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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Cody Lundin,

10 Plaintiff,

11 v.

12 Discovery Communications Incorporated,
13 et al.,

14 Defendants.

No. CV-16-01568-PHX-ROS

ORDER

15 Plaintiff Cody Lundin believes the manner in which he was portrayed on an
16 episode of the television show “Dual Survival” was defamatory and depicted him in a
17 false light. Defendants believe Lundin’s portrayal on the show was substantially accurate
18 and, even if not, Lundin has no evidence that Defendants knew the allegedly defamatory
19 statements were false or that the statements were published with reckless disregard for
20 their truth. Having watched the episode and reviewed all other evidence proffered by the
21 parties, the Court need not address Defendants’ knowledge or intent in crafting the
22 episode. None of the statements identified by Lundin as allegedly supporting his claims
23 are a sufficient basis for his claims.

24 **BACKGROUND**

25 The parties have voluminous factual disputes but Lundin’s claims are based on the
26 broadcast version of the episode, which the parties have provided. Therefore, the vast
27 majority of the facts necessary for resolving the motion for summary judgment are
28 undisputed. Where appropriate, however, the following describes the facts in the light

1 most favorable to Lundin.

2 Lundin is a “world-renowned survival expert” who has been a “professional
3 survival instructor” for close to thirty years. (Doc. 128 at 2; Doc. 135 at 64). In 2009,
4 Discovery Communications, Inc., and Original Media, LLC, approached Lundin to
5 cohost a television show called “Dual Survival.” The show aimed to depict survival
6 skills and scenarios with “realism” and “competency.” (Doc. 135 at 63). Lundin’s
7 expertise fit in with those aims and he agreed to cohost the show. Lundin worked as the
8 show’s cohost for approximately three and a half years. (Doc. 135 at 64). During the
9 first two seasons of the show, Lundin’s cohost was Dave Canterbury. (Doc. 135 at 65).
10 At the beginning of season three, Canterbury was replaced by Joe Teti.

11 Consistent with its professed intent to portray realistic survival skills and
12 scenarios, Dual Survival was marketed as an “observational reality show.” In truth,
13 however, each episode was “scripted with a story intended to convey a theme or story to
14 its audience.” (Doc. 135 at 6). In deciding whether Lundin was falsely and unlawfully
15 portrayed, it is significant that the show more than just occasionally falsely depicted what
16 was actually occurring. For example, the show often portrayed the hosts as having little
17 access to food and water. In reality, the hosts ate breakfast and dinner at “resorts, hotels,
18 [and] game lodges” while lunches were catered on location. (Doc. 135-2 at 272). In
19 addition, one episode depicted Teti tracking and killing an allegedly wild boar. In truth,
20 the show arranged to have a domestic pig tied to vegetation so Teti could easily locate
21 and kill it. (Doc. 135-2 at 274). And another episode depicted Lundin and Teti as
22 unexpectedly coming across a rattlesnake. That rattlesnake, however, was purchased and
23 transported to the filming location in a container. (Doc. 135-2 at 273). The rattlesnake
24 was then placed in an area for Lundin and Teti to “find.” Overall, Dual Survival lied “to
25 the show’s audience about nearly all aspects of the so-called ‘reality’ show and the
26 characters on the show.” (Doc. 135-2 at 269).

27 Lundin was happy to participate in the charade as long as he was portrayed in the
28 manner he preferred. Lundin contends the episodes often portrayed conflict between

1 Lundin and Teti but much of that conflict was scripted. Some of that conflict, however,
2 appears to have been genuine and a few episodes into season four, Defendants Discovery
3 Communications, Original Media, and Executive Producer Brian Nashel (“Defendants”)
4 decided to replace Lundin with another individual. Defendants then compiled and aired
5 an episode titled “Journey’s End to a New Beginning” depicting Lundin’s departure from
6 the show. That episode is the basis of Lundin’s claims in this litigation.

7 The episode touts itself as a “behind the scenes” view of the filming of previous
8 Dual Survivor episodes involving Lundin and Teti. The episode is structured around the
9 fact that either Lundin or Teti would not continue on the show. The episode paints the
10 relationship between Lundin and Teti as involving repeated instances of conflict which,
11 eventually, became unsustainable. Lundin believes the episode viewed as a whole
12 depicts a “False Narrative” of him “walking off the Show in disgrace as a burned-out,
13 irrational, incompetent and mentally ill has-been.” (Doc. 128 at 3). Lundin argues the
14 “False Narrative” was “the primary point and purpose of the episode as a whole.” (Doc.
15 128 at 6). After the show was aired, Lundin filed the present suit alleging the episode
16 constituted defamation and false light invasion of privacy because of the “False
17 Narrative” it presented of him.

18 According to Lundin, the episode must be viewed in its entirety to appreciate the
19 “False Narrative” and the myriad ways in which he was harmed. While the Court has
20 viewed the entire episode, any analysis of its contents requires consideration of discrete
21 portions. *See Rinsley v. Brandt*, 700 F.2d 1304, 1310 (10th Cir. 1983) (holding plaintiff
22 must “identify particular false statements” to allow for analysis). During discovery,
23 Lundin provided a twenty-page list of all the “defamatory and false or implied
24 statements” in the episode that supported his claims. (Doc. 135-2 at 269). Lundin
25 appears to have retreated from that list, possibly because he realized many of the
26 statements he originally listed cannot be deemed actionable by Lundin.¹ Lundin’s current

27 ¹ For example, the episode states Teti had been a soldier for twenty years. Lundin cites
28 that “false exaggeration of [Teti’s] military experience” as defamatory. Lundin does not
explain how exaggerating Teti’s military experience brought Lundin into disrepute,
impeached his honesty, or in any way affected his reputation. *See Godbehere v. Phoenix*

1 briefing has focused on eight portions of the episode. The Court will describe and
2 analyze those eight portions as well as a few portions of the episode that painted Lundin
3 in a positive light and Teti in a negative light.

4 **1. Spear and Lighter Throwing Incident**

5 During the portion of the episode showing events in Hawaii, Teti is shown
6 standing in a pool of water while Lundin is standing a few feet above him. The episode's
7 narrator sets the scene by stating: "Joe and Cody are attempting to get their only
8 resources, a hunting spear, a gourd full of water, and a lighter wrapped in a bandana
9 down to lower ground in a controlled manner." (Doc. 117-2 at 92). Lundin is then
10 depicted as holding the lighter and stating "This needs to remain dry, this needs to remain
11 dry so I'm going to wrap this up . . ." to which Teti replies "Okay." The narrator then
12 states "But as you'll see, something causes Cody to begin tossing [the items] haphazardly
13 to Joe, causing tempers to flare for both men." After Teti repeatedly tells Lundin to
14 throw the items down to him, Lundin is shown throwing everything into the water,
15 making no effort to allow Teti to catch the items. Lundin states "How about that? You
16 can make fire with wet [BEEP]. How about if I [BEEP?] That [BEEP] work?"

17 Immediately after Lundin's outburst, the episode shows Nashel commenting: "I
18 don't know and nobody really knows exactly what happened, if there was an incident that
19 set them off, it definitely got a little hairy and we definitely saw the tension between Joe
20 and Cody really come to a head during that episode." Teti is then shown commenting: "I
21 don't [BEEP] know what just happened. I—I—I don't know, is he freaking dehydrated
22 or just like had a complete brain fart. I don't know. It's unacceptable. That kind of
23 behavior, where I came from, he'd be [BEEP] history." (Doc. 117-2 at 95).

24 After depicting Lundin throwing the items, Lundin is depicted as stating,

25 I lost my cool. They're not going to run that or I'll quit. They need to pick
26 that up somehow or cancel it off or stay the [BEEP] out of my way with
27 what I want to do with my career for now. I'm not jeopardizing that. They
28 can run it and they can face the consequences, it's that simple. You tell

28 *Newspapers, Inc.*, 783 P.2d 781, 787 (Ariz. 1989) (establishing elements for defamation claim).

1 Brian or I'll—I'll tell him myself, but don't have him waste a whole bunch
2 of time with that scene. I—I don't care at this point. I'm just fried man.
3 I'm fried.

4 Lundin describes this scene as a “cornerstone piece of the False Narrative that
5 makes Cody look grossly incompetent in his life-long profession and mentally ill for no
6 explained or apparent reason.” Lundin claims the “truth” is that he had resisted throwing
7 the items down to Teti but a producer “coerced and forced Cody to throw the lighter into
8 the water.” (Doc. 135 at 27). But Lundin admits, as reflected by his own statement
9 shown during the episode, he was angry at the time he threw the items into the pool.
10 However, Lundin believes it was defamatory for the episode to depict him as angry at
11 Teti when, in truth, he was “angry at [the producer] for making him” throw the items. In
12 addition, Lundin believes everyone knew he was upset at the producer, not Teti. Thus,
13 the statements by Teti and Nashel that they did not know exactly why Lundin was upset
14 were false and generated a misleading picture of Lundin.

15 **2. Cooling Off Scene**

16 Shortly after the spear and lighter throwing incident, the episode depicts Nashel as
17 stating “From a production standpoint it was a pretty scary time. The production was
18 down for two days while the guys cooled off and while the producers figured out how to
19 work around this incident.” (Doc. 117-2 at 96). Lundin claims Nashel's statement was
20 false and misleading in two respects. First, Lundin states production was not down for
21 “two days.” Instead, the production was down only for the afternoon and evening of one
22 day and the following morning. And second, Lundin believes it was Teti's “violent
23 threats and mentally unbalanced behavior” that caused the delay, not a requirement that
24 both Lundin and Teti “cool[] off.” (Doc. 128 at 10). Apparently Lundin believes it was
25 defamatory and portrayed him in a false light for Nashel to exaggerate the length of the
26 break in filming and to not explicitly blame Teti for the break. Lundin contends Nashel's
27 statement led viewers to conclude Lundin had mental troubles and those mental troubles
28 were causing the difficulties.

3. Lundin Portrayed as Looking for Rubies

1 During the portion of the episode depicting events in Sri Lanka, the narrator states
2 “As the production continued, distractions during filming slowed down the shoot.”
3 Lundin is then shown, standing in a pool of water and looking down into the water.
4 Lundin’s voice is then heard to state “I’m [BEEP] looking for rubies. [BEEP] this
5 [BEEP] show. I’m going to look for rubies.” A crew member is then heard saying
6 “Okay, guys, uh, you ready, Joe?” And Teti responds “Yes, sir.” (Doc. 117-2 at 99).

7 Lundin states this scene “accurately depicts some of what was filmed” but “the
8 edited pieces were deliberately manipulated to falsely portray what had actually
9 happened.” (Doc. 128 at 7). Lundin has presented two slightly different explanations of
10 this scene. During his deposition, Lundin was asked about the scene:

11 Question: Did – did – did you stop and ever look at rubies?

12 Lundin: It was a joke, but in Sri Lanka there are supposed to be – I think
13 part of the narrative said –

14 Question: Let me understand this. So in one scene, you laugh and laugh
15 and laugh continuously while your co-host is trying to kill a poisonous
16 rattlesnake and people on the crew don’t really know what is up with you,
17 and now you are looking at rubies but that is a joke?

18 Lundin: You are taking this out of context.

19 Question: I am trying to understand the context, sir.

20 Lundin: Well, the problem – you would understand it if there had been an
21 episode that was based on truth. You are scrambled because you have been
22 scrambled by – by media voodoo.

23 Question: Excuse me, I – I don’t believe I have been scrambled by media
24 voodoo. I am trying to understand your reality here, sir, and -- and I think
25 you said you were -- you said this line -- isn’t this a true statement, “I am --
beep -- looking for rubies”? Did you ever say that --

26 Lundin: I am sure I did.

27 Question: -- in Sri Lanka? It is a true statement?

28 Lundin: Probably did, yes.

1 (Doc. 117-1 at 72-73). In other words, during his deposition Lundin admitted the episode
2 accurately depicted him making the statement that he was “searching for rubies” but the
3 statement was meant as a joke. Lundin now seems to offer a slightly different version of
4 events in opposing the motion for summary judgment.

5 In an affidavit he submitted in connection with his summary judgment opposition,
6 Lundin concedes he made the “looking for rubies” statement but argues “[t]he actual
7 context of the unused scene [in Sri Lanka] was a private conversation concerning my
8 finances, not my irrational and mentally unbalanced search for rubies.” (Doc. 135-1 at
9 38). Thus, Lundin’s affidavit appears to be claiming the scene was misleading in that the
10 additional context regarding his personal finances was not included.

11 Regardless of which explanation of the scene is entirely accurate, Lundin believes
12 it was inappropriate for Defendants to depict him making a statement he actually made
13 without the explanation he proposes. Lundin believes that depiction made him look
14 mentally ill although Lundin does not provide any clear explanation why viewers would
15 reach such a conclusion.

16 **4. Laughing at Rattlesnake**

17 During a scene filmed in New Mexico, Lundin and Teti are shown coming across
18 a rattlesnake. Teti decides to kill the rattlesnake and attempts to do so. In response,
19 Lundin is depicted as laughing for an extended period of time. Teti is shown
20 commenting “Cody’s laughing. I’m like, what are you laughing at? This is not funny.
21 This is a deadly venomous snake.” And a crew member is shown commenting “I’d
22 always tell myself that Cody has a laughing problem. I think this is one of those
23 moments where no one was really sure what he’s laughing at. Maybe not even him.”
24 (Doc. 117-2 at 79). The narrator explains “Although Cody’s laughter was included in the
25 episode that aired, what viewers didn’t see is that it went on for some time longer, leaving
26 the crew frustrated and unsure what to shoot, as this outtake illustrates.” Lundin is then
27 depicted as laughing for an extended period of time.

28 Lundin argues the laughing scene was “a particularly unsettling piece of the False

1 Narrative that, perhaps more than others, unmistakably portrays him as an incompetent
2 and seriously mentally ill basket case.” (Doc. 128 at 8). Lundin has not explained what
3 was false or misleading about the depiction of his laughter, which did occur. Instead, in
4 his affidavit he states he “genuinely thought Joe Teti’s incompetence with the rattlesnake
5 . . . was very funny.” (Doc. 135-1 at 32).

6 **5. Focused on Teti’s Sunglasses**

7 Leading up to a scene filmed in Oman, Nashel is shown commenting that Lundin
8 “was really focusing on things that had nothing to do with the show, like the kind of
9 sunglasses Joe was wearing, and it was really distracting to him that Joe was wearing a
10 certain brand of sunglasses and Cody was really having trouble staying focused on the
11 mission at hand.” The episode then shows Lundin and Teti in Oman. The narrator
12 describes the footage as showing “Cody completely distracted by Joe’s sunglasses and
13 unable to continue their discussions about tactics for rescue.” Lundin is shown stating to
14 Teti: “I see those [BEEP] sunglasses.” Joe states “Here, I’ll just take them off.”
15 Someone off camera then states “Now we have an idea that you guys are going to
16 continue down the -- the wadi. Would that be a fair assessment?” And Lundin states
17 “My head’s just not in the game, guys. You know. I need to take a break because I’m all
18 jumbled up now. I can’t concentrate.” (Doc. 117-2 at 101).

19 Lundin explains that this scene was false or misleading in that it did not provide
20 the larger context for his comment regarding Teti’s sunglasses. According to Lundin,
21 Teti had a contract prohibiting him from “wearing and endorsing brand-name apparel on
22 air.” Teti’s sunglasses had a brand name on them and the “actual context” of Lundin
23 commenting about Teti’s sunglasses was merely “Cody pointing out Teti’s defiant
24 breach of his contract, not Cody’s seemingly irrational and mentally ill meltdown over a
25 pair of sunglasses.” (Doc. 128 at 9). According to Lundin, the failure to include that
26 additional context resulted in the episode depicting him as mentally ill.

27 **6. Boiling Point**

28 Towards the end of the episode, there are a number of scenes filmed in Norway.

1 The narrator introduces those scenes by stating “the final blow between Cody and Joe
2 would take place during the fourth episode of season four, on a barren mountain top in
3 the Norwegian Highlands while looking for shelter against subzero temperatures and 50
4 mile per hour winds.” (Doc. 117-2 at 101). Nashel is then shown commenting “Tensions
5 had built so much at that point that by the time we got to Norway things had reached a
6 boiling point.” Lundin claims these statements were false or misleading in that they
7 implied the filming in Norway occurred shortly after the filming in Hawaii. In fact, the
8 Hawaii filming had occurred “nearly two years” earlier. (Doc. 128 at 11). The
9 statements were also allegedly misleading in that they “falsely blamed Cody, or more
10 specifically his mental and emotional illness, for problems that were caused by Teti.”

11 During the Norway section Lundin and Teti are also shown as having repeated
12 disagreements. One such disagreement involved looking for shelter and Lundin’s choice
13 to wear shorts and socks instead of winter clothing.

14 Teti: If you don’t find shelter down there what are you going to do? What
15 are you going to do?

16 Lundin: I’m going to keep moving.

17 Teti: You teach your students to walk around in shorts and socks? My life
18 is being compromised.

19 Lundin: [BEEP] you, Joe.

20 Lundin claims this scene was false or misleading because he did not say “[BEEP] you,
21 Joe” at that exact time. Lundin admits he said that phrase but he denies saying it at the
22 exact time he is depicted as saying it.

23 **7. End of Norway Scene**

24 At the end of the Norway footage, Cody is depicted as saying “[BEEP] you,
25 Nashel.” Immediately following that, Nashel is shown as stating “Those are the kinds of
26 things that we had to look at and take into account and say how do we continue doing the
27 show with this relationship that clearly isn’t working anymore?” Lundin believes those
28 statements were false or misleading in that he did not utter “[BEEP] you, Nashel” at the

1 time depicted. Lundin admits he said the phrase but disputes saying it at that exact time.
2 In addition, Lundin believes Nashel's comment was false or misleading because it
3 allegedly established Lundin's "descent into mental illness" prompted his departure from
4 the show. Nashel made no reference to mental illness. Lundin has not explained why a
5 viewer would conclude Nashel's statement that they had to "look at and take into
6 account" Lundin's behavior implied Lundin was suffering from a mental illness and that
7 the comment indicated only Lundin was at fault.

8 **8. Requests to Comment**

9 Immediately prior to showing the footage from Norway, the episode displays text
10 stating "Cody and Joe both declined our request to comment on the following incident
11 from Norway." And after the Norway footage, the narrator states "Norway would be
12 Cody's last episode of Dual Survival. He declined our request to be interviewed for this
13 program." (Doc. 117-2 at 104). Lundin argues these statements were false or misleading
14 because he was "never asked to unconditionally comment or be interviewed." (Doc. 128
15 at 11). The presence of "unconditionally" is vital to Lundin's argument because Lundin
16 concedes he was asked to comment, subject to review by Defendants. It is not clear why
17 Lundin believes reporting his refusal to offer comments on the episode reflected
18 negatively on him.

19 **9. Favorable Depictions and Depictions of Teti**

20 In addition to the eight portions of the episode on which Lundin bases his claims, a
21 few portions of the episode paint Lundin in a favorable light. For example, the episode's
22 narrator states "whatever the scenario . . . sooner or later survival usually hinges on one's
23 ability to start a fire. . . . And there may be no one on the planet who has mastered the art
24 of primitive fire like Cody Lundin." (Doc. 117-2 at 73). The show then depicts Lundin
25 successfully making fire using primitive techniques. Also, at the end of the show, Nashel
26 is shown stating "Losing Cody is a big blow to the show. He is an incredibly personality,
27 he has amazing survival skills and he's taught a lot of people a lot of stuff. So when
28 you're replacing a guy like Cody Lundin you have to be absolutely certain that you found

1 somebody whose primitive skills are on par with or better than Cody Lundin's." (Doc.
2 117-2 at 104).

3 In addition to containing positive statements regarding Lundin, the episode also
4 contains numerous negative depictions of Teti. For example, the episode depicts Teti as
5 bumbling through his attempts to kill the rattlesnake. There is no explanation why Teti
6 had such a difficult time given his alleged prowess as a hunter and survivalist. The
7 episode also depicts Teti and Lundin coming across a dead and rotting cow. Teti decides
8 to take the time to skin the cow. There is no explanation why Teti believed doing so
9 would be a good idea and it is portrayed as a foolish and abnormal endeavor. Finally,
10 Teti is shown drinking his own urine but not because of dehydration. Instead, Teti states
11 "I'm going to take a mouthful [of urine], but just to give me a little psychological edge."
12 (Doc. 117-2 at 70). Teti does not explain what "psychological edge" would be derived
13 from drinking his own urine and the scene depicts him as simply having a bizarre desire
14 to drink urine. In that scene, Lundin was depicted as questioning or challenging Teti's
15 behavior. Overall, the episode contains a variety of scenes where Lundin is depicted as
16 the more reasonable individual. The positive depictions of Lundin and the negative
17 depictions of Teti conflict with Lundin's argument that the entire episode was meant to
18 paint him as incompetent and suffering from a mental illness.

19 ANALYSIS

20 Lundin's two claims are Arizona-law claims for defamation and false light
21 invasion of privacy. These claims are subject to demanding constitutional limits. *See*
22 *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510 (1991) ("The First Amendment
23 limits California's libel law in various respects."). In this case, however, the Court need
24 not explore the constitutional aspects because the basic requirements of Arizona law
25 dictate the outcome.

26 Under Arizona law, a claim for defamation requires evidence "(1) that the
27 defendant made a false statement; (2) that the statement was published or communicated
28 to someone other than plaintiff; and (3) that the statement tends to harm plaintiff's

1 reputation.” *Donahoe v. Arpaio*, 869 F. Supp. 2d 1020, 1061 (D. Ariz. 2012). The
2 requirement of a “false statement” means the statement must have been an “assertion of
3 objective fact.” *Yetman v. English*, 811 P.2d 323, 328 (Ariz. 1991). Further, the
4 statement must be “susceptible of being proved true or false.” *Pinal Cty. v. Cooper ex*
5 *rel. Cty. of Maricopa*, 360 P.3d 142, 147 (Ariz. Ct. App. 2015). Statements involving
6 “political invective, opinion, or hyperbole” cannot be the basis for a defamation claim.
7 *Burns v. Davis*, 993 P.2d 1119, 1129 (Ariz. Ct. App. 1999). And even assertions of
8 objective facts that are false are not actionable provided they are “substantially true.”
9 *Read v. Phoenix Newspapers, Inc.*, 819 P.2d 939, 941 (Ariz. 1991). Arizona courts have
10 interpreted this “substantial truth” requirement in a relatively broad fashion.

11 A statement is substantially true, and therefore not actionable, “as long as the
12 ‘gist’ or ‘sting’ of the publication is justified.” *Id.* In other words, “a technically false
13 statement may nonetheless be considered substantially true if, viewed through the eyes of
14 the average reader, the statement differs from the truth only in insignificant details.”
15 *Desert Palm Surgical Group, P.L.C. v. Petta*, 343 P.3d 438, 449 (Ariz. Ct. App. 2015).
16 The “substantial truth” inquiry focuses on the harm to the plaintiff’s reputation by the
17 inaccurate statement versus the harm to the plaintiff’s reputation if the statement had
18 been entirely factually accurate. For example, an article describing an individual as
19 “doing four-to-five years in prison” was substantially true despite that individual being
20 out on bail pending appeal at the time of the article’s publication. *Fendler v. Phoenix*
21 *Newspapers Inc.*, 636 P.2d 1257, 1259 (Ariz. Ct. App. 1981). In that case, the “sting” of
22 the article was deemed the same whether the individual was actually in prison or had
23 merely received such a sentence and was awaiting the outcome of an appeal. *Id.*
24 Similarly, a newspaper’s inaccurate description of the crime an individual had been
25 convicted of was not actionable because the inaccuracy did not cause the individual “any
26 more damage” than what would have resulted had the article been completely accurate.
27 *Read v. Phoenix Newspapers, Inc.*, 819 P.2d 939, 942 (Ariz. 1991).

28 The substantial truth doctrine applies only to Lundin’s defamation claim but his

1 false light claim has a very similar requirement. Under Arizona law, false light liability
2 requires evidence Defendants made true or false statements that placed Lundin in a false
3 light that was “highly offensive to a reasonable person.” *Godbehere v. Phoenix*
4 *Newspapers, Inc.*, 783 P.2d 781, 786 (Ariz. 1989). But similar to the “substantial truth”
5 doctrine, a false light claim depends on “a major misrepresentation of [the plaintiff’s]
6 character, history, activities or beliefs, not merely minor or unimportant inaccuracies.”
7 *Godbehere v. Phoenix Newspapers, Inc.*, 783 P.2d 781, 787 (Ariz. 1989).

8 Application of the “substantial truth” and “major misrepresentation” doctrines
9 require consideration of the entire episode. *See Masson v. New Yorker Magazine, Inc.*,
10 501 U.S. 496, 515 (1991) (noting “an exact quotation out of context can distort meaning,
11 although the speaker did use each reported word”). But it is impossible to analyze the
12 episode as an undifferentiated single statement. Therefore, the Court will analyze the
13 eight portions outlined above, keeping in mind the need to view those portions in the
14 larger context.

15 Before looking at those eight portions, it is important to point out that, prior to this
16 case, the Court had no knowledge of Dual Survival, Lundin, or Teti. The Court had not
17 seen an episode of Dual Survival nor heard of Lundin or Teti. Even now, the only
18 information the Court has considered is that filed by the parties. Those filings do not
19 include information on how Lundin was portrayed in other episodes. Based on his
20 filings, it seems Lundin was pleased with his previous portrayals and his portrayal in the
21 relevant episode was a sudden and drastic change. The Court has no way of knowing
22 whether that is accurate. Given the information provided by the parties, the Court’s
23 analysis will focus exclusively on whether the depiction of Lundin in the relevant episode
24 supports either of his claims.

25 **1. Spear and Lighter Throwing Incident**

26 Viewed in the light most favorable to Lundin, this scene involved a number of
27 minor inaccuracies. Those technical inaccuracies, however, do not materially alter the
28 “sting” or “gist” of the scene. It is undisputed Lundin became angry and started throwing

1 things in the water instead of throwing them down for Teti to catch. Whether Lundin was
2 angry with a producer rather than Teti does not alter the fact that Lundin had an
3 emotional outburst or, in Lundin's own words, "lost [his] cool." Assuming the depiction
4 of Lundin's outburst somehow harmed his reputation, there would have been no less
5 damage to Lundin's reputation if the episode had disclosed the precise cause of Lundin's
6 outburst. *Read*, 819 P.2d at 942 (accurate article would not have caused "any less
7 damage to Read's reputation"). Moreover, the fact that Nashel and Teti professed
8 ignorance (which may have been true) about the cause of Lundin's behavior did not
9 materially impact the "sting" of the scene. Whether angry at a producer or Teti, any harm
10 to Lundin was the same. Therefore, the scene was substantially true and cannot serve as
11 the basis for a defamation claim.

12 As for the false light aspect of this scene, depicting Lundin throwing the lighter
13 and spear into the water did not present any "major misrepresentation" of Lundin's
14 character. The scene accurately depicted Lundin's anger and actions. Failing to disclose
15 Lundin's behavior was due to a producer, and not Teti, did not constitute a major
16 misrepresentation of Lundin's "character, history, activities or beliefs." *Godbehere v.*
17 *Phoenix Newspapers, Inc.*, 783 P.2d 781, 787 (Ariz. 1989). Thus, this scene cannot
18 support his false light claim.

19 **2. Cooling Off Scene**

20 The statement by Nashel that "production was down for two days while the guys
21 cooled off" was substantially true. Whether production was down for two days or a
22 slightly shorter period of time does not materially impact the "gist" or "sting" of the
23 statement. If the episode had accurately stated "production was down for a while"
24 instead of "production was down for two days," a viewer still would have understood a
25 cooling-off period was necessary. Moreover, the statement that time was needed while
26 "the guys cooled off" was not defamatory. It is undisputed that Lundin had an emotional
27 outburst and while Teti might have also contributed to the break in filming, Nashel's
28 professed opinion that production was down while both Lundin and Teti "cooled off" is

1 not actionable. *See Burns v. Davis*, 993 P.2d 1119, 1129 (Ariz. Ct. App. 1999)
2 (statements of opinion are not actionable). Therefore, the statement regarding a break for
3 cooling off does not support Lundin’s defamation claim.

4 As for the false light aspect of this scene, exaggerating the length of delay and the
5 vague statement that there was delay while “the guys cooled off” did not constitute a
6 major misrepresentation of Lundin’s character or behavior.

7 **3. Lundin Portrayed as Looking for Rubies**

8 Lundin made the “looking for rubies” statement but the episode did not present the
9 full context of that either being a joke or made only in the context of his personal
10 finances. The absence of additional context, however, did not render the depiction of
11 Lundin “false” in any meaningful way. That is, Lundin admits he made the statement
12 and Defendants had no obligation to present the context Lundin would have preferred.
13 *See, e.g., Brokers’ Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1108 (10th
14 Cir. 2017) (“The omission of additional favorable information from an otherwise true
15 publication does not render a statement materially false.”). Statements taken completely
16 out of context might be able to support a defamation claim in certain situations. *Masson*
17 *v. New Yorker Magazine, Inc.*, 501 U.S. 496, 515 (1991) (noting “an exact quotation out
18 of context can distort meaning, although the speaker did use each reported word”). But
19 the context must be sufficiently distinct such that the “gist” or “sting” of the statement is
20 clearly different. Here, the statement was presented in the context of waiting to begin
21 shooting additional scenes while Lundin apparently believes the statement was made
22 while waiting to begin shooting and he was joking or discussing his finances. The slight
23 differences between those two contexts did not meaningfully distort what Lundin said.
24 The “looking for rubies” statement, therefore, is not a sufficient basis for a defamation
25 claim.

26 As for false light, depicting the “looking for rubies” statement did not constitute
27 any “major misrepresentation” of Lundin’s character or behavior. In fact, it was an
28 accurate depiction of Lundin’s behavior and statement. Thus, this scene is not a

1 sufficient basis for a false light claim.

2 **4. Laughing at Rattlesnake**

3 The scene involving the rattlesnake and Lundin’s laughter was factually accurate.
4 Lundin has not identified any aspects of the scene that were false and Lundin has not
5 explained how accurate representations of actions he took (*i.e.*, laughing for an extended
6 period of time) can possibly support his defamation and false light claims. Therefore,
7 this scene is not a viable basis for his claims.

8 **5. Focused on Teti’s Sunglasses**

9 As with the rattlesnake scene, there was nothing false about the sunglasses scene.
10 The scene accurately depicts Lundin making a statement about Teti’s sunglasses and
11 Lundin then stating he needs time to think. To the extent Lundin believes Defendants
12 should have included a general explanation for why Lundin was concerned about the
13 brand of sunglasses Teti was wearing, Defendants had no legal obligation to provide that
14 additional context. *Brokers’ Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081,
15 1108 (10th Cir. 2017). Given that the scene was factually accurate, it cannot serve as a
16 basis for either of Lundin’s claims.

17 **6. Boiling Point**

18 Lundin points to a variety of ways the scenes from Norway were defamatory, such
19 as the description by Nashel that the relationship between Lundin and Teti had reached a
20 “boiling point,” the failure to explain how long of a gap there was between filming in
21 Hawaii and in Norway, the suggestion that his behavior was due to a mental illness, and
22 the depiction of him making a statement he did not make. None of these arguments have
23 merit.

24 First, it was not false or misleading for Nashel to state the relationship between
25 Lundin and Teti had reached a “boiling point.” Describing it as having reached a
26 “boiling point” was not a statement capable of being proven true or false. *See Burns v.*
27 *Davis*, 993 P.2d 1119, 1129 (Ariz. Ct. App. 1999) (noting “political invective, opinion, or
28 hyperbole” cannot support defamation claim).

1 Second, Lundin apparently believes it was defamatory for the episode to invite
2 viewers to conclude that the events in Hawaii and Norway occurred close in time. While
3 the episode placed the scenes in Hawaii and Norway close together, the episode clearly
4 identified the scenes in Hawaii as occurring during Season 3 while the scenes in Norway
5 were filmed during Season 4. Accordingly, viewers could not have concluded the events
6 in Norway followed immediately after Hawaii. And even if a viewer did conclude the
7 Norway scenes occurred immediately after Hawaii, Lundin offers no explanation how it
8 was defamatory to portray the scenes as occurring close in time.

9 Third, Lundin argues the scenes in Norway show him as suffering from a mental
10 illness. There is nothing in the statements or visual depictions identifying Lundin as
11 having a mental illness or even implying some mental illness was contributing to the
12 events. The Court cannot find defamation based on references that do not exist.

13 Finally, on the subject of Lundin’s alleged statement “[BEEP] you, Joe,” it is
14 undisputed that Lundin routinely used profanity while filming episodes. Therefore, it is
15 undisputed the phrase was not completely fabricated. Instead, viewing the evidence in
16 the light most favorable to Lundin, the phrase was recorded at a different time and then
17 inserted at the end of the confrontation between Lundin and Teti. Lundin offers no
18 explanation how the “gist” or “sting” of this statement was different because Defendants
19 inserted it into a time where Lundin did not utter it. There is no indication that taking a
20 statement Lundin made at a different time and inserting it at a moment in the episode
21 where such a comment made sense and was consistent with Lundin’s usual behavior,
22 would cause any viewer to think less favorably of Lundin. *See Brokers’ Choice of Am.,*
23 *Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1107 (10th Cir. 2017) (a statement is
24 defamatory only if it is “likely to cause reasonable people to think significantly less
25 favorably about the plaintiff than they would if they knew the truth”).

26 As for the alleged false light aspects of these scenes, there were no major
27 misrepresentations of Lundin’s character or behavior. The scenes used language
28 (“boiling point”) that is not provably false, accurately identified when the Hawaii and

1 Norway filming occurred, contained no references to mental illness, and used Lundin's
2 own words in a different setting that was consistent with how Lundin spoke and reacted
3 in similar situations. The scenes do not support the false light claim.

4 **7. End of Norway Scene**

5 The end of the Norway scene depicted Lundin stating "[BEEP] you, Nashel" and
6 then Nashel stating "Those are the kinds of things that we had to look at and take into
7 account and say how do we continue doing the show with this relationship that clearly
8 isn't working anymore?" Lundin believes it was defamatory or depicted him in a false
9 light to edit the scene so it appeared he said "[BEEP] you, Nashel" at that time. Lundin
10 admits he said "[BEEP] you, Nashel" at some point in time but Lundin disputes saying it
11 at that exact time. As addressed above, Lundin routinely used profanity, including
12 profanity aimed at individuals. Lundin has not established that depicting him as making
13 this statement in this particular context qualified as harmful in light of the many other
14 instances when he used profanity. And given Lundin's constant use of profanity, using
15 his own words in a different setting did not constitute a major misrepresentation of his
16 character sufficient to support a false light claim.

17 **8. Requests to Comment**

18 The statements at the end of the episode that Lundin declined Defendants' requests
19 to comment or be interviewed were substantially true. Defendants gave Lundin an
20 opportunity to comment or be interviewed, although he was not allowed to comment
21 "unconditionally." Reporting that Lundin refused to comment "unconditionally" would
22 have had the same "gist" or sting" as the actual statements that imply Lundin refused to
23 comment. Therefore, these statements are not actionable. And finally, stating that
24 Lundin refused to comment did not constitute a major misrepresentation of any aspect of
25 Lundin's character.

26 **9. Conclusion**

27 Some of the scenes identified by Lundin as the basis for his claims were
28 completely factually accurate while others were only substantially true. Whether viewed

1 in isolation or in the full context of the entire episode, none of the scenes are a sufficient
2 basis for Lundin's defamation and false light claims. At times, the episode depicted
3 Lundin as a rational and careful individual with high quality survival skills. It is a
4 reasonable inference to conclude that Teti, on the other hand, was often depicted as
5 foolish and inept. Lundin's belief that the episode created a "False Narrative" of him as
6 burned out and mentally ill has no basis in the actual contents of the episode. Whether
7 viewed as discrete scenes or as a whole, the episode simply does not contain any
8 actionable statements. Defendants are entitled to summary judgment in their favor.²

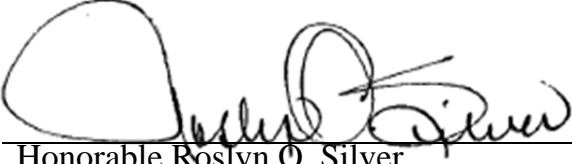
9 Accordingly,

10 **IT IS ORDERED** the Motion for Summary Judgment (Doc. 116) is **GRANTED**.

11 The Clerk of Court is directed to enter judgment in favor of Defendants.

12 **IT IS FURTHER ORDERED** the Motion to Preserve Privilege (Doc. 105) and
13 Motion for Extension of Time (Doc. 107) are **DENIED AS MOOT**.

14 Dated this 2nd day of November, 2018.

15 
16 _____
17 Honorable Roslyn O. Silver
Senior United States District Judge

18 ² There are two pending motions related to discovery issues. The resolution of the
19 summary judgment motion renders both motions moot. The first motion involves a
20 discovery dispute regarding Defendants' redaction or withholding of certain documents.
21 Defendants had asserted those documents were privileged while Lundin disagreed.
22 Defendants filed a motion requesting the Court rule that they need not produce the
23 documents. There is no need to resolve this issue as the withheld documents would not
24 impact the analysis of the episode's contents. That is, the documents would not change
25 the nature of the statements made in the episode. Even assuming the documents would
26 further establish Lundin's beliefs regarding Defendants' motivations in creating the
27 episode, those motivations do not change the fact that the statements in the episode were
28 either factually true, substantially true, or not capable of being proven true or false.
Therefore, Defendants will not be required to produce additional documents.

The second discovery-related motion involves Lundin's request for an extension
of time for him to serve a supplemental expert report regarding damages. Again, the
statements made in the episode speak for themselves and establish Lundin's claims fail as
a matter of law. Therefore, there is no need to address Lundin's request for additional
time to produce evidence related solely to damages.