

(ENDORSED)
FILED

AUG 03 2015

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY S.G. ROMAN DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

JOYCE BARTHOLOMEW,

Plaintiff,

vs.

YOUTUBE, LLC, ET AL.,

Defendants.

Case No. 1-15-CV-275833

ORDER RE: DEMURRER TO FIRST
AMENDED COMPLAINT

The demurrer of defendant YouTube, LLC (“YouTube”) came on for hearing before the Honorable Joseph Huber on August 4, 2015 at 9:00 a.m. in Department 21. The matter having been submitted, the Court rules as follows:

Plaintiff Joyce Bartholomew (“Plaintiff”) is a private musician who creates and publishes original Christian ministry music. (First Amended Complaint (“FAC”), ¶ 6.) In 2013, Plaintiff produced an original music video for one of her songs (the “Video”), which she uploaded to the web site operated by YouTube on January 14, 2014. (FAC, ¶¶ 6-7.)

According to Plaintiff’s allegations, the Video became very popular among the public and had received approximately 30,000 views by the end of April 2014. (FAC, ¶ 10.) At this time, however, YouTube removed the Video, replacing it with the image of a distressed face and

1 the following statement (the "Statement"): "This video has been removed because its content
2 violated YouTube's Terms of Service." (FAC, ¶¶ 11-12, Ex. 4.) The Statement contained a link
3 that took readers to the subsection of a new page titled "Community Guideline Tips," which
4 stated: "Want a little more insight into the limits and exceptions in the Community Guidelines?
5 Here are some helpful examples and tips." (FAC, ¶¶ 12-13, Ex. 5.) The page then displayed a
6 list of the following categories, with links to further information: "Sex and Nudity," "Hate
7 Speech," "Shocking and Disgusting," "Dangerous Illegal Acts," "Children," "Copyright,"
8 "Privacy," "Harassment," "Impersonation," and "Threats." (FAC, ¶ 13, Ex. 5.)

9 In response to her counsel's inquiry, YouTube advised Plaintiff that the Video violated
10 YouTube's Terms of Service #4, Section (H), which prohibits the use of "any automated system,
11 including without limitation, 'robots,' 'spiders,' or 'offline readers,' that accesses the Service in
12 a manner that sends more request messages to the YouTube servers in a given period of time
13 than a human can reasonably produce in the same period using a conventional on-line web
14 browser." (FAC, ¶ 19, Ex. 1.) However, this section does not concern the content of the Video
15 as indicated by the Statement, and Plaintiff has never violated this or any other section of the
16 Terms of Service. (FAC, ¶¶ 24, 26-27.)

17 On January 22, 2015, Plaintiff filed her original complaint against YouTube, alleging that
18 the Statement was libel per se. YouTube filed a demurrer to the complaint, which the Court
19 sustained with leave to amend, and Plaintiff filed the FAC on April 30, 2015. In the FAC,
20 Plaintiff asserts a single cause of action for libel per quod. YouTube now demurs to the FAC on
21 the ground that it, too, fails to state a claim. (Code Civ. Proc., § 430.10, subd. (e).)

22 YouTube's demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. As explained
23 in the Court's prior order, the Statement is not libelous whether or not it is interpreted in light of
24 the "Community Guideline Tips." The Statement refers to a violation of YouTube's Terms of
25 Service, not its Community Guidelines, and the "Community Guideline Tips" merely displays an
26 exemplary list of issues, none of which are suggested to relate to Plaintiff. Furthermore, while
27 accusations of a violation relating to some categories (e.g., "Sex and Nudity," "Hate Speech")
28 could be deemed libelous in the context of Plaintiff's career, other categories (e.g., "Children,"

1 “Copyright,” “Privacy”) do not necessarily evoke offensive conduct. Given these circumstances,
2 the Statement and “Community Guideline Tips” simply do not impute any offensive conduct to
3 Plaintiff. Plaintiff relied upon this same material in her original complaint, and does not contend
4 that any new extrinsic material bearing on the meaning of the Statement could be included in a
5 further amended complaint. (See *Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d
6 1525, 1542 [“absent an effective request for leave to amend in specified ways,” it is appropriate
7 to deny leave to amend unless “a potentially effective amendment [is] both apparent and
8 consistent with the plaintiff’s theory of the case”]; *Goodman v. Kennedy* (1976) 18 Cal. 3d 335,
9 349 [“Plaintiff must show in what manner he can amend his complaint and how that amendment
10 will change the legal effect of his pleading”], quoting *Cooper v. Leslie Salt Co.* (1969) 70 Cal. 2d
11 627, 636.)

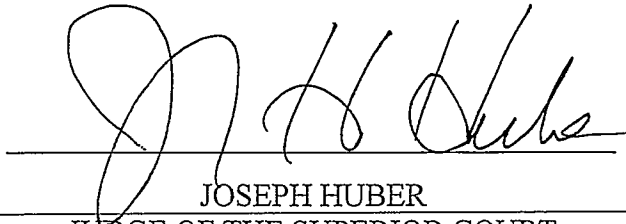
12 At the hearing on this matter, Plaintiff’s counsel cited *MacLeod v. Tribune Pub. Co.*
13 (1959) 52 Cal.2d 536, 549 (*MacLeod*), which stated that, so long as some readers will interpret
14 language in its defamatory sense, “language may be libelous on its face even though it may also
15 be susceptible of an innocent interpretation.” As recognized by *MacLeod*, however, the question
16 is not whether any reader might conceivably interpret language in a defamatory sense, but
17 “[w]hether or not the [language] is *reasonably susceptible* of this interpretation,” a determination
18 to be made by the Court. (*Id.* at p. 546, italic added.) Here, while it is theoretically possible that
19 some readers would assume that Plaintiff’s video included offensive conduct based on the
20 Statement and “Community Guideline Tips,” this assumption would not be reasonable for the
21 reasons discussed above. Plaintiff’s counsel also cited *Corman v. Blanchard* (1962) 211
22 Cal.App.2d 126 (“*Corman*”) for the proposition that a statement is libelous where any part of the
23 statement could be interpreted as such. However, contrary to Plaintiff’s characterization,
24 *Corman* stressed that language “must be considered in its entirety” and may not be divided into
25 segments and each portion treated as a separate unit. (*Id.* at pp. 131-32.) It is Plaintiff who urges
26 such a segmented approach here by focusing on a handful of issues discussed in the “Community
27 Guideline Tips.” Read as a whole, the Statement and “Community Guideline Tips” simply do

28 ///

1 not accuse Plaintiff of any offensive conduct.

2
3 DATED:

4 8-5-15

5 

6 JOSEPH HUBER

JUDGE OF THE SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

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AUG 06 2015

TO: FILE COPY

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY S.G. ROMAN DEPUTY

RE: J. Bartholomew vs Youtube, LLC
Case Nbr: 1-15-CV-275833

PROOF OF SERVICE

ORDER RE: DEMURRER TO FIRST AMENDED COMPLAINT

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Charles S Limandri , Law Offices Of Charles Limandri
P.O.BOX 9120, Rancho Santa Fe, CA 92067
David H. Kramer , Wilson Sonsini Goodrich & Rosati
650 Page Mill Road, Palo Alto, CA 94304

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 08/06/15. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Sylvia Roman, Deputy

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