IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

HORIZON GROUP MANAGEMENT, LLC, an Illinois limited liability company, Plaintiff, v. AMANDA BONNEN, Defendant.	No. 2009 L 008675

PLAINTIFF'S REPLY TO DEFENDANT'S MOTION TO DISMISS

Plaintiff, Horizon Group Management, LLC ("Horizon"), responds to Defendant's Motion to Dismiss Plaintiff's Verified Complaint ("Motion") as follows:

Introduction

Defendant's Motion raises the same unsuccessful arguments recently raised by singer Courtney Love in her motion to dismiss a libel suit based on messages which she, like Ms. Bonnen, posted on Twitter ("tweets"). *See Simorangkir v. Love*, Case No. BC410593, Superior Court of California, Los Angeles, (filed Mar. 26, 2009), Memorandum and Points of Authority, attached hereto as Exhibit A.[1] Like the court did in *Love*, this Court should deny Defendant's motion.

A court does not grant a rule 2-615 motion to dismiss with prejudice with a quick pen. Rather, "a court should deny the motion unless it clearly appears that no set of facts can be proved which will entitle the plaintiff to recover." *Hensler v. Busey Bank*, 231 Ill. App. 3d 920, 924 (4th Dist. 1992). First, Amanda Bonnen wants this Court to throw out a complaint that clearly identifies Plaintiff because of an obvious typographical error at

[1] The exhibits to Love's Memorandum and Points of Authority are voluminous and not attached to Exhibit A. The exhibits are available online at http://reporter.blogs.com/files/love_slapp.pdf or will be produced upon request.

the end of the complaint. Such misnomer can be corrected by filing a Rule 366 Motion to Correct a Misnomer, or, as a matter of judicial economy, the error can be corrected on its face. Plaintiff so moves. Defendant, stretching to find some defense, then asks the Court to dismiss the case for a variety of other reasons—none of which justify dismissal of the properly pled libel *per se* complaint.

I. Plaintiff Properly Pled the Substance of the Defamatory Statement.

Plaintiff pled, and included as an exhibit to its Verified Complaint, the libelous statement giving rise to this suit. Notwithstanding Plaintiff's pleading, Defendant contends, citing to the recent Illinois Supreme Court case *Green v. Rogers,* 2009 Ill. LEXIS 1303 (2009), that Plaintiff has not properly pled a libel *per se* action. Defendant's interpretation of *Green* is wrong.

In her reliance on *Green*, Defendant only states half of the pleading standard articulated in *Green* when she claims "plaintiff's claim 'must be pled with a heightened level of precision and particularity.'" Motion to Dismiss, 4, *citing Green v. Rogers*, 2009 Ill. LEXIS 1303 at *23. Defendant failed to include the portion of the *Green* Court's opinion which provides the entire standard of a properly pled defamatory statement. The actual standard articulated by the Court states:

> Although a complaint for defamation per se need not set forth the allegedly defamatory words in haec verba, the substance of the statement must be pled with sufficient precision and particularity *so as to permit initial judicial review of its defamatory content.*

Green, 2009 Ill. LEXIS at * 19 (emphasis added).

Whilst perhaps Defendant is focusing on the idea in *Green* that something more than a person's "mere belief" must be pled in order to properly plead a defamation *per se* claim, this analysis is irrelevant. *See Id.* at *24. In *Green*, the plaintiff pled

defamation *per se* based on information and belief, presumably arising from conversations that plaintiff had with persons other than the person making the defamatory statements. *See Id.* at *6-7. In the instant case, Plaintiff has properly pled its libel *per se* claim based on Defendant's *actual words she published.* As Plaintiff included the entire defamatory statement in its pleading, Plaintiff pled with the particularity necessary "to permit initial judicial review of its defamatory content." *See Id.* at *19. The Court, like readers around the world, can read what Defendant wrote.

II. Defendant's Defamatory Publication Cannot Be Innocently Interpreted.

Defendant strains to find some construction of her tweet in order to fall under Illinois' innocent construction rule. Defendant looks to certain articles to hopefully persuade the Court that somehow her publication deserves protection because the publication occurred on a website on which there is "drivel." *See* Motion to Dismiss, 8. To be sure, there may be "drivel" on Twitter, but so too "drivel" is everywhere—in book, television, and magazine. The mere existence of "drivel" here, there, or anywhere proves nothing.

Twitter is a legitimate medium used by reporters to report up-to-the-minute updates on legal actions, by rabbis, by people to support specific causes or engage in a certain activity, and as a marketing tool.[2] The President of the United States, the National Archives, and the Centers for Disease Control ("CDC") use Twitter to post information. On December 15, 2009, the CDC posted a tweet involving a recall of the H1N1 vaccine—hardly drivel. *See* Exhibit B. Twitter tweets must be taken seriously and treated no different than other publications.

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[2] *See, e.g., Federal judge OKs media use of Twitter*, LJWorld.com, http://www2.ljworld.com/news/2009/feb/24/federal-judge-oks-media-use-twitter/ (Feb. 24, 2009); Pete Cashmore, *Hugh Jackman Giving $100K to Charity via Twitter (@realhughjackman),* Mashable The Social Media Guide, http://mashable.com/2009/04/19/hugh-jackman-charity-twitter/ (Apr. 19, 2009).

The truth is that when people decide to post information or comment on an issue online, they choose to make statements in an online medium available for the public to view.[3] Any expectation of privacy disappears, and any posting must be read under the same standards otherwise invoked in a defamation case—as a reasonable reader would interpret the posting.

"The innocent construction rule does not require courts to strain to find an unnatural innocent meaning for a statement when a defamatory meaning is far more reasonable." *Tuite v. Corbitt*, 224 Ill.2d 490, 504-505 (2006). Moreover, "the rule also does not require courts 'to espouse a naïveté unwarranted under the circumstances.'" *Id.* at 505, quoting *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77, 94 (1996). Rather, under the innocent construction rule, "the court must 'give the allegedly defamatory words their natural and obvious meaning' and interpret them 'as they appeared to have been used and according to the idea they were intended to convey to the *reasonable reader*.'" *Tuite*, 224 Ill.2d at 510 (emphasis added), quoting *Bryson*, 174 Ill. 2d at 93.

In this case, the reasonable construction of Defendant's false publication is without question: Plaintiff *thinks* it is okay to sleep in a moldy apartment.[4] Defendant looks to her other tweets to support her theory that the publication should somehow not be considered a statement of fact. Yet, this reasoning proves nonsensical. Should the average reader assume Bonnen lied about going to the Cubs game because she tweeted

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[3] *See Facebook unveils privacy changes*, CNN, http://www.cnn.com/2009/TECH/12/10/facebook.privacy/index.html (Dec. 10, 2009)(Facebook responding to Twitter by making more information publicly available).

[4] After the publication was made and subsequently republished, it was not uncommon to read posts such as: "Thank god [sic] that I am now aware of Horizon Group Management's moldy apartments." *See, e.g.*, Eric Zorn, comment to, *Angry company drops a wee tweet into media echo chamber*, CHICAGO TRIBUNE BLOG, http://blogs.chicagotribune.com/news_columnists_ezorn/2009/07/angry-company-drops-a-wee-tweet-into-media-echo-chamber.html (last visited Nov. 13, 2009). The reaction is clear: people read Defendant's statement to mean exactly what Defendant wrote—Plaintiff thinks it is okay to have mold in its apartments.

about it? Or, using one of the tweets Defendant decided to highlight—"Just fell down the stairs & broke a heel. Nice job Amanda"—should the reasonable reader read Defendant's post to mean she did not break a heel?

Bonnen seeks to shield herself from responsibility for what she published because of how she herself now allegedly views an online website. Yet, as George Washington University Pofessor Jeffrey Rosen stated: "We should never expect that the judges are going to save us from our own worst impulses." Manav Tanneeru, *Can the law keep up with technology*, CNN, Nov. 17, 2009, http://www.cnn.com/2009/TECH/11/17/law.technology/index.html. Neither the ease of publication nor the medium of publication are factors in evaluating a defamation *per se* claim. Defendant intended to make a libelous statement about Plaintiff, and dismissing the suit against Plaintiff is not proper. *See Tuite*, 224 Ill.2d at 512.

Bonnen, reaching to find some innocent construction, claims that "moldy" has multiple meanings and, therefore, the case should be dismissed. But all the definitions she cites (even definitions not otherwise found in dictionaries) are libelous. Stating a landlord believes it is okay to have an apartment "covered with mold producing fungus" is libelous. So to is stating a landlord thinks it is okay to have an "old and moldering and crumbling" apartment. Bonnen's other alternate meaning—fusty—means being "saturated with dust and stale odors" which is also libelous. *See* Merriam-Webster Online, http://m-w.com/dictionary/fusty (last visited Dec. 17, 2009).

III. The Tweet Contains an Alleged Statement of Fact.

Defendant focuses on the idea that Bonnen's tweet simply reflects what Bonnen *thinks,* and, therefore, she is not culpable. By adopting Defendant's theory one could

always claim that any statement or publication is what the author *thinks*. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990). There would never be a libel suit, as every statement would simply be a person's opinion.

The United States Supreme Court illustrated why the "mere opinion" rationale Bonnen asks this Court to adopt should not serve to save a person making a libelous statement from responsibility. The Court commented:

> If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar."

Milkovich, 497 U.S. at 18-19.

In the *Love* case, for example, Ms. Love, in difficult to comprehend tweets, tweeted about a certain fashion designer plaintiff. Ms. Love, referring to the plaintiff, tweeted: "scorched earth ignore and blacklist, few people ever deserve our toal [sic] ignoring butthis [sic] thief and burglar does, austin police loathher! [sic] orange" and "Austin police are morethan [sic] ecstatic to pick her up she has a history of dealing cocaine, lost all custody of her child, assualt [sic] and burglary." Following Defendant's reasoning, one should assume that Ms. Love simply inserted the phrasing "I think" before her tweets, and she should have no responsibility for her publications, because Ms. Love was simply expressing her opinion, as, surely, Love could not know how the Austin police really felt about the designer plaintiff. *See* Special Motion to Strike, Exhibit A, at 9. Such rationale was rejected by the California Court when it denied Love's motion, and this Court should similarly deny such nonsensical reasoning.

IV. Defendant's Statement Is About Plaintiff.

The first page to come up on a quick Google search of "Horizon realty"—the exact name used in Defendant's tweet—brings up Plaintiff's website. And, if a reader of Defendant's publication typed in "Horizon realty Chicago" on Google or Yahoo! (since Defendant listed her location as "Chicago, Illinois") several links initially appear directing all internet users to Plaintiff. Thus, readers of Defendant's publication did not need to know Defendant lived in one of Plaintiff's apartments in order to determine Defendant's tweet pertained to Plaintiff. Trying to hide behind a typographical error in the signature page of a complaint cannot protect Defendant.

Wherefore, Plaintiff, Horizon Group Management, LLC, respectfully asks this Court to (1) deny Defendant's Motion to Dismiss Plaintiff's Verified Complaint and (2) permit Plaintiff to amend its Verified Complaint on its face to correct two typographical errors or, in the alternative, grant Plaintiff leave to file a motion to correct the misnomer under Supreme Court Rule 366, and for such other relief as this Court deems just and proper.

Respectfully submitted,
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DAWN SIMORANGKIR, aka DAWN YOUNGER-SMITH, aka BOUDOIR QUEEN, an individual,

Plaintiff,

v.

COURTNEY MICHELLE LOVE, an individual; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. **BC410593** [Assigned to the Honorable Aurelio Munoz, Dept 47]

DEFENDANT COURTNEY LOVE COBAIN'S SPECIAL MOTION TO STRIKE PURSUANT TO C.C.P. § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF COURTNEY LOVE COBAIN AND OLAF J. MULLER IN SUPPORT THEREOF

Hearing Date:	October 26, 2009
Time:	8:30 A.M.
Dept.:	47
Trial Date:	May 11, 2010
Time:	8:30 A.M.
Dept:	47

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2009, at 8:30 a.m. in Department 47 of the above-entitled courthouse, Defendant COURTNEY LOVE COBAIN ("Love" and/or "Defendant") will and does move this Court to strike Plaintiff DAWN SIMORANGKIR A/K/A DAWN YOUNGER-SMITH A/K/A BOUDOIR QUEEN'S ("Simorangkir" and/or "Plaintiff) First Amended Complaint pursuant to C.C.P. § 425.16.

Defendant's Motion is based on the attached Memorandum of Points and Authorities, the Declarations of Courtney Love and Olaf J. Muller in support thereof, the pleadings and papers on file with the Court filed concurrently herewith, and such additional matters as may be raised at the hearing.

EXHIBIT tabbies A

PLEASE TAKE FURTHER NOTICE that should the Court grant Defendant's underlying Special Motion to Strike, Defendant further reserves the right to file a separate Motion against Plaintiff and her attorneys of record Freedman and Taitelman, LLP for the recovery of attorneys' fees and costs pursuant to Code of Civil Procedure § 425.16(c).

The Court is also requested to take Judicial Notice under Code of Civil Procedure §§ 430.30(a) and 438(d) and Evidence Code §§ 451 and 452 of the following pleadings on file with the Court:

1. Conciliation Court Agreement and Stipulated Order Re Custody and Parenting Plan, filed on April 11, 2005, in the matter of Dawn Simorangkir v. Chocky Simorangkir, Los Angeles Superior Court Case No. BD375732. A true and correct copy of this pleading is attached to the accompanying Declaration of Olaf J. Muller ("Decl. Muller") as **Exhibit N.**
2. Plaintiff Samantha Ronson's Complaint against Defendant Mario Lavandeira d/b/a Perez Hilton, filed on July 12, 2007, Los Angeles Superior Court Case No. BC374174. A true and correct copy of Plaintiff's Complaint for Libel is attached to the Decl. Muller as **Exhibit E.**
3. Lavandeira's Special Motion to Strike pursuant to C.C.P. § 425.16 in Los Angeles Superior Court Case No. BC374174, filed on September 4, 2007. A true and correct copy of this Motion is attached to the Decl. Muller as **Exhibit F.**
4. Certified Copy of Transcript from November 1, 2007 Hearing on Lavandeira's Special Motion to Strike containing the Court's Ruling on the Motion. A true and correct copy of this transcript is attached to the Decl. Muller as **Exhibit G.**

DATED: August 19, 2009

KEITH A. FINK & ASSOCIATES

By: _____

Keith A. Fink
Olaf J. Muller
Attorneys for Defendant
COURTNEY LOVE COBAIN

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF PERTINENT FACTS

In or around 2008, Love discovered http://www.etsy.com ("Etsy"), a website that functions as an online shopping mall containing stores of various individual vendors, including but not limited to Simorangkir's store. See the accompanying Declaration of Courtney Love Cobain ("Decl. Cobain") at ¶ 2. Plaintiff Simorangkir is a celebrity fashion designer based in Texas who specializes in "up-cycling" clothing, which is a method of taking used and vintage clothing and using additional materials and textiles to re-work clothing into more unusual and unique fashion items. See **Exhibit B** to the accompanying Declaration of Olaf J.Muller ("Decl. Muller"). Simorangkir calls herself the "Boudoir Queen" to signify the fact that she is the "Queen" of boudoir fashion and style, which is reminiscent of 1920's "flapper" clothing. Id. Plaintiff holds herself out on her website as "a model/muse and make-up artist to the stars," a "style icon," and "her client list of starlets as a make-up artist sparkles with names like Lisa Marie Presley, Maude Adams, Susan Tyrell from Andy Warhol's BAD and many more." Id.

Plaintiff voluntarily associates with celebrities to drum up additional business for herself. She repeatedly features photos of herself with celebrities wearing her clothing on her website and separate blog, has written about her various celebrity friends, including but not limited to Love, on her website, and has even posted pictures of Love wearing Plaintiff's clothing on her website. See **Exhibit C** to the Muller Decl. Plaintiff has gone so far as to *post links* connecting Love's MySpace blog to Plaintiff's own website after Courtney decided to write about how much she enjoyed Plaintiff's clothing in December 2008. Id. Plaintiff also Love "ROCK ROYALTY"," a "bad-ass my dream come true Muse!" on her website, posted a photograph of Love wearing Plaintiff's clothing, and instructed her customers to visit Love's "myspace blog to see her mention of us!" Id. Plaintiff further states on her website that "her hollywood home was photographed by Titanic star Billy Zane," "you will see many recording artists coming in for an appointment with 'The Boudoir Queen," and "Dawn's designs have been featured in many magazine publications such as Katie Grands new LOVE magazine, "Elle," "Paste," "Tribeza," "Brilliant," and "No Depression." See **Exhibit D** to the Muller Decl.

Some time thereafter, Love contacted Simorangkir through her online store and they struck up a friendly relationship. See Decl. Love at ¶ 3. After several months of online communications, Love asked Simorangkir to travel from Texas to California to meet with Love in person to make several custom pieces of clothing for Love using approximately several hundred thousand dollars' worth of

textiles, vintage clothing, and other raw materials Love had collected over nearly a decade. Id. at ¶ 4. Simorangkir visited Love in Los Angeles on or about December 3, 2008, at which meeting Love gave her these materials. Id. at ¶ 5. Simorangkir subsequently visited Love a second time in Los Angeles on or around January 28, 2009, this time bringing her husband, Mark Younger-Smith. See Decl. Love at ¶ 6. Love again gave her tens of thousands of dollars' worth of textiles, vintage clothing, and other raw materials for her to "up-cycle" in several large bags. Simorangkir and Love agreed that any materials Love gave to Simorangkir that she did *not* use would have to be returned to Love immediately. Id.

During their second face-to-face meeting, Simorangkir repeatedly asked Love both to partake in and to procure cocaine, Percoset, and other illegal and prescription drugs for herself and her husband, and she discussed both her past drug use and drug dealing. See Decl. Love at ¶ 7. Simorangkir also drank heavily, repeatedly telephoning Love's room service at the Chateau Marmont to bring up several bottles of premium vodka to her room. Id. Simorangkir asked Love about songs Love had written, including the song "Teenage Whore." See Decl. Love at ¶ 8. After Love described some of the emotions and personal stories that led her to write this song, Simorangkir told her that she had worked in the past as a prostitute, had been one of "Nikki's girls," a well-known California prostitution ring, had outstanding arrest warrants for assault, and had been molested as a child. Id. at ¶¶ 8-10. After Love and Simorangkir talked about Love's daughter Frances, Simorangkir told Love about her estranged son and that she lost custody to the son's father, her ex-husband, years before in part because of her past as a drug dealer, drug user, and prostitute, which her ex-husband had highlighted in detail to the Family Court. Id. Simorangkir also exhibited racist, homophobic, and generally mean-spirited behavior with Love, repeatedly referring to one of her seamstresses, Jasmine, a Latina woman, as "the beaner that works for me," and joked that she paid her little or no money notwithstanding Jasmine's hard work and excellent work product. Id. at ¶ 11.

On or around March 13, 2009, Love received her first invoice for the custom pieces from Simorangkir, which prices did not match the previously-agreed prices. See Decl. Love at ¶ 13. After Love demanded Simorangkir lower her prices, Simorangkir refused and told Love that she would not deliver any of the items she had "up-cycled" until she paid the invoiced prices, effectively holding Love's clothing "hostage." Id. at ¶ 14. Love subsequently learned that Simorangkir sold these items and materials to third parties. Id. at ¶ 15. Love also subsequently learned that Simorangkir had stolen ideas and designs that Love left lying around her hotel room (which Simorangkir secretly

photographed) and put up various items for sale incorporating Love's ideas and designs on her Etsy website. Id. at ¶ 12. Outraged, Love believed it incumbent on her to warn other consumers about her nightmare experience with Simorangkir and Simorangkir's pattern of criminal and bad faith conduct. See Decl. Love at ¶ 16.

II. LEGAL ARGUMENT

A. LEGAL STANDARD GOVERNING C.C.P. § 425.16 SLAPP MOTION

Under C.C.P. § 425.16(b)(1), "a cause of action against a person arising from any act of that person in furtherance of that person's right of petition or free speech... shall be subject to a special motion to strike....." In 1992, the California Legislature enacted C.C.P. § 425.16 in direct response to the "disturbing increase" in meritless lawsuits designed "to chill the valid exercise of the constitutional rights of freedom of speech...." See C.C.P. § 425.16(a). In 1997, the Legislature amended C.C.P. § 425.16(a), expressly instructing California Courts to "broadly... construe[]" this statute. See Stats. 1997, ch. 271, § 1; amending 425.16(a). In 1999, the California Supreme Court further directed all California Courts "whenever possible... [to] interpret the First Amendment and section 425.16 in a manner 'favorable to the exercise of freedom of speech, not to its curtailment.'" See Briggs v. Eden Council for Hope and Opportunity (1999) 19 Cal.4th 1106, 1119 (quoting Bradbury v. Superior Court (1996) 49 Cal.App.4th 1170, 1176).

C.C.P. § 425.16 sets forth a two-step process under which any Special Motion to Strike / Anti-SLAPP must be analyzed. First, the Court must decide whether Defendant has made a sufficient threshold showing that the challenged cause of action is subject to a special Motion to Strike under C.C.P. 425.16(e). If the threshold showing has been made, the Court must next determine whether the Plaintiff has demonstrated a probability of prevailing on her claims. See e.g., Weinberg v. Feisel (2003) 110 Cal.App.4th 1122, 1130.

B. THIS COURT SHOULD STRIKE PLAINTIFF'S COMPLAINT BECAUSE PLAINTIFF'S CLAIMS IMPERMISSIBLY TARGET DEFENDANT'S FREE SPEECH ACTIVITY PROTECTED BY C.C.P. § 425.16.

Under C.C.P. § 425.16(e), an act in furtherance of a person's right to free speech expressly includes "(3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest [and/or] (4) or any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of

public interest." As set forth in greater detail below, all of Love's purported statements were admittedly made in a public forum regarding a matter of public interest sufficient to invoke the protection of C.C.P. § 425.16. To the extent that the statements constitute statements of fact about Plaintiff, they are a warning to consumers *not* to use Plaintiff's services and a description of Love's unfortunate experience doing business with Plaintiff Simorangkir.

1. Defendant's Allegedly-Wrongful Statements Were Admittedly Made in a Public Forum - The Internet.

All of Love's purportedly wrongful statements were made in a public forum - the Internet - and specifically on her publicly-available MySpace blog, her publicly-available Twitter page, and the publicly-available Etsy customer feedback section, all of which websites have public comment sections. See Plaintiff's FAC at ¶¶ 28-31; Decl. Love at ¶¶ 15-16.

The term "public forum" as used in Section 425.16 has been defined as "a place that is open to the public where information is freely exchanged." See Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, 475. It is not limited to a physical setting but also includes various other non-physical locations of public communication. Id. at 476. A publicly-accessible website is considered to be a public forum for purposes of C.C.P. § 425.16. See ComputerXpress Inc. v. Jackson (2001) 93 Cal.App.4th 993, 1007; Barrett v. Rosenthal (2006) 146 P.3d 510, 514, fn. 4. The website itself does not require a comment section or other public participation to be considered a public forum. See Wilbanks v. Wolk (2001) 121 Cal.App.4th 883, 897.

Plaintiff herself acknowledges that all of these statements were made in a public forum by referring to Love's statements as "marathon rants in multiple *public forums*," Love "*publicly* warned Simorangkir," and "Love escalated her assault through the constant barrage of malicious, false, and defamatory statements in *various public forums*" (emphasis added). See Plaintiff's FAC at ¶¶ 1, 20.

2. Defendant's Allegedly-Wrongful Statements Were Made In Connection With an Issue of Public Interest.

All of Love's allegedly-wrongful statements were made in connection with a matter of public interest. They constitute a warning *not* to use Plaintiff's services or do business with her in any manner and why, they are made by and concern celebrities, and they concern other matters of public interest such as drug and alcohol abuse and child abuse. Love described in detail how she contracted with Plaintiff for custom-made clothing and was price-gouged by Plaintiff, Love described how Plaintiff refused to return Love's extremely valuable property, and Love further described how Plaintiff's

irrational decision first to gouge Love and then publicly attack her was in keeping with Plaintiff's criminal background, drug and alcohol abuse, and emotional difficulty dealing with her estranged son:

> "i flew her up the first time she came to la, and it was alot [sic] of havoc that day but i did giveher [sic[over 300,000 of my insured and photographed pieces we sogned [sic] a cotract [sic] ilstingthe [sic] pieces and the date they were to be upcycled and returned to me for a certain sum, and then she wanted 5000 more so i gave it to her like an idiot andanother [sic] 5000 and now shes [sic] holding my shit hostage and imnoteven [sic] includingthe [sic] overpaying netsy [sic]." See Plaintiff's FAC at ¶ 31(h);

> "you dont [sic] charge someone 40,000$ and then give hem [sic] a deadline DEc [sic] 10th and here we are in march and deliver them a few items, and shopw [sic] the rest as though they didnt [sic] belong to you made of your textiles...." Id. at ¶ 31(aa).

"The most commonly articulated definitions of 'statements made in connection with a public issue' focus on whether (1) the subject of the statement or activity precipitating the claim was a person or entity in the public eye; (2) the statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants; and (3) whether the statement or activity precipitating the claim involved a topic of widespread public interest.'" See Commonwealth Energy Corp. v. Investor Data Exchange, Inc. (2003) 110 Cal.App.4th 26, 33; Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO (2003) 105 Cal.App.4th 913, 924.

C.C.P. § 425.16(e)(3)'s requirement that the defendant's allegedly-wrongful activity be "'in connection with an issue of public interest' ...is to be '***construed broadly***' so as to encourage participation by all segments of our society in vigorous public debate related to issues of public interest" (emphasis added). See Seelig v. Infinity Broadcasting Corp. (2002) 97 Cal.App.4th 798, 808. Courts should "err on the side of free speech" in deciding whether an issue is one of public interest. See Gallagher v. Connell (2004) 123 Cal.App.4th 1260, 1275.

"Consumer information... generally is viewed as information concerning a matter of public interest." See Wilbanks v. Wolk (2004) 121 Cal.App.4th 883, 899. Courts have expounded on this general principle as follows:

> "Members of the public have recognized their roles as consumers and through concerted activities, both private and public, have attempted to improve their... positions vis-a-vis the [suppliers] and manufacturers of consumer goods. They clearly have an interest in matters which affect their roles as consumers, and peaceful activities, such as plaintiffs', which inform them about such matters are protected by the First Amendment.'" See Paradise Hills Associates v. Procel (1991) 235 Cal.App.3d 1528, 1544.

In Paradise Hills, the Court struck down a libel suit brought by plaintiff developer in which defendant admittedly posted signs on her house stating that "my house leaks and no one gives a damn,"

"we moved to Paradise Hills but we Live in Hell," "Unhappy Homeowner - Ask Me Why," and "Beware: You Have Now Entered the 'Paradise Zone' Honesty?? Quality?? Promises?? Luxury?? Heartbroken for sure." See Paradise Hills, supra, 235 Cal.App.3d at 1535. The Court held that defendant's comments regarding the quality of life in the home built by plaintiff developer constituted a matter of public interest, such that this speech was protected. Id. Because Love's statements were warnings to consumers *not* to do business with Simorangkir and further explained why, they concern a matter of public interest.

An event of "significant interest to the public and the media" also satisfies the public interest element for purposes of C.C.P. § 425.16. See Seelig v. Infinity Broadcasting Corp. (2002) 97 Cal.App.4th 798, 807-808. In Seelig, the Court held that a radio "shock jock's" commentary regarding plaintiff's decision to appear on a television show was made in connection with an issue of public interest protected by the First Amendment. Id. Specifically, the Court held:

> "The offending comments arose in the context of an on-air discussion between the talk-radio cohosts and their on-air producer about a television show of significant interest to the public and the media... Before and after its network broadcast, *Who Wants to Marry a Millionaire* generated considerable debate within the media... *By having chosen to participate as a contestant in the Show, plaintiff voluntarily subjected herself to inevitable public scrutiny and potential ridicule by the public and the media*" (emphasis added). See Seelig, 97 Cal.App.4th at 807.

Matters involving a celebrity's personal life constitute matters of public interest if the celebrity herself is the subject of widespread public interest. See Hall v. Time Warner, Inc. (2007) 153 Cal.App.4th 1337, 1347. Statements about a "nationally known figure" necessarily concern a matter of public interest. See Sipple v. Foundation for Nat. Progress (1999) 71 Cal.App.4th 226, 239. Because Love's statements concern both herself and Simorangkir, both of whom are celebrities, Love's statements concern matters of public interest.

In Hall, the Court found that plaintiff, the former housekeeper for actor Marlon Brando sued the producers of the national television show "Celebrity Justice" after it was revealed that Brando had named Hall a beneficiary of his living trust. Id. In reversing the trial court's denial of defendants' special motion to strike, the Court held as follows:

> "The public's fascination with Brando and widespread public interest in his personal life made Brando's decisions concerning the distribution of his assets a public issue or an issue of public interest. *Although Hall was a private person and may not have voluntarily sought publicity or to comment publicly on Brando's will, she nevertheless became involved in an issue of public interest by virtue of being named in Brando's will*" (emphasis added). See Hall, 153 Cal.App.4th at 1347.

"Major societal ills are issues of public interest." See Lieberman v. KCOP Television, Inc. (2003) 110 Cal.App.4th 156, 165. Criminal conduct, particularly with regard to drug use, constitute matters of public interest. See M.G. v. Time Warner, Inc. (2001) 89 Cal.App.4th 623, 629. News reports concerning current criminal activity serve important public interests. See Briscoe v. Reader's Digest Association, Inc. (1971) 4 Cal.3d 529, 536. Because many of Love's statements concern criminal conduct by Simorangkir, as well as Simorangkir's drug and alcohol abuse and have an effect on all Etsy and Boudoir Queen consumers both past and present, they constitute matters of public interest.

Love's statements regarding Simorangkir's custody over her child are a matter of public record and therefore concern a matter of public interest. "Public records by their very nature are of interest to the public and an important benefit is performed when they are published...." See Gates v. Discovery Communications, Inc. (2004) 34 Cal.4th 679, 688 (quoting Cox Broadcasting Corp. v. Cohn (1975) 420 U.S. 469, 495).

Statements regarding matters of even lesser public significance have been held as matters of public interest sufficient to invoke the protection of C.C.P. § 425.16. For example, in Ingels v. Westwood One Broadcasting Services, Inc. (2005) 129 Cal.App.4th 1050, the Court held that an interchange on a radio call-in show regarding whether a caller was too old to participate in the show involved a matter of public interest protected by the First Amendment. In Dowling v. Zimmerman (2001) 85 Cal.App.4th 1400, 1420, the Court held that defendant's statement that someone entered tenants' locked garage and turned off the dial of their water heater involved a matter of public interest protected by the First Amendment "even though it directly affected only two tenants."

Plaintiff's counsel Freedman & Taitelman, LLP of all firms should understand that the protections of the First Amendment in conjunction with C.C.P. § 425.16 bar Plaintiff's suit here because they filed and won a Special Motion to Strike in 2007 on behalf of their client Mario Lavandeira d/b/a Perez Hilton when he was sued by Samantha Ronson, Los Angeles Superior Court Case No. BC374174. See **Exhibit E** to the Decl. Muller. Lavandeira argued at length in his Special Motion to Strike that "regardless of Ronson's own celebrity status or whether she voluntarily sought publicity in connection with the Accident, she nevertheless became involved in an issue of public interest *by virtue of being involved in the Accident. Additionally, by publicly associating herself with Lohan, Ronson also voluntarily subjected herself to the inevitable scrutiny... by the public and media*"

(emphasis added). See **Exhibit F** to the Decl. Muller.

Plaintiff herself acknowledges that Love's statements were made to warn other consumers not to use Plaintiff's services by bringing suit for several statements Love purportedly made on Etsy's consumer feedback comment section. Three of Plaintiff's cited defamatory statements were admittedly made on Plaintiff's "Etsy feedback page," an online forum specifically created to elicit consumer feedback, both good and bad, from Plaintiff's past customers to be used by Plaintiff's future customers. See Plaintiff's FAC at ¶ 30; **Exhibit No. 2** to Plaintiff's FAC. Plaintiff further alleges that "there was a strong probability that Simorangkir's clients would continue to purchase Boudoir Queen clothing and apparel from Simorangkir" and "Love's above-referenced intentional acts, *in particular Love's defamatory conduct*, were designed to disrupt Simorangkir's relationship with her clients. Love intended to intimidate Simorangkir's clients *and discourage them from doing business with Simorangkir*" (emphasis added). See Plaintiff's FAC at ¶¶ 49, 51.

C. THIS COURT SHOULD STRIKE PLAINTIFF'S COMPLAINT BECAUSE PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON HER CLAIMS AGAINST DEFENDANT.

Once a defendant has established that the basis of plaintiff's claims constitute free-speech activity protected by C.C.P. § 425.16 and the First Amendment, the burden shifts to Plaintiff to demonstrate a probability of success on her claim. See Globetrotter Software, Inc v. Elan Computer Group (N.D.Cal. 1999) 63 F.Supp.2d 1127, 1130. Plaintiff cannot simply rely on allegations in the complaint to make this showing. See Paul for Council v. Hanyecz (2001) 85 Cal.App.4th 1356, 1364. Instead, Plaintiff must be able to provide sufficient evidence to permit the court to determine whether there is a probability that plaintiff *will likely* prevail on her claims. See DuPont Merck Pharmaceutical Co. v. Superior Court (2000) 78 Cal.App.4th 562, 568.

1. Plaintiff Cannot Establish a Probability of Prevailing on Her First Cause of Action for Libel.

Under Civil Code § 45, "libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation."

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a. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Defendant's Allegedly-Libelous Statements Are Mere Hyperbole and Not Actionable.

"The statutory definitions of libel... 'can be meaningfully applied only to statements that are capable of being proved as false or true.'" See Savage v. Pacific Gas & Electric Co. (1993) 21 Cal.App.4th 434, 445. "To state a libel claim which is not defeated by the freedom of speech protections of the First Amendment, [a plaintiff] must allege a statement that is provably false." See Ferlauto v. Hamsher (1999) 74 Cal.App.4th 1394, 1401 (citing Milkovich v. Lorain Journal Co. (1990) 497 U.S. 1, 20).

Plaintiff has brought suit against Love for calling Plaintiff among other things "an "asswipe nasty lying hosebag thief," a "52 year old desperate cokes out ass," "[]one extremely rotten apple," "the nastiest lying worst person I have ever known, a thief a liar," "total scumbag, a lying ripoff...," "THAT BLACK CLPID [sic] OF VAMPITIC [sic] ENERGY THAT IS AROUND PEOPLE WHO SOLD DRUGS OR WERE MOLESTED OR its that grey and bits of black in the aura," and "this insanely nasty Etsy person." See Plaintiff's FAC at ¶¶ 29-31. Plaintiff has also brought suit because Love allegedly made the following statements about her: "austin police are morethan [sic] ecstatic to pick her up she has a history of dealing cocaine, lost all custody of her child, assualt [sic] and burglary"; "scorched earth ignore and blacklist, few people ever deserve our toal [sic] ignoring butthis [sic] thief and burglar does, austin police loathher! [sic] orange"; and "is my clothes my WARDROBE! oi vey dont [sic] fuck with my wradrobe [sic] or you willend [sic] up in a circle of corched [sic] eaeth [sic] hunted til your [sic] dead,new [sic] job." Id.

"California courts use a 'totality of circumstances' test to determine if a statement is one of fact or of opinion." See Baker v. Los Angeles Herald Examiner (1986) 42 Cal.3d 254, 260. "In determining whether statements are of a defamatory nature, and therefore actionable, 'a court is to place itself in the situation of the hearer or reader, and determine the sense or meaning of the language of the complaint for libelous publication according to its natural and popular construction.'" See Balzaga v. Fox News Network, LLC (2009) 173 Cal.App.4th 1325, 1338 (quoting Morningstar v. Superior Court (1994) 23 Cal.App.4th 676, 688). In making this determination, "'the context in which the statement was made must be considered.... 'The publication in question must be considered in its entirety; '[it] may not be divided into segments and each portion treated as a separate unit.'" See Balzaga, supra, 173 Cal.App.4th at 1338 (quoting Monterey Plaza Hotel v. Hotel Employees &

Restaurant Employees (1999) 69 Cal.App.4th 1057, 1064-1065).

""Rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of... contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection" and as such are *not* actionable. See Ferlauto v. Hamsher (1999) 74 Cal.App.4th 1394, 1401; Hustler Magazine v. Falwell (1988) 485 U.S. 46, 53-55; James v. San Jose Mercury News, Inc. (1993) 17 Cal.App.4th 1, 15; Mikovich v. Lorain Journal Co. (1990) 497 U.S. 1, 20.

The following cases are particularly instructive. In Greenbelt Cooperative Pub. Assn. v. Bresler (1970) 398 U.S. 6, 13-14, the U.S. Supreme Court that a defendant's published statement regarding "blackmail" committed by the plaintiff was *not* defamatory because "no reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging the plaintiff with the commission of the statutory criminal offense of blackmail, ...even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, and ...there was no evidence that anyone thought that the plaintiff had been charged with a crime." Id. In Ferlauto, supra, the California Supreme Court held that defendant's calling plaintiff attorney a "loser wannabe lawyer," was *not* actionable for libel because "the average reader would deem [defendant's] comments about plaintiff as subjective expressions of opinion devoid of factual matter." See Ferlauto, supra, at 1398-1406. In James v. San Jose Mercury News, Inc. (1993) 17 Cal.App.4th 1, 27, the Court found defendant newspaper's descriptions of plaintiff defense attorney's conduct as "a common and sleazy tactic to ruin kids as witnesses," "a sad lesson in justice," and "a fishing expedition to attack the character of the kid." to be protected "imaginative expression" and "rhetorical hyperbole."

Here, every single one of the allegedly defamatory statements made by Love for which Plaintiff has brought suit constitutes "rhetorical hyperbole," "vigorous epithet[s]," "lusty and imaginative expression[s] of... contempt," and language used "in a loose, figurative sense" that has been accorded free speech protection as a statement of opinion rather than an actionable statement of fact. See Ferlauto, supra, 74 Cal.App.4th at 1401 (citing Greenbelt, supra, 398 U.S. at 14; Letter Carriers v. Austin (1974) 418 U.S. 264, 286). None of Love's statements for which Plaintiff has brought suit actually reference Plaintiff by name. See generally Plaintiff's FAC. Most of these statements do not set forth any "actual fact" that can be provably true or false. Id. There are no dates, citation records, criminal arrest or conviction references, references to news articles, references to witnesses, or any other supporting facts in these statements that could lead a reasonable person to believe any actual facts

about anyone. See generally Plaintiff's FAC. None of these statements is made by a reporter or journalist. Id. When taken in context and particularly when read together, none of these purportedly wrongful statements can be reasonably construed as stating an "actual fact" that is provably false, nor would any reasonable person reading these statements perceive them as anything more than precisely the kind of rhetorical hyperbole afforded full free speech protection by the First Amendment. Id. For this reason alone, Plaintiff cannot prevail on the merits of her claim for Libel.

Plaintiff herself implicitly acknowledges in her own FAC that these statements are *not* actionable and that no reasonable person would perceive these statements as anything more than rhetorical hyperbole and lusty and imaginative expressions of contempt. Plaintiff alleges that Love's statements were "caused by a drug induced psychosis" and/or "a warped understanding of reality." See Plaintiff's FAC at ¶ 1. How can Plaintiff claim that a reasonable person would believe as fact these purportedly defamatory statements as statements of actual fact if Plaintiff simultaneously claims that they were "caused by a drug induced psychosis" and/or "a warped understanding of reality"?

The press coverage of this suit also reflects the fact that no reasonable person would believe the statements made by Love to constitute actual statements of fact. In a story posted by Zimbio, "an interactive magazine with over 18 million readers a month," the author quoted a portion of Love's allegedly defamatory statements and then told readers not to "worry if you had trouble understanding that. It's not meant to be intelligible." See Zimbio, "Designer Sues Courtney Love Over Dirty Words" (March 27, 2009), available at http://www.zimbio.com/Dawn+Simorangkir/articles/2/Designer+Sues+Courtney+Love+Over+Dirty+Words. See **Exhibit H** to the Decl. Muller. PopCrunch, another online gossip blog, reported that "Courtney Love's grammatically-challenged online rants have landed the eccentic [sic] rocker in a Los Angeles courtroom." See PopCrunch, "Courtney Love Online Rants Lawsuit–Designer Dawn Simorangkir Sues" (March 27, 2009), available at http://www.popcrunch.com/courtney-love-online-rants-lawsuit-designer-dawn-simorangkir-sues/. See **Exhibit I** to the Decl. Muller.

b. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Of The Context of the Allegedly-Defamatory Statements.

The context of Love's purportedly defamatory statements further underscores their non-actionable and non-factual nature. The statements made were not made by a newspaper or online news columnist, nor did they appear in a news article referencing said statements or even a nationally-

published magazine, as in Milkovich v. Lorain Journal Co. (1990) 497 U.S. 1, Greenbelt Cooperative Publishing Assn, Inc. v. Bresler (1970) 398 U.S. 6, and Hustler Magazine v. Falwell (1988) 485 U.S. 46. Instead, thirty-eight of the forty-one purportedly defamatory statements were made on either MySpace or Twitter. See **Exhibit J, K,** and **L** to the Decl. Muller. Because the non-journalistic context of Love's statements alone make it extremely unlikely for a reasonable reader to perceive the statements made as actual facts, Plaintiff cannot prevail on her libel cause of action.

MySpace is a "social networking" website that "focuses on building online communities of people who share interests and/or activities, or who are interested in exploring the interests and activities of others." See Wikipedia, "MySpace" (August 18, 2009), available at http://en.wikipedia.org/wiki/Myspace; Wikipedia, "Social network service" (August 18, 2009), available at http://en.wikipedia.org/wiki/Social_network_service. See **Exhibit J** to Decl. Muller. "Twitter is a free social networking and micro-blogging service that enables its users to send and read messages known as *tweets*.... Senders... by default, allow open access." See Wikipedia, "Twitter" (August 18, 2009), available at http://en.wikipedia.org/wiki/Twitter. See **Exhibit L** to Decl. Muller. In August 2009, BBC News reported that under a new market research study, "40.5% of the messages sent via [Twitter]" were "pointless babble... of the 'I'm eating a sandwich' type.'" See BBC News, "Twitter tweets are 40% 'babble'" (August 17, 2009) available at http://news.bbc.co.uk/2/hi/technology/8204842.stm. See **Exhibit M** to Decl. Muller. According to this same study, "only 8.7% of messages could be said to have 'value' as they passed along news of interest," and the remaining portion were "conversational tweets that bounded back and forth between two users...." Id.

c. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Plaintiff Cannot Establish That Many of the Contested Statements Describe or Even Reference Plaintiff.

"[I]n defamation actions, the First Amendment... requires that the statement on which the claim is based *must specifically refer to* or be 'of or concerning' the plaintiff in some way.... The 'of and concerning' or specific reference requirement limits the right of action for injurious falsehood... denying it to whose who merely complain of nonspecific statements that they believe cause them some hurt. *To allow a plaintiff who is not identified, either expressly or by clear implication, to institute such an action poses an unjustifiable threat to society*" (emphasis added). See Blatty v. New York Times Co. (1986) 42 Cal.3d 1033, 1042-1044; see also Ferlauto, supra, 74 Cal.App.4th at 1404.

Here, the overwhelming majority of Love's allegedly-wrongful statements do not refer to or

reference Plaintiff in any manner whatsoever. None of these statements references Plaintiff as "Dawn Simorangkir" or "Dawn Younger-Smith." See Plaintiff's FAC at ¶¶ 28-31. Only *two* of the forty-one (41) statements referenced by Plaintiff in her FAC reference Plaintiff by her pseudonym "Boudoir Queen" and one of these same two statements references Plaintiff as "Dawn." Id. Only *three* additional statements could possibly be attributed to Plaintiff and only because they were purportedly posted on Plaintiff's own Etsy customer feedback website. Id. The remaining statements reference no one in particular. Id. All remaining statements were posted on Love's Twitter page and MySpace page, both of which are generally available to the public and both of which have ***nothing*** to do with Plaintiff, ***nothing*** to do with Etsy, and ***nothing*** to do with clothing in general. Id. These statements further are made in the context of various other statements that admittedly have ***nothing*** to do with Plaintiff, ***nothing*** to do with Etsy, and ***nothing*** to do with clothing in general. Id. As such, no reasonable reader would attribute the bulk of the allegedly-defamatory statements as applying to Plaintiff. For this reason alone, Plaintiff cannot prevail on her claim for Libel.

d. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Plaintiff Cannot Show With Clear and Convincing Evidence That Defendant Acted With Actual Malice.

Plaintiff will have to meet a higher evidentiary burden, that of "clear and convincing evidence," to make a prima facie claim for Libel because Plaintiff is a public figure and because the allegedly defamatory statements concern a matter of public interest. Plaintiff further will have to show with clear and convincing evidence that Love acted with "actual malice," meaning Love had serious doubts about the truth of the statements made but made them anyway. As set forth below, Plaintiff will fail to meet her heavy evidentiary burden.

The standard of evidence sufficient to establish a cause of action for libel is much stronger and more difficult for a plaintiff to overcome if plaintiff is a public figure. "[A] "public figure" plaintiff" is someone who "has undertaken some voluntary act through which he seeks to influence the resolution of the public issues involved." See Live Oak, supra, 234 Cal.App.3d at 1289 (quoting Brown v. Kelly Broadcasting Co. (1989) 48 Cal.3d 711, 744) (citing Kaufman v. Fidelity Fed. Sav. & Loan Assn. (1983) 140 Cal.App.3d 913, 920). "[T]he First Amendment limits California's libel law in various respects. When, as here, the plaintiff is a public figure, he cannot recover unless he proves by *clear and convincing evidence* that the defendant published the defamatory statement with actual malice, i.e. with 'knowledge that it was false or with reckless disregard of whether it was false or not.' Mere

negligence does not suffice. Rather, the plaintiff must demonstrate that the author 'in fact entertained serious doubts as to the truth of his publication'" (emphasis added). Masson v. New Yorker Magazine (1991) 501 U.S. 496, 510; see also Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 258.

"Even as to private-figure plaintiffs, there are now significant constitutional restrictions on the right to recover damages.... [W]hen the speech involves a matter of public concern, [plaintiff] must also prove New York Times malice, supra, 376 U.S. 254, to recover presumed or punitive damages." "The First Amendment trumps the common law presumption of falsity in defamation cases involving private-figure plaintiffs when the allegedly defamatory statements pertain to a matter of public interest." Nizam-Aldine v. City of Oakland (1996) 47 Cal.App.4th 364, 375.

"[I]ll will toward the plaintiff is not 'actual malice'" for purposes of this rule. See Live Oak Publishing Company, Inc. v. Cohagan (1991) 234 Cal.App.3d 1277, 1291-1292 (citing to McCoy v. Hearst Corp. (1986) 42 Cal.3d at p. 872). As the United States Supreme Court explained in Hustler Magazine, supra, 485 U.S. at 53, "'[d]ebate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth.'" (quoting Garrison v. Louisiana (1964) 379 U.S. 64, 73). Likewise, "[t]he failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy." See Live Oak, supra, 234 Cal.App.3d at 1292 (citing Reader's Digest, supra, 37 Cal.3d at 258).

Plaintiff cannot meet this higher evidentiary burden because Love did not make any statement with "actual malice" and did not seriously doubt the validity of anything she stated online regarding Plaintiff. See generally Love Decl. Plaintiff cannot establish with clear and convincing evidence that Love entertained serious doubts about the factual accuracy of these statements because the statements themselves contain few "actual facts" that are "provably false," as set forth in greater detail above, nor do they necessarily concern Plaintiff at all as far as the average reader is concerned. Id. To the extent that the statements *do* contain provably false facts that *are* reasonably understood as regarding Plaintiff, they are true and accurate as far as Love understood them. Id. Love had personal knowledge of some of these facts - the theft, "blackmail," breach of contract, price gouging, drug and alcohol abuse - and Plaintiff herself described other facts to Love in detail - Plaintiff's estranged son, custody battle, prostitution record, arrest warrants, assault history, criminal background, child molestation, emotional

difficulties. Id. At least some public records, particularly those having to do with Plaintiff's effective loss of custody of her son, support Love's statements as correct. See **Exhibit N** to the Decl. Muller. For these reasons, too, Plaintiff will be unable to make a prima facie claim for Libel against Love.

2. Plaintiff Cannot Establish a Probability of Prevailing on Her Second Cause of Action for Invasion of Privacy - False Light or Her Third Cause of Action for Intentional Interference with a Prospective Economic Advantage.

"[C]onstitutional protection does not depend on the label given the stated cause of action; it bars not only actions for defamation, but also claims for invasion of privacy." See Reader's Digest Assn., Inc. v. Superior Court (1984) 37 Cal.3d 244, 265. "When a false light claim is coupled with a defamation claim, ***the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action***" (emphasis added). See Eisenberg, supra, 74 Cal.App.4th at 1385, fn. 13. "Although the limitations that define the First Amendment's zone of protection for the press were established in defamation actions, they are not peculiar to such actions but ***apply to all claims whose gravamen is the alleged injurious falsehood of a statement***: '[that] constitutional protection does not depend on the label given the stated cause of action'" (emphasis added). See Blatty v. New York Times Company (1986) 42 Cal.3d 1033, 1042 (citing Reader's Digest, supra, 37 Cal.3d at 265). "If these limitations applied only to actions denominated 'defamation,' they would furnish little if any protection to free-speech and free-press values: plaintiffs suing press defendants might simply affix a label other than 'defamation' to their injurious falsehood claims - a task that appears easy to accomplish as a general matter." See Blatty, supra, 42 Cal.3d at 1044-1045 (citing Reader's Digest, supra, 37 Cal.3d at 265).

Here, Plaintiff's causes of action for Invasion of Privacy - False Light and for Intentional Interference with Prospective Economic Advantage are identical for all intents and purposes to Plaintiff's cause of action for Libel. Because Plaintiff will be unable to make a prima facie claim for Libel for the reasons set forth above, Plaintiff will similarly be unable to make either additional cause of action for Invasion of Privacy - False Light or for Intentional Interference with Prospective Economic Relations.

III. CONCLUSION

For the foregoing reasons, Defendant Love respectfully requests this Court to grant her Special Motion to Strike and dismiss Plaintiff's First Amended Complaint.

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DATED: August 19, 2009

KEITH A. FINK & ASSOCIATES

By: _____

Keith A. Fink
Olaf J. Muller
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Hey there! CDCemergency is using Twitter.

Twitter is a free service that lets you keep in touch with people through the exchange of quick, frequent answers to one simple question: What's happening? Join today to start receiving CDCemergency's tweets.

CDCemergency

1. RT @CDCFlu: Non-Safety-Related Voluntary Recall of Certain Lots of Sanofi Pasteur H1N1 Pediatric Vaccine in Pre-Filled Syringes: http:// ... 11:20 AM Dec 15th from web
2. RT @CDCFlu Watch the CDC Director's live press brief on 2009 #H1N1 vaccine distribution. Today (12/10) @ 1:00p.m. EST on flu.gov/live. 6:44 AM Dec 10th from web
3. @twittermoms CDC reports salmonella outbreak from water frogs. Please RT messages @CDCemergency to moms. Learn more: http://is.gd/5hb1x 1:04 PM Dec 9th from web
4. Kids <5 yrs are at risk 4 serious salmonellosis

EXHIBIT
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infection & should avoid contact w/ water frogs & their habitats. http://is.gd/5g9Am 10:44 AM Dec 8th from web

5. Avoid Salmonella infection from water frogs. Wash hands with soap and water after contact. http://is.gd/5g88m 10:13 AM Dec 8th from web
6. Watch for signs of Salmonella infection: diarrhea, fever, & abdominal cramps. If sick call your doctor. http://is.gd/5fmdH. 4:09 PM Dec 7th from web
7. CDC reporting outbreak of Salmonella infections associated with contact with water frogs. Learn more: http://is.gd/5flaR 2:42 PM Dec 7th from web
8. RT @FluGov: Be Advised of New Spam Myth in Circulation. CDC has NOT implemented a vaccination program requiring registration. http://bit ... 7:02 AM Dec 2nd from web
9. RT @CDCFlu Watch the CDC Director's live press brief on 2009 #H1N1 flu and vaccine distribution. Today (12/1) @ 1:00p.m. EST on flu.gov 7:50 AM Dec 1st from web
10. RT @CDCFlu: Watch press brief on 2009 #H1N1 flu & vaccine distribution led by Dr. Anne Schuchat. Today (11/25) @ 12:00 noon EST on flu.g ... 6:27 AM Nov 25th from web
11. RT @CDCFlu Watch press brief on 2009 #H1N1 flu & vaccine distribution led by Dr. Anne Schuchat. Today (11/20) @ 12:00 noon EST on flu.gov 6:32 AM Nov 20th from web
12. RT @FDA_Drug_Info Q&A for Health Care Providers: Renal Dosing and Administration Recommendations for Peramivir IV. http://bit.ly/P_IV 6:56 AM Nov 15th from web
13. RT @CDCFlu CDC #H1N1 Press Brief today (11/12) - SPEAKER CHANGE – led by Dr. Anne Schuchat at 1:30PM EST. Watch live on flu.gov. 8:58 AM Nov 12th from web
14. RT @CDCFlu Watch the CDC Director's live press brief on 2009 #H1N1 flu and vaccine distribution. Today (11/12) @ 1:30 p.m. EST on flu.gov. 7:23 AM Nov 12th from web
15. RT @FDA_Drug_Info Updated Emergency Use of Tamiflu in Infants Less than 1 Year of Age. http://bit.ly/TFL_1 1:36 PM Nov 6th from web
16. RT @CDCFlu H1N1 Flu Vaccine -- Why the Delay? Watch a new CDC video to find out how flu vaccines are made: http://is.gd/4OVFq 8:43 AM Nov 6th from web
17. RT @CDCFlu Watch press brief on 2009

- *Verified Account*
- *Name CDC Emergency*
- *Location Atlanta, GA*
- *Web http://emergency....*
- *Bio CDC Emergency Preparedness and Response: increasing the nation's ability to prepare for and respond to public health emergencies.*

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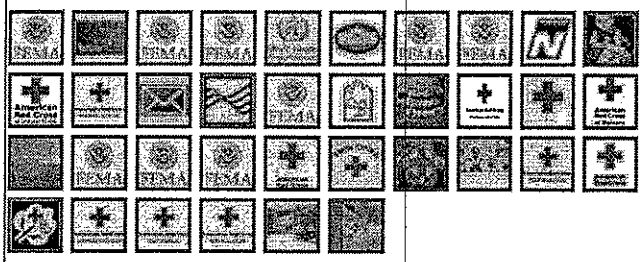

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