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 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES**
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<p>12 ISAAH JAMES SILVA, 13 Plaintiff, 14 v. 15 COURTNEY LOVE, OSAMA LUTFI, 16 ROSS BUTLER, YAN YUKHTMAN, BLUE VELVET LLC, JOHN NAZARIAN, 17 NAZARIAN AND ASSOCIATES, ESQUIRE INTERNATIONALE THE 18 AGENCY, MICHAEL EVAN SCHENK, MARC GANS, LAW OFFICES OF MARC 19 GANS, and DOES 1-50 inclusive, 20 Defendants.</p>	<p>) CASE NO. BC707927) Related to Case No. BC708676) (Hon. Armen Tamzarian, Dept. 52))) DEFENDANT COURTNEY LOVE-) COBAIN’S NOTICE OF MOTION AND) MOTION FOR JUDGMENT ON THE) PLEADINGS; MEMORANDUM OF POINTS) AND AUTHORITIES) [Filed Concurrently with Declaration of Todd S.) Eagan, Request for Judicial Notice and) [Proposed] Order])) Date: March 14, 2022) Time: 9:00 a.m.) Dept: 52) Reservation ID: 307459353250</p>
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22 Complaint Filed: May 25, 2018
 23 FAC Filed: August 30, 2018
 24 SAC Filed: April 29, 2019
 25 FSC: June 7, 2022
 26 Trial Date: June 14, 2022

1 **NOTICE IS HEREBY GIVEN** that on March 14, 2022, at 9:00 a.m. or as soon thereafter as
2 this matter may be heard in Department 52 of the above-entitled court located at 312 N. Spring
3 Street, Los Angeles, CA 90012, Defendant Courtney Love-Cobain (“Defendant”) will, and hereby
4 does, move for a judgment on the pleadings on the entire Second Amended Complaint (“SAC”) filed
5 by Plaintiff Isaiah James Silva (“Plaintiff”), and a dismissal of the entire action with prejudice.

6 This Motion is based on Code of Civil Procedure section 438(b)(1) on the grounds that the
7 entire SAC fails to state facts sufficient to constitute a cause of action.

8 Good cause exists warranting judgment on the pleadings in favor of Defendant.

9 On April 29, 2019, Plaintiff filed his operative Second Amended Complaint. On May 29,
10 2019, Defendant filed an Answer generally denying all of the allegations of the Complaint.

11 On June 16, 2021, Defendant Marc Gans (“Gans”) propounded an initial set of Requests for
12 Admission on Plaintiff (“RFA”). Plaintiff failed to serve timely, verified responses, and on August
13 20, 2021, Gans filed a Motion for Order Deeming Admitted Truth of Facts and Imposing Monetary
14 Sanctions (the “Motion”). On September 20, 2021, the Court granted the Motion and entered a
15 Minute Order deeming the RFA’s admitted (the “Order”). On September 30, 2021, Plaintiff filed a
16 Motion Seeking Relief from the Court’s Order (“Motion Seeking Relief”). On January 14, 2021, the
17 Court denied Plaintiff’s Motion Seeking Relief. As such, the Order remains in full force and effect.

18 Plaintiff’s deemed admissions are completely dispositive of the case and cannot be
19 controverted: Plaintiff has admitted that the required elements of each of his causes of action fail to
20 exist. The Court may take judicial notice of the Order and the RFAs because they are records of this
21 Court.

22 This Motion will be based on this Notice of Motion and Motion, the Memorandum of Points
23 and Authorities, the Declaration of Todd S. Eagan, the Request for Judicial Notice filed herewith, the
24 complete files and records in this action, and on such other oral argument as may be presented at the
25 hearing on this motion.

26 Dated: February 15, 2022

LAVELY & SINGER, P.C.
TODD S. EAGAN

27 By: s/ Todd S. Eagan
TODD S. EAGAN
Attorneys for Defendant
28 COURTNEY LOVE-COBAIN

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Courtney Love-Cobain (“Love-Cobain”) files the instant motion because Plaintiff
4 Isaiah James Silva’s (“Silva”) entire operative Second Amended Complaint (“SAC”) fails to state
5 facts sufficient to state a cause of action against Love-Cobain, and must be dismissed with
6 prejudice. The SAC fails as a matter of law because the Court has deemed all of the Requests for
7 Admissions propounded on Silva by Defendant Marc Gans (“Gans”) to be admitted against Silva.
8 The Court previously granted a Motion for Judgment on the Pleadings filed by Gans and Defendant
9 Law Offices of Marc Gans (“Gans Law”) on the basis of the same Requests for Admission deemed
10 admitted against Silva. Just as the Requests for Admissions are dispositive as to every cause of
11 action against Gans and Gans Law, they are dispositive as to every cause of action against Love-
12 Cobain and all other remaining defendants, rendering the SAC irreparably defective.

13 Accordingly, Defendant respectfully requests that this Court grant this Motion for Judgment
14 on the Pleadings as to the entire SAC and dismiss the action with prejudice.

15 **II. STATEMENT OF FACTS**

16 On April 29, 2019, Silva filed his operative Second Amended Complaint (“SAC”). (Request
17 for Judicial Notice [“RJN”], Ex. A.) On May 29, 2019, Love-Cobain filed an Answer generally
18 denying all of the allegations of the SAC. (RJN, Ex. B.)

19 On June 16, 2021, Gans propounded an initial set of Requests for Admission on Silva
20 (“RFAs”). Silva failed to serve timely, verified responses, and, on August 20, 2021, Gans filed a
21 Motion for Order Deeming Admitted Truth of Facts and Imposing Monetary Sanctions (the
22 “Motion”). (RJN, Ex. C.) The RFAs were attached as Exhibit A to the Motion.¹ (*Id.*) On
23 September 20, 2021, the Court granted the Motion and entered a Minute Order deeming the RFAs
24 admitted (the “Order”). (RJN, Ex. D.)

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¹ For clarity and ease of reference, all subsequent citations to the RFAs (which are attached to the Motion, submitted as Exhibit C to Love-Cobain’s Request for Judicial Notice) refer only to the request numbers.

1 On September 30, 2021, Silva filed a Motion Seeking Relief from the “Deemed Admitted”
2 Ruling Entered by the Court on September 20, 2021 Based on CCP § 2030.33 (the “Section 2030.33
3 Motion”). (Declaration of Todd S. Eagan (“Eagan Decl.”) ¶ 4.) The Court ordered supplemental
4 briefing regarding Silva’s Section 2030.33 Motion. (Eagan Decl. ¶ 4.) On January 14, 2022, the
5 Court denied Silva’s Section 2030.33 Motion. (RJN, Ex. E.)

6 On November 8, 2021, Gans and Gans Law filed a Motion for Judgment on the Pleadings
7 (the “Gans MJOP”) on the basis that the Order deeming the RFAs admitted against Silva rendered
8 the operative SAC irreparably defective against Gans and Gans Law. (Eagan Decl. ¶ 5.) On
9 January 14, 2022, the Court granted the Gans MJOP, dismissing Gans and Gans Law from the
10 action with prejudice. (RJN, Ex. E.)

11 Silva’s deemed admissions pursuant to the Court’s Order are completely dispositive of the
12 case and cannot be controverted: *Silva has admitted that the required elements of each of his*
13 *causes of action fail to exist.*

14 **III. LEGAL STANDARD APPLICABLE TO MOTION FOR JUDGMENT ON THE**
15 **PLEADINGS**

16 **A. Equivalent to Demurer**

17 Under Code of Civil Procedure section 438, subdivision (c)(1)(B)(ii), a defendant may move
18 for judgment on the pleadings on the ground that the complaint or any cause of action does not state
19 facts sufficient to constitute a cause of action against that defendant. This motion for judgment on
20 the pleadings is equivalent to a general demurrer and is subject to the same legal standard, *i.e.*, that
21 all material facts which are properly pled are deemed true, but not contentions, deductions, or
22 conclusions of fact or law. *Mack v. State Bar of Cal.*, 92 Cal. App. 4th 957, 961 (2001).

23 **B. Judicial Notice is Appropriate**

24 “A trial judge deciding a motion for judgment on the pleadings may also consider, in
25 addition to facts pleaded, **any matters subject to judicial notice.**” *Sebago, Inc. v. City of Alameda*,
26 211 Cal. App. 3d 1372, 1380 (1989) (emphasis added) (taking judicial notice of responses to
27 interrogatory and requests for admission); *see also* Cal. Civ. Proc. Code § 43 (d). “[W]here an
28 allegation [in the complaint] is contrary to law or to **a fact of which a court may take judicial**

1 **notice, it is to be treated as a nullity.”** *Fundin v. Chicago Pneumatic Tool Co.*, 152 Cal. App.3d
2 951, 955 (1984) (emphasis added); *Livermore v. Beal*, 18 Cal. App. 2d 535, 541 (1937)
3 (“Allegations in a pleading of a fact contrary to facts of which judicial notice is taken are not
4 considered as true.”). “[A] complaint otherwise good on its face is subject to demurrer when facts
5 judicially noticed render it defective.” *Joslin v. H.A.S. Ins. Brokerage* 184 Cal.App.3d 369, 374
6 (1986). Accordingly, where, as here, admissions deemed admitted directly contradict the
7 allegations in the complaint, those allegations are not to be taken as true for purposes of resolving a
8 motion for judgment on the pleadings. See *McCrickard v. Pac. Bell Tel. Co.*, No. A131224, 2012
9 WL 3568480 at *1 (Aug. 20, 2012) (“The trial court granted defendants’ motion for judgment on
10 the pleadings after denying plaintiff’s motion to withdraw requests for admissions deemed
11 admitted.”).

12 **C. No Reasonable Possibility of Curing Defects**

13 A court may properly grant a motion for judgment on the pleadings without leave to amend
14 if “there is no reasonable possibility that the defect[s]” in the pleading can be cured. *Blank v.*
15 *Kirwin*, 39 Cal.3d 311, 318 (1985). “The burden of providing such reasonable possibility is
16 squarely on the plaintiff.” *Hernandez v. City of Pomona*, 46 Cal.4th 501, 520 (2009). Thus, Silva is
17 required to show facts sufficient to establish every element of each cause of action asserted. *Young*
18 *v. Gannon*, 97 Cal. App. 4th 209, 220 (2002). Silva cannot do so here because all of the RFAs are
19 deemed admitted, cannot be controverted, and directly and unequivocally contradict the assertions
20 set forth in the SAC.

21 **IV. SILVA’S DEEMED ADMISSIONS ARE CONCLUSIVELY ESTABLISHED**
22 **AGAINST SILVA AND ARE COMPLETELY DISPOSITIVE OF THE CASE**

23 The Code of Civil Procedure provides that “[a]ny party may obtain discovery . . . by a
24 written request that any other party to the action admit the genuineness of specified documents, or
25 the truth of specified matters of fact, opinion relating to fact, or application of law to fact.” Cal.
26 Civ. Proc. Code § 2033.010. “Although requests for admissions are included in the Code of Civil
27 Procedure among discovery procedures [citation], they differ fundamentally from other forms of
28 discovery. Rather than seeking to uncover information, they seek to eliminate the need for proof.”

1 *Murillo v. Superior Court*, 143 Cal. App. 4th 730, 735 (2006) (internal citation and quotation marks
2 omitted). “The primary purpose of requests for admissions is to set at rest triable issues so that they
3 will not have to be tried.” *Orange Cty. Water Dist. v. Arnold Eng’g Co.*, 31 Cal. App. 5th 96, 115
4 (2018) (internal citation and quotation marks omitted); *accord Cembrook v. Superior Court*, 56 Cal.
5 2d 423, 429 (1961) (“[S]uch requests, in a most definite manner, are aimed at expediting the trial.”).

6 Any matter admitted in response to a request for admission is conclusively established
7 against the party making the admission unless the court permits a withdrawal or amendment. *Wilcox*
8 *v. Britwhistle*, 21 Cal. 4th 973, 978-79 (1999).”

9 Here, the conclusively established admissions by Silva with regard to Love-Cobain and the
10 other remaining defendants render the SAC irreparably defective, and are completely dispositive of
11 this action.

12 **A. Allegations Against Love-Cobain**

13 Silva’s SAC contains seven causes of action for: negligence, battery, assault, intentional
14 infliction of emotional distress, trespass, extortion, and stalking. (*See generally* RJN, Ex. A.) Each
15 of these seven causes of action is alleged against Love-Cobain. (*Ibid.*) In addition to direct liability,
16 Silva alleges that each defendant conspired with each other as to each cause of action. (*See, e.g.*,
17 RJN, Ex. A ¶ 97 (“Plaintiff alleges each Defendant was aware of the other individual Defendants
18 and their plan, and each of them conspired to commit the acts herein alleged and gave substantial
19 assistance and or encouragement to the other Defendants.”).)

20 “Conspiracy is not a separate tort, but a form of vicarious liability by which one defendant
21 can be held liable for the acts of another. . . . A conspiracy requires evidence ‘that each member of
22 the conspiracy acted in concert and came to a mutual understanding to accomplish a common and
23 unlawful plan, and that one or more of them committed an overt act to further it.’” *IIG Wireless, Inc.*
24 *v. Yi*, 22 Cal. App. 5th 630, 652 (2018). Critically, “conspiracy itself is not actionable without a
25 wrong.” *Okun v. Superior Court*, 29 Cal. 3d 442, 454 (1981). As will be shown below, no
26 conspiracy exists for any of the causes of action.

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1 **B. First Cause of Action – Negligence**

2 “The elements of a cause of action for negligence are well established. They are (a) a legal
3 duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal
4 cause of the resulting injury.” *Ladd v. Cty. of San Mateo*, 12 Cal. 4th 913, 917 (1996) (internal
5 quotation marks omitted). Silva has admitted that Love-Cobain and the other named defendants²
6 were not negligent in relation to him. (RFA Nos. 143-145.) Moreover, Plaintiff has admitted that
7 Love-Cobain and the other named defendants have never harmed him. (RFA Nos. 146-148). These
8 admissions alone entirely defeat the negligence claim.

9 Silva also made additional and more detailed admissions that compel dismissal of this cause
10 of action. Specifically, Silva alleges that his negligence claim relies upon 21 different violations of
11 the California Penal Code and the doctrine of negligence *per se*. (RJN, Ex. A ¶¶ 120.a.-s.)
12 However, Silva has admitted that no such violations occurred. Silva has admitted that neither Love-
13 Cobain nor the other named defendants violated any of the 21 statutes identified in the SAC. (RFA
14 Nos. 38-40, 43-45, 48-50, 53-55, 58-60, 63-65, 68-70, 73-75, 78-80, 83-85, 88-90, 93-95, 98-100,
15 103-105, 108-110, 113-115, 118-120, 123-125, 128-130, 133-135, 138-140). There can be no
16 conspiracy to violate any of these statutes if no violations of those Penal Code sections ever
17 occurred. *Okun*, 29 Cal. 3d at 454.

18 **C. Second Cause of Action - Battery**

19 “The essential elements of a cause of action for battery are: (1) defendant touched plaintiff,
20 or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not
21 consent to the touching; (3) plaintiff was harmed or offended by defendant’s conduct; and (4) a
22 reasonable person in plaintiff’s position would have been offended by the touching.” *So v. Shin*, 212
23 Cal. App. 4th 652, 669 (2013).

24 Silva has admitted that neither Love-Cobain nor the other named defendants ever touched
25 him with the intent to cause harm or offend. (RFA Nos. 1-3.) Additionally, Silva has admitted that
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27 ² The RFAs refer to “DEFENDANTS,” a term defined as referring “collectively, Defendant
28 Ross Butler, Defendant Courtney Love, Defendant Osama Lutfi, Defendant Yan Yukhtman, and
Defendant Blue Velvet, LLC.”

1 neither Love-Cobain nor the other named defendants has harmed him. (RFA Nos. 146-148.)
2 Without any unconsented touching, no conspiracy to commit battery can exist. *Okun*, 29 Cal. 3d at
3 454.

4 **D. Third Cause of Action - Assault**

5 “The essential elements of a cause of action for assault are: (1) defendant acted with intent to
6 cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner;
7 (2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it
8 reasonably appeared to plaintiff that defendant was about to carry out the threat; (3) plaintiff did not
9 consent to defendant’s conduct; (4) plaintiff was harmed; and (5) defendant’s conduct was a
10 substantial factor in causing plaintiff’s harm.” *Shin*, 212 Cal. App. 4th at 668-69.

11 Plaintiff has admitted that neither Love-Cobain nor any of the other named defendants acted
12 with the intent to cause harmful or offensive contact with him (RFA Nos. 6-8) or threatened to touch
13 him in a harmful or offensive manner (RFA Nos. 9-11). Additionally, Plaintiff has admitted that
14 Love-Cobain and the other named defendants have not harmed him. (RFA Nos. 146-148). There
15 be any conspiracy to commit assault if the required elements of assault did not occur.

16 **E. Fourth Cause of Action – Intentional Infliction of Emotional Distress**

17 “A cause of action for intentional infliction of emotional distress [‘IIED’] exists when there
18 is ‘(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless
19 disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or
20 extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the
21 defendant’s outrageous conduct.’ A defendant’s conduct is ‘outrageous’ when it is so ‘extreme as to
22 exceed all bounds of that usually tolerated in a civilized community.’” *Hughes v. Pair*, 46 Cal. 4th
23 1035, 1050-51 (2009) (internal citations omitted).

24 Silva has admitted that neither Love-Cobain nor the other named defendants ever engaged in
25 outrageous conduct in relation to him. (RFA Nos. 16-18.) Additionally, Silva has admitted that
26 Love-Cobain and the other named defendants have not harmed him. (RFA Nos. 146-148). Silva
27 cannot allege a conspiracy with regards to IIED if the required elements of IIED did not occur.

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1 **F. Fifth Cause of Action - Trespass**

2 “Trespass is an unlawful interference with possession of property.’ The elements of trespass
3 are: (1) the plaintiff’s ownership or control of the property; (2) the defendant’s intentional, reckless,
4 or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of
5 permission; (4) harm; and (5) the defendant’s conduct was a substantial factor in causing the harm.”
6 *Ralphs Grocery Co. v. Victory Consultants, Inc.*, 17 Cal. App. 5th 245, 261-62 (2017).

7 Silva’s trespass claim relates to the home he lived in with his ex-wife and Love-Cobain’s
8 daughter, Frances Bean Cobain, on Curson Avenue (“Curson House”). (*See, e.g.*, RJN, Ex. A
9 ¶ 173.) Silva has admitted that neither Love-Cobain nor the other named defendants ever entered
10 the Curson House without his permission. (RFA Nos. 21-22, 25.) Additionally, Silva has admitted
11 that none of the named defendants, including Love-Cobain, has harmed him. (RFA Nos. 146-148).
12 There cannot be any conspiracy with regard to trespass if the required elements of trespass did not
13 occur.

14 **G. Sixth Cause of Action - Extortion**

15 “Extortion is the obtaining of property or other consideration from another, with his or her
16 consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or
17 fear, or under color of official right.” Cal. Penal Code § 518.

18 Silva has admitted that Love-Cobain and the other named defendants have never obtained
19 any property from him. (RFA Nos. 28-30.) There cannot be any conspiracy with regard to
20 extortion if the required elements of extortion did not occur.

21 **H. Seventh Cause of Action - Stalking**

22 The first required element of the tort of stalking is that “[t]he defendant engaged in a pattern
23 of conduct the intent of which was to follow, alarm, place under surveillance, or harass the
24 plaintiff.” Cal. Civ. Code § 1708.7(a)(1). The second required element is that the plaintiff either
25 “reasonably feared for his or her safety, or the safety of an immediate family member,” or “suffered
26 substantial emotional distress.” Cal. Civ. Code § 1708.7(a)(2).

27 Silva has admitted that Love-Cobain and the other named defendants have never engaged in
28 a pattern of conduct the intent of which was to follow, alarm, place under surveillance, or harass

1 him. (RFA Nos. 33-35.) Additionally, Silva has admitted that Love-Cobain and the other named
2 defendants have not harmed him. (RFA Nos. 146-148.) Because the required elements of stalking
3 did not occur, Silva cannot allege a conspiracy with regard to stalking.

4 **V. CONCLUSION**

5 For the foregoing reasons, the entire SAC does not and *cannot* state facts sufficient to
6 constitute any causes of action against Love-Cobain. The Court therefore should grant this Motion
7 for Judgment on the Pleadings and dismiss the entire SAC as to Love-Cobain without leave to
8 amend.

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Dated: February 15, 2022

LVELY & SINGER, P.C.
MARTIN D. SINGER
TODD S. EAGAN
MELISSA Y. LERNER

By: s/ Todd S. Eagan
TODD S. EAGAN
Attorneys for Defendant
COURTNEY LOVE-COBAIN



Make a Reservation

ISIAAH JAMES SILVA VS COURTNER Y LOVE ET AL

Case Number: BC707927 Case Type: Civil Unlimited Category: Intentional Infliction of Emotional Distress
Date Filed: 2018-05-25 Location: Stanley Mosk Courthouse - Department 52

Reservation

Case Name: ISIAAH JAMES SILVA VS COURTNER Y LOVE ET AL	Case Number: BC707927
Type: Motion for Judgment on the Pleadings	Status: RESERVED
Filing Party: Courtney Love (Defendant)	Location: Stanley Mosk Courthouse - Department 52
Date/Time: 03/14/2022 9:00 AM	Number of Motions: 1
Reservation ID: 307459353250	Confirmation Code: CR-WIXOE8BTCA5YEBPR8

Fees

Description	Fee	Qty	Amount
Motion for Judgment on the Pleadings	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX0685	Authorization: 09894I

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