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(previously sued as JOHN DOE 2,
aka ELECTRICK_MAN)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

GLOBAL TELEMEDIA INTERNATIONAL, INC., a Delaware corporation; JONATHON BENTLEY-STEVENS, an individual; REGINA S. PERALTA, an individual,

Plaintiffs,

v.

DOE 1 aka BUSTEDAGAIN40; DOE 2 aka ELECTRICK_MAN; DOE 3 aka BDAMAN609; and DOES 4 through 35, inclusive,

Defendants.

Case No.: SACV 00-1155 DOC (EEx)

REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE; [Cal. Civ. Proc. § 425.16

SUPPORTING DECLARATION OF MEGAN E. GRAY[Filed Concurrently];

Date: February 5, 2001
Time: 8:30 a.m.
Courtroom: 9-D

Defendant Ronald Reader, previously sued as DOE 2 aka ELECTRICK_MAN ("Reader"), respectfully submits the following Reply to Plaintiffs' Opposition to Reader's Special Motion to Strike.

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I. INTRODUCTION

After watching the GTMI stock valuation plummet in the bear market of 2000,[1] Plaintiffs filed this defamation lawsuit against Defendant Reader for two posts he made in the Raging Bull online community of stock chatrooms. There are only two statements at issue:

> The thing that concerns me is their PR statements give them the appearance [sic] of being so high tech, so cutting edge but their real life product is so slow or non-existant [sic].
>
> The companies [sic] statements are so forward looking that: 'Their real life product roll-out is so slow and several of their products are just plans on the drawing board (do not exist).

These statements about the slow and non-existent products of GTMI are fully protected under the free-speech rights of the California and United States constitutions. These free-speech rights are especially acknowledged in California, under the anti-SLAPP statute of Civ. Proc. §425.16. This statute recognizes that free speech may be imperiled not only by a civil verdict, but also by the enormous financial hardship and chilling effect on speech that defending against a frivolous lawsuit entails.

Under the anti-SLAPP statute, the defendant has the initial burden of establishing a *prima facie* case that the action arose from acts in furtherance of his right of free speech. This Reader has done. Now, the burden shifts to the plaintiff to establish that it is likely to prevail on the merits. Wilcox v. Sup. Ct., 27 Cal. App. 4th 809, 820-21, 33 Cal. Rprt. 2d 446, 452-53 (1994). Plaintiffs in the case at bar have failed to meet this burden.

II. READER'S STATEMENTS ABOUT THE PUBLICLY OWNED GTMI AND ITS MANAGEMENT CONCERN A MATTER OF PUBLIC INTEREST AND THEREFORE FALL WITHIN THE SCOPE OF SECTION 425.16

Reader's statements, made in a popular chatroom filled with cheerleaders and nay-sayers, are vague characterizations about the product roll-out of a publicly owned and controversial company that has been scrutinized by the SEC and the news media. As such, his statements fall within the

[1] A news article and graph describing this bear market are attached as Exhibit 1.

ambit of the anti-SLAPP statute, which expressly states that it "shall be construed broadly." Cal. Civ. Proc. § 425.16 (a) .[2]

The anti-SLAPP statute applies here for a variety of reasons. GTMI is an active business enterprise offering products and services to the general public, and entering into multi-national business transactions. Plaintiffs are public figures who issue press releases and seek out and obtain media coverage.[3] GTMI is a publicly-held company, regulated by the government. GTMI is operating under a shadow because of the SEC's concerns that its president may be stepping over the line and committing fraud in his forward-looking statements.[4] This company is a matter of undeniable public controversy and interest, resulting in tens of thousands of messages on the GTMI message boards, and even garnering the attention of investigative journalists.[5] Perhaps most importantly, GTMI is a company with many thousands of investors, each of whom is directly impacted by Plaintiffs' business performance and activities.[6]

Contrary to Plaintiffs' assertions that no court has said that above factors should result in a determination that the anti-SLAPP statute is applicable, such cases do exist. For example, in Church of Scientology v. Wollersheim, 42 Cal. App. 4th 628, 650, 49 Cal. Rptr. 2d 620, 633 (1996), the court stated ". . . matters of public interest . . . include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals. Examples are product liability suits, real estate or *investment scams*, etc." (Emphasis added). At least one California court has expressly ruled that the completeness of a publicly-held company's

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[2]Plaintiffs citation to Zhao v. Wong, 48 Cal. App. 4th 1114, 55 Cal. Rptr. 2d 909 (1996), is irrelevant because Zhao was overruled by the California legislature's 1997 amendment to Cal. Civ. Proc. § 425.16, which mandates a broader interpretation of the SLAPP statute than that prescribed in Zhao. See Damon v. Ocean Hills Journalism Club, 2000 Cal. App. LEXIS 943, 102 Cal. Rptr. 2d 205 (Dec. 13, 2000), citing Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1120, 81 Cal. Rptr. 2d 471 (1999) (overruling Zhao).

[3]Reader's Special Motion to Strike, Gray Decl. ¶ 3, 6.

[4]Reader's Special Motion to Strike, Gray Decl. ¶ 4, 5.

[5]Exhibit D, Reader's Special Motion to Strike, Gray Decl.

[6]Plaintiff Bentley-Stevens himself claims that GTMI has about 10,000 shareholders. Stevens Decl., ¶ 9.

SEC filings is a public issue under the SLAPP statute because it has the potential of impacting the lives of a large number of investors and potential investors. See Exhibit 2, which is the court's ruling on a § 425.16 motion in Hitsgalore.com, Inc. v. Bloomberg L.P., et al., Superior Court of California, Case Number BC 228991, Hon. Paul Boland (Nov. 9, 2000) ("Given the number of investors [2,200], plaintiff's efforts to attract new public investors, and the overall value of the investment in plaintiff, information regarding the completeness of plaintiff's SEC filings had the potential of impacting the lives of a large number of investors and potential investors in plaintiff. According, the allegedly defamatory articles addressed a 'public issue' and plaintiff's complaint...falls within the ambit of the anti-SLAPP statute"). Indeed, even one of the cases cited by Plaintiffs stands for the proposition that the quality of products offered by a commercial enterprise constitutes a matter of public interest under the anti-SLAPP statute. Paradise Hills Assoc. v. Procel, 235 Cal. App. 3d 1528, 1544-45, 1 Cal. Rptr. 2d 514, 522-23 (1991) (defendant statements concerned the poor quality of plaintiff's products and contained exhortations to third parties to not purchase plaintiff's products).

Thus, the SLAPP statute covers speech concerning commercial matters, and rightly so. As the Supreme Court has noted,

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable." Va. Pharmacy BC. v. Va. Consumer Council, 425 U.S. 748, 765 (1976).

In a failed effort to support their hypothesis that the anti-SLAPP statute does not apply to statements about a company, Plaintiffs attempt to distinguish Wilcox v. Superior Court, 27 Cal. App. 4th 809, 822, 33 Cal. Rptr. 2d 446, 453-54 (1994). In Wilcox, a court reporter was sued for defamation and conspiracy to restrain trade after she distributed a memorandum urging the boycott of an alliance of court reporters that directly contracted with insurers for the right to be the exclusive court reporters used in cases involving the insurers. In response to arguments that the Wilcox memorandum involved "commercial speech" and the California legislature did not intend the anti-SLAPP statute to protect this form of expression, the court noted that it could not discern ". . . any

legislative history suggesting the Legislature intended to exclude commercial speech from the protection afforded by section 425.16." Id. at 822. "To the contrary, the statute has been criticized for the very reason it *does* cover commercial speech. [Citation omitted.] Furthermore, the view that SLAPP suits do not include suits aimed at commercial speech was rejected by the Ninth Circuit in In re Airport Car Rental Antitrust Litigation, 693 F.2d 84, 86 (9th Cir. 1982)."

In addition, Plaintiffs mistakenly rely on Globetrotter Software, Inc. v. Elan Computer Group, Inc., 63 F. Supp. 2d 1127, 1130 (N.D. Cal. 1999), for the proposition that the SLAPP statute does not cover Reader's statements because they concern Plaintiffs' business activities.[7] In Globetrotter, the Court declined to construe "statements of one company regarding the conduct of a competitor company" as matters of public interest for purposes of the SLAPP statute, because otherwise, ". . . any lawsuit alleging trade libel, false advertising or the like in the context of *commercial competition* would be subject to attack as a SLAPP suit." Id. [emphasis added]. Reader was not, and is not, in commercial competition with Plaintiffs, and Plaintiffs do not claim otherwise.[8]

Plaintiffs also attempt to distinguish the numerous cases supporting Reader's Motion, stressing that those cases concern media defendants, which Reader is not, and media defendants have "always enjoyed a higher level of protection under our First Amendment and related laws."[9] However, this is not the law. Media defendants do not have greater First Amendment protection, as made clear in a case cited by Plaintiffs -- Paradise Hills Associates v. Procel, 235 Cal. App. 3d 1528, 1543 (1991) -- and many other cases. See Nizam-Aldine v. City of Oakland, 47 Cal. App. 4th 364, 372-73, 54 Cal. Rptr. 2d 781, 786-87 (1996), citing Philadelphia Newspapers, Inc. v. Hepps,

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[7]Contrary to Plaintiffs' "slippery-slope" argument, characterizing a publicly-owned company in the media spotlight as a matter of public interest does not mean that people can say whatever they want about the company. The First Amendment does not protect, for example, defamation or stock manipulation. In the case at bar, however, neither tort occurred.

[8]Similarly, Plaintiffs' citation to Rosenberg v. J.C. Penny Co., 30 Cal. App. 2d 609, 86 P.2d 696 (1939), is inapposite, because it also concerned allegedly defamatory statements made by a competitor (as well as being decided in 1939).

[9]Plaintiffs make this argument based on selective citation to Morningstar, Inc. v. Superior Court, 23 Cal. App. 4th 676, 695, 29 Cal. Rptr.2d 547, 557-58 (1994).

475 U.S. 767 (1986) (noting that a distinction between media and nonmedia defendants has been rejected by courts in other jurisdictions and is inconsistent with the First Amendment analyses set forth in several California cases). In fact, it would be more reasonable for an individual, rather than a media entity, to enjoy greater First Amendment protection, because individuals do not have access to the administrative and financial resources that media defendants command to protect themselves against frivolous defamation claims.

For all these reasons, Reader's statements fall within the ambit of the anti-SLAPP statute.

III. BECAUSE THE ANTI-SLAPP STATUTE APPLIES, PLAINTIFFS MUST CARRY THEIR BURDEN THAT THEY HAVE A LIKELIHOOD OF SUCCESS ON THEIR DEFAMATION CLAIM.

Plaintiffs do not carry their burden of showing that they are likely to succeed on the merits of their claims because Reader's statements are protected opinion, or, in the alternative, they are substantially true.

A. READER'S STATEMENTS ARE PROTECTED OPINION

As Reader explains in the Special Motion, the distinction between statements of fact and opinion is made by the court, based on the totality of the circumstances. Baker v. Los Angeles Herald Examiner, 42 Cal. 3d 254, 260-261 (1986). In the context of the Message Boards, Reader's statements could not be construed by any reasonable viewer as anything other than opinion.[10]

Reader posted on an animated internet bulletin board in the midst of over 55,000 messages by other posters.[11] These Message Boards are notoriously vibrant and cacophonous communities, where users post statements of wildly varying degrees of maturity and lucidity.[12] As one new article described the Message Boards,

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[10]This Court is invited to visit the Message Boards itself to obtain a sense of the tone and tenor, nature and context, of the messages posted there. The URL is http://www.ragingbull.altavista.com/mboard/boards.cgi?board=GTMI

[11]During January 2001 alone, users dumped over 1,800 messages onto the GTMI Message Boards. Gray Decl. ¶ 6.

[12]This is encouraged on a special community page of Raging Bull, where the most prolific and popular users are heralded as "Top Members," and particularly juicy messages are singled out for special daily recognition. See Exhibit 3.

> Visit any financial message board on the Net, and you may feel like you've stepped out of the bus terminal and into the streets of some teeming, unfamiliar city. Where do you go first? How do you get acquainted with the locals? And who's the freak named Food Stamps in a Bodybag screaming "Awesome earnings run!!!....[The Raging Bull message boards have] attracted members who seem looser and less formal than those [at other message board forums] while being no less informed. See Exh. 4.

In this circus-like setting, it is unreasonable for Plaintiffs to claim that anyone would consider Reader's statements as anything more than his opinion.

Plaintiffs' only clear basis for claiming that Reader's statements should not be classified as opinion is because an unrelated Reader post said, "just the truth."[13] See Opposition, p. 10. Plaintiffs have failed to demonstrate any nexus between this message and the allegedly tortious posts. Moreover, opinion and truth are legal distinctions not familiar to non-lawyers. Most laymen think that their opinion is true, which is precisely why is it their opinion (i.e., who would hold an opinion believing it to be false?).

Taking a different tack, Plaintiffs imply that, because Reader exercised his freedom of speech in a public place where he knew other interested parties gathered, there is less reason to classify his statements as opinion. Id. Reader does not understand this argument -- free speech rights, and their violation, are determined by the content of the message spoken, not the number of ears of those that hear it.[14] Plaintiffs also seem to claim that, because Reader appears to have experience with buying and selling stocks, his statements are less opinion. Reader does not understand this argument either.

It appears that Plaintiffs may also be arguing that the implication of Reader's posts, rather than the posts themselves, are defamatory, even though the California Supreme Court has set a high standard for causes of action based on allegedly defamatory statements that rely on implication or innuendo. Forsher v. Bugliosi, 26 Cal. 3d 792, 802, 608 P.2d 716, 721 (1980). Plaintiffs attempt to

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[13]Plaintiffs do not specify which of Reader's posts they are paraphrasing when they state that "[h]e repeatedly claimed that everything he was saying was, effectively, 'just the truth.'" However, Reader assumes that Plaintiffs are referring to Posts Nos. 9865, 9953, and 9979.

[14]At least where children are not involved.

construe Reader's statements about slow and non-existent product rollout as "simply another way of saying that . . . [GTMI's] press releases are lies, and that its owners are thieves" (Opposition, p. 3) and as "basically repeatedly accus[ing Bentley-Stevens] of being a crook" (Opposition, p. 14, line 8; Declaration of Bentley-Stevens ("Stevens Decl."), ¶¶ 19, 20). However, Reader's statements do not say that, nor can they reasonably be interpreted in such a manner in this message-board debate. See Mattel Inc. v. MCA Records, Inc., 28 F. Supp. 2d 1120, 1159-62 (C.D. Cal. 1998)("bank robber" who committed a "heist" was non-actionable hyperbole because the statements were made in the context of a program where both sides of an issue were presented); Underwager v. Channel 9 Australia, 69 F.3d 361, 367 (9th Cir. 1995)(statement that plaintiff was "lying" could have denoted white lies or deception and thus it was non-actionable rhetorical hyperbole). Moreover, Reader's statements are not "of and concerning" the individual plaintiffs, and so to claim that these statements call Bentley-Stevens a criminal is beyond the pale. See Golden North Airways v. Tanana Publ'g Co., 218 F.2d 612, 621-22 (9th Cir. 1954) (it must be "certain" the plaintiff was the person defamed).

Plaintiffs simply have not carried their burden of establishing that Reader's statements, in this Message Board context, are not properly classified and protected as opinion.

B. READER'S STATEMENTS, EVEN IF NOT CONSIDERED OPINION, NONETHELESS WERE SUBSTANTIALLY TRUE

Even if Reader's statements are not classified as opinion, Plaintiffs cannot carry their burden of proof that these statements are not substantially true. Defamation law assesses a statement by its "gist" or "sting" – not by hyper-technical definitions or distinctions. "'It is well settled that a defendant is not required in an action of libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified . . . .'" Reader's Digest Ass'n. v. Superior Court, 37 Cal. 3d 244, 262 n.13, 208 Cal. Rptr. 137 (1984). Many of

GTMI's promised products and programs, as listed in the Special Motion, did not roll out on time, or did not roll out at all.[15]

Tellingly, in their Opposition, Plaintiffs do not state that they had products rolled out as of March 2000.[16] Because of the detailed showing that Reader put forth in his Motion, listing numerous examples of products that were slow or non-existent as of March 2000, Plaintiffs' burden required them to specifically refute those examples; they did not.[17] Moreover, Plaintiffs themselves have even admitted, in a September 2000 press release, that the roll-out of their products was slow. See Exh. "5" ("...the roll out of our products is overdue..."). In light of that admission, it is patently

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[15]See Special Motion, pp.15-19, citing: (a) GTMI's acquisition of ITD; (b) GTMI's purchase of IEX Da Vinci; (c) GTMI's disastrous acquisition of Finish Line Collectibles, Inc.; (d) GTMI's doomed purchase of Log On America; (e) GTMI's doomed operation of Vision 21; (f) GTMI's failure to roll out UltraPulse; (g) GTMI's aborted merger with GCN; (h) GTMI's dead-end marketing agreement with CyberAir; (i) GTMI's failure to exploit technology licensed from UCI; (j) GTMI's repeated failure to roll out Smart-Card on time; and (k) GTMI's ultimate failure to roll out Message Pilot. There were additional bases to show the Court that GTMI had slow or non-existent product rollout, but due to space limitations, not all examples could be included in the Special Motion.

[16]The fact that Plaintiffs may have executed contracts is irrelevant to an assessment of whether products were actually available.

[17]Instead, Plaintiffs focus on a smattering of business developments that finally took shape in the last quarter of 2000, well after Reader's March 2000 posts. These subsequent developments are irrelevant -- as one would expect, the truth defense is based on the truth that existed at the time the statements were made. See Restatement of Torts 2d, § 581A, Comment g ("The truth of a defamatory imputation of fact must be determined as of the time of the defamatory publication").

Moreover, although Plaintiff Bentley-Stevens has submitted a declaration claiming that GTMI now has products, it is of questionable value. Putting aside questions about his credibility based on the SEC investigation, there are significant reasons to doubt his broadly framed and ambiguous claims. For example, Bentley-Stevens attaches pictures of a purported "Smart-Card" to his Declaration as Exhibit "8." However, it remains unclear whether a single Smart-Card has ever been sold to anybody on the open market. Exhibit "8" obviously contains photographs of a mockup Smart-Card product, as evidenced by the generic user name/account stamped on the card (i.e., John C. Smith, Acct. No. 0000 0000 0000 0000). Unless Plaintiffs produce evidence that they have actually sold and activated more than a *de minimus* amount of Smart-Cards, Reader has good reason to doubt that the Smart-Card has actually rolled out.

It is also noteworthy that, in the Opposition, Plaintiffs continue to use the careful, forward-looking statements familiar to most of their press releases and public filings, most likely because the products and programs that they describe are still on the cusp of becoming reality (See, e.g., Opposition, p. 6: "Since taking over GTMI, Plaintiffs have *developed* a number of *potentially* profitable lines of business." [Emphasis added.]).

ridiculous for Plaintiffs to be suing Reader for making essentially the same statement a few months earlier.

Even the Court were to assume from ambiguous statements in the Opposition that Plaintiffs did in fact have a few products that were available to the public as of March 2000, this is insufficient to carry Plaintiffs' burden. Such an assumption does not materially detract from the extensive and detailed evidence provided by Reader in his Motion that, as of March 2000, GTMI had numerous product roll-outs that were slow or non-existent. In any event, such an assumption is not justified on the record presented to this Court.

Because Plaintiffs cannot dispute that GTMI's product roll-out was slow or non-existent as of March 2000, they focus on a red herring -- the installation of Bentley-Stevens as president. Plaintiffs argue that GTMI's long history of failed products or programs before Bentley-Stevens joined the company are irrelevant to this matter. Yet, however likely it is that Mr. Bentley-Stevens can turn GTMI around into a successful enterprise, his mere presence cannot alter the course of history -- and, as of March 2000, GTMI's long and unremarkable history was that of slow and non-existent product roll-outs.[18]

IV. READER'S ADDITIONAL STATEMENTS, FIRST MENTIONED IN PLAINTIFFS' OPPOSITION, ARE PRESUMPTIVELY PROTECTED FREE SPEECH

Although it is still unclear what statements are the subject of Plaintiffs' Complaint, the Opposition identifies two additional statements by Reader at which Plaintiffs take umbrage. One such statement is that Bentley-Stevens "was busted for misrepresentation and overstatement of the

[18]Bentley-Stevens argues that the Smart-Card and Message Pilot fiascoes do not support the truth of Reader's statement that GTMI product roll-outs were *non-existent*, because press releases available in March 2000 did not state that the products were due for release immediately. Bentley-Stevens Decl., ¶¶ 16, 17. However, this argument is dangerously misleading. GTMI publicly announced on March 21, 2000 that "[w]e are at the product roll-out stage. . ." for Smart-Card. See Reader Special Motion to Strike, Gray Decl., Exh. T. That certainly sounds like the announcement of an imminent roll-out. Further, Bentley-Stevens conveniently ignores the fact that Plaintiffs have sued Reader for a two-part statement: i.e., that GTMI product roll-outs are *slow* or non-existent. If it is true that Smart-Card has finally rolled-out, almost nine months after the March 21, 2000 press release

facts"[19] and a statement expressing the opinion that "I think that he's [Bentley-Stevens] freezing everyone in their tracks and will leave you holding the BAG!" (Post. No. 11585).

Epitaphs and slang fall within the realm of non-actionable opinion and hyperbole. For example, in Cochran v. NYP Holdings, Inc., 210 F.3d 1036 (9th Cir. 2000) (per curiam), the court affirmed dismissal of Johnnie Cochran's defamation action for the statement that "Cochran has yet to speak up [regarding his involvement in a civil damages action by police brutality victim Abner Louima]. But history reveals that he will say or do just about anything to win, typically at the expense of the truth." Id. at 1038. The average reader could reasonably find that the statement indicated a history of unethical conduct. But considering the broad context of the statement (e.g., OJ trial), and the setting (opinionated columnist), the court found it was a "collection of opinions, colorfully expressed, which renders the statement at issue simply more rhetorical hyperbole." Id. at 1124. See also, Hofmann Co. v. E.I. Du Pont De Nemours & Co., 202 Cal. App. 3d 390, 399, 248 Cal. Rptr. 384, 388 (1988)("it's like building homes off the end of a runway" when discussing the danger of permitting housing to be built next to a toxic chemical plant, was opinion, in part because the statement was rhetorical hyperbole, an imaginative expression of the perceived danger); Gold v. Harrison, 88 Haw. 94, 962 P.2d 353 (1998) (ex-Beatle George Harrison's statement to reporter about property-line battle with neighbors, "I'm being raped by all these people," is not false and defamatory, but merely rhetorical hyperbole).

In the context of the heated debates that may occur on Internet discussion groups, readers are less likely to view published statements as assertions of fact. Nicosia v. DeRooy, 72 F. Supp. 2d 1093, 1101 (N.D. Cal. 1999). In the context of spirited critique, "'the audience may anticipate efforts by the parties to persuade others to their position by use of epithets, fiery rhetoric or hyperbole, [and thus] language which generally might be considered as statements of fact may well assume the character of statements of opinion." Id. (citations omitted).

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announcing an imminent roll-out, Reader does not understand how Bentley-Stevens can argue that Reader's statement (that GTMI roll-outs are slow) is anything but substantially true.

[19]Post. No. 9953, not 9553 as cited by Plaintiffs.

Bentley-Stevens asserts that Reader's "freezing everyone in their tracks" comment should be interpreted to mean that he is a crook, that GTMI is a fraud without products, and that GTMI is "going down the tubes." Bentley-Stevens Decl., ¶ 20. However, this statement was hyperbole at the most, meant to illustrate the apparent discrepancy between Plaintiffs' optimistic press releases and Bentley-Stevens' pessimistic selling of large chunks of GTMI stock.[20]

With respect to the "busted" comment, Bentley-Stevens was in fact "busted for misrepresentation and overstatement of the facts " by the SEC, like it or not. "Busted" is slang for being accused by authorities of wrongdoing. The fact that Bentley-Stevens does not like to be reminded of this, and that he thinks that he will ultimately be cleared, is beside the point. Although Bentley-Stevens claims that "busted" connotes that he was literally arrested and charged with a criminal act, no reasonable viewer of Reader's post would have made such a connotation. That is particularly so, given that Reader's post included a hyperlink to the official SEC webpage announcing the enforcement action against Bentley-Stevens. In this context, it not reasonable to interpret this "busted" comment as Bentley-Stevens posits.

V. NO DISCOVERY IS NECESSARY TO DECIDE THIS MOTION

As should be evident, Plaintiffs have no likelihood of success on the merits of their claims. Plaintiffs are unwilling to recognize this, however, and request that the Court, should it be inclined to grant the Motion, first permit Plaintiffs to conduct discovery.

No discovery is necessary or will help the Plaintiffs' Opposition to the Motion. This Special Motion to Strike can and should be granted on several grounds, particularly that the statements at issue are (1) non-actionable opinion; and (2) substantially true. With respect to the issue of opinion, the Court can review for itself the statements at issue, within the greater context and tenor of the Message Boards, and determine as a matter of law whether or not the statements are properly classified as opinion. See, e.g., Milkovich v. Lorain Journal Co., 497 U.S. 1, 22 (1990). With

[20]In his Declaration, Bentley-Stevens admits that he sold GTMI stock. Id.

respect to the issue of substantial truth, all of that information is either publicly available or is solely in the hands of Plaintiffs, not Reader.[21]

The reality is that the only reason that Plaintiffs have come forward with the request for discovery is because they want to inflict hardship on Reader by dragging out this SLAPP suit. During the almost two months that elapsed after Reader notified Plaintiffs that he would be filing his Special Motion to Strike and before he actually did file it (automatically staying all discovery), Plaintiffs did not propound any discovery, other than subpoenas served on Raging Bull to learn the Raging Bull posters' identities and publicly embarrass them online. Plaintiffs also did not request that Reader stipulate to lift the stay to conduct discovery prior to the hearing on this Motion. Gray Decl. ¶ 5. Plaintiffs presented this request for discovery to the Court because it is the only possible way to save this case from dismissal.

Plaintiffs seem to want discovery into Reader's state of mind to attempt to contradict his assertion that he did not act with "actual malice" (i.e., either actual knowledge of falsity or reckless disregard for truth or falsity).[22] As a practical matter, it is impossible for Plaintiffs to disprove Reader's own explanations of his state of mind, let alone to do so with clear and convincing evidence. See Beilenson v. Sup. Ct., 44 Cal. App. 4th 944, 950, 52 Cal. Rptr. 2d 357, 362 (1996)(to prove actual malice by clear and convincing evidence, plaintiff must make a prima facie showing, by direct evidence, that is "such as to command the unhesitating assent of every reasonable mind..." and "actual malice cannot be implied and must be proven by direct evidence."). Moreover, Plaintiffs' planned discovery is not reasonably calculated to lead to the discovery of evidence relevant to the issue of actual malice. While the evidence that Plaintiff hopes to gather could

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[21]GTMI's Press Releases and Public SEC Filings are available online at GTMI's own website, various financial websites, and Lexis/Westlaw. Many of these public filings are attached as Exhibits to Reader's Special Motion to Strike.

[22]Plaintiffs want to conduct ". . . discovery of Mr. Reader on the issues of his general experience in trading stocks, and his overall knowledge and sophistication as to the valuation of lower-dollar stocks such as GTMI, including the effect of 'consumer' comments. The requested discovery would include a document production and special interrogatories, and possibly a deposition." See Opposition, pp. 3-4, fn. 2.

conceivably relate to establishing common-law malice (i.e., ill will), as to the element of actual malice, it does not matter whether Reader has invested in other stocks, was aware that many people read the Message Board posts, or whether he is a midwestern farmer, father, electrician, or CEO.[23]

Nevertheless, the Court need not reach this ground and decide whether or not to grant discovery, because the Court can grant Reader's Special Motion to Strike on grounds that Plaintiffs are unlikely to succeed on the merits of their claim due to the fact that Reader's statements are protected opinion, and are substantially true.

VI. Plaintiffs Are Attempting to Use this Court to Invigorate GTMI's Floundering Stock Price

GTMI's persistently falling stock price in 2000 occurred in tandem with the brutal bear market that took shape in March and April 2000 and continued through the end of that year. See Exh. "1." GTMI's dwindling valuation is attributable to the whims of the current economic climate, as well as its own lackluster performance and string of failed promises -- not to a couple of comments that Reader posted on the Raging Bull Message Boards. Indeed, Plaintiffs' Opposition does not even attempt to address the section in Reader's Motion stating one of the grounds for granting the Motion is that Plaintiffs' are unable to establish a likelihood on the merits because they will be unable to establish causation between GTMI's reduced valuation and Reader's statements.

Plaintiffs are hunting for a "victory" in this case, so that they can later re-characterize it as a judicial pronouncement that GTMI is a wonderful company to invest in, and trumpet it to the world of potential investors, as well as use it to alleviate concerns of current shareholders. But the reality is much different. Informed investors may have serious reasons to doubt the wisdom of such an

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[23]Plaintiffs are unsuccessful in their attempts to tarnish Reader's credibility by pointing out discrepancies in the facts concerning his purchase and sale of GTMI shares (these discrepancies are relatively trivial numerical differences). As Reader stated in his Declaration, he bought and sold his GTMI shares for a quick, if modest, profit. Initially, he thought that he had bought and sold a total of 4,000 shares at certain prices, but later (after he sent his letter to Plaintiff Bentley-Stevens dated April 5, 2000), he investigated and learned that his broker had made an error. As a result, he had only owned 2,000 shares. See Reader Special Motion to Strike, Reader Decl., ¶¶ 2, 3, and 5. See also Gray Decl., ¶ 7, Exhibit 6.

investment, and under the First Amendment, they are not prohibited from expressing that doubt -- in fact, they are encouraged to express that doubt.

Plaintiffs' Complaint is an untenable SLAPP suit that has been filed primarily to chill speech and has no likelihood of success on the merits. The allegedly libelous statements that are at issue simply are not actionable, and the other causes of action are meritless.[24] For all of these reasons, the Court should grant the Special Motion to Strike and dismiss this case with prejudice as to Defendant Ronald Reader.

Dated: January 26, 2001

MEGAN E. GRAY
BRIAN A. ROSS
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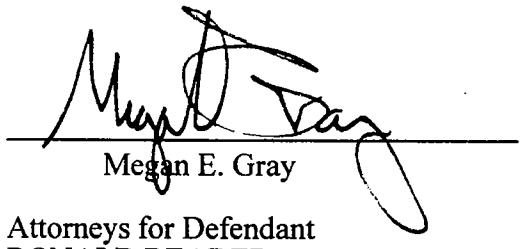

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(previously sued as John Doe 2, aka ELECTRICK_MAN)

[24]It is unclear if Plaintiffs are claiming trade libel, or libel, which is thought to be a different tort. In any event, First Amendment protections for opinion, substantial truth, and actual malice still apply. For discussion of this point, see Defendant Barry King's Special Motion to Strike, filed January 16, 2001.