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IN THE CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH COUNTY

ANDY NGO, an individual,

Plaintiff,

v.

ROSE CITY ANTIFA, an unincorporated
association; BENJAMIN BOLEN, an
individual; JOHN HACKER, an individual;
CORBYN (KATHERINE) BELYEA, an
individual; JOSEPH CHRISTIAN EVANS,
an individual; MADISON LEE ALLEN,
an individual; DOES 1-50.

Defendants.

Case No.

COMPLAINT (Assault; Battery;
Intentional Infliction of Emotional
Distress; ORICO, ORS § 166.720,
et seq.);

Claim over \$50,000; amount
pleaded: \$900,000

NOT SUBJECT TO
MANDATORY ARBITRATION

JURY TRIAL DEMANDED

Filing fee per ORS 21.160(1)(c)

1 Plaintiff Andy Ngo (“Plaintiff” or “Ngo”), by and through his undersigned
2 counsel, states the following for his Complaint:

3 INTRODUCTION

4 1. Defendants have sought to suppress independent journalist Ngo’s
5 activities through a coordinated pattern of violent, harassing, and stalking behavior.
6 Defendant Rose City Antifa is an offshoot of Antifa, a group deemed a “domestic
7 terrorist group” by the U.S. government, and widely known for its organized
8 violence and riotous behavior. Ngo, with his persistent reporting, has brought to
9 light many misdeeds of this terrorist organization and is perhaps more responsible
10 than any other American journalist for increasing public awareness of the threat
11 Antifa and its followers pose to public safety. In retaliation for Ngo’s unfavorable
12 coverage, and in an effort to intimidate Ngo from further exposing Antifa’s illegal
13 acts, Defendants have targeted Ngo, including by assaulting and threatening Ngo to
14 the point of causing lasting and significant physical injuries; publicizing private
15 and personal information about the whereabouts of Ngo and his family; and even
16 attempting to break into his family’s home, among a multitude of other threats and
17 acts of violence.

18 2. Ngo brings this action seeking compensation from Defendants for the
19 severe harm Defendants have caused, and for preliminary and permanent
20 injunctive relief enjoining Defendants from further assaulting, threatening,
21 stalking, or otherwise harassing Ngo.

22 JURISDICTION AND VENUE

23 3. The Circuit Court of the State of Oregon has jurisdiction over this
24 action pursuant to ORS 14.030, and because Defendants have purposefully availed
25 themselves of the benefits and protections of the State of Oregon. On information
26 and belief Defendants reside in Oregon, and the causes of action complained of
27 herein arise under Oregon law.

4. Venue is proper pursuant to ORS 14.050 and 14.080 because all or a substantial portion of the acts complained of herein occurred in Multnomah County, Oregon.

PARTIES

5. Plaintiff Andy Ngo is an individual who, at all times relevant to this Complaint, resided in Portland, Oregon.

6. Rose City Antifa is an association based in Portland, Oregon. Many, if not the majority, of its members are Portland residents. Rose City Antifa is an organized group of individuals which trains and directs the actions of its members. Luis Marquez is one of the leaders of Rose City Antifa.

7. Defendant Corbyn (Katherine) Belyea (“Belyea”) is an individual who, on information and belief, resides in Multnomah County, Oregon.

8. Defendant Benjamin Bolen (“Bolen”) is an individual and who, on information and belief, resides in Multnomah County, Oregon and is a member of Rose City Antifa.

9. Defendant Joseph Christian Evans (“Evans”) is an individual who reportedly does not have a local address, but has been known to reside under the Burnside Bridge in Portland, Oregon.

10. Defendant John Hacker (“Hacker”) is an individual who, on information and belief, resides in Oregon.

11. Defendant Madison Lee Allen (“Allen”) is an individual who, on information and belief, resides in Oregon.

12. Plaintiff does not know the legal names of Defendants Does 1-50, and accordingly sues them under fictitious names. Does 1-50 are any persons who directed, conspired, neglected to prevent, or engaged in the tortious conduct described below.

FACTUAL ALLEGATIONS

13. Andy Ngo is an independent journalist, who is best known for his news coverage of “Antifa,” an extremist movement and organization of far-left violent individuals who are renowned for their militant opposition to the government, law enforcement and people perceived as “right-wing.” In the U.S., Antifa calls for insurrectionary anarchy to overthrow the American government.¹ Antifa groups in Europe similarly resort to violence in pursuit of political change.

14. Antifa members engage in rioting, property destruction, and armed brawls with political opponents and bystanders or journalists perceived to be allies of their opponents. According to Antifa, any violence against public demonstrations by groups they view as fascist, racist, xenophobic, homophobic, conservative, or right-wing is inherently “self-defense”—irrespective of whether such groups actually subscribe to such views—because such public demonstrations purportedly lead to violence against marginalized groups.

15. Despite Antifa’s self-indulgent proclamations of protecting minority groups, Defendants, who upon information and belief are members of or are closely affiliated with Antifa, have targeted Ngo, a journalist who is of Asian descent and gay, for his unfavorable news coverage of them.

16. Defendants and their fellow Antifa members or supporters and “allies” have physically accosted and viciously assaulted Ngo at protests that he was covering, stolen his photographic equipment, publicized the addresses of his family home and mother’s business, tried to force entry into his house, and stalked

¹ <https://thehill.com/opinion/criminal-justice/500764-why-its-likely-to-be-antifa-not-neo-nazis-behind-the-anarchy-in-americas-streets>;
<https://www.washingtonexaminer.com/opinion/editorials/trump-is-right-antifa-are-terrorists-they-always-were>.

him in his personal life, including by attacking and stealing his phone while at a gym.

17. Rose City Antifa is the Portland chapter of Antifa.

18. Defendant Rose City Antifa constitutes a racketeering enterprise within the meaning of ORS § 166.715.

19. “Popular Mobilization” (also called “PopMob”) was established Alisha Berry, a member of Rose City Antifa. PopMob is purportedly not as violent as Rose City Antifa, but still engages in activities to counter perceived fascist and racist protests. PopMob and Rose City Antifa share leadership and members, and the two groups often collaborate.

The May Day Rabbit-Punch and Bear-Macing

20. On May 1, 2019, Ngo was covering demonstrations that commemorated the pro-labor holiday “May Day” in Portland, Oregon.

21. While video-recording the events, Ngo was set upon by mask-clad Rose City Antifa members and others.

22. Among them was Defendant Bolen, a heavy-set white man sporting a brimmed, black beanie, white-framed sunglasses, dark bandanna with white patterning, and black gloves with hard extensions near the knuckle area. He carried a distinctive skateboard.



1 23. Bolen struck Ngo in the abdomen with his fist, causing Ngo
2 significant pain and severe emotional distress. Ngo reasonably feared for his safety
3 following the incident. After the attack, Bolen melted into the crowd outside the
4 Immigration and Customs Enforcement facility at 4310 S. Macadam Ave.

5 24. Based on his attire, Bolen is, on information and belief, a member of
6 Rose City Antifa.

7 25. Ngo then left the area of the attack, and went to cover a demonstration
8 by a group called Patriot Prayer, against Antifa near a northeast Portland bar called
9 “Cider Riot,” which, at the time, was frequented Rose City Antifa members and
10 their supporters.²

11 26. During a verbal confrontation that ensued between members of the
12 Patriot Prayer and Rose City Antifa, several Antifa members began throwing
13 punches and spraying bear mace at their opponents, and a brawl broke out.

14 27. While Ngo was recording these events, Doe 1, a heavy-set, sunglass-
15 wearing white woman sporting a black hoodie, light-colored bandanna with black



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26 ² Cider Riot has since closed, permanently, following the death of a 23-year-old
27 Antifa member, Sean Kealiher, in a shooting involved hit-and-run on October 12,
28 2019 near the Cider Riot. <https://www.opb.org/news/article/antifa-killed-homicide-cider-riot-sean-kealiher/>.

1 stripes, and a hammer and sickle tattoo on her inner right forearm, depicted in the
2 image below, sprayed Ngo in the face and eyes with bear mace.³ Doe 1 is believed
3 to be a member of Rose City Antifa.

4 28. The attack left Ngo temporarily blinded and caused Ngo to fear for his
5 safety and that he might be further threatened or attacked. The incident caused Ngo
6 severe pain, humiliation, and emotional distress.

7 **May 7 2019 Assault by Antifa Member at Andy Ngo's Gym**

8 29. On May 7, 2019, Defendant John Hacker threw an unknown liquid
9 onto Ngo's head while Ngo was at his local gym.

10 30. On information and belief, Hacker intended to frighten and intimidate
11 Ngo in retaliation for his journalistic coverage of Rose City Antifa and other
12 counter-protesters.

13 31. When Ngo began to record Hacker with his phone, Hacker forcibly
14 took the phone from Ngo, without Ngo's consent.

15 32. Hacker refused to return the phone to Ngo, causing gym staff to
16 intervene and return the phone to Ngo.



27
28 ³ See 23:10-13 at:

<https://www.youtube.com/watch?v=tb4KREvKYBA&feature=youtu.be>.

33. Hacker's membership to the gym was later revoked by management.

34. Ngo reasonably fears that Hacker may commit further acts of violence against Ngo should he encounter Hacker again.

June 29, 2019 Attacks

35. On June 29, 2019, more protests arose, and Rose City Antifa faced-off against conservative protesters.

36. Ngo was in the midst of these protests in his capacity as a journalist, recording events on his GoPro video camera and phone for later analysis and commentary

37. Ngo was attacked on two separate occasions on this day.

38. In the first event, Rose City Antifa members and others, including Does 2-20, lobbed containers full of liquid, purportedly "milkshakes" they had acquired from PopMob, and other unknown liquids, at Ngo. Portland Police issued a warning on social media that day that the "milkshakes" may have contained quick-drying concrete.

39. One such "milkshake"-tossing assailant was Defendant Katherine (Corbyn) Belyea, depicted in the following image:



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2 40. Portland police officers took a crime report from Ngo regarding the
3 assault, but refused to confront Belyea, who was still in nearby in the park.

4 41. Later, at the same protest, without warning, Ngo was suddenly
5 mobbed and bloodied by a group of Rose City Antifa members and others,
6 including Does 21-43, who threw projectiles, including milkshakes, eggs, and
7 containers; punched; and kicked him. Members also hit him in the head with
8 plywood hard-edged sign placards, and carbon-hardened tactical gloves.

9 42. One of the attackers, referred herein as Doe 21, was a red-haired,
10 white woman who arrived as a passenger in a white Subaru Outback with the
11 Oregon license plate "456 LJC."

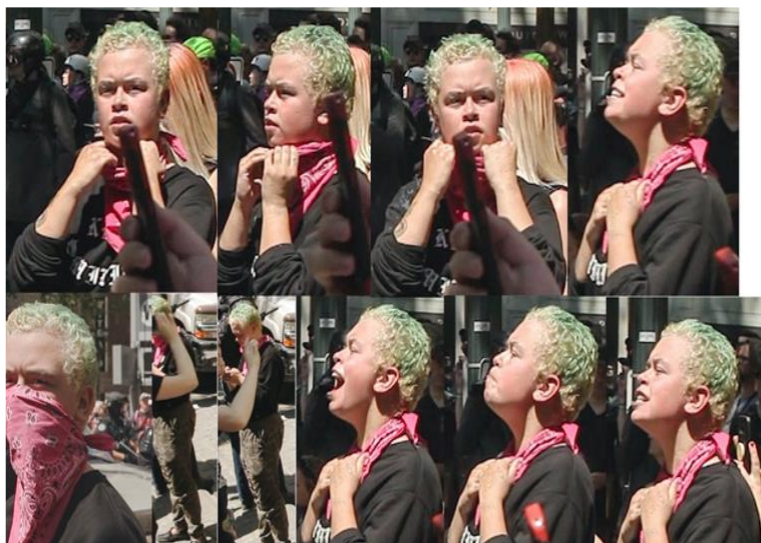
12 43. Defendant Joseph Christian Evans was among the group of assailants
13 who attacked Ngo. Evans was one of the first to strike Ngo, his actions inciting
14 further violence against Ngo.⁴

15 44. Defendant Madison Lee Allen was among the group of assailants
16 who attacked Ngo. Lee struck Ngo over the head with placard, while sporting
17 green hair and a light, red-colored bandanna, as depicted below. Defendant Evans
18 can be seen in the same photograph, just to the right of Allen.



27 ⁴ Evans is wanted by the police for an attack on another person on the same day.
28 See <https://www.oregonlive.com/portland/2019/08/portland-police-ask-for-help-finding-assault-suspect-from-june-29-protest.html>.

1 45. Allen showed her face at one time during the protests which was
2 captured on camera, as depicted below:



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12 46. During the mobbing, Ngo lost grip of his GoPro camera, which a Rose
13 City Antifa member, Doe 44, immediately stole.

14 47. The mob then dispersed and blended into the surrounding crowd.

15 48. Ngo was able to break away and requested assistance from the medic
16 team associated with the Portland Police. The police medics directed Ngo to the
17 central police precinct, the same area in which he was just beaten.

18 49. Ngo then walked himself to the police precinct, where he taken by
19 ambulance to Oregon Health & Science University and, after testing, was
20 diagnosed with a subarachnoid brain hemorrhage and hospitalized overnight.

21 50. As a result of the attacks, Ngo suffered severe pain, humiliation, and
22 emotional distress, for which he continues to receive treatment.

23
24 **“I Know Where You Live”**

25 51. On October 31, 2019, at least six masked Antifa members, including
26 Does 45-50, inclusive, approached Ngo’s family home and stood outside the door.
27 Each of their masks bore a printout of Ngo’s face.

1 52. They banged on Ngo's windows, rang the doorbell, and tried to gain
2 entry into Ngo's family home by trying the door handle to see if the door was
3 locked or not. They were not carrying trick or treat bags, and, on information and
4 belief, intended to harass, intimidate, and harm Ngo.

5 53. Ngo was present in the home at the time. He called the police and
6 recorded the trespassers on his home security system. The individuals left before
7 police arrived.



20 54. Soon after this incident, Ngo realized that personal information about
21 him, his family, and his mother's small business had been released publicly. Upon
22 information and belief, the six masked individuals were Antifa members who used
23 the publicized information to track Andy to his house and intimidate him.

24 55. As part of Rose City Antifa's campaign of terror and harassment
25 against Ngo, Twitter accounts controlled by Antifa members released, in two
26 separate events, private information about donors to Andy Ngo's medical expenses
27 from the mob attack and private information about his family (such as the address
28 of his mother's small business).

1 **CLAIMS**

2 **FIRST CLAIM FOR RELIEF**

3 **Assault – Common Law**

4 (By Plaintiff against all Defendants)

5 56. Plaintiff incorporates herein by reference each and every allegation
6 contained in the preceding paragraphs of this Complaint as though fully set forth
7 herein.

8 57. Defendants intended offensive or harmful contact with Andy Ngo
9 and/or put him in apprehension of such offensive or harmful contact with his
10 person.

11 58. Defendants placed Andy Ngo in apprehension of immediate physical
12 contact that appeared to be and that was harmful and/or offensive.

13 59. The acts or omission of the Defendants were the legal and proximate
14 cause of Andy Ngo's damages.

15 60. As a result of Defendants' actions, Ngo has suffered harm to his
16 person, causing injuries to his head and body, including bruising. Ngo has suffered
17 severe pain, discomfort, and emotional distress, as well as inconvenience and
18 interference with everyday activities. As a result of his injuries, Ngo required
19 medical care and ongoing medical treatment.

20 61. Defendants (1) committed these tortious acts in concert with each
21 other and pursuant to a common design to target Andy Ngo and forcibly dissuade
22 him from covering Antifa protests; (2) knew that each other's conduct constituted a
23 breach of duty to not commit violence against Andy Ngo and gave substantial
24 assistance or encouragement to the other Antifa members to engage in such
25 conduct; and/or (3) gave substantial assistance to each other in accomplishing the
26 tortious result and each member's own conduct, separately considered, constituted
27 a breach of duty to the third person.
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62. Ngo reasonably fears for his safety, and the safety of his family, and there exists a serious risk that Defendants will engage in further acts of violence against Ngo in retaliation for Ngo's continued journalistic coverage of Antifa activities, absent permanent injunctive relief.

SECOND CLAIM FOR RELIEF

Battery – Common Law

(By Plaintiff against all Defendants)

63. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

64. Defendants intended offensive or harmful contact with Andy Ngo.

65. Defendants caused or directly engaged in offensive or harmful contact with Andy Ngo.

66. Defendants' actions or omissions proximately resulted in damages to Andy Ngo.

67. As a result of Defendants' actions, Ngo has suffered harm to his person, causing injuries to his head and body, including bruising. Ngo has suffered severe pain, discomfort, and emotional distress, as well as inconvenience and interference with everyday activities. As a result of his injuries, Ngo required medical care and ongoing medical treatment.

68. Defendants (1) committed these tortious acts in concert with each other and pursuant to a common design to target Andy Ngo and forcibly dissuade him from covering Antifa protests, (2) knew that each other's conduct constituted a breach of duty to not commit violence against Andy Ngo and gave substantial assistance or encouragement to the other Antifa members to engage in such conduct, and/or (3) gave substantial assistance to each other in accomplishing the tortious result and each member's own conduct, separately considered, constituted a breach of duty to the third person.

69. Ngo reasonably fears for his safety, and the safety of his family, and there exists a serious risk that Defendants will engage in further acts of violence against Ngo in retaliation for Ngo's continued journalistic coverage of Antifa activities, absent permanent injunctive relief.

THIRD CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress – Common Law

(By Plaintiff against all Defendants)

70. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

71. Defendants intended to inflict severe mental or emotional distress on Andy Ngo.

72. Defendants' actions caused plaintiff to suffer severe emotional damage.

73. Defendants' actions consisted of multiple, extraordinary transgressions of the bounds of social toleration, namely the use of physical violence and intimidation tactics of threatened violence and stalking to both retaliate against Andy Ngo for his unfavorable news coverage of Antifa and suppress any such news coverage in the future.

74. Defendants caused Andy Ngo to suffer severe emotional distress, for which Ngo continues to receive ongoing medical treatment.

75. Defendants' actions or omissions proximately resulted in damages to Andy Ngo.

76. Defendants (1) committed these tortious acts in concert with each other and pursuant to a common design to target Andy Ngo and forcibly dissuade him from covering Antifa protests, (2) knew that each other's conduct constituted a breach of duty to not commit violence against Andy Ngo and gave substantial assistance or encouragement to the other Antifa members to engage in such

1 conduct, and/or (3) gave substantial assistance to each other in accomplishing the
2 tortious result and each member's own conduct, separately considered, constituted
3 a breach of duty to the third person.

4 77. Ngo reasonably fears for his safety, and the safety of his family, and
5 there exists a serious risk that Defendants will engage in further acts of violence
6 against Ngo in retaliation for Ngo's continued journalistic coverage of Antifa
7 activities, absent permanent injunctive relief.

8 **FOURTH CLAIM FOR RELIEF**

9 **Racketeer Influenced and Corrupt Organization Act - ORS § 166.720, *et seq.***

10 (By Plaintiff Against Rose City Antifa)

11 78. Plaintiff incorporates herein by reference each and every allegation
12 contained in the preceding paragraphs of this Complaint as though fully set forth
13 herein.

14 79. Ngo was injured by Defendant Rose City Antifa's violations of the
15 provisions of ORS §166.720 (1) and (4).

16 80. Rose City Antifa knowingly received proceeds derived directly and/or
17 indirectly from a pattern of racketeering activity in connection with its
18 establishment and operation of an enterprise consisting of Defendants and others,
19 in violation of ORS 166.720(1), and conspired or endeavored to do the same, in
20 violation of ORS § 166.720(4).

21 81. Rose City Antifa has directed its members, including the many Doe
22 Defendants clad in Rose City Antifa attire (black clothing and masks), to attack
23 Ngo and others to gain notoriety, and to thereafter obtain financial support in the
24 form of donations. Rose City Antifa uses these funds to further their racketeering
25 activities, including, to purchase materials, and to secure the release of Rose City
26 Antifa members arrested by law enforcement. According to its online fundraising
27 campaign, Rose City Antifa has raised over \$8,000 for these and other purposes.
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82. Distinguishing characteristics interrelating the incidents of racketeering activity include black or dark colored clothing and masks worn by those associated with the racketeering enterprise, material support for their efforts from other enterprise associates, and a focus upon Ngo and others devoted to shedding light on their unlawful enterprise.

83. The pattern of racketeering activity includes violent assaults against Andy Ngo on at least four separate occasions in 2019 alone. The May 1 and June 29, 2019 violent attacks detailed above against Andy Ngo constitute, at the very least, assault in the first, second, third, and fourth degree per ORS §§ 163.160 to 163.205. The violent attacks collectively constitute “rioting” under O.R.S. § 166.015.

84. Rose City Antifa's pattern of racketeering activities were not, and are not, isolated incidents.

85. Rose City Antifa acted to suppress Ngo's journalism through intimidation and violence, and all of their conduct detailed above was in furtherance of that goal.

86. Pursuant to ORS § 166.725, *et seq.*, Plaintiff is entitled to treble damages, court costs, and reasonable attorneys' fees.

JURY DEMAND

87. Plaintiff demands trial by jury on all questions of fact raised by his Complaint.

PRAAYER FOR RELIEF

88. WHEREFORE, Plaintiff Andy Ngo demands judgment against Defendants and prays for the following:

A. Compensatory damages exceeding \$300,000, trebled to \$900,000 pursuant to ORS 166.725(7)(a), and in a precise amount to be determined at trial;

B. Attorneys' fees pursuant to ORS 166.725(14), and costs;

1 C. Pre-judgment interest;

2 D. Temporary, preliminary, and permanent injunctive relief
3 prohibiting Defendants from harassing, threatening, harming, or attempt to do the
4 same, to Ngo, and prohibiting Defendants from further engaging in acts in
5 violation of ORS § 166.720, *et seq.*;

6 E. All other relief as this court may deem just and proper.

7 Date: June 4, 2020

/s James L. Buchal

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21 Facsimile: (415) 520-6593

22 **Pro Hac Vice Application Forthcoming*

23 *Attorneys for Plaintiff Andy Ngo*
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25
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ANDY NGO,)	
)	Case No: 20CV19618
Plaintiff,)	
)	OPINION AND ORDER RE: DEFENDANT
v.)	BENJAMIN BOLEN’S ORS 31.150 SPECIAL
)	MOTION TO STRIKE; PLAINTIFF’S
ROSE CITY ANTIFA, BENJAMIN BOLEN, JOHN HACKER, CORBYN (KATHERINE) BELYEA, JOSEPH CHRISTIAN EVANSETAL,)	CROSS-MOTION TO STRIKE
)	
Defendants.)	

Defendant Bolen’s ORS 31.150 Special Motion to Strike and Plaintiff’s Cross-Motion to Strike came before the Honorable Kathleen M. Dailey on November 19, 2020. James Buchal and Harmeet Dhillon (pro hac vice) appeared for Plaintiff Andy Ngo. Hillary Boyd and Johnathan Henderson appeared for Defendant Benjamin Bolen. Dave Park appeared for Defendant John Hacker.

Defendant Benjamin Bolen moves this Court to apply Oregon’s Anti-SLAPP statute, ORS 31.150. Plaintiff has alleged that Defendant assaulted him by way of a punch. Defendant alleges misidentification and that Plaintiff is targeting him for being at a protest representing opposing views to the Plaintiff. Because ORS 31.150 does not contemplate physical assault as “in furtherance of” Defendant’s First Amendment rights to free speech or petition, his motion is denied.

STATEMENT OF FACTS

Plaintiff Andy Ngo is an independent journalist who reports on, among other things, political demonstrations in Portland, Oregon. As relevant to this motion, Plaintiff alleges that during a

demonstration on May 1, 2019, Defendant Bolen “struck [Plaintiff] in the abdomen with his fist, causing [Plaintiff] significant pain and severe emotional distress.” Plaintiff’s Complaint, ¶ 23. Plaintiff claims Defendant Bolen was among the demonstrators and describes Bolen as “a heavy-set white man” wearing “a brimmed, black beanie, white-framed sunglasses, dark bandanna with white patterning, and black gloves with hard extensions near the knuckle area,” and carrying “a distinctive skateboard.” Plaintiff’s Complaint, ¶ 22. Defendant Bolen does not dispute that he was present at the demonstration at the time of the alleged actions but he denies that he was Plaintiff’s assailant. The other demonstrators in attendance were dressed predominantly in similar clothing, and the clothing itself obscured any potentially identifying features.

Defendant Bolen’s asserts Plaintiff has misidentified him. He moves the Court to strike all of Plaintiff’s claims against him under Oregon’s Anti-SLAPP Statute. Defendant Bolen submits two affidavits to support his motion; a declaration from himself and another from journalist Shane Burley. Plaintiff in turn moves the court to strike these declarations as legally insufficient. For the following reasons, Defendant’s Motion to Strike is denied and Plaintiff’s Cross-Motion to Strike is granted in part, denied in part.

LEGAL ANALYSIS

I. Defendant Bolen’s ORS 31.150 Anti-SLAPP Special Motion to Strike

Defendant Bolen moves to strike all of Plaintiff’s claims against him “because plaintiff named Mr. Bolen as a defendant in this action because of his presence at a political rally where he was engaged in speech or petitioning activities protected under” Oregon’s Anti-SLAPP statute. Defendant Ben Bolen’s ORS 31.150 Special Motion to Strike (“Defendant’s SMTS”), 2-3. The Anti-SLAPP statute protects defendants from actions arising out of certain statements or conduct by permitting a special motion to strike such actions at an early stage in the litigation:

(1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (3) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21....

(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

...

(c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or

(d) Any other conduct 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. ORS 31.150(1)-(2).

The statute then establishes a two-prong burden-shifting process by which the Court evaluates the special motion:

(3) A defendant making a special motion to strike under the provisions of this section has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document, or conduct described in subsection (2) of this section. If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.

(4) In making a determination under subsection (1) of this section, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which liability or defense is based. ORS 31.150(3)-(4).

In short, Defendant Bolen must first show that the claims against him “arise out of” protected statements or conduct. Only then would the burden shift to Plaintiff to demonstrate a probability of success on the claims.

Defendant himself admits that a punch to the stomach is not protected conduct under ORS 31.150(2)(d). Defendant’s SMTS, 17. To overcome this facial flaw in his motion, Defendant argues that Plaintiff’s misidentification of him shifts the conduct in question from the alleged punch to the petitioning activity in which he was engaged at the time. Defendant states—via legal brief and

affidavit—that he was in fact not Plaintiff’s assailant and that Plaintiff instead named him because of his known presence at, and participation in, the demonstration; and because of his political beliefs. Because at the time of the alleged assault, Defendant was engaged in activity which is protected by ORS 31.150, he argues, the claims against him are covered by the statute. To summarize Defendant’s argument in the terms of the statute, Plaintiff’s claims against him “arise out of” the protected conduct he was engaging in and not out of the conduct he is accused of because he was not Plaintiff’s assailant and was therefore named solely because of those protected activities.

The question of what conduct a claim arises from has been explored in both Oregon and California case law.¹ The Oregon Appellate Court has held that this question is “an inquiry into more generally what sort of claim this is.” *Deep Photonics Corp. v. LaChapelle*, 282 Or. App. 533 (2016) (citation omitted); *Mullen v. Meredith Corp.*, 271 Or. App. 698, 705 (2015) (stating the same). In *Deep Photonics*, as here, the parties disputed “what the conduct is from which plaintiffs’ claims ‘arise out of.’” *Id.* at 545. In holding that the conduct in question did not “arise out of” protected activity under subsection 2(b), the Appellate Court explained that “the act underlying the claim *itself* must have been an act in furtherance of the right to petition *and not just associated with it.*” *Id.* at 546 (citation omitted) (emphasis added). The same holds for subsections 2(c) and 2(d).

Plaintiff’s claim *itself* is one of assault, battery, and intentional infliction of emotional distress. The conduct Plaintiff alleges Defendant of engaging in is a punch to the stomach. Whether Plaintiff’s claims arise out of this conduct or some other conduct or statement is a legal question focusing on “what sort of claim” Plaintiff has brought. In answering this question, Plaintiff asks

¹ California case law is relevant because Oregon’s Anti-SLAPP statute is modeled after California’s, and therefore, California precedent before 2001 is binding, and precedent after that, persuasive. *Deep Photonics Corp.*, 282 Or. App. at 543, n. 5.

the Court to focus solely on the claim. Defendant, on the other hand, argues that the Court must consider evidence presented in the supporting and opposing affidavits submitted with the motion. In light of this evidence, he argues, the claim “arises out of” his demonstration activities and political beliefs, and not out of the alleged torts. Defendant Bolen is correct that California law indicates that the Court is not limited to the “four corners” of the complaint under the first prong of the Anti-SLAPP analysis. The Court may consider “the pleadings[] and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002) (quotation omitted). That prong one does not limit the Court to the Complaint does not change the scope of the Court’s analysis. Even though the Court considers the facts in the Complaint and affidavits, the relevant question for the Court firstly is whether the claim *itself* “arises out of” protected conduct as a matter of law, and not whether there is evidence of the Defendant’s misidentification. Defendant insists that “[a]n Anti-SLAPP motion is an evidentiary motion.” Defendant’s Reply, 3 (citing *Finton Construction, Inc. v. Bidna & Keys, APLC* (“*Finton*”), 238 Cal. App. 4th 200, 213 (2015)). But the *Finton* court noted that the Court engages in the evidentiary analysis only “*once the court reaches the second prong....*” *Finton*, 238 Cal. App. 4th at 213 (emphasis added). At the first prong, the Court considers only the general nature of the claim *itself*. Here, the claim “arises out of” an alleged punch to the stomach.

In *Mullen* and *Deep Photonics*, whether the conduct at issue was in furtherance of a protected act presented a complicated question—in both cases, the conduct was closely tied to the expression of protected rights. *Mullen* held that the claim arose out of a news broadcast and that therefore, the claim *itself* was based on conduct “in furtherance of” free speech. *Mullen*, 271 Or. App. at 705. *Deep Photonics* held that a claim alleging failure to give competent legal representation did not arise out of protected rights because, although the claim involved statements made by

an attorney, the conduct from which the claim arose was in fact incompetency, and not the statements themselves. *Deep Photonics*, 282 Or. App. at 545-46.

This case is not as complicated. Plaintiff alleges that Defendant punched him. The claims of assault, battery, and intentional infliction of emotional distress “arise out of” that alleged conduct. As Defendant Bolen himself concedes, a punch is not “conduct in furtherance of” free speech. ORS 31.150(2)(d). Defendant has failed to make the showing that these claims, as a legal matter, “arise out of” anything other than a “punch to the stomach.” The claims against Defendant do not “arise out of” any protected activity. Therefore, Defendant Bolen’s special motion fails at prong one of the Anti-SLAPP analysis.

Because Defendant’s motion fails at prong one, the Court need not proceed to prong two of the analysis to consider evidence of whether Plaintiff has made a prima facie showing of a probability he will prevail. While the Court will not reach the second prong, Defendant’s objection to inadmissible evidence presented in Plaintiff’s declaration is well taken in part. In paragraph 10 of Plaintiff’s Declaration, he states that “The members of the public were familiar with Mr. Bolen as he has attended violent Antifa protests and riots in Portland since 2016.... Mr. Bolen always brings his skateboard with him to Antifa protests, which he uses as a weapon and to get away quickly from the scene.” These statements are hearsay not based on the personal knowledge of Plaintiff and are therefore inadmissible for this motion.

The caselaw and statutory language of ORS 31.150 compel the Court to deny Defendant’s Special Motion to Strike. In denying Defendant’s motion, the Court is not “permit[ting] plaintiff to name essentially random attendees of a leftist protest, based on their appearance or dress....” Defendant’s SMTS, 17. Rather, the Court is holding only that Defendant has not shown that the

Anti-SLAPP statute reaches the claims against him. Defendant may continue to challenge the issue of misidentification through further motions practice.

II. Plaintiff's Cross-Motion to Strike

Plaintiff asks the Court to strike each of Defendant Bolen's Declarations for (1) insufficient evidence, (2) lack of personal knowledge, and (3) inadmissibility. Plaintiff's Cross-Motion to Strike, ¶ 2. The Court GRANTS Plaintiff's Motions to Strike the following testimony:

(a) Testimony from the Declaration of Benjamin Bolen In Support of Defendant's Special Motion to Strike

The following provisions are ordered stricken from the declaration of Benjamin Bolen:

He appears at these rallies in an effort to dox leftists, which means to uncover their identity and then publicly post personal identifying information online so white nationalist or other right wing groups can access the information and use it to target leftists and their families with harassment, threats, and sometimes even violence. Bolen Decl. ¶ 9.

Mr. Ngo feeds on this attention, even if it is negative. Bolen Decl. ¶ 11

He believes that racially motivated crimes are hoaxes. Bolen Decl. ¶ 12.

Mr. Ngo engages in stochastic terrorism by both demonizing leftists and posting their personal identifying information online. Bolen Decl. ¶ 12.

He knows that this information is used to target his opponents. Bolen Decl. ¶ 12.

He has a practice of embedding with a group of people from one of these groups, and reaches agreements with them whereby they provide him protection while they instigate a skirmish or physical confrontation that Mr. Ngo films and deceptively edits in a manner to further his agenda. Bolen Decl. ¶ 12.

Mr. Ngo does not care about the truth or about being accurate. Bolen Decl. ¶ 17.

Indeed, he is using this lawsuit as a means to raise money. Bolen Decl. ¶ 17.

Mr. Ngo has rushed to judgment with faulty information in an effort to demonize someone with political beliefs that differ from his own. Bolen Decl. ¶ 30.

(b) Testimony from the Declaration of Shane Burley in Support of Defendant's Special Motion to Strike

The following provisions are ordered stricken from the Declaration of Shane Burley:

Andy Ngo uses his clout and funding to identify people leads to a sequence of threats, slanders, and attacks. Burley Decl. ¶ 6.

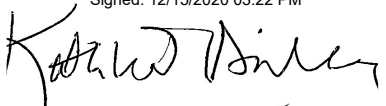
He takes an incident, usually something fairly innocuous like a fiery speech at a political rally or a disagreement on social media, and then traces far reaching allegations often mixed with his opponent's personal information. Burley Decl. ¶ 7.

Activists [] fear for their lives because Andy Ngo wants to make a name for himself. Burley Decl. ¶ 10.

CONCLUSION

Defendant's motion asks this Court to apply the Anti-SLAPP statute to claims of battery, assault, and IIED because of his insistence that he has been misidentified. Because the statute does not cover physical assault as protected conduct, Defendant's Special Motion to Strike is DENIED. Plaintiff's Motions to Strike are GRANTED in part and DENIED in part.

DATED this 15th day of December, 2020.

Signed: 12/15/2020 03:22 PM

By: Circuit Court Judge Kathleen M. Dailey
Kathleen M. Dailey
Circuit Court Judge