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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

VERA SEROVA, an individual, on behalf of
herself and all others similarly situated,

Plaintiff(s),

vs.

SONY MUSIC ENTERTAINMENT, a
Delaware general partnership; JOHN
BRANCA, as Co-Executor of the Estate of
Michael J. Jackson; EDWARD JOSEPH
CASCIO, an individual; JAMES VICTOR
PORTE, an individual; MJJ PRODUCTIONS,
INC., a California Corporation; ANGELIKSON
PRODUCTIONS LLC, a New Jersey Limited
Liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: BC 548468

Case Assigned for All Purposes to
Judge Ann I. Jones, Dept. 308

**DEFENDANTS EDWARD JOSEPH
CASCIO, JAMES VICTOR PORTE AND
ANGELIKSON PRODUCTIONS, LLC'S
REPLY IN SUPPORT OF THEIR SPECIAL
MOTION TO STRIKE FIRST AMENDED
COMPLAINT UNDER C.C.P. §425.16**

[Compendium of Federal Authorities filed
concurrently herewith]

June 30, 2016
Time: 11:00 a.m.
Dept. 308

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION & STATEMENT OF RELEVANT FACTS

4 Controversy has surrounded the Cascio Tracks since the inception of the Album. FAC ¶ 11.
5 Even before the songs' release, "numerous people familiar with Michael Jackson's voice disputed the
6 authenticity of" the Cascio Tracks. FAC ¶ 20.

7 Prior to the Album's release, on December 6, 2010, defendant Edward Joseph Cascio
8 ("Cascio"), along with his mother, father, brother, and sister appeared on the *Oprah Winfrey Show*.¹
9 The Cascio family was there, in the words of Oprah Winfrey, to discuss their "secret relationship with
10 the King of Pop, Michael Jackson."² The chyron "Michael Jackson Legacy" was burnished on the
11 upper left corner of the television screen, and Winfrey began the segment by stating: "Also making
12 news is the controversy surrounding the release of a new Michael Jackson album titled 'Michael,' with
13 ten never-heard before songs recorded before his death"³

14 During the segment, the Cascios shared home videos of their family with Jackson and regaled
15 Winfrey with stories about their life as Jackson's "second family," including stories about Jackson's
16 clothing choices, the lessons that Jackson imparted to them, the gifts they gave Jackson for Christmas,
17 and the accusations of child molestation that plagued Jackson.⁴ They discussed how Cascio's mother
18 would cook for Jackson his favorite foods (pizza, turkey, mashed potatoes) and how Jackson took out
19 the garbage like any other member of the family.⁵ Cascio gave a video tour of the house and showed
20 the basement recording studio where the Cascios installed a dancefloor for Jackson.⁶

21 Twelve minutes into this wide-ranging interview with Cascios, Winfrey stated, "Michael
22 [Jackson] and Eddie [Cascio] recorded twelve songs in the Cascios' basement."⁷ Winfrey then asked
23 Cascio point blank: "There have been some questions, you know, about first of all, people saying that
24

25 ¹ On April 18, 2016, Plaintiff lodged with the Court a DVD that contained part 2 of the Cascios' December 6, 2010 appearance on the
26 *Oprah Winfrey Show* (Oprah Video Pt. 2). Within one week of filing this Reply, the Angelikson Defendants will lodge with the Court a
DVD that contains part 1 of the Cascios' appearance on the *Oprah Winfrey Show* (Oprah Video Pt. 1).

27 ² Oprah Video Pt. 1 at: 30.

³ Oprah Video Pt. 2 at: 08.

⁴ Oprah Video Pt. 1 & 2 *passim*.

28 ⁵ Oprah Video Pt. 1 at 1:50-2:10; 2:44.

⁶ Oprah Video Pt. 1 at 7:40-8:45.

⁷ Oprah Video Pt. 2 at 3:40.

1 this isn't Michael's voice. You know that. What can you tell us about that?"⁸

2 Cascio responded: "I can tell you that it is Michael's voice. He recorded right there in my
3 basement."

4 Winfrey: "In that little room, with the mat on the floor?"

5 Cascio: "Yes. . . . It was a home studio, and we worked. I was there pushing the buttons. He
6 was right there directing. . . . That's Michael Jackson."⁹

7 According to Plaintiff, Cascio's answer to Winfrey's question constituted "commercial speech"
8 and is therefore not protected by the anti-SLAPP statute. Plaintiff is wrong for several reasons.

9 **First**, Cascio's statement on the *Oprah Winfrey Show* was made in regards to a matter of public
10 interest, namely: the Cascios' relationship with Jackson.

11 **Second**, Cascio's statement on the *Oprah Winfrey Show* was not commercial speech because it
12 was not part of an advertisement for a product and it did not propose a commercial transaction.
13 Winfrey asked Cascio a question about a controversy, and he answered it.

14 Moreover, California Code of Civil Procedure section 425.17(d) expressly provides that speech
15 related to the "creation, dissemination, advertisement, or other similar promotion of any . . . musical . .
16 . work" is not commercial speech for purposes of the anti-SLAPP statute. Cascio's statement was
17 clearly such speech.

18 **Third**, even if Cascio's brief statement on the *Oprah Winfrey Show* could be construed as
19 commercial speech (which it was not), it was inextricably intertwined with fully protected speech
20 about a matter of great public interest. Cascio, like the rest of his family, was on the *Oprah Winfrey*
21 *Show* to discuss his family's relationship with Jackson. His comment about who sang on the Cascio
22 Tracks was an inextricable part of that discussion.

23 **Fourth**, in her 25-page Opposition, Plaintiff does not attempt to explain how or why
24 defendants James Victor Porte and Angelikson Productions, LLC¹⁰ could be liable for any cause of
25 action based upon Cascio's brief statement on the *Oprah Winfrey Show*.

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27
28 ⁸ *Id.* at 3:48-3:56.

⁹ *Id.* at 3:56-4:21.

¹⁰ Cascio, James Victor Porte, and Angelikson Productions, LLC are referred to collectively herein as the "Angelikson Defendants."

1 For the reasons discussed herein and the Angelikson Defendants' moving papers, the Court
2 should grant the Angelikson Defendants' special motion to strike.

3 II.

4 DISCUSSION

5 A. CASCIO'S STATEMENT ON THE OPRAH WINFREY SHOW WAS ABOUT A
6 MATTER OF PUBLIC INTEREST

7 "The public interest component of section 425.16, subdivision (e)(3) and (4) is met when the
8 statement or activity precipitating the claim involved a topic of widespread public interest, and the
9 statement in some manner itself contributes to the public debate." Kronmeyer v. Internet Movie Data
10 Base, Inc., 150 Cal. App. 4th 941, 949 (2007). As the court in Carlisle v. Fawcett Publications, Inc.
11 held: a public interest "attaches to people who by their accomplishments, mode of living, professional
12 standing or calling, create a legitimate and widespread attention to their activities." 201 Cal. App. 2d
13 733, 746 (1962). Thus, where the subject of the statement or activity precipitating the claim was a
14 person in the public eye, this alone satisfies the public interest/public issue requirement of §425.16. *See*
15 Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26, 33 (2003); Hall v.
16 Time Warner, Inc., 153 Cal. App. 4th 1337, 1347 (2007).

17 Here, there is no question that Cascio's appearance of the *Oprah Winfrey Show* was about a
18 matter of public interest, namely the Cascios' "secret relationship with the King of Pop, Michael
19 Jackson." Every facet of the Cascios' relationship with Jackson was of public interest, which is why
20 Winfrey asked about the Christmas presents Jackson liked, the clothes Jackson wore around the house,
21 and whether the Cascios stood by Jackson after he was accused of molestation. Winfrey's questions
22 about the Cascio Tracks were part and parcel of her interview with the Cascios. In this context, Winfrey
23 would have been remiss if she did not ask about the controversy surrounding the Cascio Tracks.
24 Consequently, Cascio's comments about the Cascio Tracks were clearly made about a topic of public
25 interest, as Plaintiff concedes in her operative complaint. *See* FAC ¶¶ 11, 20, 22, 25, 32.

26 B. CASCIO'S STATEMENT ON THE OPRAH WINFREY SHOW WAS NOT
27 COMMERCIAL SPEECH

28 Plaintiff alleges that Cascio's statement on the *Oprah Winfrey Show* was commercial speech

1 because the “speaker was promoting the sale of its own product.” Opp. 8:12. Plaintiff’s attempt to
2 transform Cascio’s brief statement on the *Oprah Winfrey Show* into commercial speech is baseless.

3 1. **Cascio’s Statement on The Oprah Winfrey Show Was Not Commercial Speech**
4 **Under Bolger**

5 To determine whether speech is commercial under the First Amendment, California applies the
6 United States Supreme Court’s test articulated in Bolger v. Youngs Drug Products Corp., 463 U.S. 60
7 (1983). See Kasky v. Nike, 27 Cal. 4th 939, 945-47 (2002). In Bolger, the Court announced a three-
8 pronged test: First, the court considers whether the speech falls within the core notion of commercial
9 speech. Second, if the speech does more than propose a commercial transaction, the court considers
10 whether (a) the speech is admittedly advertising, (b) the speech references the product, and (c) the
11 speaker has an economic motive. Kasky, 27 Cal. 4th at 960-61.

12 The first step of the analysis is to determine whether the speech fits within the core notion of
13 commercial speech, speech proposing a commercial transaction. Kasky, 27 Cal. 4th at 956. Cascio’s
14 statement on the *Oprah Winfrey Show* did not propose a commercial transaction, and Plaintiff does not
15 argue that it is “core” commercial speech. Rather, Plaintiff argues that it meets the second prong of the
16 Bolger test, namely, that (a) the speech is admittedly advertising, (b) the speech references the product,
17 and (c) the speaker has an economic motive.

18 a. **Cascio’s statement was not advertising.** Plaintiff claims Cascio’s statement was
19 “commercial in character, because . . . the statement is about the origin of the product and is designed to
20 promote sales.” Opp. at 14:15-17. Plaintiff is, at best, mistaken.

21 As an initial matter, Cascio’s statement that Jackson sang on the Cascio Tracks was part of a 17-
22 minute segment on the *Oprah Winfrey Show* devoted to the Cascios’ secret relationship with Jackson, or,
23 as the chyron stated “Michael Jackson Legacy.” Cascio’s statement that Jackson sang vocals on the
24 Cascio Tracks was made in same vein as statements regarding the clothes Jackson wore around the
25 Cascio house and the foods Cascio’s mother prepared for Jackson.

26 Moreover, representations about who created and performed an expressive work necessarily do
27 much “more than propose a commercial transaction.” Rezec v. Sony Pictures Entm’t Inc., 116 Cal. App.
28 4th 135, 141 (2004). The case of Stutzman v. Armstrong, 2013 U.S. Dist. LEXIS 129204 (E.D. Cal.

September 9, 2013) illustrates the point. The plaintiffs in Stutzman sued professional bicyclist Lance Armstrong and others for violation of the UCL and CLRA arising from alleged misrepresentations made by Armstrong at personal appearances, among other places. Id. at **3, 6, 20, 51. The Court found that Armstrong's acts of speech were not advertisements because they did more than propose a commercial transaction – they described the content of Armstrong's books, the classification of his books as biography, and they described the author. Id. at *51. Accordingly, the Court found it “readily apparent that the promotional statements regarding the Armstrong Books . . . contain components of both commercial and noncommercial speech, as these materials and statements both seek to inform and seek to promote the Books for sale.” Id. Because Armstrong's commercial speech was inextricably “bound to the non-commercial contents of the books,” it was entitled to full First Amendment protection as non-commercial speech, and the UCL and CLRA causes of action failed. Id. at **54, 55.

Here, Cascio, like Armstrong, made a public statement that described the content of the Cascio Tracks. Cascio's statement did not propose a commercial transaction, and any commercial aspect of the statement was inextricably bound with the non-commercial content of the Cascio Tracks. Moreover, Cascio was speaking to Winfrey as part of a wide-ranging discussion of his family's personal relationship with Jackson. In response to one of Winfrey's questions, Cascio responded: “I can tell you that it is Michael's voice. He recorded right there in my basement. . . . It was a home studio, and we worked. I was there pushing the buttons. He was right there directing. . . . That's Michael Jackson.”¹¹ As such, Cascio was not advertising any product, but merely speaking about a subject of immense public concern.

b. Cascio's statement on the Oprah Winfrey Show was about a controversy, not a product. Winfrey began her segment with the Cascios by stating, “Also making news is the controversy surrounding the release of a new Michael Jackson album titled ‘Michael,’ with ten never-heard before songs recorded before his death.”¹² Winfrey even prefaced her question to Cascio by saying, “There have been some questions, you know, about first of all, people saying that this isn't Michael's voice.”¹³

After Cascio responded, Winfrey asked Teddy Riley, a producer on the Album, “What do you

¹¹ Oprah Video Pt. 2 at 3:56-4:21.

¹² Id. at: 08.

¹³ Id. at 3:48-3:56.

1 say to the doubters?”¹⁴

2 Riley replied, “I say to the doubters . . . this is Michael’s voice.”¹⁵

3 Winfrey then asked, “Would Michael have liked the heat on this new album? Would he have
4 liked the controversy?”¹⁶

5 Riley responded: “He lived for controversy.”

6 Oprah chimed in: “The fact that we are sitting here going ‘Is it or isn’t it?’... He would have
7 liked it.”¹⁷

8 Cascio’s statement therefore was more about the controversy surrounding the Cascio Tracks than
9 the actual tracks. Consequently, Plaintiff cannot meet this factor of the Bolger test.

10 **c. Cascio’s purported economic motivation for making his statement to Winfrey was**
11 **remote.** The Cascio family appeared on the *Oprah Winfrey Show* to discuss their secret relationship
12 with Jackson. Consequently, Cascio and his family discussed an array of topics, none of which had
13 anything to do with the sale of any product or any economic motive, including: how the Cascios met
14 Jackson, Jackson’s sleep habits, Jackson’s clothing choices, a tour of the basement where Jackson
15 recorded with Cascio, life lessons imparted by Jackson, whether Jackson would approve the release of
16 a posthumous album, and Jackson’s opinion of controversy (answer: he loved controversy.) In this
17 context, Winfrey asked Cascio about the allegations that Jackson did not sing on the Cascio Tracks,
18 and Cascio responded. Cascio’s response was not advertising for the Album, and any economic
19 motive was extremely remote.

20 Moreover, courts have repeatedly cautioned that economic motivation, *especially for artistic*
21 *works*, is insufficient to render speech commercial. See Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495,
22 502 (1952) (that “books, newspapers, and magazines are published and sold for profit does not prevent
23 them from being a form of expression whose liberty is safeguarded by the First Amendment”); Bolger,
24 463 U.S. at 67 (“economic motivation in itself is insufficient to characterize a publication as
25 commercial”); see also Cinevision Corp. v. City of Burbank, 745 F.2d 560, 567-68 (9th Cir. 1984)

27 ¹⁴ Id. at 5:50.

28 ¹⁵ Id. at 5:53-6:03.

¹⁶ Id. at 7:52.

¹⁷ Id. at 8:00.

1 (recognizing that making expressive materials available to the public “further[s] a first amendment
2 interest”); Young v. Am. Mini Theatres, Inc., 427 U.S. 50, 77 (1976) (Powell, J., concurring) (“Our
3 cases reveal . . . that the central concern of the First Amendment . . . is that there be a free flow from
4 creator to audience of whatever message a film or a book might convey. . . . In many instances, . . . it is
5 only the theater owner or the bookseller who can protect this interest.”); Pittsburgh Press Co. v. Human
6 Relations Comm’n, 413 U.S. 376, 385 (1973) (“If a newspaper’s profit motive were determinative, all
7 aspects of its operations – from the selection of news stories to the choice of editorial position – would
8 be subject to regulation . . . Such a basis for regulation clearly would be incompatible with the First
9 Amendment.”).

10 In short, Plaintiff’s attempt to characterize Cascio’s statement on *The Oprah Winfrey Show* as
11 commercial fails the Bolger test.

12 **2. Cascio’s Statement On *The Oprah Winfrey Show* Is Protected By California Code Of**
13 **Civil Procedure § 425.17(d)**

14 In 2004, the California Legislature enacted section 425.17(c) of the Code of Civil Procedure,
15 which exempts certain types of speech from the ambit of section 425.16. Under section 425.17(c), an
16 action may be exempt from the provisions of section 425.16 if it is “brought against a person primarily
17 engaged in the business of selling or leasing goods or services” where the speech at issue consists of
18 “representations of fact” about the speaker’s products for the purpose of promoting or securing sales.
19 Cal. Civ. Proc. Code § 425.17(c). Known as the “commercial speech exemption,” this provision is
20 intended to exclude certain types of commercial speech from the protections of the anti-SLAPP statute.
21 See Metcalf v. U-Haul Int’l, Inc., 118 Cal. App. 4th 1261, 1265 (2004).

22 However, the Legislature explicitly carved out an exception to section 425.17(c) for speech
23 related to music. In particular, the commercial speech exemption of **section 425.17(c) does not apply to**
24 “[a]ny action against any person or entity based upon the creation, dissemination, exhibition,
25 advertisement, or other similar promotion of any dramatic, literary, **musical**, political, or artistic work.”
26 Cal. Code Civ. Proc. § 425.17(d) (emphasis added). Through section 425.17(d), the Legislature
27 intended “to preserve the anti-SLAPP motion for the protection of those frequent targets it was intended
28 to protect,” *i.e.*, those engaged in “the creation or promotion of constitutionally protected artistic works

1 and the like.” Cal. B. Analysis, S.B. 515-Assemb. Comm, 2003-2004 Reg. Sess. (July 1, 2003).

2 Cascio’s statement that Jackson sang on the Cascio Tracks easily falls within the scope of speech
3 to which the Legislature intended to extend anti-SLAPP protection under section 425.17(d), as Cascio
4 was present at the creation of the Cascio Tracks. Indeed, Winfrey herself identified one of the Cascio
5 Tracks as being “produced and written by Michael Jackson and Eddie Cascio.”¹⁸ Consequently,
6 Cascio’s statement on the *Oprah Winfrey Show* was about the creation of a musical work and is
7 therefore protected by Code of Civil Procedure section 425.17(d).

8 **3. Cases Cited By Plaintiff Are Inapposite**

9 Plaintiff alleges that “*commercial speech* about the properties of one’s product does not concern
10 an issue of public interest.” Opp. 8:4-5 (emphasis added). Plaintiff, however, does not allege that *mere*
11 *speech* about the properties of one’s products does not concern an issue of public interest. The
12 distinction is a crucial one, as Cascio did not engage in “commercial speech.” See Section II.B.1.
13 above.

14 In fact, none of the cases on which Plaintiff relies establishes (1) that commercial speech is *per*
15 *se* exempted from the anti-SLAPP statute, or (2) that statements about the properties of a product –
16 regardless of whether those statements are “commercial speech” – may never relate to an issue of public
17 interest. Quite the contrary. As the court in L.A. Taxi Cooperative, Inc. v. Independent Taxi Owners
18 Association of Los Angeles held: “Commercial speech that involves a matter of public interest . . . may
19 be protected by the anti-SLAPP statute.” 239 Cal. App. 4th 918, 927 (2015). Moreover, statements
20 about a particular commercial product may qualify for anti-SLAPP protection where the product is a
21 matter of genuine public interest. See All One God Faith, Inc. v. Organic & Sustainable Indus. Stds.,
22 Inc., 183 Cal. App. 4th 1186, 1207 (2010) (noting that “several recent cases have concluded that a
23 manufacturer’s advertising statements about a commercial product are not subject to the protection of
24 section 425.16 *when the specific nature of the speech . . . do[es] not involve a matter of public interest*”)
25 (emphasis added); Stewart v. Rolling Stone LLC, 181 Cal. App. 4th 664, 678 (2010) (“Plaintiffs have
26 not provided us with any authority for the proposition that commercial speech is categorically disentitled
27 to protection under the anti-SLAPP statute.”).

28

¹⁸ Oprah Video Pt. 2 at: 05.

1 Accordingly, whether statements are “commercial speech” is irrelevant to the question of
2 whether they were made “in connection with a public issue or an issue of public interest.” Cal. Civ.
3 Proc. Code § 425.16(e)(4). Plaintiff’s authorities stand for the unremarkable proposition that speech
4 about everyday consumer products often does not involve a matter of public interest. That is not the
5 case here. As discussed above, Cascio’s statement – indeed his entire appearance on the *Oprah Winfrey*
6 *Show* – involved matters of public interest.

7 **C. ANY PURPORTED COMMERCIAL SPEECH WAS INTERWINED WITH**
8 **PROTECTED SPEECH**

9 Where commercial speech is inextricably intertwined with fully protected speech, the speech
10 “sheds its commercial character and becomes fully protected speech.” Dex Media, Inc. v. City of
11 Seattle, 696 F.3d 952, 958 (9th Cir. 2012); *see also* Riley v. Nat’l Fed’n of Blind, 487 U.S. 781, 796
12 (1988) (“we do not believe that the speech retains its commercial character when it is inextricably
13 intertwined with otherwise fully protected speech”). Therefore, even if the Court concludes that
14 Cascio’s brief statement on the *Oprah Winfrey Show* should be construed as commercial speech,
15 because it was inextricably intertwined with fully protected speech about a matter of public interest, it is
16 fully protected.

17 As discussed herein, Cascio and his family appeared on the *Oprah Winfrey Show* to discuss their
18 “secret relationship” with Jackson. As part of that discussion, Winfrey asked Cascio about the
19 controversy related to the Cascio Tracks. To the extent Cascio’s statement that Jackson sang on the
20 Cascio Tracks constituted commercial speech, it was clearly intertwined with protected speech.

21 Plaintiff argues that the speech was not inextricably intertwined because there was “no law of
22 man or nature [that] required Defendants to combine the Cascio tracks with representations that Michael
23 Jackson performed on those tracks.” Opp. at 19. Even assuming that is the proper test, Plaintiff is
24 wrong.

25 As an initial matter, Cascio did not “combine the Cascio tracks with representations that Michael
26 Jackson performed on those tracks.” Rather, Cascio appeared on the *Oprah Winfrey Show* with
27 members of his family to discuss their relationship with Jackson. As part of that appearance, Cascio
28 represented that it is Jackson’s voice on the Cascio Tracks and that Jackson recorded the tracks in the

1 Cascio basement. Plaintiff's argument that Cascio's comments about the origin of Cascio Tracks would
2 have the effect of chilling the dissemination of expressive speech – exactly what the First Amendment
3 seeks to avoid. See Riley, 487 U.S. at 796 (“Regulation of a solicitation must be undertaken with due
4 regard for the reality that solicitation is characteristically intertwined with informative and perhaps
5 persuasive speech, and for the reality that without solicitation the flow of such information and advocacy
6 would likely cease.”).

7 The authorities Plaintiff cites to argue otherwise are easily distinguishable. Plaintiff cites cases
8 in which a speaker sprinkled noncommercial speech in with commercial speech in an effort to have all
9 the speech be deemed noncommercial. For example, in Kasky, Nike included speech about its opinion
10 of economic globalization when refuting direct claims about its labor practices.
11 Kasky, 27 Cal. 4th at 967. The California Supreme Court held that there was no requirement for Nike to
12 speak about both subjects in the same publication, “nor was it impossible for Nike to address those
13 subjects separately.” Id. at 966-67. Similarly, in Board of Trustees of State University of New York v.
14 Fox, 492 U.S. 469, 473 (1989), the Court made a similar conclusion regarding “Tupperware parties”
15 where salespeople discussed home economics while engaging in commercial speech concerning the
16 products. The Court found there was nothing that required the salesman to combine the two messages.
17 Id.

18 Here, by contrast, it would be impossible to discuss songs performed by Michael Jackson in
19 Cascio's basement without saying the songs were performed by Michael Jackson. Cascio did not
20 sprinkle in noncommercial elements to try to turn commercial speech into noncommercial speech.
21 Instead, Cascio merely described the art he created with Jackson in his basement in response to a
22 question by Oprah Winfrey.

23 In addition, Cascio's statement was made as a guest on the *Oprah Winfrey Show* in response to a
24 question from Winfrey. Cascio's statement was therefore nothing like the defendants in Kasky who
25 made “statements [about the work conditions in Nike factories] in press releases, in letters to
26 newspapers, in a letter to university presidents and athletic directors, and in other documents distributed
27 for public relations purposes.” Kasky, 27 Cal. 4th at 948. Nor was Cascio's appearance and statement
28 on the *Oprah Winfrey Show* anything like the defendant in Fox, a company that sells housewares that

1 conducted demonstrations of its products in college dormitories. Fox, 492 U.S. at 472.

2 As a guest on the *Oprah Winfrey Show* answering questions about his relationship with Jackson,
3 Cascio's speech regarding the Cascio Tracks was akin to Lance Armstrong's statements at "personal
4 appearances" regarding the content of his books. See Stutzman, 2013 U.S. Dist. LEXIS 129204 at **3,
5 6, 20, 51. Consequently, the Court should following the reasoning in Stutzman and grant the
6 Angelikson Defendants' special motion to strike .

7 **D. PLAINTIFF HAS NOT ALLEGED ANY CAUSES OF ACTION AGAINST JAMES**
8 **PORTE OR ANGELIKSON PRODUCTIONS**

9 It is elemental that, to state a cause of action under the UCL or the CLRA, one must allege that
10 the defendant engaged in unfair competition or committed unfair or deceptive acts. See Cal. Bus. &
11 Prof. Code § 17200; Civ. Code § 1770. According to the Opposition, the entirety of Plaintiff's UCL and
12 CLRA claims is based upon Cascio's brief statement on the *Oprah Winfrey Show*. Opp at 3:1-5; 14:7-
13 17. Plaintiff has not, and cannot allege, that the other Angelikson Defendants, James Porte and
14 Angelikson Productions, engaged in any speech that would subject them to liability for claims under the
15 UCL or CLRA. Consequently, the Court should strike these causes of action against them.

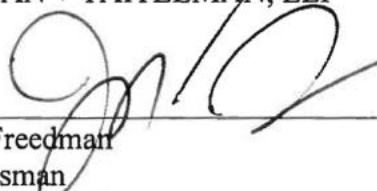
16 **III.**

17 **CONCLUSION**

18 Based upon the foregoing, the Angelikson Defendants, and each of them, respectfully request
19 that this motion to strike be granted in their favor, and the first two causes of action be dismissed
20 without leave to amend.

21
22 Dated: June 16, 2016

FREEDMAN + TAITELMAN, LLP

23
24 By: 
25 Bryan J. Freedman
26 Jordan Susman
27 Attorneys For Defendants
28 Edward Joseph Cascio, James Victor Porte and
Angelikson Productions, LLC

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**

3 **COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 500, Los Angeles, California 90067.

6 On **June 16, 2016**, I served the foregoing document(s) described as **DEFENDANTS**
7 **EDWARD JOSEPH CASCIO, JAMES VICTOR PORTE AND ANGELIKSON**
8 **PRODUCTIONS, LLC'S REPLY IN SUPPORT OF THEIR SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT UNDER C.C.P. §425.16** on the interested parties as follows:

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Attorneys for Defendants Sony Music Entertainment, MJJ Productions, Inc., And John Branca, as co-executor of the Estate of Michael J Jackson

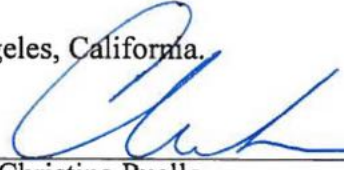
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1 ☒ **By Notice of Electronic Filing Through Case Anywhere:** I electronically served a true
2 and correct copy of the document on counsel of record listed to receive transmissions
3 though CaseAnywhere.

4 ☒ **State.** I declare under penalty of perjury under the laws of the State of California that the
5 above is true and correct.

6 Executed on **June 16, 2016**, at Los Angeles, California.

7 
8 Christina Puello
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