

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

American Heritage Railways, Inc., et al. v. Bradley Arthur Hirou

No. 3:24-cv-1802-CAB-JLB (S.D. Cal. Nov. 7, 2025) · No. 3:24-cv-1802-CAB-JLB · Decided November 7, 2025

SUMMARY

The United States District Court for the Southern District of California granted American Heritage Railways, Inc. and related plaintiffs partial summary judgment against Bradley Arthur Hirou on claims for declaratory relief and defamation. The court held that no copyright existed in the asserted business name or personal name, no valid security agreement existed, and Hirou's UCC-1 financing statements were unauthorized and invalid. The court found the filings defamatory per se and awarded \$15,000 in presumed general damages, while denying Hirou's motion to strike the plaintiffs' reply brief.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cathy Ann Bencivengo
JURISDICTION	United States District Court for the Southern District of California
DECIDED	November 7, 2025
DOCKET	3:24-cv-1802-CAB-JLB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved for partial summary judgment on their claims for declaratory relief and defamation. Defendant moved to strike plaintiffs' reply brief.
STANDARD OF REVIEW	Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court views all reasonable inferences from the facts in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	unpublished
PARTIES	American Heritage Railways, Inc., Old Tucson Entertainment, LLC, Plaintiffs v. Bradley Arthur Hirou, Defendant

TOPICS

summary judgment

defamation

secured transactions

commercial litigation

civil procedure

PRACTICE AREAS

civil procedure

commercial litigation

defamation

secured transactions

intellectual property

QUESTIONS PRESENTED

1. Whether plaintiffs were entitled to summary judgment declaring that no copyright existed in Filmwest or Hirou's name, no valid security agreement existed between the parties, and Hirou's UCC-1 financing statements were invalid.
2. Whether Hirou's UCC-1 financing statements constituted defamation per se under California law.
3. Whether Hirou's asserted qualified privilege and First Amendment defenses barred plaintiffs' defamation claim.
4. Whether plaintiffs were entitled to presumed general damages and, if so, in what amount.
5. Whether plaintiffs' reply brief violated Civil Local Rule 7.1(e)(3) so as to warrant striking it.

HOLDINGS

1. Filmwest, as a business trade name, and Hirou's personal name are not proper subjects of copyright protection; therefore, plaintiffs were entitled to declaratory relief that no copyright existed in those claimed works.
2. No valid security agreement existed between plaintiffs and Hirou because plaintiffs never assented to one, and Hirou therefore lacked authority to file the challenged UCC-1 financing statements.
3. Hirou's UCC-1 financing statements were defamatory per se because they falsely stated that plaintiffs had violated a copyright, incurred more than \$100 million in fees, and owed debts secured by liens, and the statements naturally tended to injure plaintiffs' business reputations.
4. California Civil Code section 47(c)'s qualified privilege did not defeat plaintiffs' defamation claim because Hirou lacked a legitimate relationship with plaintiffs and, in any event, acted with actual malice or reckless disregard for the truth.
5. Plaintiffs were entitled to presumed general damages for defamation per se, and the court awarded \$15,000.
6. The motion to strike was denied because Civil Local Rule 7.1(e)(3) permits a reply filed and served no later than seven days before the noticed hearing date, and plaintiffs' reply was timely.

KEY QUOTATIONS

“A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (at 3)

“As the “[c]reation of a valid contract requires mutual assent[,]” and Hirou concedes Plaintiffs never assented, the Court finds no dispute that Hirou and Plaintiffs never entered any security agreement.” (at 5)

“Hirou’s filings are per se defamatory because he falsely states that Plaintiffs violated a copyright (implying unlawful conduct), incurred over one-hundred million dollars in fees, and owe outstanding debts to Hirou, which together harm Plaintiffs’ business reputation without any extrinsic explanatory matter.” (at 7)

FACTUAL BACKGROUND

Hirou sent plaintiffs purported self-executing security agreements claiming that plaintiffs would grant him security interests in all their property based on their alleged unauthorized use of his claimed common-law copyright in the business name Filmwest. He then filed UCC-1 financing statements against American Heritage Railways, Inc. and Old Tucson Entertainment, LLC, asserting that each owed him \$148,500,000 and that he held liens against their property. Plaintiffs denied entering any agreement with Hirou, granting him any security interest, or infringing any copyright. The filings were submitted to the California Secretary of State and made publicly available.

PROCEDURAL HISTORY

Plaintiffs filed the action on October 8, 2024, alleging that Hirou filed fraudulent UCC-1 financing statements against their property and asserting claims for declaratory and injunctive relief, violation of California Commercial Code section 9509 and Business and Professions Code section 17200, and defamation. The court previously granted plaintiffs a preliminary injunction. The court granted plaintiffs' motion for partial summary judgment, awarded \$15,000 in presumed general damages, and denied the motion to strike.

DISPOSITION

other

CASES CITED

- U.S. v. Neal, 776 F.3d 645, 649 n.1 (9th Cir. 2015)
- Am. Heritage Rys., Inc. v. Hirou, No. 3:24-CV-1802-CAB-JLB, 2025 WL 622614, at *2 (S.D. Cal. Feb. 26, 2025)
- Teeple v. Hirou, 8-CV-2281-JAH-CAB, Doc. No. 37 (S.D. Cal. July 16, 2009)
- Head v. McDonough, No. 2:14-CV-01563-MCS-PLA, 2021 WL 3260613, at *2 n.1 (C.D. Cal. July 16, 2021)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)
- KTS Karaoke, Inc. v. EMI Blackwood Music, Inc., No. 2:13-CV-915-CJC-JPR, 2014 WL 12589624, at *3 (C.D. Cal. Oct. 14, 2014)
- Chestang v. Yahoo Inc., No. 2:11-CV-00989-MCE, 2012 WL 3915957, at *5 (E.D. Cal. Sept. 7, 2012)
- United States v. Rodriguez Ramirez, 291 F. Supp. 2d 266, 269 (S.D.N.Y. 2003)
- Ray v. Credit Union One, No. CIVA 06-11694, 2007 WL 522700, at *2 (E.D. Mich. 2007)
- Gannon v. Tucknott Miller, No. 1:05-CV-00168 TS, 2006 WL 1793581, at *2 (N.D. Ind. 2006)
- First Nat. Mortg. Co. v. Fed. Realty Inv. Tr., 631 F.3d 1058, 1065 (9th Cir. 2011)

- Lightstorm Ent., Inc. v. Cummings, No. 2:20-CV-08044-ODW (PVCX), 2021 WL 2483792, at *3 (C.D. Cal. 2021)
- Taus v. Loftus, 151 P.3d 1185, 1209 (Cal. 2007)
- ZL Techs., Inc. v. Does 1-7, 13 Cal. App. 5th 603, 623 (2017)
- Morris v. Nat'l Fed'n of the Blind, 192 Cal. App. 2d 162, 164 (1961)
- Kashian v. Harriman, 98 Cal. App. 4th 892, 914-15 (2002)
- Umamoto v. Inspire Ins. Sols., Inc., No. 13-CV-0475-LHK, 2013 WL 2084475, at *5 (N.D. Cal. May 14, 2013)
- Future Ads LLC v. Gillman, No. 8:13-CV-905-DOC-JPR, 2013 WL 12306479, at *7 (C.D. Cal. Dec. 23, 2013)
- New York Times Co. v. Sullivan, 376 U.S. 254 (1964)
- Duke v. City of Fernley, No. 3:09-CV-00739-RAM, 2012 WL 965955, at *10 (D. Nev. Mar. 15, 2012)
- Tilkey v. Allstate Ins. Co., 56 Cal. App. 5th 521, 576 (2020)
- Gertz v. Robert Welch, Inc., 418 U.S. 323, 349 (1974)
- Ferguson v. Waid, No. C17-1685, 2018 WL 6040174 (W.D. Wash. Nov. 19, 2018), aff'd, 798 F. App'x 986 (9th Cir. 2020)
- Olive v. Robinson, No. C20-0356, 2023 WL 346622 (W.D. Wash. Jan. 20, 2023)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
 CALIFORNIA 10 11 AMERICAN HERITAGE RAILWAYS, Case No.: 3:24-cv-1802-CAB-JLB
 INC., et al., 12 ORDER: Plaintiffs, 13 v. (1) GRANTING MOTION FOR 14 PARTIAL
 SUMMARY JUDGMENT BRADLEY ARTHUR HIROU, 15 [Doc. No. 48]; Defendant. 16 (2)
 DENYING MOTION TO STRIKE 17 [Doc. No. 51] 18 19 On October 8, 2024, Plaintiffs
 American Heritage Railways, Inc., et al., sued 20 Defendant Bradley Arthur Hirou (“Hirou”) for
 declaratory and injunctive relief, violation 21 of California Commercial Code § 9509 and Business
 and Professions Code § 17200, and 22 defamation.

[Doc. No. 1 (“Compl.”).] Plaintiffs alleged that Defendant Hirou filed 23 fraudulent UCC-1
 Financing Statements with the California Secretary of State against 24 Plaintiffs’ property. On
 February 26, 2025, the Court granted Plaintiffs a preliminary 25 injunction against Hirou. [Doc.
 No. 20.] Plaintiffs now seek partial summary judgment 26 on their first claim for declaratory relief
 and fourth claim for defamation.

For the reasons 27 below, the Court GRANTS the motion for partial summary judgment and
 DENIES the 28 motion to strike. 1 I. BACKGROUND 2 In June 2024, Plaintiffs—two
 corporations and their employees—received 3 documents from Hirou that purported to be “Self-
 Executing Security Agreement[s]” in 4 which Hirou claimed, inter alia, Plaintiffs would grant him

“a security interest in all of 5 [their] property” for using his common law copyright to “Filmwest © et al.,” a business 6 which he operates.

[Compl. at 13–18.] Subsequently, Hirou filed UCC-1 Financing 7 Statements against Plaintiffs Americans Heritage Railways, Inc. and Old Tucson 8 Entertainment, LLC, within which he alleged unpaid debts for \$148,500,000 each based 9 on the purported violation of the security agreement. [Id. at 114–41.] A Uniform 10 Commercial Code Financing Statement, or UCC-1 Financing Statement, “is a standardized 11 legal form filed by a creditor giving notice of an interest in the personal property of a 12 debtor.” U.S. v. Neal, 776 F.3d 645, 649 n.1 (9th Cir.

2015). 13 As part of his UCC-1 Financing Statements, Hirou included purported invoices 14 which state that the debt is for fees Plaintiffs incurred in using his copyright without 15 authorization. [See, e.g., Compl. at 126.] Plaintiffs alleged that they never entered any 16 agreement with Defendant Hirou, never granted any security interest in any property to 17 him, and that the UCC-1 statements are thus fraudulent.

[Id. ¶¶ 50–55.] Plaintiffs further 18 contended that they did not infringe upon any copyrights held by Hirou. [Id. at ¶ 39.] The 19 Court granted Plaintiffs’ motion for preliminary injunction. *Am. Heritage Rys., Inc. v. 20 Hirou*, No. 3:24-CV-1802-CAB-JLB, 2025 WL 622614, at *2 (S.D. Cal. Feb. 26, 2025). 21 Hirou was previously enjoined from filing unauthorized, frivolous UCC-1 Financing 22 Statements against different parties by another court in this District.

Teeple v. Hirou, 8- 23 CV-2281-JAH-CAB, Doc. No. 37 (S.D. Cal. July 16, 2009) (holding that Hirou was 24 prohibited from “filing further UCC-1 Statements... based upon [his] ‘self-executing 25 security agreements’”). 26 Plaintiffs now seek summary judgment on their claims for declaratory relief and 27 defamation. “[T]he Court does not address arguments or objections that do not respond to 28 [Plaintiff]s’ grounds for summary judgment or are otherwise irrelevant to issues before the 1 Court[,]” such as Hirou’s improper, repeated challenges to service, standing, and personal 2 jurisdiction.

Head v. McDonough, No. 2:14-CV-01563-MCS-PLA, 2021 WL 3260613, at 3 *2 n.1 (C.D. Cal. July 16, 2021). 4 II. LEGAL STANDARD 5 A court “shall grant summary judgment if the movant shows that there is no genuine 6 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” 7 Fed. R. Civ. P. 56(a).

The movant “always bears the initial responsibility” of establishing 8 the basis for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If 9 the moving party does so, the burden shifts to the opposing party to show that a genuine 10 issue of disputed fact remains. *Id.* at 324. When ruling on a summary judgment motion, 11 the court must view all inferences drawn from the underlying facts in the light most 12 favorable to the nonmoving party.

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). 14 III. DISCUSSION 15 A. Declaratory Relief 16 Plaintiffs seek a declaration that (1) no copyright exists for “Filmwest ©, et al.,” or 17 Hirou’s name, (2) no valid security agreement exists between Plaintiffs and Hirou, and (3) 18 Hirou had no authority to file the UCC-1 Financing Statements, and they are thus invalid.

19 “A plaintiff may seek a declaratory judgment as to the ownership, validity, or 20 infringement of a copyright.” KTS Karaoke, Inc. v. EMI Blackwood Music, Inc., No. 2:13- 21 CV-915-CJC-JPR, 2014 WL 12589624, at *3 (C.D. Cal. Oct. 14, 2014) (emphasis added) 22 (citing Societe de Conditionnement v. Hunter Eng’g Co., 655 F.2d 938, 943 (9th Cir. 23 1981)). Filmwest, as a business trade name, is not subject to common law copyright 24 protection.

See Chestang v. Yahoo Inc., No. 2:11-CV-00989-MCE, 2012 WL 3915957, at 25 *5 (E.D. Cal. Sept. 7, 2012) (finding a business trade name is not copyrightable as a matter 26 of law and “cannot serve as the basis for a copyright action”). Hirou also contests that his 27 personal name is copyrighted, but he is incorrect. [See, e.g., Doc. No. 18 at 2]; see United 28 States v. Rodriguez Ramirez, 291 F. Supp. 2d 266, 269 (S.D.N.Y.

2003) (voiding liens 1 placed on property and rejecting claimed common law copyright in a name as federal law 2 preempted common law copyright and “a name is not a proper subject for copyright”); see 3 also Ray v. Credit Union One, No. CIVA 06-11694, 2007 WL 522700, at *2 (E.D. Mich. 4 2007) (“Plaintiff’s Complaint fails to state a claim for relief because his name is not subject 5 to copyright protection.”).

Indeed, “common law copyright law does not exist, as it would 6 be pre-empted by federal law.” Gannon v. Tucknott Miller, No. 1:05-CV-00168 TS, 2006 7 WL 1793581, at *2 (N.D. Ind. 2006). 8 Regarding the purported security agreements, Plaintiffs state that they never entered 9 any agreement with Hirou in any capacity. [Doc. No. 48-1 at 6.] Hirou offers zero 10 evidence that Plaintiffs did so.

Instead, he inexplicably states that they are self-executing 11 agreements, indicating that he believes he could unilaterally compel Plaintiffs to enter 12 them. [Compl. at 13–18; Doc. No. 49 at 2.] As the “[c]reation of a valid contract requires 13 mutual assent[.]” and Hirou concedes Plaintiffs never assented, the Court finds no dispute 14 that Hirou and Plaintiffs never entered any security agreement.

First Nat. Mortg. Co. v. 15 Fed. Realty Inv. Tr., 631 F.3d 1058, 1065 (9th Cir. 2011); see also Rodriguez Ramirez, 291 16 F. Supp. 2d at 269. 17 Given the lack of any enforceable security agreement, Hirou had no authority to file 18 UCC-1 Financing Statements against Plaintiffs. See Lightstorm Ent., Inc. v. Cummings, 19 No. 2:20-CV-08044-ODW (PVCX), 2021 WL 2483792, at *3 (C.D.

Cal. 2021) (“The 20 California Commercial Code... provides that a person may file a UCC-1 only if the debtor 21 authorizes the filing[.]” (emphasis added) (citing Cal. Com. Code §§ 9509, 9315(a)(2)). 22 Indeed, Hirou’s filings are part of a rising “odd area of law... dealing with individuals 23 who file UCC-1 Financing Statements without having any legal or contractual right to do 24 so.” Gerald L. Blanchard & Rodney A. Morris, 1 Problem Loan Workouts, § 4:4 25 Fraudulent Financing Statements (2025).

Accordingly, the Court finds that Plaintiffs are 26 entitled to summary judgment on their claim for declaratory relief that (1) no copyright 27 exists for “Filmwest ©, et al.,” or Hirou’s name, (2) no valid security agreement exists 28 1 between Plaintiffs and Hirou, and (3) Hirou’s UCC-1 Financing Statements filed against 2 Plaintiffs are invalid. 3 B. Defamation 4 Plaintiffs argue that Hirou’s fraudulent UCC-1 Financing Statements are per se 5 defamatory because they state that Plaintiffs Americans Heritage Railways, Inc. and Old 6 Tucson Entertainment, LLC, each owe a debt of \$148,500,000 to Hirou and that he 7 possesses liens against their property.

[Doc. No. 48-1 at 8–9.] Plaintiffs assert that the 8 UCC-1 Statements affect “their credit worthiness, financial stability, and ability to honor 9 legitimate obligations to legitimate creditors” and overall injure their businesses. [Id.]

The 10 Court agrees. 11 Under California law, defamation involves (1) a publication that is (2) false, (3) 12 defamatory, (4) unprivileged, and (5) has a natural tendency to injure or that causes special 13 damage. *Taus v. Loftus*, 151 P.3d 1185, 1209 (Cal. 2007).

As to the first prong, there is 14 no genuine dispute that Hirou filed the UCC-1 Financing Statements with the California 15 Secretary of State who then, as required, published them to a database or website to notify 16 the public of Hirou’s purported liens in Plaintiffs’ property.

As to falsity, the second prong, 17 the Court found above that there is no dispute that Hirou’s UCC-1 Financing Statements 18 were false as Plaintiffs never entered any agreement with him nor otherwise authorized the 19 filings as required. 20 As to the third prong, a publication is per se defamatory, or defamatory on its face, 21 when it does not require extrinsic explanatory matter.

See *ZL Techs., Inc. v. Does 1-7*, 13 22 Cal. App. 5th 603, 623 (2017). In the complaint, Plaintiffs attached exhibits of the UCC- 23 1 Financing Statements, which show Plaintiffs as debtors, Hirou as the secured party, and 24 include invoices for \$148,500,000 that Hirou sent to Plaintiffs for their purported, 25 unauthorized use of his copyright. [See, e.g., Compl. at 127–28, 140.]

Hirou states the 26 amount was incurred by Plaintiffs for their unauthorized use of his private, common-law 27 copyrighted property. [Id. at 126, 140.] The statements contain e-stamps confirming they 28 were received by the California Secretary of State on July 12, 2024. [Id.] Hirou’s filings 1 are per se defamatory because he falsely states that Plaintiffs violated a copyright (implying 2 unlawful conduct), incurred over one-hundred million dollars in fees, and owe

outstanding 3 debts to Hirou, which together harm Plaintiffs' business reputation without any extrinsic 4 explanatory matter.

See ZL Techs., Inc., 13 Cal. App. 5th at 623 ("A corporation can be 5 libeled by statements which injure its business reputation[.]"). 6 Regarding the fourth prong of privilege, Hirou argues that his filings are privileged 7 pursuant to Civil Code § 47(c) which "grants a qualified privilege for certain 8 communications made without malice, especially in the context of protecting commercial 9 interests." [Doc.

No. 49 at 6.] California privileges publications made in "a 10 communication, without malice, to a person interested therein, (1) by one who is also 11 interested, or (2) by one who stands in such a relation to the person interested as to afford 12 a reasonable ground for supposing the motive for the communication to be innocent, or 13 (3) who is requested by the person interested to give the information." Cal. Civil Code 14 § 47(c).

In other words, the privilege applies "to a communication from one interested 15 person to another[.]" *Morris v. Nat'l Fed'n of the Blind*, 192 Cal. App. 2d 162, 164 (1961). 16 "[T]he required relation between the parties to the communication is a contractual, business 17 or similar relationship, such as between partners, corporate officers and members of 18 incorporated associations, or between union members [and] union officers." *Kashian v. 19 Harriman*, 98 Cal. App.

4th 892, 914 (2002) (internal quotation marks omitted). "The 20 existence of the privilege is ordinarily a question of law for the court." *Id.* at 915. 21 Hirou has no legitimate relationship with Plaintiffs. He merely sent them "self- 22 executing security agreements" based on non-existent copyrights. Even if, however, the 23 Court assumes that Hirou did have a legitimate relationship with Plaintiffs, "[t]he privilege 24 may be defeated by evidence that the challenged statement was made with [actual] malice." 25 *Umamoto v. Insphere Ins.*

Sols., Inc., No. 13-CV-0475-LHK, 2013 WL 2084475, at *5 26 (N.D. Cal. May 14, 2013) (citing Cal. Civ. Code § 47(c)). Actual malice can be established 27 "by a showing that the defendant lacked reasonable grounds for belief in the truth of the 28 publication and therefore acted in reckless disregard of the plaintiff's rights." *Id.* Hirou 1 offers nothing to show he had any reasonable grounds to believe that Plaintiffs had 2 consented to the filing of the UCC-1, as required, and that he was entitled to hundreds of 3 millions of dollars in unauthorized copyright usage fees from Plaintiffs.

Accordingly, the 4 Court finds his publications were made with reckless disregard and that the privilege does 5 not apply. 6 As to the final prong, Plaintiffs do not allege any special damages. As such, they 7 must establish that Hirou's filings against them have a natural tendency to injure. See *Taus*, 8 151 P.3d at 1209.

The Court finds Hirou's filings naturally injure Plaintiffs' business reputation specifically because he states that they incurred millions of dollars in unauthorized copyright usage fees, which suggests Plaintiffs engage in unsound and unlawful business practices. See *ZL Techs., Inc.*, 13 Cal. App. 5th at 623. Hirou argues that "defamation per se [] requires a showing of falsity and fault" and that he believed in good faith that he was protecting his intellectual property, thus there must be a factual determination as to his intent.

[Doc. No. 49 at 6.] There is no dispute that Hirou intended to file the UCC-1 Financing Statements, as Plaintiffs have shown and Hirou has conceded. [See, e.g., Doc. No. 49 at 2; Compl. at 13–18.] The Court also established above that the filings/statements were false. Hirou cites no authority for his suggestion that acting in good faith bars a finding of defamation.

Rather, Plaintiffs are "not required to show actual malice in a claim for defamation per se." *Future Ads LLC v. Gillman*, No. 8:13-CV-905-DOC-JPR, 2013 WL 12306479, at *7 (C.D. Cal. Dec. 23, 21 2013). Hirou also asserts that his filings are protected expressions under the First Amendment. [Doc. No. 49 at 6.] Citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), he contests that "such expressions are protected unless made with actual malice." [Doc.

No. 49 at 6.] *Sullivan* held that public figures must show actual malice in defamation actions. See *Duke v. City of Fernley*, No. 3:09-CV-00739-RAM, 2012 WL 965955, at *10 (D. Nev. Mar. 21, 2012) ("Sullivan and its progeny indubitable stand for the proposition that actual malice must be demonstrated in defamation actions involving public officials[.]" (emphasis added)).

Given that no public figures are involved, *Sullivan* does not apply here. Moreover, the Court found above that Hirou's filings against Plaintiffs were made with actual malice or reckless disregard. Hirou defamed Plaintiffs through his fraudulent UCC-1 filings; the First Amendment does not protect defamation. See *USA Techs., Inc. v. Doe*, 571 F. Supp. 2d 901, 906 (N.D.

Cal. 2010). As Plaintiffs have shown there is no genuine dispute as to any material fact and satisfied each prong of their defamation claim, the Court finds they are entitled to summary judgment. C. Damages Plaintiffs assert that they "are entitled to presumed general damages as reasonable compensation for injury to their occupations." [Doc. No. 48-1 at 9.]

They seek between \$50,000 to \$100,000 for each of Plaintiff American Heritage Railways, Inc. and Plaintiff Old Tucson Entertainment, LLC. [Id.] "In an action for defamation per se,... damages can be presumed." *Tilkey v. Allstate Ins. Co.*, 56 Cal. App. 5th 521, 576 (2020); see also *Kimberly A. Gaab & Sara Church Reese*, Cal. Practice Guide: Civil Procedure Before Trial, Claims and Defenses § 4:524 (The Rutter Group 2024) ("[I]n all cases of defamation per

se, plaintiffs may recover 17 ‘presumed’ (or ‘assumed’) damages—i.e., damages that are presumed to exist as a result 18 of the defamation—without proof of actual harm.”).

To recover presumed damages, 19 Plaintiffs must make a showing of reckless disregard for the truth, which the Court found 20 they have done. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349 (1974). 21 Plaintiffs cite two cases from the Western District of Washington where the court 22 awarded \$50,000 and \$25,000, respectively, as damages for per se defamation.

Ferguson 23 v. *Waid*, No. C17-1685, 2018 WL 6040174 (W.D. Wash. Nov. 19, 2018), *aff’d* 798 F. 24 App’x 986 (9th Cir. 2020); *Olive v. Robinson*, No. C20-0356, 2023 WL 346622 (W.D. 25 Wash. Jan. 20, 2023). These cases are distinguishable.

In *Ferguson*, the court based its 26 award of presumed damages not only on “the presumed impact of the defamatory 27 statements on [the defamed’s] business[,]” but also “on the evidence at trial of [his] 28 emotional distress.” 2018 WL 6040174, at *8.

In *Olive*, the court similarly considered the 1 || fact that it was the second time that defendant falsely accused plaintiff of sexual assault. 2 ||2023 WL 346622, at *8. Here, Hirou did not state that Plaintiffs engaged in criminal 3 ||misconduct nor is there evidence of any actual harm or Hirou having defamed Plaintiffs 4 ||before.

The Court finds it appropriate to award Plaintiffs \$15,000 in presumed, general 5 || damages. 6 D. Motion to Strike 7 Hirou filed a motion to strike Plaintiffs’ reply brief. [Doc. No. 51.] He argues that 8 reply violates CivLR 7.1(e)(3) because Plaintiffs did not obtain leave from the Court to 9 || file it. [/d. at 2.] Hirou is incorrect. CivLR 7.1(e)(3) requires any reply to be filed and 10 served no later than seven days prior to the date for which the matter is noticed.

Plaintiffs’ 11 ||reply was filed properly. The motion to strike is DENIED. 12 IV. CONCLUSION
13 Plaintiffs’ motion for partial summary judgment on their claims for declaratory relief 14 defamation is GRANTED. Plaintiffs are awarded presumed general damages in the 15 ||amount of \$15,000.

The motion to strike is DENIED. 16 It is SO ORDERED. 17 Dated: November 7, 2025 € 18 Hon. Cathy Ann Bencivengo 19 United States District Judge 20 21 22 23 24 25 26 27 28