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**FILED**

Superior Court of California  
County of Los Angeles

JUL 05 2022

Sherri R. Carter, Executive Officer/Clerk

By  Deputy  
E. Lopez

*Superior Court of California*  
*County of Los Angeles*  
*Department 26*

Z  S 

Plaintiff,

vs.

VIVKA GREY;

Defendant.

VIVKA GREY;

Plaintiff,

vs.

Z  S 





Defendant.


Case No.: 20STCV09708

(Consolidated with 20STCV09741)

**FINAL STATEMENT OF  
DECISION**

**PROCEDURAL BACKGROUND**

On March 10, 2020, Z  S  and , also known *inter alia* as Vivka Grey ("Grey"), each filed a respective complaint asserting a defamation claim against the other. On July 7, 2020, the Court found that the cases were related and consolidated the actions with the earlier-filed complaint, the S  Complaint, as the lead case.<sup>1</sup>

<sup>1</sup> On August 24, 2020, S  filed an amended complaint identifying Grey's true legal name.

1 On November 19, 2020, the Court denied S[REDACTED]'s motion for judgment on the pleadings  
2 as to Grey's first cause of action and granted S[REDACTED]'s motion for judgment on the pleadings with  
3 20 days leave to amend as to Grey's second cause of action. (Order 11/19/20.) On November  
4 30, 2020, Grey requested dismissal of the second cause of action without prejudice (by case  
5 number 20STCV09741), and the Court granted Grey's request on the same day.

6 S[REDACTED] and Grey each waived jury. The matter proceeded to a bench trial on November  
7 22, 2021. After numerous days of witness testimony, both parties rested on December 7, 2021.  
8 The parties submitted written closing briefs in lieu of oral closing arguments. Following receipt  
9 of the parties' final briefs on January 7, 2022, the matter was taken under submission.

10 On March 24, 2022, the Court filed and served a tentative statement of decision. On  
11 April 13, 2022, Vivka Grey ("Grey") filed objections to the tentative statement of decision and  
12 an appendix of excerpts of trial transcripts. On April 13, 2022, Z[REDACTED] S[REDACTED] filed  
13 objections to the tentative statement of decision. On April 15, 2022, Grey filed a request for  
14 judicial notice and a response to S[REDACTED]'s objections. On April 18, 2022, S[REDACTED] filed a response  
15 to Grey's objections. On April 20, 2022, S[REDACTED] filed an opposition to Grey's request for judicial  
16 notice.

17 The Court now issues its final statement of decision.

18  
19 **ALLEGATIONS OF S[REDACTED]'S COMPLAINT**

20 The S[REDACTED] complaint alleges the following:

21 On February 13, 2019, Grey published a public Facebook post at  
22 <http://www.facebook.com/VivkaCriesWolf/posts/2478145012257909>. (S[REDACTED] Complaint ¶ 5.)  
23 The post contains various false factual statements about S[REDACTED] with whom Grey lived briefly in  
24 or around 2010 and/or 2011 when she relocated to Los Angeles from out of state. (*Id.* ¶ 7.)

25 In particular, Grey's Facebook post contains eight fabricated allegations:

- 1 (1) "He knew I was in a rough financial situation, and he forced me to move in with him"  
[Statement One];
- 2 (2) "S [redacted] expected Grey to 'be at his beck and call for sex, at any time with any service'  
" [Statement Two];
- 3 (3) "S [redacted] demanded that Grey engage in particular sex acts with him, commanding  
4 'now you will do it with me.' Even if I didnt enjoy it the first time' ' (sic)"  
[Statement Three];
- 5 (4) "S [redacted] threatened to kick Grey 'out of the house if [she] didnt perform for him' (sic)"  
[Statement Four];
- 6 (5) "I remember sometimes the sex would hurt, and he'd tell me I just had to 'loosen up'  
7 and shoving a pillow in my face to bite and cry into while he continued" [Statement  
8 Five];
- 9 (6) "S [redacted] also coerced Grey 'to have sex with other people of his choosing' and 'never  
10 allowed [her] to pursue anything with anyone [she] felt an interest in.'" [Statement  
11 Six]
- 12 (7) "After 'months of him telling me how 'unfortunate' and 'pointless' my natural body  
13 happened to be,' S [redacted] pressured Grey to obtain breast implants, which he bought for  
14 her" [Statement Seven];
- 15 (8) "In light of the foregoing, Grey concludes that S [redacted] is 'downright cruel' — a  
16 monster, in her words — while portraying herself as his innocent victim; 'I was  
17 groomed, I was gaslighted,' she says." [Statement Eight]

18 (*Ibid.*)

19 These statements are false in that Grey's romantic involvement and intimate encounters  
20 with S [redacted] were always entirely consensual. (*Id.* ¶ 8.) S [redacted] did not force Grey to move into his  
21 home, and S [redacted] did not verbally humiliate Grey for her appearance. He did not persuade her to  
22 artificially enlarge her breasts. Nor did he pay for her surgery. (*Id.*)

23 "Grey's false statements have been seen by an untold number of readers since she  
24 publicly posted them on Facebook on or about February 13, 2019, subsequently publicized  
25 and/or republished them elsewhere online, including (without limitation) on Twitter at  
<http://twitter.com/vividvivka/status/1095554997654188033>, and then encouraged others to do  
the same. See, e.g., <http://twitter.com/vividvivka/status/1095809840578850818>." (*Id.* ¶ 10.)

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1 **ALLEGATIONS OF GREY'S COMPLAINT**

2 The Grey complaint alleges the following:

3 On February 13, 2019, S[REDACTED] published a post to his website under the "Official  
4 Announcements" section entitled, "The Statement." The Statement has since been edited,  
5 revised, and or added to several times, including a subsequent reference to Grey as recently as  
6 June 22, 2019. (Grey Complaint ¶ 4.)

7 The Statement is false as it pertains to Grey. (*Id.* ¶ 6.) S[REDACTED]'s "Statement claims that  
8 [Grey] lied about several subjects in an online post [Grey] published earlier in February of 2019.  
9 [Grey's] statement discussed the fact that [S[REDACTED]] had pressured her into having sex with various  
10 individuals against her will; [S[REDACTED]]'s Statement claimed [Grey] was lying about this, and that it  
11 never happened. [Grey's] statement claimed that [S[REDACTED]], on multiple occasions, ignored her  
12 pleas to stop and other various protests when they were having sexual intercourse; [S[REDACTED]]  
13 Statement claimed [Grey] was lying about this, and that she never protested. [S[REDACTED]]'s Statement  
14 claimed that "[Grey] 'didn't mention any discomfort with anything [S[REDACTED]] did sexually.' [Grey]  
15 alleges this is untrue, that [Grey] protested out of pain and discomfort on several occasions  
16 during sex, and that [S[REDACTED]]'s false Statement to the contrary was intended to damage [Grey's]  
17 reputation and cause her harm." (*Id.* ¶ 9.) S[REDACTED] knew the Statement was false or failed to use  
18 reasonable care to determine the truth or falsity of the Statement. (*Id.* ¶ 13.)

19 Grey has suffered loss of Grey's trade, profession, occupation, and reputation, and  
20 suffered shame, mortification, and injury to Grey's feelings, all to Grey's damage. (*Id.* ¶ 14.)

21  
22 **GREY'S FURTHER IDENTIFICATION OF DEFAMATORY STATEMENTS**

23 On December 10, 2021 -- after both parties had rested on December 7, 2021 -- Grey filed  
24 "Defendant Vivka Grey's Identification of Defamatory Statements by Z[REDACTED] S[REDACTED]" in which  
25 Grey identified the following defamatory statements by S[REDACTED]:

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- "That's basically a total admission on the accusers' part they know the accusations aren't true and there's nothing to check or investigate" [hereinafter "**Statement 2-02**"] (Exh. 2-02);
- "As for Viv... I never bought her breast implants. Mandy did, and I was not happy about it because it was a lot of money to splash out on someone we'd only known for a few months" [hereinafter "**Statement 2-09a**"] (Exh. 2-09)
- "These things didn't happen the way Viv describes them. . ." [hereinafter "**Statement 2-09b**"] (Exh. 2-09)
- "The short version is: everything damning in both posts is contradicted by eyewitnesses and the accusers' own statements" [hereinafter "**Statement 2-11**"] (Exh. 2-11)
- "1. I got her breast implants and carried on a campaign of verbal humiliation about how she looked. None of this is true: Mandy bought the implants out of our joint bank account and I was upset with her for doing it because we hadn't known Viv that long and it was a lot to spend on someone we'd basically just met" [hereinafter "**Statement 2-16**"] (Exh. 2-16)
- "2. He knew I was in a rough financial situation, and he forced me to move in with them so he could 'Keep me close.' Again none of this is true" [hereinafter "**Statement 2-18a**"] (Exh. 2-18)
- "... I know the name of the couple she was planning on moving in with--because it's the same pair of people she moved in with after we broke up" [hereinafter "**Statement 2-18b**"] (Exh. 2-18)
- "The only time I said anything to Viv about who she should or shouldn't have sex with was: One time (after she'd moved in) Viv and I went to a friends' comedy show in the upstairs room of the House of Blues on Sunset. I think Mandy was too sick to go. Viv wanted to have sex with me in the bathroom and I told her I couldn't because it was early days and I didn't know if Mandy would be ok with that. That's it" [hereinafter "**Statement 2-19a**"] (Exh. 2-19)
- "... if Viv wasn't happy, she never said anything, even when we eventually broke up" [hereinafter "**Statement 2-19b**"] (Exh. 2-19)
- "So what happened? Like I said in my original statement--when we broke up, Viv really wanted to be in a photo shoot we were doing of the D&D group in Maxim. She's a model and having Maxim on your resume is a big deal. Mandy and I weren't comfortable with it since she was our ex- and wasn't in the group anymore. She got much angrier than the situation warranted and there were hard feelings after. Regardless of her motivations: it's really hard to square her accusations with anything that happened in the real world,

1 especially because of how involved Mandy was at every stage” [hereinafter “Statement  
2-20”] (Exh. 2-20)

- 2 - “Vivka: Completely contradicted by the bare facts, and--if they was true--paints Mandy  
3 as an abuser” [hereinafter “Statement 2-39”] (Exh. 2-39)
- 4 - “. . . Vivka only jumped on board with her accusations once the mob was decidedly on  
5 Mandy’s side” [hereinafter “Statement 2-70”] (Exh. 2-70)
- 6 - “Mandy and her friends’ statements don’t have any specific incidents of abuse  
7 corroborated, conflict with each other, and their claims don’t match their own statements  
8 at the time” [hereinafter “Statement 2-75”] (Exh. 2-75).

9 (12/1/0/21 Defendant Vivka Grey’s Identification of Defamatory Statements by Z█████ S█████)

10 On December 23, 2021, the Court granted Grey’s motion to amend to conform to proof and  
11 allowed S█████ to file and serve a supplemental closing argument brief to address these allegedly  
12 defamatory statements.

### 13 REQUEST FOR JUDICIAL NOTICE

14 Grey filed a request to take judicial notice on April 15, 2022 – after both parties rested  
15 and after the Court issued its tentative statement of decision. The Court did not authorize either  
16 party to submit additional evidence or requests for judicial notice after the close of evidence or  
17 after the Court issued its tentative statement of decision. Accordingly, Plaintiff’s untimely  
18 request for judicial notice is denied.<sup>2</sup>

### 19 FACTUAL BACKGROUND

#### 20 *Summary of Undisputed Testimony*

21 Much of the testimony of the multiple witnesses at trial was not in conflict, including  
22 testimony concerning the following:  
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24

25 <sup>2</sup> Even if the Court had granted Plaintiff’s untimely request to take judicial notice, it would not  
change the Court’s rulings in this statement of decision.



1 Z S, also known as Z S, is a published artist, author, game  
2 designer, and adult film actor. S has published a book . S has  
3 been nominated for and has won awards for his art. His paintings have been displayed at the  
4 Museum of Modern Art and the Whitney Museum of American Art, among other museums.  
5 S has won or been nominated for numerous awards for his work in the gaming industry.  
6 S is a prominent figure in the Indie gaming industry and has won numerous awards for art  
7 and video games ("Role Playing Games," or "RPGs").

8 Grey met S in approximately 2010, when Grey was working with S's then wife  
9 Amanda Nagy. Grey and Nagy were both nude models working for the same website, Suicide  
10 Girls. At the time S and Nagy met Grey, Grey was living in Michigan. Grey moved from  
11 Michigan to Los Angeles when she found a job in Los Angeles. When Grey moved to Los  
12 Angeles, she initially lived with a roommate M in Santa Clarita. Grey began to experience  
13 financial difficulties. She was not earning as much money from her new job as she initially  
14 expected. Grey's then-roommate M was unable to pay his share of the rent because he was  
15 unemployed, which meant that Grey had to pay the entire rent bill herself. Grey began to dip  
16 into her savings, which were dwindling.

17 In approximately early 2011, Grey became involved in a polyamorous relationship with  
18 S and Nagy. During their relationship, S had more financial resources than Grey did.  
19 During the same approximate time (early 2011) that Grey was experiencing financial difficulty  
20 due to her roommate M reneging on his rent commitment for their Santa Clarita apartment,  
21 S and Nagy's prior roommate was vacating their apartment, and their second bedroom was  
22 about to become vacant. S asked Grey to move in with S and Nagy. Grey moved into  
23 S and Nagy's apartment while S and Nagy were away for approximately a month in  
24 Montreal, Canada. The married couple charged Grey for rent, which Grey paid. S, Nagy,  
25 and Grey were in a polyamorous relationship while they were living together in 2011.

1 At some point while S[REDACTED], Nagy, and Grey were living together, Grey wanted to get  
2 breast implants. S[REDACTED] accompanied Grey to her consultation with the plastic surgeon who  
3 ultimately performed Grey's surgery. S[REDACTED] and Nagy had a joint bank account. S[REDACTED] who  
4 was earning more than Nagy, contributed more to the funds in their joint bank account. Grey's  
5 breast implants were paid for with money from S[REDACTED] and Nagy's joint bank account.

6 On May 9, 2011, Nagy sent S[REDACTED] an email about "peace talks with Viv." (Exh 9-08, 9-  
7 09; 11/22, 147:15-18.) Grey had not had sex with either S[REDACTED] or Nagy for a period of time, and  
8 the parties had a verbal conversation about Grey's reluctance to have intercourse during that  
9 period. (11/22, 147:25 – 148:19.) The in-person conversation occurred before S[REDACTED] left on  
10 May 5, 2011 for a trip to New York. (11/22, 148: 20-28.) Grey was unable to explain "what the  
11 problem was or anything." (11/22, 148:2-14.) During the conversation, S[REDACTED] gave Grey an  
12 "ultimatum." (Exh. 9-22; 11/22, 149:24 – 150:13.) Specifically, S[REDACTED] told Grey that they  
13 should break up if they were not having sex, especially if Grey could not explain why they were  
14 not having sex. (11/22, 149:24 – 150:13.)

15 On May 25, 2011, Grey ended the relationship and moved out of S[REDACTED]'s and Nagy's  
16 home. Grey described the breakup and the ensuing moving-out process as "absolutely horrible  
17 and traumatic" in her February 12, 2019 Facebook post.

18 At the time of their breakup, S[REDACTED] and Grey were scheduled for a Maxim photoshoot.  
19 After the breakup, Grey still wished to participate in the Maxim photoshoot, but S[REDACTED] requested  
20 that Grey not come to the photoshoot. Consequently, Grey did not appear for the Maxim  
21 photoshoot.

22 S[REDACTED] and Nagy also parted ways sometime later, in approximately 2017.

23 On February 10, 2019, Nagy – estranged from S[REDACTED] by this time – posted a statement to  
24 her personal Facebook page containing allegations of sexual and emotional abuse that S[REDACTED]  
25 inflicted upon her during their relationship.



1 On February 12, 2019, Grey published a Facebook post which began as follows: "Im [sic]  
2 scared to write this. Im [sic] scared to put it to text and 'verbalize' it in this way. Ive [sic] spent  
3 so many years dissociating and compartmentalizing what I went through." (Exh. 1.) S███s  
4 Complaint for defamation is based on the following eight statements which S███ alleges are all  
5 contained in Grey's February 12, 2019 Facebook post:

- 6 (1) "He knew I was in a rough financial situation, and he forced me to move in with him"  
7 [Statement One];
- 8 (2) "S███ expected Grey to 'be at his beck and call for sex, at any time with any service' "  
9 [Statement Two];
- 10 (3) "S███ demanded that Grey engage in particular sex acts with him, commanding 'now  
11 you will do it with me.' Even if I didnt enjoy it the first time' ' (sic)" [Statement Three];
- 12 (4) "S███ threatened to kick Grey 'out of the house if [she] didnt perform for him' (sic)"  
13 [Statement Four];
- 14 (5) "I remember sometimes the sex would hurt, and he'd tell me I just had to 'loosen up' and  
15 shoving a pillow in my face to bite and cry into while he continued" [Statement Five];
- 16 (6) "S███ also coerced Grey 'to have sex with other people of his choosing' and 'never  
17 allowed [her] to pursue anything with anyone I felt an interest in.'" [Statement Six]
- 18 (7) "After 'months of him telling me how 'unfortunate' and 'pointless' my natural body  
19 happened to be,' S███ pressured Grey to obtain breast implants, which he bought for  
20 her" [Statement Seven];
- 21 (8) "In light of the foregoing, Grey concludes that S███ is 'downright cruel' — a monster,  
22 in her words — while portraying herself as his innocent victim; 'I was groomed, I was  
23 gaslighted,' she says." [Statement Eight]

24 (*Ibid.*) Grey concluded her statement as follows: "This was one of the hardest things Ive [sic]  
25 ever written. Ive [sic] stared at this screen for hours. Ive [sic] cried twice. There are so many  
other things I could have said or elaborated on ... but I dont [sic] have the strength. And Mandy  
said most of it already. So here is some of my story. Im [sic] relieved people are finally talking  
about what type of man Z███ S███ really is." Grey also published a Tweet on or about February  
12, 2019 that contained a link to her February 12, 2019 Facebook post.

The next day, on February 13, 2019, S███ published a blog post entitled "The  
Statement" under the "Official Announcements" portion of his website. The Statement was

1 approximately 76 pages in length. (Exh. 2.) Most of S█████'s Statement focused on Nagy's  
2 February 10, 2019 post about S█████. However, a portion of The Statement, especially pages 16  
3 through 20, was dedicated to addressing Grey's February 12, 2019 Facebook post about S█████  
4 including the following:

- 5 - "That's basically a total admission on the accusers' part they know the accusations aren't  
6 true and there's nothing to check or investigate" ["Statement 2-02"] (Exh. 2-02);
- 7 - "As for Viv... I never bought her breast implants. Mandy did, and I was not happy about  
8 it because it was a lot of money to splash out on someone we'd only known for a few  
9 months" ["Statement 2-09a"] (Exh. 2-09);
- 10 - "These things didn't happen the way Viv describes them. . ." ["Statement 2-09b"] (Exh.  
11 2-09);
- 12 - "The short version is everything damning in both posts is contradicted by eyewitnesses  
13 and the accusers' own statements" ["Statement 2-11"] (Exh. 2-11);
- 14 - "1. I got her breast implants and carried on a campaign of verbal humiliation about how  
15 she looked. None of this is true: Mandy bought the implants out of our joint bank account  
16 and I was upset with her for doing it because we hadn't known Viv that long and it was a  
17 lot to spend on someone we'd basically just met" ["Statement 2-16"] (Exh. 2-16);
- 18 - "2. He knew I was in a rough financial situation, and he forced me to move in with them  
19 so he could 'Keep me close.' Again none of this is true" ["Statement 2-18a"] (Exh. 2-  
20 18);
- 21 - ". . . I know the name of the couple she was planning on moving in with--because it's the  
22 same pair of people she moved in with after we broke up" ["Statement 2-18b"] (Exh. 2-  
23 18);
- 24 - "The only time I said anything to Viv about who she should or shouldn't have sex with  
25 was: One time (after she'd moved in) Viv and I went to a friends' comedy show in the  
upstairs room of the House of Blues on Sunset. I think Mandy was too sick to go. Viv  
wanted to have sex with me in the bathroom and I told her I couldn't because it was early  
days and I didn't know if Mandy would be ok with that. That's it" ["Statement 2-19a"]  
(Exh. 2-19);
- "... if Viv wasn't happy, she never said anything, even when we eventually broke up"  
["Statement 2-19b"] (Exh. 2-19);
- "So what happened? Like I said in my original statement--when we broke up, Viv really  
wanted to be in a photo shoot we were doing of the D&D group in Maxim. She's a model

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1 and having Maxim on your resume is a big deal. Mandy and I weren't comfortable with it  
2 since she was our ex- and wasn't in the group anymore. She got much angrier than the  
3 situation warranted and there were hard feelings after. Regardless of her motivations: it's  
4 really hard to square her accusations with anything that happened in the real world,  
5 especially because of how involved Mandy was at every stage" ["Statement 2-20"]  
(Exh. 2-20);

- 6 - "Vivka: Completely contradicted by the bare facts, and--if they was true--paints Mandy  
7 as an abuser" ["Statement 2-39"] (Exh. 2-39);
- 8 - "... Vivka only jumped on board with her accusations once the mob was decidedly on  
9 Mandy's side" ["Statement 2-70"] (Exh. 2-70);
- 10 - "Mandy and her friends' statements don't have any specific incidents of abuse  
11 corroborated, conflict with each other, and their claims don't match their own statements  
12 at the time" ["Statement 2-75"] (Exh. 2-75);.

13 S███ has revised or updated The Statement several times since its original version  
14 posted on February 13, 2019.

### 15 *Disputed Testimony*

16 Though the witnesses' testimony was consistent on many topics and events, as set forth  
17 above, there were some areas of testimony in dispute.

18 Grey testified that she was surprised when S███ asked her to move in with S███ and  
19 Nagy because she felt that it was early in the relationship. Grey also felt surprised when S███  
20 told Grey that he loved her because it was so early in the relationship.

21 Grey also testified that while they were living together, Grey informed S███ that she did  
22 not like to have sex in certain positions because they caused her to experience pain. However,  
23 S███ and Grey still had sex in those certain painful positions. S███ and Grey discussed Grey's  
24 past sexual experiences, and Grey testified that she felt that S███ used her past sexual  
25 experiences against her and often tried to persuade her that the only reason for some of her  
aversions was that she had not tried those practices with S███. For example, before dating

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1 S███. Grey had used toys during sex on at least one occasion. Grey expressed to S███ that she  
2 did not enjoy using toys during sex, but S███ and Grey still used toys together during sex.

3 The parties' testimony concerning the motivations for Grey's February 12, 2019  
4 Facebook post was also in conflict. Grey testified that she posted her statement for cathartic and  
5 healing purposes. After reading Nagy's post, Grey wanted to similarly share her experiences  
6 with others. Grey felt closure after posting her statement. S███ on the other hand, testified that  
7 he believed that the reason behind Grey's posting of her February 12, 2019 statement was that  
8 Grey was still upset about and seeking revenge for S███ refusing to include her in the 2011  
9 Maxim photoshoot shortly after their breakup.

## 11 DISCUSSION

12 Defamation is effected by either libel or slander. (Civ.Code, § 44.) "Libel is a false and  
13 unprivileged publication *by writing* . . . which exposes any person to hatred, contempt, ridicule,  
14 or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him  
15 in his occupation." (Civ.Code, § 45 [italics added].) Slander is "orally uttered." (Civ.Code, §  
16 46.)

17 The alleged false statements in Grey's Facebook post and S███'s Statement on his  
18 website were written, and the parties' claims against each other are for libel – not slander.

19 "A libel which is defamatory of the plaintiff without the necessity of explanatory matter,  
20 such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face."  
21 (Civ.Code, § 45a.) For a claim of libel per se, " 'damage to plaintiff's reputation is conclusively  
22 presumed and he need not introduce any evidence of actual damages in order to obtain or sustain  
23 an award of damages,' including, in an appropriate case, punitive damages." (*Barnes-Hind, Inc.*  
24 *v. Superior Court* (1986) 181 Cal.App.3d 377, 382.) On the other hand, "[d]efamatory language  
25 not libelous on its face is not actionable unless the plaintiff alleges and proves that he has

1 suffered special damage as a proximate result thereof.” (Civ.Code, § 45a.) “ ‘Special damages’  
2 means all damages that plaintiff alleges and proves that he or she has suffered in respect to his or  
3 her property, business, trade, profession, or occupation, including the amounts of money the  
4 plaintiff alleges and proves he or she has expended as a result of the alleged libel, and no other.”  
5 (Civ.Code, § 48a(d)(2).)

6  
7 S█████’s Complaint: Grey’s February 12, 2019 Facebook Post

8 ***Non-Actionable Opinion***

9 Grey contends that many of her allegedly defamatory statements are non-actionable  
10 opinion.

11 “A publication ‘must contain a false statement of *fact*’ to give rise to liability for  
12 defamation. [Citation.]” (*Jensen v. Hewlett-Packard Co.* (1993) 14 Cal.App.4th 958, 970.) “If  
13 defendant’s statement is one of opinion, then it cannot be false and is outside the meaning of  
14 [defamation].” (*Tschirky v. Superior Court* (1981) 124 Cal.App.3d 534, 539.) “In other words,  
15 an opinion or legal conclusion is actionable only “ ‘if it could reasonably be understood as  
16 declaring or implying actual facts capable of being proved true or false.’ ” [Citation.] Thus, an  
17 opinion based on implied, undisclosed facts is actionable if the speaker has no factual basis for  
18 the opinion. [Citation.] An opinion is not actionable if it discloses all the statements of fact on  
19 which the opinion is based and those statements are true. [Citation.] An opinion is actionable if it  
20 discloses all the statements of fact on which the opinion is based and those statements are false.’  
21 [Citations.]” (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515,  
22 527.)

23 “Whether the challenged statement is reasonably susceptible of an interpretation which  
24 implies a provably false assertion of actual fact is a question of law.” (*Morningstar, Inc. v.*  
25 *Superior Court* (1994) 23 Cal.App.4th 676, 686–687.) “To ascertain whether the statements in

1 question are provably false factual assertions, courts consider the “totality of the  
2 circumstances.” [Citation.] “First, the language of the statement is examined. For words to be  
3 defamatory, they must be understood in a defamatory sense .... [¶] Next, the context in which the  
4 statement was made must be considered.... [¶] This contextual analysis demands that the courts  
5 look at the nature and full content of the communication and to the knowledge and understanding  
6 of the audience to whom the publication was directed.” [Citations.]” (*Seelig v. Infinity*  
7 *Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809–810.)

8 As to Grey’s February 12, 2019 Facebook post, Statements One through Seven are clear  
9 statements of facts as each of these statements implies facts that may be proven true or false.  
10 Statement One -- “[h]e knew I was in a rough financial situation, and he forced me to move in  
11 with him” (S█████████ Complaint ¶ 7) -- implies two facts that can be proven true or false, namely,  
12 (1) that S█████████ knew Grey was in a rough financial situation, and (2) that he forced Grey to move  
13 in with him. Each of these implied facts can be proven true or false – i.e., S█████████ either knew  
14 Grey’s financial situation or not, and S█████████ either forced Grey to move in with him through  
15 some means or not. Similarly, Statement Two, “S█████████ expected Grey to ‘be at his beck and call  
16 for sex, at any time with any service’” (S█████████ Complaint ¶ 7), implies that S█████████ intended that  
17 Grey be available any time for sex without regard for Grey’s desires, which can be proven true or  
18 false as with any alleged intention. Further, Statement Six, “S█████████ also coerced Grey ‘to have  
19 sex with other people of his choosing’ and ‘never allowed [her] to pursue anything with anyone  
20 [Grey] felt an interest in’” (S█████████ Complaint ¶ 7), is plainly a statement of fact as both  
21 assertions can be proven true or false. Each of the above statements involves actions and  
22 intentions of S█████████ that can be demonstrated to be either true or false.

23 In contrast, Statement Eight is a nonactionable opinion. In Statement Eight, “Grey  
24 concludes that S█████████ is ‘downright cruel’ — a monster, in her words — while portraying herself  
25 as his innocent victim; ‘I was groomed, I was gaslighted.’” (S█████████ Complaint ¶ 7.) This



1 assertion is a statement of opinion. There is no factual way to determine whether S [REDACTED] is  
2 “downright cruel” or a “monster,” or whether Grey was [figuratively] “groomed” or  
3 “gaslighted.” Thus, Statement Eight, is a nonactionable opinion.  
4

5 ***Falsity***

6 “The *sine qua non* of recovery for defamation ... is the existence of a falsehood.” (*Baker*  
7 *v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 259.) Thus, “ ‘[i]n all cases of alleged  
8 defamation, whether libel or slander, the truth of the offensive statements or communication is a  
9 complete defense against civil liability, regardless of bad faith or malicious purpose.’  
10 [Citations.]” (*Ringler Associates Inc. v. Maryland Cas. Co.* (2000) 80 Cal.App.4th 1165, 1180.)  
11 “[I]t matters not under California law that petitioner alleges only part of the work at issue to be  
12 false.” (*Masson v. New Yorker Magazine, Inc.* (1991) 501 U.S. 496, 510.) “[T]he test of libel is  
13 not quantitative; a single sentence may be the basis for an action in libel even though buried in a  
14 much longer text.” (*Washburn v. Wright* (1968) 261 Cal.App.2d 789, 795.) At the same time,  
15 however, “[m]inor inaccuracies do not amount to falsity so long as ‘the substance, the gist, the  
16 sting of the libelous charge be justified.’” (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240,  
17 1262.) A defendant’s statements need not be completely accurate to avoid liability as “ ‘the  
18 statement is not considered false unless it “would have a different effect on the mind of the  
19 reader from that which the pleaded truth would have produced.” ’ [Citations.]” (*Dickinson v.*  
20 *Cosby* (2017) 17 Cal.App.5th 655, 691.)

21  
22 Statement One: “He knew I was in a rough financial situation, and he forced me to move  
in with him”

23 This is an exact quote taken from Grey’s February 12, 2019 Facebook post. (Exh. 1, p.  
24 1.) It includes three subparts. First, the Court credits Grey’s testimony that her savings were  
25 dwindling before she moved in with S [REDACTED] and Nagy as her then roommate M [REDACTED] did not pay

1 for his half of the rent or the bills. (11/30, 34:19-35:8; 12/06, 61:7-13.) Second, prior to moving  
2 in, Grey frequently spoke to S[REDACTED] and Nagy about the financial stress caused by her job and her  
3 roommate not paying his half of the rent, and thus, S[REDACTED] knew about Grey's financial woes.  
4 (11/29, 39:12-40:24; 41:1-3; 134:24-135:2; 11/30, 35:25-36:10.)

5 The third subpart of Statement One is that "[S[REDACTED]] forced [Grey] to move in with him."  
6 Grey has requested that the Court take judicial notice of the Webster dictionary definitions of  
7 "force" Notably, the first listed definition of the term "force" is "to compel by *physical* . . .  
8 means." Thus, Grey's own cited dictionary definition establishes that the term "force" is  
9 commonly associated with *physical* compulsion. The record is devoid of any evidence that  
10 S[REDACTED] exerted physical compulsion in his efforts to persuade Grey to move in with S[REDACTED] and  
11 Nagy. Indeed, Grey moved in while S[REDACTED] and Nagy were in Montreal for an approximate one-  
12 month period. It is difficult to imagine how S[REDACTED] could have forced Grey to move in to his Los  
13 Angeles apartment from the remote location of Montreal. The Court credits Grey's and Nagy's  
14 testimony that S[REDACTED] offered solutions to alleviate Grey's financial stress by buying out Grey's  
15 lease and helping Grey's roommate find a new place to live. (11/30, 35:25 - 39:5; 11/30, 84:10-  
16 25; 12/1, 115:5-24; 11/30, 35:25 - 39:5; 11/30, 84:10-25; 12/1, 115:5-24; 11/29, 41:5-42:19,  
17 46:20-47:1; 47:15-27.) Nonetheless, removing financial obstacles that would have prevented  
18 Grey from moving in S[REDACTED] and Nagy is far from resorting to physical compulsion and far from  
19 "forcing [Grey] to move in with [S[REDACTED]]."

20  
21 Grey has objected to the Court's tentative statement of decision on the ground that the  
22 Court failed to consider that the term "force" includes a subjective component, i.e., "that Grey  
23 felt forced to move in with S[REDACTED]" (Grey's Objections to Tentative Statement of Decision p. 4:  
24 15.) This argument is unavailing. Grey did not state in her February 13, 2019 Facebook post  
25

1 that she felt forced to move in with S[REDACTED]. Instead, her exact words were: "he forced me to  
2 move in with him," focusing on S[REDACTED]'s acts – not Grey's inward feelings. The "natural and  
3 probable effect [of these words] upon the mind of the average reader" is an understanding that  
4 S[REDACTED] engaged in some physical use of force or other act of compulsion to overcome a reluctance  
5 on Grey's part to moving in with him and Nagy. (*MacLeod v. Tribune Publishing Co.* (1959) 52  
6 Cal.2d 536, 547.)

7 Moreover, even if the Court were to put aside the common understanding of the term  
8 "force" as encompassing some aspect of compulsion, and even if the Court were to instead  
9 embrace Grey's interpretation of the term as focusing exclusively on Grey's inner feelings, the  
10 evidence is clear that any psychological pressure that Grey felt to move in with S[REDACTED] and Nagy  
11 arose from her financial distress – which S[REDACTED] did not cause. Grey herself was clear in her  
12 testimony that the primary source of her financial woes was her roommate's unemployment and  
13 inability to contribute to the rent. To the extent that Grey also suggested during her trial  
14 testimony that she felt pressure from S[REDACTED] to move in with him and Nagy, Grey was effectively  
15 impeached, and the Court does not find Grey's testimony to be credible. The contemporaneous  
16 exchange of emails between the parties refutes any suggestion that S[REDACTED] engaged in acts to  
17 "compel by physical, moral, or intellectual means" or to overcome reluctance on Grey's part to  
18 moving in with S[REDACTED] and Nagy. (Grey's Objections to Tentative Statement of Decision p. 3:  
19 19.) Grey expressed no reservation at the time about moving in with S[REDACTED] and Nagy. Nor did  
20 any of Grey's emails suggest that she subjectively felt pressure to move in. To the contrary, the  
21 tenor of Grey's email communications with S[REDACTED] during his month away in Montreal with Nagy  
22 was excitement, anticipation and longing for S[REDACTED] and Nagy to return to their joint Los Angeles  
23 apartment.  
24  
25

1 Thus, the Court finds that S[REDACTED] has proven that Grey failed to use reasonable care to  
2 determine the truth or falsity of her statement concerning "forcing [Grey] to move in with  
3 [S[REDACTED]]," and the statement is not substantially true.

4 Statement Two: S[REDACTED] expected Grey to "be at his beck and cal. for sex, at any time with  
5 any service"

6 The Court credits Grey's and Nagy's testimony concerning S[REDACTED]'s voracious desire for  
7 sex and its prominence in S[REDACTED]'s and Grey's relationship. Grey testified that S[REDACTED]  
8 oversexualized their relationship. (11/30, 90:26-91:21.) Grey and Nagy both testified credibly  
9 that when Grey would say "no" to sex, S[REDACTED] would respond by saying "yes" and then lead Grey  
10 to the bedroom to have sex. (11/29, 64:22-65:15; 11/30, 49:7-50:3; 11/30, 52:18-26; 11/30,  
11 90:18-25.) S[REDACTED] expected sex from Grey and would become "huffy, angry, frustrated, and  
12 upset" the few times that Grey said no to sex or if she went too long not wanting to have sex with  
13 S[REDACTED]. (11/30, 90:26-91:21.)

14 Nagy similarly testified that S[REDACTED] expected Nagy and Grey to be available for sex at all  
15 times. S[REDACTED] would repeatedly say, "What good are you if you're not having sex with me?" and  
16 "If you're not going to fuck me, you need to get the fuck out of my house" at least every two  
17 weeks. (11/29, 63:19-64:9.) S[REDACTED] constantly "joke[d]" that if Grey and Nagy were not having  
18 sex with S[REDACTED] or not performing for him, then "[Grey and Nagy were] useless and therefore  
19 why should [Grey] even be there and why should [Grey] be allowed to stay there..."

20 During his own testimony at trial, S[REDACTED] corroborated that he would have ended the  
21 relationship with Grey if Grey did not want to have sex with him. (11/23, 129:3-18.) S[REDACTED]  
22 further testified that he told Grey that if she abstained from having sex with him for more than 5  
23 to 7 days, the relationship needed to end. (11/22, 147:4-150:13; 11/24, 61:24-63:28.)  
24  
25

1 S███ contends that there was no evidence at trial that Grey “was required to remain in  
2 the apartment with Nagy and S███ or drive anywhere, to be available to S███ for sex,” and that  
3 the lack of this type of evidence demonstrates the falsity of Statement Two. (S███’s Objections  
4 to Tentative Statement of Decision p. 3: 20-22.) This argument is unavailing. Grey did not  
5 assert in her Facebook Post that she acceded without fail to each and every one of S███’s  
6 demands for sex or that she always made herself available for sex with S███. Statement Two  
7 centered on S███’s *expectations* – not Grey’s reaction to his expectations and demands. The  
8 Court credits Grey’s and Nagy’s testimony regarding S███’s insatiable appetite for sex and  
9 S███’s reaction on the few occasions that Grey or Nagy said no to sex or asked him to stop in  
10 the middle of sex or went too long between having sex with S███. In light of this evidence,  
11 there was ample factual support for Grey’s statement that S███ *expected* Grey to [a] “be at his  
12 beck and call for sex, [2] at any time [3] with any service.”

14 Given the abundance of testimony noted above on this point, which the Court credits, the  
15 Court finds that Grey has demonstrated that Statement Two and all of its subparts are true.

16 Statement Three: S███ demanded that Grey engage in particular sex acts with him,  
17 commanding “‘now you will do it with me.’ Even if I didnt enjoy it the  
18 first time” (sic)

19 S███’s Complaint has paraphrased Statement Three. The exact statement in Grey’s  
20 February 12, 2019 post reads: “I remember him using my past sexual experiences as gateways.  
21 They were pushed on me, and presented in a way that was ‘well, you did this with them, and so  
22 now you will do it with me.’ Even if I didnt [sic] enjoy it the first time.” (Exh. 1-02.)

23 Grey has provided ample support for the factual basis for this statement. S███ and Grey  
24 spoke with each other about Grey’s past sexual experiences, sex positions, and preference on sex  
25 toys. (11/22, 63:12-64:13.) Grey testified credibly that she told S███ that she had bad

1 experiences with certain sex toys in the past. (11/30, 51:14-26.) As a result, Grey expressed that  
2 she did not like internal sex toys.<sup>3</sup> S [REDACTED] responded by stating that Grey was not using sex toys  
3 properly and that Grey "probably would have enjoyed it more if [she had tried those sex toys]  
4 with someone experienced like him and Mandy and they could show [Grey] more how to enjoy  
5 it." (11/30, 51:27-52:3.) Grey also told S [REDACTED] that there was at least one sexual position, doggy  
6 style, that she did not like to do because it had caused her pain in the past, which Nagy  
7 confirmed. (11/30, 20:19-26; 52:4-12; 12/06, 35:28-36:9.) Grey testified credibly that despite  
8 these discussions of Grey's negative experiences with certain sex positions and toys, S [REDACTED] used  
9 this knowledge against Grey. Despite these conversations, S [REDACTED] used nonverbal cues to direct  
10 Grey to use sex toys or into the doggy style sex position. (11/22, 61:12-62:14; 11/30, 52:13-  
11 53:8.) S [REDACTED] would also say, "well, you did it with them, now you're going to do it with me."  
12 (11/30, 88:18-89:5.)

13  
14 Grey has demonstrated that Statement Three is true.

15 Statement Four: S [REDACTED] threatened to kick Grey "out of the house if [she] didnt perform for  
16 him" (sic)

17 S [REDACTED]'s Complaint has paraphrased Statement Four. The exact statement in Grey's  
18 February 12, 2019 post reads: "I remember all of his jokes about kicking Mandy or I out of the  
19 house if we didnt [sic] perform for him, or how we would be "useless" otherwise. I remember  
20 when they stopped feeling like jokes, even though he still would laugh when saying it." (Exh 1-  
21 02.)

22  
23  
24  
25 <sup>3</sup> When questioned about a text message in which she had written about having just purchased  
batteries for a sex toy, Grey testified that she was referencing a vibrator, an external sex toy – not  
an internal sex toy. (Ex. 8-045; 12/06, 56:16-22.)



1 S███ has taken Statement Four out of context and characterized the quote that Grey  
2 attributed to S███ as a threat when in fact the context of Statement Four makes clear that Grey  
3 was describing what initially started as a joke that S███ repeatedly made. Even when the joke  
4 no longer felt like a joke to Grey, Statement Four makes clear that S███ "still would laugh when  
5 saying it." (Exh 1-02.)

6 Regardless of whether it was construed as a threat or as a joke, there is ample evidentiary  
7 support for Grey's attribution of these statements to S███. Grey heard S███ make these  
8 comments and "jokes" weekly about threatening to kick Grey or Nagy out of the house if they  
9 did not sexually perform for him or about how they would be useless otherwise. (11/30, 90:1-17;  
10 Exh. 9:08-09; 9:22.) Grey testified credibly that she might have initially thought that S███ was  
11 joking, but it "started to feel more and more serious." (11/30, 90:1-12.) Nagy also testified that  
12 at least every two weeks, S███ would say things like "What good are you if you're not having  
13 sex with me?" and "If you're not going to fuck me, you need to get the fuck out of my house."  
14 (11/29, 63:19-64:9.) Nagy did not believe S███ to be joking based on the seriousness of his  
15 tone. (11/29, 64:5-7.) S███ would also frequently tell Nagy and Grey, "You're useless if you're  
16 not fucking me." (11/29, 64:10-24.)

17  
18 Grey's and Nagy's testimony about S███'s frequent comments about kicking them out  
19 of the house if they were not performing is also consistent with the "Ultimatum" that S███ does  
20 not deny he made toward the end of his relationship with Grey. As reflected in a  
21 contemporaneous email, the parties had a conversation shortly before they broke up in May 2011  
22 during which S███ gave Grey an "ultimatum." (Exh 9-22; 11/22, 149:24 – 150:13.) S███'s  
23 ultimatum to Grey during this conversation -- that they should break up if they were not having  
24 sex -- is not dissimilar from the message of S███'s "jokes" that he would kick Grey and Nagy  
25

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1 out of the house if they did not perform for him. (11/22, 149:24 – 150:13.) S[REDACTED] also testified  
2 at trial that he would have ended any relationship, including his relationship with Grey, if she  
3 ceased to desire to have sex with S[REDACTED]. (11/23, 129:3-18.)

4 Grey has demonstrated that Statement Four is true.

5  
6 Statement Five: "I remember sometimes the sex would hurt, and he'd tell me I just had to  
7 'loosen up' and shoving a pillow in my face to bite and cry into while he  
8 continued"

9 Statement Five is a direct quote from Grey's February 12, 2019 Facebook post. (Exh 1-  
10 02.)

11 Grey and Nagy corroborated each other in their testimony on this topic. Both Grey and  
12 Nagy testified credibly that at times Grey would express that she was in pain during intercourse,  
13 and S[REDACTED]'s response was to tell Grey to loosen up or to give Grey a pillow and tell Grey to bite  
14 the pillow. (11/29, 59:10-60:9; 11/30, 47:20-49:6; 92:7-27; 12/06, 32:2-5.) Nagy remembered  
15 three occasions quite well though she was certain that it happened more than three times. (11/29,  
16 59:16-20.) Twice, S[REDACTED] "gave [Grey] a pillow and told her to bite it. He told her to just loosen  
17 up and that the pain would go away." (11/29, 59:21-26.) On one occasion, S[REDACTED] stopped and  
18 said, "Mandy, why is my dick so big?" (11/29, 59:26-60:9.)

19 Nagy testified credibly about her own similar experience of asking S[REDACTED] to stop sex  
20 midway. When Nagy first started dating S[REDACTED], she asked him to stop having sex midway.  
21 "[S[REDACTED]]-- he was enraged. His hands were clenched into fists, his knuckles were white. They  
22 were shaking. And in a really, really low, angry, serious voice he said, 'Never do that to me  
23 again. Do you understand?' And I was so afraid I thought he was going to hurt me, so I said I  
24 understand. I'll never do that again. And then he said you can't get a man excited like that and  
25

1 then deny him satisfaction. So I never did. I never said no again after that. I was terrified.”

2 (11/29, 60:28-61:24.)

3 Concerning Grey’s expression of pain from intercourse, S[REDACTED] himself testified that he  
4 witnessed Grey apply frozen peas to her crotch due to soreness after sex. (11/22, 142:26-144:6.)

5 S[REDACTED] points to certain emails and texts that Grey sent him in 2011 expressing intimate  
6 messages, sometimes concerning sex, and argues that these communications impeach Grey’s  
7 testimony regarding pain during intercourse. The Court is not persuaded. Statement Five does  
8 not indicate that every sexual encounter between S[REDACTED] and Grey caused Grey pain or that S[REDACTED]  
9 ignored Grey’s expressions of pain every time they had intercourse. That Grey may have  
10 experienced pleasure from some instances of intercourse with S[REDACTED] during their relationship  
11 does not preclude Grey from having experienced pain during intercourse on other occasions.  
12 Indeed, Statement Five itself expressly includes the qualifier that Grey was describing a series of  
13 events that occurred only “sometimes.” (Exh 1-02.) Finally, it is not terribly surprising that  
14 Grey did not contemporaneously share her experiences publicly in light of what Grey and Nagy  
15 described was S[REDACTED]’s reaction to sexual partners refusing to have sex or stopping sex mid-  
16 course and in light of S[REDACTED]’s prominence as an artist, author, game designer, and adult film  
17 actor.  
18

19 Grey has demonstrated that Statement Five is true.

20  
21 Statement Six: S[REDACTED] also coerced Grey “to have sex with other people of his choosing”  
22 and “never allowed [her] to pursue anything with anyone I felt an interest  
23 in.”

24 S[REDACTED]’s Complaint has paraphrased and misquoted Statement Six. The exact statement in  
25 Grey’s February 12, 2019 post reads: “I was pressured to have sex with other people of his

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1 choosing (he called it 'sport-fucking') but was never allowed to pursue anything with anyone I  
2 felt an interest in." (Exh 1-02.)

3 Statement Six includes two subparts: (1) that S█████ "pressured" Grey to have sex with  
4 other people of S█████'s choosing; and (2) that S█████ did not allow Grey to pursue a romantic  
5 interest with individuals in whom Grey was interested.

6 With regard to the former statement, the Court finds that the evidence demonstrates a  
7 factual basis for Grey's expression of being pressured to have sex with other people of S█████'s  
8 choosing. First, the Court notes that Grey's February 12, 2019 post did not use the word  
9 "coerced" as alleged in S█████'s Complaint. Instead, Grey's post used the word "pressured,"  
10 which is reasonably construed as an inherently subjective term, i.e., whether Grey *felt* "pressured"  
11 to have sex with other people of his choosing." Further, Statement Six does not encompass any  
12 statement that Grey actually had sex with other people of S█████'s choosing – only that Grey was  
13 pressured to have sex with others.

14 Within this framework, the evidence introduced at trial supports that Grey's statement  
15 that she "was pressured to have sex with other people of his choosing (he called it 'sport-  
16 fucking')" is substantially true. (Exh. 1-02.) Grey testified credibly that on approximately three  
17 occasions, S█████ verbally "kind of like offered random men and was like you could have sex  
18 with him." (11/30, 53:15-54:10.) S█████'s suggestions concerning other sex partners surprised  
19 Grey and made her feel "really weird" because she did not know these other men at all, and it felt  
20 like pressure to Grey. (11/30, 54:8-14.)

21  
22 In addition to the occasions that S█████ verbally suggested other sex partners for Grey,  
23 S█████ once emailed Grey about this type of offer on March 20, 2011. (Exh. 8-77.) While S█████  
24 and Nagy were in Montreal, S█████ had arranged for his friend C██████████ Z██████████ to help  
25

1 Grey move her things into S's and Nagy's apartment. In making those arrangements, S  
2 emailed Grey: "One more thing – he is a charming young lad – If you have sex with him, you  
3 will owe us one! You are absolutely banned from falling in love with him. You've been  
4 warned." (Ext. 8-77.) Similar to how uncomfortable she felt when S had suggested other  
5 sexual partners to her verbally, Grey was again bewildered and felt extremely uncomfortable  
6 from S's email because Grey did not know this person at all and did not know if anything  
7 had been promised to him. (11/30, 54:21-55:14.) Because S kept offering other partners  
8 again and again, it felt like pressure to Grey. (11/30, 89:6-28.)

9 Nagy testified that she heard S suggest one person for Grey to have sex with –  
10 D, also known as C Z. Grey also told Nagy that S had suggested  
11 that Grey sleep with other people, S's friends. (11/30, 2:10-14; 11/30, 2:15-4:25; 12/6,  
12 110:11-111:9.) M B similarly testified that Grey had relayed to him that she had been  
13 encouraged to have sex with other men of S's choosing. (12/06, 85:9-23.)

14  
15 The totality of this evidence supports that Grey used reasonable care to determine the  
16 truth of her statement that she felt pressured to have sex with other people of S's choosing.

17 Grey also presented substantial evidence at trial of the veracity of her statement that  
18 S never allowed her to pursue anything with anyone she felt an interest in. Shortly before  
19 ending her relationship with S, Grey became interested in an individual, M B, and  
20 asked S if she could spend time with B (11/30, 55:15-56:5; 12/06, 60:2-18.) S  
21 became more and more angry about Grey's request that she spend more time with M B.  
22 S confirmed that he felt threatened by B and specifically forbade Grey from ever seeing  
23 or talking to B. (11/30, 56:6 - 57: 3; 12/1, 120:17-123:9; 12/06, 81:10-17.) Accordingly,  
24  
25

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1 B and Grey did not enter into a sexual relationship until after Grey ended her relationship  
2 with S (12/1, 120:17-123:9; 12/06, 76:24-77:2, 87:18-28.)

3 Grey has demonstrated that Statement Six is true.

4 Statement Seven: After "months of him telling me how 'unfortunate' and 'pointless' my  
5 natural body happened to be," S pressured Grey to obtain breast  
6 implants, which he bought for her;

7 S's Complaint has paraphrased and misquoted Statement Seven. The exact  
8 statement in Grey's February 12, 2019 post reads: "For my birthday, he bought me my first  
9 breast implants. I wanted bigger breasts, so that was a positive, but the months of him telling me  
10 how 'unfortunate' and 'pointless' my natural body happened to be was not." (Exh 1-1.)

11 S has mischaracterized Grey's February 12, 2019 post in attributing to Grey a  
12 statement that "S pressured Grey to obtain breast implants." (Complaint p. 2:22.) Grey did  
13 not state in her February 12, 2019 post that S pressured her to obtain breast implants. (Exh  
14 1-1.) To the contrary, Grey expressly stated in her post, "I wanted bigger breasts, so that was a  
15 positive." (*Ibid* [italics added].)

16 Statement Seven accurately attributes two statements to Grey in her February 12, 2019  
17 post: (1) that S made degrading comments to Grey about her body for months; and (2) for  
18 Grey's birthday, S bought Grey her first breast implants.

19 With regard to S's comments about Grey's body, Nagy's and Grey's testimony was  
20 consistent with regard to the types of comments they each heard S make about women's  
21 breasts generally and about Grey's body in particular. S once told Nagy "Why do they even  
22 make them like that, referring to a woman with small breasts. He would rate women on a scale  
23 of one to 10, and only rate them higher if they had large breasts." (11/29, 52:23-28.) Similarly,  
24  
25



1 S███ commented frequently to Grey on women's breasts, using terms like "useless" and  
2 "pointless" and saying things like "Why did they even make them like that." (11/30, 42:23-28.)

3 Grey testified credibly that S███'s comments became more and more calling Grey's  
4 body "useless and pointless and really more promoting Mandy's size as an ideal." (11/30, 42:28-  
5 43:2.) S███ used the terms "useless" and "pointless" to describe Grey's breasts and her body  
6 and made comments that Grey's small chest was not ideal. (11/30, 43:12-18.) Nagy testified  
7 credibly that S███ made comments about Grey's and Nagy's bodies constantly, going back and  
8 forth between positive and negative comments, including calling Grey "worthless," "unfortunate  
9 looking," and "pointless." (11/29, 50:23-51:6; 11/29, 52:18-22; 11/29, 53:1-4.) Nagy confirmed  
10 that she heard S███ refer to Grey's body as "pointless" at least four or five times. (11/29,  
11 53:13-16.) S███ also told Nagy that he had once told Grey that she could be so pretty, implying  
12 that Grey was not already pretty. (11/29, 50:23-51:6.; 11/29, 53:25-28.)

13  
14 S███'s attempts to impeach Grey's and Nagy's testimony with the testimony of S███  
15 R███ is unavailable. R███ admitted during her testimony that Grey moved out of S███'s  
16 and Nagy's apartment before R███ moved in as their roommate. (11/29, 21:5-9; 11/29.)  
17 Thus, R███'s presence did not overlap with Grey's at the apartment, and R███ would not  
18 have been privy to the intimate details of what occurred between S███, Nagy, and Grey before  
19 R███ moved in. (11/29, 30:19-25.)

20 With regard to the second half of Statement Seven regarding payment for Grey's breast  
21 implants, Nagy testified that Grey was excited about getting breast implants one day, but could  
22 not afford them yet. (11/29, 54:4-12.) S███ had told Nagy that he had paid for a "girl's breast  
23 implants in the past," and Nagy suggested to S███ that they pay for Grey's breast implants.  
24 (11/29, 54:15-19.) When Nagy proposed the idea, S███ responded, "Make it happen," never  
25

1 expressing any reluctance. (11/29, 54:20-27.) S█████ and Nagy then accompanied Grey to a  
2 consultation for getting the implants. (11/29, 55:3-8.) The Court finds S█████'s testimony that he  
3 was upset about Nagy's use of their joint funds to pay for Grey's breast implants simply not  
4 credible.

5 In any event, the evidence amply demonstrates that funds withdrawn from a joint bank  
6 account of Nagy and S█████ were used to pay for Grey's breast surgery. (11/29, 57:13-15.) Both  
7 Nagy and S█████ contributed to the joint bank account, but S█████'s income was greater, and  
8 S█████ contributed more than Nagy to the funds in the account. (11/29, 57:16-22.) Therefore, it is  
9 undisputed that S█████ contributed to buying Grey her first breast implants.

10 Grey has demonstrated that Statement Seven is true.

### 11 Actual Malice

12 The parties dispute whether S█████ is a public figure, and thus, whether S█████ must  
13 demonstrate malice to prevail on his defamation claim.

14 "[T]he Constitution delimits a State's power to award damages for libel in actions brought  
15 by public officials against critics of their official conduct." (*New York Times Co. v. Sullivan*  
16 (1964) 376 U.S. 254, 283.) Similarly, " 'public figures'—like public officials—must also prove  
17 actual malice in order to recover in a defamation action." (*Reader's Digest Assn. v. Superior*  
18 *Court* (1984) 37 Cal.3d 244, 253.) There are two classes of public figures. "The first is the 'all  
19 purpose' public figure who has 'achiev[ed] such pervasive fame or notoriety that he becomes a  
20 public figure for all purposes and in all contexts.' The second category is that of the 'limited  
21 purpose' or 'vortex' public figure, an individual who 'voluntarily injects himself or is drawn into  
22 a particular public controversy and thereby becomes a public figure for a limited range of issues.'  
23 [Citation]. Unlike the 'all purpose' public figure, the 'limited purpose' public figure loses  
24 certain protection for his reputation only to the extent that the allegedly defamatory  
25

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1 communication relates to his role in a public controversy.” (*Reader’s Digest Assn. v. Superior*  
2 *Court*, 37 Cal.3d at 253-254.)

3 “At trial, whether a plaintiff in a defamation action is a public figure is a question of law  
4 for the trial court.” (*Khawar v. Globe Intern., Inc.* (1998) 19 Cal.4th 254, 264.) “[S]uch a  
5 determination is often a close question which can only be resolved by considering the totality of  
6 the circumstances which comprise each individual controversy.” (*Reader’s Digest Assn., supra*,  
7 37 Cal.3d at p.255.)

8 A public figure “must [] demonstrate, by clear and convincing evidence, that the  
9 challenged statements were made with actual malice in order to prevail on his claim for  
10 defamation.” (*Issa v. Applegate* (2019) 31 Cal.App.5th 689, 703.) “In this context, a defendant  
11 acts with ‘actual malice’ when publishing a knowingly false statement or where [s]he  
12 ‘entertained serious doubts as to [its] truth.’ [Citation.]” (*Christian Research Institute v.*  
13 *Alnor* (2007) 48 Cal.App.4th 71, 81.)

14 Grey contends that S████ is a public figure. The Court disagrees.

15 S████ is a published artist, author, game designer, and adult film actor. S████ has been  
16 nominated for and has won awards for his art. His paintings have been displayed at the Museum  
17 of Modern Art, the Whitney Museum of American Art, and Saatchi Gallery in London, among  
18 other museums. S████ has won or been nominated for numerous awards for his work in the  
19 gaming industry. S████ is a prominent figure in the Indie gaming industry and has won  
20 numerous awards for art and video games (“Role Playing Games,” or “RPGs”). S████ has also  
21 conceded that his adult film videos have been displayed in every format, including on the major  
22 tube sites. S████ has also written numerous books. His books have sold on Amazon. S████ still  
23 receives royalty payments from his books. S████ has also broadcast a show ██████████  
██████████ S████ has been featured in publications such as Maxim Magazine, Vanity Fair, the  
25 New York Times, and Art Forum, and print and digital editions of Dungeons & Dragons. S████

1 also conceded during his trial testimony that all of his work and business, to some extent,  
2 depends on being known on the Internet.

3 The above evidence demonstrates that S█████ has achieved some degree of prominence in  
4 certain niches – the art world, the Indie gaming industry, and as an author of books about his  
5 work in these areas. Nonetheless, Grey has failed to introduce evidence that S█████ is a common  
6 household name or achieved some equivalent level of notoriety. “All-purpose public figurehead  
7 will not be lightly assumed.” (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203.) “Absent  
8 clear evidence of general fame or notoriety in the community, and pervasive involvement in the  
9 affairs of society, an individual should not be deemed a public personality for all aspects of his  
10 life.” (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 352.) It cannot be said that S█████ has  
11 achieved such pervasive fame or notoriety that he has become a public figure for all purposes  
12 and in all contexts. (*Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1273 [“Clearly  
13 [plaintiff] is no Jerry Falwell, Jesse Jackson, or Louis Farrakhan”].)

14 Nor may the Court deem S█████ a limited purpose public figure. “A person becomes a  
15 limited public figure by injecting himself into the public debate about a topic that concerns a  
16 substantial number of people.” (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 25; see also  
17 *Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, 1092 [“[f]irst, there must be a public  
18 controversy, which means the issue was debated publicly and had foreseeable and substantial  
19 ramifications for nonparticipants. . . . Second, the plaintiff must have undertaken some voluntary  
20 act through which he or she sought to influence resolution of the public issue. . . . In this regard, it  
21 is sufficient that the plaintiff “ ‘attempts to thrust himself into the public eye.’ ”] [citations  
22 omitted].) Here, S█████ did not post The Statement (Exhibit 2) until February 13, 2019 – after  
23 Grey’s Facebook post on February 12, 2019. Moreover, The Statement is clearly a response to  
24 Grey’s Facebook post. Prior to Grey’s Facebook post on February 12, 2019, S█████ did not  
25

1 voluntarily inject himself into the vortex of the intimate sexual details of his past relationship  
2 with Grey. The Court declines to find that S████ is a limited public purpose figure.<sup>4</sup>

3 Thus, S████ need not demonstrate malice on Grey's part in order to prevail on his  
4 defamation claim against her.

5  
6 ***Damages***

7 "A libel which is defamatory of the plaintiff without the necessity of explanatory matter,  
8 such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face.  
9 Defamatory language not libelous on its face is not actionable unless the plaintiff alleges and  
10 proves that he has suffered special damage as a proximate result thereof. Special damage is  
11 defined in Section 48a of this code." (Civ.Code, § 45a.) " 'Special damages' means all damages  
12 that plaintiff alleges and proves that he or she has suffered in respect to his or her property,  
13 business, trade, profession, or occupation, including the amounts of money the plaintiff alleges  
14 and proves he or she has expended as a result of the alleged libel, and no other." (Civ.Code, §  
15 48a(d)(2).)

16 From the discussion above, the Court has concluded that of all the false statements  
17 alleged in S████'s Complaint, only a single isolated statement in Grey's February 12, 2019  
18

19  
20 <sup>4</sup> Pointing to the Court's order ruling on Grey's motion for summary judgment or in the  
21 alternative summary adjudication, Grey argues that the Court has already found that S████ is a  
22 limited public figure. (Grey's Objections to Tentative Statement of Decision, p. 8: 2-10.) Grey  
23 cites no authority for her contention that a court is bound at a court trial by its earlier findings  
24 made in the context of denying a motion for summary judgment or in the alternative summary  
25 adjudication. Given the different burdens that each party bears in the context of a motion for  
summary judgment versus at trial and given the differences in evidence presented for any  
particular motion for summary judgment versus at trial, the Court does not find Grey's argument  
that the Court is somehow bound by its findings in denying her motion for summary judgment to  
be persuasive. Even apart from the different burdens and different evidentiary record, Grey fails  
to identify any reason why the Court may not at the bench trial simply reconsider its earlier  
finding in ruling on a pre-trial motion.

1 Facebook post is false, namely, the subpart of Statement One that “[S████] forced [Grey] to  
2 move in with him.”

3 S████ fails to prove actual damages attributable to this one single statement that “[S████  
4 forced [Grey] to move in with him.” S████’s testimony regarding the reasons for his decreased  
5 revenue from various sources was speculative. Over the course of this litigation, S████’s  
6 damage calculations have been a roving target. S████ has failed to justify or explain his wildly  
7 varying figures. Nor has S████ introduced evidence of what other factors may have accounted  
8 for his decreased revenues, such as, for example, the effect of a worldwide pandemic on sales of  
9 art, books, and Indie games. On cross-examination, S████ acknowledged that he has not worked  
10 in pornography since 2018 – before Grey’s Facebook post. Accordingly, S████ did not claim  
11 that the reason he stopped work in the pornography industry has anything to do with Grey’s  
12 Facebook post. With regard to a decline in sales of S████’s art, S████ acknowledged that  
13 galleries were largely closed since the onset of the COVID pandemic, which accounted for at  
14 least some part of the decline in sales. As to emotional damages, S████ acknowledged that he  
15 has not lost any friends due to Grey’s Facebook post.

16 Moreover, S████ has failed to differentiate any reputational or emotional harm caused by  
17 Grey’s statement that S████ forced her to move in with him from reputational and emotional  
18 harm stemming from a plethora of other sources. S████’s inability to distinguish reputational  
19 and emotional damages from a multitude of sources is fatal to his claim.

20 Nagy publicly posted an equally uncomplimentary description of sexual and emotional  
21 abuse that she suffered during her extended relationship with S████ just two days prior to Grey’s  
22 February 12, 2019 Facebook post. From the timing of Nagy’s and Grey’s posts – only two days  
23 apart -- it would appear that any damages from Grey’s statement that S████ forced her to move  
24 in with him would be substantially dwarfed by the reputational harm caused by Nagy’s post.  
25 Indeed, the fact that S████ devoted only approximately six and a half percent of the pages of his



1 responsive February 13, 2019 Statement (pages 16 through 20 out of 76 pages) to addressing  
2 Grey's February 12, 2019 Facebook post in contrast to 93.5% of The Statement to addressing  
3 Nagy's February 10, 2019 post would appear to give some indication of S███'s own view of the  
4 relative degree to which the two posts have caused him reputational harm. The nature of the  
5 revelations in Grey's February 12, 2019 post which the Court has found are truthful and the  
6 allegations in Nagy's February 10, 2019 post would naturally capture the attention of any reader  
7 more readily than Grey's statement that S███ forced her to move in with him. Thus, it would be  
8 almost impossible for S███ to parse out any harm to his business or revenues directly  
9 attributable to Grey's isolated false statement. Likewise, S███ has failed to differentiate any  
10 shame, mortification or hurt feelings that he may have experienced as a result of Grey's  
11 statement that S███ forced her to move in with him from any emotional reaction S███ suffered  
12 from reading the remainder of Grey's February 12, 2019 post or from reading Nagy's February  
13 10, 2019 post.

14       Apart from Nagy's February 10, 2019 post, the evidence demonstrated numerous other  
15 sources of reputational damage to S███. On cross-examination, S███ admitted that he has sued  
16 at least four individuals other than Grey for defamation and for causing him reputational damage,  
17 including Amanda Nagy, ██ and GEN CON. There were two other  
18 women – J████████████████████ and H████████████████████ – whom S███ considered suing for  
19 defamation after J████████████████████ posted a description of sexual assault by S███ and after  
20 H████████████████████ also posted about her sexual experiences with S███. During his testimony,  
21 S███ did not attempt to differentiate between the reputational and emotional harm that these  
22 other defamation defendants or potential defamation defendants have caused him from the  
23 reputational and emotional harm Grey's statements about S███ forcing her to move in with him  
24 has caused him. S███ also testified about having been embroiled in disputes with a host of other  
25 individuals on the Internet for years, some of which have resulted in mutually unflattering

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1 accusations. (See, e.g., Exh. 34 [M█████C█████]; Exh. 35 [F█████K█████, G█████B█████]; Exh. 36  
2 [E█████S█████].) S█████ has also been involved in a large number of highly visible clashes  
3 with people in the role-playing games industry. During cross-examination, S█████ admitted that  
4 yet others have carried out hate campaigns and acts of harassment against S█████ as far back as  
5 2011, including E█████, S█████ A█████, A█████ K█████. During his testimony, S█████  
6 identified A█████ K█████, T█████ H█████, J█████ A█████, G█████, O█████ H█████, and D█████ H█████ as  
7 members of the "hate mob" or individuals who have harassed S█████ online.

8 In sum, S█████ cannot differentiate any damages that might have resulted from Grey's  
9 statement that S█████ forced her to move in with him from the damages caused by Nagy's,  
10 L█████s, or M█████'s posts, or from the other highly visible online clashes in which S█████  
11 has been involved over the years.

12 Therefore, the Court finds that S█████ fails to prove any actual damages caused by Grey's  
13 defamatory statement about his having forced her to move in with him.

14 Nonetheless, the Court finds that Grey's Statement One that S█████ forced her to move in  
15 with him was of a nature as to expose S█████ to "hatred, contempt, ridicule, or obloquy, or which  
16 cause[d] him to be shunned or avoided," thus qualifying as libel. (Civ.Code, § 45.) The Court  
17 further finds that Grey's Statement One required no explanation and was defamatory of S█████  
18 "without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic  
19 fact" and thus, constituted libel on its face. (Civ.Code, § 45a.) Civil Code section 45a's  
20 requirement of proof of special damages applies only to "[d]efamatory language *not* libelous on  
21 its face." (Civ.Code, § 45a.) Because Grey's Statement One was libelous on its face, it is  
22 actionable even in the absence of proof of special damages. Though S█████ has failed to prove  
23 any actual damages for harm to reputation or shame, mortification, or hurt feelings, damages are  
24 presumed for libel on its face. S█████ is entitled to receive compensation for this assumed harm  
25 in whatever sum the Court finds is reasonable, and the Court must award at least a nominal sum,

1 such as one dollar. (CACI 1704.) In light of the multiplicity of other sources of reputational  
2 damage to S█████, the Court will award only nominal damages of \$1 and no punitive damages.

3 In her objections to the Court's tentative statement of decision, Grey urges the Court to  
4 apply the elements of defamation per quod, which would mean that S█████'s failure to prove  
5 special damages stemming from Grey's Statement One would prove fatal to S█████'s defamation  
6 claim. Grey objects to the Court's application of the elements for defamation per se on the  
7 ground that "Grey's Statement One does not fit into the categories of a defamatory statement per  
8 se under Civ. Code, § 46." (Grey's Objections to Tentative Statement of Decision p. 6: 4-5.)

9 Grey's reliance on Civil Code section 46 is misplaced. Section 46 applies to "[s]lander,"  
10 defined as a "false and unprivileged publication, orally uttered." (Civ.Code, § 46.) It is  
11 undisputed that Grey's Statement One was made in writing and did not implicate an orally  
12 uttered falsehood. The categories of section 46 have no applicability to libel cases, such as the  
13 instant one, which arise out of "a false and unprivileged publication by writing . . ." (Civ.Code,  
14 § 45.)

15 In its tentative statement of decision, the Court noted that "[o]ne further point bears  
16 mention with regard to why the Court declines to award any punitive damages or any more than  
17 \$1 of nominal damages. S█████ conceded on cross-examination that he did not see any public  
18 posts by Grey about him after February 2019, which is consistent with Grey's testimony that she  
19 removed her Facebook page shortly after posting it." In the briefing that has followed the  
20 Court's tentative statement of decision, the parties have both corrected the Court's mistaken  
21 understanding that Grey removed her Facebook page shortly after posting it. The Court hereby  
22 corrects its findings to reflect that the evidence does not indicate that Grey has removed her  
23 Facebook page, including Statement One. However, this correction does not yield a different  
24 outcome in terms of punitive damages. This (mistaken) observation by the Court was only one  
25 of several factors leading the Court to decline to award punitive damages. This correction does

1 not alter or affect any of the other factors which still lead the Court to decline to award punitive  
2 damages. For example, it is undisputed that S█████ himself has continued to post The Statement  
3 about Grey and Nagy, with some edits over time, well beyond 2019. As of S█████'s deposition in  
4 this action in March 2021, S█████ noted 40-100 published comments and 60-200 unpublished  
5 comments in response to S█████'s post. This evidence establishes S█████'s ongoing post of The  
6 Statement attempting to refute Nagy's and Grey's February 2019 posts, allegation by allegation,  
7 in painstaking detail may well have drawn greater attention to the events described therein than  
8 Grey's Facebook post itself. At the very least, S█████ has failed to demonstrate that any harm to  
9 his reputation has not stemmed from his own continued publication and republication of the  
10 intimate details of his sexual relationship with Grey and Nagy, as opposed to Grey's statement  
11 that S█████ forced her to move in with him. Moreover, the Court credits Grey's testimony that  
12 after reading Nagy's post, Grey was inspired to write and publish her own Facebook post as part  
13 of a cathartic and healing process – not out of malice or oppression. Thus, the Court will not  
14 award punitive damages.

15  
16 Grey's Complaint: S█████'s February 13, 2019 blog – "The Statement"

17 ***Non-Actionable Opinion***

18 S█████ contends that many of the statements that Grey has identified as being defamatory  
19 in S█████'s February 13, 2019 blog entitled "The Statement" are non-actionable opinions. The  
20 Court disagrees except as to one statement.

21 Statement 2-70, specifically, S█████'s statement that "Vivka only jumped on board with  
22 her accusations once the mob was decidedly on Mandy's side" is an expression of S█████'s  
23 opinion of Grey's motivations in making the accusations in her February 12, 2019 Facebook  
24 post. (Exh. 2-70.) This statement cannot reasonably be understood as declaring or implying  
25

1 actual facts capable of being proved true or false. (*Integrated Healthcare Holdings, Inc. v.*  
2 *Fitzgibbons* (2006) 140 Cal.App.4th 515, 527.)

3 In contrast, the balance of all the other statements that Grey enumerated in the  
4 "Identification of Defamatory Statements by Z█████ S█████" that Grey filed on December 10,  
5 2021 can reasonably be understood as declaring or implying actual facts capable of being proved  
6 true or false. (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons*, 140 Cal.App.4th at 527.)

### 8 ***Falsity***

9 For the reasons discussed above with regard to the veracity/falsity of the eight statements  
10 that S█████ alleges were defamatory in Grey's February 12, 2019 Facebook post, the Court finds  
11 that the following statements in S█████'s February 13, 2019 blog are true:

- 12 - "These things didn't happen the way Viv describes them. . ." [Statement 2-09b]  
13 [describing Grey's move to Los Angeles and denying that S█████ forced Grey to move in  
14 with S█████ and Nagy] (Exh. 2-09);
- 15 - "he forced me to move in with them so he could 'Keep me close.' Again none of this is  
16 true" [Statement 2-18a] (Exh. 2-18);

17 For the same reasons discussed above, the Court finds that the following statements in  
18 S█████'s February 13, 2019 blog were false:

- 19 - "That's basically a total admission on the accusers' part they know the accusations aren't  
20 true and there's nothing to check or investigate" [Statement 2-02] (Exh. 2-02);
- 21 - "As for Viv... I never bought her breast implants. Mandy did, and I was not happy about  
22 it because it was a lot of money to splash out on someone we'd only known for a few  
23 months" [Statement 2-09a] (Exh. 2-09);
- 24 - "The short version is: everything damning in both posts is contradicted by eyewitnesses  
25 and the accusers' own statements" [Statement 2-11] (Exh. 2-11);
- "1. I got her breast implants and carried on a campaign of verbal humiliation about how  
she looked. None of this is true: Mandy bought the implants out of our joint bank account

1 and I was upset with her for doing it because we hadn't known Viv that long and it was a  
lot to spend on someone we'd basically just met" [Statement 2-16] (Exh. 2-16);

- 2 - "2. He knew I was in a rough financial situation, . . . Again none of this is true"  
3 [Statement 2-18a] (Exh. 2-18);
- 4 - ". . . I know the name of the couple she was planning on moving in with--because it's the  
5 same pair of people she moved in with after we broke up" [Statement 2-18b] (Exh. 2-18);
- 6 - "The only time I said anything to Viv about who she should or shouldn't have sex with  
7 was: One time (after she'd moved in) Viv and I went to a friends' comedy show in the  
8 upstairs room of the House of Blues on Sunset. I think Mandy was too sick to go. Viv  
9 wanted to have sex with me in the bathroom and I told her I couldn't because it was early  
10 days and I didn't know if Mandy would be ok with that. That's it" [Statement 2-19a]  
(Exh. 2-19);
- 11 - ". . . if Viv wasn't happy, she never said anything, even when we eventually broke up"  
12 [Statement 2-19b] (Exh. 2-19);
- 13 - "Vivka: Completely contradicted by the bare facts, and--if they was true--paints Mandy  
14 as an abuser" [Statement 2-39] (Exh. 2-39);
- 15 - "Mandy and her friends' statements don't have any specific incidents of abuse  
16 corroborated, conflict with each other, and their claims don't match their own statements  
17 at the time" [Statement 2-75] (Exh. 2-75);

18 There is one statement not addressed in the discussion above as to the veracity or falsity  
19 of Statements One through Seven of Grey's February 12, 2019 Facebook post: Statement 2-20.  
20 In Statement 2-20, S█████ offers the following explanation as to why he believes Grey has  
21 fabricated all the allegations in her Facebook post:

22 "So what happened? Like I said in my original statement--when we broke up, Viv really  
23 wanted to be in a photo shoot we were doing of the D&D group in Maxim. She's a model  
24 and having Maxim on your resume is a big deal. Mandy and I weren't comfortable with it  
25 since she was our ex- and wasn't in the group anymore. She got much angrier than the  
situation warranted and there were hard feelings after. Regardless of her motivations, it's  
really hard to square her accusations with anything that happened in the real world,  
especially because of how involved Mandy was at every stage."

(Exh. 2-20.) The Court finds that Statement 2-20 was true insofar as S█████ did request after their  
break up that Grey not come to the Maxim photo shoot. However, the Court finds the portion of



1 Statement 2-20 that Grey “got much angrier than the situation warranted and there were hard  
2 feelings after” not to comport with the evidence before the Court. It seems highly improbable  
3 that Grey would secretly harbor a grudge for eight years against S█████ for disinviting her from  
4 the Maxim photo shoot, then unleash her Facebook post as retaliation coincidentally two days  
5 after Nagy’s post chronicling her own abuses. Instead, the Court credits Grey’s explanation that  
6 having read Nagy’s post inspired her to share about her own experiences with S█████ for purposes  
7 of healing and closure. Thus, the Court finds S█████’s statement regarding the role that the  
8 Maxim photo shoot played in motivating Grey to post her February 12, 2019 Facebook post to be  
9 false.

10 The Court’s finding that S█████’s February 13, 2019 blog contains several false  
11 statements, as identified above, does not end the inquiry. To qualify as libel, a statement must  
12 “expose[] [the plaintiff] to hatred, contempt, ridicule, or obloquy, or . . . cause[] [plaintiff] to be  
13 shunned or avoided, or . . . ha[ve] a tendency to injure [plaintiff] in his occupation.” (Civ.Code,  
14 § 45.)

15 Here, each of S█████’s defamatory statements is a false denial of the assertions in Grey’s  
16 February 12, 2019 Facebook post. Given the nature of the statements in Grey’s Facebook post, it  
17 is hardly surprising that Grey’s Facebook post drew a vehement denial from S█████. A  
18 reasonable reader would construe Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-19b,  
19 2-39, 2-75, and 2-20 as nothing more than an immediate response to and denial of Grey’s  
20 Facebook post, which preceded S█████’s blog. In fact, the portion of S█████’s blog devoted to  
21 “Vivka” (Grey) is organized by listing Grey’s specific accusations. Accusation by accusation,  
22 S█████ attempts to refute and counter Grey’s assertions with his own arguments and version of  
23 events. Viewed as such, Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-19b, 2-39, 2-  
24 75, and 2-20 do not expose Grey to “hatred, contempt, ridicule, or obloquy.” (Civ.Code, § 45.)  
25 Nor have Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-19b, 2-39, 2-75, and 2-20

1 caused Grey to be "shunned or avoided." (Civ.Code, § 45.) Nor do S[REDACTED]'s denials of Grey's  
2 accusations have a tendency to injure Grey in her occupation. (Civ.Code, § 45.)

3 The facts presented by S[REDACTED]'s false denials are akin to those in *Coit Drapery Cleaners,*  
4 *Inc. v. Sequoia Ins. Co.* (1993) 14 Cal.App.4th 1595, in which the Court noted the following:

5 Appellants seem to say only that Coit and the other defendants initially denied the  
6 allegations of harassment in statements to investigators of the California  
7 Department of Fair Employment and Housing, and that those false denials of  
8 sexual harassment might somehow constitute defamation of Seahorn by  
9 contradicting her statement such harassment did occur, thus triggering insurance  
coverage. *Such sophistry proves too much. No authorities are cited, and we have  
found none, to support the position that such denials of one's own conduct are  
defamation.*

10 (*Id.* at p. 1599 [italics added].)

11 Thus, Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-19b, 2-39, 2-75, and 2-20  
12 do not qualify as libel within the meaning of Civil Code section 45.

#### 13 14 **Damages**

15 Moreover, even if the Court were to deem that Statements 2-02, 2-09a, 2-11, 2-16, 2-18,  
16 2-18b, 2-19a, 2-19b, 2-39, 2-75, and 2-20 constitute libel (which the Court does not do for the  
17 reasons stated above), these statements do not qualify as libel per se, and Grey has failed to  
18 prove any special damages arising from S[REDACTED]'s defamatory statements.

19 S[REDACTED]'s false denials, in the context of defending himself against Grey's Facebook post,  
20 do not constitute libel per se. *Western Broadcast Co. v. Times-Mirror Co.* (1936) 14 Cal.App.2d  
21 120, illustrates this point. In *Western Broadcast Co. v. Times-Mirror Co.*, the plaintiff filed an  
22 action for libel arising out of the defendant's publication of an article concerning a controversy  
23 between the parties over the dropping of the listing of the plaintiff's radio station (KNX) from  
24 the metropolitan papers while the listings of other radio stations continued to be carried. The  
25 sole question for the Court was whether plaintiff's complaint was sufficient to withstand a

1 general demurrer. At the outset of its analysis, the Court noted that “[i]t has been held in certain  
2 cases that it is not libelous per se to publish an answer challenging the correctness of an  
3 opponent’s statements and charging such opponent with “telling falsehoods” or “falsely  
4 asserting.” (*Id.* at 124.) Turning to the article at issue, the Court emphasized the nature of the  
5 article as a *response* to a statement that preceded it:

6 [t]he opening paragraph shows that [the article] is a *reply to something that has gone on*  
7 *before*, winding up with the conclusion of the defendant (not facts) . . . The article is  
8 largely argumentative and would be so construed by the ordinary reader, and as we have  
9 already pointed out, it appears on its face to be a *defense against something* which has  
10 been said over KNX. The article does not charge KNX with giving out misinformation  
generally nor with having been guilty of any of the acts cited therein . . . . It limits its,  
charges, where charges are made, to the particular controversy between the parties and  
gives its side of the argument *in self-defense*.

11 (*Id.*, 14 Cal.App.2d at 124–125 [italics added].) The Court of Appeal held that the complaint did  
12 not withstand demurrer and reversed the trial court’s order overruling the demurrer.

13 Applying *Western Broadcast Co. v. Times-Mirror Co.* to the instant case leads to the  
14 same conclusion. S█████’s blog is clearly a response in self-defense to an earlier statement by  
15 Grey – Grey’s Facebook post. In fact, Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-  
16 19b, 2-39, 2-75, and 2-20 are each made in the context of responding to a specific allegation by  
17 Grey. As in *Western Broadcast Co. v. Times-Mirror Co.*, S█████ does not paint Grey to be a liar  
18 generally. Instead, S█████’s statements are limited to responding to the particular allegations in  
19 Grey’s Facebook post. Moreover, S█████’s blog is disjointed and makes sense only after reading  
20 Grey’s February 13, 2019 Facebook post, which provides necessary context for what it is that  
21 S█████ is denying. Without the “explanatory matter” of Grey’s February 13, 2019 Facebook post,  
22 it is difficult to follow S█████’s blog. Thus, S█████’s statements are not libel on their face.

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1 Because Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-19b, 2-39, 2-75, and 2-  
2 20 are not libelous on their face, they are not actionable unless Grey proves that she has suffered  
3 special damage<sup>5</sup> as a proximate result of these statements. (Civ.Code, § 45a.)

4 Grey has failed to prove that Statements 2-02, 2-09a, 2-11, 2-16, 2-18, 2-18b, 2-19a, 2-  
5 19b, 2-39, 2-75, and 2-20 caused her to suffer special damage, or for that matter, any damages at  
6 all. The Court finds that Grey's claims of damages as a result of S[REDACTED]'s false denials to be  
7 speculative at best. Grey did not tie any specific perceived loss of income to S[REDACTED]'s false  
8 denials. Thus, Grey failed to prove any special damages. Grey credibly testified about  
9 emotional turmoil that she has experienced, but she failed to differentiate any hurt feelings  
10 caused by having been subjected to and re-living the experiences set forth in her Facebook post  
11 from any psychological harm caused by S[REDACTED]'s false denial. Compared to the psychological  
12 trauma of having experienced what Grey described in her Facebook post, any incremental harm  
13 caused by S[REDACTED]'s false denial would seem negligible. Accordingly, the Court finds that Grey  
14 has failed to prove any damages, let alone special damages.

15  
16 **THE PARTIES' OBJECTIONS TO THE TENTATIVE STATEMENT OF DECISION**

17 The Court has read and considered the objections to the proposed statement of decision  
18 that each of the parties filed on April 13, 2022. The Court has made revisions to certain  
19 portions of the discussion above to address the parties' objections, including, at times,  
20 explaining why the Court finds the objections to lack merit. Any objection that has not been  
21  
22  
23

24 <sup>5</sup> As noted above, " '[s]pecial damages' means all damages that plaintiff alleges and proves that  
25 he or she has suffered in respect to his or her property, business, trade, profession, or occupation,  
including the amounts of money the plaintiff alleges and proves he or she has expended as a  
result of the alleged libel, and no other." (Civ.Code, § 48a(d)(2).)

1 expressly addressed or otherwise incorporated above in a modification from the tentative ruling  
2 is overruled.<sup>6</sup>

3 Accordingly, the Court adopts the instant statement of decision as its final statement of  
4 decision.

5 **CONCLUSION**

6  
7 Having carried his burden of proof on his complaint, Z██████ S██████ is entitled to entry  
8 of judgment in his favor against Grey as to the single cause of action of S██████'s Complaint in  
9 the amount of \$1 of nominal damages and costs per memorandum of costs.

10 Vivka Grey having failed to carry her burden of proof on her complaint, judgment shall  
11 be entered in favor of defendant Z██████ S██████ and against Vivka Grey as to the single cause of  
12 action of Grey's Complaint.

13 Within 10 days, Plaintiff/Cross-Defendant Z██████ S██████ is to file and serve a proposed  
14 judgment as to both Complaints.

15 The Court's Judicial Assistant is to give notice of this order to all parties, including  
16 Counsel for Z██████ S██████ at his new address noted in his June 29, 2021 notice of change of  
17 address ██

18 DATED: July 5, 2022

19   
20 Hon. Elaine Lu  
21 Los Angeles Superior Court  
22

23 \_\_\_\_\_  
24 <sup>6</sup> The Court acknowledges that the Court Clerk mailed notice of the Tentative Statement of  
25 Decision to S██████'s Counsel at an outdated address. The Court finds that S██████ has not been  
prejudiced by the clerical error because he timely filed his objections to the Tentative Statement  
of Decision. The Court Clerk will be directed to send all future notices to S██████'s Counsel at his  
updated address.

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