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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

**PETER TODD**, an individual,

Plaintiff,

v.

**SARAH MICHELLE REICHWEIN** *aka*  
**ISIS AGORA LOVECRUFT**, an individual,

Defendant.

Case No. 4:19-cv-01751-DMR

**PLAINTIFF PETER TODD'S  
OPPOSITION TO DEFENDANT'S  
SPECIAL MOTION TO STRIKE  
PLAINTIFF'S COMPLAINT (ANTI-  
SLAPP MOTION)**

Date: August 22, 2019

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Location: Courtroom 4

Complaint Filed: April 3, 2019

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## INTRODUCTION

In his Complaint, Plaintiff Peter Todd (“Todd”) alleges that Defendant Sarah Michelle Reichwein *aka* Isis Agora Lovecraft (“Lovecraft”) published four false and defamatory Tweets about him. Lovecraft’s Tweets falsely accuse Todd of sexually assaulting and raping Lovecraft and others. Lovecraft moves to strike Todd’s Complaint under Civil Procedure Code section 425.16. In support of their motion, Lovecraft argues that the Tweets are accurate because Todd sexually assaulted Lovecraft and raped another person (i.e. Jane Doe), and because Lovecraft reasonably relied on their own experience and Jane Doe’s description of the alleged rape when Lovecraft published the Tweets.

Lovecraft’s defense would be compelling if it were not entirely fabricated. The evidence shows that when Lovecraft has a disagreement with somebody, Lovecraft and Lovecraft’s collaborators publicly and falsely accuse that person of horrific crimes. Here, when Todd did not support Lovecraft and Bryce Wilcox’s Zcash cryptocurrency endeavor in 2018, Lovecraft publicly and falsely accused Todd of defending rapists. Then, when Todd again criticized Zcash in February 2019, Lovecraft publicly and falsely accused Todd of sexually assaulting and raping Lovecraft and others. When third party Jacob Appelbaum (“Appelbaum”) was progressing in his cryptography studies more quickly than Lovecraft and Lovecraft’s lover, Lovecraft accused Appelbaum of rape. Similarly, when third party Nadim Kobeissi raised doubts about Lovecraft’s accusations of rape against Appelbaum, Lovecraft falsely accused Kobeissi of rape. When Appelbaum’s academic advisors asked for the dispute to be handled through the court system, Lovecraft falsely accused them of threatening, harassing, and retaliating against Lovecraft. And in yet another case, when a prominent member of the cryptography community did not support Lovecraft in their allegation of rape against Appelbaum, Lovecraft accused him of hiring a thug to assault Lovecraft and drag them into the street.

Lovecraft does not use Twitter to publish accurate statements and legitimate criticism. Rather, Lovecraft uses Twitter to assassinate the character of anybody who



questions Lovecraft. For this reason, and as summarized below, Lovecraft's motion to strike fails.

- Not in Connection with Public Interest: As an initial matter, Lovecraft cannot rely on the anti-SLAPP statute because Lovecraft did not publish the Tweets in connection with an issue of public interest. Rather, Lovecraft sought to turn a private dispute with Todd regarding Zcash into a public controversy by unilaterally accusing Todd of rape outside of any ongoing discussion of sexual assault.
- Plaintiff's Evidence of Defamation: Moreover, Todd's evidence demonstrates that Lovecraft published false and unprivileged Tweets, which have a natural tendency to injure Todd by accusing him of rape and sexual assault.
- Plaintiff Is Not a Limited-Purpose Public Figure: Contrary to Lovecraft's arguments, Todd is not a limited-purpose public figure. Todd did not inject himself into any controversy regarding Lovecraft's false claims that Todd sexually assaulted Lovecraft. While Lovecraft tries to tether the Tweets to Lovecraft's previous rape accusation against Jacob Applebaum, that controversy occurred years earlier and was unconnected to Todd—in fact, Todd publicly stated that he could not contribute to that debate.
- Lovecraft Acted with Malice: Under any standard, Lovecraft acted with malice when they published the Tweets because: a) Lovecraft knew that Todd had not raped or sexually assaulted Lovecraft, b) Lovecraft has a pattern and practice of falsely accusing others of rape and other crimes, c) Lovecraft has a vendetta against Todd for criticizing Zcash, and d) Lovecraft's supposed reliance on Jane Doe is not credible in light of Lovecraft's chronic pattern of lying about the most serious allegations, including in court proceedings.

For all of these reasons, the Court should deny Lovecraft's special motion to strike.

## BACKGROUND

### A. Plaintiff Peter Todd and Defendant Isis Agora Lovecraft

Plaintiff Peter Todd is a Bitcoin enthusiast and a leading developer of

cryptocurrency and blockchain software. (Declaration of Peter Todd in Support of Plaintiff's Opposition to Defendant's Special Motion to Strike ("Todd Decl.") ¶2.) Todd is highly respected in the cryptography and cryptocurrency sectors for his expertise in the security properties of the Bitcoin network and other decentralized technologies. (Todd Decl. ¶2.)

Defendant Sarah Michelle Reichwein *aka* Isis Agora Lovecraft is a self-described "anarchist; hacker; once-upon-a-time theoretical physicist." (Todd Decl. ¶¶3–4 & Ex. A.) Lovecraft previously worked for The Tor Project, Inc., the goal of which is to provide a way of using the internet with as much privacy as possible. (Todd Decl. ¶5.) Like Todd, Lovecraft regularly attends cryptography conferences. (Todd Decl. ¶6.)

#### **B. Todd's Interactions with Lovecraft**

Todd first met Lovecraft on July 4, 2014 in Paris, France at the Tor Development Meeting. (Todd Decl. ¶7.) Lovecraft presented at a small group session entitled "Bridging the Gap." (Todd Decl. ¶7.) After Lovecraft completed their session, Todd introduced himself to Lovecraft, and the two spoke about Bitcoin micropayments and Lovecraft's cryptographic work. (Todd Decl. ¶7.)

Thereafter, Todd and Lovecraft developed a friendship, communicating through social media platforms about personal and professional matters. (Todd Decl. ¶8.) Todd and Lovecraft saw each other again on December 27, 2014 at the Chaos Communication Congress in Hamburg, Germany, where they went out to dinner and dancing with others after the conference sessions. (Todd Decl. ¶9.) Lovecraft, Todd, and others (including one of Lovecraft's then-lovers) purchased tickets to travel to Berlin to celebrate New Year's Eve together. (Todd Decl. ¶9.)

Over the next several months, Todd and Lovecraft regularly communicated by email, XMPP (OTR), and social media and occasionally met in person. (Todd Decl. ¶10.) For example, on January 30, 2015, Todd visited San Francisco, where Lovecraft and Lovecraft's romantic partner, Mike Perry, were residing. (Todd Decl. ¶11.) Todd, Lovecraft, and Perry went hiking and out to dinner; Lovecraft then invited Todd to spend



1 the night at Lovecraft and Perry's apartment, which Todd did (sleeping on the couch,  
2 while Lovecraft and Perry slept in the bedroom). (Todd Decl. ¶¶11.) When Todd returned  
3 to San Francisco in March 2015, Lovecraft and Perry again invited Todd to stay at their  
4 apartment, where they drank, danced, and listened to music. (Todd Decl. ¶¶12.)

5 Contrary to Lovecraft's declaration, Todd was not in San Francisco on or around  
6 September 5, 2015. (Todd Decl. ¶¶13.) And although Todd traveled to San Francisco in  
7 August 2015, Lovecraft's account of their interactions during this time is false. (Todd Decl.  
8 ¶¶13.) More specifically, on August 22, 2015, Todd travelled to San Francisco to attend  
9 SF Bitcoin Devs Meetup and for other professional reasons, and Todd stayed with his  
10 friends, including Elizabeth Stark. (Todd Decl. ¶¶14.) On the night of August 24, Todd went  
11 out to dinner with Lovecraft, Perry, and others. (Todd Decl. ¶¶14.) On August 26, 2015,  
12 Todd planned to meet Lovecraft at the Workshop Café in San Francisco to work on Bitcoin  
13 Core's Tor support (Todd Decl. ¶¶15.) Todd arrived at the café around 6:00 p.m., with  
14 Lovecraft arriving approximately an hour-and-a-half later. (Todd Decl. ¶¶15.) Todd and  
15 Lovecraft briefly discussed computer code. (Todd Decl. ¶¶15.) When the Workshop Café  
16 closed at around 10:00 p.m., Todd and Lovecraft walked to Taqueria Cancun for dinner.  
17 (Todd Decl. ¶¶15.) Todd and Lovecraft ordered their food in the restaurant but ate in the  
18 public courtyard of the Social Security Administration building. (Todd Decl. ¶¶15.) Lovecraft  
19 and Todd discussed both personal and professional matters while they ate, and Lovecraft  
20 fed spare nachos to rats. (Todd Decl. ¶¶15.) At 11:30, Lovecraft hailed a cab, and Todd  
21 walked to Elizabeth Stark's apartment. (Todd Decl. ¶¶15.) Todd made no sexual  
22 statements to Lovecraft or anybody else during this time. (Todd Decl. ¶¶15.) Moreover,  
23 Todd did not initiate any physical contact with Lovecraft during this time. (Todd Decl. ¶¶15.)

24 After this interaction, Todd and Lovecraft regularly communicated with each other  
25 both publicly and privately, and Lovecraft's communications reflected no fear or dislike of  
26 Todd. (Todd Decl. ¶¶16–17 & Exs. B–C.) In fact, on August 29, 2015 (three days after  
27 Todd and Lovecraft had dinner at Taqueria Cancun), Todd, Lovecraft, and Perry went to  
28 the beach and then to Lovecraft's apartment, where they watched the cartoon Gravity Falls

1 and consumed alcohol. (Todd Decl. ¶¶16.)

2 On September 5, 2015, Lovecraft invited Todd to attend the 2015 Summer Tor  
3 Dev Conference in Berlin, Germany. (Todd Decl. ¶¶18 & Ex. D.) Todd travelled to Germany  
4 for the conference, and between September 29, 2015 and October 8, 2015, Todd and  
5 Lovecraft interacted in personal and professional settings, including attending meetings,  
6 going to nightclubs, dancing, and dining at restaurants. (Todd Decl. ¶¶18.) As an example,  
7 on October 8, 2015, Lovecraft asked Todd to “hang out” with them in person in Berlin.  
8 (Todd Decl. ¶¶18 & Ex. C.) After the Berlin meeting, Lovecraft continued to communicate  
9 with Todd via email, Pond, XMPP (OTR), and social media about a variety of personal and  
10 professional topics, including buying tickets to a conference, advice on travelling in China,  
11 how Lovecraft’s presentations went, and job prospects. (Todd Decl. ¶¶19 & Exs. B–C.) On  
12 May 1, 2016, Lovecraft requested that Todd timestamp Lovecraft’s blog post about  
13 supposed FBI harassment. (Todd Decl. ¶¶20 & Ex. B.) And on May 25, 2016, Lovecraft  
14 informed Todd that rape allegations against journalist and computer security researcher  
15 Jacob Appelbaum were to be made public in the near future. (Todd Decl. ¶¶21 & Ex. B.)

16 **C. Lovecraft’s Numerous False Rape and Other Criminal Allegations Against**  
17 **Third Parties**

18 Jacob Appelbaum: On June 13, 2016, Lovecraft publicly and falsely accused  
19 Appelbaum of sexual assault and rape after he achieved more recognition in his academic  
20 cryptography studies than Lovecraft and Lovecraft’s lover, Henry de Valence.  
21 (Declaration of Jacob Appelbaum in Support of Plaintiff’s Opposition to Defendant’s  
22 Special Motion to Strike (“Appelbaum Decl.”) ¶¶4–9 & Exs. A–D.; Todd Decl. ¶¶42–43 &  
23 Ex. S.) Lovecraft published their allegations against Appelbaum in multiple online media.  
24 (Appelbaum Decl. ¶¶4–10 & Exs. A–F; Todd Decl. ¶¶37–40 & Exs. M–Q.) On August  
25 18, 2016, Todd posted the following statement on Twitter about Lovecraft’s allegations  
26 against Appelbaum: “See, as a relative outsider to that community I can’t tell what is  
27 true and what isn’t. That’s a big problem.” (Todd Decl. ¶¶22 & Ex. E.)

28 Nadim Kobeissi: In February 2019, Lovecraft falsely accused fellow cryptographer

Nadim Kobeissi of rape and sexual assault in multiple posts on Twitter. (Declaration of Nadim Kobeissi in Support of Plaintiff's Opposition to Defendant's Special Motion to Strike ("Kobeissi Decl.") ¶¶7 & Ex. A.) Lovecraft published these accusations against Kobeissi on Twitter after Kobeissi expressed doubts about Lovecraft's allegations against Appelbaum. (Kobeissi Decl. ¶¶9.) Lovecraft's false statements about Kobeissi have substantially harmed him. (Kobeissi Decl. ¶¶10.)

Will Scott: On December 26, 2016, Lovecraft accused third party Will Scott of gang rape. (Todd Decl. ¶¶39 & Exs. O–P.) In response, Shari Steele, Board Member, Former Executive Director, and Former Legal Director of the Electronic Frontier Foundation stated:

Your blog post is not consistent with the Tor community process or your own stated desire for restorative justice. You've lumped someone who didn't commit rape, has shown remorse, and went through a process of rehabilitation with those who would continue to do harm.

(Todd Decl. ¶¶34–36, 39 & Exs. J–L & O–P.)

Daniel Bernstein and Tanja Lange: Between 2015 and 2016, Professor Daniel Bernstein and Professor Tanja Lange served as academic advisors to PhD student Henry de Valence, who was also Lovecraft's lover. (Declaration of Daniel J. Bernstein in Support of Plaintiff's Opposition to Defendant's Special Motion to Strike ("Bernstein Decl.") ¶¶28; Todd Decl. ¶¶42–43 & Ex. S.) Bernstein and Lange also served (and currently serve) as academic advisors to Appelbaum. (Bernstein Decl. ¶¶7.) After Lovecraft accused Appelbaum of rape and sexual assault, de Valence published a statement falsely claiming that he had resigned from his PhD program "due to sexual harassment, bullying, blackmail, and physical harm as a result of their favorite student Jacob Appelbaum, as well as Tanja and Dan's total abdication of their responsibility to manage the workplace environment in their research group." (Todd Decl. ¶¶42–43 & Ex. S.) Thereafter, Lovecraft falsely claimed that:

"His academic advisors have taken steps to punish and threaten reprisal—for myself & others within academia—for our actions #WhyIDidntReport [¶] Let's be clear: Jacob is a sociopath narcissist, and his advisors are tenured academics actively covering up for other reports of abuse."

(Lovecraft Decl. ¶¶16 & Ex. 7.) Lovecraft's statements are false. (Bernstein Decl. *passim*.)

John Gilmore: In October 2017, Lovecraft accused computer pioneer and co-founder of the Electronic Frontier Foundation, John Gilmore, of hiring a thug to assault Lovecraft and drag them into the street. (Todd Decl. ¶¶36 & Ex. L.) At the same time, Lovecraft accused Gilmore of conspiring with this thug to store illegal substances in Gilmore's house. (Todd Decl. ¶¶36 & Ex. L.) Notably, Lovecraft made these accusations shortly after Gilmore questioned their rape allegations against Appelbaum. (Todd Decl. ¶¶37 & Ex. M.)

#### **D. Lovecraft's Rape and Sexual Assault Allegations Against Peter Todd**

Declarant Bryce Wilcox *aka* Zooko ("Wilcox") is the founder and CEO of Zcash, a cryptocurrency business. (Todd Decl. ¶¶24.) Lovecraft is close friends with declarant Wilcox, and Lovecraft herself is a contributor to the Zcash security protocols. (Todd Decl. ¶¶24, 41 & Exs. F & R.) On May 14, 2018, Todd published a Tweet criticizing the security of Zcash. (Todd Decl. ¶¶25 & Ex. G.) Within hours, Lovecraft publicly published the following communication on Github:

"peter todd is complete trash, and not just for his idiotic takes on privacy and security, he's also an abuser who doesn't seem to understand the word 'no' and harasses rape victims (and he's managed to be the only person I've ever had to block on github)."

(Todd Decl. ¶¶26 & Ex. H.) On February 5, 2019, Todd again published several statements on Twitter identifying vulnerabilities in Zcash's cryptocurrency model. (Todd Decl. ¶¶27 & Ex. I.) Just a few hours later, Lovecraft published the Tweet:

"this is not even touching upon the stories of the rape and assault survivors of you and @petertodd and @ioerror and you all have been seen to behave conveniently alike and seen to dutifully protect one another 🙄"

(Todd Decl. ¶¶4, 28 & Ex. A.) Three days (and five Tweets) later, Lovecraft published the following Tweet:

"i love watching the men in my industry who've sexually abused me and many others squirm as i take them out one by one while they nervously await their turn [¶] hahahahahahaha eat goat dung you epoxy brained cowards"

(Todd Decl. ¶¶4, 29 & Ex. A.) On February 20, 2019, Defendant published the following Tweet:

“Nadim Kobeissi is a serial rapist and abuser who defends other rapists including Jacob Appelbaum and Peter Todd and in 2012 he grabbed my face and force kissed me at a conference and i absolutely believe the multiple survivors i’ve personally spoken with since then.”

(Todd Decl. ¶¶4, 30 & Ex. A.) And on February 20, 2019, Defendant published the following Tweet in response to a Tweeted question from Twitter user @\_willish:

[@\_willish:] “Peter todd is a rapist?”

“yes, similar to Nadim, i personally have a story about Peter Todd and i’ve personally spoken with survivors with absolutely awful and horrifying reports who are terrified of him and of coming forward (rightly so) [¶] i however am not afraid and shitty dudes are going down”

(Todd Decl. ¶¶4, 31 & Ex. A.)

Lovecraft’s Tweets are false. (Todd Decl. ¶33.) Todd has never raped or sexually assaulted Lovecraft or anybody else. (Todd Decl. ¶33.) Rather, Lovecraft made up these allegations in response to Todd’s criticism of Zcash. (Todd Decl. ¶33.)

Similarly, Lovecraft and Wilcox fabricated the statements in Lovecraft’s declaration, Wilcox’s declaration, and the declaration of Jane Doe. (Todd Decl. ¶33.) Contrary to Jane Doe’s declaration, Todd did not rape, assault, or coerce anybody into having sex with him. (Todd Decl. ¶33.)

### EVIDENTIARY OBJECTIONS

Todd objects to Lovecraft’s evidence as follows:

- Declaration of Jane Doe (entirety). “Absent extraordinary circumstances, witnesses do not testify anonymously under our system of laws.” *Diamond Pleasanton Enter., Inc. v. City of Pleasanton*, No. 12-CV-00254-WHO, 2015 WL 74946, at \*1 (N.D. Cal. Jan. 5, 2015); see *Doe v. Los Angeles Unified Sch. Dist.*, No. 216-CV-00305CASJEMX, 2017 WL 797152, at \*\*8–9 (C.D. Cal. Feb. 27, 2017) (sustaining objections to Doe declarations). Lovecraft has not sought a protective order to keep Jane Doe’s name under seal, nor has Lovecraft filed any document identifying the signator to



Jane Doe's declaration. "Without any record whatsoever of a witness's identity or their signature, a declarant cannot be held to their statements under 'penalty of perjury.'" See *Los Angeles Unified Sch. Dist.*, 2017 WL 797152 at \*9.

- Declaration of Bryce Wilcox ¶¶4–6: These Paragraphs contain hearsay (i.e. statements of anonymous "Friend," Lovecraft, and Jane Doe) and are not subject to any exception to the hearsay rule. As such, these portions of the Wilcox declaration are inadmissible under Fed. R. Evid. 802.

- Declaration of Ben Rosenfeld ¶12: This Paragraph contains hearsay (i.e. statements of Jane Doe) and is not subject to any exception to the hearsay rule. As such, this portion of the Ben Rosenfeld Declaration is inadmissible under Fed. R. Evid. 802.

- Declaration of Isis Lovecraft ¶¶13, 23 & Exs. 2, 9: Exhibit 2 to the Lovecraft Declaration is supposedly a Twitter direct message exchange between Lovecraft and a "friend" discussing Todd. Exhibit 9 to the Lovecraft declaration is supposedly a copy of a Signal message exchange between Lovecraft and Jane Doe. However, Exhibits 2 and 9 are facially incomplete, do not refer to Todd, and do not identify the person communicating with Lovecraft. Exhibits 2 and 9 are thus inadmissible under Fed. R. Evid. 901. See, e.g., *Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 693 F. App'x 650, 651 (9th Cir. 2017) (the district court properly excluded partial transcript that included numerous ellipses).

## ARGUMENT

### A. Legal Standard

California courts have emphasized that anti-SLAPP only applies to a cause of action that lacks minimal merit. See *Manzari v. Associated Newspapers Ltd.*, 830 F.3d 881, 887 (9th Cir. 2016). Thus, a plaintiff is not required to *prove* the specified claim to the court. See *id.* Rather, and so as to avoid depriving the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim. See *id.* To determine whether a plaintiff has substantiated a legally sufficient claim, a court must look to the pleadings and affidavits presented by both parties; however, the court does not weigh credibility nor evaluate the weight of the evidence. See *id.* Instead,



a court must accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law. *See id.*

The first step in analyzing an anti-SLAPP motion is to determine whether the defendant has successfully made a prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's rights of petition or free speech. *See Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 967 (N.D. Cal. 2013), *aff'd*, 609 F. App'x 497 (9th Cir. 2015). The anti-SLAPP statute defines such an act to include, *inter alia*, "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." *See id.*

If a court finds that the defendant made the requisite showing that the claim is within the scope of the anti-SLAPP statute, the burden shifts to the plaintiff to establish a "probability" of prevailing on the claim by making a prima facie showing of facts that would, if proved, support a judgment in the plaintiff's favor. *See Kashian v. Harriman*, 98 Cal. App. 4th 892, 906 (2002). At the second step of the anti-SLAPP inquiry, the required probability that the plaintiff will prevail is not high; the plaintiff must only establish "minimal merit." *See Hilton v. Hallmark Cards*, 599 F.3d 894, 908 (9th Cir. 2010). A court may consider the defendant's opposing evidence, but only to determine if such evidence defeats the plaintiff's showing as a matter of law; that is, a court must not weigh the evidence or make credibility determinations. *See Manzari*, 830 F.3d at 887; *Kashian*, 98 Cal. App. 4th at 906. In addition, the court will only consider evidence that would be admissible at trial in determining plaintiff's probability of prevailing. *See id.*

**B. The Tweets do not involve an issue of public concern because they solely relate to a private dispute between Lovecraft and Todd.**

As an initial matter, Lovecraft's Tweets about Todd do not involve a matter of public concern or relate to an ongoing controversy. More specifically, Lovecraft cannot turn her private dispute with Todd regarding Zcash into a public matter by simply publishing rape accusations on the internet.

California's anti-SLAPP law does not define "an issue of public interest." See *Grenier v. Taylor*, 234 Cal. App. 4th 471, 481–82 (2015). However, California courts have established the following guiding principles to distinguish a public interest from a private dispute:

- "Public interest" does not equate with mere curiosity;
- A matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small, specific audience is not a matter of public interest;
- The assertion of a broad and amorphous public interest that is generally connected to a specific dispute is not sufficient;
- The focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of a private controversy;
- A person cannot turn otherwise private information into a matter of public interest by communicating it to a large audience; and
- Finally, a defendant cannot, through their own conduct, create a defense by making the plaintiff a public figure.

See *id.*

Several cases have explained that simply tethering a defamatory statement to a general topic of public interest does not transform that statement into a matter of public interest within the scope of anti-SLAPP. See, e.g., *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1252–55 (2017) (expressing doubt that the defendant's statement that the plaintiff had an abortion along with his avowed opposition to "killing babies" contributed to the public debate on women's reproductive rights); *Mann v. Quality Old Time Service, Inc.*, 120 Cal. App. 4th 90, 111 (2004), *disapproved on other grounds by Baral v. Schnitt*, 1 Cal. 5th 376 (2016) (defendant's statements that the plaintiff had falsified data and plagiarized work were only remotely related to the broader subject of global warming and climate change); *Bikkina v. Mahadevan*, 241 Cal. App. 4th 70, 84 (2015) ("By focusing on society's general interest in the subject matter of the dispute instead of the specific speech





or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called ‘synecdoche theory of public issue in the anti-SLAPP statute,’ where ‘[t]he part [is considered] synonymous with the greater whole.’”); *Consumer Justice Center v. Trimedica Int’l, Inc.*, 107 Cal. App. 4th 595, 601 (2003) (advertising claims relating to promised benefits of herbal supplement did not concern an issue of public interest even if a broader discussion of alternative medicine and herbal supplements might; “[i]f we were to accept [defendant]’s argument that we should examine the nature of the speech in terms of generalities instead of specifics, then nearly any claim could be sufficiently abstracted to fall within the anti-SLAPP statute”); *Dual Diagnosis Treatment Center, Inc. v. Buschel*, 6 Cal. App. 5th 1098, 1105–06 (2016) (“[a]lmost any statement, no matter how specific, can be construed to relate to some broader topic”; finding that status of rehabilitation facility was not sufficiently connected to broader topic of consumer protection).

Here, Lovecraft cannot transform their false accusations of rape against Todd into a general debate about sexual assault. First, Lovecraft’s Tweets are pure invective against Todd; the Tweets contain absolutely no exploration, analysis, or discussion of “sexual harassment and violence against women [as a] pressing public concern.” (Mtn. at 9:4; Todd Decl. ¶¶4 & Ex. A.) Second, Lovecraft did not publish their Tweets in the context of an ongoing public controversy. Rather, Lovecraft published the Tweets after Todd criticized Wilcox’s and Lovecraft’s Zcash business. (Todd Decl. ¶¶4, 25–27 & Exs. A, G–I.) Finally, and most importantly, Lovecraft cannot turn a private controversy into a public matter by publishing accusations on the internet. California courts have consistently held that a defendant charged with defamation cannot, through their own conduct, create a defense by creating a public issue. See *Grenier*, 234 Cal. App. 4th at 481–82; *Harkonen v. Fleming*, 880 F. Supp. 2d 1071, 1081 (N.D. Cal. 2012); *Hailstone v. Martinez*, 169 Cal. App. 4th 728, 736 (2008). To hold otherwise would mean that any defendant could turn any private matter into a public concern simply by communicating it to a large number of people. See *Grenier*, 234 Cal. App. 4th at 481–82.

Lovecraft argues that they published the Tweets as part of an ongoing controversy in the cryptography community about alleged misconduct by Jacob Appelbaum. Lovecraft's argument fails. The Appelbaum controversy arose in mid-2016, nearly three years before Lovecraft's Tweets. That controversy was not ongoing when Lovecraft published the Tweets. See *Dual Diagnosis Treatment Center, Inc.*, 6 Cal. App. 5th at 1105–06. Moreover, Todd was not involved in the Appelbaum controversy, even back in mid-2016. (Todd Decl. ¶¶22 & Ex. E.) In short, Lovecraft did not publish the Tweets as part of the Appelbaum controversy. See *Talega Maint. Corp. v. Standard Pac. Corp.*, 225 Cal. App. 4th 722, 734 (2014) (where controversy is of interest to a limited community, the speech must occur in the context of an *ongoing* controversy, dispute, or discussion to be within the scope of anti-SLAPP). Rather, Lovecraft published the Tweets just hours after Todd criticized Zcash.

In summary, Lovecraft has failed to show that the Tweets were made in connection with an issue of public interest, where they are pure invective, directed at a private figure, and were not part of any ongoing controversy.

**C. Todd has established all of the elements of his defamation claim with admissible evidence.**

The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. See *Laker v. Bd. of Trustees of California State Univ.*, 32 Cal. App. 5th 745, 763 (2019). A publication has a natural tendency to injure if it contains a charge by implication from the language employed by the speaker so that a listener could understand the defamatory meaning without the necessity of knowing extrinsic explanatory matter. See *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 112 (2007).

Todd has submitted evidence establishing each of these elements.

- Lovecraft admits that they published the Tweets on Lovecraft's personal Twitter account. (Lovecraft Decl. ¶¶24–25); Todd Decl. ¶¶4, 28–31 & Ex. A.)
- The Tweets are false and defamatory in that they falsely accuse Todd of raping

and sexually assaulting Lovecraft and others. (Todd Decl. ¶¶33.) Importantly, the Tweets both accuse Todd of assaulting and/or raping Lovecraft (i.e. “I personally have a story about Peter Todd”) and of assaulting and raping others (“I’ve personally spoken with survivors . . .”). (Todd Decl. ¶¶4, 28-31 & Ex. A.)

- There is no arguable privilege that would protect the Tweets, and in any event, privilege is treated as an affirmative defense to a claim of defamation. See *Beroiz v. Wahl*, 84 Cal. App. 4th 485, 492 (2000); *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP*, 133 Cal. App. 4th 658, 676 (2005) (defendant bears burden of proof on affirmative defense).
- The Tweets have a natural tendency to injure Todd in that they accuse him of rape and sexual assault. “False statements that accuse the plaintiff of criminal conduct are defamatory on their face.” *Grenier*, 234 Cal. App. 4th at 486.

Lovecraft argues that some of the Tweets are not defamatory per se. Lovecraft’s argument fails. First, Lovecraft disputes that the following Tweet is defamatory per se because “it is a statement directed at a third party, not Todd . . .”:

“This is not even touching upon the stories of the rape and assault survivors of you and @petertodd and @ioerror and you all have been seen to behave conveniently alike and seen to dutifully protect one another.”

(Mtn. at 17:16–21.) Lovecraft’s argument does not make sense. The Tweet specifically accuses Peter Todd of rape and sexual assault. In determining whether a statement is defamatory, a court must look to both what is explicitly stated and what insinuation and implication can be reasonably drawn from the statement. See *Issa v. Applegate*, 31 Cal. App. 5th 689, 703 (2019). The pertinent question is whether a reasonable factfinder could conclude that the statements as a whole, or any of their parts, directly make or sufficiently imply a false assertion of defamatory fact that tended to injure plaintiff’s reputation. See *id.* No reasonable person would view this Tweet as stating or implying anything other than that Todd has raped and sexually assaulted others.

Lovecraft next argues that the following Tweet is not defamatory because it is too

1 generalized, referring only to vague reports and stories. (Mtn. at 16:15–16.) Lovecraft  
2 omits the preceding Tweet in their motion, which is set forth below for completeness:

3       [@\_willish:] “Peter todd is a rapist?”

4       “yes, similar to Nadim, i personally have a story about Peter Todd  
5 and i've personally spoken with survivors with absolutely awful and  
6 horrifying reports who are terrified of him and of coming forward  
7 (rightly so) [¶] i however am not afraid and shifty dudes are going  
8 down.”

9 (Todd Decl. ¶¶4, 31 & Ex. A.) This Tweet specifically accuses Todd of being a rapist.  
10 In determining whether a statement is defamatory, a court must apply a totality of the  
11 circumstances test, first examining the language of the statement itself, and then  
12 examining the context in which the statement was made. *See Kaelin v. Globe Commc'ns*  
13 *Corp.*, 162 F.3d 1036, 1041 (9th Cir. 1998); *Dickinson v. Cosby*, 17 Cal. App. 5th 655,  
14 686 (2017). A defamatory meaning must be found, if at all, in reading the publication as  
15 a whole. *See Manzari*, 830 F.3d at 890. Viewing this Tweet in context, no reasonable  
16 person could view the Tweet as stating anything other than that Todd is a rapist.

17       Finally, Lovecraft argues that the following Tweet is not defamatory because “it  
18 does not even mention him—and there is no indication that the statement was referring  
19 to him”:

20       “i love watching the men in my industry who've sexually  
21 abused me and many others squirm as I take them out one  
22 by one while they nervously await their turn [¶]  
23 hahahahahahaha eat goat dung you epoxy brained  
24 cowards.”

25 As noted above, in determining whether a statement is defamatory, the Court must  
26 examine the language of the statement itself and the context in which it was made.  
27 Here, three days before publishing this Tweet (and just four Tweets earlier), Lovecraft  
28 expressly accused Todd of rape. (Todd Decl. ¶¶4, 28 & Ex. A.) A reasonable person  
would understand that the subsequent reference to “men in my industry who’ve  
sexually abused me” refers to Todd.

Because the Tweets are defamatory on their face, Todd has established his claim

1 for defamation

2 **D. Todd is not a limited-purpose public figure where he did not inject himself**  
 3 **into any controversy regarding allegations of his sexual conduct.**

4 When a defamation action is brought by an all-purpose public figure or a limited-  
 5 purpose public figure, the plaintiff must show that the defendant acted with actual malice  
 6 in publishing the defamatory statement. See *Cabrera v. Alam*, 197 Cal. App. 4th 1077,  
 7 1091 (2011). Lovecruft claims that Todd is a limited-purpose public figure because Todd  
 8 published a couple of Tweets about the rape allegations against third party Jacob  
 9 Appelbaum two-a-half years before Lovecruft's defamatory Tweets. Lovecruft's argument  
 10 fails.<sup>1</sup>

11 In considering whether a person is a limited-purpose public figure, a court must  
 12 examine the nature and extent of his participation in the particular controversy giving rise  
 13 to the defamation. See *Rudnick v. McMillan*, 25 Cal. App. 4th 1183, 1190 (1994); *Addison*  
 14 *v. City of Baker City*, 258 F. Supp. 3d 1207, 1241 (D. Or. 2017), *aff'd*, 758 F. App'x 582  
 15 (9th Cir. 2018). This Court has previously set forth a three-part test for determining  
 16 whether an individual is a limited-purpose public figure: (1) there must be a public  
 17 controversy, which means the issue was debated publicly and had foreseeable and  
 18 substantial ramifications for nonparticipants; (2) the plaintiff must have undertaken some  
 19 voluntary act through which he or she sought to influence resolution of the public issue;  
 20 and (3) the alleged defamation must be germane to the plaintiff's participation in the  
 21 controversy. See *Harkonen*, 880 F. Supp. 2d at 1080; *Grenier*, 234 Cal. App. 4th at 484;  
 22 *Cabrera*, 197 Cal. App. 4th at 1092. Whether an individual is a public figure is a question  
 23 of law that must be assessed through a totality of the circumstances. See *Manzari*, 830  
 24 F.3d at 888.

25 California courts require a "fairly high" threshold of public activity to elevate a

26 \_\_\_\_\_  
 27 <sup>1</sup> Lovecruft does not argue that Todd is an all-purpose public figure. Nor could Lovecruft  
 28 make such an argument because Todd has not achieved such pervasive fame or  
 notoriety that he has become a household name that should be considered a public figure  
 in all contexts. See *Cabrera*, 197 Cal. App. 4th at 1091.

1 private person to limited-purpose public figure status. *Hufstedler, Kaus & Ettinger v.*  
2 *Superior Court*, 42 Cal. App. 4th 55, 69 (1996). To that end, in order to be considered a  
3 limited-purpose public figure, the plaintiff must have thrust himself into the forefront of a  
4 particular public controversy in order to influence the resolution of the issues involved.  
5 *See Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 254–55 (1984); *Nadel v.*  
6 *Regents of Univ. of California*, 28 Cal. App. 4th 1251, 1269 (1994). The mere involvement  
7 of a person in a matter that the media deems to be of interest to the public does not, in  
8 and of itself, transform a person into a public figure for the purpose of a subsequent libel  
9 action. *See Reader's Digest Assn.*, 37 Cal. 3d at 254. In the same vein, a private individual  
10 is not automatically transformed into a public figure just by virtue of becoming involved in  
11 or associated with a matter that attracts public attention. *See Z.F. v. Ripon Unified Sch.*  
12 *Dist.*, 482 F. App'x 239, 240–41 (9th Cir. 2012). Rather, a defendant claiming that the  
13 plaintiff is a limited-purpose public figure must show more than mere newsworthiness to  
14 justify application of the demanding burden of the actual malice standard. *See id.*

15 California courts have required far more purposeful interjection into an active  
16 controversy than present here before finding limited-public figure status. For example, in  
17 *Nadel v. Regents of Univ. of California*, 28 Cal. App. 4th 1251, 1269 (1994), the court  
18 found that two defamation plaintiffs, who had opposed the construction of volleyball court,  
19 were limited-purpose public figures because they had spoken publicly at city council  
20 meetings and demonstrations about the issue, had written letters to the editor of a local  
21 newspaper, a university, and the city, had spoken to media reporters, and had regularly  
22 staffed an “information table” on Sunday afternoons in the park. Similarly, in *Manzari*, 830  
23 F.3d at 888, the Ninth Circuit found that a former model and pornographic actress was a  
24 limited-purpose public figure regarding her HIV positive-status while she acted in  
25 pornography because she operated her own pornographic website, her image had been  
26 downloaded millions of times from her website, she had enjoyed extensive news  
27 coverage related to her success in performing in and marketing online pornography, and  
28 she had given numerous newspaper interviews and testified before Congress. By



contrast, in *Grewal v. Jammu*, 191 Cal. App. 4th 977, 988 n.7 (2011), the court held that a defamation plaintiff, who had co-founded a religious temple, who was an active member of the temple, and who had spoken as an ordinary congregant, had not injected himself into a public controversy about his fitness to serve as the president of the Temple.

In the instant case, Todd did not transform himself into a limited-purpose public figure by voluntarily thrusting himself into a debate about his alleged sexual assault and rape of others or the topic of sexual assault generally. As discussed above, Lovecraft published the Tweets accusing Todd of sexual assault and rape after Todd criticized Wilcox's Zcash business. (Todd Decl. ¶¶25–31 & Exs. A, G–I.) Under no construction of the scope of a limited-purpose public figure could Todd's Tweets about Zcash be considered germane to Lovecraft's Tweets accusing Todd of sexual assault and rape.

Lovecraft argues that Todd became a limited-purpose public figure by voluntarily injecting himself into the general topic of rape and sexual assault. (Mtn. at 12:24–27.) More specifically, Lovecraft argues that in mid-2016, Todd became a limited-purpose public figure when he published two Tweets about Lovecraft's rape accusations against Jacob Appelbaum, and that Lovecraft's 2019 Tweets accusing Todd of rape and sexual assault were part of the same ongoing controversy. (Mtn. at 12:24–13:7.) Lovecraft's argument fails. Todd's Tweets about the Appelbaum controversy were posted two-and-a-half years before Lovecraft published the Tweets at issue. (Todd Decl. ¶¶4, 38 & Exs. A, N.) Lovecraft has submitted no evidence that Todd in any way participated in the Appelbaum controversy, let alone sought to influence the resolution of that controversy, during this two-and-a-half-year period, other than with his initial two Tweets. (Mtn. at 12:24–13:7.) See *Addison*, 258 F. Supp. 3d at 1241 (statements about a controversy that occurred six years ago did not transform plaintiff into a public figure; "Limited purpose public figures are exactly that—public figures for a limited purpose.").

Moreover, even if Todd had voluntarily injected himself into the Appelbaum dispute, that involvement did not transform Todd into a limited-purpose public figure for all debates relating to rape and sexual assault generally. Finally, Todd's Tweets could not

1 be construed as a purposeful interjection in an effort to influence resolution of the  
 2 Appelbaum controversy (a requirement for limited-purpose public figure status). Rather,  
 3 Todd's Tweets stated only that Todd did not know what to believe about the public  
 4 accusations against Appelbaum. (Todd Decl. ¶¶22 & Ex. E.) In summary, Lovecraft's  
 5 unprompted Tweets about Todd, published years after the Appelbaum controversy, have  
 6 no relation to that controversy

7 Most importantly, to hold that an individual who makes a few isolated statements  
 8 about a public controversy transforms himself into a limited-purpose public figure for  
 9 perpetuity would fundamentally undermine the goal of California's anti-SLAPP statute and  
 10 the First Amendment, which seek to encourage continued participation in matters of  
 11 public significance. See Civ. Proc. Code section 425.16. If the Court were to adopt  
 12 Lovecraft's proposed standard, anyone who made any statement, in any limited manner,  
 13 about any public issue, would be indefinitely transformed into a limited-purpose public  
 14 figure.

15 **E. Under any standard, Lovecraft acted with malice when they fabricated the**  
 16 **facts in the Tweets and their filings with this Court.**

17 Before turning to the evidence of Lovecraft's malice, it is important to recognize  
 18 that the Tweets convey two distinct defamatory messages: (1) that Todd sexually  
 19 assaulted and/or raped Lovecraft; and (2) that Todd sexually assaulted and/or raped  
 20 multiple other people. The Tweets convey both of these messages because Lovecraft  
 21 refers to Lovecraft "personally hav[ing] a story about Peter Todd" and to the "rape and  
 22 assault survivors" of Todd. (Todd Decl. ¶¶4, 31 & Ex. A.)

23 In a defamation action, a public figure plaintiff must prove that the defendant made  
 24 the defamatory statement with actual malice—i.e. with knowledge that the statement was  
 25 false or with reckless disregard as to whether it was false. See *McGarry*, 154 Cal. App.  
 26 4th at 114. In contrast, a private figure plaintiff need only prove that the defendant acted  
 27 negligently in making the defamatory statement—i.e. whether a reasonably prudent  
 28 person would have published, or would have investigated before publishing, the



defamatory statement. See *id.* Because Todd has shown that Lovecraft published the Tweets with malice, he has satisfied his burden under either standard. See *Bikkina*, 241 Cal. App. 4th at 89 (finding of actual malice generally includes finding of negligence).

In analyzing malice at the anti-SLAPP stage, the Court must not weigh the evidence. See *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 598–99 (9th Cir. 2010). Rather, the Court must determine whether Todd has established a minimal level of legal sufficiency and triability. See *id.* Even though a public figure plaintiff must ultimately demonstrate malice by clear and convincing evidence, at the anti-SLAPP stage, the plaintiff need show only that the claim (including the malice element) has “minimal merit”; i.e. a probability that he will later be able to produce clear and convincing evidence. See *id.*

A plaintiff may establish malice by circumstantial or direct evidence. See *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 709 (2007). And because direct evidence of malice is extremely difficult to obtain, actual malice is typically proved by circumstantial evidence, evaluated under the totality of the circumstances surrounding the publication. See *D.A.R.E. Am. v. Rolling Stone Magazine*, 101 F. Supp. 2d 1270, 1277–78 (C.D. Cal. 2000), *aff’d sub nom. D.A.R.E. Am. v. Rolling Stone Magazine*, 270 F.3d 793 (9th Cir. 2001). “Evidence of negligence, of motive and of intent may be adduced for the purpose of establishing, by cumulation and by appropriate inferences, the fact of a defendant’s recklessness or of his knowledge of falsity.” *Young v. CBS Broad., Inc.*, 212 Cal. App. 4th 551, 563 (2012) (internal bracketing omitted); see *Reader’s Digest Assn.*, 37 Cal. 3d at 257–58. Factors such as the “failure to investigate, anger and hostility toward the plaintiff, reliance upon sources known to be unreliable, or known to be biased against the plaintiff. . . indicate that the publisher himself had serious doubts regarding the truth of his publication.” *Young*, 212 Cal. App. 4th at 563; see also *Evans v. Unkow*, 38 Cal. App. 4th 1490, 1497 (1995) (reliance solely on a source known to be hostile toward the plaintiff may support a finding of reason to doubt the source’s veracity, and hence constitutional malice).

Direct evidence of malice includes instances where “a story is fabricated by the defendant [or] is the product of his[, her, or their] imagination,” which can be shown by contradictory testimony proffered through declarations. *Christian Research Inst. v. Alnor*, 148 Cal. App. 4th 71, 93 (2007) (citing *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968)). For example, in *Christian Research*, a religious organization brought a defamation action against a former employee who published an online article claiming that the organization was the focus of a federal criminal mail fraud investigation. See *id.* at 76–77. In support of his anti-SLAPP motion, the defendant submitted a declaration stating he called the postal inspector's office and spoke with “Debra,” who told him that the organization was being investigated for fraud. *Id.* Discussing the types of evidence that would demonstrate malice, the court opined that the plaintiffs could “submit[] a declaration from an official at the . . . postal inspector's office that no one named Debra worked there during the time in question, or a declaration from Debra stating she spoke with [the defendant] but did not tell him her office was investigating [the organization].” See *id.* at 93.

Lovecraft acted with malice as to all aspects of the Tweets because Lovecraft knew the Tweets were false when they published them. Regarding the statements that Todd abused or raped Lovecraft, the Tweets are false and Lovecraft knew they were false because they concerned Lovecraft's personal experience. Todd never engaged in any conduct toward Lovecraft that could be viewed in any context as rape or assault. (Todd Decl. ¶¶33.) Rather, the Tweets and Lovecraft's declaration in this respect are complete fabrications. (Todd Decl. ¶¶4, 26–33 & Ex. A, G–I.) Like the evidence discussed by the *Christian Research* Court, the Todd declaration directly rebuts Lovecraft's defamatory statements and establishes Lovecraft's malice. (Todd Decl. ¶¶4, 26–33 & Ex. A, G–I.)

The falsity of Lovecraft's Tweets and declaration is further highlighted by the substantial circumstantial evidence of malice. First, as discussed above, Lovecraft had a motive to assert false allegations against Todd: namely, Lovecraft published the Tweets after Todd criticized Bryce Wilcox's and Lovecraft's Zcash business. (Todd Decl. ¶¶23–31 & Exs. F–I.) Next, and contrary to Lovecraft's declaration, the communications

1 between Lovecraft and Todd that occurred after the supposed assault on Lovecraft show  
2 that Lovecraft and Todd maintained a friendly relationship, which indicates the absence  
3 of a sexual assault or rape. (Todd Decl. ¶¶17 & Exs. B–C.) In fact, following the supposed  
4 assault on Lovecraft, and despite Lovecraft’s claim that “[f]rom that day forward, I sought  
5 to avoid Mr. Todd,” Lovecraft thereafter sought to “hang out” with Todd. (Todd Decl. ¶¶17  
6 & Ex. C.) Lovecraft’s communications with Todd after the alleged assault further  
7 demonstrate that Lovecraft concocted the Tweets to exact revenge against Todd for  
8 criticizing Zcash. (Todd Decl. ¶¶33, *passim*.)

9 Lovecraft’s lack of credibility is further illustrated by their history of routinely and  
10 falsely accusing men and women of sexual assault, rape, and other crimes when those  
11 men and women do not support Lovecraft’s position. In or around June 2016, Lovecraft  
12 falsely accused Jacob Appelbaum of sexual assault and/or rape when Appelbaum was  
13 advancing in his academic studies faster than Lovecraft and Lovecraft’s romantic partner  
14 Henry de Valence. (Appelbaum Decl. ¶¶4–9; Todd Decl. ¶¶37–38, 42–43 & Exs. M–Q,  
15 S.) When third party Nadim Kobeissi raised doubts about Lovecraft’s accusations against  
16 Appelbaum, Lovecraft falsely accused Kobeissi of rape and sexual assault. (Kobeissi  
17 Decl. ¶¶7, 9.) When the academic advisors of Appelbaum and de Valence did not  
18 condemn Appelbaum after Lovecraft accused him of rape, Lovecraft falsely claimed that  
19 they had retaliated against, harassed, and threatened de Valence and Lovecraft.  
20 (Bernstein Decl. *passim*; Lovecraft Decl. ¶¶16 & Ex. 7.) Another time, Lovecraft accused  
21 third party Will Scott of gang rape. In response, the Electronic Frontier Foundation publicly  
22 stated “[y]ou’ve lumped someone who didn’t commit rape . . .” (Todd Decl. ¶¶35, 39 &  
23 Exs. K, O–P.) And after third party and internet pioneer John Gilmore said that Lovecraft’s  
24 allegations against Appelbaum caused a “trial-by-rumour,” Lovecraft accused Gilmore of  
25 engaging a thug to assault Lovecraft and drag them into the street. (Todd Decl. ¶¶36–37  
26 & Exs. L–M.) Given Lovecraft’s complete disregard for the truth, Lovecraft’s testimony is  
27 not credible.

28 Knowing that their history of false accusations against men and women would be

1 looked upon with skepticism, it is not surprising that Lovecraft sought out or fabricated  
2 other “evidence” to support their version of events. In addition to Lovecraft’s complete  
3 lack of credibility, other evidentiary issues make Lovecraft’s account of these events even  
4 more suspect. For instance, in the Twitter and Signal messages where Lovecraft claims  
5 to discuss Todd’s supposed actions, neither party identifies Todd by name at any point.  
6 (Lovecraft Decl. ¶¶13, 23 & Exs. 2, 9.) Moreover, both Exhibits 2 and 9 to the Lovecraft  
7 declaration are facially incomplete, as the screenshots displayed therein include select  
8 portions of the conversations and clearly omit content from the beginning and end.  
9 (Lovecraft Decl. ¶¶13, 23 & Exs. 2, 9.) This is especially notable because while  
10 Lovecraft’s declaration devotes an entire page explaining the details that Jane Doe  
11 supposedly relayed to Lovecraft on December 15, 2018, none of these details appear in  
12 Exhibit 9, which Lovecraft claims are screenshots of that exchange. (Lovecraft Decl. ¶23  
13 & Ex. 9). And while Lovecraft implies that they obtained this evidence from their own  
14 records, the arrangement of the messages and the image of Lovecraft on the top left  
15 corner of the screenshots in Exhibit 9 indicate that they were not taken from Lovecraft’s  
16 phone or other device belonging to Lovecraft. (Lovecraft Decl. ¶23 & Ex. 9.)

17       Given the discrepancies and contradictions in Lovecraft’s declaration, Lovecraft  
18 attempts to shift the Court’s attention to the declaration of Jane Doe. However, Jane Doe’s  
19 declaration was either completely fabricated by Lovecraft or by an accomplice of  
20 Lovecraft. This fabrication of Jane Doe’s declaration is evidenced by the fact that the  
21 declaration is completely false; Todd has never raped or sexually assaulted any person,  
22 let alone under the circumstances described in Jane Doe’s declaration. (Todd Decl. ¶33.)  
23 Given that Jane Doe’s declaration is completely fabricated, and given that Lovecraft  
24 herself has time-and-again fabricated allegations of sexual assault and rape against Todd  
25 and others, it is simply not credible that Lovecraft relied in good faith on Jane Doe’s false  
26 statements in publishing the Tweets. Rather, given Lovecraft’s pattern and practice of  
27 working with others to publish falsehoods about rape and sexual assault (including with  
28 declarant Bryce Wilcox), Lovecraft likely influenced, if not completely fabricated, Jane

1 Doe's false declaration.

2 Moreover, even if Jane Doe had actually told Lovecraft that she had been raped  
3 by Todd, Lovecraft's declaration makes clear that Lovecraft possessed a "high degree of  
4 awareness of [the statement's] probable falsity." *Harte-Hanks Commc'ns, Inc. v.*  
5 *Connaughton*, 491 U.S. 657, 688 (1989). The test for malice is a subjective one, and  
6 courts do not inquire into whether the reason for believing the truth of a particular  
7 statement is reasonable. *See Christian Research*, 148 Cal. App. 4th at 92. Here,  
8 Lovecraft essentially admits that they did not adhere to their own subjective standard in  
9 supposedly believing Jane Doe. Lovecraft declared that they believed Jane Doe's  
10 purported statement about Todd because Lovecraft "believe[s] rape victims." (Lovecraft  
11 Decl. ¶22.) However, applying Lovecraft's own subjective standard, in order for Lovecraft  
12 to have believed that Jane Doe that had been raped, Lovecraft would have needed to  
13 know that Doe had been raped. Because this prerequisite had not occurred, under  
14 Lovecraft's own subjective standard, they could not have believed that Doe's allegation  
15 against Todd was true. This is not a mere semantical dissection. Lovecraft chooses their  
16 words very carefully, typically to create ambiguity regarding their accusations against  
17 others. Lovecraft must be held to the subjective standard they identified.

18 Considering the evidence in the aggregate, it becomes clear that that Lovecraft  
19 knew the Tweets were false when they published them, and that as a result, Lovecraft  
20 also acted negligently. Specifically, Todd has demonstrated that: (1) Lovecraft knowingly  
21 published false Tweets that Todd sexually assaulted and/or raped them, where Lovecraft  
22 personally knew these statements were false; (2) Lovecraft knowingly submitted a false  
23 declaration stating that Todd sexually assaulted them, where Lovecraft personally knew  
24 the statements were false; (3) Lovecraft knowingly published false Tweets stating that  
25 Jacob Appelbaum and Nadim Kobeissi sexually assaulted and/or raped them; (4)  
26 Lovecraft falsely accused other third parties of horrific crimes; and (5) in support of their  
27 motion, Lovecraft fabricated, or at the very least facilitated, the false declaration of Jane  
28 Doe, which supposedly reflects what was told to Lovecraft by a victim of Todd—an

1 assertion that Lovecraft knew was false.

2 Based on this evidence, the Court must deny Lovecraft's special motion to strike.

3 **CONCLUSION**

4 For all of the reasons set forth above, the Court should deny Defendant's special  
5 motion to strike Plaintiff's Complaint.

6  
7 Respectfully Submitted,

8 DATED: July 29, 2019

**KRONENBERGER ROSENFELD, LLP**

9  
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