353 (b))

At several points, to calm down the tense situation, Plaintiff offered apologies to the trial judge. These were not legal concessions nor forfeiture of any legal challenges. When Plaintiff said "you were trying to help", he did not say who was being helped. Certainly, Plaintiff was not being helped and needed no help. Plaintiff's "apologies" were made in the vain hope that lowering the temperature would allow the trial to proceed normally.

But the trial judge's conduct remained the same. The climax of the irregularities occurred when the judge invited Mr. Yang to move for judgment at the close of the Plaintiff's case. Mr. Yang, merely said "Yes", and the judge swiftly entered judgment in favor of him without substantive analysis of the evidence presented.

Yang fails to dispute any of the record. Yang contends he

didn't just say "Yes" but he also asked the trial judge a question "Is it a motion for summary judgment?" (AA1410, Trial Tr.p.21) Yang's question is not a motion.

Prior to the submission of the matter, Plaintiff presented specific controverted issues, from Yang's liability to damages, to the trial court. See Trial Transcript, pp.22-29 (AA1411-1419.) The trial judge's "statement of decision" failed to "explain the factual and legal basis as to each of the principal controverted issues at trial" mandated by CCP § 632.

2. The episode about the RFAs shows prejudice of the trial judge

Yang writes that "Yang repeatedly responded in the discovery process and **in the trial** that since the court had already ruled that iMan was Yang, Yang would no longer argue about this matter." (RB, pp.20-21.) (boldface added). This happened on the first day of trial. Although Yang initially lied under oath in denying that he was "iMan" on the first day of trial, Yang also informed the trial judge that the court had deemed him to be iMan.

Thus, on the first day of trial, both Plaintiff and defendant Yang repeatedly informed the trial judge of the order that deemed Yang to the online IDs.

The trial judge had presided over the case since December 2021. The discovery order deeming Yang to be "JFF", "iMan", "VOA" and "CH3CH2OH" was issued on June 29, 2022, under her watch.

The trial judge had stated that she had carefully reviewed the

case record prior to the trial. Plaintiff had twice written about the "Jun 29, 2022" court order in two short per-trial briefs submitted to the trial judge (AA550, AA764). When Plaintiff brought up Commissioner Dashman's name and the order, the trial judge never indicated that she did not review it.

It was Plaintiff's true "impression" that the trial judge knew that the Requests for Admission (RFAs) were deemed admitted by the court. Even though Plaintiff had done everything properly, he offered apologies to the trial judge, in the hope to calm down the situation and move the case along.

Yet, Plaintiff's apology triggered an unexpected response from the trial judge.

Such was the irregularity of the trial.

Yang fails to refute any of Plaintiff's arguments.

3. The comment about Plaintiff not being a lawyer trained in the United States shows bias and prejudice of the trial judge

On the first day of the trial, the trial court declined to admit into evidence Yang's blog articles on Yeyelcub made under various online IDs. On the second day of trial, to link iMan (Yang) on ZZB to his identities on Yeyeclub, Plaintiff questioned Yang about Trial Exhibit 19, which contained a private message iMan sent Plaintiff on ZZB, where iMan discussed his disputes on Yeyeclub (AA1017-1019 (Vol.4)). As Plaintiff explained to the trial court, "we are going from ZZB, my website, to Yeyeclub, what IDs he used on Yeyeclub." The trial judge objected. Plaintiff requested the trial judge to maintain an adversarial process. The

trial judge stated “You are not a lawyer trained in the United States. In fact, you're not a lawyer.”, with additional commentary. (AA1395-1340 (Trial Tr. pp.6-11.))

The AOB argues that the trial judge’s conduct shows bias and prejudice. Yang fails to refute Plaintiff’s arguments and analysis in the AOB based on the record, other than repeating conclusory statements.

XI. The Trial Court Violated Equal Protection Clauses of the California and U.S. Constitutions

The determination of whether national origin was a factor in a state action relies on the actual evidence presented. The defendant contends that since the opposing parties share the same racial background, it is impossible for the trial judge to have violated equal protection principles. This assertion has no logical basis and is fallacious.

In a scenario where two individuals of the same national origin are in conflict—one being successful and honest, the other dishonest and defamatory—it is more plausible that a racist arbiter would exhibit favoritism toward the dishonest individual. This bias could be driven by a secret pleasure in seeing the honest and successful person maligned by someone of the same national origin. With the defamation perpetuated by the perversion of the law, endorsement of the defamation as free speech in such a legal dispute could negatively impact their community, reinforcing harmful stereotypes and hindering communal progress. Such an unspoken motive could lead to irregularities in the proceedings and a misapplication of the law.

In this case, there were two litigants of the same national origin.

Yang tormented female netizens with threats of sexual violence and viciously attacked others with abusive and violent language. In his native tongue, he wrote like the meanest wretch (see e.g., Trial Ex. 18). Having lived in Canada for at least twenty years (AA703), Yang had not learned to speak intelligible English and consumed precious public resources by requiring a Chinese-English interpreter. Known to be a fraud and parasite with no societal contribution to talk about (AA634, AA704), Yang attacks others under the cloak of numerous online IDs, such as JFF (on xys.org), iMan, VOA and CH3CH2OH (and numerous others) (AA60-63). When examined under oath, Yang repeatedly lied right in front of the trial judge. Yang's perjury had been fully exposed at trial.

Plaintiff, on the other hand, is a productive and honest member of California society. Plaintiff had published oft-cited research papers in renowned U.S. scientific journals. (AA14.) Plaintiff's technologies had been widely adopted by many large U.S. enterprises, evidenced in part by Plaintiff's copyright actions against Symantec, StorageTek and Chordiant. Plaintiff had successfully defended his intellectual property in federal court. Plaintiff's businesses had generated millions of dollars of revenue, contributing to California's economy. (AA67-68.) Plaintiff had become a licensed lawyer in California and an officer of the court.

Noting Yang's false testimony under oath, the trial judge merely commented: "Yes, he previously denied he was iMan, and

he is now stating that he is iMan." When Plaintiff cited fundamental legal rules of maintaining an adversarial process, the trial judge brought up Plaintiff's non-US background as a basis to deny Plaintiff the opportunity to examine Yang.

Had some U.S.-born white pro se litigant been "wasting" her time, the trial judge would not have made the national origin comment.

The trial judge's statement made it clear that Plaintiff's non-U.S. origin was a factor in her decision-making process. Strict scrutiny should be applied.

CONCLUSION

For the foregoing reasons and reasons stated in the AOB, Plaintiff requests that the Court of Appeal reverse the trial court's order of judgment in favor of Yang, reverse the award of costs to Yang, and order that terminating and monetary sanctions be imposed against Yang. Plaintiff further requests that the case be assigned to a different judge on remand.

Respectfully submitted,

Dated: May 16, 2024

/s/ D. Yue

Dongxiao Yue

Plaintiff-Appellant *Pro Se*