

NOV 28 2007

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
Clerk of the Superior Court
By Jelena
DEPUTY CLERK

HON. GEORGE A. MIRAM, JUDGE - DEPARTMENT NO. 28

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MATT FOLLNER,)	
)	CASE NO. CIV 461638
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Plaintiff,)	
)	DECISION AND ORDER RE:
vs.)	1. MOTION TO STRIKE OR
)	DEMURRER filed by A&E
DUANE CHAPMAN, et al,)	Television Networks, et al; and
)	2. MOTION TO FILE A 2 nd
Defendants.)	AMENDED COMPLAINT filed
)	by Matt Follner.
)	

The above-entitled matter came on regularly for hearing before the Hon. George A. Miram on October 1, 2007 at 9:00 a.m. in Department LM/28. Kathryn D. Cox appeared for and on behalf of plaintiff. Nathan E. Siegel and James A. Quadra appeared for and on behalf of defendants. The Court, after hearing argument by counsel, took the matter under submission and having given the matter further consideration rendered the following decision:

I. Facts and Procedural Background

This action arises out of a "Dog the Bounty Hunter" television episode, a show about the Defendant, a professional bounty hunter, in which cameras purport to follow him as he tracks down and arrests fugitives. The television episode in

1 question involved the arrest of a fugitive that was employed as a construction worker
2 and semi professional football player by the Plaintiff, Matt Follner.
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4 The complaint alleges that the television falsely portrayed Follner as having
5 lied about the fugitive's whereabouts on one day, only to be caught with the fugitive
6 a day later and arrested with the fugitive. Follner alleges that in truth, he truthfully
7 stated that he did not know the whereabouts of the fugitive, that several months later
8 the fugitive returned to work stating that his legal difficulties were resolved, and that
9 while Follner was restrained, he was not arrested. Defendants bring a special motion
10 to strike and demurrer. Plaintiff moves for leave to amend his complaint.
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13 The Defendants moving papers included a DVD (resubmitted) that contains
14 the subject show. The court has viewed the DVD in its entirety.
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16 II. Analysis

17 **A. Special Motion to Strike**

18 **(1) First Amendment Right Concerning Matter of Public Concern**

19 The anti-SLAPP statute, CCP § 425.16, protects acts in furtherance of a person's right
20 of petition or free speech...in connection with a public issue." Generally, the content
21 of a broadcast television show is speech protected by the First Amendment (Dyer v.
22 Childress (2007) 147 Cal.App.4th 1273, 1280 ["certainly it is beyond dispute that movies
23 involve free speech"]) and there is no question that the instant action is based on the
24 content of such broadcast speech. Put another way, "but for" the broadcast of the
25 show in question, none of the causes of action would exist.
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1 The Anti-SLAPP statute invokes a two prong analysis, first an inquiry as to
2 whether the lawsuit affects certain First Amendment and other rights, and if so,
3
4 second, whether there is a reasonable probability that the Plaintiff will prevail.

5 In Simmons v. Allstate Insurance Co. (2001) 92 Cal.4th 1068, 1073, the Plaintiff
6 argued that the trial court "should have granted his oral request for leave to amend
7 the cross-complaint so as to remove any allegation that might be 'objectionable' under
8 the anti-SLAPP statute." (Id.) The court held: "As Simmons concedes, the anti-SLAPP
9 statute makes no provision for amending the complaint once the court finds the
10 requisite connection to First Amendment Speech. And for the following reasons, we
11 reject the notion that such a right should be implied." Thus Simmons clearly
12 precludes granting leave to amend while a SLAPP suit is pending to delete
13 allegations that bring the pleading within the scope of the Anti-SLAPP statute and
14 thereby avoid an order finding the claim barred by anti-SLAPP.
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16 To avoid the finding in Simmons that leave to amend cannot be granted once
17 the first prong of the anti-SLAPP statute is found to exist, Plaintiff invokes the
18 preliminary issue that because Defendant Chapman is not permitted to act as a
19 bounty in California, one or more actions that Chapman took were illegal, were
20 outside the scope of the anti-SLAPP statute, and, therefore, do not prevent Plaintiff
21 from amending the complaint.
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23 In Flatley v. Mauro (2006) 39 Cal.4th 299, the California Supreme Court affirmed
24 that an action by an entertainer for extortion against an attorney and client was not
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1 protected by the Anti-SLAPP motion where the speech itself was illegal, in that case,
2 extortion. The Court stated:

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4 "We conclude, therefore, that where a defendant brings a motion to strike
5 under section 425.16 based on a claim that the plaintiff's action arises from activity by
6 the defendant in furtherance of the defendant's exercise of protected speech or
7 petition rights, but either the defendant concedes or the evidence conclusively
8 establishes that the assertedly protected speech or petition activity was illegal as a
9 matter of law, the defendant is precluded from using the Anti-SLAPP statute to strike
10 the Plaintiff's action. In reaching this conclusion we emphasize that the question of
11 whether the defendant's underlying conduct was illegal as a matter of law is
12 preliminary, and unrelated to the second prong question of whether the plaintiff has
13 demonstrated a probability of prevailing, and the showing required to establish
14 conduct illegal as a matter of law—either through defendant's concession or by
15 uncontroverted and conclusive evidence—is not the same showing as the plaintiff's
16 second prong showing a probability of prevailing." (*Flatley v. Mauro* (2006) 39 Cal.4th
17 299, 320.)

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19 Here, the lawsuit against Defendants is not based on what Chapman did,
20 whether legal or illegal, but on the broadcasting of a television show depicting
21 Chapman's action. Assuming for sake of argument that Chapman did act illegally in
22 arresting the fugitive in question, there is nothing illegal about the broadcasting of his
23 illegal actions as part of a public television program. If, for example, the entire
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1 television show was conceded by Defendants to be pornographic and therefore illegal
2 to broadcast on the public television frequencies, the anti-SLAPP statute would not be
3 available to Defendants because no legal First Amendment Activity was affected.
4 Where as here, the broadcast of the television show is legal, though potentially subject
5 to civil tort liability arising from alleged harm suffered as a result of such broadcast,
6 the Flatley exception to the anti-SLAPP statute does not apply.
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9 Thus, the exception of Flatley v. Mauro (2006) 39 Cal.4th 299 is inapplicable
10 because the broadcast itself was not an illegal act.
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12 Plaintiff also asserts that the broadcast is not protected by Anti-SLAPP because
13 it involved a private matter and did not involve a matter of public concern.
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15 In Weinberg v. Feisel (2003) 110 Cal.App.4th 1122, 1127 the action involved
16 various causes of action arising out of statements by the Defendant that plaintiff had
17 stolen a valuable collector's item from him. The court held: "since the record does not
18 support the conclusion that plaintiff is a public figure or that he has thrust himself
19 into any public issue, defendant's accusations related to what in effect was a private
20 matter. Under the circumstances, the fact that defendant accused plaintiff of criminal
21 conduct did not make the accusations a matter of public interest. Simply stated,
22 causes of action arising out of false allegations of criminal conduct, made in
23 circumstances like those alleged in this case, are not subject to the anti-SLAPP statute.
24 Otherwise, wrongful accusations of criminal conduct, which are among the most clear
25 and egregious types of defamatory statements automatically would be accorded the
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1 most stringent projections provided by law, without regard to the circumstances in
2 which they were made—a result that would be inconsistent with the purpose of the
3 anti-SLAPP statute and would unduly undermine the protection accorded by
4 paragraph 1 of Civil Code section 46...” The *Weinberg* holding is distinguishable
5 because the speech in question was between to private individuals and was not one
6 of multiple episodes broadcast to the general public as is at issue in the instant case.
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9 A more similar case is *Dyer v. Childress* (2007) 147 Cal.App.4th 1272, 1282,
10 involving the use of the Plaintiff's name for a fictional character in the motion picture
11 “Reality Bites.” In *Dyer*, the court noted: “It does not necessarily follow, however,
12 that a more extensively published statement therefore is in the public interest.
13 Regardless of the scope of the publication, protection under the anti-SLAPP turns on
14 whether the activity of the defendant involves the right of petition or free speech in
15 connection with a public issue.” (Id.) In *Dyer*, the court found that anti-SLAPP did
16 not apply holding that “assuming the issues facing Generation X at the start of the
17 1990’s are of significant interest to the public, Dyer, a financial consultant living in
18 Wisconsin who happened to have gone to school with Childress, was not connected
19 to these issues in any way. Thus, Defendants failed to meet their initial burden of
20 showing the activity underlying Dyer’s lawsuit was in furtherance of defendants’
21 constitutional right of free speech in connection with a public issue or an issue of
22 public concern.” (Id. At 1284.)
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1 In Dyer, the court distinguished other cases involving media defendants such
2 as Ingels v. Westwood One Broadcasting Services, Inc. (2005) 129 Cal.App.4th 1050
3 [plaintiff called into live radio show] and Selig v. Infinity Broadcasting Corp. (2002) 97
4 Cal.App.4th 798, 807-808 [participant in television show *Who Wants to Marry a*
5 *Millionaire*] as involving individuals who “voluntarily thrust themselves into a
6 discussion of public topics” while *Dyer* “did not inject himself into any public
7 debate.” (*Dyer v. Childress* (2007) 147 Cal.App.4th 1272, 1281.) *Dyer* also distinguished
8 *Dora v. Frontline Video, Inc.* (1993) 15 Cal.App.4th 536, 544-546 on the grounds that the
9 plaintiff was a legendary figure in surfing lore and an account of his life depicted a
10 time and place in California history. (*Dyer v. Childress* (2007) 147 Cal.App.4th 1272,
11 1281.)

12 The middle ground between *Dyer* and other media cases such as *Ingels*, *Selig*,
13 and *Dora* appears to have been addressed in *M.G. v. Time Warner, Inc.* (2001) 89
14 Cal.App.4th 623, 629 [identity of members of little league team disclosed in magazine
15 and television program on coaches who molest youths playing team sports]; *Hall v.*
16 *Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1347 [Television program *Celebrity*
17 *Justice* reporting on legal proceedings involving well known individuals disclosed
18 Plaintiff's identity in connection with television show on actor Marlon Brando's will];
19 *Four Navy Seals v. Assoc. Press* (S.D. Cal. 2005) 413 F.Supp.2d 1136 [Plaintiffs' pictures
20 depicted in photographs of abuse of Iraqi captives.] In each of these cases, the
21 identities of private individuals were disclosed in connection with publications on

1 public issues such as child molestation, legal issues involving celebrities, and
2 mistreatment of Iraqi captives. In each case, the matter was found to satisfy the first
3 prong of the anti-SLAPP statute and the matter was resolved on the second prong,
4 whether there was a reasonable likelihood that Plaintiff would prevail.
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6 Here, a weekly television show about the capture of fugitives by a professional
7 bounty hunter is sufficiently a matter of legitimate public concern as to fall within the
8 first prong of the anti-SLAPP statute as defined by M.G. v. Time Warner, Inc. (2001) 89
9 Cal.App.4th 623, 629; Hall v. Time Warner, Inc. (2007) 153 Cal.App.4th 1337, 1347; and
10 Four Navy Seals v. Assoc. Press (S.D. Cal. 2005) 413 F.Supp.2d 1136. The entertainment
11 aspects of such a show, while significant, do not rise to the level of portraying pure
12 fantasy. Law enforcement and the arrest of wanted individuals remains an
13 appreciable, if somewhat unseemly, public concern.
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16 While Plaintiff Follner was not a celebrity himself and did not necessarily
17 thrust himself into a matter of public concern, he was sufficiently involved in that
18 matter to bring his claims within the scope of the anti-SLAPP statute.
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21 This court finds that the first prong of the Anti-SLAPP statute has been
22 satisfied.
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24 **(2) Probability that Plaintiff Will Prevail**

25 **(A) Misappropriation Claim**

26 Civil Code § 3344(a) provides an action against "anyone who uses another's
27 name, voice, signature, photograph or likeness in any manner..." However, Civil
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1 Code § 3344(d) provides that “for purposes of this section, a use of a name, voice,
2 signature, photograph or likeness in connection with any news, public affairs, or
3 sports broadcast or account, or any political campaign shall not constitute a use for
4 which consent is required under subdivision (a).”

6 In *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, the court considered
7 whether Actor Clint Eastwood could bring a misappropriation claim for the National
8 Enquirer’s Publication of an article describing a “love triangle” between Eastwood,
9 singer Tanya Tucker, and actress Sandra Locke. (Id. at 414-415.) The court noted that
10 in defamation cases involving the First Amendment Right of Speech, courts have
11 permitted a public figure plaintiff to recover upon showing that that the defendant
12 published defamatory statements with actual malice, i.e. either with knowledge of
13 their falsity or with reckless disregard for the truth and that in privacy actions
14 involving deliberate fictionalization presented as truth, the standard of fault required
15 to impose liability on publisher for matters of public interest, the target must prove
16 reckless falsehood. (Id. at 424.) The court concluded: “We therefore hold that Civil
17 Code section 3344, subdivision (d), as it pertains to news, does not provide an
18 exemption for a knowing or reckless falsehood.” (Id. at 425.)

23 The *Eastwood* Court’s holding that Civil Code § 3344(d) does not protect
24 knowing or reckless falsehood was based on an evaluation of the mechanism for First
25 Amendment Protection in defamation and privacy litigation where a public figure
26 plaintiff must prove actual malice, i.e. knowing or reckless disregard for the truth also
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1 referred to by the Eastwood court as scienter. (Id. at 424-425 [citing Associated Press v.
2 Walker (1967) 388 U.S. 130, 162 [18 L.Ed.2d 1094, 1115, 87 S.Ct. 1975] [defamation]
3 and Cox Broadcasting v. Cohn (1975) 420 U.S. 469, 490 [43 L.Ed.2d 328, 346, 95 S.Ct.
4 1029][privacy].)

5
6 Eastwood concluded: "the standard of scienter, whether in a defamation or
7 privacy case, reflects the Supreme Court's recognition that while a calculated
8 falsehood has no constitutional value, such statements are inevitable in the
9 continuing debate on public issues and thus, the fruitful exercise of the freedoms of
10 speech and press requires 'breathing space' for speech that matters. [citations]
11 Accordingly, we conclude whether the focus is on the status of Eastwood, or on
12 materials published in the Enquirer article, scienter of the alleged calculated
13 falsehood is the proper standard of fault to impose liability on the Enquirer..." (Id. at
14 424-425.) Thus, the knowing or reckless falsehood standard applied to Civil Code §
15 3344(d) in Eastwood came directly from existing First Amendment defamation and
16 privacy cases and was designed to give Civil Code § 3344(d) appropriation media
17 defendants the same protection they would receive in defamation or privacy causes
18 of action. Thus, the application of the Eastwood standard to the instant case does not
19 significantly expand the law of defamation as argued by the defense, because it
20 incorporates the U.S. Supreme Court's protection of defamation and privacy claims
21 against media defendants directly into the Civil Code § 3344 cause of action.
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1 To the contrary, while an appropriation claim against a non-media defendant
2 would only require a showing of use, not of false light or reckless or knowing
3 falsehood, Eastwood incorporates those requirements into the Civil Code § 3344(d)
4 exception and therefore preserves Constitutional protection by making actual malice
5 or scienter an element of an appropriation claim against a media defendant. While a
6 defamation or privacy claim must only prove the elements of those causes of action,
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8 defamation or privacy claim must only prove the elements of those causes of action,
9 to succeed against a media defendant, a Civil Code § 3344 plaintiff must essentially
10 prove *both* appropriation and defamation/false light. Where this standard is met, it is
11 impossible for the use of a misappropriation claim to expand the law of defamation.
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14 **1. The Public Interest Exception: Civil Code § 3344(d) Does Not Provide An**
15 **Exemption For A Knowingly False or Recklessly False Segment Of A Broadcast**
16 **That Is Likely To Mislead The Viewer.**
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18 In Eastwood, the court was not called upon to determine whether a claim for
19 misappropriation would exist when a publication on an issue of public interest was
20 partially true and partially false because Eastwood asserted that the entire article was
21 allegedly false. The court stated: "whatever the line in a particular situation is to be
22 drawn between news accounts that are protected and those that are not, we are quite
23 sure that the First Amendment does not immunize Enquirer when the entire article is
24 allegedly false." (Id. at 425.) Thus, Eastwood did not hold that only compete
25 fabrications are free from immunity, but that complete fabrication was a safe harbor
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1 and that the line between partial fabrications and complete fabrications did not have
2 to be drawn in that case.
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4 The Enquirer argued that falsity is the predicate for false light claims, not for
5 commercial appropriation. (Id. at 425.) The court disagreed holding that “the
6 deliberate fictionalization of Eastwood’s personality constituted commercial
7 exploitation, and becomes actionable when it is presented to the reader as if true with
8 the requisite scienter.” (Id. at 426.) Noting that the issue was unsettled in California,
9 the court opined “we see no constitutional barrier to imposing damages under section
10 3344 subdivision (a) measured not only by the harm done to plaintiff, but additionally
11 by the benefit enjoyed by defendant.” (Id. at 426 fn. 10.) Thus while false light claims
12 and the Civil Code § 3344(a) cause of action with scienter both require knowing or
13 reckless falsity, *Eastwood* opined that an appropriation claim could constitutionally
14 permit a different measure of damages.
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18 In the instant action, Defendants argue that to escape Civil Code § 3344(d)
19 there must be a complete fabrication or falsity and that there is no dispute that the
20 bulk of the broadcast, the part relating to the capture of the fugitive, was accurate.
21 While not an issue discussed by the court in *Eastwood*, the Appendix to the *Eastwood*
22 opinion contains an Exhibit A depicting the cover of the National Enquirer in
23 question. (Id. at 427.) The lead story, comprising 70%-80% of the cover advertises an
24 article concerning the “Secret Heartache” of (then) Dukes of Hazard star Cathy Bach,
25 and a small box in the lower left hand corner shows pictures of Eastwood and Tucker
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1 with the line: "Clint Eastwood in Love Triangle with Tanya Tucker." Thus, even if
2 the complete falsity language of *Eastwood* is taken literally, the Enquirer Publication in
3 question contained other articles that were not alleged to be false or misleading. Thus
4 the fact that not everything in the instant Broadcast was false or fabricated does not
5 necessarily preclude a misappropriation claim.

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8 *Maheu v. CBS, Inc.* (1988) 201 Cal.App.3d 662 involved an action by the former
9 aid to Howard Hughes. The court discussed *Eastwood* above and characterized it as
10 holding that "had the article not been alleged to be entirely false, it would have come
11 within the exemption set forth in Civil Code § 3344, subdivision (d), for news
12 accounts. (Id. at 677.) The *Maheu* court noted that in that case, the plaintiff "does not
13 allege that all or even a majority of the material published was false. Since Appellant
14 does not dispute the truthfulness of the matters published, the material is protected as
15 a news account under section 3344, subdivision (d)." (Id.) The *Maheu* court affirmed
16 the lower court decision sustaining a demurrer without leave to amend noting that
17 the plaintiff "has failed to incorporate allegations of knowing or reckless falsity into
18 these causes of action, although he has been afforded numerous opportunities to do
19 so." (Id. at 677.) Thus, the holding in *Maheu* only addresses a publication in which
20 there are no allegations of reckless falsity.

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25 A review of the California Cases citing *Eastwood* reveals only one California
26 case **addressing** the extent of knowing or reckless falsity necessary to take a
27 publication outside the protection of Civil Code § 3344(d), the **depublished** Court of
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1 Appeals decision in Shulman v. Group W Productions, Inc. (1996) 51 Cal.App.4th 850
2 [Depublished and superseded by Shulman v. Group W Productions, Inc. (1998) 18
3 Cal.4th 200.) While the Court of Appeals decision includes a discussion of a
4 commercial appropriation of likeness cause of action under Civil Code § 3344 and
5 concluded that “the errors complained of were trivial and did not rise to the level of
6 knowing and reckless falsehood required to destroy the public affairs exemption of
7 Civil Code section 3344, subdivision (d)” (Id. at 892.), no discussion of the
8 appropriation claim appears in the Supreme Court Opinion inferring that the issue
9 was not included in the matters for which review was requested.
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13 The facts of Shulman are somewhat analogous to the instant case in that the
14 case arose out of a documentary television showing the rescue and transportation of
15 two seriously injured auto accident victims, one of whom, the plaintiff, was
16 paralyzed. The most legally significant difference with the instant case is that the
17 Plaintiff in Shulman was the focus of the broadcast, not a peripheral character. The
18 operative complaint included two causes of action for invasion of privacy, one based
19 on the intrusion of videotaping the rescue and one for the publication of the private
20 facts therein, two for commercial exploitation of their likeness, one at common law
21 and one a statutory claim under Civil Code § 3344, an action for intentional infliction
22 of emotional distress, and an action for injunction. (Id. at 864.) The trial court granted
23 summary judgment, the Court of Appeals reversed as to the publication of private
24 facts and intrusion claims, but affirmed the dismissal of the appropriation claim. The
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1 Supreme Court concluded that summary judgment was proper with regard to the
2 publication of private facts claim, improper with regard to the intrusion claim, and
3 did not address the appropriation claim. (*Shulman v. Group W Productions, Inc.* (1998)
4 18 Cal.4th 200, 209.)

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6 In evaluating the misappropriation claim, the **depublished** Court of Appeals
7 opinion had "no difficulty concluding that a television show which depicts the work
8 of air rescue paramedics is a matter of public affairs." (Id. at 891.) The instant
9 broadcast is analogous in that it involved the on-the-scene filming of a bounty
10 hunter's search and arrest of a fugitive and would also appear to qualify as a matter
11 of public affairs. The **depublished** Court of Appeals decision then provided the
12 following analysis:
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15 "Appellants attack the applicability of this public affairs exemption on the
16 ground that the broadcast was knowingly or recklessly false. (See *Eastwood v. Superior*
17 *Court* (1983) 149 Cal.App.3d 409, 425, 198 Cal.Rptr. 342.) In support, they point to the
18 following: the narrator said six people were injured when only four had been; the
19 narrator falsely implied that gasoline was dripping; siren sound effects were added
20 and appellants' statements and exclamations were edited to appear at other portions
21 of the tape, all to heighten dramatic effect.
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25 The court in *Eastwood* overturned the lower court's order sustaining the
26 National Enquirer's demurrer to actor Clint Eastwood's cause of action under Civil
27 Code section 3344. Eastwood sued after the paper ran an article claiming he was part
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1 of a love triangle. Turning to federal court decisions construing the First Amendment
2 in a defamation context, the appellate court held that the news and public affairs
3 exemption of Civil Code section 3344, subdivision (d) did not protect knowing or
4 reckless falsehoods. (Id. at p. 425.) This was especially so, the court held, when the
5 entire article was allegedly false. (Ibid.)
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8 The plaintiff in *Baugh v. CBS, Inc.* [N.D. Cal. 1993] 828 F.Supp. 745, argued that
9 Civil Code section 3344, subdivision (d) did not protect the broadcast of her in-home
10 discussion with a domestic violence counselor because her segment was
11 sensationalized by mixing it with other episodes. The district court rejected this
12 contention because it was not entirely false in the sense used in *Eastwood* and was
13 the broadcast of an actual event which occurred at plaintiff's home. (Id. at pp. 753-
14 754.)
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17 The court in *Carlisle v. Fawcett Publications* [1962] 201 Cal.App.2d 733,
18 considered a defamation claim by the man who married actress Janet Leigh when she
19 was a young teenage girl. Among others, he contended the article was fictionalized
20 for dramatic effect, placing the date of their marriage around the attack on Pearl
21 Harbor. "The mere fact that there are errors in the account does not constitute an
22 invasion of privacy. [Citation.]" (Id. at p. 748.) The truth required of a publication "is
23 not complete truth, but rather substantial truth." (*St. Surin v. Virgin Islands Daily*
24 *News, Inc.* (3rd Cir. 1994) 21 F.3d 1309, 1316.)
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1 With these decisions in mind, we hold that the errors complained of were
2 trivial and did not rise to the level of knowing or reckless falsehood required to
3 destroy the public affairs exemption of Civil Code section 3344, subdivision (d),
4 [footnote omitted] Summary judgment on this claim was properly granted. We
5 alternatively hold that summary judgment was proper as to Mercy Air since it did not
6 broadcast the videotape and therefore did not appropriate appellants' likenesses in
7 any event.”
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10 (Shulman v. Group W Productions, Inc. (1996) 51 Cal.App.4th 850 Depublished
11 and superseded by Shulman v. Group W Productions (1998) 18 Cal.4th 200.) While the
12 Court of Appeals' decision in *Shulman* is not citable authority, this court finds the
13 Court of Appeals' analysis in *Shulman* to be persuasive and not inconsistent with the
14 ruling of the Supreme Court in that case.
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17 In St. Surin v. Virgin Islands Daily News, Inc. (3rd Cir. 1994) 21 F.3d 1309, 1316,
18 the court elaborated on the “substantial truth” doctrine stating: “The truth required is
19 not complete truth but rather substantial truth. Minor inaccuracies regarding factual
20 information will not make an article untrue and libelous so long as the statement
21 would not materially mislead the reader.” (Id. at 1326 [citing Orr v. Argus-Press Co.
22 (6th Cir. 1978) 586 F.2d 11108, 1112; Auvil v. CBS 60 Minutes (E.D. Wash. 1992) 800
23 F.Supp. 928, 936; Bose Corp v. Consumers Union of United States, Inc. (1984) 466 U.S. 485,
24 513, 80 L.Ed.2d 502, 104 S.Ct. 1949 (“Erroneous statement is inevitable in free debate,
25 and . . . must be protected if the freedoms of expression are to have the 'breathing
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1 space' that they 'need . . . to survive.'" (quoting New York Times v. Sullivan (1964) 376
2 U.S. 254, 271-72, 11 L.Ed.2d 686, 84 S.Ct. 710)].)

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4 Thus, it would appear that the traditional Constitutional protection afforded to
5 media defendants and incorporated into Civil Code § 3344 actions by Eastwood does
6 not require complete falsity—notwithstanding the presence of that language in
7 Eastwood—but only sufficient falsity to materially mislead the reader or viewer.
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9 Applying the St. Surin standard to the instant case, there is no dispute that the
10 bulk of the instant episode, including the fact of Plaintiff being handcuffed was
11 accurate; however, the representation at the end of the show, that Plaintiff was
12 arrested for harboring and aiding and abetting a fugitive, is alleged to be knowingly
13 false. The incident was not a necessary or even relevant part of the main story, and
14 the producers went out of their way to identify the person being accused of criminal
15 conduct by superimposing Plaintiff's name over Plaintiff's picture.
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18 As noted above, St. Surrin placed a caveat on the incidental error doctrine
19 providing that some errors are permissible "so long as the statement would not
20 materially mislead the reader." St. Surin v. Virgin Islands Daily News, Inc. (3rd Cir.
21 1994) 21 F.3d 1309, 1316.) Here, the Defendants published allegedly incorrect
22 information that materially misleads the viewer as to the nature of the police action
23 taken with regard to the Plaintiff.
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26 If Plaintiff can prove knowing or reckless falsity, the First Amendment does
27 not protect this action because this was not the type of "erroneous statement [that] is
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1 inevitable in free debate" (New York Times v. Sullivan (1964) 376 U.S. 254, 271-72, 11
2 L.Ed.2d 686, 84 S.Ct. 710) but a deliberate decision to add information that is alleged
3 to be recklessly false or knowingly false to enhance the marketability of an otherwise
4 constitutionally protected broadcast. The false portion of the broadcast was
5 unnecessarily added to the main program in much the same way that the National
6 Enquirer article at issue in Eastwood was added to the apparently constitutionally
7 protected publication of other news in that issue of the National Enquirer. Thus, the
8 instant broadcast is alleged to be sufficiently false to satisfy the Constitutional
9 standard that Eastwood sought to incorporate from defamation and privacy law.

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13 Plaintiffs also complain that the show was knowingly false or misleading in
14 that it collapsed the time line to make events separated by several months appear to
15 be occur on consecutive days and that Plaintiff appeared to be lying when he was
16 shown one day saying that he had no knowledge of the location of the fugitive, and
17 the next day, which was really several months later, in the company of the fugitive.

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19
20 Courts have generally held that this type of inaccuracy is protected by the First
21 Amendment. In Carlisle v. Fawcett Publications (1962) 201 Cal.App.2d 733, 748 a
22 defamation claim by the man who married actress Janet Leigh when she was a young
23 teenage girl the Court of Appeals affirmed the trial court's order sustained a
24 demurrer without leave to amend to a complaint alleging libel and invasion of
25 privacy. (Id. at 735.) The Plaintiff contended that the article was fictionalized for
26 dramatic effect, placing the date of their marriage around the attack on Pearl Harbor.
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1 "The mere fact that there are errors in the account does not constitute an invasion of
2 privacy. [Citation.]" (Id. at p. 748.)
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5 **2. Plaintiff Has Not Provided Sufficient Evidence of Scienter Or Actual Malice (i.e.**
6 **Knowing or Reckless Falsity Malice To Satisfy The "Likely To Prevail" Standard**
7 **Of An Anti-SLAPP Motion.**
8

9 Having determined qualitative nature of the evidence necessary for a Civil
10 Code § 3344 claim to satisfy the Constitutional protection afforded a media
11 defendant, the final question was whether the evidence offered in support of the
12 Anti-SLAPP motion was sufficient to meet this standard.
13

14 In Rosena v. Scherer (2001) 88 Cal.App.4th 260, 274, the court evaluated an
15 Anti-SLAPP motion brought in defense of a defamation action by a public figure in a
16 political campaign and determined that to establish a "probability that the plaintiff
17 will prevail" pursuant to CCP § 425.16(b)(1) "plaintiff cannot prevail unless he can
18 also demonstrate by clear and convincing evidence that the objectionable statements
19 were made with actual malice." (Id.) Similarly, in Conroy v. Spitzer (1999) 70
20 Cal.App.4th 1446, 1451, another anti-SLAPP motion brought in response to a political
21 campaign defamation action, the court held: "as a public official, Conroy could not
22 recover damages for Spitzer's statements about his fitness for office unless he proved
23 by clear and convincing evidence that the statements were made with actual
24 malice' – that is, with knowledge that they were false or with reckless disregard of
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1 whether they were false or not.” (Id. [quoting New York Times v. Sullivan (1964) 376
2 U.S. 254, 279-280 [11 L.Ed.2d 686, 84 S.Ct. 710, 726].) Since Eastwood incorporates that
3 same standard into Civil Code § 3344 causes of action, then to survive an Anti-SLAPP
4 motion the instant plaintiff must prove malice by clear and convincing evidence.

5
6 “The clear and convincing standard requires that the evidence be such as to
7 command the unhesitating assent of every reasonable mind.” (Rosenauro v. Scherer
8 (2001) 88 Cal.App.4th 260, 274 [quoting Beilenson v. Superior Court (1996) 44
9 Cal.App.4th 944, 950].) “Malice can be established by showing that defendants had
10 recklessly disregarded the truth or knew the statements were false. (Id. [quoting
11 Beilenson at p. 950])
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13

14 Here Defendant Duane Chapman and his wife Beth Chapman, both
15 professional bounty hunters who are veterans of many arrests documented on the
16 very television show at issue, taunted the Plaintiff on camera that he was going to jail
17 for harboring or aiding and abetting a fugitive.
18

19 Plaintiff’s declaration provides: as follows:
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21 40. As four of my guys and I were trying to leave for lunch, Dog and his troops
22 blocked us in.

23 41. Dog and two other guys ripped open the passenger door and pulled Sam
24 out.
25

26 42. Somebody pulled me and the other guys out and made us lie flat on the
27 ground.
28

1 43. I was handcuffed and made to lie there. Nobody said what was happening.

2 44. I knew some of the police. I said "Hey guys, what's going on?" they
3 assured me that it was not about me and that I was ok.
4

5 45. I was not ok. I was stunned and it began to dawn on me how bad this was
6 going to be for me, my business and my family.
7

8 46. The other guys, including Sam, who was the only other person handcuffed,
9 were allowed to get up, but not me.

10 47. Suddenly Dog and Beth came running at me. They were both screaming
11 and I couldn't make it all out. They said I was going to jail. That got my attention.
12

13 48. Suddenly I heard Beth scream at me that they were going to the semi-pro
14 league to get the team dismantled. That made me feel physically sick.

15 49. After Sam was put in the police car, the police took the handcuffs off of me
16 as though nothing had happened.
17

18 50. None of the police officers questioned me.

19 51. I was not charged with anything.
20

21 52. A woman with a clipboard approached me and asked me to sign a release
22 and I told her I would want to talk to an attorney first.

23 (Declaration of Matt Follner.)
24

25 While Plaintiff argues in his memorandum of points and authorities that the
26 Chapmans and their production crew were present when Plaintiff was released and
27 aware that Plaintiff was not arrested, the Follner declaration does not contain any
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1 statement concerning whether Defendants were present when Follner was released
2 and therefore had, as claimed, actual knowledge that the representations made on the
3 camera were false. Plaintiffs also submit the declaration of Fidel Bartolon concerning
4 the events that occurred during he arrest of the fugitive, but do not offer any facts
5 indicating that Defendants had knowledge that Plaintiff was not arrested. Thus while
6 there is evidence that Plaintiff was not arrested and released at the scene, there is no
7 evidence that Defendants had actual knowledge that Follner had not been arrested by
8 the police and was released at the scene. There most certainly is no demonstration by
9 plaintiff_of clear and convincing evidence that Defendant's possessed knowledge of
10 the falsity of their broadcast at the time the show was broadcast.

14 Plaintiff does offer clear and convincing evidence that the program was edited
15 to make events that occurred several months apart appear on consecutive days, with
16 the result that Plaintiff appeared to be lying when he denied knowing the
17 whereabouts of the fugitive and then was found with the fugitive on what was
18 portrayed the next day. Several parts of the program refer to Plaintiff as a liar.
19 However, courts have generally found that the first amendment protects such
20 inaccuracies. (Carlisle v. Fawcett Publications (1962) 201 Cal.App.2d 733, 748.)
21 Defendants offer the declarations of the Chapmans indicating that they believed
22 Plaintiff was lying about the whereabouts of the fugitive (Declaration of Alice
23 Elizabeth Chapman at ¶ 9; Declaration of Duane Chapman at ¶ 8.) There is no clear
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1 and convincing evidence that the Chapmans in fact believed that Plaintiff had been
2 truthful or that the Chapmans knew that Plaintiff had in fact been truthful.

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4 In Christian Research Institute v. Alnor (2007) 148 Cal.App.4th 71, 76-77, the
5 Defendant, who maintained a website called the Christian Sentinel, published under
6 the heading "Breaking News" a story stating that "Christian Research Institute (CRI)
7 President Hank Hanegraaff has become the focus of a federal criminal mail fraud
8 investigation sparked last week by an unusual 'urgent memo' fundraising appeal
9 letter he released on Friday on CRI's website." When CRU sued for defamation,
10 Alnor responded with an anti-SLAPP motion which was denied in the trial court but
11 reversed and ordered granted by the Court of Appeals on the grounds that the
12 Plaintiff failed to demonstrate by clear and convincing evidence that Alnor made the
13 challenged statement with actual malice. (Id. At 76.) Malice may be inferred by
14 hostility. (Id. at 85.) While malice may be inferred by a complete fabrication, evidence
15 that the person believed the statements to be true at the time made was not
16 sufficiently offset by evidence of contrary knowledge to meet the clear and
17 convincing standard. (Id. at 84-88.)

18
19 While there is some evidence of hostility, the hostility is explained by the
20 Chapman's professed belief that Plaintiff had lied, and there has not been any
21 evidence that they in fact believed the contrary, that Plaintiff had been truthful.
22 While the broadcast augmented the appearance that Plaintiff had lied by
23 misrepresenting the time frame of events, there is no evidence that Defendants knew
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1 or believed the resulting inference i.e. that Plaintiff has lied, to be untrue. Since
2 there is no evidence that Defendants were aware at the time the program was
3 broadcast that Plaintiff had not in fact been arrested for aiding and abetting a fugitive,
4 Plaintiff has failed to establish actual malice or scienter.
5

6 The Anti-SLAPP motion on the misappropriation claim is granted.
7
8

9 **(B) Violation of Right of Privacy**

10 The privacy claim poses a different problem because the Plaintiff must show a
11 reasonable expectation of privacy. In *Four Navy Seals v. Associated Press* (N.D. Cal.
12 2005) 413 F.Supp.2d 1136, 1143, the court held "As a matter of law, Plaintiffs have
13 failed to state a cause of action for invasion of their state constitutional privacy
14 interest. This conclusion is based on the fact that Plaintiffs have not, and cannot,
15 adequately plead facts supporting a conclusion that any expectation of privacy as to
16 their photographs would be reasonable under the circumstances of this case. The
17 SEAL plaintiffs were active duty military members conducting wartime operations in
18 full uniform who chose to allow their activities to be photographed and placed on the
19 internet. In this context, it would not be reasonable for anyone to expect the images to
20 remain private." Here, Plaintiff Follner consented to be photographed in one portion
21 of the program, and Plaintiff does not have a reasonable expectation of privacy that
22 his photograph will not be taken when in public, especially when present at a
23 potentially newsworthy event. The fact that Plaintiff owned a team, had a felony
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1 arrest, or had involvement with a person who was a fugitive were less widely known,
2 but were not necessarily private facts for which disclosure was prohibited. Unlike a
3 misappropriation or false light or defamation claim, the fact that false impression is
4 created does not state a claim for violation of the right to privacy.
5

6 Defendants assert failure to comply with the retraction statute, Civil Code §
7 48a, as an affirmative defense. The retraction statute does not apply to pure privacy
8 claims. (*Kapellas v. Kofman* (1969) 1 Cal.3d 30, 35), but does apply to privacy claims
9 based on placing the plaintiff in a false light in the public eye in that they are
10 analogous to a defamation claim. (*Selleck v. Globe Intern. Inc.* (1985) 166 Cal.App.3d
11 1123, 1133-1134.) Plaintiff's Opposition states: "Matt Follner's is considered on based
12 on informational privacy." (Opposition at 12:15-16.) While Plaintiff makes a false light
13 argument, it appears that the privacy cause of action is not based on false light and
14 that the retraction statute does not apply.
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18 Since Plaintiff has not been able to plead facts showing that private
19 information was disclosed, the special motion to strike is granted with respect to the
20 Constitutional right to privacy cause of action. There does not appear to be a
21 reasonable likelihood that Plaintiff will prevail.
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24

25 (C) Intentional and Negligent Infliction of Emotional Distress

26 These causes of action are based on the broadcast of a television episode
27 stating that Plaintiff was paying a fugitive under the table and showing Plaintiff
28

1 being detained ostensibly for harboring fugitives. While these causes of action are
2 based on acts that could foreseeably cause some emotional distress, the conduct was
3 not so outrageous or would so foreseeably cause severe emotional distress as to give
4 rise to the elements of this claim. Even if the elements of a intentional or negligent
5 infliction of emotional distress were deemed to exist, the failure to demand a
6 retraction pursuant to Civil Code § 48a would appear to eliminate any damages
7 because emotional distress by its very nature is an element of general damages.
8 While there do not appear to be any cases on this issue, it would not be reasonable for
9 Civil Code § 48a to bar general damages for failing to seek a retraction in a cause of
10 action labeled defamation, but would permit such damages in a cause of action label
11 intentional or negligent infliction of emotional distress based on the same facts as the
12 defamation claim.
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18 **(D) Negligence**

19 The Constitutional protections afforded the media in defamation claims can
20 not be circumvented by simply recasting the same allegations as negligence. Courts
21 have generally held that where a cause of action other than defamation is essentially
22 asserting a defamation claim, that the statutory and malice requirements applicable to
23 defamation cases apply. (See e.g. *Selleck v. Globe Intern. Inc.* (1985) 166 Cal.App.3d
24 1123, 1133-1134.) In the context of punitive damages, courts have held that
25 allegations of negligence will not support a claim for malice.
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1 The Special Motion to strike is therefore granted with regard to the negligence
2 claim.
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5 **(E) Defamation & False Light Claims In The Proposed Amended Complaint**

6 The Proposed Amended Complaint appears to plead an adequate Defamation
7 and False Light Claim. The broadcast falsely asserted that Plaintiff was paying the
8 fugitive under the table, and the taunting of Plaintiff while handcuffed in a manner
9 that inferred that he had been arrested for harboring a fugitive would qualify as
10 either defamation or false light. While Plaintiff has not requested a retraction, it
11 appears that Plaintiff can prove special damages.
12
13

14 Actual Malice is demonstrated by evidence that (1) the taunting of Plaintiff
15 was itself malicious, (2) Broadcasting a scene implying that Plaintiff had been arrested
16 or harboring a fugitive when the Defendants were present as Plaintiff was released by
17 the police indicating that there was no validity to the view that Plaintiff was arrested;
18 and (3) Plaintiff asserts that Defendant Beth Chapman screamed that she was going to
19 the pro-league to have Plaintiff's team dismantled. (Follner Declaration at ¶ 48.)
20
21 However, the proposed amended complaint also contains various causes of action for
22 which the instant Anti-SLAPP motion has been granted. Thus, the motion for leave
23 to amend is denied without prejudice to Plaintiff's right to seek leave to amend to
24 state claims that are not inconsistent with this ruling.
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SUMMARY AND RULING

The Anti-SLAPP motion is granted with regard to all cause of action.

A television broadcast about the capture of fugitives by a professional bounty hunter, analogous to the broadcast of the rescue victims in Shulman v. Group W Productions (1998) 18 Cal.4th 200, is sufficiently a matter of legitimate public concern as to fall within the first prong of the anti-SLAPP statute as defined by M.G. v. Time Warner, Inc. (2001) 89 Cal.App.4th 623, 629; Hall v. Time Warner, Inc. (2007) 153 Cal.App.4th 1337, 1347; and Four Navy Seals v. Assoc. Press (S.D. Cal. 2005) 413 F.Supp.2d 1136. While Plaintiff was not a celebrity himself and did not necessarily thrust himself into a matter of public concern, he was sufficiently involved in that matter to bring his claims within the scope of the anti-SLAPP statute. Flatley v. Mauro (2006) 39 Cal.4th 299 is inapplicable because the broadcast was not an illegal act.

To prevail on a Civil Code § 3344(a) claim, Plaintiff must demonstrate that the action falls outside the public affairs exception provided in Civil Code § 3344(d) or involves knowing or reckless falsehood. (Eastwood v. Superior Court (1983) 149 Cal.App.3d 409, 425.) The knowing or reckless falsehood standard applied to Civil Code § 3344(d) in Eastwood came directly from existing First Amendment defamation and privacy cases and was designed to give Civil Code § 3344 media defendants the same protection they would receive in a defamation or privacy cause of action.

Defendants argue that Eastwood requires complete fabrication and that the instant broadcast is conceded to depict actual events. However, in Eastwood, the court

1 was not called upon to determine whether a claim for misappropriation would exist
2 when a publication on an issue of public interest was partially true and partially false
3 because Eastwood asserted that the entire article was allegedly false. While Maheu v.
4 CBS, Inc. (1988) 201 Cal.App.3d 662, 677 characterized Eastwood as holding that “had
5 the article not been alleged to be entirely false, it would have come within the
6 exemption set forth in Civil Code § 3344, subdivision (d), for news accounts.” (Id. at
7 677), the Maheu court was not called upon to evaluate partial untruth because the
8 plaintiff “has failed to incorporate allegations of knowing or reckless falsity into these
9 causes of action, although he has been afforded numerous opportunities to do so.”
10 (Id. at 677.)
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14 Here Plaintiff has alleged that parts of the broadcast were untrue, including
15 the representation that Plaintiff was paying the fugitive under the table, that Plaintiff
16 had lied about not knowing the fugitive’s whereabouts, and that Plaintiff was
17 depicted as having been arrested for aiding and abetting a fugitive. There are no
18 published California decisions addressing Civil Code § 3344(d) in the context of a
19 broadcast that is partially untrue.
20
21

22 In Eastwood, the Appendix to the opinion contains an Exhibit A depicting the
23 cover of the National Enquirer in question. (Id. at 427.) The lead story, comprising
24 70%-80% of the cover advertises an article concerning the “Secret Heartache” of
25 (then) Dukes of Hazard star Cathy Bach, and a small box in the lower left hand corner
26 shows pictures of Eastwood and Tucker with the line: “Clint Eastwood in Love
27
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1 Triangle with Tanya Tucker.” Although not discussed by the court, the entire
2 publication at issue in Eastwood was not alleged to be false, only the portion relating
3 to Eastwood. Thus the fact that not everything in the instant Broadcast was false or
4 fabricated does not necessarily preclude a Civil Code § 3344 claim.

6 This is consistent with First Amendment law that Eastwood incorporated into
7 Civil Code § 3344 claims against media defendants. In St. Surin v. Virgin Islands Daily
8 News, Inc. (3rd Cir. 1994) 21 F.3d 1309, 1316, the court elaborated on the “substantial
9 truth” doctrine stating: “The truth required is not complete truth but rather
10 substantial truth. Minor inaccuracies regarding factual information will not make an
11 article untrue and libelous so long as the statement would not materially mislead the
12 reader.” (Id. at 1326 [citing Orr v. Argus-Press Co. (6th Cir. 1978) 586 F.2d 11108, 1112;
13 Auvil v. CBS 60Minutes (E.D. Wash. 1992) 800 F.Supp. 928, 936; Bose Corp v. Consumers
14 Union of United States, Inc. (1984) 466 U.S. 485, 513, 80 L.Ed.2d 502, 104 S.Ct. (quoting
15 New York Times v. Sullivan (1964) 376 U.S. 254, 271-72, 11 L.Ed.2d 686, 84 S.Ct. 710)].)
16 Thus the traditional Constitutional protection afforded to media defendants and
17 incorporated into Civil Code § 3344 actions by Eastwood does not require complete
18 falsity—notwithstanding the presence of that language as limited by the facts in
19 Eastwood—but only sufficient falsity to materially mislead the reader or viewer.

25 California courts have held that when opposing an Anti-SLAPP motion on
26 causes of action involving First Amendment protection of matters of public concern,
27 “plaintiff cannot prevail unless he can also demonstrate by clear and convincing
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1 evidence that the objectionable statements were made with actual malice." (Rosenauro
2
3 v. Scherer (2001) 88 Cal.App.4th 260, 274; See also Conroy v. Spitzer (1999) 70 Cal.App.4
4 th 1446, 1451.) Thus, while no California court has so held, the incorporation of First
5 Amendment Protections into a Civil Code § 3344 action by Eastwood, would appear to
6 require that a Plaintiff opposing an Anti-SLAPP motion attacking a Civil Code § 3344
7 claim to demonstrate actual malice by clear and convincing evidence.
8

9 Plaintiff has failed to prove actual malice, referred to a scienter in Eastwood, by
10 the clear and convincing standard. In the broadcast, the Chapmans espouse a belief
11 that Plaintiff lied about not knowing the whereabouts of the fugitive and the time line
12 of the show was condensed to make it appear that Plaintiff denied knowledge on one
13 day and was found with the fugitive on the next day when in fact the actual events
14 were several months apart. The mere altering of a time line is not sufficient
15 inaccuracy to destroy First Amendment protection (Carlisle v. Fawcett Publications
16 (1962) 201 Cal.App.2d 733, 748), and there is no evidence that the statements or
17 portrayal of Plaintiff as lying about the whereabouts of the fugitive was made with
18 actual malice, i.e. knowledge by the Chapmans and their production staff that
19 Plaintiff was in fact telling the truth.
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24 Plaintiff has alleged that he is falsely portrayed as having been arrested for
25 lying and/or aiding or abetting the fugitive because he is photographed on the
26 grounds in handcuffs, is taunted by the Chapmans as going to jail for aiding and
27 abetting a fugitive, and his name is superimposed across his picture. While Plaintiff
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1 has offered evidence that he was not arrested and was released after the fugitive was
2 loaded into a police car, there is no evidence offered that the Chapmans or their
3 production staff were present and aware that Plaintiff had not been arrested, i.e. that
4 the Chapmans had knowledge that the implication in the broadcast that Plaintiff had
5 been arrested was in fact untrue. The Declaration of Plaintiff does not state whether
6 Defendants were present when he was released or state facts indicating that
7 Defendants were aware Plaintiff had not been arrested and the Declaration of Fidel
8 Bartolon who was also present during the fugitive arrest is silent as to whether
9 Defendants were present when Plaintiff was released. Thus Plaintiff has failed to
10 show actual malice by clear and convincing evidence.
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14 Plaintiff has not demonstrated a reasonable likelihood that he will prevail on
15 the intentional infliction of emotional distress cause of action because the conduct
16 was not sufficiently outrageous as to qualify for that cause of action.
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18 Plaintiff has not demonstrated a reasonable likelihood that he will prevail on
19 the Negligent Infliction of Emotional Distress and Negligence Claims, because mere
20 negligence is insufficient to establish malice required in an action against media
21 defendants.
22

23 The intentional and negligent infliction of emotional distress claims would also
24 appear to be barred by Civil Code § 48a. Furthermore, Plaintiff cannot evade the
25 First Amendment protections afforded media defendants broadcasting matters of
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1 public interest by simply characterizing conduct as a tort other than defamation or
2 false light without demonstrating actual malice.

3
4 Since the special motion to strike is granted with regard to all causes of action,
5 the demurrer brought by Defendants is moot.

6
7 While the motion for leave to amend cannot be considered once the first prong
8 of the Anti-SLAPP motion is established as is the case here (Simmons v. Allstate
9 Insurance Co. (2001) 92 Cal.4th 1068, 1073), there is no reason that leave to amend to
10 state valid claims cannot be granted to state new claims after the Anti-SLAPP motion
11 is adjudicated and if it is demonstrated that the proposed new causes of action do not
12 appear to be barred by the Anti-SLAPP statute.

13
14 Here, the proposed complaint contains the causes of action for which the Anti-
15 SLAPP motion has been granted, plus additional causes of action for defamation and
16 false-light. Since the proposed complaint proposes to relitigate matters for which an
17 Anti-SLAPP motion has been granted, the motion is denied, without prejudice to
18 Plaintiff's right seek to leave to amend to state claims not barred by Anti-SLAPP.
19
20

21 **IT IS SO ORDERED.**

22 Dated: NOV 28 2007

23 
24 JUDGE OF THE SUPERIOR COURT