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LYNNE SPEARS

FILED
Los Angeles Superior Court

JUN 15 2009

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 SAM LUTFI,

12 Plaintiff,

13 vs.

14 LYNNE IRENE SPEARS, JAMES PARNELL)
SPEARS, BRITNEY JEAN SPEARS, and)
15 DOES 1 through 25, inclusive.)

16 Defendants.)

CASE NO.: BC 406904

Assigned for all purposes to:
The Honorable Zaven V. Sinanian

DEFENDANT LYNNE SPEARS' NOTICE
OF MOTION & SPECIAL MOTION TO
STRIKE PURSUANT TO ANTI-SLAPP
STATUTE; MEMORANDUM OF POINTS
& AUTHORITIES & SUPPORTING
DECLARATIONS OF LYNNE SPEARS
AND CHIP MACGERGOR

[Cal. Civ. Proc. § 425.16]

Request for Judicial Notice filed concurrently
herewith; [Proposed] Order lodged concurrently
herewith

Hearing Date: July 14, 2009
Hearing Time: 8:30 a.m.
Hearing Place: Dept. 23

Complaint Filed: Feb. 3, 2009
FSC: March 4, 2010
Trial Date: March 23, 2010

CITY/CASE: 06-406904-LEN/DEF#:
RECEIPT #: CCM65980110
DATE PAID: 06/15/09 04:04:14 PM
PAYMENT: \$350.00 0310
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Tantalo & Adler LLP
9300 Wilshire Blvd. Suite 550
Beverly Hills, CA 90212

1 **TO ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on July 14, 2009, at 8:30 a.m. or as soon thereafter as the
3 matter may be heard, in Department 23 of the above-entitled Court, located at the Stanley Mosk
4 Courthouse, 111 North Hill Street, Los Angeles, California 90012, defendant Lynne Irene Spears
5 ("Lynne") will and hereby does move this Court, pursuant to California Code of Civil Procedure
6 Section 425.16, for an Order striking the First, Second, and Fourth causes of action of plaintiff's
7 First Amended Complaint asserted against Lynne and the related demands for damages and other
8 relief, dismissing plaintiff's action against Lynne with prejudice, and entering judgment in Lynne's
9 favor.

10 This Motion is made on the ground that plaintiff's complaint is a meritless "SLAPP" lawsuit
11 arising out of the exercise of Lynne's constitutionally-protected freedom of speech. Each of
12 plaintiff's three (3) purported causes of action against Lynne falls within the ambit of California
13 Code of Civil Procedure Section 425.16 (the anti-SLAPP statute) because the causes of action
14 (i) arise out of written statements made by Lynne in a public forum and/or Lynne's exercise of her
15 right of free speech, and (ii) concern an issue of public interest. Code Civ. Proc. § 425.16(e)(3),(4).
16 Plaintiff's First, Second, and Fourth causes of action against Lynne must be stricken, and the entire
17 action against Lynne therefore dismissed with prejudice, because plaintiff either has not pleaded a
18 legally-cognizable claim and/or cannot demonstrate a reasonable probability of success on the merits
19 of each required element of any of his claims against Lynne. Cal. Code Civ. Proc. § 425.16(b)(1).
20 This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points &
21 Authorities, the attached Declarations of Lynne Spears and Chip MacGregor, the concurrently-filed
22 Request for Judicial Notice, the complete files and records in this action, and such further evidence
23 and argument as may be presented prior to or at hearing on this matter.

24 DATED: June 15, 2009

Respectfully Submitted,

25 **TANTALO & ADLER LLP**

26
27 By: 
Michael S. Adler

Attorneys for defendant
LYNNE SPEARS

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I. INTRODUCTION

This case arises from the high volume of publicity generated by plaintiff's involvement in – and subsequent judicially-ordered exclusion from – the life of pop star Britney Spears (“Britney”). Plaintiff Sam Lutfi (“Lutfi”) was an associate of Britney Spears before Britney’s well-publicized conservatorship. In February of 2008, this Court’s Probate Department handling Britney’s conservatorship issued a temporary restraining order prohibiting Lutfi from communicating with Britney in any way or approaching within 250 yards of Britney, her children, her parents, or their respective homes (the “TRO”).

The TRO was based in large part on a declaration from Britney’s mother, Defendant Lynne Irene Spears (“Lynne”), filed in the conservatorship action. Lynne’s declaration recounted various facts about Lutfi’s relationship with Britney, including: (a) Lutfi’s claim that he had ground up prescription drugs such as Risperdol and Seroquel and put them in Britney’s food; (b) Lutfi’s claim that he had disposed of all of Britney’s cell phone chargers and made her house phones unworkable; and (c) Lutfi’s request that Lynne tell Britney that her then-boyfriend was gay.

On February 5, 2008, Lynne’s declaration became public and the statements in the declaration were widely reported throughout the United States. *The Los Angeles Times*, the *Chicago Tribune*, the *Boston Globe*, and the *New York Post* (among many, many newspapers) reported on these statements, as did countless magazines (such as *People*) and national television programs (such as coverage on MSNBC and CNN). Articles about the declaration – and the declaration itself – appeared on myriad internet sites such as the ABC News website, the CBS News website, TMZ.com, the People Magazine website, and so forth. There cannot be any question but that tens of millions (if not hundreds of millions) of people learned about these facts in February of 2008.

More than six months later, Lynne’s memoir was published. *Through the Storm* recounts Lynne’s life as a middle-class, small-town mom whose family got caught up in the tornado of fame when her two young daughters became international celebrities. As part of her life story, *Through the Storm* recounts (often word for word) the same facts to which Lynne testified in the TRO declaration, and which previously had received such world-wide coverage. The book did not sell particularly well, perhaps because there was little news in the book.

1 In this action, Lutfi claims that he has been defamed by Lynne. Recognizing that he cannot
2 sue Lynne or the court for the world-wide publicity he received in February of 2008 in connection
3 with the TRO because judicial proceedings are absolutely privileged, Lutfi styles his complaint as if
4 his damage comes from the publication of the same facts in Lynne's later-published memoir. Lutfi
5 asserts that he has been the subject of ridicule in magazine headlines, television shows, and internet
6 gossip sites, and he contends that the publication of Lynne's memoir in the fall of 2008 is the
7 proximate cause of such ridicule. Notably, however, the only specific facts from Lynne's memoir
8 that Lutfi has identified as being allegedly defamatory are those contained in Lynne's declaration
9 filed in this Court and widely-reported in connection with the February 2008 TRO. The evidence
10 will show that the book could not have been the cause of any harm to Lutfi, and that his reputation
11 was already widely established well in advance of the book.

12 California's anti-SLAPP statute protects the exercise of an individual's constitutional right to
13 freedom of speech. To apply, California Code of Civil Procedure 425.16 first requires that the
14 defendant establish that a claim arises from a defendant's protected activity. Here, there is no
15 question that Lutfi's claim are based on Lynne's exercise of her free speech rights (i.e. publication)
16 and that the memoir addressed an issue of interest to the public. As such, the claims arise from a
17 protected activity. *Nygaard, Inc. v. Uusi Kertula*, 159 Cal.App.4th 1027, 1042 (2008) (holding that
18 anti-SLAPP applies to magazine article on any issue in which the public is interested, even "tabloid"
19 issues.) Once the defendant meets the burden of showing the claims arise from protected activity,
20 the burden shifts to the plaintiff to show a probability of success on his claims at this early, pleading
21 stage. Civ. Proc. Code § 425.16. To do so, Lutfi must show that he has pled a legally sufficient
22 claim and produce admissible evidence sufficient to sustain a favorable judgment. *Nygaard*, 159
23 Cal.App.4th at 1044 (2008). In other words, to defeat this motion Lutfi must introduce admissible
24 evidence on each element of each of his claims against Lynn sufficient to establish a *prima facie*
25 case on each cause of action.

26 Lutfi has brought three purported causes of action against Lynne: one for "defamation," one
27 for "libel," and one for intentional infliction of emotional distress. Lutfi's "defamation" claim is
28 based on various characterizations of Lutfi as a "fake," a "Svengali," "a predator," "a gatekeeper,"

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1 and "the General." [First Amended Complaint ("FAC") ¶ 37.] These characterizations are mere
2 statements of opinion, and as such are protected speech as a matter of law and therefore not
3 actionable. *Nygaard*, 159 Cal.App.4th at 1048-49. Lutfi's "defamation" claim fails as a matter of law
4 and is therefore legally insufficient within the meaning of the statute. Lutfi's second cause of action
5 must be struck.

6 Lutfi's separate "libel" claim is based on six specific statements about Lutfi, each of which
7 first was published in Lynne's original, widely-reported declaration and only repeated later in her
8 memoir. As an initial matter, Lutfi will bear the burden of proving that each element of a libel
9 claim, starting with proof that each statement was false. Lynne already has testified under oath that
10 those statements were true. In addition, if his causes of action are to survive this motion to strike,
11 Lutfi also must show that it was the publication of the statements in the book that allegedly caused
12 him his supposed harm, given the overall context in which those statements were made. In light of
13 the massive world-wide publicity that arose out of Britney's conservatorship and the TRO in
14 February of 2008, Lutfi cannot demonstrate any probability that the mere repetition of those same
15 statements just six months later, in a relatively unsuccessful book, caused him any additional harm.

16 Finally, Lutfi's claim for intentional infliction of emotional distress merely incorporates his
17 prior allegations against Lynne for "defamation" and "libel." Since the defamation claim cannot
18 stand as a matter of law, and since the libel claim must fall under the evidence, this claim also must
19 be struck. As a result, all three of Lutfi's claims against Lynne should be stricken, in their entirety
20 and judgment should be entered in Lynne's favor.

21 **II. FACTUAL BACKGROUND**

22 In considering a motion to strike under Section 425.16, the Court considers the pleadings, the
23 evidentiary submissions from both sides, and matters subject to judicial notice. Civ. Proc. Code §
24 425.16.

25 **A. ON FEBRUARY 1, 2008, THE PROBATE DEPARTMENT OF THE LOS ANGELES
26 SUPERIOR COURT ISSUED A TEMPORARY RESTRAINING ORDER AGAINST
PLAINTIFF OSMA ("SAM") LUTFI.**

27 On February 1, 2008, the Probate Department of this Court placed Britney Spears under a
28 temporary conservatorship in the case *In re the Conservatorship of the Person of Britney Jean*

1 *Spears*, matter number BP 108870. [Lynne Spears' Request for Judicial Notice ("RJN") Fact 1 and
2 Ex. 1.] In connection therewith, the Probate Department issued a temporary restraining order against
3 Osama ("Sam") Lutfi on the same date. [RJN Fact 2 and Ex.2.] In the several months leading up to
4 the conservatorship, Lutfi had been involved with much of Britney's public and private life. [RJN
5 Fact 4 and Ex. 4; January 31, 2008 Declaration of Lynne Spears ("Spears Dec.") ¶ 16 (describing
6 Lutfi's desire to be publicly photographed with Britney).] The TRO restrained Lutfi from directly or
7 indirectly attempting to contact Britney Spears. *Id.* The TRO likewise required Lutfi to stay at least
8 250 yards away from Britney as well as the homes of Britney, her children, her siblings, and her
9 parents. *Id.*

10 **B. LYNNE'S DECLARATION FILED WITH THE COURT IN SUPPORT OF THE TRO**
11 **IDENTIFIED THE SAME FACTS ABOUT WHICH LUTFI NOW COMPLAINS.**

12 As part of the TRO application on behalf of her daughter, the Probate Department of this
13 Court considered a six page declaration from Lynne based on her observations of Lutfi. [RJN Fact 3
14 and Ex. 3.] In particular, Lynne's declaration attested to the following facts:

- 15 (a) "Sam [Lutfi] told [Lynne's friend] and me that he grinds up Britney's pills,
16 which were on the counter and included Risperdol and Seroquel. He told us
17 that he puts them in her food that that was the reason she had been quiet
18 for the last three days (she had been sleeping.) He told us that the doctor who
19 is treating her now is trying to get her into a sleep-induced coma so that they
20 could then give her drugs to heal her brain."
21 (b) "Although Britney has several cell phones, he told us that he had disposed of
22 all of the phone chargers and had made the house phones unworkable."
23 (c) "Sam then said to tell Britney that Adnan [her then-boyfriend] was gay."
24 (d) "Adnan has called me and told me he's worried about Britney. He told me
25 that Sam hides the phones and tells her he has lost them. He also hides her
26 dog, London. She looks for him all over the house crying and then Sam
27 brings out the dog from the hiding place and acts like her savior."
28 (e) "I understood from the conversation that Sam had disabled all of Britney's
cars (she has several at her residence)."

[RJN Fact 3 and Ex. 3 at Paragraphs 13, 9, 10, 24 and 4.]

26 **C. THE CONTENTS OF LYNNE'S DECLARATION WERE REPORTED TO TENS OF**
27 **MILLIONS (IF NOT HUNDREDS OF MILLIONS) OF PEOPLE MONTHS BEFORE**
28 **LYNNE'S BOOK WAS PUBLISHED, AND US WEEKLY EVEN REPORTED THAT**
LUTFI HAD ADMITTED GIVING BRITNEY DRUGS.

On February 5, 2008, Lynne's declaration became public. [RJN Fact 5 and Ex. 5.] The

1 statements in the declaration were widely reported around the country (and the globe). [*Id.*] Among
2 countless other news and tabloid outlets, the facts identified above were reported in *The Los Angeles*
3 *Times*, the *New York Daily News*, the *New York Post*, *Newsday*, the *Boston Globe*, the *Chicago Sun*
4 *Times*, the *Chicago Tribune*, and the *Seattle Times*, as well as in popular news magazines such as
5 *People*. [*Id.*] The facts set forth in Lynne's declaration were also widely reported on television,
6 including MSNBC and CNN's "Showbiz Tonight" segment. [*Id.*] Finally, of course, the facts were
7 reported on a multitude of news sites on the internet. [RJN Fact 6 and Ex. 6.]

8 Lynne's declaration itself was also widely available on the internet, being posted in full on
9 news sites like ABCnews.com and the popular websites TMZ.com and TheSmokingGun.com,
10 among numerous other places. [RJN Fact 7 and Ex. 7.]

11 Moreover, as part of the massive wave of publicity about these facts, *US Weekly* even
12 reported that Lutfi had admitted giving Britney drugs. [RJN Fact 8 and Ex. 8.]

13 **D. ABOUT SIX MONTHS LATER, LYNNE'S BOOK WAS PUBLISHED WITH**
14 **LIMITED SUCCESS, REFERENCING THE SAME FACTS OF WHICH LUTFI**
15 **NOW COMPLAINS.**

16 Lynne's memoir, *Through the Storm*, was released to the public on or about September 16,
17 2008, more than six months after Lynne's declaration became public. [Declaration of Chip
18 MacGregor ("MacGregor Dec.") ¶ 4.] Lynne's publishers printed over one hundred and sixty five
19 thousand copies of the book with the hopes that it would sell more. [*Id.* ¶¶ 6-7 and Ex. 1.]
20 Unfortunately, the book was not a great success. [*Id.*] As of March 31, 2009, the book had sold
21 approximately 65,000 copies; only slightly more than a third of the total number of printed copies.
22 [*Id.*]

23 As part of her life story in the book, Lynne recounted the same information that she had
24 included in the declaration. In particular, Lynne reported that:

- 25 (a) "Sam told [Lynne's friend] and me that he grinds up Britney's pills, which
26 were on the counter and included Risperdol and Seroquel, and puts them in
27 her food. He said that was the reason she had been quiet for the last three
28 days. She had been drugged and asleep. He said that her doctor was trying to
get her into a sleep-induced coma so that they could then give her other drugs
to treat her."
- (b) "[Lutfi] told us that he threw away all of Britney's phone chargers and
disabled the house phones by cutting the wires."

- 1 (c) "He then told us to tell Britney that Adnan is gay."
2 (d) "Adnan told me that Sam also would hide Britney's dog, London. She would
3 look all over the house, crying, and then Sam would bring out the dog and act
4 like some sort of savior."
5 (e) "Adnan told me that Sam hid Britney's cell phones and told her that he lost
6 them."
7 (f) "[Lutfi] also disabled several of Britney's cars so she couldn't leave
8 unattended."

9 [Through the Storm, pages 176-77, attached to Plaintiff's FAC, and FAC ¶¶ 27-29.]

10 In addition, Lynne recounted – among other things – that Lutfi had said directly to her: "If
11 you try to get rid of me, she'll be dead and I'll piss on her grave." [Through the Storm, Page 176-77,
12 attached to Plaintiff's FAC.]

13 **E. LUTFI SUES LYNNE, ALLEGING THAT HE HAS BEEN LIBELED AND**
14 **DEFAMED BY THE BOOK EVEN THOUGH THOSE SAME FACTS HAD BEEN**
15 **WIDELY PUBLISHED MONTHS EARLIER.**

16 In the FAC, Lutfi alleges that the first six facts identified above from the book are false and
17 libelous and that he has been harmed as a result of the publication of those facts in the book. [FAC
18 ¶¶ 27-34.] Lutfi also alleges that he has been defamed by the book and its reference to him as a
19 "fake," a "Svengali," "a predator," "a gatekeeper" and "the General." [Id. ¶¶ 37-40.] Finally, Lutfi
20 alleges that Lynne's actions in allegedly libeling and defaming him constitute intentional infliction
21 of emotional distress. [Id. ¶ 53.]

22 Lutfi asserts that the book has received significant amount of media attention on public
23 television and internet sites. [FAC ¶¶ 33, 43.] Lutfi likewise asserts that "since the publication of
24 the Book," he has allegedly been "subjected to unfathomable amounts of ridicule and public scorn.
25 Lutfi is constantly bombarded by magazine headlines, television shows, and internet gossip sites that
26 have propagated Lynne's [alleged] lies and fabrications. Lutfi can no longer find work as a
27 counselor of at-risk teens. Lutfi has received numerous death threats from overzealous fans and, as
28 such, is no longer able to venture into the public without being harassed and ridiculed." [FAC ¶¶ 30,
40.] Lutfi thus attempts to blame his poor reputation on the book without mention of the extensive
national publicity that pre-dated the book by more than six months.

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III. LEGAL ANALYSIS

Code of Civil Procedure section 425.16 is California's anti-SLAPP law, enacted to protect defendants from inappropriate lawsuits arising out of a defendant's acts "in furtherance of the right of petition or free speech." Civ. Proc. Code § 425.16(b)(1). Section 425.16 requires that a plaintiff's claims subject to the anti-SLAPP statute be stricken, "unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." *Id.* The anti-SLAPP statute thus provides a mechanism to screen out harassing lawsuits at an early stage. *Kilber v. Northern Inyo County Local Hosp. Dist.*, 39 Cal.4th 192, 196-97 (2006); *Rosenaur v. Scherer*, 88 Cal.App.4th 260, 273 (2001).

Evaluation of an anti-SLAPP motion requires a two-step process. *Nygaard, Inc. v. Uusi Kertula*, 159 Cal.App.4th 1027, 1035 (2008). First, the court must determine "whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity." *Id.* (quoting *City of Cotati v. Cashman*, 29 Cal.4th 69, 76 (2002)). Then, if the court finds that the cause of action arises from protected activity, the burden shifts to the plaintiff to establish both a legally sufficient complaint and a showing of facts sufficient to sustain a judgment. *Kronemyer v. Internet Movie Data Base, Inc.*, 150 Cal.App.4th 941, 951 (2007); *Equilon Enterps., LLC v. Consumer Cause, Inc.*, 29 Cal.4th 53, 67 (2002). In considering the pleadings and the evidentiary submission of both the plaintiff and the defendant, the court will not weigh the credibility of competing evidence, but the Court must grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim. C.C.P. § 425.16(b)(2); *Plumley v. Mockett*, 164 Cal.App.4th 1031, 1047 (2008). If plaintiff fails to meet his burden, the Court must dismiss the action. *Beilenson v. Sup. Ct.*, 44 Cal.App.4th 944, 953 (1996).

A. **LUTFI'S CLAIMS ARISE OUT OF FIRST AMENDMENT-PROTECTED ACTIVITY, TRIGGERING THE ANTI-SLAPP STATUTE'S PROTECTIONS.**

Under California's anti-SLAPP statute, "protected activity" is any act in furtherance of a person's right of free speech under either the United States or California Constitution, in connection with any issue of public interest. Civ. Proc. Code § 425.16(b)(1) and (e). For purposes of the anti-SLAPP statute, "protected activity" includes "written or oral statement[s] or writing[s] made in a

1 place open to the public or in a public forum in connection with an issue of public interest.” *Nygaard*,
2 159 Cal.App.4th at 1035 (quoting Civ. Proc. Code § 425.16(e)(3) (emphasis added). “Protected
3 activity” also includes any other conduct in furtherance of an exercise of the constitutional right of
4 free speech in connection with a public issue or an issue of public interest. Civ. Proc. Code §
5 425.16(e)(4).

6 **1. Lynne’s Memoir Constitutes a “Public Forum” Within the Meaning of the Anti-**
7 **SLAPP Statute, And Regardless Lynne’s Memoir Was an Exercise of Her Free**
8 **Speech Rights.**

9 Publication of a book of general interest qualifies as a public forum for the purposes of the
10 anti-SLAPP statute. As the Court of Appeals observed last year in *Nygaard*, the courts are required to
11 broadly construe the concept of “public forum.” *Nygaard*, 159 Cal.App.4th at 1038; *see generally* Civ.
12 Proc. Code §425.16(a) (“This section shall be construed broadly.”); *Equilon Enterps.*, 29 Cal.4th at
13 59-60 (recognizing legislative mandate to construe anti-SLAPP protections broadly). Indeed,
14 *Nygaard* expressly held that newspapers and magazines are public forums because they “can be
15 purchased and read by members of the public.” *Id.* at 1039; *see also Barrett v. Rosenthal*, 40 Cal.4th
16 33, 41 n.4 (2006); *Wilbanks v. Wolk*, 121 Cal.App.4th 883, 895 (2004) (postings on websites are a
“public forum” for anti-SLAPP purposes.).

17 It naturally follows that just as magazines and newspapers are public forums, so too are
18 books of general interest which can be “purchased and read by members of the public.” *See*
19 *generally Nygaard*, 159 Cal.App.4th at 1039; *see also Annette F. v. Sharon S.*, 119 Cal.App.4th 1146,
20 1161 (2004) (explaining that a publication is within the protections of anti-SLAPP statute if
21 discusses public issues and is distributed to a large and interested community); *Sipple v. Foundation*
22 *for Nat’l Progress*, 71 Cal.App.4th 226, 238 (1999) (magazine within protections of anti-SLAPP);
23 *Dora v. Frontline Video, Inc.* 15 Cal.App.4th 536, 544-46 (1993) (documentary entitled to protection
24 under anti-SLAPP); *M.G. v. Time Warner, Inc.*, 89 Cal.App.4th 623, 629 (2001) (same).

25 At any rate, even if the publication of the book did not qualify as a “public forum” within the
26 meaning of subsection (e)(3) (and it does), the publication of the book certainly is an exercise of the
27 right of free speech under the United States and California Constitutions pursuant to the “catch-all”
28 provision of subsection (e)(4). *See generally Taus v. Lufius*, 40 Cal.4th 683, 713 (2007) (finding that

1 there was “no question” that publication of articles was activity in furtherance of defendant’s
2 exercise of free speech.) Indeed, the right of publication of written materials is one of the
3 fundamental rights protected by the right of free speech. *See e.g. Bantam Books, Inc. v. Sullivan,*
4 372 U.S. 58, 61, 66-67 (1963) (rejecting opinions on books from state commission on morality as
5 violating free speech rights); *Joseph Burstyn, Inc. v. Wilson,* 343 U.S. 495, 501-02 (1952) (holding
6 that motion pictures, like books, magazines, and newspapers, are protected by First Amendment).

7 **2. Lynn’s Memoir Addresses Issues Of Public Concern.**

8 Finally, there can be no reasonable dispute that Lynn’s memoir – and the statements in it
9 with which Lutfi takes issue – address issues of public interest within the meaning of the anti-
10 SLAPP statute. As the Court of Appeals held last year in *Nygaard*, an “issue of public interest” is
11 “any issue in which the public is interested.” *Nygaard*, 159 Cal.App.4th at 1042 (emphasis in the
12 original). *Nygaard* went on to explain that “the issue need not be ‘significant’ to be protected by the
13 anti-SLAPP statute – it is enough that it is one in which the public takes an interest.” *Id.* As
14 evidenced by the widespread news coverage, it is abundantly clear that the Lutfi’s conduct vis-à-vis
15 Britney is an issue in which the public took a keen interest.

16 The anti-SLAPP statute clearly applies to Lutfi’s claims against Lynne. Accordingly,
17 pursuant to the anti-SLAPP statute the burden now shifts to Lutfi to establish that his claims are
18 legally cognizable and supported by sufficient evidence to support a judgment.

19 **B. LUTFI CANNOT ESTABLISH A PRIMA FACIE CASE AS TO ANY OF HIS**
20 **CAUSES OF ACTION AGAINST LYNNE.**

21 **1. Lutfi’s “Defamation” Claim Fails As A Matter of Law Because Statements of**
22 **Opinion Are Protected and Not Actionable.**

23 Lutfi’s second purported cause of action for “defamation” alleges that Lynne’s book contains
24 various characterizations of him that are “pejorative,” in referring to Lutfi as a “fake,” a “Svengali,”
25 “a predator,” “a gatekeeper,” and “the General.” [FAC ¶ 37.] Lutfi likewise contends that “Lynne
26 accuses [him] of using paparazzi as his ‘foot soldiers’ and ‘henchmen.’” [FAC ¶38.] Finally, Lutfi
27 alleges generically that Lynne “indirectly accuses [him] of conduct that is despicable, dishonest,
28 improper, immoral and potentially criminal” but provides no specific details. [FAC ¶39.]

It is well-established that there are “recognized constitutional limits on the type of speech

1 which may be the subject of state [law] defamation actions.” *Rosenauro v. Scherer*, 88 Cal.App.4th
2 260, 279 (2001) (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16 (1990)). In particular, the
3 United States Supreme Court has made it clear that there is First Amendment protection for any
4 statement that does not recite an actual specific fact about an individual, as opposed to mere opinion.
5 *Id.* Opinions are protected and privileged, and not actionable. *Id.*

6 As a result, to establish a claim for common law defamation, a plaintiff must identify specific
7 facts which are provably false. *Gilbert v. Sykes*, 147 Cal.App.4th 13, 27 (2007) (citing *Milkovich*,
8 497 at 20). Put differently, ‘rhetorical hyperbole,’ ‘vigorous epithet[s],’ ‘lusty and imaginative
9 expression[s] of . . . contempt,’ and language used ‘in a loose figurative sense’ have all been
10 accorded constitutional protection” and are not actionable. *Id.* Where there are no verifiable facts,
11 the statement is “clearly protected” under the First Amendment even if it reflects a statement of
12 anger or disgust. *Moyer v. Amador Valley J. Union High School Dist.*, 255 Cal.App.3d 720, 725-26
13 (1990). Likewise, characterizations of a plaintiff are not actionable, however emphatic or
14 descriptive. *Id.*; see also *Morrow v. Los Angeles Unified Sch. Dist.*, 149 Cal.App.4th 1424, 1443-44
15 (2007); *Miller v. Bakerfield News-Bulletin, Inc.*, 44 Cal.App.3d 899, 902-03 (1975).

16 There are absolutely no allegations, whatsoever, of any false statements of specific fact
17 included in Lutfi’s second purported cause of action for defamation. All of the statements that Lutfi
18 has identified as allegedly “defamatory” in the second cause of action are statements of opinion by
19 Lynne, and therefore protected under the First Amendment of the United States Constitution.
20 *Nygaard*, 159 Cal.App.4th at 1052; *Morrow*, 149 Cal.App.4th at 1444. Lutfi’s second purported cause
21 of action for “defamation” therefore must be struck from the FAC.

22 **2. Lutfi Cannot Establish A Probability Of Success On His “Libel” Claim Because**
23 **He Cannot Carry His Burden Of Proof.**

24 Under California law, a cause of action for libel requires a statement of fact that is (a)
25 intentional, (b) false, and (c) unprivileged. Cal. Civ. Code § 45. Moreover, Lutfi became
26 voluntarily and publically involved with Britney Spears before the publication of this book, and
27 therefore Lutfi is *at least* a limited purpose (or “vortex”) public figure for purposes of his defamation
28 and libel claims. *Annette F. v. Sharon S.*, 119 Cal.App.4th 1146, 1163 (2004); see generally RJN
Facts 4-8 and Exs. 4-8. As such, Lutfi bears the burden of proof of falsity of the statements in this

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1 action as well as being required to prove malice on the part of Lynne. *Philadelphia Newspapers,*
2 *Inc. v. Hepps*, 475 U.S. 767, 775-76 (1986) *Christian Research Institute v. Alnor*, 148 Cal.App. 4th
3 71, 81 (2007). Moreover, as such a public figure, Lutfi is subject to a heightened burden of proof:
4 he must prove falsity by clear and convincing evidence. *Annette F.*, 119 Cal. App.4th at 1166;
5 *Gilbert v. Sykes*, 147 Cal.App.4th 13, 26 (2007).¹ The heightened standard of proof does not apply
6 only at trial; when faced with an anti-SLAPP motion, a plaintiff who will bear a burden of clear and
7 convincing evidence at trial must not only submit evidence tending to establish the truth of the
8 matter, but sufficient to establish it to the clear and convincing requirement. *Christian Research*
9 *Institute*, 148 Cal.App. 4th at 84.

10 As an initial matter, Lynne testified to the truth of the six statements at issue less than three
11 days after the statements were made. [January 31, 2008 Declaration of Lynne Spears (“Spears
12 Dec.”) ¶¶ 4, 9, 10, 13, 24.] Notably, Lutfi’s complaint is not verified, and the evidence will show
13 that Lynne’s statements were in fact true. A plaintiff cannot sue for libel about statements that are
14 true. *Gilbert*, 147 Cal.App.4th at 28 . Because Lutfi must prove the falsity of the statements as a
15 threshold matter and because Lynne’s statements were true, Lutfi’s “libel” claim must be stricken.
16 *Id.*

17 In addition, however, Lutfi’s claim must also fail because the evidence shows that he was not
18 harmed by Lynne’s statements in the book. First, of course, it is a matter of black-letter law that
19 Lutfi cannot claim harm for Lynne’s statements in her January 31, 2008 declaration to the probate
20 department of this Court that resulted in the TRO. Even if the statements were not true (and they
21 are), the litigation privilege provides that statements made in a court proceeding are absolutely
22 privileged. Civ. Code § 47(b); *Jacob B. v. County of Shasta*, 40 Cal.4th 948, 955 (2007) (Litigation
23 privilege is “absolute and applies regardless of [alleged] malice.”). Moreover, the subsequent

24 ¹ The Fourth District Court of Appeals disagreed with the holdings of *Annette F.* and *Gilbert* in
25 *Christian Research Institute* on whether the plaintiff need prove falsity with clear and convincing
26 evidence. *Christian Research Institute*, 148 Cal.App.4th at 81. Nevertheless, the result in that
27 case was the same inasmuch as *Christian Research Institute* noted that the plaintiff had to
28 demonstrate evidence to prove malice by clear and convincing evidence and found the plaintiff
did not. *Id.*, 86-87; *see generally Gomas v. Fried*, 136 Cal.App.3d 924, 934 (1982) (actual malice
never presumed and must be proven by clear and convincing evidence). The same result will
apply in this case whether the question is of falsity or malice: either way, Lutfi cannot
demonstrate at all, much less by clear and convincing evidence, that Lynne made intentionally
false statements since she obviously believed in the truth of a statement she made under oath.

1 publication by the news media of such statements made in court likewise cannot give rise to a claim.
2 Civ. Code §§ 47(b),(d); *Paterno v. Superior Court*, 163 Cal.App.4th 1342, 1354 (2008) (reports of
3 statements from judicial proceedings themselves are absolutely privileged.)

4 As such, the question is whether Lutfi has been harmed by the publication of Lynne's
5 statements in the book, even if those statements were false (and they were not). Lutfi argues that
6 Lynne's statements are "libel *per se*" and presumably therefore asserts that he does not have to plead
7 and prove specific economic damages. *See generally* Civil Code §§ 45a, 48a. Lutfi can be expected
8 to argue that general damage to his reputation is typically presumed in the case of "libel *per se*,"
9 even without affirmative evidence of damage to his reputation. *Allard v. Church of Scientology*, 58
10 Cal.App.3d 439, 450 (1976) (noting that damages may be presumed as a matter of law when claims
11 are "libelous per se").

12 However, even if Lynne's statements constitute "libel per se," as a matter of United States
13 Supreme Court law, Lutfi would be required to prove actual damages and could not rely on any
14 presumption of harm because the matter involved an issue of public interest. *Gertz v. Welch*, 418
15 U.S. 323, 349 (1974).²

16 Moreover, in this instance, the Court may take judicial notice of evidence that should
17 overcome any presumption because it affirmatively demonstrates that Lynne's statements did
18 nothing to change Lutfi's standing in the public eye. In other words, Lutfi was "libel-proof" as to
19 the statements about which he complains.

20 The "libel-proof" doctrine applies where a plaintiff's reputation with respect to a specific
21 subject is already so badly tarnished that he cannot be further injured by specific statements on that
22 subject. *Guccione v. Hustler Magazine, Inc.*, 800 F.2d 298, 303 (2nd Cir. 1986). While no published
23 state court decision in California has specifically addressed the "libel-proof" doctrine,³ *Guccione*
24 was generally cited with approval in *Hughes v. Hughes*, 122 Cal.App.4th 931, 938 (2004).
25 Moreover, the United States District Court for the Central District of California, applying California

26 ² The *Gertz* rule clearly applies when there is no proof of malice. *Gertz*, 418 U.S. at 349. *Gertz*
27 did not reach the question of whether harm could be presumed if a plaintiff can prove malice. *Id.*
28 ³ Aside from *Hughes, supra*, it appears that the only other reported case in California to even
mention the "libel-proof" concept was *Aronson v. Kinsella*, 58 Cal.App.4th 254, 272 (1997). In
Aronson, the Court of Appeals did not reach the "libel-proof" doctrine because it found for the
defendant on other grounds.

1 law, concluded that the "libel-proof" doctrine applies under California law. *Wynberg v. Nat'l*
2 *Enquirer, Inc.*, 564 F.Supp. 924, 928-29 (1982).

3 As the Second Circuit explained in *Guccione*:

4 The libel-proof doctrine is to be applied with caution, since so few
5 plaintiffs will have so bad a reputation that they are not entitled to obtain
6 redress for defamatory statements, even if their damages cannot be
7 quantified and they receive only nominal damages. But in those instances
8 where an allegedly libelous statement cannot realistically cause
9 impairment of reputation because the person's reputation is already so low
10 or because the true portions of a statement have such damaging effects,
11 even nominal damages are not to be awarded. Instead, the claim should be
12 dismissed so that the costs of defendant against the claim of libel, which
13 can themselves impair vigorous freedom of expression, will be avoided.

14 *Guccione*, 800 F.2d at 303.

15 The federal court in *Wynberg* addressed a situation in which the National Enquirer had
16 published an article that the plaintiff believed accused him of financially exploiting his relationship
17 with actress Elizabeth Taylor. *Wynberg v. National Enquirer, Inc.*, 564 F. Supp. at 927. The court
18 noted that there had been "numerous articles" in advance of the National Enquirer article that
19 established that the plaintiff had "established a specific reputation for taking financial advantage of
20 Elizabeth Taylor." *Id.* at 928-29. As such, the court found that there could not have been any harm
21 to plaintiff as a result of the National Enquirer article and granted summary judgment on the libel
22 claim. *Id.*

23 The case here is obviously parallel to that in *Wynberg*. To the extent that any individual
24 cared about Lutfi's relationship with Britney Spears, the public was already well aware of the
25 statements reflected in Lynne's TRO declaration and any effect on Lutfi's reputation had already
26 occurred. Indeed, given the *US Weekly* article stating that Lutfi had admitted giving Britney drugs,
27 Lutfi had clearly already "established a specific reputation" beyond the declaration for the most
28 extreme of the facts at issue herein before the book was published. As such, the evidence
conclusively rebuts any inference that the later publication of the book could have caused Lutfi any
cognizable harm, whatsoever. Absent damages, the claim should be dismissed. *Anschutz*
Entertainment Group, Inc. v. Snapp, 171 Cal.App.4th 598, 643 (2009) (granting anti-SLAPP motion
against defamation claim for failure to show damages).

In short, Lutfi cannot establish the falsity of the statements with the requisite evidence

1 required, and even if he could, he has clearly suffered no harm from the book. Lutfi cannot meet his
2 burden with respect to the first purported cause of action for "libel," and therefore it must be stricken
3 from the FAC.

4 **C. LUTFI'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
5 **ALSO FAILS AS A CONSEQUENCE OF THE FAILURE OF HIS OTHER CLAIMS.**

6 The constitutional protections of the anti-SLAPP statute apply not only to defamation claims
7 but to "all claims whose gravamen is the allegedly injurious falsehood of a statement." *Gilbert v.*
8 *Sykes*, 147 Cal.App.4th 13, 34 (2007) (quoting *Blatty v. New York Times Co.*, 42 Cal.3d 1033, 1042
9 (1986)). As such, the anti-SLAPP statute applies to a claim for intentional infliction of emotional
10 distress for a claim arising out of an allegedly injurious false statement. *Id.* This shifts the burden to
11 Lutfi to establish both a legally sufficient complaint and a showing of facts sufficient to sustain a
12 judgment. *Kronemyer v. Internet Movie Data Base, Inc.*, 150 Cal.App.4th 941, 951 (2007).

13 The elements of intentional infliction of emotional distress are: (1) extreme and outrageous
14 conduct by the defendant with the intention of causing, or reckless disregard of the probability of
15 causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3)
16 actual and proximate causation of significant emotional distress by the defendant's outrageous
17 conduct. *Ess v. Eskaton Properties, Inc.*, 97 Cal.App.4th 120, 129 (2002) (quoting *Cervantez v. J.C.*
18 *Penny Co.*, 24 Cal.3d 579, 593 (1979)). To be outrageous, the conduct must be so extreme as to
19 exceed all bounds of that usually tolerated in a civilized community. *Id.* at 130 (quoting *Cervantez*,
20 24 Cal.3d at 593.) The fact that conduct might constitute another tort is not alone enough to qualify
21 the conduct as "outrageous." *Cantu v. Resolution Trust Co.*, 4 Cal.App.4th 857, 888 n.14 (1992)
22 (citing the Restatement 2d Torts, § 46, com. d, p. 73). In addition, the fact that conduct might be
23 termed "outrageous" is not sufficient; instead, the tort requires conduct of a nature that is especially
24 calculated to cause mental distress of a serious kind. *Ess*, 97 Cal.App.4th at 130.

25 In the context of this case, even if Lutfi might otherwise be able to establish the elements of
26 intentional infliction of emotional distress (and he cannot), he cannot do so independent of the
27 defamation claim. The collapse of the defamation claim will also "spell the demise" of all other
28 claims which allegedly arise from the same publication. *Gilbert*, 147 Cal.App.4th at 34. Put
differently, Lutfi cannot advance by means of an independent emotional infliction of intentional

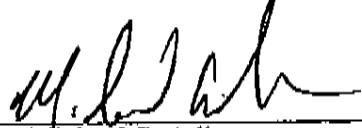
1 distress a claim that fails as a defamation claim. *Id.*, quoting *Fellows v. Nat'l Enquirer, Inc.*, 42
2 Cal.3d 234, 245 (1986); *see also Flynn v. Higham*, 149 Cal.App.3d 677, 682-83 (1983) (rejecting
3 any claim for intentional infliction of emotional distress "based on the very same acts which were
4 insufficient to support a cause of action for defamation").

5 **IV. CONCLUSION**

6 For the reasons discussed above, this Court should strike each of Lutfi's first, second, and
7 fourth purported causes of action against Lynne Spears pursuant to California Code of Civil
8 Procedure § 425.16 and grant judgment for Lynne.

9 Dated: June 15, 2009

TANTALO & ADLER LLP

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11 By 
12 Michael S. Adler
13 Attorneys for Defendant
14 LYNNE SPEARS
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DECLARATION OF LYNNE SPEARS

I, LYNNE SPEARS, declare:

1. I am the mother of Britney Spears ("Britney"), who is the subject of this action. I have personal knowledge of each of the facts set forth in this Declaration, and can testify competently thereto, except as to the matters stated on information and belief, and as to such matters I believe them to be true.

2. This past Monday night (January 28), Britney's father, Jamie, and I (in separate cars) went to Britney's house in Beverly Hills because we had heard news reports that Britney had just been in a big fight with Osama Lufti aka Sam Lufti ("Sam"), the man who has inserted himself into my daughter's life, home, and finances, and that she was crying. We were very concerned about her safety. We arrived at the Summit Community gatehouse in BHPO at approximately 10 p.m. I was with my friend, Jackie.

3. The guards at the gatehouse stopped us there for awhile. Jackie, Jamie, and I finally proceeded to Britney's house and entered it. We were able to enter the house because it was not locked. Britney does not lock her doors and currently there are no security guards around her residence. Britney was not home. We found Sam, and Sam said as we walked in the door that Britney only wanted me to come to the house, and that she was afraid to see her dad.

4. Two or three paparazzi came into the house and entered the kitchen. They greeted Sam. The paparazzi then reported to Sam where Britney currently was. From the conversation between Sam and the paparazzi I determined that Sam had given Felipe (another paparazzi) one of Britney's cars to get her out of the house when he heard that Jamie and I were on our way to see Britney. I also understood from the conversation that Sam disabled all of Britney's cars (she has several at her residence).

5. Sam had told Britney that Jamie and I were coming to the house to do an intervention, and that Britney panicked and took off with Felipe. Another man named Chad Hardcastle was in the house.

6. I also heard during the evening that during Britney's and Sam's fight that evening, Sam had told Britney that she was an unfit mother, a piece of trash and a whore, that she cares

4-1-08 10:51 AM

1 13. Sam told Jackie and me that he grinds up Britney's pills, which were on the
2 counter and included Risperdol and Seroquel. He told us that he puts them in her food and that
3 that was the reason she had been quiet for the last three days (she had been sleeping). He told us
4 that the doctor who is treating her now is trying to get her into a sleep-induced coma so that they
5 could then give her drugs to heal her brain.

6 14. Sam then encouraged us to sit down on a sofa and to do "tequila shots." Jackie
7 and I said we did not want to. Britney seemed to follow our lead. Sam then got some wine out
8 and said "let's all do toasts with wine." Britney said that she didn't want to, she wanted a pretty
9 glass. Sam found a glass with a stem and poured wine for Britney when we were not looking.
10 Britney refused to drink her wine and asked to drink mine.

11 15. Shortly afterward, Sam went back into the kitchen and was standing behind a
12 raised bar so that we could not see what his hands were doing on the counter. From what I could
13 see, it looked like he was crushing something on the counter. Sam then said to Britney, "Let's
14 go upstairs" and Britney followed him. Britney had calmed down by the time she went upstairs.

15 16. A little while later, Britney came downstairs. She seemed agitated again and told
16 us that she wanted to go to Rite Aid for lipsticks. It was now past midnight. Jackie and I said we
17 would take her. Sam told us that he wanted to follow us in his car. We told him that he
18 shouldn't because the paparazzi were in front of the neighbor's house and would harass us. As
19 we were about to drive off, Sam jumped into the back seat of the car. The paparazzi followed.
20 Sam and I were sitting in the back seat, with Chad as well. He told me that he gave Britney
21 something (when they were upstairs) to make her more light-hearted, happy, and fun. We
22 entered Rite Aid and Britney chose her lipstick. The manager said it is dangerous out there,
23 which it was. When Britney gave the cashier her credit card, the cashier told her it was not
24 working. I paid for the lipstick and the manager told us we could leave through the side door so
25 no one could see us. Sam insisted we leave through the front door and he put his arms around
26 Britney and me for the paparazzi to take pictures. I disengaged as quickly as I could.

1 17. Sam told me, "You'd better learn that I control everything. I control Howard
2 Grossman, Britney's business manager. I control her attorneys and the security guards at the
3 gate. They don't listen to Britney, they listen to me. That's why Jamie was gone tonight."

4 18. At another point that evening, Sam bragged to me that he is the one who receives
5 Britney's checks and that one of them was for me. I told Sam that I hadn't gotten any checks
6 from Britney. Sam then told me that they are in his car. He told me that if he weren't in the
7 house to give Britney her medicine, she would kill herself. Then he said to me, "If you try to get
8 rid of me, she'll be dead and I'll piss on her grave."

9 19. He then proclaimed that he has been in the family for a year and that he has done
10 nothing but good for Britney. At this point it was two or three in the morning. Britney was
11 meandering around the house. She would let me hug her, but she was out of it.

12 20. At one point during the night, Sam was screaming at me and Britney said to me,
13 "Sam treats me like that." Then she picked up the house phone and said, "Look at the phone, it
14 doesn't work." Sam then blamed the dead phone on Britney. Jackie spoke up and said to Sam,
15 "You said you cut the phone wire."

16 21. Britney then said again at some point during the night, "When do I get to see my
17 babies?" Sam answered, "Wednesday." Britney then said, "What do I have to do to see them?"
18 Sam responded, "Take the pills I tell you to take." Britney said, "I don't like the pills and I don't
19 like the psychiatrist. Can't I see another psychiatrist so I can see my babies?" Sam responded,
20 "If I told you to take 10 pills a day, you should do what I tell you to see your babies." Jackie
21 then said, "Britney, your parents can help you find a psychiatrist. The psychiatrist needs to get to
22 know you to give you the right medicine." Sam then raised his voice and said, "Why don't you
23 get back with Kevin."

24 22. Britney then said, "I'll do anything to get them back."

25 23. At some point during the evening, Sam said that Britney decided that he should be
26 her manager.

27 24. Adnan has called me and told me he's worried about Britney. He told me that
28 Sam hides the phones and tells her he has lost them. He also hides her dog, London. She looks

1 for him) all over the house crying and then Sam brings out the dog from the hiding place and acts
2 like her savior.

3 25. While we were at Rite Aid, Britney went in and out of her British accent.

4 26. At 4:00 a.m., I was exhausted and wanted to leave. Sam blocked my car so I
5 could not leave. I threatened to call Jamie to the house.

6 27. Britney said, "I want my Daddy up here. I want to talk to my Daddy." I reached
7 Jamie on the phone and gave the phone to Britney. I heard her tell him that she wanted to see
8 him. He said, "Right now baby?" and she said, "No." He said, "10:00 in the morning?" And
9 she said, "No, noon."

10 28. I spent the rest of the night at Britney's house and for the first time in a very long
11 time, when I lay down to sleep, I felt very agitated. I could not fall asleep at all. I felt like I had
12 had coffee. Jackie, who had gone home earlier, later told me that she also could not sleep at all
13 and felt like she had had coffee.

14 29. Jamie came to pick me up the next morning. Jamie gave Britney a big hug and
15 said to her, "Baby, you're ok?" Britney said, "I'm fine," then burst into tears.

16 30. To my knowledge, Britney never went to sleep that night and was very agitated
17 most of the night.

18 31. Sam and Chad, however, slept in the "smoking room," a small room downstairs
19 on the first floor of the house.

20 32. Later the next day, on January 29, Jackie showed me a text message she had
21 received from Sam: "Thanks for telling Jamie all your Bull Sh*t. He just hit me. Now you guys
22 did your deed. Much accomplished. Good job."

23 33. I did not see Britney again until I arrived at her house on Wednesday night after
24 Sam called me and told me to come to the house. When we arrived, Britney seemed subdued.
25 The police arrived and took her to the Neuro Psychiatric Institute at UCLA ("NPI"). While at

26 ///

27 ///

28 ///

1 NPI, I learned that Britney informed her doctor, Lee Saja, MD, that she had also taken Aderol.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed on January 31, 2008, at Los Angeles, California.

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5 
6 Lynne Spears

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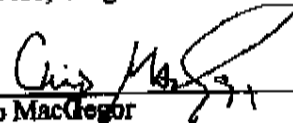
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1 were printed. We had hopes that the book would not only sell that number of copies but would, in
2 fact, go into additional printings.

3 7. However, as reflected in the "Net Units," sales of the book have been less than we had
4 hoped. The "Net Units" reflects that as of March 31, 2009, less than 65,000 copies of the book were
5 sold.

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Executed under penalty of perjury of the Laws of the United States and the State of
California, on this 15th day of June, 2009 in Hillsboro, Oregon.


Chip MacGregor