

1 Bryan J. Freedman (SBN 151990)
2 Jacqueline C. Brown (SBN 177970)
3 FREEDMAN & TAITELMAN, LLP
4 1901 Avenue of the Stars, Suite 500
5 Los Angeles, California 90067
6 Tel: (310) 201-0005
7 Fax: (310) 201-0045
8 Email: bfreedman@ftlp.com
9 jbrown@ftlp.com

6 Gregory L. Doll (SBN 193205)
7 Michael A. Amir (SBN 204491)
8 1888 Century Park East, Suite 1106
9 Los Angeles, California 90067
10 Tel.: (310) 557-9100
11 Fax: (310) 557-9101
12 email: gdoll@dollamir.com
13 mamir@dollamir.com

14 Attorneys for Defendant MARIO LAVANDEIRA

12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14 SAMANTHA RONSON,

15 Plaintiff,

16 vs.

17 SUNSET PHOTO AND NEWS, LLC;
18 JILL ISHKANIAN; MARIO LAVANDEIRA
19 dba PEREZ HILTON; and DOES 1 through
20 10, inclusive,

21 Defendants.

) Case No. BC374174

) [Assigned to the Honorable Elihu M. Berle,
22 Dept. 42]

) NOTICE OF MOTION AND MOTION TO
23 STRIKE THE COMPLAINT PURSUANT
24 TO CODE OF CIVIL PROCEDURE
25 SECTION 425.16 OF DEFENDANT
26 MARIO LAVANDEIRA; DECLARATIONS
27 OF MARIO LAVANDEIRA, MIKLOS
28 GASPAS, AND JACQUELINE C. BROWN
IN SUPPORT THEREOF

) [Request for Judicial Notice filed
29 concurrently herewith]

) Date: September 26, 2007
30 Time: 8:30 a.m.
31 Dept.: 42

) Action filed: July 12, 2007

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 04 2007

John A. Clarke, Executive Officer

By: *Nancy Alvarez*
NANCY ALVAREZ, Clerk

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2
3 PLEASE TAKE NOTICE that on September 26, 2007 at 8:30 a.m., or as soon thereafter
4 as the matter may be heard in Department 42 of the above-entitled Court, located at 111 North
5 Hill Street, Los Angeles, California 90012, defendant Mario Lavandeira ("Lavandeira") will and
6 hereby does move the Court for an order striking the complaint brought by plaintiff Samantha
7 Ronson ("Ronson") and awarding Lavandeira his attorneys' fees and costs associated with this
8 Motion. The Motion is made on the grounds that the complaint against Lavandeira is barred
9 pursuant to Code of Civil Procedure section 425.16 because (1) it arises from Lavandeira's
10 constitutional right of free speech; and (2) Ronson cannot establish by evidence admissible at
11 trial a reasonable probability of prevailing on her claim.

12
13 The Motion is based on this Notice, the attached Memorandum of Points and Authorities
14 and Declarations of Mario Lavandeira, Miklos Gaspar, and Jacqueline C. Brown, the
15 concurrently filed Request for Judicial Notice, the records, papers and pleadings on file in this
16 action, and upon such argument as counsel may present at the time of the hearing on the Motion.

17
18 DATED: September 4, 2007

FREEDMAN & TAITELMAN, LLP
DOLL AMIR & ELEY, LLP

19
20
21 By: 

BRYAN J. FREEDMAN
Attorneys for Defendant MARIO LAVANDEIRA

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5 Witkin, <u>Summary of California Law</u> (10th ed. 2005) Torts, § 529	11
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1 **I. INTRODUCTION**

2 The defamation action brought by plaintiff Samantha Ronson ("Ronson") is a classic
3 example of an improper "strategic lawsuit against public participation" (a "SLAPP suit") that is
4 expressly barred by Code of Civil Procedure Section 425.16, the "anti-SLAPP statute" (hereafter
5 "Section 425.16"). As will be demonstrated, Ronson seeks to punish defendant Mario
6 Lavandeira ("Lavandeira") for exercising his legitimate free speech rights in order to obtain an
7 economic advantage over him. To make matters worse, she does not seek to vindicate any
8 cognizable rights. Instead, she asserts a meritless claim for defamation that is plainly based on
9 Lavandeira's constitutional right of free speech to express his opinions and subjective beliefs.
10 Additionally, Ronson has no evidence, let alone clear and convincing evidence, that Lavandeira
11 made defamatory statements about Ronson with actual malice. As a result, Ronson's defamation
12 action against Lavandeira falls squarely within the broad ambit of the anti-SLAPP statute and
13 should be dismissed.

14 This action arises from the media storm focused on the young actress, Lindsay Lohan
15 ("Lohan"). Over the last couple of years, Lohan has provided endless fuel for tabloid fodder.
16 Her repeated stints in rehabilitation, her misconduct on film sets, her love life, and her excessive
17 use of drugs and alcohol has mesmerized the media and public. On May 26, 2007, Lohan made
18 headlines again when she crashed her Mercedes Benz into a curb on Sunset Boulevard during the
19 early morning hours while driving under the influence of alcohol (the "Accident"). When the
20 police investigated the Accident, they also found cocaine in Lohan's car. Ronson, who is also a
21 celebrity, was with Lohan when the Accident occurred. By Ronson's own admission, "the
22 incident involving Lohan's car crash received wide media attention" and that on the very
23 morning of the crash, "news outlets and websites began reporting" the story.

24 Lavandeira owns and operates the celebrity gossip blog website, PerezHilton.com (the
25 "Website"). Like numerous other media outlets and websites, Lavandeira posted on the Website
26 his opinions and commentary about the Accident, the cocaine found by the police, and the
27 relationship between Ronson and Lohan. Soon thereafter, Ronson filed this defamation action
28 against Lavandeira, and others, seeking damages in excess of \$20,000,000.

1 As demonstrated below, Ronson's complaint against Lavandeira should be stricken and
2 dismissed as an improper SLAPP suit and Lavandeira should be awarded his attorneys' fees and
3 costs relating to this Motion for the following reasons:

4 1. Ronson's claim arises from Lavandeira's exercise of his constitutionally protected
5 free speech rights; and

6 2. Ronson cannot demonstrate, by evidence admissible at trial, a reasonable
7 probability of prevailing on her defamation claim because:

8 a. Ronson cannot demonstrate that Lavandeira's subjective expressions of
9 opinion are provably false; and

10 b. Ronson cannot demonstrate, by clear and convincing evidence, that
11 Lavandeira acted with actual malice.

12 **II. FACTUAL SUMMARY**

13 **A. Lindsay Lohan**

14 Lindsay Lohan ("Lohan") is well-known film actress. Although she has been acting and
15 modeling since she was three years old, she gained widespread media attention after appearing in
16 her first feature film, "The Parent Trap," at the age of 12. Since then, she has appeared in
17 thirteen feature films. RJN, Ex. A. She has also appeared on numerous television programs as
18 an actor, a guest, or subject. Id., Ex. A.

19 Over the last few years, Lohan has received nearly continuous media attention for her
20 exploits on and off the screen. Declaration of Jacqueline C. Brown ("Brown Decl."), ¶¶ 2-5 &
21 Exs. D-G. She has been in the media for, among other things, her eating disorder, excessive
22 partying and use of alcohol and drugs, repeated stints in rehabilitation, love life, family troubles,
23 run-ins with paparazzi, unprofessional conduct on film sets, repeated car accidents, and repeated
24 hospital stays. Id., Exs. D-G. Indeed, it is a rare day that Lohan does not appear in the media.

25 A search of her name on Google results in nearly 7 million hits. Brown Decl., ¶ 4 & Ex.
26 F. There are also at least fifteen websites (if not more) dedicated solely to Lohan such as
27 lindsaylohanfan.org, lindsayblog.com, lohanguropie.com, lindsaylohanworld.info,
28 lohanonline.com, lindsay-news.com, lindsay-lohan.net, lindsaylohanwatch.com,

1 lohanx.blogspot.com, lohanpictures.com, lindsaypics.com, lindsaylohan.com,
2 lindsaylohansbutt.com, and linsay-lohan-updates.blogspot.com. Id., ¶ 5 & Ex. G.

3 **B. Samantha Ronson**

4 Ronson is a celebrity DJ who regularly performs at exclusive and high profile events such
5 as, among others, "Jessica Simpson's birthday party; corporate events for Blender, Maxim,
6 PlayStation at the Superbowl and ElleGirl; and the entertainment awards shows including the
7 Video Music Awards in Miami, Sundance, and the Independent Film Channel Awards."
8 Complaint, ¶ 2.¹ She is also an accomplished musician. She has a record contract with the hip
9 hop record label, Roc-A-Fella Records. RJN, Ex. B. She has written and performed various
10 singles that have been featured on film sound tracks such as "Built This Way" on the 2004
11 soundtrack for the film "Mean Girls," starring Lohan (RJN, Ex. B) and "Pull My Hair Out" that
12 was featured on the 2004 soundtrack for the film, "The Woodsman," starring Kevin Bacon. She
13 also performed the single "Wanted" for the 2006 soundtrack for the film "Half Nelson," starring
14 Ryan Gosling. Id., Exs. C & D.

15 She appeared, as herself, in national television advertisement for The Gap. RJN, Ex. E.
16 She has been interviewed by MTV. Brown Decl., ¶ 9 & Ex. L. She has her own website
17 samantharonson.com. RJN, Ex. B. She also has her own entry on Wikipedia.com, the free
18 Internet encyclopedia. Id., Ex. F. A search of "samantha ronson" on Google results in 283,000
19 hits. Brown Decl., ¶ 8 & Ex. J. She is also the frequent subject of the media and paparazzi. Id.,
20 ¶¶ 6-8, Exs. H-L.

21 **C. The Accident**

22 During the early morning of May 26, 2007, Lohan crashed her Mercedes Benz into a curb
23 on Sunset Boulevard (the "Accident"). Complaint, ¶ 10. Lohan was under suspicion for driving
24 under the influence of alcohol. Id. The police found cocaine in her car. Id. Ronson was with
25 Lohan when the Accident occurred. Id. Later, Lohan was arrested for driving under the
26 influence alcohol and possession of cocaine. RJN, Ex. G.

27
28 ¹ According to Ronson's website, she has also performed "with Lindsay Lohan at the
American Music Awards." RJN, Ex. B.

1 **D. The Accident Receives "Widespread Media Attention"**

2 As Ronson admits, the Accident "received widespread media attention." Complaint, ¶
3 11. She also admits that the very morning of the Accident, "news outlets and websites began
4 reporting" about it. Id., ¶ 10. In fact, every major media outlet including CNN, the New York
5 Times, the Los Angeles Times, and ABC News, among others, reported about the Accident.
6 RJN, Ex. H. Additionally between May 27, 2007 and June 1, 2007, numerous websites posted
7 articles stating that Ronson had arranged for the paparazzi to obtain photographs of Lohan,
8 intoxicated and passed out in Ronson's car, and that the cocaine found by the police in Lohan's
9 car after the Accident may have been Ronson's. Complaint, ¶¶ 13 & 19 (listing websites).

10 On June 1, 2007, Lavandeira posted an article on the website PerezHilton.com (the
11 "Website") that reproduced the statements by the website celebritybabylon.com. Complaint, ¶
12 20. Lavandeira also added the statements that (1) Ronson has been "toxic" to Lohan; (2)
13 "According to news reports, Ronson has been selling out Lohan to the paparazzi"; (3) Ronson
14 "allegedly entered into an agreement with a photo agency to tip them off to here whereabouts
15 with Lindsay, even creating photo-ops for them"; (4) "the cocaine that was found in Lohan's car
16 after her crash may have been RONSON's"; and (5) "With friends like Samantha Ronson,
17 Lindsay doesn't need any enemies." Id., ¶ 21; see also Declaration of Mario Lavandeira
18 ("Lavandeira Decl."), ¶ 17; Declaration of Miklos Gaspar ("Gaspar Decl."), ¶ 6 & Ex. B.

19 On June 13, 2007, Lavandeira posted an article from the Australian magazine NW that
20 was reporting about the news that Ronson may have arranged photograph opportunities for
21 paparazzi while Lohan was passed out in Ronson's car. The article from NW shows a picture of
22 Lavandeira wearing a sweatshirt bearing the words "Blame Samantha," with the caption "Celeb
23 gossip guru Perez Hilton has described the DJ's influence on Lindsay's life as 'toxic' . . . and
24 wears this top to prove his point." Below the NW article, Lavandeira added the statement "Was
25 Lindsay Lohan betrayed by her lezbot DJ pal Samantha Ronson? Australia's NW magazine
26 seems to think so. And we wouldn't disagree!" Complaint, ¶ 21; see also Lavandeira Decl., ¶
27 18; Gaspar Decl., ¶ 6 & Ex. C.

1 **III. ARGUMENT**

2 **A. Ronson's Complaint is Subject to the Anti-SLAPP Statute**

3 A "SLAPP suit" is brought to chill the valid exercise of the constitutional rights of
4 freedom of speech and petition for the redress of grievances. Section 425.16(a); Braun v.
5 Chronicle Publishing Co., 52 Cal.App.4th 1036, 1042 (1997). The primary objective of a
6 SLAPP suit is to obtain an economic advantage over the defendant, not to vindicate a legally
7 cognizable right of the plaintiff. Indeed, one of the hallmarks of a SLAPP suit is its lack of
8 merit. Wilcox v. Superior Court, 27 Cal.App.4th 809, 816 (1994). Section 425.16 provides a
9 summary procedure by which defendants may dispose of such lawsuits at the pleading stage and
10 thus avoid the cost and delays of lengthy litigation. Soukup v. Law Offices of Herbert Hafif, 39
11 Cal.4th 260, 278 (2006). "[T]he point of the anti-SLAPP statute is that you have a right *not* to be
12 dragged through the courts because you exercised your constitutional rights." Varian Med.
13 Systems, Inc. v. Delfino, 35 Cal.4th 180, 193 (2005) (emphasis original; internal quotes omitted).

14 A motion to strike a SLAPP suit involves a two-step process. First, the court determines
15 whether the moving party has demonstrated that the challenged activity stems from protected
16 activity. If a prima facie showing has been made by the moving party, the court must then
17 consider whether the plaintiff demonstrated a probability of success on the challenged claim.
18 Section 425.16(b)(1); Fontani v. Wells Fargo Investments, 129 Cal.App.4th 719, 727 (2005).

19 A defendant meets its burden by demonstrating that the conduct underlying the plaintiff's
20 claim fits within one of the categories spelled out in Section 425.16(e). City of Cotati v.
21 Cashman, 29 Cal.4th 69, 78 (2002). Section 425.16(e) defines protected activity as:

22 (1) any written or oral statement or writing made before a
23 legislative, executive, or judicial proceeding, or any other official
24 proceeding authorized by law; (2) any written or oral statement or
25 writing made in connection with an issue under consideration or
26 review by a legislative, executive, or judicial body, or any other
27 official proceeding authorized by law; (3) any written or oral
28 statement or writing made in a place open to the public or a public
 forum in connection with an issue of public interest; (4) or any
 other conduct in furtherance of the exercise of the constitutional
 right of petition or the constitutional right of free speech in
 connection with a public issue or an issue of public interest.

Section 425.16(e)(4). When determining whether a cause of action "arises from" protected

activity, Section 425.16 is to be "broadly construed." Section 425.16(a); Briggs v. Eden Council for Hope & Opportunity, 19 Cal.4th 1106, 1119 (1999).

1. **Ronson's Action Is Based on Lavandeira's Free Speech Rights**

Section 425.16(e)(3) defines acts in furtherance of free speech or petition as including statements that are made (1) in a public forum and (2) in connection with an issue of public interest. Ronson's claim against Lavandeira falls directly within this category.

a. **Lavandeira's Website Is a Public Forum**

The California Supreme Court and the Courts of Appeal repeatedly have held that a Web site accessible to the public is a public forum for purposes of Section 425.16. Barrett v. Rosenthal, 40 Cal.4th 33, 41, fn. 4 (2006); Kronemyer v. Internet Movie Data Base, Inc., 150 Cal.App.4th 941 (2007); Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. 129 Cal.App.4th 1228, 1247 (2005); Vogel v. Felice, 127 Cal.App.4th 1006, 1015 (2005); Wilbanks v. Wolk, 121 Cal.App.4th 883, 895 (2004); ComputerXpress, Inc. v. Jackson, 93 Cal.App.4th 993, 1007 (2001). As observed by the court in Huntingdon Life Sciences, Inc., 129 Cal.App.4th at p. 1247 (citation omitted), "Statements on [defendant's] Web site are accessible to anyone who chooses to visit the site, and thus they 'hardly could be more public.'"

Ronson alleges that each of Lavandeira's allegedly defamatory statements appeared on the Website. Complaint, ¶¶ 6-7, 20-21. Lavandeira's website meets all the requirements of a public forum. The website is accessible free of charge to any member of the public. Lavandeira Decl., ¶ 4. Readers of the Website may review the opinions and commentary of Lavandeira as well as other members of the public. Id. They may also post their own opinions. Id.

b. **Lohan and the Accident Are Matters of Public Interest**

A statement or other conduct is "in connection with an issue of public interest . . . if the statement or conduct concerns a topic of widespread public interest and contributes in some manner to a public discussion of the topic." Hall v. Time Warner, Inc., 153 Cal.App.4th 1337, 1347 (2007). An event that is of "significant interest to the public and the media" satisfies the public interest requirement for purposes of Section 425.16(e)(3). Seelig v. Infinity Broadcasting Corp., 97 Cal.App.4th 798, 807-808 (2002). Additionally, matters involving a celebrity's

1 personal life constitute matters of public interest where the celebrity is the subject widespread
2 public interest. Hall, 153 Cal.App.4th at 1347.

3 The public interest requirement of Section 425.16(e)(3) *must be construed broadly* so as
4 to encourage participation by all segments of our society in vigorous public debate of issues of
5 public interest. Gilbert v. Sykes, 147 Cal.App.4th 13, 23 (2007). Additionally, in deciding
6 whether a matter is one of public interest, courts should "err on the side of free speech."
7 Gallagher v. Connell, 123 Cal.App.4th 1260, 1275 (2004).

8 The decision in Hall v. Time Warner, Inc., 153 Cal.App.4th 1337 (2007), demonstrates
9 that Lohan and the Accident are topics of public interest. The facts of Hall involved claims
10 brought by the former housekeeper of Marlon Brando against the producers of the nationally
11 broadcast television show "Celebrity Justice." After Brando's death, when it was revealed that
12 he had named Hall as a beneficiary of his living trust, a reporter for "Celebrity Justice" visited
13 Hall in her room in a retirement home, interviewed her, and portions of the interview were
14 televised. Hall sued the producers for trespass, intrusion upon seclusion, public disclosure of
15 private facts, intentional infliction of emotional distress, and elder abuse. Id. at 1341-1342.

16 In reversing the trial court's denial of the producers' motion to strike, the court in Hall
17 held:

18 "The public's fascination with Brando and widespread public
19 interest in his personal life made Brando's decisions concerning
20 the distribution of his assets a public issue or an issue of public
21 interest. Although Hall was a private person and may not have
22 voluntarily sought publicity or to comment publicly on Brando's
23 will, she nevertheless became involved in an issue of public
24 interest by virtue of being named in Brando's will. Defendants'
25 television broadcast contributed to the public discussion of the
26 issue identifying Hall as a beneficiary and showing her on camera.
27 We conclude that the acts from which the complaint arises . . .
28 constituted conduct in furtherance of defendants' right of free
speech 'in connection with a public issue or an issue of public
interest.'"

Hall, 153 Cal.App.4th at 1347.

26 The decision in Seelig v. Infinity Broadcasting Corp., 97 Cal.App.4th 798 (2002) further
27 supports the conclusion that Lavandeira's statements involved matters of public interest. The
28 facts of Seelig involved claims of slander brought by a contestant on the television program

1 "Who Wants to Marry a Multimillionaire" against radio talk show hosts and their employer
2 arising from disparaging comments made about plaintiff during a radio broadcast. In reversing
3 the trial court's denial of defendants' motion to strike, the Seelig court held:

4 "The offending comments arose in the context of an on-air
5 discussion between the talk-radio cohosts and their on-air producer
6 about a television show of significant interest to the public and the
7 media . . . Before and after its network broadcast, *Who Wants to*
8 *Marry a Multimillionaire* generated considerable debate within the
9 media . . . By having chosen to participate as a contestant in the
10 Show, plaintiff voluntarily subjected herself to inevitable public
11 scrutiny and potential ridicule by the public and the media."

12 Seelig, 97 Cal.App.4th at 807; see also Ingels v. Westwood One Broadcasting Servs., Inc., 129
13 Cal.App.4th 1050, 1055, 1064 (2005) (live call-in radio talk show matter of public interest).

14 Here, Lohan is an accomplished and well-known film actress. It cannot be legitimately
15 disputed that Lohan is the subject of widespread media attention and public fascination for her
16 exploits on and off the screen, and especially regarding her destructive and excessive use of
17 alcohol and drugs. As a result of the widespread public interest in Lohan, the Accident was also
18 a matter of public interest. In fact, by Ronson's own admission, the Accident involving Lohan
19 generated "widespread media attention" and that within hours of the Accident, "news outlets and
20 websites began reporting" the story. Complaint, ¶¶ 10-11.

21 Ronson admits that she was with Lohan when the Accident occurred and that police
22 found cocaine in Lohan's car. Complaint, ¶ 10. Thus, regardless of Ronson's own celebrity
23 status, or whether she voluntarily sought publicity in connection with the Accident, she
24 nevertheless became involved in an issue of public interest by virtue of being involved in the
25 Accident. Additionally, by publicly associating herself with Lohan, Ronson also voluntarily
26 subjected herself to the inevitable scrutiny and potential ridicule by the public and media.
27 Lavandeira's articles about Accident and Ronson's relationship with Lohan contributed to the
28 public discussion of these issues.

29 **c. Ronson Herself Is Matter of Public Interest**

30 Where the subject of the statement or activity precipitating the claim was a person in the
31 public eye, this *alone* satisfies the public interest/public issue requirement of Section 425.16.

1 Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal.App.4th 26, 33 (2003).

2 For example, in Sipple v. Foundation for Nat. Progress, 71 Cal.App.4th 226, 239 (1999), the
3 court found that the statements about “a nationally known figure” necessarily concerned a matter
4 of public interest. Additionally, the law is settled that individuals closely associated with public
5 figures are themselves public figures. Maheu v. CBS, Inc., 201 Cal.App.3d 662, 675 (1988).

6 Ronson has been closely and publicly associated with Lohan for quite sometime. Brown
7 Decl., ¶ 10 & Ex. M. By this association alone, Ronson is considered a public figure as a matter
8 of law. Moreover, the evidence also demonstrates that Ronson is a celebrity in her own right in
9 connection with the music and club scene.

10 By Ronson’s own admission, she is a celebrity DJ who regularly performs at exclusive,
11 high profile, and celebrity events. Complaint, ¶ 2. She has a record contract with a well-known
12 record label. RJN, Ex. B. Her music has been featured on several film soundtracks. Id., Exs. B-
13 D. She has starred in a national ad campaign for The Gap. Id., Ex. E. She has her own website.
14 Id., Ex. B. She has her own entry on Wikipedia.com. Id., Ex. F. *Significantly, she is the*
15 *frequent subject of the media and numerous celebrity gossip, entertainment, and paparazzi*
16 *websites.* Brown Decl., ¶¶ 6-9 & Exs. H-L.

17 d. Drug and Alcohol Use, Driving Under the Influence, and
18 Celebrity Misconduct Are Matters of Public Interest

19 Where a statement or activity precipitating the claim involves conduct that could affect
20 large numbers of people beyond the direct participants, the claim is subject to Section 415.16.
21 Commonwealth Energy Corp., 110 Cal.App.4th at 33. There can be little doubt that the use and
22 possession of drugs and driving under the influence are matters that have potential impact on a
23 wide segment of society and receive widespread public attention. “Few problems affecting the
24 health and welfare of our population, particularly our young, cause greater concern than the
25 escalating use of controlled substances.” Lieberman v. KCOP Television, Inc., 110 Cal.App.4th
26 156, 165 (2003) (citation omitted) (for the purposes of Section 425.16, illegal dispensing of
27 controlled substances is an issue of “great public interest”); see also Taylor v. Superior Court, 24
28 Cal.3d 890, 899 (1979) (driving under the influence is an issue of great urgency and concern).

1 The Accident involved issues of under age drinking (Lohan was 20 years old when the
2 accident occurred), driving under the influence, and the use of illegal drugs. As a result of the
3 Accident and the publicity surrounding it, the California Department of Alcoholic Beverage
4 Control launched an investigation into the practice of Hollywood nightclubs serving alcohol to
5 underage celebrities and patrons. RJN, Ex. I; Brown Decl., ¶ 11 & Ex. N.

6 There also can be little doubt that the impact of unseemly celebrity behavior on our
7 society is also a matter of great public interest and concern. Indeed, nearly every day brings a
8 new headline about some celebrity's run-in with the law, treatment for drug or alcohol abuse, or
9 sex scandal. As a result, there has been growing media attention about the affect this behavior is
10 having on our society, and more importantly, on our children. RJN, Ex. J. Commenting on a
11 matter of public concern is fundamental to the right of free speech. Annette F. v. Sharon S., 119
12 Cal.App.4th 1146, 1162 (2004).

13 **B. Ronson Cannot Show a Reasonable Probability of Prevailing on Her**
14 **Defamation Claim**

15 Once the defendant has met its burden of establishing that the complaint falls within
16 the anti-SLAPP statute, the burden shifts to the plaintiff to establish a "reasonable probability"
17 that he will prevail at trial. Section 425.16(b). To establish a "probability" of prevailing, the
18 plaintiff must show (1) a legally sufficient claim; and (2) that the claim is supported by
19 competent, admissible evidence sufficient to sustain a judgment in the plaintiff's favor. Fashion
20 21 v. Coalition for Humane Immigrant Rights of Los Angeles, 117 Cal.App.4th 1138, 1147
21 (2004). Ronson cannot meet this burden.

22 Ronson's defamation claim is based on two categories of statements: (1) Lavandeira's
23 subjective statements of opinion about Ronson; and (2) Lavandeira's republishing of statements
24 made by others about Ronson. Complaint, ¶¶ 20-21. As demonstrated below, Ronson cannot
25 show a reasonable probability of prevailing on her claim because she cannot prove that
26 Lavandeira's subjective statements of opinion about her were provably false statements or that
27 Lavandeira acted with actual malice when he republished the statements of others.

1 1. Ronson Cannot Demonstrate that Lavandeira Made Provably False
2 Statements

3 The tort of defamation involves (a) a publication that is (b) false, (c) defamatory, and (d)
4 unprivileged, and that (e) has a natural tendency to injure or that causes special damage. Civ.
5 Code, §§ 45-46; 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 529, p. 782 (citing Civ.
6 Code, §§ 45-46 and cases). To prevail on her defamation claim, Ronson has the burden of
7 presenting evidence of a statement of fact that is provably false. See Seelig, 97 Cal.App.4th at
8 809. Statements that cannot be reasonably interpreted as stating "actual facts" about an
9 individual cannot form the basis of a defamation action. Id. Additionally, expressions of opinion
10 are not actionable. Savage v. Pacific Gas & Elec. Co., 21 Cal.App.4th 434, 445 (1993). Thus,
11 "rhetorical hyperbole," "vigorous epithets," "lusty and imaginative expressions of contempt," and
12 language used "in a loose, figurative sense" have all been accorded constitutional protection.
13 Seelig, 97 Cal.App.4th at 809. Additionally, epithets and subjective disapproval of the "sticks
14 and stones will break my bones" variety, are not actionable. Ferlauto v. Hamsher, 74
15 Cal.App.4th 1394, 1404 (1999).

16 The critical determination of whether an allegedly defamatory statement constitutes fact
17 or opinion is a question of law for the court. Ferlauto, 74 Cal.App.4th at 1401. In making this
18 determination, California courts apply the totality of the circumstances test. Id.; see also Seelig,
19 97 Cal.App.4th at 809. Under this test, the court first examines the language of the statement.
20 Next, the context in which the statement was made must be considered. The "contextual analysis
21 demands that the courts look at the nature and full content of the communication and to the
22 knowledge and understanding of the audience to whom the publication was directed." Seelig, 97
23 Cal.App.4th at 809-810. Under this test, "editorial context is regarded by the courts as a
24 powerful element in construing as opinion what might otherwise be deemed fact." Ferlauto, 74
25 Cal.App.4th at 1401 (citation omitted).

26 Applying this test, the following statements have been found to be not to be actionable:

- 27 • Statements by radio hosts that plaintiff was a "local loser," "chicken butt," and
28 "big skank," were "unquestionably" statements of the speaker's subjective

judgment. Seelig, 97 Cal.App.4th at 810.

- Statements that the plaintiff was a “creepazoid attorney” and “loser wannabe lawyer” were “classic rhetorical hyperbole which ‘cannot reasonably [be] interpreted as stating actual facts.’” Ferlauto, 74 Cal.App.4th at 1404.
- Metaphoric expressions such as “keep him honest,” “booby,” and “baying in the ocean breezes,” were subjective expressions of negative opinion with no disprovable factual content. Copp v. Paxton, 45 Cal.App.4th 829, 838 (1996).
- Statements that an attorney used “sleazy tactics” and engaged in a “fishing expedition,” and the supposition that the judge had a “dim view of the defense tactics,” merely opinion only. James v. San Jose Mercury News, Inc., 17 Cal.App.4th 1, 7-8 (1993).
- Use of the words “liar” and “thief” by a political foe was constitutionally protected hyperbole. Rosenauro v. Scherer, 88 Cal.App.4th 260, 280 (2001).

The Language of Lavandeira’s Statements: Ronson alleges that the following statements by Lavandeira are defamatory: (1) “Ronson has been toxic to Lohan’s life,” (Complaint, ¶¶ 20-21); (2) “With friend’s like Samantha Ronson, Lindsay doesn’t need any enemies,” (Id., ¶ 20); (3) “And we wouldn’t disagree!” with an article in Australia’s magazine NW that asked “Was Lindsay Lohan betrayed by her Lezbot DJ pal Samantha Ronson?” (Id., ¶ 21); (4) “Blame Samantha,” and (5) a photograph of Lavandeira wearing a sweatshirt bearing the words “BLAME SAMATHA.” Id., ¶ 21.

The Context of Lavandeira’s Statements: The Website is a celebrity gossip blog. Lavandeira Decl., ¶ 3. It is billed as “celebrity gossip juice, not from concentrate” as well as “Hollywood’s Most Hated Website!” Id., ¶ 7. The style of the Website is intentionally irreverent to celebrities.² Id., ¶ 5. Almost all every article includes Lavandeira’s editorial commentary and

² Additionally, “caricature, imaginative expression, and rhetorical hyperbole . . . are often subject to the threat of a defamation action, but generally constitute a legitimate exercise of literary style.” Ferlauto, 74 Cal.App.4th at 1403. As demonstrated, the comments made by Lavandeira about Ronson are typical of Lavandeira’s literary style.

1 opinions about the spotlighted celebrity. Id. He also often uses hyperbole, slang, profanity, and
2 epithets in his postings. Id. Most of his blogs are intentionally written in a “tongue-in-cheek”
3 manner. Id. Additionally, when showing pictures of celebrities, he also usually includes his own
4 satirical scribbles across the photograph expressing his opinion about the celebrity in the
5 photograph. Id., ¶ 6 & Ex. A.

6 Viewing Lavandeira’s statements in this context, it is plain that his statements were
7 nothing more than expressions of his subjective opinion. For example, Lavandeira states that
8 Ronson has been “toxic” to Lohan. The term “toxic,” in this context, plainly refers to
9 Lavandeira’s view that Ronson is a bad influence on Lohan. See Lavandeira Decl., ¶ 17.
10 Whether Ronson has been, in fact, toxic to Lohan is too vague to be capable of being proven true
11 or false. See James, 17 Cal.App.4th at 15 (terms “dim view” insusceptible of proof or disproof
12 because too vague). Moreover, such a determination is plainly subjective.

13 Lavandeira’s statements that “With friend’s like Samantha Ronson, Lindsay doesn’t need
14 any enemies,” “Blame Samantha,” and that Lavandeira did not disagree with a Australian
15 magazine’s opinion that Ronson had betrayed Lohan are unquestionably statements of subjective
16 expressions of disapproval, devoid of any factual content, reflecting Lavandeira’s “vague
17 expressions of low esteem” for Ronson. See Ferlauto, 74 Cal.App.4th at 1404. The conclusion
18 that these statements are merely Lavandeira’s opinions is reinforced by the statement that
19 Lavandeira was wearing a sweatshirt bearing the words “Blame Samantha” to “prove his point”
20 that Ronson was been a “toxic” influence on Lohan. Lavandeira’s “point” is merely another way
21 of stating his “opinion.” No reader of the Website could have interpreted the statements to be
22 statements of actual fact. Indeed, Lavandeira’s statements are of the “sticks and stones will break
23 by bones” variety, and thus, are not actionable.

24 2. Ronson Cannot Demonstrate, By Clear and Convincing Evidence,
25 that Lavandeira’s Statements Were Made With Actual Malice

26 Ronson is a public figure in the music and club scene and by virtue of her public
27 association with Lohan. At a minimum, she is also a “limited public figure” in connection with
28 the Accident and Lohan. A person will be considered a “limited purpose” or “vortex” public

figure, if he voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. McGarry v. University of San Diego, 2007 Cal.App.LEXIS 1350, *25 (July 17, 2007). Here, Ronson has been drawn into the issues surrounding the Accident and Lohan's drug and alcohol use by virtue of by being with Lohan when the Accident occurred, her close association with Lohan, and cocaine being found in Lohan's car.

Like "all purpose" public figures, limited public figures must show by "clear and convincing evidence" that the alleged defamatory statement was published with actual malice, meaning with knowledge the republished statements were false or with reckless disregard of their falsity. Ampex Corp. v. Cargle, 128 Cal.App.4th 1569, 1578 (2005). The test is "*a subjective test, under which the defendant's actual belief concerning the truthfulness of the publication is the crucial issue.*" This test directs attention to the defendant's attitude toward the truth or falsity of the material published, not the defendant's attitude toward the plaintiff. McGarry, 2007 Cal.App.LEXIS 1350 at *24-26 (emphasis added). The reckless disregard test is not a negligence test measured by whether a reasonably prudent person would have published, or would have investigated before publishing, the defamatory statement. Instead, the evidence must "permit the conclusion that the defendant actually had a 'high degree of awareness of ... probable falsity.' As a result, failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." Id. at *26 (citations omitted). Thus, to support a finding of actual malice, the failure to investigate must fairly be characterized as demonstrating the speaker purposefully avoided the truth or deliberately decided not to acquire knowledge of facts that might confirm the probable falsity of charges. Id. at *27-*28.

Ronson cannot demonstrate by clear and convincing evidence that Lavandeira acted with actual malice. Since Lavandeira first met Ronson in January 2006, he has heard from numerous sources that she had a drug problem. Id., ¶ 11. Almost immediately after the Accident, numerous websites (other than Lavandeira's Website) began reporting that the cocaine found in Lohan's car might have been Ronson's and that Ronson had a deal with photographers to help them obtain compromising pictures of Lohan. Id., ¶ 16; see also Complaint, ¶ 19 (listing

1 websites). Thus, when Lavandeira republished the article from celebritybabylon.com on June 1,
2 2007 and from NW magazine on June 13, 2007, he genuinely believed the reports about Ronson
3 were true and had no reason to believe they were false. Id., ¶ 19. Since the Accident, he has not
4 received any information indicating the cocaine found in Lohan's car *was not* Ronson's or that
5 Ronson *did not* have a deal with photographers. Id.

6 **C. Lavandeira Is Entitled to Attorneys' Fees In Connection with this Motion**

7 "Any defendant who brings a successful motion to strike is entitled to mandatory
8 attorneys fees." Ketchum v. Moses, 24 Cal.4th 1122, 1131 (2001); see also Section 425.16(c)
9 (the "prevailing defendant" on a motion to strike "shall be entitled" to recover his attorneys' fees
10 and costs). If the Court grants Lavandeira's Motion, he will submit a noticed motion for his fees.

11 **IV. CONCLUSION**

12 For all of the foregoing reasons, Lavandeira respectfully requests that the Court grant his
13 Motion in its entirety, strike the Complaint brought by Ronson, and award Lavandeira his
14 attorneys' fees and costs associated with this Motion.

15
16 DATED: September 4, 2007

FREEDMAN & TAITELMAN, LLP
DOLL, AMIR & ELEY, LLP

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19 By: 

BRYAN J. FREEDMAN
Attorneys for Defendant MARIO LAVANDEIRA

Declaration

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1 "Hollywood's Most Hated Website!"

2 8. Approximately ninety percent of the information that I post on the Website comes
3 from searching the Internet and finding news and information of interest. Therefore, most of the
4 information I post on the Website comes from news that has previously appeared elsewhere on
5 the Internet. The other ten percent of the information I post consists of original reporting
6 conducted by me.

7 9. Prior to launching the Website, I was aware of the young actress Lindsay Lohan
8 ("Lohan"), from her roles in the feature films "The Parent Trap" and "Freaky Friday."

9 10. Since launching the Website in 2004, I have heard news about Lohan hundreds of
10 times. The news has related to, among other things, her eating disorder, excessive partying and
11 use of alcohol and drugs, repeated stints in rehabilitation, love life, family troubles, run-ins with
12 paparazzi, unprofessional conduct on film sets, repeated car accidents, and repeated hospital
13 stays. Based on this information, since the Website launched, I have blogged about Lohan at
14 least six hundred times.

15 11. I first met Samantha Ronson ("Ronson") in January 2006 at the Super Bowl in
16 Detroit. Since then, I have received approximately 20-50 reports from various sources that she
17 was a lesbian and that she had a drug problem. I also heard from various sources that Ronson
18 was from a wealthy, high-profile family in New York, she was a famous DJ, a musician, and that
19 some of her music had been featured on various film soundtracks.

20 12. In late 2006, I began hearing reports about Lohan and Ronson, together. The
21 reports I received were that they were often seen partying together at various clubs. I also heard
22 from numerous sources that they were dating.

23 13. On May 26, 2007, I heard that Lohan had been involved in an automobile accident
24 (the "Accident") and that there was speculation she had been driving under the influence of
25 alcohol and/or drugs. Soon thereafter, the media was reporting that the police had found cocaine
26 in Lohan's car. Later, I heard that Lohan had been arrested for driving under the influence and
27 possession of cocaine.

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DECLARATION OF MARIO LAVANDEIRA

1 14. On or around May 29, 2007, I began seeing photographs and videos on the
2 Internet of an obviously drunk Lohan, who was shown stumbling out of a club in Los Angeles,
3 falling on the ground, vomiting in public, and passed out in the front seat of Ronson's car.

4 15. For the next couple of days, I searched the Internet for stories and news about the
5 Accident and the photographs and video taken of Lohan on May 29, 2007.

6 16. Almost immediately after the Accident, numerous sources on the Internet were
7 reporting that Ronson was in Lohan's car at the time of the Accident. I also began seeing
8 numerous reports that the cocaine found in Lohan's car may have belonged to Ronson.
9 Additionally, almost immediately after the photographs and videos of Lohan from May 29, 2007
10 appeared on the Internet, I began seeing numerous reports that Ronson had a deal with
11 photographers to provide them photo opportunities of Lohan. The websites that were reporting
12 this information about Ronson's involvement with the Accident, cocaine, and photographers
13 included, among others, celebritybabylon.com, celebitchy.com, socialitelife.com,
14 hollyscoop.com, evilbeetgossip.com, popontheop.blogspot.com, and gossip.commongate.com.

15 17. On June 1, 2007, after numerous websites had been reporting for several days
16 about Ronson's involvement in the Accident, the cocaine found in Lohan's car, and Ronson's
17 involvement with the paparazzi, I posted a blog about these issues. A true and correct copy of a
18 reproduction of the post is attached as Exhibit B to the Declaration of Miklos Gaspar. When I
19 posted this blog, I was very careful to indicate that the information on the Website had come
20 from celebritybabylon.com and not from me. I was also very careful to make it clear that I was
21 quoting from celebritybabylon.com, which is apparent from the post. Also, when I used the word
22 "toxic" to describe Lohan's friends, including Ronson, I was merely expressing my opinion that
23 these people were having a negative influence on Lohan's life. Additionally, when I stated
24 "[w]ith friends like Samantha Ronson, Lindsay doesn't need any enemies," I was merely
25 expressing my opinion that it did not appear Ronson had been a good friend to Lohan.

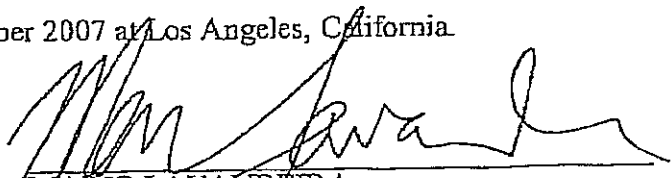
26 18. On June 13, 2007, I posted another blog about Lohan and Ronson. A true and
27 correct copy of a reproduction of the post is attached as Exhibit C to the Declaration of Miklos
28

Gaspar. As indicated in the post, the Australian magazine NW had written an article indicating its belief that Ronson had betrayed Lohan. In the post, I stated that "And we wouldn't disagree!" By making this statement, I was expressing my opinion, based on all the information that had been circulating on the Internet, that I agreed with NW's opinion about Ronson. In this post, I am also shown in a photograph wearing a sweatshirt bearing the words "Blame Samantha." The photograph contains the caption "Celeb gossip guru Perez Hilton has described the DJ's influence on Lindsay's life as 'toxic' . . . and wears this top to prove his point." As I stated above, by using the word "toxic," I was merely stating my opinion that Ronson had been a negative influence on Lohan's life. By posting this photograph, I was simply trying to visually emphasize my opinion of Ronson to the readers of the Website.

19. When I quoted the article from celebritybabylon.com on the Website on June 1, 2007 and the statement from NW magazine on June 13, 2007, I genuinely believed that the reports about Ronson were true based on all of the information that had been circulating on the Internet at the time and the information that I had received about Ronson since early 2006. When I posted these articles, I had not read, seen, or heard any information indicating the reports about Ronson were false. Since the Accident, I have not heard any reports from any source indicating that the cocaine found in Lohan's car did not belong to Ronson, that Ronson did not have a deal with photographers, or that she had not arranged photo opportunities of Lohan for photographers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4 th day of September 2007 at Los Angeles, California.


MARIO LAVANDEIRA

Declaration

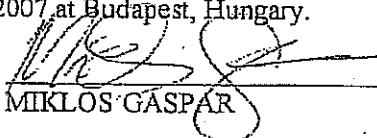
DECLARATION OF MIKLOS GASPAR

I, Miklos Gaspar, declare:

1. I am over eighteen years old. I have personal knowledge of the facts set forth herein and could and would testify competently to them if called to do so.
2. I am the managing director of Pressflex KFT ("Pressflex") a web hosting service provider.
3. Since June 19, 2007, Pressflex has hosted and managed the servers for the website PerezHilton.com (the "Website"). Generally, web hosting is a service that provides Internet users with online systems for storing information, images, video, or any content accessible via the web. Web hosts are companies that provide space on a server they own or lease for use by their clients as well as providing Internet connectivity, typically in a data center. The prior web host for PerezHilton.com was Hoodlum Productions ("Hoodlum").
4. The posts dated June 1, 2007 (the "June 1 Post") and June 13, 2007 (the "June 13 Post") referring to Samantha Ronson appeared on the Website prior to the date that Pressflex began hosting the Website. However, when Pressflex began hosting the Website, the raw data files for previous posts were transferred from Hoodlum to Pressflex. As a result, Pressflex now maintains the raw data files for the posts in question, even though these posts have never appeared on the web site hosted by Pressflex.
5. A host server saves and retains only the raw data for a post. A post, as it appears on a computer screen, is the combined product of the software that serves the raw data and the browser. Therefore, the actual, visual representations of the posts as they appeared on the Website on June 1 and June 13 do not exist in a saved form. Rather, only the raw data exists. This is true for all posts, including those that appear on the Website currently.
6. Using the software that Pressflex uses to serve the Website, my colleagues were able to reproduce the June 1 Post and June 13 Post from the raw data for these posts. A true and correct copy of the reproduced June 1 Post is attached hereto as Exhibit B. A true and correct copy of the reproduced June 13 Post is attached hereto as Exhibit C.
7. The June 1 Post and June 13 Post attached hereto as Exhibits B and C are not identical to the posts as they appeared on the Website on June 1 and June 13. The differences and the reasons for these differences are explained below.
 - a. Because Pressflex's software is different from Hoodlum's software, the "look" of the Website changed slightly when Pressflex began hosting the Website. Therefore, the reproduced posts have a slightly different (but insignificant) "look" than how they originally appeared on June 1 and June 13.
 - b. The June 1 Post and the June 13 Post do not include the advertisements that appeared on the right side of the posts on these dates. It would take substantial time, effort, and resources over the course of many days (or even weeks) to recover the actual advertisements that appeared on these dates.
 - c. On the Website, many posts appear on one webpage. For example, ten or more posts may appear on a single page. However, the June 1 Post and the June 13 Post attached as Exhibits B and C are the individual posts referring to Samantha Ronson that appeared these dates. The other posts that appeared with these posts on these dates are not included on Exhibits B and C. It would take substantial time, effort, and resources over the course of several days to reproduce all of the posts that appeared on the webpages with these posts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4th day of September 2007 at Budapest, Hungary.



 MIKLOS GASPAR

Declaration

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1 lohanx.blogspot.com, lohanpictures.com, lindsaypics.com, lindsaylohan.com,
2 lindsaylohansbutt.com, and linsay-lohan-updates.blogspot.com. I did not review all of the search
3 results because it would have required extensive time and effort to do so. However, based on my
4 review of the first ten pages, it is highly likely that additional websites dedicated to Ms. Lohan
5 exist.

6 6. In an effort to determine the extent of the media attention received by Samantha
7 Ronson, I conducted a search of the Los Angeles Times database maintained by lexis.com, using
8 the search terms "Samantha Ronson." The search resulted in twenty-three articles about her or
9 mentioning her name. A true and correct copy of the lexis.com search results from The Los
10 Angeles Times database is attached hereto as Exhibit H.

11 7. I also searched the website nytimes.com, using the words "Samantha Ronson."
12 The search resulted in fifteen articles about her or mentioning her name. A true and correct copy
13 of the search results from nytimes.com is attached hereto as Exhibit I.

14 8. I also searched the words "Samantha Ronson" on the Internet search engine,
15 Google.com. The search resulted in 283,000 hits. A true and correct copy of the first page of the
16 search results from Google.com is attached hereto as Exhibit J. Most of the results were from
17 celebrity gossip, entertainment, and paparazzi websites. Because it would not be possible to
18 submit all of these articles to the court, I printed a selection of the articles found on various
19 celebrity gossip and paparazzi websites. A true and correct copy of these articles are attached
20 hereto as Exhibit K.

21 9. I also searched the words "Samantha Ronson" in the website mtv.com. The
22 search resulted in an article by Corey Moss featuring an interview of Ms. Ronson. A true and
23 correct of the article is attached hereto as Exhibit L.

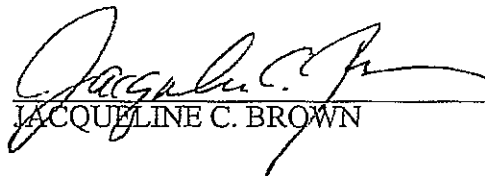
24 10. I also conducted a search of the Internet for articles and photographs of Ms. Lohan
25 and Ms. Ronson together. My search resulted in hundreds of articles and photographs of them
26 dating back as early as 2005. Because it would not be possible to submit all of these articles to
27 the court, I printed a selection of the articles found on various celebrity gossip and paparazzi
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1 websites. A true and correct copy of these articles are attached hereto as Exhibit M.

2 11. In the course of my research, I discovered that as a result of the publicity
3 surrounding the automobile accident involving Ms. Lohan on May 26, 2007, the California
4 Department of Alcoholic Beverage Control had begun an investigation into the practice of
5 Hollywood nightclubs serving alcohol to underage celebrities and patrons. A true and correct
6 copy of an article by David Pierson and Andrew Blankstein entitled "Lohan Bust May Mark Last
7 Call for Young Stars," dated May 30, 2007 is attached hereto as Exhibit N.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

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12 Executed this 4th day of September 2007 at Los Angeles, California.

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15 JACQUELINE C. BROWN
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