

Docket No. 24-1285

In the Supreme Court of the United States

Dongxiao Yue, Petitioner

v.

Wenbin Yang, Respondent

**On Petition for Writ of Certiorari to the
Supreme Court of California**

Brief in Opposition

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QUESTIONS PRESENTED

1. Does the affirmance by a state appellate court of a civil bench trial judgment—where the petitioner failed to present evidence establishing the essential elements of his defamation claim—raise a substantial federal question under the Due Process or Equal Protection Clauses of the Fourteenth Amendment warranting this Court's review, particularly when the petitioner's allegations focus on routine evidentiary rulings and trial management?
2. Do alleged procedural irregularities or judicial comments in a state civil bench trial qualify as "structural errors" of constitutional magnitude that override California's established forfeiture rules requiring timely trial objections, especially when those rules align with federal plain-error review and sister-state fundamental-error doctrines, and no such error is evident in the record?

INTRODUCTION

Respondent Wenbin Yang, proceeding pro se, respectfully submits this Brief in Opposition to Petitioner Dongxiao Yue's Petition for a Writ of Certiorari. The petition seeks review of the unpublished opinion of the California Court of Appeal, First Appellate District, Division Five, issued on December 2, 2024 (Case No. A168295), which affirmed the trial court's judgment in favor of Respondent pursuant to California Code of Civil Procedure section 631.8. Petitioner contends that the trial proceedings were marred by structural errors, judicial bias, and violations of due process and equal protection under the Fourteenth Amendment, and that such defects should supersede state forfeiture doctrines.

The appellate opinion (hereafter refer to "Opinion") meticulously analyzed and rejected each of Petitioner's contentions. It held that Petitioner forfeited his constitutional claims by failing to assert them at trial, submitted an incomplete record that invokes a presumption of correctness in favor of the judgment, and failed to establish any error, let alone one of structural dimension. The Opinion underscored that Petitioner's claims for defamation and unfair competition failed due to an absence of evidence on essential elements, including falsity, publication, negligence, and damages.

Petitioner's filing misconstrues these state-law determinations as federal constitutional matters, yet this case constitutes a private dispute devoid of broader import. The petition presents no circuit split, novel federal question, or issue of national significance. Granting certiorari would contravene principles of federalism, as state courts have competently adjudicated this matter. This Brief opposes the petition's assertions and demonstrates that review is unwarranted.

STATEMENT OF THE CASE

A. Background and Pretrial Proceedings

This action arose from online discussions in 2014 and 2015 within the overseas Chinese online community, which Petitioner referred to as the "Internet Chinatown." Petitioner operated a personal website known as ZZB, functioning as a forum for chats among Chinese expatriates. Respondent, a Canadian resident of Chinese descent, participated in platforms such as ZZB and Yeyeclub.com, where exchanges occasionally became contentious. Petitioner alleged defamation based on posts that stated that Yue's family once was nearly "homeless" and accused him of utilizing "Trojan virus" methods in his legal services.

These statements were not fabricated falsehoods but were grounded in information disclosed by Petitioner himself. They are substantiated in widely circulated news reports and court records. In a media interview, Petitioner personally informed a reporter that the court had ordered the seizure of his family's sole residence, placing the family with two children at risk of homelessness. In his motion filed with a court, Petitioner explicitly described his use of a deceptive "Trojan horse" technique to effect service of the summons and complaint on Respondent via email.

In 2007, Petitioner initiated a copyright infringement action in the United States District Court for the Northern District of California (Yue v. Storage Technology Corp., No. C07-05850). The court imposed \$219,949.90 in attorney fees upon Petitioner for conduct described as "duplicative to nearly vexatious." Petitioner's non-payment led to an accusation of contempt of court on December 15, 2008, resulting in the seizure of his family's home and placing them at imminent risk of homelessness. A friend, Li Yong, solicited donations within the community under Petitioner's children's names (Trial Exhibit 402). This incident garnered extensive coverage in Chinese media, where Petitioner was regarded as a "national hero" for allegedly defeating the "Anglo-Saxon legal system." Petitioner co-authored a book named as "Win in USA" and asserted successes in U.S. courts (Trial Exhibits 401–406, 438). Accordingly, the "homeless" reference was predicated on verifiable events.

The "Trojan virus" allegation stemmed from Petitioner's email summon services, which incorporated embedded links to collect user data (Trial Exhibit 422). In response to criticism, Petitioner pursued a series of lawsuits to deter opponents. Between 2015 and 2017, he filed four defamation actions against nearly 40 individuals and entities, targeting anonymous critics on Chinese websites. None succeeded, yet these proceedings expended considerable judicial resources over a decade, transforming online tittles into extended legal wars.

Against Respondent specifically, Petitioner filed a defamation complaint on June 10, 2015, in Alameda County Superior Court (No. HG15773556), dismissed with prejudice in December 2022 for inactivity. On June 13, 2016, Petitioner commenced a duplicative action in Contra Costa County Superior Court (No. MSC16-01118), alleging defamation and unfair competition, following an unsuccessful attempt to disqualify the judge in the prior case. Petitioner's pattern reflects utilization of the judicial system to suppress criticism rather than to vindicate substantiated harm.

B. Trial Court Proceedings

The bench trial transpired on March 27 and 28, 2023, in Contra Costa County Superior Court before the Honorable Claire Maier. Petitioner appeared pro se, claiming membership in the California Bar, but his presentation was disorganized and inadequately prepared (*Trial Transcript at A47*) He allocated time to matters previously resolved, such as Respondent's use of the username "iMan" (deemed admitted pursuant to a June 29, 2022, order) (*Trial Transcript at A46*). Petitioner proffered 73 exhibits, but "mostly hearsay exhibits" (*Trial Minute Order at A37*) as the court observed and only 8 of which related to Respondent. The trial judge observed, "This is not a trial; it's a mess" (*Trial Transcript at A48*), underscoring Petitioner's unprofessionalism during the trial is nearly ridiculous.

Petitioner's testimony was stricken on grounds of hearsay, speculation, and lack of foundation. (*Trial Minute Order at A37*) For example, he sought to introduce testimony concerning ZZB users as California residents without adequate foundation or authentication. Exhibit 18, a Chinese-language blog post, was excluded for failure to include an English translation as required by California Rules of Court, rule 3.1110(g). (*Trial Minute Order at A37*) Other exhibits were deemed irrelevant, as they pertained to unrelated parties or issues. Petitioner extended apologies three times within 90 minutes on the second day: for accusing the judge of advocating for Respondent ("I apologize for that comment. You were trying to help,") (*Trial Transcript at A52*); for disorganization ("I apologize for the organization,") (*Trial Transcript at A49*); and for misstating prior evidentiary rulings ("I do apologize for yesterday") (*Trial Transcript at A61*).

With respect to the defamation cause of action, Petitioner adduced no evidence of publication to third parties(*Trial Transcript at A73*), falsity (he did not testify to the statements' untruth) (*Trial Transcript at A72*), negligence (no proof Respondent knew or should have known of falsity) (*Trial Transcript at A74*), or damages (no demonstration of harm(*Trial Transcript at A74*)). The judge determined there was "a clear lack of proof of defamation"(*Trial Transcript at A69*) and "a dearth of evidence with regard to damages," "(*Trial Transcript at A69*) even after reviewing inadmissible exhibits (*Trial Transcript at A69*) . For unfair

competition, Petitioner presented no evidence of business operations or economic loss (*Trial Transcript at A66*); ZZB statistics (Exhibit 72) were unexplained (*Trial Transcript at A72 and A73*).

The judge assisted Petitioner by halting irrelevant discussions ("spent a great deal of time on irrelevant material") (*Trial Transcript at A46*), guiding arguments ("Point those out and argue why they are defamatory") (*Trial Transcript at A58*), and allowing reopening of the case (*Trial Transcript at A68*). Petitioner confirmed he had presented all desired evidence ("Plaintiff already presented the evidence, I believe is Exhibit 39 to 45") (*Trial Transcript at A70*). Referencing California Civil Jury Instruction 1704, the judge concluded no elements were met (*Trial Transcript at A74*). After Yue's failed attempts, the judge invited Respondent's motion for judgment under section 631.8, which Respondent accepted (*Trial Transcript at A67*). Judgment was entered for Respondent, as Petitioner failed to establish a *prima facie* case.

C. Appellate Proceedings

The California Court of Appeal, First Appellate District, Division Five, rendered an unpublished opinion on December 2, 2024 (No. A168295). Petitioner appealed the section 631.8 judgment, alleging structural errors encompassing judicial pre-judgment, bias, and usurpation of the adversarial

role, along with violations of due process and equal protection under the Fourteenth Amendment.

The Opinion denied the structural error claims, ruling that Petitioner forfeited his constitutional objections by not raising them at trial, in accordance with *Geftakys v. State Personnel Board* (1982) 138 Cal.App.3d 844, 864. Structural errors, as articulated in *In re Murchison* (1955) 349 U.S. 133, 136, involve defects that undermine the trial framework, but the asserted issues were isolated, harmless, and corrected where necessary. The motion invitation was authorized by section 631.8, and Respondent's consent negated any *sua sponte* characterization. Evidentiary objections represented standard judicial functions in a bench trial with pro se litigants. Petitioner's failure to prove falsity, negligence, publication, or damages made the judgment inevitable, irrespective of procedural concerns.

Regarding judicial bias, Petitioner referenced the statement "not a lawyer trained in the United States," which the judge promptly corrected ("I stand corrected, you are a member of the California Bar") (*Trial Transcript at A49*) rendering it harmless and unrelated to immigrant status. The remark stemmed from frustration with Petitioner's disorganized presentation and procedural lapses. Comments on time-wasting were accurate assessments of Petitioner's inefficiencies, such as delayed judicial notice requests, aimed at preserving efficiency rather than discrimination. No discriminatory intent was

evident under *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 373–74. Respondent's Canadian Chinese background, arguably more "foreign," undermined disparate treatment claims. The missing transcript for the first trial day triggered the presumption of correctness pursuant to *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.

Evidence exclusions constituted a sound exercise of discretion, fully consistent with the provision of the California Evidence Code: testimony due to hearsay and speculation; Exhibit 18 due to absence of translation; others due to irrelevance. No prejudice ensued. Admitted evidence did not support a *prima facie* case. The Opinion awarded costs to Respondent.

Petitioner's appeal is speculative, procedurally waived, and devoid of factual or legal support, confirming that state courts can adeptly manage such challenges without federal oversight. The California Supreme Court denied review on March 19, 2025 (No. S288738).

REASONS FOR DENYING THE PETITION

A. No Substantial Federal Interest Warrants Supreme Court Review

This Court exercises certiorari jurisdiction sparingly, reserving it for cases presenting significant federal questions, such as resolving circuit conflicts or elucidating major constitutional matters (Supreme Court Rule 10). Petitioner's filing does not satisfy these criteria. It seeks to elevate routine state trial procedures to federal constitutional violations. The Principles of federalism accord deference to state procedural determinations unless they infringe established federal rights, as affirmed in *Howlett v. Rose* (1990) 496 U.S. 356, 365. The ensuing analysis demonstrates the lack of federal interest.

1. Absence of a Broad Federal Legal Question in Routine State Procedures

Petitioner's assertions—exclusion of evidence, judicial remarks, and motion invitation—implicate state evidentiary provisions, including California Evidence Code sections 210 (relevance) and 1200 (hearsay), and rule 3.1110(g) (translations). These constitute discretionary rulings, not federal mandates. For example, the exclusion of Petitioner's testimony for lack of foundation was a conventional application, and

Petitioner had ample opportunities to rectify it, including case reopening (*Trial Transcript at A68*).. In Mathews v. Eldridge (1976) 424 U.S. 319, 333, this Court delineated due process as a balancing of private interests, error risk, and governmental burdens. The proceedings here were equitable, devoid of systemic deficiencies. The Opinion characterized the rulings as discretionary and non-prejudicial. This Court has declined certiorari in analogous cases, such as Wynn v. Associated Press (2025) and Blankenship v. NBCUniversal (2023), where defamation procedural issues lacked wider application. Petitioner's contentions are confined to his particular trial, not doctrines of general applicability.

2. No Conflict with Federal Plain-Error Rules or Sister-State Doctrines

Petitioner maintains that California's forfeiture rule conflicts with federal plain-error review and sister-state doctrines. However, it is harmonious. Pursuant to United States v. Olano (1993) 507 U.S. 725, 732–35, unpreserved errors must be plain, impact substantial rights, and impair fairness—thresholds Petitioner does not meet, as no error was identified. The Geftakys rule similarly requires timely objections to facilitate remediation. Interstate variations are permissible under federalism. Ohio employs plain error in civil cases sparingly, only where it gravely undermines judicial integrity (Goldfuss v. Davidson (1997) 79 Ohio St.3d 116, 122–23); Petitioner's matter, with repeated evidentiary opportunities, falls short.

Florida reviews fundamental errors affecting the case's foundation (*Sanford v. Rubin* (1970) 237 So. 2d 134, 137), but the Opinion classified the issues as minor and harmless. Howlett validates state procedural autonomy absent constitutional infringement (496 U.S. at 365). No genuine conflict arises, as illustrated by denials in *Berisha v. Lawson* (2021).

3. Claims Centered on Fact-Bound Disputes, Not Ambiguous Constitutional Principles

Petitioner's bias allegations hinge on trial occurrences, not indeterminate facets of the Fourteenth Amendment. The "not a lawyer trained in the United States" remark was forthwith corrected (*Trial Transcript at A49*), negating prejudice. In *Liteky v. United States* (1994) 510 U.S. 540, 555, this Court specified that bias demands extrajudicial sources or profound antagonism; ordinary impatience suffices not. Here, the statement derived from Petitioner's disorganized conduct. Time-wasting observations precisely addressed delays, such as belated requests, to uphold efficiency. *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 373–74 necessitates proof of intentional discrimination; Petitioner proffered none. This Court eschews fact-intensive reviews, per *Taylor v. Freeland & Kronz* (1986) 503 U.S. 638, 645. No equivocal constitutional clause requires elucidation.

4. Lack of Novel Application to Emerging Legal or Technological Issues

The posts originate from 2014, absent engagement with modern concerns like social media prohibitions in *Packingham v. North Carolina* (2017) 582 U.S. 98, 104–08. No aspects of artificial intelligence, data privacy, or platform accountability are implicated; this is a personal controversy under state defamation law. Petitioner's actions resemble strategic lawsuits against public participation, governed by California Code of Civil Procedure section 425.16, but the Opinion discerned no foundation for federal elevation. Review would not further jurisprudential development.

5. Minimal Stakes and Absence of National Policy Implications

The proceeding entailed no jury, no damages, and limited public relevance—a contest between two foreign private litigants. This Court entertains thousands of certiorari petitions yearly, granting review in roughly 1–2 percent, favoring issues of national consequence (Supreme Court Rule 10). Petitioner's record of frivolous litigations indicates a pattern burdening resources without justification. Federalism counsels non-interference (*Michigan v. Long* (1983) 463 U.S. 1032, 1040).

6. Petitioner's Underlying Claims Fail on Evidentiary Merits Independent of Procedures

Disregarding procedural aspects, Petitioner did not substantiate defamation elements: statements conformed to public records (not false), no publication and negligence evidence, and no damages. The unfair competition claim lacked each element including economic injury proof. The nonsuit result was inexorable.

B. The Questions Presented in the Petition Lack Any Substantive Merit

Petitioner's questions posit that trial conduct infringed due process and equal protection, and structural errors obviate forfeiture. The Opinion repudiates these propositions.

1. The First Question Presented Is Meritless and Fails to Identify Constitutional Violations

This question avers that evidence exclusion, remarks, motion commencement, and judgment sans substantial input contravene the Fourteenth Amendment.

a. This Court Does Not Serve as a General Error-Correction Tribunal for State Trials

State procedures merit deference; federal scrutiny is confined to fundamental inequity (*Estelle v. McGuire* (1991) 502 U.S. 62, 67–68). Petitioner's grievances are state-centric (*Taylor*, 503 U.S. at 645).

b. Petitioner's Allegations Are Deeply Fact-Specific and Do Not Raise Abstract Legal Issues

Exclusions complied with rules: hearsay testimony and untranslated Exhibit 18. No overarching legal tenet is engaged.

c. The Record Provides No Factual Support for Claims of Bias or Procedural Unfairness

The remark was rectified (*Trial Transcript at A49*), the motion was authorized by California Code of Civil Procedure section 631.8 and consensual (*Trial Transcript at A67*), and judgment evidence-based (*Trial Transcript at A69*). Lower court dismissals affirm the absence of merit.

2. The Second Question Presented Is Unfounded and Misapplies Structural Error Doctrine

This question maintains that structural errors like prejudgment and bias dispense with forfeiture.

a. No Evidence of Structural Error in the Trial Record or Appellate Findings

Structural errors must permeate the trial structure (*Weaver v. Massachusetts* (2017) 582 U.S. 286, 294–95); here, matters were isolated and harmless. No bias manifested.

b. California's Forfeiture Rule Is Fully Consistent with Federal and Sister-State Practices

It comports with *Olano* (507 U.S. at 732–35). Disparities with *Ohio* (*Goldfuss*) and *Florida* (*Murphy v. International Robotic Systems, Inc.* (2000) 766 So. 2d 1010, 1030) embody permissible state diversity.

c. The Rule's Legitimacy Promotes Efficiency and Fairness in Litigation

Timely assertions permit rectification (*In re Seaton* (2004) 34 Cal.4th 193, 198); Petitioner omitted this.

d. Structural Errors in Civil Cases Do Not Automatically Exempt Forfeiture Requirements

In civil actions, preservation endures (Puckett v. United States (2009) 556 U.S. 129, 134). Petitioner's precedents, e.g., Hormel v. Helvering (1941) 312 U.S. 552, are inapposite.

e. No Demonstrated Need for Imposing Uniform Constitutional Standards Across States

No miscarriage of justice transpired (Michigan v. Long, 463 U.S. at 1040); Petitioner received sufficient opportunities.

f. The Petition Fails to Satisfy This Court's Certiorari Threshold Under Rule 10

No division or salience subsists (Estelle, 502 U.S. at 67–68).

C. The Petition Systematically Mischaracterizes the Trial Record and Applicable Legal Standards

Petitioner distorts the record; the Opinion rectifies these inaccuracies.

1. Mischaracterization of Legitimate Evidence Exclusions as Acts of Judicial Bias

Exclusions were justified: hearsay, lack of foundation. No bias or prejudice ensued (Foust, 198 Cal.App.4th at 187).

2. Mischaracterization of Harmless Judicial Comments as Evidence of Discrimination

The remark was corrected forthwith and originated from procedural flaws, not discrimination. No intent was proven (Yick Wo, 118 U.S. at 373; Liteky, 510 U.S. at 555). Forfeited per Geftakys.

3. Mischaracterization of the Motion for Judgment as Usurpation of the Adversarial Role

The invitation accorded with section 631.8 and was consensual. This constituted standard procedure.

4. Mischaracterization of the Appellate Court's Affirmance as Endorsement of Misconduct

The Opinion disavowed errors, deeming actions efficiency-enhancing (In re Murchison, 349 U.S. at 136).

D. Petitioner's Claims Have Been Fully and Finally Resolved by the California State Courts

1. The Judgment's Finality Under Res Judicata and Exhaustion of State Remedies

The affirmed judgment is res judicata, with state remedies exhausted (28 U.S.C. § 1738).

2. Certiorari Cannot Alter the Fundamental Evidentiary Failures in Petitioner's Case

No elements were substantiated (New York Times Co. v. Sullivan (1964) 376 U.S. 254). Remand would prove futile.

3. Granting Review Would Constitute a Waste of Judicial Resources on Frivolous Claims

Petitioner's litigation pattern diverts resources from meritorious matters.

E. Petitioner's Equal Protection and Vulnerable Litigant Claims Lack Factual or Legal Basis

No discriminatory intent was established (Yick Wo, 118 U.S. at 369). Remarks addressed conduct, not origin (Liteky, 510 U.S. at 555). Pro se litigants adhere to identical rules (Rappleyea v. Campbell (1994) 8 Cal.4th 975, 984–85).

CONCLUSION

The petition is without merit and misconstrues state proceedings as federal controversies. Drawing upon the Opinion, no grounds for review exist. Certiorari should be denied to uphold federalism and judicial economy.

Respectfully submitted,

Wenbin Yang

Respondent, pro se

12 August, 2025

APPENDIX TO BRIEF IN OPPOSITION

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APPENDIX AA

Opinion of California Court of Appeal

(December 2nd, 2024)

Filed 12/2/24

**NOT TO BE PUBLISHED IN OFFICIAL
RECORDS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

DONGXIAO YUE, Plaintiff and Appellant,

v.

WENBIN YANG, Defendant and Respondent.

No. A168295

(Contra Costa County, Superior Court No.
MSC1601118)

Plaintiff Dongxiao Yue appeals from a judgment entered against him pursuant to Code of Civil Procedure section 631.8 [1] on his complaint for unfair competition and defamation against defendant Wenbin Yang. Yue argues the trial court erred by failing to impose terminating sanctions against defendant Yang, excluding certain evidence, and entering judgment against Yue. He also argues the bench trial violated his due process rights and the equal protection clauses of the California and United States Constitutions. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 13, 2016, Yue filed a complaint against Yang; Trigmax Solutions, LLC (Trigmax); Yeyeclub.com (Yeyeclub); and Muye Liu. The

[1] All statutory references are to the Code of Civil Procedure unless otherwise stated.

complaint alleged causes of action for unfair competition and defamation. It alleged that Yue established a Chinese language online community Web site called Zhen Zhu Bay (ZZB). TrigmaX and Liu allegedly owned and operated a competing Chinese language Web site whose successor is Yeyeclub. Yang, a resident of Toronto, Canada, allegedly used the online identity "iMan" and others on Yeyeclub and ZZB. In September and October 2015, Yang, using various online identities, allegedly posted messages on Yeyeclub stating that Yue violated a court order and used an " 'Internet Virus Technique during the process Service.' " Yang also posted a blog article titled " '[Plaintiffs] Trojans Virus and Burglary Felony, stating, " 'Since [Plaintiff] was able to use Trojan horse Virus to send summons to Y's computer, then he can send anything to X's computer. Only if he need! For example, he can send a hidden monitor, just like underground special agent's secret radio, steal all the data in your computer,' " and Yue's " 'summons Trojan horse' 'stole the information of your computer's operating system.' " (Sic) On March 27, 2023, the trial court granted a motion to dismiss filed by Liu and Trigmax.^[2] Yue filed a separate appeal regarding the dismissal order, which we decided in Yue v. Trigmax Solutions, LLC, *supra*, A167577. On March 27, 2023, Yue proceeded to trial against Yang only. Yue and Yang each proceeded in pro. per. and appeared remotely for a bench trial.

[2] As we noted in our unpublished opinion in *Yue v. Trigmax Solutions, LLC* (Aug. 29, 2024, A167577),

the trial court's order granting the motion to dismiss states that the motion was also brought on behalf of Yeyeclub. We noted that the record in appeal No. A167577 was unclear and inconsistent regarding whether Yeyeclub moved for dismissal based on the five-year rule, whether a default judgment was entered as to Yeyeclub, and whether the trial court's reference to Yeyeclub in its dismissal order was a clerical error, and we left it to the parties on remand to determine the status of Yeyeclub. Yeyeclub, TrigmaX, and Liu are not parties to this appeal.

There is no court reporter's transcript of the first day of trial. The minute order states that Yue and Yang each gave brief opening statements and then Yue testified. The minute order does not summarize Yue's testimony other than stating: "The court informs Mr. Yue his testimony thus far is hearsay and not evidence. [*] The court strikes testimony regarding users being local California residents as it lacks foundation and calls for hearsay and speculation." (Capitalization omitted.) The minute order also states that Yang objected to exhibits Yue offered into evidence. The trial court admitted certain exhibits and excluded others. Some exhibits were excluded because they were not translated into English. Yue called Yang and examined him briefly before the court recessed. The minute order does not summarize Yang's testimony. The second day of the bench trial was transcribed by a court reporter. Yang's testimony continued through an interpreter. When asked if he made posts on Yeyeclub, Yang first stated that he was "not very clear on this because [it was] many years ago" and then denied he posted on Yeyeclub. Upon Yue's request, the trial court took judicial notice of a June 29, 2022, minute order finding that Yang failed to respond to certain of Yue's requests for admission, which were then deemed admitted. The trial court explained that the deemed admissions were that Yang used the identity of iMan on ZZB, Yeyeclub, and XYS[3] and that he also used the identities of VOA and CH₃CH₂OH on Yeyeclub. The trial court admitted additional exhibits into evidence based on the admissions regarding Yang's various identities. Yue questioned Yang about whether he wrote a message stated on one of the exhibits, and Yang stated he did not remember. Yue

then stated he had no further questions for Yang. Yue then offered exhibit 72, which he stated was

[3] XYS is not identified in the reporter's transcript.

"a summary of statistics of [ZZB's] blog account, blog View account, and et cetera." Yang did not object to its admission, and the trial court admitted the exhibit but also noted a lack of proper foundation. Yue rested. The trial court Invited Yang to make a motion for judgment under section 631.8. The trial court explained that a motion for judgment is a motion at the close of plaintiff's case for failure to provide sufficient evidence to support the case, and the trial court asked, "Mr. Yang, is that your motion?" to which Yang stated, "Yes, it is." The trial court offered Yue the opportunity to reopen his case to present additional evidence and stated that the court had reviewed the exhibits and found a lack of proof of defamation or damages. Yue did not offer additional evidence. However, he responded that he believed the evidence provided in trial exhibits 37 to 45 and 47 proved defamation and that damages are presumed. He further stated that trial exhibit 72 showed a drop in users on ZZB. The trial court asked Yue to clarify the theory of defamation on which he based his complaint. Yue stated his position was that defamation involved a private figure and private concern. The trial court then asked Yue to specifically identify which statements he believed were defamatory, and Yue referred to statements in trial exhibits 37, 39, 42, 43 and 44, including, " 'You have violated court order. The whole family was almost driven to the streets' "; a blog post titled "Trojan Virus and Burglary Felony of Yue"; and another document titled "Legal Illiterate and Shyster Yue The Fruit of Poisonous Tree Delivering Summons With Online Virus" Yue further argued that Yang's statement in exhibit 41 that Yang had "[n]ot seen anything which indicates that Yue might

really conduct such kind of illegal attack except your claim' " was evidence that Yang admitted his statement regarding Yue's use of a Trojan horse was untrue. Yue rested again.

The trial court granted the motion for judgment and orally noted some deficiencies in Yue's case, stating: "For almost all of Mr. Yue's testimony, he failed to testify or demonstrate to the court that any of these statements were untrue. Many of the statements pointed to by Mr. Yue are statements of opinion, which are permissible. They're also insults, which are permissible under the First Amendment. [*]] Mr. Yue also failed to show any damages. He didn't testify about damages. He didn't explain the chart. He didn't provide any nexus between the reduction and these postings. He even failed to demonstrate that these postings were public. There was some intimation perhaps they were, but there was no evidence of it. [*]] When he states that Mr. Yang admitted that the Trojan horse Virus was untrue, that is not the evidence that I heard yesterday. Mr. Yue's testimony was deficient to establish any of the elements that I'm looking at California Jury Instruction 1704. [*]] I do have the fact that Mr. Yang made these statements. I don't have any proof that he reasonably understood that these were not true or he failed to use reasonable care to determine the truth or falsity of the statements. [*]] There were no actual damages. And with regard to assumed - damages, I will note that if there is - Plaintiff has proved the harm to hurt feelings or shame or reputation or mortification, that Mr. Yue provided no testimony about that either. I understand that he brought the case, but no testimony was provided."

DISCUSSION

I. The trial court did not abuse its discretion when it denied Yue's pretrial requests for terminating sanctions.

Yue argues the trial court erroneously denied his motion for terminating sanctions against Yang based on his discovery violations. On January 4, 2022, Yue filed a motion to compel further discovery responses from Yang. The motion also requested monetary sanctions of \$125 but not

terminating sanctions. On March 9, 2022, the trial court granted Yue's motion in part and ordered Yang to provide verified responses to certain discovery requests, including requests for admission related to several online identities used by Yang. On May 27, 2022, Yue filed a motion to deem the first set of requests for admission propounded on Yang admitted because Yang failed to comply with the March 9, 2022, discovery order. Yue's motion also requested terminating sanctions. On June 29, 2022, the trial court granted Yue's motion to deem the requests for admission admitted but denied Yue's request for terminating sanctions. Yue moved again for terminating sanctions on August 25, 2022, based on Yang's supplemental discovery responses and violation of prior discovery orders. On October 19, 2022, the trial court denied Yue's motion for terminating sanctions. On January 19, 2023, Yue filed a motion to compel Yang to answer deposition questions which he had refused to answer. In the motion, Yue also requested monetary sanctions of \$1,771.62, but he did not request terminating sanctions. On March 15, 2023, the trial court granted Yue's motion in part but denied monetary sanctions. Yue contends the trial court's denial of his pretrial requests for terminating sanctions against Yang should be reversed. We review an order denying a motion for terminating sanctions for abuse of discretion. (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604.) The order is presumed correct, and all presumptions are indulged to support the order on matters as to which the record is silent. It is Yue's burden to affirmatively demonstrate error. (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.)

Discovery sanctions should be "appropriate to the dereliction, and should not exceed that which is required to protect the

interests of the party entitled to but denied discovery." (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 793.) "[T]he terminating sanction is a drastic penalty and should be used sparingly." (Lopez, *supra*, 246 Cal.App.4th at p. 604.) Yue has failed to persuade us that the trial court abused its discretion by denying his request for terminating sanctions. The trial court ordered that Yue's requests for Yang to admit he used various online identities were deemed admitted based on Yang's failure to comply with the court's prior discovery order. Yue used these admissions at trial. Yue fails to explain in any detail the subject of the other discovery he requested and to which Yang failed to respond. We find the trial court did not abuse its discretion when it opted to deem admitted the requests for admission and denied Yue's request for terminating sanctions.

II. Exclusion of Evidence

Yue argues the trial court erroneously excluded certain evidence. First, he complains that on the first day of trial, the trial court struck his testimony that some of the users of the ZZB Web site were local California residents who knew Yue personally. As noted *ante*, there is no reporter's transcript of Yue's testimony, which occurred on the first day of trial. The trial court's minute order states that the court struck testimony regarding users being local California residents as it lacked foundation and called for hearsay and speculation. We review the trial court's evidentiary rulings for abuse of discretion. (Pannu v. Land Rover North America, Inc. (2011) 191 Cal.App.4th 1298, 1317.) Yue claims, without citation to any authority, that

his testimony was not hearsay. (Benach v. County of Los Angeles (2007) 149 Cal.App.4th 836, 852 (Benach) ["An appellant must provide . . . legal authority to support his contentions"].) He does not address the trial court's

additional bases that the testimony lacked foundation and was speculative. On this record, with only a summary of the testimony in a minute order and no reporter's transcript or settled statement, we cannot find that the trial court abused its discretion by striking Yue's testimony that some of the users of the ZZB Web site were California residents who knew Yue personally. Yue argues that the trial court erroneously excluded exhibit 18, which he states is a blog post by "iMan" with a photo of Yang's wife. The exhibit is almost entirely in a Chinese language. The trial court did not abuse its discretion in excluding the exhibit. (Cal. Rules of Court, rule 3.1110(g) ["Exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter"].) Finally, Yue argues generally that the trial court erred in excluding unidentified "trial exhibits involving Yeyeclub and Liu," which he states the trial court excluded because Yeyeclub was in default and the other defendants had been dismissed. He cites only to the minute order stating which exhibits were admitted and which were not. He provides no discussion of the exhibits he claims were erroneously excluded or case authority supporting his claim of error. Yue has failed to demonstrate an abuse of discretion. (Benach, *supra*, 149 Cal.App.4th at p. 852 ["It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness"].)

III. Entry of Judgment

Yue's opening brief argues that Yang committed libel per se based upon statements contained in certain exhibits admitted at trial, that he proved damages, and that the trial court misapplied the law and disregarded established facts. We understand Yue's argument to be that the trial court erred in granting the motion for judgment under section 631.8.

The purpose of section 631.8 "is 'to enable the court, when it finds at the completion of plaintiffs case that the evidence does not justify requiring the defense to produce evidence, to weigh evidence and make findings of fact.' [Citation.] Under the statute, a court acting as trier of fact may enter judgment in favor of the defendant if the court concludes that the plaintiff failed to sustain his burden of proof.

[Citation.] In making the ruling, the trial court assesses witness credibility and resolves conflicts in evidence. [Citations.]" (People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes (2006) 139 Cal.App.4th 1006, 1012.) We review a judgment entered under section 631.8 under the same standards as we review judgments entered after a completed bench trial.

(Pettus v. Cole (1996) 49 Cal.App.4th 402, 424 425.) The substantial evidence rule applies to the trial court's factual findings, and we review questions of law independently. (Ibid.) The standard is somewhat different when, as here, the issue is whether there was a failure of proof at trial. [W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding" (Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc. (2011) 196 Cal.App.4th 456, 466 (Sonic)

We presume the trial court's judgment is correct. (Denham v. Superior Court (1970) 2 Cal.3d

557, 564.) To overcome this presumption, Yue must affirmatively demonstrate prejudicial error based on an adequate record. (Jameson v. Desta (2018) 5 Cal.5th 594, 608 609.) Yue has provided the reporter's transcript for the second day of the trial, but there is no reporter's

transcript of the first day of trial. Nor has Yue provided a settled statement, the "viable alternative to a reporter's transcript." (Randall v. Mousseau (2016) 2 Cal.App.5th 929, 933; Cal. Rules of Court, rule 8.137.) As explained in Estate of Fain (1999) 75 Cal.App.4th 973: "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be conclusively presumed correct as to all evidentiary matters. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence." (Id. at p. 992.) With these principles in mind, we consider Yue's claim of error. Yue argues that Yang, using various online identities, posted messages on ZZB and Yeyeclub that defamed Yue. He refers to the following four statements contained in trial exhibits 37, 39, 42 and 44: (1) "In a society governed by the rule of law, court orders cannot be disobeyed!" How well Yue, DNGXIAO said that. This is a valuable experience gained with so much blood and tears. Back in the day, Yue savvy disobeyed the court order, and the family was almost thrown out into the street. I don't know if everyone remembers. [Emojil]." (Sic) (2) Yang's statement to Yue that he does not want to communicate with Yue by email because "[a]s you confessed in your Complaint and Motion, you once tried to serve me by using Internet Virus Technique (hiding documents in your own website). This is outrageous and scared me! [*] I have not seen anything which indicates that you might really conducted that kind of illegal service approach

except your claim. In other words, I only know that you tried to serve me by hiding documents in your website because you said so. I consider it as that you used

Internet Virus Technique during the process service. No more, No less." (Sic) (3) "In the (civil) Complaint and in the Motion to email Summons, shyster YUE openly presented that he used a network Virus to send the Summons as evidence (bury the Summons on the page of his website, and as soon as you visit his website, his Trojan horse will be in your computer). This shows how legally illiterate this shyster is! [*] . . . [*] Even if the IPS [ISP4] company or those who share that IP address do not sue Yue for dropping a virus on them, even if Yang does not counteract Yue slander Yue distributed Summons and Complaints to all those who share that IP address, Yue DONGXIAO himself can't get rid of the 'cyber hacking' crown. People who have some common sense in the 21st century know that cyber viruses are illegal and criminal. As a televised legal advisor with a Master's in Computer Science, Yue even took this as evidence in court, and put the rope hanging around his neck in front of the judge and the defendant. This man's smart aleck, legal illiteracy and stupidity are really jokes, a state-of-the-art, breathtaking living specimen." (Sic) [4] A document titled "Trojans Virus and Burglary Felony of Yue DongXiao," stating, "If Yue DongXiao can send Summons to Y's computer using Trojans Virus as a method, he can send anything to X's computer in the same way. As long as he needs it! For example, a hidden monitor, like a secret radio station for a sleeper agent, which can steal all the data from your computer. [*] A burglar who climbed in through the window committed Burglary Felony, whether he didn't steal a piece of bread or stole a sack of US dollar bills. According to California Penal Code Section 461(1), the offence to residential theft is first-

degree burglary with a sentence of 2-6 years. If you steal nothing, you will have to go to prison for at least two years, and if you steal a sack of US dollar bills, you will

[4] Internet service provider.

spend up to six years in prison. Life is not fair, but law is. [*]] Definition of Trojans: [*]] Trojans are malicious programs that perform actions that have not been authorized by the user. [*]] So, does Yue's Summons with the Trojans perform action? Of course! And it executed very important actions, such as display on screen, stealing information of your computer's operating system!" (Sic, boldface and capitalization omitted.)

Yue argues that Yang's statements are libel per se; that they were false; that Yang knew they were false; that damages are presumed and that he also proved damages when he presented exhibit 72, a document he prepared which he claims demonstrates that after Yang's statement, Yue's ZZB Web site lost visitors and bloggers.

Yue claims the trial court erred when it found that Yue failed to prove Yang's statements were false because the burden was on Yang to prove truth as an affirmative defense. However, even assuming it was not Yue's burden to prove the falsity of Yang's statements,[5] Yue fails to demonstrate that the trial court erred in finding that Yue failed to prove the elements of defamation. The trial court found there was no evidence Yang's statements were public. Yue argues that the statements were "evidently public." He appears to base his argument on what he claims were user comments indicating that people believed Yang's false statements. He also states, without a record citation, that the fact that he downloaded Yang's posts proves they were public. However, he does not cite to any evidence that he downloaded the

posts. He claims he testified that his friends in California

[5]"The tort of defamation 'involves (a) a publication that is (b) false, (c) defamatory, (d) unprivileged, and that (e) has a natural tendency to injure or causes special damage.' " (Taus v. Loftus (2007) 40 Cal.4th 683, 720.) However, "[t]he burden of pleading and proving truth is generally on the defendant." (Smith v. Maldonado (1999) 72 Cal.App.4th 637, 646, fn. 5.)

saw the blog posts. As discussed ante, Yue argues the trial court erred by striking his testimony as hearsay. We have concluded that based on the incomplete record, we are unable to determine that the trial court abused its discretion in striking Yue's testimony. Similarly, without a reporter's transcript or settled statement regarding Yue's testimony, we are unable to find that Yue presented evidence that was of such a character and weight as to leave no room for the trial court's determination that there was insufficient evidence of the publication element of defamation. (Sonic, *supra*, 196 Cal.App.4th at p. 466; Estate of Fain, *supra*, 75 Cal.App.4th at p. 992.) In other words, Yue provides no basis for us to conclude that the trial court erred in finding that Yue failed to prove Yang's statements were published.

In addition, Yue was also required to prove that Yang failed to use reasonable care to determine the truth or falsity of the statements. (CACI No. 1704.) The trial court also found Yue presented no evidence regarding this element of defamation. Yue's opening brief notes the trial court's finding regarding this element but not does provide any argument as to why it was erroneous.[6]

In sum, based on the record presented, Yue has not carried his burden to affirmatively demonstrate the trial court erred in finding that Yue failed to prove all the elements of his claim. (Sonic, *supra*, 196 Cal.App.4th at p. 466.)

[6] Yue also attempts to contest the trial court's finding that some of Yang's statements were insults protected under the First Amendment by stating, without any citations to the record or to case authority, that not all insults are protected speech and generally stating that combining insults with defamatory statements does not negate the defamatory nature of the statement. Yue's generalized argument without citation to authority is insufficient to overcome the presumption of correctness we apply to the judgment. (Benach, *supra*, 149 Cal.App.4th at p. 852 [to overcome the presumption of correctness, appellant must support contentions with reasoned argument and citation to authority].)

IV. Due Process

Yue complains that the bench trial violated his due process rights in three ways. First, he contends the trial court advocated on behalf of Yang. Yue claims the following conduct by the trial court supports his claim: (1) The trial court improperly interrupted Yue's testimony on the first day of trial and asked Yang if he had objections to certain trial exhibits. (2) It interjected during Yang's testimony on the second day of trial to state that Yang testified he did not remember writing a message to Yue, and then, when Yue asked a follow-up question, the trial court stated it had been asked and answered and told Yue to move on. (3) When Yue offered a trial exhibit which he describes as a "summary of the statistics of ZZB," the trial court admitted it into evidence but also stated, "'I don't see proper foundation here.' " (4) At the conclusion of Yue's case, the trial court invited a motion for judgment.

To the extent Yue's argument is based on trial testimony from the first day of trial, the appellate record is incomplete because there is no reporter's transcript or settled statement from the first day of trial. On an incomplete record, we are unable to find error. (Estate of Fain, *supra*, 75 Cal.App.4th at p. 992.) Further, Yue did not raise the issue of a due process violation in the trial court. Constitutional questions not raised in the trial court are considered waived. (*Geftakys v. State Personnel Board* (1982) 138 Cal.App.3d 844, 864.) Even if we were to exercise our discretion to consider the due process issue, we would find that Yue has failed to demonstrate that the trial court's comments during trial testimony,

with regard to Yue's exhibit or its invitation for Yang to make a motion for judgment, amounted to a due process violation. Based on the record provided, it appears that the trial court's statements were made in an effort to control the litigation and conserve judicial resources. (Coshow v. City of Escondido (2005) 132

Cal.App.4th 687, 701 ["A court's inherent powers to control litigation and conserve judicial resources authorize it to conduct hearings and formulate rules of procedure as justice may require"]; Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2023) 1] 16:31 cmt. ["as a practical matter, a judge may . . . invite a motion for judgment to short-cut the proceedings"].)

Second, Yue contends the trial judge showed prejudice regarding what Yue describes as "[t]he episode about the RFAs." Yue states that he previously informed the trial court that a court commissioner had issued a discovery order deeming true the requests for admission that Yang had used various online identifications. On the second day of trial, Yue asked the trial court to take judicial notice of the prior discovery order. Yue's opening brief states that the trial court "reacted by stating that [Yue's] 'failing to do this at the outset is an absurd waste of time'." However, Yue's summary of his exchange with the trial court is misleading and incomplete. The record shows that the trial court first asked Yue for the date of the discovery order so that the court could attempt to locate the document in its file. Yue initially provided an incorrect date, and the court's clerk could not locate the document. Yue then provided the correct date, and the trial court stated that Yue should have included the document as a potential exhibit rather than have the court and the clerk scroll through years of documents in the court's file. When the trial court located the discovery order, it read into the record the various online identifications Yang used on certain Web sites, based on the admissions. The trial court then

reconsidered a prior ruling on certain other exhibits offered by Yue and stated, "Based on the newly I'm going to say discovered admissions, you failing to do this at the outset is an absurd waste of time. But based on that, yes, these are admissible, so 42 and 44, although

I ruled them previously inadmissible, are now admitted into evidence." Yue then apologized and stated he was under the impression that the trial court knew the requests for admission had been deemed admitted. The trial court responded that it was Yue's responsibility to bring his case and that "to state that the court doesn't understand what a ruling was previously in a case is absurd. That's not the way you handle a trial." Yue made no objection during this exchange that his due process rights were Violated; nor does he explain in his briefing why the trial court's comments amount to a due process Violation. Yue's claim is waived and meritless.

Third, Yue argues that the trial court exhibited bias against him when it commented on his legal training. The context of the exchange is as follows. Yang testified that he did not remember writing a message stated in an exhibit Yue presented to Yang. Yue then asked a follow-up question, and the trial court stated: "And you're presuming that Mr. Yang wrote this information. And you're asking him about the substance. He has testified he does not remember if he wrote this or not." Yue responded to the court asking to "have an adversarial proceeding and let Mr. Yang object to whatever questions Plaintiff is asking?" The trial court agreed that Yang was an adversarial witness and further stated that Yue was wasting time and that it was the court's responsibility to see that proceedings are conducted in an orderly fashion. It stated that Yue was "not a lawyer trained in the United States. In fact, you're not a lawyer. You spent a great deal of time yesterday on irrelevant and inadmissible material,

and you are attempting to do the same today." Yue told the trial court that he was a member of the California State Bar. The trial court then confirmed the spelling of Yue's name and corrected itself, stating, "Mr. Yue, I stand

corrected; you are a licensed attorney. You're having trouble though, so I'd ask that you proceed in an organized fashion, please."

As with the other alleged due process Violations, Yue has forfeited this claim because he did not argue to the trial court that it was exhibiting bias or violating his due process rights. (Geftakys v. State Personnel Board, *supra*, 138 Cal.App.3d at p. 864.) Further, Yue's opening brief does not explain how the above exchange Violated his due process rights and, instead, simply states that the trial court's "apparent bias and prejudice were unwarranted." (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 156 [conclusory arguments not supported by pertinent legal authority that fail to disclose appellant's reasoning may be disregarded].) While we do not condone the trial court's commenting on Yue's status as a member of the California State Bar or his legal training, the trial court quickly corrected itself and the trial proceeded. Although Yue is a licensed attorney, he represented himself at trial and in his appeal. As an unrepresented party, he is held to the same standards as other litigants. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 1247 [unrepresented parties are entitled to no greater consideration than other litigants and attorneys].) Based on our consideration of the incomplete record, it appears that the trial court was attempting to assist the litigants in moving the case forward in an efficient manner. (*Arave v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (2018) 19 Cal.App.5th 525, 539 542 [recognizing trial court's broad discretion to guide trial, including directing counsel to ask direct

questions and avoid wasting time].) Even if ~~1~~ had not forfeited his due process claim, he has failed to demonstrate a due process violation.

V. Equal Protection

Under a separate heading, Yue argues the same exchange with the trial court regarding Yue's status as a lawyer violates the equal protection clauses of the California and U.S. Constitutions. This issue was also not raised below and is therefore forfeited. (Geftakys v. State Personnel Board, *supra*, 138 Cal.App.3d at p. 864.) Moreover, Yue has not demonstrated that his trial was conducted in a manner that Violated the equal protection clauses.

DISPOSITION

The judgment is affirmed. Yue's request for terminating and monetary sanctions against Yang is denied. Yang shall recover his costs on appeal.

Jackson, P. J.

WE CONCUR:

Simons, J.

Chou, J.

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APPENDIX BB
Excerpts of Trial Minute Order

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
HONORABLE CLARE MAIER
PRESIDING
DEPARTMENT 36

MSC16-01118
HEARING DATE: 03/27/2023

Dongxiao Yue, Plaintiff
v.
Wenbin Yang, Defendant etc.

Excerpts of Trial Minute Order

(3/27/2023)

~~~~~

THE COURT STATES PLTF'S EXHIBITS APPEAR  
TO BE MOSTLY HEARSAY EXHIBITS.

~~~~~

MR. YUE TESTIFIES AS PLTF'S FIRST WITNESS.
THE COURT INFORMS MR. YUE HIS
TESTIMONY THUS FAR IS HEARSAY AND NOT
EVIDENCE.

~~~~~

THE COURT STRIKES TESTIMONY REGARDING  
USERS BEING LOCAL CALIFORNIA RESIDENTS  
AS IT LACKS FOUNDATION AND CALLS FOR  
HEARSAY AND SPECULATION.

~~~~~

MR. YUE IS ADMONISHED FOR ARGUING WITH
THE COURT'S RULING.

~~~~~

PLTF'S EXH. 18: iMan blog post with a photo of his  
wife (2014-05-06), IS NOT ADMITTED.

~~~~~


APPENDIX CC
Excerpts of Trial Transcript
(3/28/2023)

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
HONORABLE CLARE MAIER
PRESIDING
DEPARTMENT 36

MSC16-01118
HEARING DATE: 03/28/2023

Dongxiao Yue, Plaintiff

v.

Wenbin Yang, Defendant etc.

[Excerpts of Trial Transcript page 5]

22 · · · · · MR. YUE: · Your Honor, this question is to identify

23 · Mr. Yang as the various online IDs that has been used online.

24 · · · · · THE COURT: · Just a moment. · Just a moment.

25 · · · · · Exhibit 18 was already ruled as inadmissible. · We're

26 · moving on. · Next question.

[Excerpts of Trial Transcript page 6]

9 · · · Q. · · BY MR. YUE: · So, Mr. Yang, you just said,
didn't you

10 · admitted that you were iMan, correct?

11 · · · · · THE COURT: · That's been asked and
answered. · Move on.

12 · He has admitted that. · Please move on, Mr. Yue.

13 · · · · · MR. YUE: · That's what he just said.

14 · · · · · THE COURT: · Mr. Yue, pose your next
question.

[Excerpts of Trial Transcript page 7]

7 · · · · · MR. YUE: · Your Honor, again, the relevance is ·

8 · identification, identification of Mr. Yang as various online ·

9 · identities who posted defamatory statements.

10 · · · · · THE COURT: · You've already gotten there. · This is

11 · iMan. · He's admitted he's iMan. · He's identified that he's

12 · iMan. · We're moving on.

[Excerpts of Trial Transcript page 8]

1 · been a long time ago, I do not remember. ·

2 · · · · · THE COURT: · All right, Mr. Yue, next question. · Let's ·

3 · move on. ·

4 · · · Q. · · BY MR. YUE: · So, Mr. Yang, you said you reported the ·

5 · posting of the family photos to the administrator of Yeyeclub. ·

6 · How did you do that? ·

7 · · · · · THE COURT: · Mr. Yue, you're now presuming that he ·

8 · wrote this information. ·

9 · · · · · Let me have you interpret.

10 · · · · · THE INTERPRETER: · Your Honor, please.

11 · · · · · THE COURT: · You want what I said?

12 · · · · · And you're now presuming that Mr. Yang wrote this

13 · information. · And you're asking him about the substance. · He

14 · has testified he does not remember if he wrote this or not.

15 · · · · · MR. YUE: · Your Honor, can we have an adversarial

16 · proceeding and let Mr. Yang object to whatever the questions

17 · Plaintiff is asking?

18 · · · · · THE COURT: · I think what you're asking is whether or

19 · not you can question Mr. Yang as an adversarial witness, and

20 · the answer is yes, you may, which means you may ask leading

21 · questions, but Mr. Yang not only is the witness, he also

22 · represents himself, so he is entitled to object to the

23 · questions before answering.

24 · · · · · So, Mr. Yue, you're wasting an inordinate amount of

25 · time. · You did so yesterday, and you're doing so today. · We

26 · went through the exhibits to see what was admitted and what

27 · was not admitted, and if you want the court to consider that

28 · and to consider that all writings authored by iMan are

[Excerpts of Trial Transcript page 9]

1 · writings from Mr. Yang, I believe Mr. Yang would
stipulate to ·

2 · that, and then you can have me consider those
exhibits and ·

3 · make your argument as to why it's defamatory. · I
need you to ·

4 · expedite things and stop wasting time. ·

5 · · · · · MR. YUE: · Your Honor, Plaintiff is a litigant
just ·

6 · trying to prove his case, and Your Honor is
objecting on ·

7 · behalf of Mr. Yang, and there is no way -

8 · · · · · THE COURT: · No, that -- go ahead. ·

9 · · · · · MR. YUE: · -- for Plaintiff to try this case.

10 · · · · · THE COURT: · It is the court's
responsibility to

11 · judiciously use the court's resources, and in doing
so, it is

12 · my responsibility to see that proceedings are
conducted in an

13 · orderly fashion.

14 · · · · · You are not a lawyer trained in the United
States.

15 · In fact, you're not a lawyer. · You spent a great
deal of time

16 · yesterday on irrelevant and inadmissible
material, and you are

17 · attempting to do the same today.

18 · · · · · I am not objecting on behalf of Mr.
Yang. · In fact, I

19 · am seeking to assist you with your case, Mr.
Yue. · What I am

20 · seeking is to have you tell me the relevant
admissible

21 · evidence that you wish the court to consider.

22 · · · · · You've already told me what exhibits you
wish to have

23 · admitted, I have ruled on those exhibits, and to
continue to

24 · make inquiry of Mr. Yang as to whether or not
he's iMan is

25 · redundant and a waste of the judge's -- or the
court's

26 · resources.

27 · · · · You are disorganized, lack preparation,
you're not

28 · complying with nor understanding the rules of
evidence, and

[Excerpts of Trial Transcript page 10]

1 · this is turning into a morass of a case, of a trial. · This is ·

2 · not a trial; it's a mess. ·

3 · · · · · MR. YUE: · Your Honor, may I say a few words? ·

4 · · · · · THE COURT: · Please proceed, Mr. Yue. ·

5 · · · · · MR. YUE: · First -- first, I already stated the ·

6 · relevance of this question, which is to prove, to show ·

7 · Mr. Yang's IDs on Yeyeclub, so that's the relevance. · It's ·

8 · already -- so this is not a waste of the -- a waste of time. ·

9 · · · · · Secondly, I am admitted to the State Bar of 10 · California, and I pass the exam, I scored well in evidence and

11 · know the evidence, and I win cases against many
competent

12 · lawyers. · It's not that I'm a stranger to the law so

13 · · · · · THE INTERPRETER: · Mr. Yue, please.

14 · · · · · Your Honor.

15 · · · · · THE COURT: · Mr. Yue, is the spelling of
your name the

16 · spelling of your name on the California State Bar
website?

17 · · · · · MR. YUE: · Yes.

18 · · · · · THE COURT: · Okay, thank you.

19 · · · · · All right, Mr. Yue, I stand corrected; you
are a

20 · licensed attorney. · You're having trouble though,
so I'd ask

21 · that you proceed in an organized fashion, please.

22 · · · · · MR. YUE: · Your Honor, I apologize for the

23 · organization because the trial has been -- because
of the

24 · dismissal of two of the defendants so I have to
quickly

25 · reorganize the presentation of the trial given that
Mr. Yang

26 · is the only remaining defendant.

27 · · · · · But let me proceed asking Mr. Yang.

28 · · · · · So Mr. Yang -

[Excerpts of Trial Transcript page 12]

26 · · · · · THE COURT: · Mr. Yue, there is no June 26
order.

27 · · · · · MR. YUE: · June 29. · Sorry, sorry. · June
29. · June 29.

28 · · · · · THE COURT: · This is precisely what I
mean about you

[Excerpts of Trial Transcript page 13]

1 · wasting the court's time, Mr. Yue. · This should
have been ·

2 · printed and included as a potential exhibit to
impeach ·

3 · Mr. Yang. · You now have both the clerk and the
court scrolling ·

4 · through years of documents in order to locate a
document for ·

5 · you. · You -- go ahead. ·

6 · · · · · You claim I'm working for the defendant
where, in ·

7 · fact, you're asking me to work for you. ·

8 · · · · · MR. YUE: · I apologize. · I apologize for that
comment. ·

9 · You were trying to help, I understand, so -

10 · · · · · THE COURT: · So hold on. · We haven't
gotten there yet.

11 · Madam Clerk is now printing this document. · It's
the minute

12 · order. · It's not a court order but a minute order
from

13 · June 29th of 2022.

14 · · · · · So, Mr. Yang, I believe you had an
objection. · So

15 · what is the objection to the court taking judicial
notice of

16 · the minute order from June 29th?

17 · · · · · THE INTERPRETER: · Mr. Yang, please.

18 · · · · · THE WITNESS: · I am objecting to
whatever purpose is

19 · this document. · I don't know its purpose. · I don't
know what

20 · is this document at all.

21 · · · · · THE COURT: · All right. · So I will note that
the

22 · minute order does reflect that Mr. Yang failed to
comply with

23 · the Request For Admissions 1 through 6, which
are before the

24 · court in Exhibit 69.

25 · · · · · Moreover, I find it relevant, and it will
assist the

26 · court in making a determination in this case. · It
will also

27 · expedite matters, Mr. Yue, you have the
admissions, you do not

28 · need to ask any questions of Mr. Yang as to any
of these

[Excerpts of Trial Transcript page 14]

·1· admissions now. · I will read these admissions. ·

2 · · · · · The court is now deeming that you have
admitted using ·

3 · the ID as JFF on XYS. · You also used the ID of
iMan or ZZB. ·

4 · · · · · THE INTERPRETER: · I'm sorry, Your
Honor, CCB? ·

5 · · · · · THE COURT: · ZZB. ·

6 · · · · · You also used the ID of iMan on Yeyeclub. ·

7 · · · · · You also used the ID of iMan on XYS. ·

8 · · · · · Mr. Yang also used the ID of VOA on
Yeyeclub. ·

9 · · · · · THE INTERPRETER: · Your Honor, VOA?

10 · · · · · I'm sorry, Your Honor, on IMAX?

11 · · · · · THE COURT: · On Yeyeclub.

12 · · · · · And, finally, admission number 6 is that
you used the 13 · ID of CH3CH2OH on Yeyeclub.

14 · · · · · THE WITNESS: · Can I say something?

15 · · · · · THE COURT: · Mr. Yang, you're being
cross-exam —

16 · examined right now. · No, you may not.

17 · · · · · Well, actually, you're the lawyer too. · If it's
an

18 · objection of some sort, yes, you may.

19 · · · · · MR. YANG: · I object because in the
proceeding of

20 · eliminating, otherwise dismissing evidence, these
have already

21 · been gone over.

22 · · · · · THE COURT: · The objection is overruled.

[Excerpts of Trial Transcript page 15]

22 · · · · · THE WITNESS: · During the discovery process, the judge 23 · had already made the same judgment decision. 24 · · · · · THE COURT: · Right, and it may be used against you in 25 · the trial, and it just was. · Mr. Yue just used it against you.

26 · · · · · And no more. · We're done. · You're being questioned. 27 · I've made my ruling. · You are consuming an inordinate amount 28 · of the court's time. · We need to move on.

[Excerpts of Trial Transcript page 16]

1 · Mr. Yue, again, I wish to emphasize that you
have ·

2 · these admissions, that means just tell me the
exhibits you ·

3 · want me to review, tell me your argument, finish
your case. ·

4 · You need to finish your case now. · You've been
spinning round ·

5 · in circles. ·

6 · · · · · My sense is that you have a number of
documents ·

7 · that you find the writings are defamatory. · Point
those out to

8 · me and argue why they are and tell me what your
damages are. ·

9 · · · · · MR. YUE: · Yes, Your Honor.

10 · · · · · THE COURT: · You need to make your case
and not waste

11 · this many hours on nothing.

12 · · · · · MR. YUE: · Yes, Your Honor, I again move
to admit

13 · Exhibit 42, which was a post made by VOA on
Yeyeclub and

14 · Exhibit 44, which is another exhibit [sic] made by
CH3CH2OH.

15 · · · · · THE COURT: · I apologize for
interrupting. · You may

16 · translate.

17 · · · · · THE INTERPRETER: · Yes, Your Honor.

18 · · · · · THE COURT: · Based on the newly I'm
going to say

19 · discovered admissions, you failing to do this at
the outset is

20 · an absurd waste of time. · But based on that, yes,
these are

21 · admissible, so 42 and 44, although I ruled them
previously 22 · inadmissible, are now admitted into
evidence.

23 · · · · · (Plaintiff's Exhibits 42 and 44 were
admitted into

24 · · · · · evidence.)

25 · · · · · THE COURT: · Anything else you wish the
court to

26 · consider, Mr. Yue?

27 · · · · · THE INTERPRETER: · Mr. Yue, please.

28 · · · · · MR. YUE: · Also 46, 47. · Those two blog
posts by

[Excerpts of Trial Transcript page 17]

1 · Mr. Yang, VOA on Yeyeclub, 46 and 47. ·

2 · · · · · THE COURT: · 47 was previously
admitted. · 46 is now ·

3 · admitted. ·

4 · · · · · (Plaintiff's Exhibit 46 was admitted into
evidence.) ·

5 · · · · · MR. YUE: · For evidence I guess, Mr. Yang, I
think ·

6 · it's now - ·

7 · · · · · THE COURT: · No, no, you may not
interrupt, Mr. Yang. ·

8 · · · · · THE INTERPRETER: · Mr. Yue. ·

9 · · · · · MR. YUE: · Your Honor, I do apologize for
yesterday

10 · because I did -- I was under the impression that
you knew the

11 · request of the admissions was deemed not
admitted, so I didn't

12 · realize you -- that was by another judicial officer
and so --

13 · · · · · THE COURT: · Mr. Yue, it is your
responsibility to

14 · bring your case. · You should know better than
that, and that's

15 · why I assumed you weren't a lawyer. · You accuse
the court --

16 · or to state that the court doesn't understand
what a ruling

17 · was previously in a case is absurd. · That's not the
way you

18 · handle a trial.

19 · · · · · THE INTERPRETER: · Mr. Yue,
please. · I'm interpreting

20 · for the judge.

21 · · · · · MR. YUE: · Yes, yes.

22 · · · · · THE COURT: · Mr. Yue, what other evidence do you have

23 · for the court to consider?

24 · · · · · MR. YUE: · I have another exhibit to ask Mr. Yang

25 · about.

26 · · · · · THE COURT: · Stop right there. · Stop right there.

27 · · · · · THE WITNESS: · Your Honor, Exhibit 46, Mr. Yang,

28 · Exhibit 46 was not translated. · It was not admissible.

[Excerpts of Trial Transcript page 19]

21 · · · · THE COURT: · So what are your
questions? · He says hc

22 · doesn't remember. · We need to move on.

23 · · · · · MR. YUE: · I have no more questions, Your
Honor.

24 · · · · · THE COURT: · No more for Mr. Yang. · And
then do you

25 · have any further evidence for the court to
consider, Mr. Yue?

26 · · · · · MR. YUE: · No, Your Honor. · Just one --
just one

27 · second here.

28 · · · · · Plaintiff would like to introduce Exhibit 72.

[Excerpts of Trial Transcript page 20]

21 · · · · · THE COURT: · So 72 is received in evidence.

22 · · · · · (Plaintiff's Exhibit 72 was admitted into evidence.)

23 · · · · · THE COURT: · I don't see proper foundation here.

24 · Mr. Yue, is that all of the evidence you wish the court to

25 · consider?

26 · · · · · MR. YUE: · Yes, Your Honor.

27 · · · · · THE COURT: · So the plaintiff rests?

28 · · · · · MR. YUE: · Yes, Your Honor.

[Excerpts of Trial Transcript page 21]

1 · · · · THE COURT: · Mr. Yue and Mr. Yang, I
would like you to ·

2 · review California Code of Civil Procedure
631.8. · I'm inviting ·

3 · a motion for judgment from Mr. Yang. ·

4 · · · · Mr. Yue, considering all of the evidence
submitted, I ·

5 · believe you failed to prove your case, but I need to
have a ·

6 · motion from Mr. Yang as to this. · You have not
presented ·

7 · evidence of defamation nor of damages. · You have
not proven ·

8 · the elements of Cause of Action 1 either. ·

9 · · · · Do you wish to -- do you wish to reopen?

10 · · · · And, Mr. Yang, are you making that
motion at this

11 · time?

12 · · · · · MR. YANG: · I am not very clear as to what motion am I

13 · to make. · Is it a motion for summary judgment?

14 · · · · · THE COURT: · It's similar to a motion for summary

15 · judgment. · It is a motion -- I'm sorry.

16 · · · · · THE INTERPRETER: · I'm sorry, Your Honor.

17 · · · · · THE COURT: · It's my fault.

18 · · · · · It's a motion at the close of the plaintiff's case

19 · for failure to provide sufficient evidence to prove his case.

20 · Mr. Yang, is that your motion?

21 · · · · · MR. YANG: · Yes (in English).

22 · · · · · Yes, it is.

23 · · · · · THE COURT: · Mr. Yue, because I have invited this and

24 · noted that you're having a problem with your
case, I would

25 · like -- I will give you, if you would like, the
opportunity to

26 · reopen. · If you have any additional -- sorry.

27 · · · · · If you have any additional evidence you
wish the

28 · court to consider, now would be the time to do so.

[Excerpts of Trial Transcript page 22]

1 · · · · THE INTERPRETER: · Mr. Yang, the judge
is asking ·

2 · Mr. Yue. ·

3 · · · · MR. YANG: · Sorry (in English). ·

4 · · · · MR. YUE: · Your Honor, Plaintiff requests a
briefing ·

5 · on the -- on whatever motion Mr. Yang has. ·

6 · · · · THE COURT: · That request is denied. ·

7 · · · · Mr. Yue, I have carefully reviewed every
exhibit that ·

8 · you have referenced. · I have carefully reviewed
even the ·

9 · exhibits that were not admitted. · There is a clear
lack of

10 · proof of defamation. · Moreover, there is a dearth
of evidence

11 · with regard to damages.

12 · · · · A dearth, a lacking.

13 · · · · But, once again, because I invited this and
14 · highlighted, noted that you are failing to prove
your case

15 · yesterday and today and gave Mr. Yang the
opportunity for this

16 · motion, I would -- I believe it's only fair to permit
you to

17 · rectify this issue, to fix it, if you are capable of
doing so;

18 · therefore, I invite you to reopen. · That's
contingent upon any

19 · further evidence you wish the court to consider.
20 · · · · · MR. YUE: · Your Honor, Plaintiff already
presented the

21 · evidence, I believe is Exhibit 39 to 45.

22 · · · · · THE INTERPRETER: · Your Honor, I
believe Plaintiff has

23 · already proved the evidence and so provided
Exhibits 39 to 45.

24 · · · ·

MR. YUE: · 37 to 45 and 47.

25 · · · · · THE INTERPRETER: · 37 to 45, 47.

26 · · · · · THE COURT: · This is Mr. Yue
speaking. · You need to

27 · translate it to -- it wasn't Mr. Yang. · You need to
translate

28 · it to Mandarin, sir.

[Excerpts of Trial Transcript page 24]

[Excerpts of Trial Transcript page 29]

9 · · · · · THE COURT: · Anything else, Mr. Yue?

10 · · · · · MR. YUE: · That will be all, Your Honor.

11 · · · · · THE COURT: · So you rest?

12 · · · · · Mr. Yang, I will not hear from you because
Mr. Yue

13 · has still not met the test. · I am granting your
motion, and I

14 · will note a couple of deficiencies with the case.

15 · · · · · For almost all of Mr. Yue's testimony, he
failed to

16 · testify or demonstrate to the court that any of
these

17 · statements were untrue. · Many of the statements
pointed to by

18 · Mr. Yue are statements of opinion, which are
permissible.

19 · They're also insults, which are permissible under
the First

20 · Amendment.

21 · · · · · Mr. Yue also failed to show any
damages. · He didn't

22 · testify about damages. · He didn't explain the
chart. · He

23 · didn't provide any nexus between the reduction
and these

24 · postings. · He even failed to demonstrate that
these postings

25 · were public. · There was some intimation perhaps
they were, but

26 · there was no evidence of it.

27 · · · · · When he states that Mr. Yang admitted
that the Trojan

28 · horse virus was untrue, that is not the evidence
that I heard

[Excerpts of Trial Transcript page 30]

1 · yesterday. · Mr. Yue's testimony was deficient to establish any ·

2 · of the elements that I'm looking at California Jury ·

3 · Instruction 1704. ·

4 · · · · I do have the fact that Mr. Yang made these ·

5 · statements. · I don't have any proof that he reasonably ·

6 · understood that these were not true or he failed to use ·

7 · reasonable care to determine the truth or falsity of the ·

8 · statements. ·

9 · · · · There were no actual damages. · And with regard to

10 · assumed damages, I will note that if there is -- Plaintiff has

11 · proved the harm to hurt feelings or shame or reputation or

12 · mortification, that Mr. Yue provided no testimony about that

13 · either. · I understand that he brought the case, but no

14 · testimony was provided.

15 · · · · · As noted -- I'll just leave it at that.

16 · · · · · At this point, I know, Mr. Yue, you're asking for a

17 · statement of decision. · This is my statement of decision.

18 · It's not mandated unless there have been more than 8 hours on

19 · the hearing. · There were not. · And that is my ruling.

20 · minute order will be prepared.

21 · · · · · Thank you.

22 · · · · · MR. YANG: · Thank you (in English).

23 · · · · · (The matter concluded, 10:49 a.m.)

