

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	:	
RACHEL CAROL FILSOOF,	:	
	:	Case No.: 1:21-cv-01791(NRB)
Plaintiff,	:	
	:	
v.	:	FIRST AMENDED ANSWER
	:	WITH COUNTERCLAIMS
ANDREW J. COLE,	:	
	:	
Defendant.	:	<u>JURY TRIAL DEMANDED</u>
_____	:	

Defendant ANDREW J. COLE (“Defendant” or “Cole”), appearing by and through his attorneys, FARBER SCHNEIDER FERARRI LLP (“FSF”), answering the complaint (the “Complaint”) of plaintiff RACHEL CAROL FILSOOF (“Plaintiff”), sets forth and alleges as follows:

INTRODUCTION

1. Defendant denies the allegations contained in paragraph “1” of the Complaint.

PARTIES

2. Defendant denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph “2” of the Complaint.
3. Defendant admits the allegations contained in paragraph “3” of the Complaint.
4. Defendant denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph “4” of the Complaint.
5. Defendant admits the allegations contained in paragraph “5” of the Complaint as citizen is referred to in 28 U.S.C. § 1332.

JURISDICTION and VENUE

6. Defendant admits the allegations contained in paragraph “6” of the Complaint only to the extent that they are citizens of a different state and an amount of controversy exists that likely exceeds \$75,000, though Defendant respectfully submits that it will be Plaintiff who will be judgment debtor, not Defendant.

7. Defendant denies the allegations contained in paragraph “7” of the Complaint.

8. Defendant denies the allegations contained in paragraph “8” of the Complaint.

9. Defendant denies the allegations contained in paragraph “9” of the Complaint.

10. Defendant denies the allegations contained in paragraph “10” of the Complaint.

11. Defendant denies the allegations contained in paragraph “11” of the Complaint.

12. Defendant denies the allegations contained in paragraph “12” of the Complaint.

13. Defendant denies the allegations contained in paragraph “13” of the Complaint.

14. Defendant denies the allegations contained in paragraph “14” of the Complaint.

15. Defendant denies the allegations contained in paragraph “15” of the Complaint.

16. Defendant denies the allegations contained in paragraph “16” of the Complaint.

17. Defendant denies the allegations contained in paragraph “17” of the Complaint.

18. Defendant denies the allegations contained in paragraph “18” of the Complaint.

19. Defendant denies the allegations contained in paragraph “19” of the Complaint.

20. Defendant denies the allegations contained in paragraph “20” of the Complaint.

FACTUAL ALLEGATIONS

21. Defendant denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph “21” of the Complaint.

22. Defendant denies any knowledge or information sufficient to form a belief to the allegations contained in paragraph “22” of the Complaint.

23. Defendant admits the allegations contained in paragraph “23” of the Complaint to the extent that Defendant has performed, in some capacity, all the roles alleged in this paragraph.

24. Defendant denies the allegations contained in paragraph “24” of the Complaint.

25. Defendant denies the allegations contained in paragraph “25” of the Complaint.

26. Defendant denies the allegations contained in paragraph “26” of the Complaint.

27. Defendant denies the allegations contained in paragraph “27” of the Complaint.

28. Defendant denies the allegations contained in paragraph “28” of the Complaint.

29. Defendant denies any knowledge or information sufficient to form a belief to the allegations contained in paragraph “29” of the Complaint.

30. Defendant denies any knowledge or information sufficient to form a belief to the allegations contained in paragraph “30” of the Complaint, but admits only to the extent that Defendant attended an anti-bullying event on or around August 22, 2019.

31. Defendant denies the allegations contained in paragraph “31” of the Complaint.

32. Defendant denies the allegations contained in paragraph “32” of the Complaint and admits only to the extent that on or around December 2, 2020 and December 3, 2020 he was at a cabin located at 2558 Varden Court, Mariposa, California (hereinafter, the “Mariposa Cabin”).

33. Defendant denies the allegations contained in paragraph “33” of the Complaint.

34. Defendant denies any knowledge or information sufficient to form a belief to the allegations contained in paragraph “34” of the Complaint.

35. Defendant denies any knowledge or information sufficient to form a belief to the allegations contained in paragraph “35” of the Complaint but admits only to the extent that police came to the Mariposa Cabin.

36. Defendant denies the allegations contained in paragraph “36” of the Complaint.

37. Defendant admits the allegations contained in paragraph “37” of the Complaint.

38. Defendant denies the allegations contained in paragraph “38” of the Complaint.

39. Defendant denies the allegations contained in paragraph “39” of the Complaint.

40. Defendant denies the allegations contained in paragraph “40” of the Complaint.

41. Defendant denies the allegations contained in paragraph “41” of the Complaint.

42. Defendant denies the allegations contained in paragraph “42” of the Complaint, but admits only to the extent that he posted a picture in New York City.

43. Defendant denies the allegations contained in paragraph “43” of the Complaint.

44. Defendant denies the allegations contained in paragraph “44” of the Complaint.

COUNT 1 BATTERY

45. Defendant repeats and realleges each of the foregoing paragraphs.

46. Defendant denies the allegations contained in paragraph “46” of the Complaint.

47. Defendant denies the allegations contained in paragraph “47” of the Complaint.

48. Defendant denies the allegations contained in paragraph “48” of the Complaint.

49. Defendant denies the allegations contained in paragraph “49” of the Complaint.

50. Defendant denies the allegations contained in paragraph “50” of the Complaint.

51. Defendant denies the allegations contained in paragraph “51” of the Complaint.

52. Defendant denies the allegations contained in paragraph “52” of the Complaint.

53. Defendant denies the allegations contained in paragraph “53” of the Complaint.

54. Defendant denies the allegations contained in paragraph “54” of the Complaint.

55. Defendant denies the allegations contained in paragraph “55” of the Complaint.

56. Defendant denies the allegations contained in paragraph “56” of the Complaint.

57. Defendant denies the allegations contained in paragraph “57” of the Complaint.

58. Defendant denies the allegations contained in paragraph “58” of the Complaint.

59. Defendant denies the allegations contained in paragraph “59” of the Complaint.

60. Defendant denies the allegations contained in paragraph “60” of the Complaint.

61. Defendant denies the allegations contained in paragraph “61” of the Complaint.

62. Defendant denies the allegations contained in paragraph “62” of the Complaint.

63. Defendant denies the allegations contained in paragraph “63” of the Complaint and

refers all questions of law to the Court.

64. Defendant denies the allegations contained in paragraph “64” of the Complaint.

COUNT II FALSE IMPRISONMENT

65. Defendant repeats and realleges each of the foregoing paragraphs.

66. Defendant denies the allegations contained in paragraph “66” of the Complaint.

67. Defendant denies the allegations contained in paragraph “67” of the Complaint.

68. Defendant denies the allegations contained in paragraph “68” of the Complaint.

69. Defendant denies the allegations contained in paragraph “69” of the Complaint.

70. Defendant denies the allegations contained in paragraph “70” of the Complaint.

COUNT III ASSAULT

71. Defendant repeats and realleges each of the foregoing paragraphs.

72. Defendant denies the allegations contained in paragraph “72” of the Complaint.

73. Defendant denies the allegations contained in paragraph “73” of the Complaint.

74. Defendant denies the allegations contained in paragraph “74” of the Complaint.

75. Defendant denies the allegations contained in paragraph “75” of the Complaint.

76. Defendant denies the allegations contained in paragraph “76” of the Complaint.

77. Defendant denies the allegations contained in paragraph “77” of the Complaint.

COUNT IV INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

78. Defendant repeats and realleges each of the foregoing paragraphs.
79. Defendant denies the allegations contained in paragraph “79” of the Complaint.
80. Defendant denies the allegations contained in paragraph “80” of the Complaint.
81. Defendant denies the allegations contained in paragraph “81” of the Complaint.
82. Defendant denies the allegations contained in paragraph “82” of the Complaint.
83. Defendant denies the allegations contained in paragraph “83” of the Complaint.
84. Defendant denies the allegations contained in paragraph “84” of the Complaint.
85. Defendant denies the allegations contained in paragraph “85” of the Complaint.

COUNT V INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

86. Defendant repeats and realleges each of the foregoing paragraphs.
87. Defendant denies the allegations contained in paragraph “87” of the Complaint.
88. Defendant denies the allegations contained in paragraph “88” of the Complaint.
89. Defendant denies the allegations contained in paragraph “89” of the Complaint.
90. Defendant denies the allegations contained in paragraph “90” of the Complaint.
91. Defendant denies the allegations contained in paragraph “91” of the Complaint.
92. Defendant denies the allegations contained in paragraph “92” of the Complaint.
93. Defendant denies the allegations contained in paragraph “93” of the Complaint.
94. Defendant denies the allegations contained in paragraph “94” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

95. The claims as against Defendant are barred in whole or in part because Defendant did not commit a battery against the Plaintiff in any shape, way, or form. Further, Plaintiff brought this action solely as retaliation for Defendant ending their relationship, and to appear a victim so that her

abusive conduct does and did not negatively impact her career. Rather Plaintiff is the aggressor who assaulted and battered Defendant, resulting in his multiple fractured bones and other injuries.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

96. The claims as against Defendant are barred in whole or in part because any physical altercation was initiated solely by Plaintiff and Defendant acted only in self-defense. Plaintiff battered Defendant from which he suffered, *inter alia*, multiple broken vertebrae.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

97. The claims as against Defendant are barred in whole or in part because Plaintiff was free to leave the Mariposa Cabin at any time. Though Defendant did not confine her to the premises, Defendant refused her permission to drive the rental vehicle he had driven to the premises in, since Plaintiff did not have a license, and the rental vehicle was registered only in his name. Defendant was forced to stop Plaintiff from illegally taking Defendant's rental vehicle, but Plaintiff was otherwise free to leave by any other legal means not requiring a license, such as any number of car and/or cab services which were, upon information and belief, available telephonically or via the internet.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

98. The claims as against Defendant are barred in whole or in part because Plaintiff orchestrated Defendant's arrest on December 3, 2020, evidenced by the fact that police did not arrest Defendant at the Mariposa Cabin; he remained there as they left only with Plaintiff. Defendant was then arrested sometime later after driving away from the Mariposa Cabin and running into a police roadblock. Said arrest resulted from Plaintiff later changing her story to police, a version of events which falsely casts Defendant as aggressor.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

99. The claims as against Defendant are barred in whole or in part because Plaintiff voluntarily consented to going to the Mariposa Cabin and was never forcibly restrained to stay. The Mariposa Cabin door was not locked, and Plaintiff was not threatened with harm if she left. Moreover, Plaintiff willfully elected to stay for a duration and, when she was ready to leave, she called for a ride by, apparently, calling the police. Notably, as discussed below, Defendant went to sleep on the night in question during which time Plaintiff had her phone and was entirely unrestrained, yet was still at the Mariposa Cabin when Defendant awoke the next morning.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

100. The claims as against Defendant are barred in whole or in part because Defendant never threatened Plaintiff nor her dog. Defendant only held the dog to calm it down while Plaintiff was having a hysterical episode.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

101. The claims as against Defendant are barred in whole or in part because Defendant did not act in an outrageous way that would constitute intentional infliction of emotional distress. Defendant acted reasonably under the circumstances including, without limitation, declining to let Plaintiff drive his rented vehicle while unlicensed, and calming Plaintiff's dog during her hysterical episode.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

102. The damages allegedly sustained by the Plaintiff, all of which were expressly denied, were not caused by the negligence, carelessness, culpable conduct, or breach of duty on the part of the Defendant, but were caused by the incompetence, negligence, careless, and/or culpable conduct of third parties, their servants, agents or employees whom Defendant had no control and that the

amount of damages recovered, if any, shall therefore be diminished in proportion to which said incompetence, negligence, carelessness and/or culpable conduct attributable to the third parties, their servants agents or employees bears to the culpable conduct which caused the damages alleged.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

103. The damages allegedly sustained by the Plaintiff, all of which are expressly denied, where were caused in whole or in party by the incompetence, negligence, carelessness, and/or culpable conduct of the Plaintiff, and/or her family, servants, agents, or employees and/or others for whom Plaintiff is legally responsible and that the amount of damages recovered, if any, shall therefore be diminished in proportion to which said incompetence, negligence, careless and/or culpable conduct bears to the culpable conduct which caused the damages alleged.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

104. The claims as against the Defendant are barred in whole or in part because the Plaintiff has acted and continues to act in a harassing, wrongful, egregious, wanton manner, devoid of moral justification by causing serious physical harm to Defendant and creating false allegations to destroy his reputation in hopes of saving her own reputation and career.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

105. The claims as against the Defendant are barred in whole or in part as a result of Plaintiff's failure to mitigate damages allegedly sustained. Defendant did not interfere with any of Plaintiff's economic relations, but as to whatever business relationships she allegedly lost, her personality or lack of talent is to blame.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

106. The claims as against the Defendant are barred in whole or in part by the doctrines of unclean hands, estoppel, ratification and waiver.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

107. The claims against Defendant are barred in whole or in part as time barred by applicable statutes of limitation.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

108. The complaint fails to confer personal jurisdiction over Defendant in that service, to the extent that it occurred in New York, was effectuated while Defendant was wrongfully incarcerated as a result of Plaintiff's false claims and Defendant does not have minimum contacts with New York such that maintenance of the suit in New York offends the traditional notions of fair play and substantial justice.

JURY TRIAL DEMANDED

109. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on each and every claim as pleaded herein.

COUNTERCLAIMS

FACTS COMMON TO ALL COUNTERCLAIMS

110. As the old saying goes, "hell hath no fury like those with enough fame to employ a publicist." Plaintiff, an aspiring public figure of some kind, has admitted to Defendant that she made false allegations contained herein because her publicist advised her that she must "strike first" in order to sanctify her own behavior, should Defendant publicize the awful things she did to him. The only thing true in Plaintiff's version of events is that she was the first to make criminal and civil allegations

against the other. However, since Plaintiff opened that door, the truth will expose her as the sole aggressor here; Defendant, the real victim, must vigorously defend against her false claims.

111. When all is said and done, the evidence will show Plaintiff was always the aggressor, that any of her career failure owes to her lack of talent and difficulty to work with, and that her allegations are simply manipulations and lies, as were her relationships with Defendant and others. Moreover, Plaintiff has defamed Defendant outside the context of any suit, knowingly and repeatedly making false claims on social media and otherwise.

112. Defendant is an aspiring musician and pacifist whose extensive work has fostered a robust anti-bullying agenda. He spearheaded a campaign working with headlining musicians to shine a light on bullying by creating #IAMNOJOKE program sponsored by the Creative Visions Foundation. By making these false claims against him, Plaintiff has irreversibly damaged his reputation in the field.

113. Upon information and belief, Plaintiff is an individual who maintains a residence in New York, New York. As a result, she could be said to be a citizen, for the purpose of diversity, of New York.

114. Defendant is a resident of Los Angeles County, California and therefore, is a citizen, for the purpose of diversity, of California.

115. Subject matter jurisdiction exists pursuant to 28 U.S.C. § 1332 as Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs, though in this case it is Plaintiff who has damaged Defendant.

116. Venue is not proper in this judicial district pursuant to 28 U.S.C. § 1391. A case should be venued in a district either where the Defendant resides and/or a substantial part of the events or omissions giving rise to the claim occurred. However, Defendant admittedly resides in the Central District of California and, by far, the only locale which qualifies as being a substantial part of the

events or omissions giving rise to Plaintiff's claims took place in Mariposa, California which is located in the Eastern District of California. Moreover, Defendant does not do business in New York and has no contacts with New York other than as a tourist. He is not present in the state; he transacts no business within the state, derives no revenue from the state; solicits no business within the state; he has committed no tortious acts within the state or without the state that have had any effect within the state; etc. Defendant's only professional opportunity in New York was a scheduled television appearance, thwarted by the arrest that Plaintiff wrongfully orchestrated. Any engagement in interstate commerce and/or promotions through the internet do not have sufficient contacts with New York to confer jurisdiction or to make venue proper. If it did, 28 U.S.C. § 1391 would have no force or effect. There is nothing in Defendant's conduct or business which would cause Defendant to expect consequences in New York. Accordingly, venue in any district in New York is improper.

117. For similar reasons, personal jurisdiction within New York does not exist as discussed above in Defendant's affirmative defenses.

118. With respect to Plaintiff's allegations, they are baldly false. Defendant has never threatened Plaintiff with a knife or any weapon, thrown her into walls, confiscated her telephone or even been in possession of it for longer than a few moments at any given time, threatened to kill her dog, dragged her, pulled her out of a car, stalked her, attempted to pressure her against doing anything, or contacted her business connections to disrupt her business relations. Upon information and belief, she does a good enough job of that on her own.

119. Moreover, the incident on August 7, 2019, while being time-barred, never happened. The same is true with respect to the claimed events in Atlanta, Georgia which also never happened.

120. As will be discussed below, Plaintiff similarly misrepresents the events of August 21, 2019 (also time barred) and December 2 and 3, 2020. In fact, it was Defendant who came out of the December incident with broken bones. To add insult to literal injury, Plaintiff was so shaken from

that incident that two days later, on December 5, 2020, she posted to social media, “been taking a much needed personal break but I’m still here, don’t you forget about meeeee [sic].”

121. Plaintiff has a long and documentable history of violent and emotionally explosive outbursts which have been a hallmark of relationships beyond hers with the Defendant. She has been abusive to multiple men. Defendant was a recipient of this abuse.

122. In connection with the August 22, 2019 incident, it was Plaintiff who attacked Defendant and upon lunging at Defendant, she fell to the ground when he stepped out of the way.

123. Upon information and belief, Plaintiff thereafter demanded a splint which was not at all medically necessary.

124. Upon information and belief, Plaintiff demanded the splint only to set up and embarrass Defendant when accompanying him to an anti-bullying event, and to somehow highlight the irony of Defendant’s participation in that social justice despite her scurrilous allegations.

125. Defendant organized and created the “#IAMNOJOKE” and/or “#NoJoke” event and Plaintiff appeared only due to him inviting her.

126. Upon information and belief, she was not regularly wearing the splint/sling during the entire event including, without limitation, never wearing it during her performance, reserving it for the cameras—being demonstrative that it was entirely unnecessary.

127. As mentioned above, the only person who exited the Mariposa Cabin injured was Defendant—during the course of those events, as a result of Plaintiff’s abusive behavior, Defendant broke multiple vertebrae and a finger.

128. The allegations about him holding a knife anywhere near Plaintiff are simply invented.

129. What actually happened is that Plaintiff had a meltdown over what she perceived was an intentional sexual slight over Defendant’s attentiveness to her needs despite numerous previous, upon information and belief, successful encounters earlier in the day.

130. Upon information and belief, Plaintiff was looking for an exit strategy from the relationship because she was already talking to a new man who became her new boyfriend as described below.

131. Plaintiff then began to pack up her belongings and said she was leaving.

132. Defendant attempted to reason with her to get her to stay and/or to assist her in getting transportation.

133. However, Plaintiff refused assistance and escalated the fight, beginning to attack Defendant's success in the entertainment industry.

134. Defendant responded in kind and showed exasperation over the fact that she was starting another fight to ruin a special occasion, and communicated, in sum and substance, that he wanted out of the relationship and that, in fact, it was he who was going to leave the house.

135. After this, Plaintiff attacked Defendant physically, ripping his shirt, tearing at his neck, and punching him in the face, bloodying his nose.

136. Defendant, in shock, after being punched in the face, turned and headed toward a location where he could check his face, after which Plaintiff chased him, attacked him again from behind and/or the side, ripping his chain off his neck, causing abrasions.

137. After that attack, Plaintiff grabbed the keys to Defendant's rental vehicle and stormed toward said car.

138. Plaintiff, upon information and belief, does not have a valid driver's license and/or does not know how to drive a car.

139. Regardless, she was not an authorized driver on the rental vehicle and Defendant could not permit her to drive it.

140. As a result, he reached into the car and pulled out the keys to prevent her from illegally driving the car in violation of the rental agreement and/or without a license, exposing him to liability while in her agitated and dangerous behavioral state.

141. As Defendant tried to take the keys, Plaintiff attacked him again—forcefully bending his left ring finger backward and, in fact, breaking it.

142. Soon after, Plaintiff came back inside the Mariposa Cabin and demanded the keys.

143. Defendant refused to provide her with the keys since she neither had a license nor was on the rental car agreement.

144. Plaintiff started to verbally abuse Defendant at which point, Defendant decided to remove himself from her presence and walked away toward the garage of the Mariposa Cabin.

145. Upon walking away from Plaintiff, with his back turned, the next thing Defendant knew, he was on the ground with a throbbing pain in his back.

146. Plaintiff had struck Defendant with something that he cannot identify, which hit him in the spinal area of his back causing substantial pain and damage.

147. Knowing she had done real damage, Plaintiff calmed down, attempted to help Defendant to a couch in the living room of the Mariposa Cabin at which point Defendant said something was really wrong with him physically and the two spoke briefly in a much calmer manner.

148. At that point, dizzy and with lingering pain, Defendant opted to go to bed and was eventually able to fall asleep.

149. During this period, Plaintiff remained in the house, and even for some period got in bed beside Defendant.

150. Also, during this period, Plaintiff was in possession of her phone.

151. While Defendant slept, there was nothing preventing Plaintiff from exiting the Mariposa Cabin or contacting someone for help, belying her claims of false imprisonment.

152. She did not do so, and she was still voluntarily in the Mariposa Cabin with Defendant in the morning.

153. After discussing modifying the day to accommodate Defendant's injury to his back the fight continued due to the fact that Defendant had planned a romantic excursion and Plaintiff was continuing her argument from the previous evening.

154. At that point, Defendant broke up with Plaintiff, declared that he was leaving to go on the excursion himself and told her to find her own way home.

155. It was then Plaintiff called her mother, who, after being unable to secure ride sharing in the area, called the police because, as Plaintiff claimed, it was the only way for her to get a ride out of the area.

156. When Defendant heard the police had been called, he made the decision that it would be better if he remained at the scene rather than leaving Plaintiff alone at the Mariposa Cabin and awaited them on the front porch.

157. When they arrived, they talked through the situation and left with Plaintiff without making an arrest.

158. Upon information and belief, the police did not return to the Mariposa Cabin and Defendant packed up his things at his leisure and departed in the rental vehicle.

159. However, Plaintiff obviously changed her story in the police car because instead of returning to the property, they set up a roadblock and arrested Defendant as he left the property.

160. Plaintiff's story has continually changed over time to such an extent that in the proceedings in Mariposa, California, the Mariposa district attorney was forced to admit, "there was a lot of additional information on her statement now than what was reported on the day of the incident."

161. Plaintiff admitted to Defendant that she accused him of abuse on social media, in the manner described below, because “that was a decision of management and publicist” as they urged it was “best to say something before [Defendant does].”

162. Continuing to conduct herself consistent with that false narrative, Plaintiff holds fast to her phony claims against Defendant, hoping her efforts to destroy him will salvage her career, casting herself as sympathetic victim despite her aggressive and abusive actions.

163. After posting bail and while still in severe pain, Defendant sought medical attention. The doctors ultimately confirmed a back injury that included multiple cracked and/or fractured vertebrae and a broken finger, both caused by Plaintiff’s violence.

164. Various medical professionals could tell that the injuries were demonstrative of domestic violence.

165. With regard to Plaintiff’s allegations about the Sunset Marquis Hotel, Defendant had on prior occasions patronized that bar prior to his breakup with Plaintiff.

166. On or about December 3, 2020, pending his arraignment and in faithful compliance with a ten-day order of protection issued as a condition of his release, Defendant stayed away from the Sunset Marquis since Plaintiff stayed there when in town.

167. However, after the ten-day order of protection expired, Defendant learned Plaintiff was staying at that hotel, and, while still feeling strong emotions of love and regret over their atomic breakup (despite Plaintiff breaking his back), visited the hotel on December 22, 2020 to see how she was doing, but that encounter did not occur at all as Plaintiff claims.

168. When he arrived, he did not come bearing gifts, but Defendant said he had bought Plaintiff a gift he had left at home.

169. Wanting to give her the gift, Defendant decided to return home to retrieve it, but in order to be able to return, he needed to leave the Sunset Marquis undetected by Plaintiff’s mother and

her new boyfriend who were also staying there. Plaintiff assisted in his departure, via text, letting him know that neither her mother nor her new boyfriend were in his path of egress, saying, in sum and substance, “all clear,” and he went and retrieved the gift.

170. Via text messages, the two arranged to meet a second time that evening (December 22 and/or the early morning of December 23, 2020) and Defendant gave Plaintiff a gift of a necklace.

171. Defendant never implied or alluded to any expected quid pro quo, nor pressure nor intimidation of any kind regarding his gift, a genuine gesture.

172. In fact, in the early morning of December 23, 2020, when Defendant returned, despite the fact that she was staying with her mother and, upon information and belief, her new boyfriend, Plaintiff did not feel the need to wake them or alert them that to Defendant’s presence, nor call the authorities to protect her; rather, Plaintiff and Defendant conversed, and she initiated a kiss while sitting in his car.

173. Following that encounter Plaintiff safely exited Defendant’s vehicle, Plaintiff escorted her to the front desk of the hotel where they kissed again and, thereafter, she returned to her room at which time, Defendant left and wished her a good night’s sleep that night via electronic means.

174. With regard Plaintiff’s allegations on December 28, 2021, January 10 and January 11, 2021, they are either false, taken out of context or require supremely egocentric logical leaps to have the meaning she claims.

175. A perfect example of this is Plaintiff claim that a post made on Defendant’s social media on January 10, 2021, was in relation to her. Plaintiff claims to want Defendant out of her life but all the while tirelessly scrutinizes his social media, imputing some paranoid meaning to innocuous posts quite unrelated to her. Plaintiff baselessly claims the January 10, 2021 post relates to her but is unable to demonstrate a credible nexus to her. Nothing from that or any post from that day even suggests anything related to her. It is simply a picture of Defendant.

176. Upon information and belief, any statement made by Defendant on or about December 28, 2021 regarded a realization of the end of the Parties' relationship and that Defendant had clarity as to the situation.

177. Her obsessive scrutiny of Defendant's social media continued into March 2021 when Plaintiff managed to orchestrate Defendant's second arrest by alleging an intentional violation of an order of protection requiring him to, *inter alia*, stay 600 feet away from her home.

178. By maliciously weaponizing one of Defendant's Instagram "Stories"—a temporary post which disappears forever after 24-hours—Plaintiff, who lives in an apartment on the 30th floor of 10 West Street, New York, New York, alleged that Defendant was intentionally within the prohibited distance to her, when that is not the case.

179. In reality, the Story, which was posted after 11:00 p.m. on or about March 1, 2021 and depicted a locale highly trafficked by tourists, at night, depicts only a view of New Jersey and makes no comment which could even be reasonably tied to Plaintiff.

180. Nevertheless, in her criminal complaint against him in the New York case, Defendant was alleged to be, on March 2, 2021 at 12:00 p.m., located at the north end of the South Cove of the promenade just south of the World Financial Center and he is alleged to be less than 600 feet from the nearest corner of her block, not even to the high-rise tower in which Plaintiff lives (there is outdoor space and public ways in between) or the door of her building.

181. By the foregoing, Plaintiff abused the criminal process in a punitive way to grab the moral high ground following the Parties' break-up and in attempts to prevent the career damage which would be caused by the truth of her abusive behavior.

182. The real circumstances of Defendant's Story location are far from sinister: at the time said picture was taken, Defendant was traveling by truck driving around Manhattan before headed

back to New Jersey with two other individuals with whom he was staying at the end of a driving tour and visit to New York City which had commenced at or about 4:00 p.m. on March 1, 2020.

183. During that time, the driver stopped his truck so that Defendant and the other individual could quickly jump out, take the picture of the Hudson River and opposite shore, and jump back in before leaving New York City.

184. It was so quick that the driver literally remained in the car waiting for them.

185. Plaintiff, upon information and belief, engaged in painstaking tracking, triangulation and reverse engineering of Defendant's Instagram Story photograph to estimate his location.

186. By stalking his social media account, Plaintiff sought to vilify Defendant far beyond any purpose intended by the order of protection.

187. It should be noted that since Instagram Stories are temporary posts which expire and extinguish after 24-hours, so Plaintiff must have been closely watching and scrutinizing Defendant's page to observe it.

188. Plaintiff's inference is simply unreasonable—that a photograph taken in a high tourist area, of another state allegedly slightly under 600 feet from the nearest corner of Plaintiff's block (and likely far greater than 600 feet from Plaintiff's actual residence) in a densely populated city, that bears no relation whatsoever to Plaintiff, had anything to do with her or an attempt to communicate with her.

189. Plaintiff's resolve to destroy Defendant and unyielding scrutiny of his social media is illustrated by Defendant's arrest for claimed intentional violation of the order of protection, which was effectuated weeks later, and only because Plaintiff was further scrutinizing Defendant's social media and alerted the authorities as to his location.

190. Doubtlessly, Defendant lacked any intentionality in his location on the Hudson River promenade on March 1, 2021, even if he had been within 600 feet of Plaintiff's home, which is denied,

he did so and, shortly thereafter, left the area, without even an attempt to contact Plaintiff, and in taking and posting a picture of New Jersey from the shadow of the World Financial Center, nothing about the location and/or the content of the posting could bear any relation to Plaintiff.

191. Moreover, all movements during Defendant's visits to New York during March 2021 were dictated by third parties who were driving and/or taking photographs of Defendant and showing him around.

192. After she digitally stalked Defendant and ascertained his specific New York City location on March 17, 2021, she hurriedly informing the police as to his locale and dispatched her new boyfriend chase Defendant down with the police and videotape his arrest.

193. The post which advised Plaintiff of Defendant's location was one where Defendant said he was going to be on television for the first time and, upon information and belief, Plaintiff punitively wanted to prevent that from happening.

194. As a result of this orchestrated arrest, Defendant spent several days in the notorious County jail on Rikers Island, portions of his sequestered property was never returned including the chain that Plaintiff had ripped off his neck (which had since been repaired), he missed his television appearance and worse, he had to suffer the fear, mental anguish and abuses that come with remaining incarcerated for several days.

195. Making matters worse, Plaintiff has defamed Defendant to hundreds of people on social media, falsely calling Defendant an emotional and physical abuser and falsely imputing her own outrageous conduct to him.

196. Specifically, on December 8, 2020, she posted on Instagram and Facebook the same post doubtlessly referencing about Defendant,

It hurts to love [Defendant] to the fullest but be lied to and disrespected in return. I wasn't planning on dragging myself out of it cause [sic] love can be blinding...until it went too far. Domestic abuse is inexcusable and NO kind of love includes putting your loved one in

danger...Verbal abuse hurts enough which I had endured quite a long time of...but physical is too far and I'm finally getting the courage to have a voice.

197. She did this intentionally to disparage Defendant and cast him in a most socially repugnant light, especially given Defendant's substantial works in anti-bullying, which is a professional death sentence.

198. Defendant has attempted to move on with his life, has not attempted to disrupt Plaintiff's business, and she seems determined to ruin him however, so he, is compelled to use his voice to establish a truthful record of events.

199. Finally, before and since the breakup, Plaintiff has been in possession of, retained and refused to return several items belonging to Defendant of value and/or sentimental value to Defendant (the "Replevin Items"), despite due demand.

200. However, in light of the orders of protection, Defendant has not been able to personally demand return since the Parties' severance of their relationship, but prior to that, demands have been made and Plaintiff has committed to return of the Replevin Items.

201. The Replevin Items include, but are not limited to: (1) a vintage stop watch which had belonged to Defendant's father which has infinite sentimental value; (2) an Alexander McQueen shirt which had been worn by Defendant when receiving a Canadian humanitarian award and during many of his performances which is, in itself, expensive, but has infinite sentimental value; (3) a black and gold Gibson guitar, which had belonged to Jimmy Page and an accompanying guitar case autographed by, upon information and belief, Jimmy Page; (4) an Ibanez "Chrome Boy" guitar, serial number f9820040, signed by Joe Satriani and an accompanying guitar case silver on the outside and red velvet on the inside; and (5) a vintage 1953 Neumann/TELEFUNKEN u47 Microphone, serial number 2624, with power supply, shock mount, microphone cable, power supply cable and briefcase.

202. Some or all of the Replevin Items are unique and not replaceable, however the appraised resale value of the two guitars and the microphone likely exceed \$100,000.00.

203. Moreover, Defendant uses many of the Replevin Items in his work and his inability to use them is negatively affecting his work.

FIRST COUNTERCLAIM FOR RELIEF
(State Law Claim for Battery)

204. Defendant repeats and realleges each of the foregoing paragraphs.

205. On or about December 2 and/or December 3, 2020 Plaintiff, tried to leave with a rented vehicle that was not her name, nor did she have a license to drive.

206. When Defendant tried to take the keys out of the ignition of the car, Plaintiff physically attacked Defendant forcibly grabbing and bending Defendant's hand.

207. As a result of Plaintiff's conduct, Defendant suffered a broken finger.

208. Further, later the same night as Defendant's back was to Plaintiff, Plaintiff hit Defendant in the back with an object with such force that two of his vertebrae cracked and/or fractured.

209. Defendant suffered personal injuries as a result of Plaintiff's battery.

210. Plaintiff intended to make the contact, as described herein, with the Defendant during the batteries that occurred on December 2, 2020 and/or December 3, 2020.

211. All of the aforesaid contact was without the permission or consent of the Defendant.

212. In addition to compensatory damages for pain and suffering caused by Plaintiff's actions, Plaintiff's aforementioned conduct was intentional, deliberate, and so outrageous that an award of punitive damages is necessary to vindicate the rights of the Defendant and public and to deter the commission of similar acts of violence in the community.

213. As a result of Plaintiff's conduct, Defendant is entitled to an award of compensatory and punitive damages in an amount to be determined at trial, but believed to be not less than \$5,000,000.00.

SECOND COUNTERCLAIM FOR RELIEF
(State Law Claim for Intentional Infliction of Emotional Distress)

214. Defendant repeats and realleges each of the foregoing paragraphs.

215. By the conduct complained of herein, Plaintiff intentionally and/or recklessly engaged in extreme and outrageous conduct in the form of: (1) her violence against Defendant which left him not just battered and bruised, but with a broken finger and back; (2) her campaign of harassment attempting to ruin his life and career, by stalking his social media to orchestrate arrests, falsely premised criminal charges, jail stays, draconian bails and otherwise; (3) after getting her pound of flesh, continuing to pursue these falsehoods to maliciously hurt and injure Defendant; and (4) doing all of this while admitting that she had lied: he never hit her yet she maintains the falsehood at the recommendation of her manager and publicist.

216. The conduct complained of herein was intentional, to destroy Defendant's career and life so that hers could persist unblemished and therefore was done with the intent to cause severe emotional distress.

217. Plaintiff's actions complained of herein have gone and continue to go beyond the bounds of human decency, were and are utterly outrageous, and cannot be countenanced in civilized society.

218. As a direct and proximate result of Plaintiff's conduct complained of herein, Defendant suffers severe emotional distress including, without limitation, pervasive and crippling anxiety, depression, loss of appetite and ability to work or focus, and inability to sleep and function normally.

219. In addition to compensatory damages for intentional infliction of emotional distress, Plaintiff's aforementioned conduct was intentional, deliberate, and so outrageous that an award of punitive damages is necessary to vindicate the rights of the public and deter the commission of similar acts of violence in the community.

220. As a result of Plaintiff's conduct, Defendant is entitled to an award of compensatory and punitive damages in an amount to be determined at trial, but believed to be not less than \$5,000,000.00.

THIRD COUNTERCLAIM FOR RELIEF
(State Law Claim for Abuse of Process)

221. Defendant repeats and realleges each of the foregoing paragraphs.

222. Plaintiff has orchestrated, caused to be commenced and maintained regularly issued process against Defendant by virtue of making false statements to law enforcement agents and others in California and/or New York in order to ensnare Defendant in criminal charges, intent on destroying Defendant as guard against damaging her own career—attempting to remain the sympathetic figure despite her actual role as the aggressor and abuser.

223. By the conduct complained of herein, Plaintiff abused process by substantially and falsely altering her statement to police after she left the Mariposa Cabin with them, in order to secure an arrest and criminal charge against Defendant despite the fact that the police declined to make an arrest before leaving the first time and Defendant was the only one with broken bones and injuries.

224. She continued her abuse of process in or about the beginning of February 2021 by continuing to alter her story to such an extent that the District Attorney felt compelled to note such stark deviations from her original story on the record in open Court. At some point after the arrest there was a Temporary Order of Protection against the Defendant, and on February 2, 2021 the Superior Court of California, County of Mariposa ordered a criminal protective order.

225. In addition to Defendant's innocence of Plaintiff's complaint herein, he has complied and continues to comply with, every aspect of the Protective Order dated February 2, 2021.

226. However, while Defendant was visiting a tourist attraction in New York City, and posted an Instagram story which depicted the New Jersey skyline and had absolutely no reference or mention to the Plaintiff, the Plaintiff had him arrested for violating the California Protective Order alleging he was less than 600 feet from her apartment.

227. Plaintiff improperly orchestrated the arrest and prosecution of Defendant in two different cases in a perverted manner to obtain the collateral objective preserve, and/or improve, her career and reputation at the expense of Defendant's life and career.

228. As a result, Defendant was damaged.

229. Plaintiff's conduct was knowing, malicious, willful and wonton, entitling Defendant to an award of punitive damages.

230. As a result of Plaintiff's conduct, Defendant is entitled to an award of compensatory and punitive damages in an amount to be determined at trial, but believed to be not less than \$5,000,000.00.

FOURTH COUNTERCLAIM FOR RELIEF
(State Law Claim for Defamation)

231. Defendant repeats and realleges each of the foregoing paragraphs.

232. Plaintiff made certain statements about Defendant including, without limitation those referenced above disparaging Defendant's integrity, character, lawfulness and damaging to Defendant's business.

233. These certain statements about Defendant including, without limitation those set forth above constitute defamatory statements of fact (the "Defamatory Statements") in that they allege Defendant to be a violent physical and emotional abuser.

234. The Defamatory Statements are false.

235. Plaintiff made the Defamatory Statements to third parties including, without limitation, the world, since one or more were posted to social media, knowing they were false, with reckless disregard for the truth or with negligent disregard for the truth.

236. Plaintiff made and/or published the Defamatory Statements to third-parties as evidenced by the fact that one or more were posted to social media.

237. The Defamatory Statements constitute slander *per se* and/or libel *per se* in that they charge Defendant with serious moral turpitude, commission of a crime and domestic abuse.

238. The Defamatory Statements also constitute slander *per se* and/or libel *per se* in that they tend to injure Defendant in his trade, business and/or profession and/or his fitness to perform his personal and professional duties.

239. As discussed above, Defendant is a musician and a reputation for violence towards women has and will continue to have a serious impact on his career.

240. Furthermore, Defendant is heavily involved in anti-bullying, including without limitation, “#IAMNOJOKE” and/or #NoJoke, and a reputation for violence and bullying has and will continue to impact his involvement in that important work.

241. The Defamatory Statements are not and never were privileged.

242. While proof of damages is not required, the Defamatory Statements have caused Defendant damages including to his reputation, business interests and/or prospective economic opportunities.

243. Plaintiff published the Defamatory Statements to third-parties with the foreseeable and intended result of poisoning his career and trying to preserve her own reputation, and have, as a result, caused additional damages.

244. Plaintiff's conduct was sufficiently knowing, malicious, willful and wonton such that Defendant is entitled to an award of punitive damages.

245. As a result of Plaintiff's conduct, Defendant is entitled to an award of compensatory and punitive damages in an amount to be determined at trial, but believed to be not less than \$5,000,000.00.

FIFTH COUNTERCLAIM FOR RELIEF
(State Law Claim for Replevin)

246. Defendant repeats and realleges each of the foregoing paragraphs.

247. Defendant is the owner of each and every of the Replevin Items and/or is lawfully entitled to possess said Replevin Items.

248. Defendant has a superior interest to the Replevin Items than Plaintiff.

249. By the conduct complained of herein, despite due demand, Plaintiff has unlawfully withheld the Replevin Items from Defendant.

250. Despite due demand, Plaintiff has refused and/or failed to return the Replevin Items to Defendant.

251. Defendant is entitled to return and possession of the Replevin Items and seeks and is entitled to an order of Replevin for return of the Replevin Items.

PRESERVATION OF DEFENSES

252. Defendant reserves the right to raise additional and other affirmative defenses that may subsequently become or may appear upon information and belief to be applicable to the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Defendant ANDREW J. COLE. respectfully requests that this Court grant a judgment in his favor against Plaintiff as follows:

- (a) Dismissing the Complaint with prejudice, in its entirety;
- (b) An award to Defendant and against Plaintiff in connection with each of the first, second, third and fourth counterclaims for relief, for Battery, Intentional Infliction of Emotional Distress, Abuse of Process and Defamation, in an amount to be determined at trial, but believed to be at least \$5,000,000.00;
- (c) An award to Plaintiff, in connection with the fifth counterclaim for relief, for an order of replevin for the return and possession of the Replevin Items;
- (d) An award to Plaintiff of punitive damages against Defendants for willful, wanton, malicious conduct performed in bad faith and/or in reckless disregard of Plaintiff's rights;
- (e) An award to Plaintiff of reasonable costs and expenses of this litigation, including, but not limited to, attorneys' fees and expert fees;
- (f) Such other and further relief as this Court may deem just and appropriate.

Dated: New York, New York
June 18, 2021

Respectfully submitted,



FARBER SCHNEIDER FERRARI LLP
By: Daniel J. Schneider, SDNY # DS7366
261 Madison Avenue, 26th Floor
New York, New York 10016
(212) 972-7040
dschneider@fsflp.com