

FILED
Superior Court of California
County of Los Angeles

MAY 29 2024

David W. Stayton, Executive Officer/Clerk of Court

By: A. Garcia, Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

**CENTRAL DISTRICT
STANLEY MOSK COURTHOUSE**

JAMES CAMPER,

Plaintiffs,

vs.

PARAMOUNT GLOBAL, et al.,

Defendant

) Case No.: 23STCV13425

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) ORDER ON DEFENDANTS' SPECIAL
) MOTION TO STRIKE

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Defendants Paramount Global, Black Entertainment Television, LLC, Edmonds Entertainment, Inc., and This Way Out Media, Inc.'s Special Motion to Strike Plaintiff's First Amended Complaint under Code of Civil Procedure Section 425.16 is GRANTED. The first amended complaint is stricken, and the action is dismissed. The judicial assistant is directed to give notice.

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1 **ALLEGATIONS OF THE COMPLAINT**

2 Plaintiff James Camper alleges that defendants engaged in false, deceptive, and
3 misleading advertising for season 2 of a reality television show called “College Hill: Celebrity
4 Edition” (College Hill), which is available on BET Plus, an online subscription-based streaming
5 service. The premise of the show is that a group of celebrities live in a house together and attend
6 college to earn degrees that they did not pursue in younger years. Plaintiff alleges he was
7 induced to subscribe to BET Plus by a trailer and other marketing materials that misleading
8 suggested that the show would air footage of a physical fight between two female cast members.

9 Plaintiff alleges that the trailer was released on April 25, 2023. According to plaintiff,
10 the trailer shows the two cast members, Amber Levonchuck and Joseline Hernandez, arguing
11 about racial identity. Ms. Levonchuck gets out of her seat to confront Ms. Hernandez. The
12 camera then cuts to a third cast member who is in distress and yells, “Oh, my God!” Other cast
13 members can be heard in the background yelling, “No! No!”

14 Plaintiff further alleges that on May 11, 2023, defendants disseminated a still photograph
15 on social media, showing Ms. Levonchuck and Ms. Hernandez physically attacking each other.
16 Further, two weeks after the season started airing, Ms. Hernandez did an interview that was
17 posted to YouTube in which she talked about the fight.

18 Plaintiff contends that by circulating these materials, defendants intended to convey that
19 the show would air actual footage of the altercation between the two women, and that a
20 reasonable person viewing the materials would believe that would be the case. Plaintiff further
21 alleges that defendants knew the actual fight would not be aired, but disseminated false and
22 misleading marketing materials in order to induce potential customers to subscribe. Plaintiff
23 subscribed to BET Plus because the marketing materials led him to believe the physical fight
24 would be shown. Plaintiff would not have subscribed if he knew the show would not show
25 footage of the actual fight.

26 Plaintiff further alleges when the episode in question was aired, instead of showing the
27 actual physical fight, defendants flashed the following message across the screen: “Out of
28 respect for the parties involved, we have chosen not to show the fight. College Hill and ASU do

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1 not condone violence of any kind.” Based on that, plaintiff alleges that defendant engaged in
2 false advertising and committed fraud.

3 Plaintiff asserts claims for violations of the Unfair Competition Law (Bus. & Prof. Code
4 § 17200), the False Advertising Law (Bus. & Prof. Code § 17500), and the Consumer Remedies
5 Act (Civ. Code § 1750 et seq.), and for fraudulent misrepresentation, breach of implied contract,
6 and unjust enrichment. Plaintiff seeks compensatory and punitive damages, and a mandatory
7 injunction requiring defendants to show footage of the full altercation to plaintiff.

8 **RELEVANT PROCEDURAL HISTORY**

9 Plaintiff, in pro per, filed this action on July 3, 2023. Defendants filed this anti-SLAPP
10 motion on September 5, 2023. On November 9, 2023, a hearing was held on the motion. The
11 court did not provide a tentative ruling, but instead generally discussed the action with the
12 parties. The court explained to plaintiff the limited upside to his case (given that his out-of-
13 pocket losses were \$19.95) and the potential downsides, including the fact that attorney fees
14 could be awarded to defendants if they were to prevail on their anti-SLAPP motion. The court
15 ordered the parties to a mandatory settlement conference and continued the hearing on the
16 motion.

17 In the opposition papers and in a separate motion, plaintiff sought leave to conduct
18 discovery on issues related to the motion. The court granted plaintiff leave to conduct limited
19 discovery on the issue of whether defendant BET was responsible for, or had any role in, the
20 dissemination on social media platforms of the still photograph depicting case members Joseline
21 Hernandez and Amber Rose fighting. As to that topic, plaintiff stated he was seeking (1) to take
22 the depositions of Jason Harvey and Justin Brown who had submitted declarations in support of
23 defendants’ motion, and (2) to propound interrogatories. The court granted plaintiff leave to take
24 those two depositions and to propound five interrogatories. The court continued the hearing on
25 the anti-SLAPP motion and set a briefing schedule for supplemental papers. Subsequently,
26 plaintiff sought a continuance of the hearing because he was unable to complete the discovery in
27 the time allotted. The court granted the request to continue the hearing.

1 The hearing was held on April 12, 2024, and the matter was taken under submission as of
2 that date. On April 15, 2024, plaintiff filed a document entitled, "Plaintiff's Summary of Oral
3 Argument After Anti-SLAPP Hearing." The filing was unauthorized. The document is stricken.
4

5 **KEY FACTS AND EVIDENCE**

6 **A. The Show, the Trailer, and the Operative Episode**

7 *College Hill: Celebrity Edition* is a reality television show produced by Edmonds
8 Entertainment and This Way Out Media. The show aired on BET Plus, a streaming service
9 operated by Paramount Global. The show follows a group of celebrities who live together as they
10 attend college courses. The cast members work towards completing a certificate program while
11 they participate in internships, extra credit projects, and other extracurricular activities. Season 2
12 of *College Hill: Celebrity Edition* premiered on BET Plus on May 11, 2023. It is set at Alabama
13 State University, a historically Black college or university, or HBCU. The coursework focuses
14 on African-American culture and history, particularly historical struggles to combat racism and
15 to advance civil rights.

16 The cast included Amber Levonchuck (popularly known as Amber Rose) and Joseline
17 Hernandez. Levonchuck is hereinafter referred to as "Rose" in this order because that is the way
18 in which she is referred to in the evidence presented. Rose is a model, rapper, and television and
19 radio host. She had previously appeared in music videos and has high-profile romantic
20 relationships with other celebrities. Hernandez has previously starred in other reality television
21 shows.

22 During filming of a class on campus at Alabama State University, Rose and Hernandez
23 had a debate about Rose's biracial identity that escalated into a physical altercation. Defendants
24 aired the debate during Episode 6 of the Series, aired footage of Rose taking the first swing
25 toward Hernandez, aired audio of the physical altercation, and aired the other students' reactions
26 to the event as it was occurring, but did not air video of the actual physical contact between the
27 two women. Defendants' declarant states that defendants exercised their editorial discretion not
28 to air footage of the actual physical contact between Rose and Hernandez out of respect for the

1 cast members, crew, and Alabama State University, as defendants did not want to put the school
2 in the position of appearing to condone physical fights in its classrooms or among its students.

3 The official trailer for the series was released on April 25, 2023. The court has carefully
4 reviewed the trailer and the episode in question. The trailer is two minutes long. After the cast
5 members are shown, an announcer states: "Eight celebrities take on the challenge of college."
6 The trailer then shows quick-cut scenes in college classes in which inspiring statements are
7 made. A statue of Rosa Parks is shown. In quick short clips, cast members earnestly state what
8 they hope to get out of their education. Other cast members are shown practicing for the pep
9 squad. The trailer then shows scenes from the house in which the cast members apparently live.
10 An announcer states: "This house is a mad house." Quick cut scenes of drinking are shown; cast
11 members are shown having verbal disputes. A few cast members directly address the camera to
12 complain about other cast members. One cast members says: "If they keep pushing me, they are
13 going to find what they are *not* looking for."

14 The mood of the trailer then turns more serious, with Rose talking to another cast
15 member by the pool about the fact that she has a Black mom and a white dad, and she is unlike
16 other people in the house. In a scene where she directly faces the camera, she addresses her
17 biracial identity and states she is happy with who she is. The trailer then switches to scenes at the
18 college campus. An announcer asks, "Will these celebrities make the grade?" Scenes are shown
19 of cast members getting stressed out by the workload. A cast members states, "I think the
20 pressure is getting to us all." A scene from a classroom is then shown. Hernandez states in an
21 accusatory tone: "Your problem is, Amanda [Rose], that you don't even want to be Black." The
22 shocked teacher says: "Joseline!" The camera then cuts to Rose, who stands up, apparently
23 angry, and says, "You want to go there?" The camera cuts to other students in the classroom
24 who are saying, "No! No!" One woman looks shocked and says, "Oh my God!" and puts her
25 hands up to her face. The trailer ends there. The trailer does not include footage of a physical
26 fight between the women, but strongly suggests that a physical fight may have occurred.

27 *All* of the footage that appeared in the trailer also appeared in one or more of the series'
28 episodes. In other words, there is no footage in the trailer that does not appear in at least one of
the series' episodes. The BET executive in charge of marketing for the series declares that the

1 trailer was the only promotion defendants released that alluded to the possibility that there may
2 have been a physical fight between two cast members.

3 The scene that plaintiff complains about takes place mid-way through Episode 6. Just
4 prior to the operative scene, there is a scene from a different class in which the students and the
5 professor engage in a serious, substantive conversations about race. Rose, who apparently is the
6 only biracial cast member, gets offended by a few of Hernandez's comments. The students then
7 go to the next class, which is African American Literature. The class is taught by Dr. Jacqueline
8 Trimble, Chair of the Languages and Literature Department at Alabama State University. The
9 professor begins with a discussion of Langston Hughes, and students read some of his poetry
10 aloud. The professor leads a discussion about Hughes's themes. Hernandez makes some
11 comments about the beauty of Black women, and then makes an insulting comment about Rose.
12 The professor chastises Hernandez, who says she has the free speech right to say whatever she
13 wants. Rose gets up and leaves the room. Directly addressing the camera outside of the
14 classroom, Rose states she does not have to put up with such bullying. Cutting back to the
15 classroom, the professor lectures the students about the need for respect.

16 The class returns to a discussion of Langston Hughes, this time focusing on one of his
17 essays. While the professor is lecturing on the substance of the essay, Rose returns to the
18 classroom. In a voiceover, Rose states she had to leave the classroom in order to calm down,
19 but she is not going to allow Hernandez to ruin the class for her. The professor then opens the
20 floor for discussion, asking the students to describe incidents in their own lives that relate to
21 themes in Hughes's essay. A male student gives a thoughtful, earnest answer. Rose then
22 earnestly says her biggest racial mountain is that she does not fit in white spaces and does not fit
23 in black spaces either.

24 Rose starts to explain her point, when she is aggressively interrupted by Hernandez. The
25 discussion escalates into a verbal argument between the two women about Rose's perception of
26 her racial identity. The professor attempts to regain control of the classroom but is unable to do
27 so. Rose gets up to leave again, when Hernandez starts taunting her with the words "Crybaby,
28 crybaby, crybaby." The camera is on Rose. She turns, and takes a massive swing with her arm,
apparently at Hernandez. Hernandez is off camera. We hear the other students yell, "No! No!"

1 The camera switches to a view of the empty hallway outside the classroom, but we continue to
2 hear violent, chaotic, and escalating sounds of a physical altercation and the shocked reactions of
3 the other students. There is no question but that a physical fight is occurring. As the violent,
4 chaotic audio continues, a black card is shown on the screen that states: “Out of respect for all
5 parties involved, we have chosen not to show this fight. College Hill and ASU do not condone
6 violence of any kind.” The disturbing audio goes on for approximately 15 seconds, before,
7 during and after the period in which the black card is displayed.

8 The camera returns to the classroom, where we see Rose being forcibly led out of the
9 classroom. The students remaining in the classroom look extremely distressed, with one woman
10 crying and saying, “Oh my God! Oh my God!” As the episode continues, the fight is extensively
11 discussed among the cast members.

12 Although the actual physical contact between the two women is not shown on camera,
13 the scene dramatically depicts the physical altercation by showing Rose’s opening swing, by
14 playing an extended segment of violent and disturbing audio that leaves no doubt that a physical
15 fight is occurring, and by showing video and playing audio of other classmates’ reactions during
16 and after the event. The black card reinforces the fact that a physical fight had occurred. The
17 scene is much more dramatic than what is shown in the trailer, and nothing that is in the trailer is
18 left out of the scene. Plaintiff does not dispute that the physical fight actually occurred.

19 The episode was filmed in late 2022. Mimi Blanchard, the lead producer on Season 2,
20 declares: “After the fight, Ms. Rose and Ms. Hernandez were expelled from ASU, which has a
21 zero-tolerance policy for physical violence. Because they were no longer attending ASU, Ms.
22 Rose and Ms. Hernandez were no longer part of College Hill: Celebrity Edition.”

23 **B. Other Alleged Promotional Materials Mentioned in the Complaint**

24 Plaintiff also alleges that defendants disseminated a screen shot showing actual, physical
25 contact between the two women on social media. Plaintiff also claims that defendants were
26 behind an interview of Hernandez that was conducted by the hosts of a webseries called “Drink
27 Champs” that is disseminated on YouTube. The “Drink Champs” episode in question was not
28 submitted by either side. Plaintiff alleges that Hernandez stated in that interview that she “got in

1 a fight on College Hill. Somebody attacked me and I put their head through that
2 mother[...]glass.” The evidence regarding these materials is discussed in the discussion section
3 below.

4 **C. Plaintiff’s Subscription to BET Plus**

5 Plaintiff subscribed to BET Plus on May 17, 2023. Defendant presents evidence that
6 plaintiff subscribed through the Apple Store. The subscription started with a free seven-day trial,
7 after which the account converted to a paid account charging \$9.99 monthly. From reviewing the
8 BET Plus viewer data, defendant was able to determine that plaintiff watched Episode 6 on June
9 8, 2023.

10 Defendant presents evidence that plaintiff’s access to the service was cut off several days
11 later, apparently because of an issue with the payment, and that plaintiff resubscribed a few days
12 later directly through BET Plus. Plaintiff disputes that his original subscription was cut off or
13 that he opened a second account. For purposes of this motion, the court accepts plaintiffs’
14 version of the facts. Plaintiff paid a total of \$19.98 for two months’ worth of service to BET
15 Plus.

16 **RULINGS ON OBJECTIONS**

17 **A. Defendants’ Objections to Plaintiff’s Evidence, filed on Nov. 3, 2023**

- 18
- 19 1. Sustained.
 - 20 2. Sustained.
 - 21 3. Sustained.
 - 22 4. Sustained.
 - 23 5. Sustained.
 - 24 6. Sustained.
 - 25 7. Sustained.
 - 26 8. Sustained.
 - 27 9. Sustained.
 - 28 10. Sustained.

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B. Defendant’s Objections to Plaintiff’s Evidence, filed on April 4, 2024

1. Overruled. The court has considered the supplemental evidence submitted by plaintiff to cure this issue and finds that the deposition testimony has been sufficiently authenticated.
2. Overruled.
3. Overruled.
4. Overruled.
5. Sustained.
6. Overruled.
7. Overruled.
8. Overruled, but of limited value for the reasons stated in the objections.
9. Overruled, but of limited value for the reasons stated in the objections.
10. Overruled.
11. Overruled.

DISCUSSION

A. Legal Standard

California’s anti-SLAPP legislation provides a special motion to strike “intended to resolve quickly and relatively inexpensively meritless lawsuits that threaten free speech on matters of public interest.” (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 619, quoting *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, 639.) To effectuate the purpose of the statute, the statute is to be “construed broadly.” (*See* Code Civ. Proc., § 425.16, subdivision (a); *Rand Resources, LLC, supra*, 6 Cal.5th at p. 619.)

1 Code of Civil Procedure section 425.16, subdivision (b)(1) provides in relevant part: “A
2 cause of action against a person arising from any act of that person in furtherance of the person’s
3 right of petition or free speech under the United States or California Constitution in connection
4 with a public issue shall be subject to a special motion to strike, unless the court determines that
5 the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”
6 (Code Civ. Proc., § 425.16, subd. (b)(1).) (All statutory references are to the Code of Civil
7 Procedure unless otherwise indicated.)

8 Section 425.16, subdivision (e) defines an “act in furtherance of a person’s right of
9 petition or free speech under the United States or California Constitution in connection with a
10 public issue” to include, among other things: “(3) any written or oral statement or writing made
11 in a place open to the public or a public forum in connection with an issue of public interest, or
12 (4) any other conduct in furtherance of the exercise of ... the constitutional right of free speech
13 in connection with a public issue or an issue of public interest.”

14 Under this statute, the defendant bears the initial burden to prove that the plaintiff’s
15 lawsuit (or any claim therein) “arises from” defendant’s exercise of free speech or petition rights
16 as defined in section 425.16, subdivision (e). (*Equilon Enterprises, LLC v. Consumer Cause,*
17 *Inc.* (2002) 29 Cal.4th 53, 61.) “The defendant bringing the anti-SLAPP motion to strike must
18 make a prima facie showing that the allegations that form the basis of the plaintiff’s claims arise
19 from conduct that falls under one of the categories set forth in section 425.16, subdivision (e).”
20 (*Laker v. Board of Trustees of California State University* (2019) 32 Cal.App.5th 745, 760.)

21 If the defendant makes a prima facie showing under the first prong, the burden shifts to
22 the plaintiff to establish “a probability” that plaintiff will prevail on the claims that are based on
23 protected activity. “The Supreme Court has described this second step of the SLAPP analysis as
24 a ‘summary-judgment-like procedure.’” (*Laker v. Board of Trustees of California State*
25 *University* (2019) 32 Cal.App.5th 745, 760; accord, *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)
26 The plaintiff carries the burden of demonstrating that its claim has “at least ‘minimal merit.’”
27 (*Laker*, 32 Cal.App.5th at p. 760.) “If the plaintiff is unable to demonstrate that his or her claim

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1 has at least minimal merit, then the trial court should deem the cause of action a SLAPP and
2 should strike it.” (*Id.*)

3 To meet the burden on the second prong, the plaintiff must produce evidence that would
4 be *admissible at trial*. (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) Plaintiff must
5 prove that the claim is both legally sufficient and supported by a prima facie showing of facts
6 sufficient to support a favorable judgment. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, 93;
7 *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) The test is essentially that
8 which would govern a motion for summary judgment or a motion for nonsuit or directed verdict.
9 (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714; *Kenne v. Stennis* (2014) 230 CA4th 953, 963;
10 *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 469.) The plaintiff cannot rely on the
11 allegations in the complaint.

12 The anti-SLAPP statute generally does not apply to claims arising out of certain
13 categories of commercial speech, including representations about the defendant’s goods or
14 services that are made to customers or potential customers for promotional purposes. (Code Civ.
15 Proc., § 425.17, subd. (c).) However, that exception does not apply to “[a]ny action against any
16 person or entity based upon the creation, dissemination, exhibition, advertisement, or other
17 similar promotion of any dramatic . . . or artistic work, including, but not limited to, a motion
18 picture or television program.” (*Id.*, § 426.17, subd. (d)(2).) As the claim at issue here arises out
19 of the promotion or advertising of a television program, the commercial speech exception to the
20 anti-SLAPP statute does not apply.

21
22 **B. Prong One: Were defendants’ alleged communications and conduct**
23 **protected by the Anti-SLAPP statute?**

24 All of plaintiff’s claims arise directly from the advertising for and alleged promotion of
25 *College Hill*. Defendants argue that the promotion of *College Hill* is protected activity under
26 section 425.16, subdivision (e)(4). Again, that subdivision defines protected activity to include
27 ““any other conduct in furtherance of the exercise of . . . the constitutional right of free speech in
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1 connection with a public issue or an issue of public interest.” Commonly referred to as the
2 “catchall provision,” this subdivision “extends the protection of the anti-SLAPP statute beyond
3 actual instances of free speech” regarding a public issue or an interest of public interest in a
4 public forum “to all conduct in furtherance of the exercise of that right when undertaken in
5 connection with a public issue or issue of public interest.” (*Ojeh v. Brown* (2019) 43
6 Cal.App.5th 1027, 1036; accord, *FilmOn.com, Inc. v. DoubleVerify, Inc.* (2019) 7 Cal.5th 133,
7 139-140 (*FilmOn*).

8 The creation and dissemination of a television series is constitutionally protected free
9 speech. (*Musero v. Creative Artists Agency, LLC* (2021) 72 Cal.App.5th 802, 816 [“Creating
10 a **television** show is an exercise of constitutionally protected expression”]; *Tamkin v. CBS*
11 *Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 143 [“The creation of a **television** show is an
12 exercise of free speech”]; *Hunter v. CBS Broadcasting Inc.* (2013) 221 Cal.App.4th 1510, 1521,
13 [casting decisions are protected activity]; *De Havilland v. FX Networks, LLC* (2018) 21
14 Cal.App.5th 845, 860 [“the First Amendment ... safeguards the storytellers and artists who take
15 the raw materials of life—including the stories of real individuals, ordinary or extraordinary—
16 and transform them into art, be it articles, books, movies, or plays.”].)

17 Further, advertising and promoting a television series furthers the exercise of free speech
18 by making it more likely the public will discover and watch the program. (*Woulfe v. Universal*
19 *City Studios LLC* (C.D. Cal., Dec. 20, 2022, No. 222CV00459SVWAGR) 2022 WL 18216089 [a
20 movie trailer furthers the exercise of free speech “by increasing public engagement with the
21 movie—drumming up public interest in the movie”]; *Tamkin*, supra, 193 Cal.App.4th at p. 143
22 [“Here, defendants’ acts helped to advance or assist in the creation, casting, and broadcasting of
23 an episode of a popular television show.”]; *Ojeh v. Brown* (2019) 43 Cal.App.5th 1021, 1040
24 [activities that further or advance the production of a documentary film, such as soliciting
25 investors, fall within the scope of the anti-SLAPP statute.]

26 The court next addresses whether the speech at issue – the television program and
27 associated promotional activities – constituted speech “in connection with” a public issue or an
28 issue of public interest. “[A] statement is made ‘in connection with’ a public issue when it

1 contributes to—that is, ‘participat[es]’ in or furthers—some public conversation on the
2 issue.” (*FilmOn, supra*, 7 Cal.5th at p.151.) Courts have identified “three nonexclusive and
3 sometimes overlapping categories of statements within the ambit of subdivision (e)(4).
4 [Citation.] The first is when the statement or conduct concerns ‘a person or entity in the public
5 eye’; the second, when it involves ‘conduct [or speech] that could directly affect a large number
6 of people beyond the direct participants’; and the third, when it involves ‘a topic of widespread,
7 public interest’.” (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621 (*Rand*.) By
8 contrast, “a matter of concern to the speaker and a relatively small, specific audience is not a
9 matter of public interest.” (*Ibid.*).

10 Here, the episode of *College Hill* at issue in this lawsuit involves a topic of widespread,
11 public interest. The episode involved discussions of issues regarding race and racial identity, and
12 the physical fight that is at the center of plaintiff’s claim arose out of a dispute on that topic. By
13 including actual discussions on such issues, the episode participates in and furthers public
14 conversation on the topic. Further, as noted, the trailer and other promotional activities also
15 furthered the public conversation by making it more likely that the public would watch the
16 episode.

17 For all of the foregoing reasons, the court concludes that plaintiff’s lawsuit arises out of
18 speech and conduct protected by the anti-SLAPP statute.

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20 **B. Prong Two: Is Plaintiff’s Evidence Sufficient to Make a Prima Facie**
21 **Showing that the Claims Have Merit?**

22 On Prong Two, as noted, plaintiff bears the burden to show the claim is both legally
23 sufficient and supported by a prima facie showing of facts sufficient to support a favorable
24 judgment. (*Navellier, supra*, 29 Cal.4th at pp. at 89, 93.)
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1 **1. Claims for Violation of the False Advertising Law, Unfair**
2 **Competition Law, and Consumer Legal Remedies Act**

3 **a. Plaintiff Has Not Made a Prima Facie Showing of the**
4 **Elements of the Claims**

5 To prove a violation of the False Advertising Law (FAL) (Bus. & Prof. Code, §§ 17500,
6 et seq.) or the Consumer Legal Remedies Act (CRLA), plaintiff must prove that defendants made
7 a false or misleading statement. The FAL “broadly prohibit[s] false or misleading advertising,
8 declaring that it is unlawful for any person or business to make or distribute any statement to
9 induce the public to enter into a transaction ‘which is untrue or misleading, and which is known,
10 or which by the exercise of reasonable care should be known, to be untrue or misleading.’”
11 (*People v. Ashford University, LLC* (2024) 100 Cal.App.5th 485, 508.) A violation of the FAL is
12 also a violation of the Unfair Competition Law (Bus. & Prof. Code, §§ 17200, et. seq.);
13 plaintiff’s UCL claim is based on the allegedly false or misleading advertising. (*Ibid.*) “[T]he
14 FAL prohibits “not only advertising which is false, but also advertising which[,] although true,
15 is either actually misleading or which has a capacity, likelihood or tendency to deceive or
16 confuse the public.’ [Citation.] Thus, to state a claim under either the UCL or the false
17 advertising law, based on false advertising or promotional practices, ‘it is necessary only to show
18 that “members of the public are likely to be deceived.””” (*Ibid.*)

19 “‘Likely to deceive’ implies more than a mere possibility that the advertisement might
20 conceivably be misunderstood by some few consumers viewing it in an unreasonable manner.
21 Rather, the phrase indicates that the ad is such that it is probable that a significant portion of the
22 general consuming public or of targeted consumers, acting reasonably in the circumstances,
23 could be misled.” (*Lavie v. Proctor & Gamble Co.* (2003) 105 Cal.App.4th 496, 58.) The same
24 standards apply to the CLRA.

25 Here, plaintiff has not made a prima facie showing that it is probable that a significant
26 portion of the general consuming public or targeted consumers could be misled by the trailer. As
27 plaintiff alleges, the trailer strongly suggests that two of the female cast members had a physical
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1 altercation in a classroom. That suggestion is true; the women in question *did* have such a
2 physical altercation. Further, contrary to plaintiff's assertion, the altercation *was* depicted in the
3 episode, with a level of graphic detail that was greater than that in the trailer. As previously
4 described, the episode depicted the physical altercation by showing Rose's opening swing, by
5 playing an extended segment of violent and disturbing audio that leaves no doubt that a physical
6 fight is occurring, and by showing and playing audio of other classmates' reactions during and
7 after the event. Although the physical contact between the women is not shown, it is not
8 necessary to show that contact to effectively convey to the audience that a physical fight
9 occurred. The scene is much more dramatic than what is shown in the trailer, and nothing that is
10 in the trailer is left out of the scene. Further, the tone of the trailer and the episode are very
11 closely aligned.

12 Plaintiff alleges that the trailer led him to believe that the episode would show the actual
13 physical contact between the women, instead conveying that the fight had occurred through less
14 graphic storytelling techniques. But there is nothing in the trailer that indicates how the fight
15 would actually be depicted in the episode. Filmmakers often use storytelling techniques to
16 convey that an event has occurred without showing every graphic detail. For example, a film
17 may have a scene in which a gruesome automobile accident leads to the death of a character.
18 That scene may be depicted by showing the moments leading up to the impact; then by having
19 the camera cut away while the screech of brakes and a massive crash are heard; and then by
20 showing bodies on the ground covered by sheets with a coroner's truck nearby. Or a filmmaker
21 may depict a sex scene by showing the initial moments of physical intimacy, then cutting the
22 camera away while suggestive sounds are played, and then showing the characters in a ruffled
23 bed talking about what just happened. A trailer that suggested a car accident or a sex scene
24 would be depicted in the films would not be misleading simply because the films did not actually
25 show close-ups of the mangled dead bodies or a more explicit depiction of the sex act that some
26 viewers of the trailers might hope to see.

27 As the trailer and the episode both truthfully convey to the viewer that a physical fight
28 between the two women occurred, there is nothing about the trailer and episodes in themselves

1 that would justify a conclusion that a substantial portion of the viewing public would be deceived
2 by the trailer. And plaintiff does not present sufficient extrinsic evidence to support such a
3 conclusion. In an attempt to meet this burden, plaintiff presents his own declaration and that of
4 one other consumer who was led to believe that the actual physical contact between the women
5 would be aired. The two declarations are insufficient to make a prima facie showing that it is
6 probable that a significant portion of the general consuming public or of targeted consumers
7 would be misled by the trailer.

8 Plaintiff also present screenshots of what appear to be comments from social media from
9 other anonymous consumers who appear to be commenting on plaintiff's lawsuit, saying that
10 they thought the trailer was false advertising and that they had thought that they would get to see
11 the fight. Plaintiff provides no evidence regarding how these comments were collected, where
12 they appeared, or any other information about them. They are attached to the opposition papers
13 without any declaration at all. The court sustains defendants' objections to the social media
14 comments as hearsay and lacking foundation.

15 Plaintiff also alleges in his first amended complaint that he was misled by what he calls a
16 "screenshot" that was circulated on social media and by an interview of Joseline Hernandez that
17 was posted to YouTube, but he provides no evidence to support those assertions. Plaintiff
18 submits a declaration in opposition to the motion, but plaintiff does not declare that he saw either
19 the photograph or the interview before he subscribed to BET Plus or that he relied on either in
20 deciding to subscribe. Thus, he has not made a prima facie showing as to reliance or causation
21 as to these materials. Further, with respect to the interview, plaintiff alleges that the interview
22 occurred on May 25, 2023, but the evidence submitted by defendant establishes that plaintiff
23 subscribed to BET Plus on May 17, 2023, before the interview occurred. Plaintiff could not have
24 relied on the interview in deciding to subscribe.

25 Plaintiff has also not met his burden to make a prima facie showing that defendant was
26 responsible for the dissemination of either the photograph or the interview. As to what plaintiff
27 calls a screenshot, plaintiff attaches a still photograph to his first amended complaint that appears
28 to be the two women from the trailer engaged in a physical fight. It has a label attached that

1 says: "Screenshot of Altercation." Plaintiff presents no evidence regarding where or in what
2 context this image appeared; the allegations in the first amended complaint and plaintiff's
3 arguments are not evidence. Further, the court cannot assume that the image was necessarily
4 circulated by defendants from the content of the image itself. From the classroom scene in the
5 episode at issue, the court can see there were at least 15 students in the classroom plus the
6 professor; and more people arrived on the scene as the event was occurring. (See Episode 6 at
7 0:15:02, 0:15:34, 0:15:53.) There are numerous cell phones visible in the scene; there is no
8 evidence to suggest that someone in the room could not have taken a video and, for example,
9 texted to someone else while the event was occurring. There also had to have been a number of
10 crew members on set. Further, any number of employees, independent contractors, or vendors
11 could have had access to the footage during post-production period. The court has no basis for
12 concluding that the still image was released by defendants as part of an official marketing effort
13 as opposed to being leaked by someone else who was present on the scene or had access to the
14 footage. The court cannot draw any inference from the context of the alleged social media posts
15 because plaintiff has presented no evidence about where or how they were posted or what text
16 accompanied them. The plaintiff has not made a prima facie showing that any defendant
17 disseminated the photograph.¹

18 In support of the motion, defendants present a declaration from Jason Harvey, the Senior
19 Vice President of Business Operations and Subscriptions for BET. Mr. Harvey declares that the
20 group that he heads "led the marketing efforts for Season 2 of College Hill: Celebrity Edition."
21
22

23 ¹Further, defendant provides persuasive evidence that BET Plus and other defendants were not responsible for the
24 interview. Defendant presents the declaration of Jason Brown, who was the Director of Corporate
25 Communications and Publicity at Black Entertainment Television ("BET"). He declares: "I arranged press
26 appearances for cast members to promote the series. . . . [¶] My team did not arrange any press appearances for
27 Joseline Hernandez. We had no role whatsoever in the interview Ms. Hernandez did on "Drink Champs." In fact, we
28 were surprised to see the interview when it came out in May 2023. [¶] Throughout our efforts to promote Season
2 of College Hill: Celebrity Edition, we attempted to promote positive aspects of the series. We avoided promoting
the physical fight that took place between Ms. Hernandez and Amber Rose, in part because we knew that Alabama
State University—where the series was filmed—was not happy that the fight had taken place."

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1 He states in a conclusory manner: “No ‘screenshot’ showing a physical fight was released as
2 part of any official marketing campaign for the series.”

3 The conclusory statements in Harvey’s declaration lack foundation, and the court gives
4 them little weight. However, plaintiff, not the defendant, bears the burden on Prong 2. The
5 defendants do not have to prove that they did not disseminate the photograph. And nothing in
6 Mr. Harvey’s deposition supports an inference that BET or any other defendant was behind the
7 dissemination of the screenshot.

8 **b. *Woulfe v. Universal City Studios LLC is Distinguishable***

9 Plaintiff relies heavily on the federal district court’s decision in *Woulfe, supra*, 2022 WL
10 18216089, but the case is distinguishable on the facts. Further, the case is not persuasive
11 authority with respect to Prong 2 because the court applied the wrong legal standard under
12 California law for determining whether a claim has minimal merit.

13 In that case, plaintiffs alleged they were induced to rent a movie called *Yesterday*
14 because the actress Ana DeArmas appeared in the trailer. The scene in the trailer featuring
15 DeArmas was cut from the final film, and the actress did not appear in the film at all. Plaintiffs
16 alleged they would not have rented the movie had they known that DeArmas would not be in the
17 movie. Plaintiff asserted claims for violation of the FAL, UCL, and CLRA (among other
18 claims).

19 Defendants brought a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6)
20 and an anti-SLAPP motion. The court found that the claims fell within the scope of the anti-
21 SLAPP motion. On Prong 2, however, the court applied a pleading standard to determine
22 whether the plaintiffs had met their burden, rather than the correct test under California law.
23 Specifically, applying federal pleading standards, the court said plaintiff must “present *sufficient*
24 *allegations* to assert a plausible claim. [Citations omitted.] [¶] Thus, Plaintiffs' burden is to
25 plausibly *allege* that ‘a significant portion of the general consuming public or of targeted
26 consumers, acting reasonably in the circumstances, could be misled’ that De Armas or the
27 Segment would be in the movie.” (*Woulfe, supra*, at p. *7, italics added.)
28

1 The court concluded that plaintiff had sufficiently *alleged* such a claim. Defendants
2 argued that the plaintiffs' claims failed because the trailer made no affirmative representation
3 that DeArmas would be in the movie (even though she appeared in the trailer). The court
4 rejected that argument, concluding that plaintiffs had sufficiently alleged that defendants had
5 made an implied representation that DeArmas would be in the movie by including her in the
6 trailer. The court further found that plaintiff had plausibly *alleged* that a significant portion of
7 reasonable consumers could be led to believe that DeArmas would be in the movie.

8 Thus, in contrast to this case, in *Woulfe*, there was something in the trailer – an
9 appearance by a popular actress – that did not appear in the film. The court, unsurprisingly, held
10 that it was plausible that a reasonable consumer could be misled into believing the actress would
11 appear in the film. Here, by contrast, everything that appeared in the trailer appeared in the
12 series, and there is nothing about the trailer that is inconsistent with the way that the fight is
13 depicted in the movie. The fact that the federal court concluded that the plaintiffs in *Woulfe* had
14 alleged a plausible claim does not undermine the conclusion that plaintiff has not presented
15 sufficient evidence to make a prima facie showing on Prong 2.

16 **c. Plaintiff's Claims Are Directed to the Content of the**
17 **Episode, Not the Advertising**

18 For purposes of this motion, the court accepts plaintiff's contention that the trailer is
19 wholly commercial speech with limited first amendment protection. Plaintiff contends that his
20 claims are based on the misleading nature of the trailer, but when the claims are closely
21 analyzed, it becomes clear that his true complaint is with the artistic choices the producers made
22 regarding the scene in the episode, rather than with the trailer.

23 The physical fight between the two women was a major plot point in Episode 6 (and
24 perhaps the entire season). As discussed, the producers and editors of the episode had a range of
25 choices as to how to depict the fight in the episode. At one end of the spectrum, they could have
26 chosen merely to allude to the fight, much as is done in the trailer. At the other end of the
27 spectrum, they could have chosen to show every second of the physical contact between the

1 women in gruesome detail. And they had myriad choices in between those two extremes. The
2 producers elected to go with an approach somewhere in the middle of the spectrum, with graphic
3 audio of the event being played and with audio and video of the classmates' reactions, but with
4 no images of the actual physical contact. From a storytelling perspective, the approach the
5 producers took was an effective way of conveying to the audience that a physical fight had
6 occurred; the audience would be left with no doubt that there had been a fight.

7 Given the significance of the physical altercation to the plot of Episode 6, it is also
8 natural that the producers and marketers would decide to reference the fight in the trailer for the
9 season. As previously discussed, the trailer was less explicit than what was shown in the
10 episode. It strongly alluded to the fact that there would be a fight, but no fight was actually
11 shown. Given that the trailer was at the low end of the explicitness scale, the scene in the trailer
12 would be an appropriate way to allude to the fact that a physical fight between the women had
13 occurred, regardless of how explicitly the fight was depicted in the episode.

14 Plaintiff's claim is based on the premise that once the producers made the decision to
15 allude to the fight in the trailer, they were *obligated* to air the entire fight, including video
16 footage of actual physical contact between the two women. According to plaintiff, no other
17 storytelling technique was allowed. Viewed in this way, it becomes clear that plaintiff's claim is
18 more about the artistic choices the producers made about how to depict the scene in the episode
19 than about how the fight was alluded to in the trailer.² This is further supported by the remedy
20 plaintiff seeks for the alleged violation. In addition to compensatory and punitive damages,
21 plaintiff seeks an injunction requiring defendants "to show plaintiff the full contents of the
22 altercation between the cast." Plaintiff does not seek any injunction with respect to the marketing
23 of the show.

24 To the extent the claim is directed to the content of the episode and not the trailer, the
25 claims fail for several reasons. First the episode is non-commercial speech to which the false
26

27 ² For purposes of this analysis, the court disregards the still photograph, since plaintiff did not make a prima facie
28 showing that any defendant disseminated the photograph; how, when, or where the photograph was displayed or
in what context; or that plaintiff relied on the photograph in deciding to subscribe to the BET Plus service.

1 advertising laws do not apply. Second, there is nothing that is alleged to be untrue about the
2 episode. Third, defendants' artistic decisions about how to depict certain incidents in the episode
3 are protected by the First Amendment. (See, e.g., *Miami Herald Pub. Co. v. Tornillo* (1974) 418
4 U.S. 241, 258 [editorial control and judgment over what to publish is protected by the first
5 amendment]; *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 398
6 [entertainment programming is entitled to the same first amendment rights as programming
7 designed to inform]; *De Havilland v. FX Networks, LLC* (2018) 1 Cal.App.5th 845, 857-59 [First
8 Amendment barred claim based on TV docudrama].) The producers had the artistic freedom to
9 depict the fight with a lower level of explicit detail, even if in past seasons physical fights had
10 been shown more explicitly.

11 For all of the foregoing reasons, plaintiff has not met his burden on Prong 2 as to the
12 FAL, CLRA, or UCL claims.

13 2. Remaining Claims

14 Each of plaintiff's remaining claims is based on the same premise as the FAL, CLRA,
15 and UCL claims -- that plaintiff was induced to subscribe to BET Plus because defendant made
16 material false representations regarding the fight scene. (See Plaintiff's Opposition
17 Memorandum filed on November 2, 2023, at p.18-19 ["The central issues in Plaintiff's]s claims
18 are whether the Defendants made some actionable misrepresentation in its advertisements of
19 College Hill].) The claims all fail for the same reasons as the FAL, CLRA, and UCL claims.
20

21
22 Dated: MAY 29 2024

Kristin S. Escalante

23 KRISTIN S. ESCALANTE
24 SUPERIOR COURT JUDGE