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8 Attorneys for Defendants NBCUniversal Media, LLC,
 9 erroneously sued as “NBCUniversal, Inc.,” F. Gary Gray;
 O’Shea Jackson Sr., p/k/a Ice Cube; Andre Young, p/k/a Dr.
 10 Dre; The Estate of Eric Wright, p/k/a Eazy E; Tomica Woods-
 11 Wright, individually and as the personal representative of The
 Estate of Eric Wright; Comptown Records, Inc.; Matt Alvarez;
 12 Scott Bernstein; Legendary Pictures Funding, LLC, erroneously
 sued as “Legendary Pictures;” Xenon Pictures, Inc., sued as
 13 “Xenon Pictures, Inc./Xenon Entertainment Group;” Jonathan
 14 Herman; Andrea Berloff; S. Leigh Savidge; and Alan Wenkus

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**
 17

18 GERALD E. HELLER, an individual,
 19 Plaintiff,
 20 vs.
 21 NBCUNIVERSAL, INC., et al.,
 22 Defendants.

CASE NO. 2:15-cv-09631-MWF-KS
 NOTICE OF MOTION AND MOTION TO
 STRIKE CLAIMS 1 THROUGH 8 OF THE
 FIRST AMENDED COMPLAINT
 PURSUANT TO CAL. CIV. PROC. CODE §
 425.16; MEMORANDUM OF POINTS AND
 AUTHORITIES

[Chieffo Declaration and Request for Judicial
 Notice Filed Concurrently]

Date: March 28, 2016
 Time: 10:00 a.m.
 Courtroom: 1600
 Action Removed: December 15, 2015

1 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on March 28, 2016 at 10:00 a.m. in Courtroom
3 1600 of the above-captioned Court, located at 312 North Spring Street, Los Angeles,
4 California, Defendants NBCUniversal Media, LLC, erroneously sued as “NBCUniversal,
5 Inc.,” F. Gary Gray; O’Shea Jackson Sr., p/k/a Ice Cube; Andre Young, p/k/a Dr. Dre;
6 Tomica Woods-Wright, individually and as the personal representative of The Estate of
7 Eric Wright; Comptown Records, Inc.; Matt Alvarez; Scott Bernstein; Legendary
8 Pictures Funding, LLC, erroneously sued as “Legendary Pictures;” Jonathan Herman;
9 Andrea Berloff; S. Leigh Savidge; and Alan Wenkus (collectively “Defendants”) will
10 and hereby do move pursuant to Cal. Civ. Proc. Code § 425.16 (b) to dismiss Claims 1
11 through 8 of the First Amended Complaint (“FAC”). Defendants’ Motion is made on the
12 grounds that Claims 1 through 8 fall within the scope of speech and conduct protected by
13 Cal. Civ. Proc. Code § 425.16, and Plaintiff cannot demonstrate a probability that he will
14 prevail on the merits of his claims.

15 Defendants also seek an award of attorneys’ fees against Plaintiff pursuant to Cal.
16 Civ. Proc. Code §425.16(c). Defendants will submit a supporting declaration and motion
17 for attorneys’ fees should the instant Motion be granted.

18 This Motion is based on this Notice, the attached Memorandum of Points and
19 Authorities, Request for Judicial Notice and the Declaration of Vincent H. Chieffo, and
20 the documents attached thereto, which are either referenced in the FAC and are not
21 subject to dispute as to authenticity, or are the proper subject of judicial notice by this
22 Court, and on any other matter the Court may properly consider.

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1 This Motion is made following the conference of counsel pursuant to L.R. 7-3
2 which took place on February 1, 2016.

3 DATED: February 10, 2016

GREENBERG TRAURIG, LLP

4
5 By: /s/ Jeff E. Scott

Jeff E. Scott

6 Attorneys for Defendants NBCUniversal Media,
7 LLC, erroneously sued as “NBCUniversal, Inc.,”
8 F. Gary Gray; O’Shea Jackson Sr., p/k/a Ice Cube;
9 Andre Young, p/k/a Dr. Dre; The Estate of Eric
10 Wright, p/k/a Eazy E; Tomica Woods-Wright,
11 individually and as the personal representative of
12 The Estate of Eric Wright; Comptown Records,
13 Inc.; Matt Alvarez; Scott Bernstein; Legendary
14 Pictures Funding, LLC, erroneously sued as
15 “Legendary Pictures;” Xenon Pictures, Inc., sued
16 as “Xenon Pictures, Inc./Xenon Entertainment
17 Group;” Jonathan Herman; Andrea Berloff; S.
18 Leigh Savidge; Alan Wenkus
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 California’s anti-SLAPP statute allows courts to put an early end to litigation
4 claims that “chill the valid exercise of the constitutional rights of freedom of speech.”
5 Cal. Code of Civ. Proc. § 425.16(a). There can be no doubt that Claims 1 through 8 of
6 the First Amended Complaint (“FAC”) qualify for protection and early dismissal under
7 the statute.

8 Claims 1 through 8 are based on the assertion that twelve Defendants “had a hand
9 in creating, writing, directing, producing, editing, and/or distributing globally” the
10 theatrical motion picture “Straight Outta Compton” (“the Film”). FAC ¶ 1. The premise
11 of these claims is Plaintiff’s theory that he has been defamed, or his image has been
12 misappropriated, by the depiction of the “Jerry Heller” character in the Film. Because
13 these claims fall directly within the scope of protection afforded by the anti-SLAPP
14 statute, the burden is shifted to Plaintiff Gerald E. Heller (“Plaintiff” or “Heller”) to
15 demonstrate a “probability” of prevailing on his claims. Plaintiff cannot meet this
16 burden.

17 The Film is a docudrama chronicling a decade-long story from 1986 to 1996 of the
18 pioneering rap record company, Ruthless Records, the rise and demise of Ruthless
19 Records’ extremely successful musical group, N.W.A., and the careers and personal
20 relationships of members of N.W.A. The Film is set against the backdrop of epochal
21 change in the rap music industry, and the social and racial tensions of the time, including
22 the tension between the police and African American residents of Compton and the
23 efforts of law enforcement and others to censor N.W.A. Plaintiff was part of this history
24 both as the manager of Ruthless Records and as the manager of all but one of the
25 members of N.W.A. The Film depicts Plaintiff, the members of N.W.A., including
26 Defendants Andre Young (p/k/a Dr. Dre) (“Dr. Dre”), O’Shea Jackson (p/k/a Ice Cube)
27 (“Ice Cube”), Eric Wright (p/k/a Eazy E) (“Eazy E”), who died in 1995, and also
28 Defendant Tomica Woods-Wright (“Woods-Wright”), Eric Wright’s widow.

1 In recounting the highly publicized rise and fall of Ruthless Records and N.W.A.,
2 the Film includes criticism of Plaintiff that had been very publicly leveled against him
3 by members of N.W.A. and others. Plaintiff's own previously published book recounting
4 his version of these events concedes that he had been subjected to such public criticism.
5 Plaintiff's management of Ruthless Records and N.W.A. led to two lawsuits filed in 1997
6 in the Los Angeles Superior Court. Plaintiff appears to claim that the Film allows false
7 implications to be drawn from that criticism. As explained below, any such alleged
8 implications are at most expressions of opinion based on ambiguous and hotly-debated
9 historical events and are not actionable as injurious falsehoods under governing law.
10 Moreover, Plaintiff, as a public figure in these public events, will not be able to
11 demonstrate a probability of prevailing on his constitutionally-mandated burden of
12 proving with clear and convincing evidence that each Defendant acted with "actual
13 malice," *i.e.*, with knowledge of falsity or with reckless disregard of the truth, or that
14 each Defendant affirmatively intended or endorsed those allegedly false and defamatory
15 implications. Nor will Plaintiff be able to demonstrate a probability of success on his
16 claim for misappropriation of his likeness in a docudrama about the historic events of
17 great public interest dramatized in the Film.

18 Because Plaintiff will not be able to meet his burden of demonstrating a probability
19 of prevailing on any of his Claims 1-8 as to any Defendant, this motion to strike should
20 be granted as to all Defendants.

21 **II. STATEMENT OF FACTS**

22 The following facts are based on Plaintiff's allegations in the FAC, Plaintiff's
23 statements in his 2006 book "Ruthless: A Memoir," his allegations in a verified
24 complaint he filed in 1997, and the allegations in a complaint against Plaintiff also filed
25 in 1997. Defendants' Request For Judicial Notice and Chieffo Declaration ("RJN")
26 Exhs. 2 – 4.

27 **A. ALLEGATIONS OF THE FAC**

28 Plaintiff met Eazy E, Dr. Dre, and Ice Cube between 1986 and 1987. FAC ¶ 23.

1 In early 1987, Eazy E formed a record company called Ruthless Records that Plaintiff
2 managed in exchange for a “20% interest in Ruthless.” *Id.* Eazy E, Ice Cube, Dr. Dre,
3 and others formed a musical group known as N.W.A., which entered into “an exclusive
4 Recording contract with Ruthless” and “Ruthless arranged for [Plaintiff] to provide
5 management services to all of the members of N.W.A., except Ice Cube, for a standard
6 20% commission.” *Id.* at ¶ 24. Under Plaintiff’s management, Ruthless “entered into a
7 series of exclusive music publishing agreements with” Eazy E, Ice Cube, and Dr. Dre,
8 entitling “Ruthless to a percentage of gross music publishing revenues generated by
9 music composition written in whole or in part by” all or any of them. *Id.* at ¶ 25.

10 The FAC admits that the Film accurately depicts at least some of the historical
11 events in question (*id.* at ¶¶ 27-29, 38, 39, 110, 122), but alleges that Plaintiff has been
12 defamed by “certain scenes, words, statements, images, implications and innuendo” in
13 the Film. *Id.* at ¶ 1. The FAC does not identify any specific statements in the Film that
14 Plaintiff claims to be defamatory. Instead, Plaintiff alleges only his general, subjective
15 interpretations of the Film, as follows:

16 Heller is the “bad-guy” in the movie who is solely responsible for the demise
17 of N.W.A.; Heller is a sleazy manager who took advantage of Defendants
18 Eazy E, Dr. Dre and Ice Cube, effectively, by stealing their money; Heller
19 steered Dr. Dre and Ice Cube away from hiring an attorney to review any
20 contracts so they could never get paid; Heller intentionally withheld a \$75,000
21 check from Ice Cube that rightfully belonged to Ice Cube; Heller induced Dr.
22 Dre to sign an unfavorable contract; Heller made sure he was paid more than
23 his fair share to the detriment of the other members of N.W.A.; Heller did not
24 pay numerous bills and expenses of N.W.A., rather, he paid himself first;
25 Heller abandoned Dr. Dre and the D.O.C. after his car accident, but Suge
26 Knight stepped in to take care of them[;] Heller intentionally kept the
27 members of N.W.A. in the dark regarding finances; Heller was enjoying
28 “lobster brunches” while the contracts of Defendants Dr. Dre and Ice Cube

1 were “still being finalized” and relegated to eating “Fatburger”; Dr. Dre
2 accuses Heller of stealing money and says that Ice Cube was right about him;
3 Ice Cube states in an interview at his home that the Jewish Defense League
4 should not condone Heller’s behavior in trying to get him to sign a contract
5 without his attorney’s review; Tomica Woods-Wright tells Eazy-E that Heller
6 took advantage of [Eazy E] and left him with 2-3 years of unpaid bills; Eazy E
7 fires Heller in Heller’s kitchen after accusing him of illegal activity, and
8 Heller says in his defense that Eazy-E screwed things up and that Heller took
9 actions to cover his own (rear end).

10 *Id.* at ¶ 36. Elsewhere, the FAC alleges that unidentified portions of the Film depict
11 Plaintiff “as a sleazy, greedy, selfish, personal manager that took advantage of the
12 members of N.W.A. and caused the demise of N.W.A.,” and as being “corrupt, deceitful,
13 crooked, and fraudulent.” *Id.* at ¶¶ 48, 49, 71.

14 The FAC baselessly lumps 12 named Defendants—who played widely divergent
15 roles in connection with the Film—together with the generic, unsupportable false
16 allegations that all of them “had a hand in creating, writing, directing, producing, editing,
17 and/or distributing globally” the Film and that as “credited producers” they each are
18 “responsible for the publication” of the allegedly defamatory portions of the Film. *Id.* at
19 ¶¶ 1, 5-10, 12, 14-19, 42. The FAC further alleges the unsupportable false conclusion
20 that all twelve Defendants “published” all of the alleged defamatory statements in the
21 Film, “either with knowledge that they were false and defamatory of Plaintiff, or with
22 reckless disregard for their truth or falsity and the defamatory nature of the statements.”
23 *Id.* at ¶ 52; *see also* ¶¶ 50, 64, 69.

24 Based on the alleged defamatory content of the Film and the alleged reputational
25 damage, Plaintiff asserts five tort claims: Defamation (Claim 1), Trade Libel, (Claim 2),
26 False Light (Claim 3), Intentional Interference with Prospective Economic Advantage
27 (Claim 5), and Negligent Interference with Prospective Economic Advantage (Claim 6).
28 Additionally, Claims 7 and 8 are breach of contract claims against only Defendants

1 Woods-Wright and Comptown Records predicated on the same putative injurious
2 falsehoods and alleged resulting breaches of a “non-disparagement” clause included in a
3 1999 settlement agreement between Plaintiff, on the one hand, and Defendants Woods-
4 Wright and Comptown Records, on the other. *Id.* at ¶¶ 93, 94, 96, Exh. B at 1, 15. Based
5 on the inclusion of the “Jerry Heller” character in the Film, Plaintiff also asserts a claim
6 for misappropriation of likeness in Claim 4.¹

7 **B. PLAINTIFF’S BOOK “RUTHLESS: A MEMOIR”**

8 In 2005, Plaintiff wrote a book “relating the story of Ruthless and N.W.A.,” which
9 was published by Simon and Schuster in 2006 and entitled “Ruthless: A Memoir”
10 (“Plaintiffs’ Memoir”). FAC at ¶¶ 29, 30. Set forth below are relevant statements in
11 Plaintiff’s Memoir. RJN, Exh. 2.

12 This is a work of non-fiction. I have done my best to tell this story the way
13 it happened and, in many cases, clear up standing misconceptions and
14 misunderstandings. Events and actions have been retold as I have
15 remembered them. Conversations presented in dialogue form have been
16 recreated based on my memory of them, they are not intended to represent
17 word for word documentation of what was said; they are meant to evoke the
18 substance of what was actually said.

19 Plaintiff’s Memoir at Preface.

20 “The start of the Ruthless era” began on March 3, 1987 when Plaintiff was
21 introduced to Eazy E, who told Plaintiff he wanted to start his own record label,
22 “Ruthless Records,” and the music group “NWA.” *Id.* at 60, 64. Plaintiff and Eazy E
23 agreed that Eazy E would be the sole owner of Ruthless Records and Plaintiff would be
24 paid 20% of “every dollar [that] comes into Ruthless,” with Plaintiff responsible for his
25 expenses and Eazy E responsible for his expenses. Plaintiff acknowledged that, “[l]ater
26

27 ¹ Claims 1 – 6 of the FAC are alleged against all named Defendants other than
28 Comptown Records, Xenon Pictures, Inc./Xenon Entertainment Group, and the purported
Defendant “The Estate of Eric Wright.”

1 on people used this deal to discredit me,” but said “it definitely fit within the industry
2 standards for a startup act.” *Id.* at 74-75. Plaintiff “acted as the general manager of
3 Ruthless Records.” *Id.* at 22.

4 Plaintiff describes himself as the “financializer” of Ruthless Records and N.W.A.,
5 saying, in his view, that “artists should make music; it doesn’t pay for them to have to
6 spend time financializing.” “But musicians need someone behind them they can trust to
7 take care of the business details.” *Id.* at 103, 166-67.

8 One of Plaintiff’s duties was to “protect the life of the goose that laid the golden
9 egg, NWA a rap supergroup, the black Beatles.” *Id.* at 22. Plaintiff “acted as the general
10 manager of Ruthless Records so that had to be my ultimate goal, a mandate so obvious
11 that it didn’t even need to be spelled out.” *Id.* Plaintiff “failed because [he] couldn’t
12 imagine any one coming in between the two most crucial members of the group, Eazy-E
13 and Dr. Dre.” *Id.*

14 N.W.A.’s first studio album, “Straight Outta Compton,” was released in 1988 and was a
15 hit, selling 3 million units. *Id.* at 132. Plaintiff booked N.W.A. on a national tour
16 starting on Memorial Day 1989 in Nashville. Plaintiff describes this tour as “a ‘Platinum
17 card’ tour with everything, including hotels, meals and airline tickets for 29 people, put
18 on Jerry ‘Sugar Daddy’ Heller’s American Express Platinum card.” *Id.* at 135.

19 [Plaintiff’s] credit report was starting to glow in the dark.” *Id.* at 136. During this tour,
20 in Phoenix, Ruthless was prepared to pay \$75,000 checks to each band member,
21 contingent on them officially signing with the label. “Everyone signed except Cube.” *Id.*
22 at 138. “He refused the check on the advice of his San Francisco lawyer, Michael
23 Ashburn.” *Id.* “It was just one more sign of the ongoing trouble with [Cube].” *Id.*

24 During the 1989 tour, Ice Cube complained and “said he wasn’t being paid what he
25 was worth.” *Id.* at 158. Plaintiff describes Ice Cube as “the eternal troublemaker.” *Id.* at
26 183. Plaintiff quotes Ice Cube as saying, “[t]here was no way I was ever going to get
27 paid what I was worth at Ruthless.” *Id.* at 294. Ice Cube “was always a major pain in the
28 ass – a complainer, a borderline paranoiac [but] Cube didn’t have all the facts. He

1 only thought he did.” *Id.* at 136. “There were a lot of people involved in turning Cube
2 against Ruthless.” *Id.* at 182. “Chief among them were Bryan Turner and his director of
3 publicity at Priority Records, Pat Charbonnet.” *Id.* Ice Cube was publicly critical of
4 Plaintiff’s business relationship with Eazy E. *Id.* at 180-81.

5 Ice Cube left N.W.A. by 1990, and in the last part of 1990, Heller realized that Dr.
6 Dre would also be leaving Ruthless. *Id.* at 186. Dr. Dre “became distant and evasive”
7 and began spending more and more time with the D.O.C.² *Id.* at 187. “The D.O.C. was
8 one of those who were whispering in Dre’s ear that Eazy and Ruthless were ripping him
9 off.” *Id.* at 187-88. Dr. Dre began to miss studio dates and to “complain constantly
10 about not getting paid, not having money, not getting what was due to him.” *Id.* at 192.
11 Dr. Dre left in 1991 after Suge Knight “obtained releases from Eazy-E that effectively
12 meant the end of NWA.” *Id.* at 24-25.

13 Plaintiff recounts that he “left Ruthless five weeks before Eric Wright passed
14 away at Cedars Sinai Hospital on March 26, 1995” and that he was not allowed to visit
15 Eazy E while he was in the hospital prior to his death. *Id.* at 297, 299.

16 “Cube and Dre would eventually claim that my partnership with Eazy-E at
17 Ruthless was poisoned[—t]hat it was not a relationship of equals but one of plantation
18 master and field slave, oppressor and oppressed, exploiter and victim.” *Id.* at 6. “There
19 are plenty of people who knee-jerk agree with them.” *Id.* “For a long time, ... I kept
20 quiet.” *Id.* at 9. “I didn’t care what Dre or Cube or the D.O.C. said about me—even
21 when they lied publicly that I had stolen money from them, ripped off, cheated them.”
22 *Id.* “All these years I have never answered the allegations of financial impropriety leveled
23 against me, first by Cube and then by Dre.” *Id.* at 292. “I’ve had to sit still and listen for
24 two decades now to accusations from a pair of former friends and their advisors that I
25 was a thief, a liar, and a cheat, that I was caught with my ‘hand in the cookie jar,’ that I
26 had signed them to ‘draconian’ contracts.” *Id.* “But I know the truth, and the truth is in
27

28 ² The professional name “D.O.C.” refers to Tracy Curry, the “‘Fifth Beatle’ in N.W.A.”
Id. at 120. The D.O.C. is also depicted in the Film.

1 this book.” *Id.* at 10. “It’s my truth, but it’s also Eazy’s truth.” *Id.* at 11.

2 **C. THE 1997 LITIGATION BETWEEN PLAINTIFF AND DEFENDANTS**
 3 **WOODS-WRIGHT AND COMPTOWN RECORDS**

4 In 1997, Plaintiff sued Defendant Woods-Wright (individually and as co-Executor
 5 of the Estate of Eric Wright), Defendant Comptown Records, Inc. (d/b/a/ Ruthless
 6 Records), and others in the Los Angeles Superior Court, Case No. BC172414. That
 7 litigation was consolidated with an action brought against Plaintiff by those two
 8 Defendants and a co-trustee of the Eric Wright Trust, and both cases were settled in
 9 1999, as memorialized by a written settlement agreement. FAC ¶ 93, Exh. B.³ Plaintiff’s
 10 verified complaint in that case (“1997 Complaint”) asserted various claims, including
 11 claims premised on the alleged wrongful termination “in or about March 1995” of
 12 Plaintiff’s management agreements with Eazy E and Ruthless Records. RJN, Exh. 3.⁴
 13 The Complaint against Plaintiff alleged fraud, breach of fiduciary duty and related claims
 14 over Plaintiff’s management of Ruthless Records and N.W.A. (the “Woods-Wright
 15 Complaint”). RJN, Exh. 4.

16 In 1987, Plaintiff and Eazy E entered into an oral agreement for Plaintiff “to act as
 17 [Eazy E’s] personal Manager with respect to all of Wright’s activities in the music and
 18 entertainment industries” (1997 Complaint at ¶ 10), and “in lieu of providing Heller an
 19 ownership interest in Ruthless, in consideration of Heller terminating his independent
 20 representation of certain other musical groups Heller then had under contract,⁵ and in
 21 consideration of the management services to be performed by Heller,” Plaintiff and Eazy
 22 E entered into an oral agreement by which Plaintiff would: 1) receive a 20% commission
 23

24 ³ The 1997 litigation is not disclosed in Plaintiff’s Memoir published in 2006.

25 ⁴ Plaintiff’s version of events in his 1997 Complaint are not always consistent with his
 26 version told in his Memoir or in the FAC in this action.

27 ⁵ This allegation contradicts the FAC’s allegations that Plaintiff also managed members
 28 of N.W.A. (FAC at ¶ 24) and the admissions in Plaintiff’s Memoir that he continued to
 manage those musical groups and artists that agreed to be signed to Ruthless Records
 (Plaintiff’s Memoir at p. 78).

1 “based upon gross revenues earned by Ruthless/Wright from any and all activities in the
2 music and entertainment industries;” 2) receive 50% “of the gross proceeds of the sale of
3 publishing rights from music owned or/otherwise controlled by Wright/Ruthless;”
4 3) receive 20% “of the gross proceeds in the event of a sale of Ruthless;” and 4) be
5 reimbursed “for the expenses incurred by him, in any manner relating to his services on
6 behalf of Wright/Ruthless.”⁶ *Id.* at ¶ 12(a).

7 As manager of Ruthless and Eazy E, “Heller was responsible for negotiating a
8 variety of very profitable contracts for Wright and Ruthless including ... the original
9 contract with Dr. Dre.” *Id.* at ¶ 23. Moreover, and “[c]ontrary to normal industry
10 practice,” Plaintiff negotiated the retention of both a substantial portion of the publishing
11 rights on every Ruthless Records song and, in most cases, the right to administer those
12 songs. *Id.* at ¶ 24. He also acknowledged that record companies “do not customarily
13 retain either of these valuable rights,” which “have proven to be worth millions of dollars
14 to Wright/Ruthless.”⁷ *Id.*

15 “Heller and Wright were each the sole signatory required on each of Wright’s
16 various personal and business bank accounts as well as on the corporate bank account
17 opened after the incorporation of Ruthless.” *Id.* at ¶ 19. Under Plaintiff’s management,
18 Eazy E’s personal affairs and Ruthless Records’ business affairs were commingled. *Id.*
19 at ¶ 87.

20 In 1994, Eazy E wrote to Plaintiff expressing concerns about Plaintiff’s
21 management of Ruthless Records and the lack of financial information Plaintiff was

22
23 ⁶ This allegation contradicts Plaintiff’s claim in his Memoir (at pp. 74-75) that he had no
24 ownership interest in Ruthless Records. According to the 1997 Complaint, Plaintiff had
25 an effective ownership interest equal to 50% of Ruthless Records’ music publishing
26 assets and 20% of, presumably, Ruthless Records’ non-music publishing assets—both
27 due upon sale of those assets. 1997 Complaint at ¶ 12.

28 ⁷ These music publishing agreements were “contrary to normal industry practice” and
worth “millions of dollars to Wright/Ruthless” and thus increased the amount of
Plaintiff’s 20% management fee of the gross revenues of Ruthless, including “exclusive
music publishing contracts” with Eazy E, Dr. Dre, and Ice Cube. FAC ¶ 25.

1 providing, stating, in part: “I want a list of who I’m paying & how much I’m paying
 2 them weekly & monthly,” “I want to know when money comes in, how much and how
 3 much goes out,” “I think I should sign all checks, sometimes it does not look good if I
 4 don’t, maybe we should have double signature checks,” and “I think I should have a
 5 separate account for child support bill that don’t have anything to do with Ruthless
 6 Records.” *Id.* at ¶ 32, Exh. A, pp. 1-2.

7 Plaintiff alleged that he had an oral employment agreement with Ruthless Records
 8 and a management agreement with Eazy E, and that both were wrongfully terminated “in
 9 or about March 1995.” FAC ¶¶ 65 and 74.

10 Woods-Wright and Comptown Records’ 1997 suit against Plaintiff further
 11 evidences the public dispute over Plaintiff’s management and relationship with N.W.A.,
 12 as depicted in part in the Film. For example, the Woods-Wright Complaint alleges that
 13 Eazy E became aware of Plaintiff’s “abysmal management” “in or around November
 14 1994,” that Eazy E hired an entertainment attorney in January 1995 to provide all of
 15 Comptown Records’ “entertainment-related legal services,” that Eazy E hired Woods-
 16 Wright “to manage the business affairs of Comptown,” and that Plaintiff was terminated
 17 in writing on or about January 20, 1995 (while Eazy E was alive). Woods-Wright
 18 Complaint ¶ 12. The Woods-Wright Complaint also alleges that Plaintiff’s misconduct
 19 included his taking 20% off the top of Comptown Records’ gross income instead of 15%
 20 of Eazy E’s personal adjusted gross income, that Plaintiff concealed a large expense
 21 account at Comptown Records that he used, that he took a 20% commission on advances
 22 paid to Comptown Records, leaving it unable to pay its expenses, and that he never
 23 explained the conflict of interest in acting as a general manager of Comptown Records
 24 while also acting as personal manager for other musical artists under contract with the
 25 label. *Id.* at ¶ 18.

26 **III. ARGUMENT**

27 **A. CALIFORNIA’S “ANTI-SLAPP STATUTE”**

28 As the Ninth Circuit has recognized, California’s anti-SLAPP statute, California

1 Code of Civil Procedure § 425.16,⁸ “was enacted to allow early dismissal of meritless
2 first amendment cases aimed at chilling expression though costly, time-consuming
3 litigation.” *Metabolife Int’l, Inc. v. Wornik*, 264 F.3d 832, 839 (9th Cir 2001). Courts
4 “whenever possible, should interpret the First Amendment and section 425.16 in a
5 manner ‘favorable to the exercise of freedom of speech, not its curtailment.’” *Briggs v.*
6 *Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1119 (1999) (citation omitted);
7 Cal. Civ. Proc. Code §425.16(a) (Legislature directs that the anti-SLAPP statute “shall be
8 construed broadly”). Defendants can challenge California state law claims pending in
9 federal court under Section 425.16 and California case law interpreting its application.
10 *See, e.g., Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2009); *Sarver v. Hurt*
11 *Locker LLC*, No. 2:10-CV-09034-JHN, 2011 WL 11574477 *3 (October 13, 2012 C.D.
12 Cal), (Appeal Pending, Ninth Circuit Docket # 12-55429); *Thomas v. Los Angeles Times*
13 *Commc’ns, LLC*, 189 F. Supp.2d 1005, 1010 (C.D. Cal. 2002).

14 Under Section 425.16, any “cause of action against a person arising from any act
15 in furtherance of the person’s right of ... free speech ... in connection with a public issue
16 shall be subject to a special motion to strike, unless the court determines that the plaintiff
17 has established that there is a probability that the plaintiff will prevail on the claim.” Cal.
18 Civ. Proc. Code § 425.16(b)(1).

19 In *Navellier v. Sletten*, 29 Cal. 4th 82 (2002), the California Supreme Court
20 outlined the two-step process used in applying Section 425.16. “First, the court decides
21 whether the defendant has made a threshold showing that the challenged cause of action
22 is one arising from protected activity.” *Id.* at 88. This prong is satisfied if the conduct
23 fits into one of the four categories enumerated in Section 425.16(e).⁹ *Nygaard, Inc. v.*

24 ⁸ Hereinafter, “Section 425.16.”

25 ⁹ As applicable in this case, an act in furtherance of a person’s right of free speech
26 includes: “(3) any written or oral statement or writing made in a place open to the public
27 or a public forum in connection with an issue of public interest, or (4) any other conduct
28 in furtherance of the exercise of the constitutional right of petition or the constitutional
right of free speech in connection with a public issue or an issue of public interest.”
Section 425.16(e).

1 *Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1036 (2008). Second, if the claim arises from
2 protected conduct, the court “must then determine whether the plaintiff has demonstrated
3 a probability of prevailing on the claim.” *Id.* If the plaintiff cannot meet this burden, the
4 claim must be stricken. *Id.*

5 Analysis of the first prong is focused “not on the form of plaintiff’s cause of
6 action, but, rather, the defendant’s *activity* that gives rise to his or her asserted liability –
7 and whether that activity constitutes protected speech or petitioning.” *Navellier*, 29 Cal.
8 4th at 92 (emphasis in original) (applying anti-SLAPP motion to breach of contract
9 claim). “In the anti-SLAPP context, the critical consideration is whether the cause of
10 action is *based on* the defendant’s protected free speech or petitioning activity.” *Id.* at 89
11 (emphasis in the original, citations omitted); *Hunter v. CBS Broad., Inc.* 221 Cal. App.
12 4th 1510, 1520 (2013) (“In assessing whether a cause of action arises from protected
13 activity, we disregard the labeling of the claim and instead examine the *principle thrust*
14 or gravamen of a plaintiff’s cause of action ... We assess the principle thrust by
15 identifying the allegedly wrongful and injury-producing conduct ... that provides the
16 foundation of the claim.”) (emphasis in original, citation and internal quotation marks
17 omitted).

18 If the first prong is met, the plaintiff must demonstrate that the claim “is both
19 legally sufficient and supported by a sufficient prima facie showing of facts to sustain a
20 favorable judgment if the evidence submitted by the plaintiff is credited.” *Navellier*, 29
21 Cal. 4th at 88-89 (citation and internal quotation marks omitted). In addition, where an
22 anti-SLAPP motion in federal court “identifies legal defects on the face of the pleading,”
23 the motion is “analogous to a Rule 12(b)(6) motion to dismiss” and the court “must
24 decide the motion in a manner that complies with standards set by Federal Rules 8 and
25 12.” *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp. 2d 973, 982-83 (C.D. Cal.
26 1999); *see also Metabolife Int’l, Inc.*, 264 F.3d at 832, 846-47.¹⁰

27
28 ¹⁰ As shown in Defendants’ concurrently-filed Motion to Dismiss, Plaintiff’s FAC does not sufficiently plead Claims 1-8 or other Claims. Among other deficiencies, the FAC

1 This Motion is based on the allegations of the FAC, the contents of Plaintiff's
 2 Memoir and the Film (both of which are referenced in the FAC), Plaintiff's verified 1997
 3 Complaint (also expressly referenced in the FAC), and the 1997 Complaint filed by
 4 Woods-Wright, another co-trustee of the Eric Wright Trust, and Comptown Records, all
 5 of which this Court may judicially notice. RJN, Exhs. 1-4; *Knieval v. ESPN*, 393 F.3d
 6 1068, 1076 (9th Cir. 2005) (upholding judicial notice of documents referenced in, but not
 7 attached to, complaint); *Lee v. City of Los Angeles*, 250 F.3d 668, 688–90 (9th Cir.2001)
 8 (matters of public record), overruled on other grounds by *Galbraith v. Cnty. of Santa*
 9 *Clara*, 307 F.3d 1119, 1125–26 (9th Cir.2002); *see also* Fed. R. Evid. 201(d).

10 **B. THE ANTI-SLAPP STATUTE BARS CLAIMS 1-8.**

11 Claims 1-8 arise from twelve of the fifteen named Defendants allegedly jointly
 12 creating, writing, directing, producing, distributing and publishing the Film, and the
 13 content of the Film. FAC ¶¶ 1, 42. Plaintiff alleges that the Film defames Plaintiff
 14 (Claim 1), constitutes trade libel (Claim 2), places him in a false light (Claim 3),
 15 misappropriates his likeness (Claim 4), intentionally or negligently interferes with his
 16 prospective economic advantage (Claims 5 and 6) and breaches a non-disparagement
 17 clause in a contract with Defendants Woods-Wright and Comptown Records (Claims 7
 18 and 8). Each one of these Claims falls squarely within the scope of protection afforded
 19 by Section 425.16, and within the definitions of Section 425.16(e)(3) and (4).¹¹

20 Motion pictures are a “significant medium for the communication of ideas” and an
 21 “organ[] of public opinion” protected by the First Amendment. *Joseph Burstyn, Inc. v.*
 22 *Wilson*, 343 U.S. 495, 500-02 (1952); *see also Sarver*, 2011 WL 11574477 at *4;

23 fails to identify how any of the Defendants was responsible for the challenged scenes in
 24 the Film, leaving Defendants guessing what they allegedly did wrong, in violation of Fed.
 25 R. Civ. P. 8's basic notice pleading requirement. *See* Motion to Dismiss at § III.B.
 26 These arguments are not repeated here but are incorporated by reference as they further
 27 establish why Plaintiff cannot satisfy his burden to show the required likelihood of
 success.

28 ¹¹ It cannot be disputed that the challenged content of the Film was exhibited in a manner
 open to the public or in a public forum. Section 425.16(e)(3); FAC ¶¶ 3, 40.

1 *Shulman v. Group W Prods., Inc.*, 18 Cal. 4th 200, 225 (1998) (“the constitutional
2 guarantees of freedom of expression apply with equal force to ... an entertainment
3 feature”); *Polydoros v. Twentieth Century Fox Film Corp.*, 67 Cal. App. 4th 318, 323-24
4 (1997) (“Film is . . . protected by constitutional guarantees of free expression”).

5 The Film is indisputably concerned with a public issue and matters of public
6 interest. Within the anti-SLAPP statute, “[a]ny issue in which the public takes an interest
7 is of ‘public interest.’” *Nygaard, Inc.*, 159 Cal. App. 4th at 1039. The Film is a
8 docudrama recounting the history of the groundbreaking Ruthless Records, the meteoric
9 rise of its hugely successful musical group, N.W.A., Eazy E’s death from AIDS in 1995,
10 the very public departure of Ice Cube and Dr. Dre from N.W.A., and the integral
11 involvement of Plaintiff in that entire history. Indeed, because of the controversies
12 generated during the events depicted in the Film, and the intense public interest in and
13 impact of N.W.A., Plaintiff wrote his Memoir to tell what he calls his “truth.” Plaintiff’s
14 Memoir at pp. 10-11.

15 Based on clear precedent, Defendants easily establish that the Film raises public
16 issues and matters of public interest and is protected by the anti-SLAPP statute. *See, e.g.*,
17 *Kronemyer v. Internet Movie Data Base, Inc.*, 150 Cal. App. 4th 941, 949 (2007)
18 (website’s listing of producer credits on a motion picture); *Ingels v. Westwood One*
19 *Broad. Servs., Inc.*, 129 Cal. App. 4th 1050, 1059, 1075 (2005) (radio talk show about
20 dating); *Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337, 1341 (2007) (story on the
21 television program “Celebrity Justice” about a famous actor’s housekeeper); *Seelig v.*
22 *Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 807 (2002) (live radio show statements about
23 plaintiff’s appearance on reality television program “Who Wants to Marry a
24 Multimillionaire”); *Hilton*, 599 F.3d at 908 (greeting card featuring Paris Hilton).

25 Because Defendants easily satisfy the first prong of the anti-SLAPP statute for
26 Claims 1-8, the burden shifts to Plaintiff to demonstrate—*on a Defendant-by-Defendant*
27 *basis*—that he has a reasonable probability of success on those claims. As explained
28 below, Plaintiff cannot satisfy this burden.

1 **C. PLAINTIFF CANNOT SHOW A REASONABLE PROBABILITY OF**
 2 **PREVAILING ON ANY OF CLAIMS 1-8 AGAINST ANY DEFENDANT.**

3 All claims based on alleged defamation or injurious falsehood—however labeled
 4 and under whatever legal theory asserted—must comply with the right of free speech
 5 guaranteed by the First Amendment. *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1057-58
 6 (9th Cir. 1990), *cert. denied*, 499 U.S. 961 (1991) (trade libel and tortious interference
 7 with business relationships claims “are subject to the same first amendment requirements
 8 that govern actions for defamation”); *Leidholdt v. L.F.P. Inc.*, 860 F.2d 890, 893, n.4 (9th
 9 Cir. 1988) (public figure plaintiff cannot recover for false light invasion of privacy
 10 “unless she also shows that the false statements were made with ‘actual malice’” because
 11 “the tort of false light privacy is ... sufficiently duplicative of libel to be subject to the
 12 same limitations”) (citation omitted); *Blatty v. New York Times Co.*, 42 Cal. 3d 1033,
 13 1042 (1986) (“Although the limitations that define the First Amendment’s zone of
 14 protection for the press were established in defamation actions, they are not peculiar to
 15 such actions but apply to all claims whose gravamen is the alleged injurious falsehood of
 16 a statement.”).

17 1. Law Governing Plaintiff’s Defamation and Injurious Falsehood Based
 18 Claims 1-3, and 5-8

19 In the FAC, Plaintiff alleges his subjective view of what he asserts are the
 20 defamatory “implications” of the Film. Because Plaintiff in his own Memoir admits that
 21 the challenged criticisms of him depicted in the Film were in fact leveled against him by
 22 N.W.A. members and others (as further evidenced by the 1997 litigation), Plaintiff can
 23 only claim false implications from the Film’s depiction of those undisputed prior public
 24 criticisms. Accordingly, Defendants analyze Plaintiff’s defamation and injurious
 25 falsehood Claims under the theory of defamation by implication.

26 When addressing a defamation by implication claim, the Court ‘must
 27 determine whether the statements that form the basis of a defamation claim:

28 (1) ... impliedly assert a fact that is susceptible to being proven false; and

1 (2) whether the language and tenor is such that it cannot reasonably be
2 interpreted as stating actual facts.

3 *Thomas*, 189 F. Supp. 2d at 1013 (citations omitted).

4 Therefore, to show a reasonable probability of success on his defamation and
5 injurious falsehood claims based on alleged inferences from the Film, Plaintiff must first
6 identify facts that, if believed, would show that any allegedly false implications in the
7 Film are of demonstrably provable false statements of facts—as opposed to non-
8 actionable statements of opinion—that are reasonably susceptible to a defamatory
9 meaning. *Sarver*, 2011 WL 11574477 at *8-*9; *Nygaard, Inc.*, 159 Cal. App. 4th at 1048
10 -1049; *Seelig*, 97 Cal. App. 4th at 809; *Couch v. San Juan Unified Sch. Dist.*, 33 Cal.
11 App. 4th 1491, 1500 (1995).

12 Second, as a limited purpose public figure, Plaintiff must also identify facts (and
13 ultimately provide clear and convincing evidence of those facts) supporting his
14 conclusion that any defamatory inferences of fact about Plaintiff were made by each
15 Defendant with the constitutionally-required fault standard of actual malice, *i.e.*, that they
16 were made with knowledge of their falsity or with a reckless disregard of their truth
17 (*Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 266 (9th Cir. 2013)), and that each
18 Defendant affirmatively “intended to convey the defamatory impression” from the Film
19 (*Newton v. National Broad. Co., Inc.*, 930 F.2d 662, 681 (1990); *Dodds v. Am. Broad.*
20 *Co.*, 145 F.3d 1053, 1063-64 (9th Cir. 1998)).

21 Plaintiff will not be able to make either showing.

22 a. Plaintiff is at Least a Limited Purpose Public Figure.

23 A plaintiff becomes a “limited purpose public figure” where (i) “public
24 controversy existed when the statements were made;” (ii) “the alleged defamation is
25 related to the plaintiff’s participation in the controversy;” and (iii) “the plaintiff
26 voluntarily injected himself into the controversy for the purpose of influencing the
27 controversy’s ultimate resolution.” *Makaeff*, 715 F.3d at 266.

28 Plaintiff’s own allegations satisfy this standard. FAC ¶¶ 22-30 (public controversy

1 has existed since at least 2001 when Plaintiff allegedly collaborated on screenplay about
 2 his role in the “hugely successful” N.W.A., followed by publication of his Memoir about
 3 the same controversy in 2006, through which Plaintiff injected himself into the
 4 controversy¹²; ¶¶ 31-37 (the public controversy was a subject of the Film). So does the
 5 1997 litigation, in which Plaintiff also was injected into the public controversy. RJN at
 6 Exhs. 3-4.

7 b. Plaintiff Cannot Demonstrate the Requisite Probability that the
 8 Alleged Defamatory Inferences in the Film Arise From False
 9 Statements of Fact.

10 The Ninth Circuit applies a three-part test to determine whether defamatory
 11 inferences from protected speech such as the Film can reasonably be interpreted to state
 12 provably false defamatory facts rather than opinions:

13 First, we look at the statement in its broad context, which includes the
 14 general tenor of the entire work, the subject of the statements, the setting,
 15 and the format of the work. Next we turn to the specific context and content
 16 of the statements, analyzing the extent of figurative or hyperbolic language
 17 used and the reasonable expectations of the audience in that particular
 18 situation. Finally, we inquire whether the statement itself is sufficiently
 19 factual to be susceptible of being proved true or false.

20 *Knieval*, 393 F.3d at 1075 ; *Unelko Corp.*, 912 F.2d at 1053, *Partington v. Bugliosi*, 56
 21 F.3d 1147, 1153 (9th Cir. 1995).¹³ Indeed, the “context in which the statement appears is
 22

23 ¹² “Generally, authors are considered to have participated sufficiently in public
 24 controversies or otherwise involved themselves in matters of public concern as to be
 25 public figures.” *Live Oak Publ’g Co. v. Cohagan*, 234 Cal. App. 3d 1277, 1289 (1991)
 (citation and internal quotation marks omitted).

26 ¹³ California courts apply a substantially identical “totality of the circumstances” test to
 27 determine whether defamatory inferences can reasonably be interpreted to state provably
 28 false defamatory facts. *Baker v. Los Angeles Herald Examiner*, 42 Cal. 3d 254, 260
 (1986). California’s “totality of the circumstances” test considers “the context in which
 the statement was made” and looks “at the nature and full content of the communication

1 paramount in our analysis, and in some cases it can be dispositive.” *Knieval*, 393 F.3d at
2 1075. The application of this test is ordinarily a question of law for the court. *Wynn v.*
3 *Chanos*, 75 F. Supp. 3d 1228, 1234 (N.D. Cal. 2014); *Baker*, 42 Cal. 3d at 260; *Seelig*, 97
4 Cal. App. 4th at 810; *Couch*, 33 Cal. App. 4th at 1500.

5 Here, because the Film is a docudrama, the three-part test must be considered in
6 that context. The United States Supreme Court has recognized that it would be
7 unreasonable to assume that all statements in a docudrama represent assertions of
8 verifiable facts. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 512-13 (1991).¹⁴

9 In *Partington*, the Ninth Circuit applied its three-part test to alleged defamatory
10 inferences from a book and a docudrama based on that book. *Partington*, 56 F.3d at
11 1154-55. Partington, a criminal defense attorney, sued Bugliosi, another criminal
12 defense attorney and author, for defamation based on statements about Partington in
13 Bugliosi’s book and in a made-for-television motion picture based on that book. The
14 statements allegedly defamed Partington’s performance as a defense attorney in a high
15 profile murder trial. *Id.* at 1149-50. Partington claimed he was defamed by implications
16 arising from statements in the book and the made-for-television docudrama. In affirming
17 the lower court’s summary judgment, the Ninth Circuit analyzed the alleged defamatory
18 implications from the made-for-television movie:

19 Docudramas, as their names suggests, often rely heavily upon dramatic
20 interpretations of events and dialogue filled with rhetorical flourishes in
21 order to capture and maintain the interest of their audience. We believe that
22 viewers in this case would be sufficiently familiar with this genre to avoid
23 assuming that all statements within them represent assertions of verifiable
24

25 and the knowledge and understanding of the audience to whom the publication was
26 directed.” *Id.* at 261.

27 ¹⁴ “[T]hat the work is so-called docudrama or historical fiction, or that it recreates
28 conversations from memory, not from recordings, might indicate that the quotations
should not be interpreted as the actual statements of the speaker to whom they are
attributed.” *Id.* at 513.

1 facts. To the contrary, most of them are aware by now that parts of such
2 programs are more fiction than fact.

3 *Partington*, 56 F.3d. at 1155. Significantly, the Ninth Circuit in *Partington* also
4 observed, in reasoning especially applicable here:

5 When, as here, an author writing about a controversial occurrence fairly
6 describes the general events involved and offers his personal perspective
7 about some of its ambiguities and disputed facts, his statements should
8 generally be protected by the First Amendment. Otherwise, there would be
9 no room for expressions of opinion by commentators, experts in a field,
10 figures closely involved in a public controversy, or others whose
11 perspectives might be of interest to the public. Instead, authors of every sort
12 would be forced to provide only dry, colorless descriptions of facts, bereft of
13 analysis or insight. There would be little difference between the editorial
14 page and the front page, between commentary and reporting, and the robust
15 debate among people with different viewpoints that is a vital part of our
16 democracy would surely be hampered.

17 *Id.* at 1154; *see also Masson*, 501 U.S. at 519 (the First Amendment guarantees authors
18 “the interpretive license that is necessary when relying upon ambiguous sources”).

19 As with the made-for-television movie in *Partington*, the Film here is
20 unquestionably a docudrama based on controversial historical events that are subject to
21 various interpretations. The history of Ruthless Records, N.W.A. and its members is
22 replete with controversial criticisms and rebuttals, and their resulting ambiguities and
23 factual disputes as Plaintiff’s own Memoir concedes. Plaintiff’s Memoir at pp. 6, 8-9,
24 181, 192, 292.¹⁵ The Film is an interpretation and dramatization of that ambiguous
25 history spanning a 10-year time period over 30 years ago, which was and remains a
26 subject of intense public interest. Dramatization through fictionalized scenes and
27

28 ¹⁵ Even Plaintiff’s own recounting of these events lack consistency. *See supra*, pp. 8-9,
n. 4-6.

1 dialogue and compressed or out-of-time sequences are expected in such docudramas, and
2 the Film carries an express disclaimer to this effect.¹⁶ As stated by the Ninth Circuit, the
3 First Amendment provides “breathing space in order to criticize and interpret the actions
4 and decisions of those involved in a public controversy. If they are not granted leeway in
5 interpreting ambiguous events and actions, the public dialogue that is so important to the
6 survival of our democracy will be stifled.” *Partington*, 56 F.3d at 1159.

7 Accordingly, under the Ninth Circuit’s three-part test (*i.e.*, examining (i) broad
8 context; (ii) specific context/content; and (iii) whether the “statement” is sufficiently
9 factual), Plaintiff will not be able to demonstrate the requisite probability of prevailing on
10 his defamation or injurious falsehood claims:

11 First, as to the broad context, because the Film is a docudrama, Defendants “have
12 substantial latitude in describing the events involved” in the Film. *Partington*, 56 F.3d at
13 1154. This context negates any impression that the Film implies any provably false
14 assertion of fact about Plaintiff.

15 Second, the specific implications alleged by Plaintiff also refute any argument that
16 the Film makes false statements about Plaintiff. At most, Plaintiff complains that the
17 Film describes others’ publicly-expressed opinions about Plaintiff. The “Jerry Heller”
18 character in the Film is not shown committing any improper or illegal actions, or even
19 admitting that he had ever done anything improper. Rather, the Film depicts criticisms
20 articulated by others about Plaintiff, which Plaintiff’s own Memoir concedes had been
21 very publicly leveled against him. *See, e.g.*, Plaintiff’s Memoir, at pp. 8-9, 292.¹⁷ For
22 example, in the scene where the Eazy E and Heller characters confront each other (Film
23 at 02:03:21-02:05:50), the Jerry Heller character unqualifiedly defends himself and
24 denies any wrongdoing. *See Reader’s Digest Assoc., Inc. v. Superior Court*, 37 Cal. 3d

25
26 ¹⁶ “Although this motion picture is based on a true story some of the material has been
27 fictionalized.” Film at timestamp 3:26:25:19. The “timestamp” is visible on the copy of
28 the Film provided to the Court.

¹⁷ Even the cover of Plaintiff’s Memoir proclaims that he has an “[a]n ear for talent and a
talent for controversy.”

1 244, 259 (1984) (defendants under no obligation to create “balanced” depiction of events
 2 or depict plaintiff’s view of events). It is impossible to conceive of a serious docudrama
 3 exploring this history that would not depict these disputes, and the First Amendment
 4 protects the right of filmmakers to tell this story.¹⁸

5 In a case with a similar fact pattern, the Sixth Circuit affirmed the lower court’s
 6 dismissal of a defamation action, brought by the former manager of the singing group the
 7 Judds, alleging that an article in the tabloid *The Globe* had stated he had stolen or
 8 misappropriated the Judds’ money based on language in that article that the plaintiff had
 9 “ripped off \$20 million” from the Judds, had been “bleeding them dry for 10 years”,
 10 “couldn’t be trusted,” “had betrayed and used” the Judds, and had “pocketed most of
 11 what [the Judds] had earned.” *Stilts v. Globe Int’l, Inc.*, 91 F.3d 144, No. 95-5554, 1996
 12 WL 370142 at *1-3 (6th Cir. 1996), *aff’g* 950 F. Supp. 220, 224-25 (M.D. Tenn. 1995).
 13 The Sixth Circuit concluded the article was as a matter of law “substantially true”
 14 because a reasonable reader would understand the article was describing an undisputed
 15 “controversy that exists between the Judds and [their manager] Stilts concerning their
 16 mutual business affairs and the hard feelings between the Judds and Stilts.” *Id.*

17 Third, as to whether any alleged “statements” are sufficiently factual such that they
 18 may be proven false, the alleged implications derived from the Film are not statements of
 19 fact at all. As examples, whether Plaintiff was a “sleazy” manager, or a “bad guy,” or
 20 was responsible for the demise of N.W.A., or had members of N.W.A. sign
 21 “unfavorable” contracts, are all expressions of opinion and not of demonstrable fact. As
 22 discussed with approval in *Partington* (e.g., at 1158-59) other Circuits have found similar
 23 subjective evaluations not to be assertions of provable, objective facts. *Beverly Hills*
 24

25 ¹⁸ These comments are equally applicable to other negative opinions of Plaintiff
 26 expressed in the Film by other characters in the Ruthless/N.W.A. saga, including Dr. Dre,
 27 Woods-Wright, and Ice Cube. FAC ¶ 36. The issue is not whether those opinions are
 28 “true” as Plaintiff seems to contend, but whether those opinions were held by some
 involved in the story told in the Film, and Plaintiff must admit they were. *See supra* at pp.
 5-7, 9-10.

1 *Foodland, Inc. v. United Food & Commercial Workers Union, Local 655*, 39 F.3d 191,
 2 196 (8th Cir. 1994) (“unfair”); *Moldea v. New York Times Co.*, 22 F.3d 310, 316 (D.C.
 3 Cir.) (“sloppy journalism”), *cert. denied*, 513 U.S. 875 (1994); *Chapin v. Knight-Ridder,*
 4 *Inc.*, 993 F.2d 1087, 1093 (4th Cir. 1993) (“hefty mark-up”); *Phantom Touring, Inc. v.*
 5 *Affiliated Publ’n*, 953 F.2d 724, 728 (1st Cir.) (assertion that a stage production was
 6 “fake” and “phony”), *cert. denied*, 504 U.S. 974 (1992).¹⁹

7 In addition, the inferences claimed by Plaintiff relate to his performance as the
 8 manager for Ruthless Records, Eazy E, and other members of N.W.A. In *Partington*, the
 9 Ninth Circuit concluded “that negative statements concerning a lawyer’s performance
 10 during trial, even if made explicitly, are generally not actionable since they are not
 11 ordinarily “susceptible of being proved true or false.” 56 F.3d at 1158 (quoting
 12 *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990)). The same is true of negative
 13 statements concerning the performance of a manager in the music business.²⁰ As with
 14 trial strategy, “there is a wide variation in opinion concerning the appropriate”
 15 management strategies to be pursued in the music business “in a given circumstance.”
 16 *Id.*²¹

17 Finally, because Plaintiff in his own Memoir admits that the criticisms of him that

18
 19 ¹⁹ Even if Plaintiff claims that the inference that he was fired is a statement of fact, it will
 20 do him no good. He has admitted he was terminated, and that he sued and litigated for
 21 over two years his claim that he was “wrongfully” terminated, before settling those
 22 claims and the counterclaims Comptown Records brought against him. *See supra* at pp.
 23 8-10. Thus, the inference that he was fired is at least substantially true, and cannot form
 24 the basis of a defamation claim under California law. *Masson*, 501 U.S. at 516-17.

25 ²⁰ Plaintiff has expressed some of his views on this subject. Plaintiff was the
 26 “financializer” of Ruthless Records and N.W.A. because “artists should make music; it
 27 doesn’t pay for them to have to spend time financializing” and “being scrupulously
 28 honest within the context of the music business ... means something quite different from
 the context of most businesses.” Plaintiff’s Memoir at pp. 103, 166-67, 226.

²¹ Plaintiff recognizes as much in his Memoir, where he expresses regret about his
 failure as the manager of Ruthless Records to keep N.W.A. together and, by implication,
 recognizes that if he had made different decisions and pursued different strategies, then
 that regrettable outcome might have not occurred. Plaintiff’s Memoir at p. 22.

1 are the subject of Claims 1-3 and 5-8 were publicly leveled at him by members of
2 N.W.A. and others and because of the 1997 litigation based on those criticisms, his only
3 claim can be of false implications from the Film’s depiction of those undisputed
4 criticisms. However, the Ninth Circuit in *Partington* rejected such claims as barred by
5 the First Amendment, precluding Plaintiff from satisfying his burden of proving the
6 requisite probability of prevailing on those claims here.

7 c. Plaintiff Cannot Demonstrate the Requisite Probability of Proving All
8 Defendants Made the Alleged Defamatory Inferences with “Actual
9 Malice” or That All Defendants Affirmatively Intended or Endorsed
10 any Defamatory False Inferences.

11 To establish the requisite probability of prevailing on his defamation and injurious
12 falsehood claims, Plaintiff must identify facts (and ultimately prove them by clear and
13 convincing evidence) supporting the conclusion that *each Defendant* made the challenged
14 statements “with ‘actual malice,’ *i.e.*, knowledge of their falsity or reckless disregard of
15 their truth.” *Makaeff*, 715 F.3d at 270 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S.
16 323, 331-32, 334 n.6, 342 (1974)). The “reckless disregard” standard means showing by
17 admissible, clear and convincing evidence that *each Defendant* “entertained serious
18 doubts as to the truth” of the challenged inferences from the Film. *Id.* Mere evidence of
19 a failure to investigate, or of factual errors in the docudrama Film, will not suffice. *St.*
20 *Amant v. Thompson*, 390 U.S. 727, 733 (1968); *Makaeff*, 715 F.3d at 270; *Murray v.*
21 *Bailey*, 613 F. Supp. 1276, 1280 (N.D. Cal. 1985); *Partington*, 56 F.3d at 1155; *Reader’s*
22 *Digest Assoc., Inc.*, 37 Cal. 3d at 259-65.

23 Plaintiff must also identify facts (and ultimately produce admissible, clear and
24 convincing evidence) supporting the conclusion that *each Defendant* “intended to convey
25 the defamatory meaning” of the alleged defamatory implications in the Film. *Newton*,
26 930 F.2d at 681. Here, as discussed more fully in the companion Motion to Dismiss,
27 Plaintiff does not even identify which Defendant(s) purportedly made what statements,
28 thereby precluding him from satisfying this burden.

1 Because the Film portrays views and opinions that Plaintiff admits in his Memoir
2 were publicly expressed by participants in the controversies depicted in the Film, and
3 were the basis of the 1997 litigation, Plaintiff cannot satisfy his burden with respect to
4 *any* Defendant—much less all of them—of showing both “actual malice” and that the
5 filmmakers intended to endorse or convey those opinions as their own.

6 2. Plaintiff Cannot Demonstrate the Requisite Probability of Prevailing on His
7 Misappropriation of Likeness Claim 4.

8 In Claim 4, Plaintiff sues for “misappropriation of likeness” under California law
9 because he was depicted in the Film without his permission. However, the law is clear
10 that Defendants did not need Plaintiff’s permission to depict him in the Film. As shown
11 in Defendants’ Motion to Dismiss, “no cause of action will lie for the publication of
12 matters in the public interest.” *Montana v. San Jose Mercury News, Inc.*, 34 Cal. App.
13 4th 790, 793 (1995).

14 The “public interest” exception to liability for misappropriation of likeness claims
15 is predicated on the First Amendment: “public interest in the subject matter of [a]
16 program gives rise to a constitutional protection against liability.” *Dora v. Frontline*
17 *Video, Inc.*, 15 Cal. App. 4th 536, 542-43 (1993) (documentary film chronicling events
18 and public personalities in the early days of surfing not subject to claim for appropriation
19 of likeness, even though plaintiff alleged the documentary “erroneously characterizes me
20 and contains prevarications about me”); accord *Vijay v. Twentieth Century Fox Film*
21 *Corp.*, No. CV 14-5404 RSWL (Ex), 2014 WL 5460585, at *4 (C.D. Cal. Oct. 27, 2014);
22 *Daly v. Viacom, Inc.*, 238 F. Supp. 2d 1118, 1122 (N.D. Cal. 2002). “The California
23 Supreme Court has subjected the ‘right of publicity’ under California law to a narrowing
24 interpretation which accords with First Amendment values.” *Cher v. Forum Int’l Ltd.*,
25 692 F.2d 634, 638 (9th Cir. 1982) (citing *Guglielmi v. Spelling-Goldberg Prods.*, 25 Cal.
26 3d 860, 871-72 (1979) (“[w]hether the publication involved was factual and biographical,
27 or fictional, the right of publicity has not been held to outweigh the value of free
28 expression”)).

1 As discussed above, N.W.A. was a wildly successful and controversial rap music
 2 group and, for three decades, there has been intense public interest in the Film's
 3 characters and their story. Films that "inform and entertain the public with the
 4 reproduction of past events, travelogues and biographies," and depict people who were
 5 part of an "era that contributed, willingly or unwillingly, to the development of a lifestyle
 6 that has become world-famous and celebrated in popular culture," qualify as "public
 7 interest" expression protected by the First Amendment. *Dora*, 15 Cal. App. 4th at 542;
 8 *accord, Montana*, 34 Cal. App. 4th at 793. Accordingly, this public interest exception to
 9 liability for misappropriation of likeness precludes Plaintiff from satisfying his burden of
 10 showing he has a reasonable probability of prevailing on this claim.

11 Nor can Plaintiff evade this result by pointing to allegedly false statements or
 12 implications about him in the Film. Where, as here, a misappropriation of likeness claim
 13 by a public figure is predicated even in part on allegedly false statements, Plaintiff bears
 14 the additional burden of pleading and proving "actual malice" as he would in a
 15 defamation claim. *Stewart v. Rolling Stone, LLC*, 181 Cal. App. 4th 664, 682 (2010);
 16 *William O'Neil & Co. v. Validea.com, Inc.*, 202 F. Supp. 2d 1113, 1118 (2002). As
 17 discussed above, Plaintiff cannot meet his burden to establish the requisite probability of
 18 proving actual malice as to any Defendant.

19 **IV. CONCLUSION**

20 Based on the foregoing, the Motion should be granted.

21 DATED: February 10, 2016

GREENBERG TRAURIG, LLP

22 By: /s/ Jeff E. Scott

23 Jeff E. Scott

24 Attorneys for Defendants Attorneys for
 25 Defendants NBCUniversal Media, LLC,
 26 erroneously sued as "NBCUniversal, Inc.;" F.
 27 Gary Gray; O'Shea Jackson Sr., p/k/a Ice Cube;
 28 Andre Young, p/k/a Dr. Dre; The Estate of Eric
 Wright, p/k/a Eazy E; Tomica Woods-Wright,
 individually and as the personal representative of
 The Estate of Eric Wright; Comptown Records,

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Inc.; Matt Alvarez; Scott Bernstein; Legendary Pictures Funding, LLC, erroneously sued as “Legendary Pictures;” Xenon Pictures, Inc., sued as “Xenon Pictures, Inc./Xenon Entertainment Group;” Jonathan Herman; Andrea Berloff; S. Leigh Savidge; Alan Wenkus