

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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AUDIOEYE, INC.,

Plaintiff,

- against -

ADRIAN ROSELLI,

Defendant.

Motion Seq. 001

Index No. 803054/2023

**STATEMENT OF  
MATERIAL FACTS**

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As required under [22 NYCRR § 202.8-g](#), Defendant Adrian Roselli submits this statement of material facts as to which there is no genuine issue to be tried in support of his motion for summary judgment under [CPLR 3212\(h\)](#).

**Please take notice** that the papers opposing this motion “shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.” [22 NYCRR § 202.8-g\(b\)](#). Please take further notice that each paragraph in this statement may be deemed admitted unless specifically controverted, and followed by citation to evidence. [22 NYCRR § 202.8-g\(c\)-\(d\)](#).

**Background**

***Defendant Adrian Roselli***

1. Adrian Roselli is a web developer who has been developing websites and software interfaces for over 30 years. Roselli Aff. ¶ 1.
2. From 1998 to 2015, he was a co-founder and partner of a software consulting company that focused on web design. *Id.*
3. He now owns a consulting business where clients hire him to design accessible websites. *Id.*

4. He currently works full time in the field of digital accessibility. *Id.*

5. He also has run a blog, on [adrianroselli.com](http://adrianroselli.com), for twenty-four years, on which he has long written about issues such as digital accessibility and the technology associated with it. *Id.* ¶ 6.

6. Mr. Roselli has a wide background as a voice advocating for accessibility on the web, including serving as an invited expert for the W3C HTML Working Group (the standards body responsible for developing HTML), being a member of the Accessible Platform Architectures Working Group, Accessible Rich Internet Applications Working Group, HTML Accessibility Task Force, and Web Platform Working Group (formerly the HTML Working Group), and being a founding member of [evolt.org](http://evolt.org), one of the very first communities (dating back to 1998) made up of web professionals from around the globe who share their knowledge and experience in web development. Roselli Aff. ¶¶ 8-9.

7. Mr. Roselli also has a wide array of publications including writing articles for trade journals and web sites, and participated as an author and editor for several books, including [\*Web Graphics for Non-Designers\*](#), [\*Cascading Style Sheets\*](#) and [\*Usability: The Site Speaks for Itself\*](#). *Id.*

***Plaintiff AudioEye, Inc.***

8. Plaintiff AudioEye, Inc., produces a set of products designed “to address website-accessibility issues on a large scale.” First Amended Complaint (“FAC”) ([NYSCEF Doc. No. 5](#)) ¶ 2.

9. At issue in this case are AudioEye’s automated products. AudioEye

admits that “AudioEye’s toolbar does not, by itself, ensure full accessibility—nor does AudioEye claim that it does so.” FAC ¶ 3.

10. AudioEye’s automated products have been the subject of massive public criticism “particularly,” but not exclusively, “throughout the past two years.” FAC ¶ 6.

11. Those criticisms include statements from at least nine different people saying, in January of 2022 (e.g., before the statements at issue in this case) that “AudioEye’s services do not work and actively harm the accessibility community” and that AudioEye products are “snake oil.” FAC ¶ 26.

12. That is, there was an existing public debate over the assertion that “AudioEye’s services do not work and actively harm the accessibility community” before any of the statements at issue in this case. FAC ¶¶ 6, 23, 26.

13. AudioEye’s products have also been the subject of a number of ADA or accessibility lawsuits. Roselli Aff. ¶ 93.

14. In September 2020, Disability Rights Advocates filed a class action lawsuit on behalf of nonprofit LightHouse for the Blind and Visually Impaired of San Francisco against ADP TotalSource, Inc. (“ADP”), the human resources software company, for failing to make its products accessible to blind and low vision people. Roselli Aff. ¶ 17.<sup>1</sup>

15. LightHouse’s Complaint stated that ADP had failed to make its products fully accessible because it had “adopt[ed] a piecemeal approach”, and had

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<sup>1</sup> This, and the related material, is also judicially noticeable.

not “...integrate[d] accessibility principles into its website and mobile application design.” Complaint, *LightHouse for the Blind and Visually Impaired of San Francisco v. Automatic Data Processing, Inc.* (N.D. Cal. Civ., 4:20-cv-09020-HSG, December 16, 2020).

16. The suit came about because after working for a long time with AudioEye for website remediation, ADP was sued for alleged consistent failures in AudioEye services and products to be used by blind people. Roselli Aff ¶ 22.

17. That is, AudioEye products rendered ADP’s Human Resources platform not accessible to blind users and rather than improve their user experience it created obstacles and significantly prolonged what should have been straightforward HR tasks. *Id.*

18. The *LightHouse* plaintiffs, who were using screen readers,<sup>2</sup> pled that they were unable to use many of the key features of ADP’s products, such as “submitting and approving time off requests; viewing tax, compensation and benefits information; and timekeeping” because of lack of accessibility measures. Complaint, *LightHouse for the Blind and Visually Impaired of San Francisco v. Automatic Data Processing, Inc.* (N.D. Cal. Civ., 4:20-cv-09020-HSG, December 16, 2020).

19. In the settlement — Roselli Ex. 1 — the parties defined the terms

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<sup>2</sup> Screen readers are software programs that allow blind or visually impaired users to read the text that is displayed on the computer screen with a speech synthesizer or braille display. American Foundation for the Blind, <https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/screen-readers>

“Accessible,” “Accessibility,” and “Access” to mean that overlay products “such as those currently provided by companies such as AudioEye were “insufficient for accessibility compliance going forward.” Roselli Aff. ¶ 22; Roselli Ex. 1 at 1-2.

20. AudioEye has also been very publicly criticized by name in an industry open letter — called the “Overlay Fact Sheet” (Roselli Ex. 2) — a document signed by over 700 experts and end users who believe AudioEye-type products do more harm than good. *See* Roselli Ex. 2.<sup>3</sup>

### ***General Facts About Accessibility Online***

21. There are a wide array of barriers that prevent people with disabilities from having equal access to the internet. FAC ¶ 14.

22. Indeed, it is estimated that only 3% of websites are fully accessible. FAC ¶ 21.

23. An estimated 2.3% of the United States population reports having a visual disability. Sharron Rush, W3C WEB ACCESSIBILITY INITIATIVE, *The Business Case for Digital Accessibility* (Nov. 9, 2018), available at <https://www.w3.org/WAI/business-case/>.

24. Legislation exists to protect those people, including the Americans with Disabilities Act, and it applies specifically to individual websites. FAC ¶ 15; Roselli Aff. ¶ 13.

25. As far as solutions go, broadly speaking and likely oversimplifying,

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<sup>3</sup> Mr. Roselli did not author the Overlay Fact Sheet. Roselli Aff. ¶ 26. Nor is it plausible he did, given that it is literally signed by its author, Karl Groves, a very well known accessibility professional.

those hosting websites can either (1) attempt to “overlay” accessibility onto already-existing websites in an automated way or (2) work in the source code and build the website to *be* accessible. FAC ¶¶ 17-20; Roselli Aff. ¶ 11-16.

26. There is a fierce debate about the appropriateness and efficacy of “overlay” solutions. FAC ¶ 4-6 (“There are some in the digital accessibility industry who have advocated against the use of any remediation technology like AudioEye’s—automated or manual. These individuals and groups disparagingly refer to such technology as ‘overlays,’ because the technology does not change the actual source code, but instead ‘overlays’ on top of the existing code and fixes the way assistive technology interprets that existing code”<sup>4</sup>); ¶¶ 21-22 (arguing the “Internet is simply too big and fast changing for a manual-only approach to succeed” and asserting that therefore overlays and other automated solutions are required as a matter of “reality”); Roselli Ex. 2 at 4-13 (open letter signed by 700+ industry experts and individual consumers, noting “Given that conformance is defined as meeting all requirements of the standard, these products’ documented inability to repair all possible issues means that they cannot bring a website into compliance,” and quoting individual end users with disabilities and summarizing “Many users with disabilities have expressed strong words of dissatisfaction with overlay products. As shown below, overlays themselves may have accessibility problems significant enough for users to take steps to actively block overlays from appearing at all.”); Amanda Morris, *For Blind Internet Users, the Fix Can Be Worse Than the*

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<sup>4</sup> It is unclear why Plaintiff describes this as “disparagingly,” when, in the next sentence, it admits the word “overlay” is literally accurate.

*Flaws*, N.Y. Times, (July 13, 2022) (similar, and documenting the dispute).

27. Mr. Roselli does not believe automation — and specifically, overlays — are appropriate for accessibility online, because, among other things:

- a. “Digital accessibility is best achieved by addressing issues in source code before it is delivered to users’ browsers by rendered HTML code. For instance, by creating conformant representative templates that each page within a website can use, so that every user can use it as they wish, with or without assistive technology. These templates can hold representative content and information and structures, such as alternative text for images, or header text, et cetera. This allows for technologies to interact with rendered HTML in predictable ways, making the site possible to be used for people of diverse abilities”;
- b. “the sale of overlay products to corporate clients, such as those sold by AudioEye, can be detrimental to achieving accessibility, because they encourage performative compliance by companies rather than approaches that would lead to more meaningful accessibility”;
- c. “It is well documented that a good number of disabled people do not like overlay products ... [and p]lenty of well-known media outlets have reported on and documented disabled people’s complaints about overlay products”;<sup>5</sup>
- d. “Overlay products only impact the rendered HTML, which has already been delivered to the user’s browser ... [O]verlay products, which are designed, quite literally, to lay over existing websites without impacting their source code, are insufficient to achieve accessibility, as defined by the Web Content Accessibility Guidelines (“WCAG”), and often do not work.”

Roselli Aff. ¶¶ 12-17.

28. For that reason, Mr. Roselli “[does] not believe [overlay or automation products] can bring websites into true compliance or achieve meaningful accessibility.” *Id.*

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<sup>5</sup> Citing Amanda Morris, *For Blind Internet Users, the Fix Can Be Worse Than the Flaws*, N.Y. Times, (July 13, 2022)

29. Obviously, for its part, AudioEye believes “[t]he reality is that some degree of automation is required to meet the fastchanging nature of the Internet and solve accessibility at scale” and that “[t]hose who insist on offering only a manual, ground-up approach cannot possibly keep pace with reality, and therefore they ultimately impede accessibility.” FAC ¶¶ 21-22.

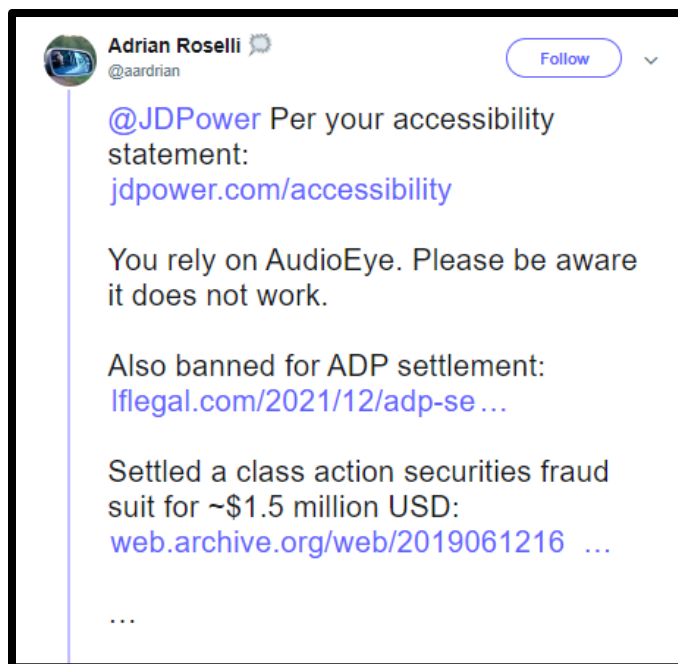
30. This debate rages on, and — given the absence of relevant parties, including the hefty weight of expertise criticizing AudioEye in the Overlay Fact Sheet (among other places), along with the “competitors” who AudioEye believes are “soliciting and/or drafting” articles about AudioEye products, as well as “disability rights lawyer[s]” making similar statements (FAC ¶ 27)— certainly will not be resolved by this lawsuit. Roselli Aff. ¶¶ 26, 95-99; FAC ¶¶ 26-27.

### **Posts by Defendant**

#### ***Statement 1***

31. On March 29, 2022, Adrian Roselli posted a tweet thread on his public Twitter page, where he often tweets about disability accessibility issues and web development, with the following content (“Statement 1”):





Roselli Aff. ¶ 27; FAC ¶ 35.

32. The statement that JD Power “rel[ies] on AudioEye” is true. FAC ¶ 35.

33. The statement that AudioEye was “banned [from the] ADP settlement” is substantially true, in that the *LightHouse* Settlement literally defined the terms “Accessible,” “Accessibility,” and “Access” to mean that overlay products “such as

those currently provided by companies such as AudioEye were “insufficient for accessibility compliance going forward.” Roselli Aff. ¶¶ 22, 30; Roselli Ex. 1 at 1-2.

34. Statement 1 also links a full and correct copy of the *LightHouse* Settlement. Roselli Aff ¶ 27.

35. Thus, a reader of Statement 1 could evaluate for themselves if Mr. Roselli’s description of the *LightHouse* Settlement was a fair one. *Id.*

36. The statement that AudioEye agreed to pay \$1.5 Million in damages to settle a securities fraud class action against it is true. *See* Order and Final Judgment, *In re AudioEye Inc., Securities Litigation*, CV-15-00163 (TUC) (DCB), ECF No. 100 (D. Ariz. May 8, 2017).

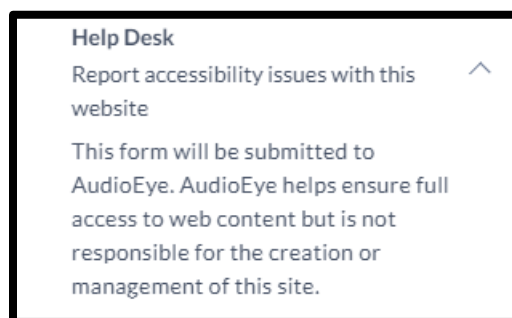
37. The statement that there were 700 signatories among disabled users, accessibility practitioners, researches, and educators on a document that identified AudioEye and products like it as ineffective is true. Roselli Ex. 2; Roselli Aff. ¶ 26.

38. Statement 1 links the website “[overlayfalseclaims.com/](http://overlayfalseclaims.com/)” after saying “AudioEye also engages in deceptive marketing practices,” after linking four other documents to the text before them. Roselli Aff. ¶ 27.

39. [Overlayfalseclaims.com](http://overlayfalseclaims.com) lists 12 claims, and argues they are deceptive. Roselli Aff. ¶ 27; <http://overlayfalseclaims.com/>. It also, in turn, supports its arguments with 18 footnotes. *Id.*

40. Thus, a reader of Statement 1 could evaluate for themselves if Mr. Roselli’s statement that AudioEye and other overlay vendors engage in deceptive marketing practices was fair based on the support provided for that argument. *Id.*

41. The statement that feedback on JD Power's website will route directly to AudioEye is true, and remains true today. Roselli Aff. ¶ 29; <https://www.jdpower.com/accessibility>. As of today, JD Power's website displays this:



*Id.*

42. Mr. Roselli believed all statements of fact<sup>6</sup> in Statement 1 at the time he published them. Roselli Aff. ¶ 27.

43. Mr. Roselli *still* believes all statements of fact in Statement 1, and nothing in the complaint has changed those sincerely held beliefs about what facts are true. Roselli Aff. ¶¶ 28-32.

44. Mr. Roselli likewise genuinely held the opinions expressed in Statement 1 at the time he published them. Roselli Aff. ¶ 27.

45. Mr. Roselli still genuinely holds all the opinions expressed in Statement 1, and nothing in the complaint has changed those sincerely held opinions. Roselli Aff. ¶¶ 28-32.

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<sup>6</sup> This, and the other similar facts asserted below, is not necessarily to concede there are any statements of fact in the specific sense "fact" is used in defamation law in any of the statements at issue in this case. Rather, what are legally "opinions" can, at least in the colloquial sense, have something like a truth value.

## Statement 2

46. On or around May 30, 2022, Mr. Roselli posted a Twitter thread including video demonstrations that showed himself using different tools from the AudioEye Toolbar widget, an overlay product, with the content shown in Roselli Aff.

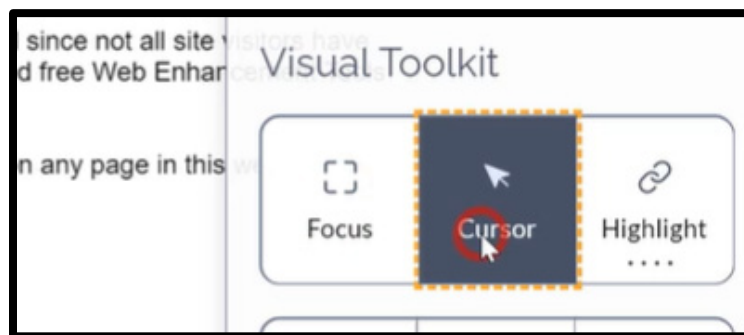
¶ 39.

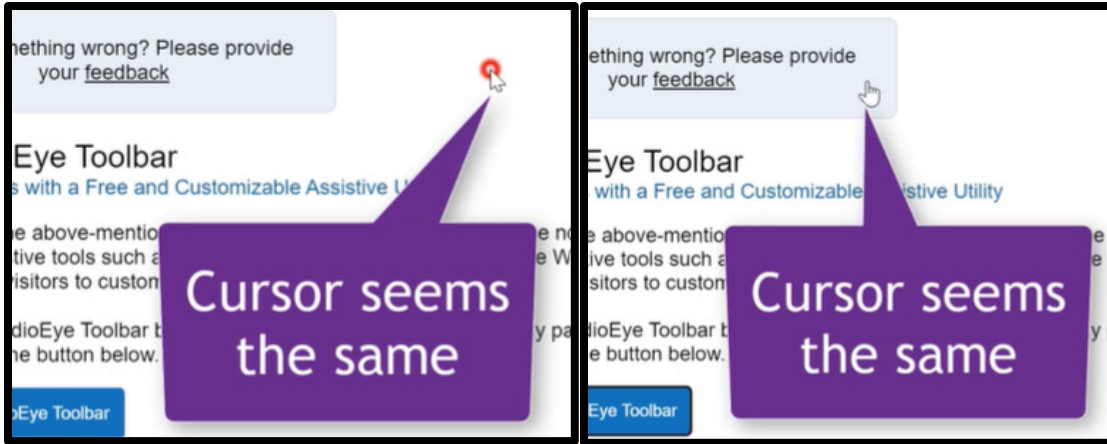
47. Statement 2 consisted of videos, and text describing and commenting on those videos. *Id.*; Roselli Aff. ¶¶ 40-62.

48. The videos were an accurate reflection of how the AudioEye tool worked on Mr. Roselli's machine. Roselli Aff. ¶ 40-62.

49. As shown in the videos, the AudioEye tool appears not to be working — or otherwise not doing what it is supposed to be doing. Roselli Aff. ¶¶ 40-54.

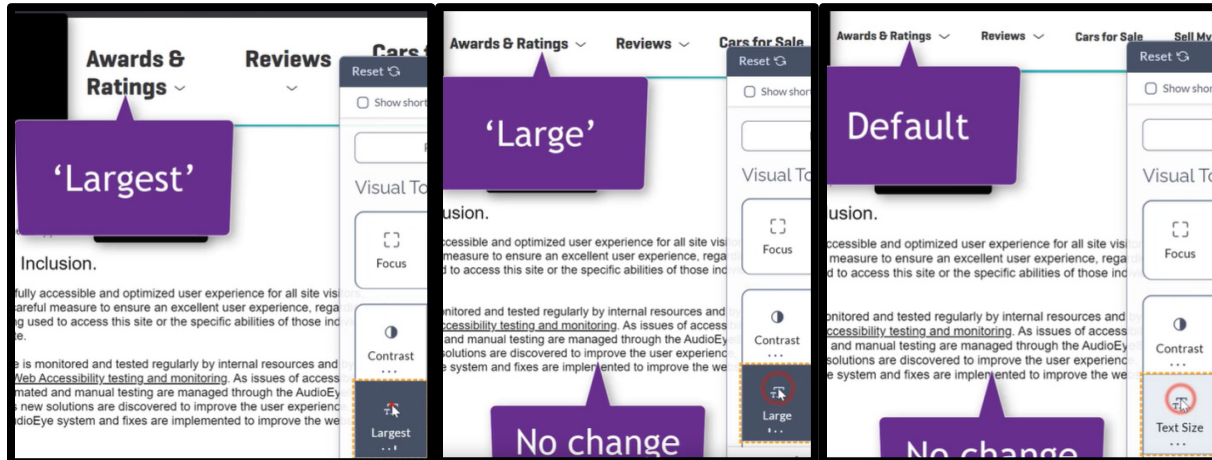
50. That is, for example, in the second video, the cursor does not change size when Mr. Roselli clicks "Cursor" in the AudioEye "Visual Toolkit":





Roselli Aff. ¶¶ 42-43.

51. Despite this lack of general results, as shown in the fourth video, the AudioEye toolkit was doing *something* — specifically, the “Text Size” tool changed the size of the text in the navigation bar at the top of the website, but failed to change the text in the body:



Roselli Aff. ¶¶ 46-47.

52. Mr. Roselli believed all statements of fact in Statement 2 at the time he published them. Roselli Aff. ¶ 60.

53. Mr. Roselli *still* believes all statements of fact in Statement 2, and nothing in the complaint has changed those sincerely held beliefs about what facts

are true, except that he understands that AudioEye has since fixed the problems highlighted on the specific website highlighted in Statement 2. Roselli Aff. ¶¶ 60-62.

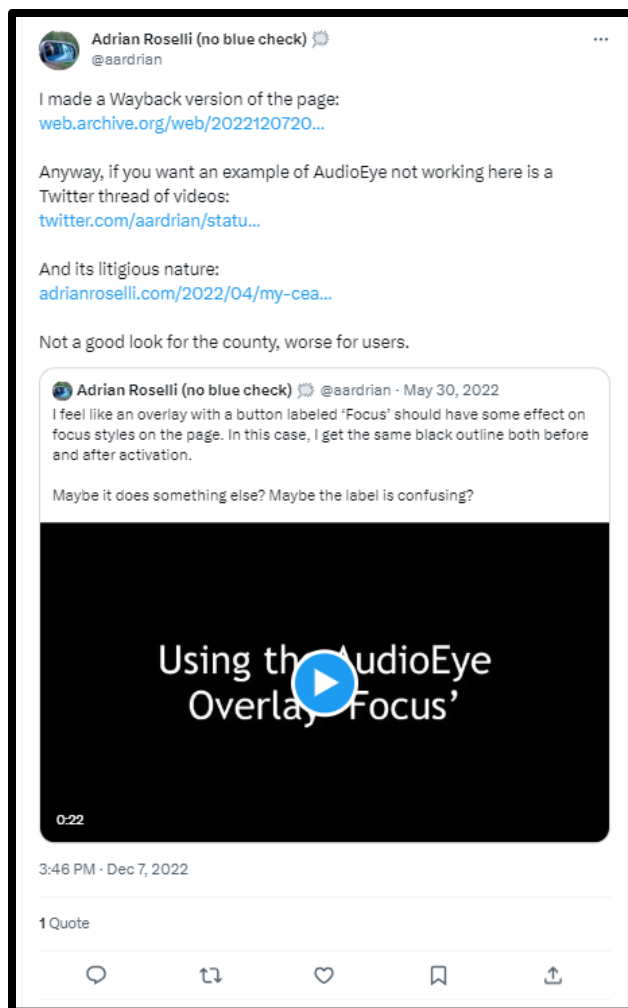
54. Mr. Roselli likewise genuinely held the opinions expressed in Statement 2 at the time he published them. Roselli Aff. ¶ 60.

55. Mr. Roselli still genuinely holds all the opinions expressed in Statement 2, and nothing in the complaint has changed those sincerely held opinions. Roselli Aff. ¶¶ 60-62.

### ***Statement 3***

56. On or around December 7, 2022, upon learning that AudioEye had apparently received a contract to provide Orange County, California with web accessibility services, Mr. Roselli posted a Twitter thread with the following content (“Statement 3”):





57. Mr. Roselli's opinion that a 9-day bidding process for a major government contract was "fake" was based on common knowledge of how government bidding works. Roselli Aff. ¶ 74.

58. The statements of fact in Statement 3 are substantially true.<sup>7</sup> Roselli Aff. ¶¶ 66; 69-70; 74.

59. Mr. Roselli believed all statements of fact in Statement 3 at the time he published them. Roselli Aff. ¶ 75.

<sup>7</sup> It is genuinely unclear what parts of Statement 3 Plaintiff is asserting are actionable.

60. Mr. Roselli *still* believes all statements of fact in Statement 3, and nothing in the complaint has changed those sincerely held beliefs about what facts are true. Roselli Aff. ¶¶ 75-77.

61. Mr. Roselli likewise genuinely held the opinions expressed in Statement 3 at the time he published them. Roselli Aff. ¶ 75.

62. Mr. Roselli still genuinely holds all the opinions expressed in Statement 3, and nothing in the complaint has changed those sincerely held opinions. Roselli Aff. ¶¶ 75-77.

#### ***Statement 4***

63. On February 26, 2023, Mr. Roselli posted on his blog, the post titled “#AudioEye Will Get You Sued” (“Statement 4”) attached to his affidavit as Roselli Ex. 3.

64. The post begins with a “disclaimer” that reads:

“This post and the headline is my opinion. I provide verifiable facts throughout to inform that opinion. I am also not a lawyer and this post does not constitute legal advice. The content reflects my genuinely held beliefs and opinions.”

Roselli Ex. 3 at 1.

65. The post also qualifies, “It is important to note that AudioEye also offers human testing and remediation...My concern with AudioEye has consistently been its overlay product.” *Id.* at 1.

66. When viewed online, the post is literally tagged (by Mr. Roselli) as a “rant.” Roselli Aff. ¶ 79 n. 15; FAC ¶ 58.



67. The post has its title because Mr. Roselli “believe[s] that the use of AudioEye overlay products can be a liability, because they do not actually bring companies into compliance.” Roselli Aff. ¶ 81.

68. The post has *eighty-two* footnotes and links in its body. Roselli Ex. 3 at 1-17.

69. It is true that AudioEye has “g[otten]” at least 4 of its customers “sued.” Roselli Aff. ¶ 93, citing *LightHouse et al. v. ADP Inc., et al.*, Case No. 4:20-cv-09020 (HSG), in the Northern District of California and *Tucker et al. v. C.S. Babylon Marine, Inc.*, Case No. 1:22-cv-3642 (LGS), in the Southern District of New York;<sup>8</sup> *Gomez v. Jackson Family Wines, Inc.*, (N.D. Cal. Civ., 3:22-cv-00957, February 16, 2022);<sup>9</sup> and *Anthony Hammond Murphy v. Eyebobs, LLC*, (W.D. Pa. Civ. R. 1:21-cv-17, January 7, 2021).

70. Further, the prediction that interacting with AudioEye would “get you sued” proved accurate in that AudioEye sued Mr. Roselli. Roselli Aff. ¶ 91.

71. Mr. Roselli believed all statements of fact in Statement 4 at the time he published them. Roselli Aff. ¶ 92.

72. Mr. Roselli *still* believes all statements of fact in Statement 4, and nothing in the complaint has changed those sincerely held beliefs about what facts

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<sup>8</sup> AudioEye itself acknowledges that this case was about its products in a press release. See <https://www.prnewswire.com/news-releases/audioeye-successfully-defends-customer-in-precedent-ada-case-for-website-accessibility-301785612.html> It was resolved by a stipulation of voluntary dismissal, with no public indication of whether a confidential payment was made by AudioEye or its client — though apparently AudioEye, as described in the press release’s title, handled the defense.

<sup>9</sup> Jeff Quackenbush, *Dozens of Northern California Wineries Face Website Accessibility Lawsuits*, North Bay Business Journal (April 1, 2022). <https://www.northbaybusinessjournal.com/article/industrynews/dozens-of-northern-california-wineries-face-website-accessibility-lawsuits/>

are true. Roselli Aff. ¶¶ 92

73. Mr. Roselli likewise genuinely held the opinions expressed in Statement 4 at the time he published them. Roselli Aff. ¶ 92.

74. Mr. Roselli still genuinely holds all the opinions expressed in Statement 4, and nothing in the complaint has changed those sincerely held opinions. Roselli Aff. ¶ 92.

75. Statements 1, 2, 3, and 4 were all made in places open to the public or in public forums. Roselli Aff. ¶¶ 27, 39, 74; Roselli Ex. 3; FAC ¶¶ 35, 43, 53, 57.

76. Statement 3 was also in furtherance of the exercise of the constitutional right of petition, in that it was “target[ed] toward Orange County.” FAC ¶¶ 53-54.

### **Opinion and Facts on Overlays**

77. Mr. Roselli believed at the relevant time — and still believes, even having reviewed Plaintiff’s complaint — that (1) overlay products in general are not the best approach to digital accessibility (2) Plaintiff’s overlay products often do not work well, (3) that Plaintiff’s marketing practices can be exaggerated or deceptive, and (4) that retaining Plaintiff for digital accessibility services renders a corporate client vulnerable to reputational harm and liability and compliance issues. Roselli Aff. ¶¶ 10-17; 28.

78. That opinion is common — it is widely held throughout the disability community, particularly among the end users AudioEye purportedly helps companies serve. Roselli Aff. ¶¶ 26, 97; Roselli Ex. 2; Hamilton Aff. ¶¶ 2-10;

Faulkner Aff. ¶¶ 2-11; Rietveld Aff. ¶¶ 2-8; Rum Aff. ¶¶ 1-9; Watson Aff. ¶¶ 3-10; Amanda Morris, *For Blind Internet Users, the Fix Can Be Worse Than the Flaws*, N.Y. Times, (July 13, 2022), <https://www.nytimes.com/2022/07/13/technology/ai-web-accessibility.html> (“Morris”); Gus Alexious, *Why Automated Tools Alone Can’t Make Your Website Accessible And Legally Compliant*, Forbes, (October 28, 2021), <https://www.forbes.com/sites/gusalexio/2021/10/28/why-automated-tools-alone-cant-make-your-website-accessible-and-legally-compliant/?sh=3669c920364e> (“...web accessibility overlays are mere bit-part solutions and certainly not the magic bullet they are sometimes purported to be.”); Todd Feathers, *People with Disabilities Say This AI Tool is Making the Web Worse for Them*, Vice, (March 17, 2021), <https://www.vice.com/en/article/m7az74/people-with-disabilities-say-this-ai-tool-is-making-the-web-worse-for-them>; *Dozens of Northern California Wineries Fact Website Accessibility Lawsuits*, North Bay Business Journal (April 1, 2022), <https://www.northbaybusinessjournal.com/article/industrynews/dozens-of-northern-california-wineries-face-website-accessibility-lawsuits/><sup>10</sup>

79. Indeed, survey results are consistent that AudioEye’s products simply do not work *for their users*. Roselli Ex. 2 at 7-13 (collecting 20 user comments damning overlay products); at 13-14 (noting a survey which found “A strong majority (67%) of respondents rate these tools as not at all or not very effective. Respondents with disabilities were even less favorable with 72% rating them not at

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<sup>10</sup> The Court may take judicial notice of newspaper articles for the fact that they are published, which speaks to the fact that people hold these opinions (and held them before Mr. Roselli said anything at issue).

all or not very effective, and only 2.4% rating them as very effective”); Rum Aff. ¶¶ 4-6 (noting a survey of 646 users, where 65 participants noted using AudioEye or other overlays, all gave lower than 3 out of 5 ratings of the experience, and said overlays had conflicted with their accessibility technology, and collecting quotes); Morris (noting “hundreds” of people with disabilities have complained about issues with automated accessibility web services, and that “In addition to poorly labeled images, buttons and forms, blind users have documented issues with overlays that include being unable to use their keyboards to navigate web pages either because headings on the page are not properly marked or because certain parts of the page are not searchable or selectable. Other times, automated tools have turned every piece of text on a page into a heading, preventing users from easily jumping to the section of a website they want to read.”)<sup>11</sup>; Watson Aff. ¶¶ 3-10 (blind user, stating “I have, in both personal and professional capacities, had the misfortune to encounter AudioEye products, including AudioEye’s overlay products. ... Mr. Roselli’s description is, from my perspective, well researched, completely accurate, and amply demonstrated.”).

80. All readers of Mr. Roselli’s statements understood them to be opinions — to be sure, well supported and cited opinions, grounded in decades of advocacy and strong beliefs, but opinions nonetheless. Hamilton Aff. ¶¶ 2-10; Faulkner Aff. ¶¶ 2-11; Rietveld Aff. ¶¶ 2-8; Rum Aff. ¶¶ 1-9; Watson Aff. ¶¶ 3-10).

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<sup>11</sup> A particularly informative quote from the Morris piece: “I’ve not yet found a single one that makes my life better,’ Mr. Perdue said of automated accessibility web services. ‘I spend more time working around these overlays than I actually do navigating the website.’”

81. The question of how to approach ADA accessibility online is a topic of significant public interest and concern. FAC ¶¶ 1-7; 14-22; 65; Morris, Gus Alexious, *Why Automated Tools Alone Can't Make Your Website Accessible And Legally Compliant*, Forbes, (October 28, 2021); Todd Feathers, *People with Disabilities Say This AI Tool is Making the Web Worse for Them*, Vice, (March 17, 2021); *Dozens of Northern California Wineries Fact Website Accessibility Lawsuits*, North Bay Business Journal (April 1, 2022).

82. Website accessibility is, in Plaintiff's own words, "a growing issue that requires a fast yet effective solution" and a "large-scale problem" that intersects with "the single most important legislation protecting the rights of people with disabilities." FAC ¶¶ 15; 17-22.

83. Therefore, this case is based upon statements in public fora, made in connection with an issue of public interest. FAC ¶¶ 1-7; 14-22; 65; Morris, Gus Alexious, *Why Automated Tools Alone Can't Make Your Website Accessible And Legally Compliant*, Forbes, (October 28, 2021); Todd Feathers, *People with Disabilities Say This AI Tool is Making the Web Worse for Them*, Vice, (March 17, 2021); *Dozens of Northern California Wineries Fact Website Accessibility Lawsuits*, North Bay Business Journal (April 1, 2022);<sup>12</sup> Roselli Aff. ¶¶ 10-17.

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<sup>12</sup> The Court may take judicial notice of newspaper articles for the fact that they are published, which speaks to the public controversy.