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 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 BRIAN WARNER, p/k/a MARILYN
 12 MANSON,
 13 Plaintiff,
 14 vs.
 15 EVAN RACHEL WOOD; ASHLEY GORE,
 a/k/a ILLMA GORE,
 16 Defendants.

Case No. 22STCV07568
 Assigned to Hon. Teresa A. Beaudet, Dept. 50

**DEFENDANT EVAN RACHEL WOOD'S
 NOTICE OF SPECIAL MOTION TO
 STRIKE AND SPECIAL MOTION TO
 STRIKE PORTIONS OF PLAINTIFF'S
 COMPLAINT PURSUANT TO CODE OF
 CIVIL PROCEDURE § 425.16 AND FOR
 ATTORNEYS' FEES**

[Declarations of Evan Rachel Wood and
 Michael J. Kump, Request for Judicial Notice,
 Notice of Lodging, and Proposed Order filed
 concurrently herewith]

Date: December 13, 2022
 Time: 2:00 p.m.
 Dept.: 50

Reservation ID: 324970224500

Action Filed: March 2, 2022
 Trial Date: None Set

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NOTICE OF SPECIAL MOTION TO STRIKE

TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 2:00 p.m. on December 13, 2022, or as soon thereafter as it may be heard, in Department 50 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California, 90012, Defendant Evan Rachel Wood (“Defendant” or “Wood”) will and hereby does move to strike the following portions of the Complaint filed by Plaintiff Brian Warner (p/k/a Marilyn Manson) relating to the FBI Letter: (i) Paragraph 4, First Bullet Point; (ii) Section B of the Factual Allegations (Paragraphs 32 through 37, including the image on Page 11 and Footnote 17); (iii) Paragraph 63(c) of the First Cause of Action; and (iv) Attachment A.

Wood also moves to strike the following portions of the Complaint relating to Wood’s communications with other victims of Warner: (i) Paragraph 1, lines 4 through 6 (“to publicly cast” through “career.”); (ii) Paragraph 3, lines 16 to 17 (“spearheaded” through “and abuse”); (iii) Paragraph 4, lines 1 through 5 and Second Bullet Point; (iv) Paragraph 5, lines 19 to 20 (“and to the false” through “against him”); (v) Paragraph 16, First Sentence; (vi) Paragraphs 21 through 24; (vii) Section A of the Factual Allegations (Paragraphs 25 through 31); (viii) Paragraph 63(e) of the First Cause of Action; (ix) Attachment B; and (x) Attachment C.

Finally, Wood moves to strike Warner’s claims based on purportedly false and defamatory statements: (i) Paragraph 4, Third Bullet Point; (ii) Section F of the Factual Allegations (Paragraphs 56 through 61); (iii) Paragraph 64(d) of the First Cause of Action; and (iv) the Second Cause of Action (Paragraphs 68 through 75).

Wood further moves to strike all references to or relief sought against Wood based on the allegations and claims contained in the portions of the Complaint identified above. Wood moves to strike the identified portions of the Complaint and requested relief with prejudice and without leave to amend pursuant to California Code of Civil Procedure § 425.16.

This special motion to strike is made upon the grounds that Plaintiff has filed a “Strategic Lawsuit Against Public Participation” (“SLAPP”) that includes claims that arise from protected activity and for which he cannot demonstrate a probability of prevailing on the merits. The conduct complained of arises from documents filed by Wood in a parentage action in L.A. County Superior

1 Court, Wood’s communications with other victims of Warner, Wood’s advocacy for the Phoenix
2 Act and other legislation on behalf of domestic abuse survivors, Wood’s communications in
3 connection with ongoing criminal investigations, and Wood’s communications in connection with
4 the documentary film *Phoenix Rising*. Such conduct implicates Wood’s rights of free speech and
5 petition.

6 Wood further requests that all discovery proceedings be stayed pursuant to California Code
7 of Procedure § 425.16(g).

8 Although not required by statute, counsel for Wood requested and participated in a meet and
9 confer call with Warner’s counsel regarding the subject matter of this motion, but the parties were
10 unable to resolve the issues raised by this motion. Kump Decl. ¶ 2.

11 **PLEASE TAKE FURTHER NOTICE** that Wood intends to seek recovery of attorneys’
12 fees and costs as a prevailing party pursuant to California Code of Civil Procedure § 425.16(c).

13 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities;
14 the Declarations of Evan Rachel Wood and Michael J. Kump and exhibits thereto; the concurrently
15 filed Request for Judicial Notice; all pleadings and documents on file with the Court; and upon oral
16 argument and such other matters as the Court deems just and appropriate.

17
18 DATED: April 28, 2022

Respectfully submitted,

19 KINSELLA WEITZMAN ISER KUMP HOLLEY LLP


20 By: 
21 _____
22 Michael J. Kump
23 Attorneys for Defendant EVAN RACHEL WOOD
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For years, Plaintiff Brian Warner raped and tortured Defendant Evan Rachel Wood and threatened retaliation if she told anyone about it. Warner has now made good on those threats by filing the present lawsuit. In it, he seeks to hold Wood liable for defamation and intentional infliction of emotional distress (“IIED”) based on Wood’s decision to publicly name Warner as her abuser and to talk to Warner’s other victims. Many of Warner’s claims arise from protected activity, and all are meritless. They should therefore be stricken under the anti-SLAPP statute.

First, Warner asserts an IIED claim based on a declaration filed in a parentage action between Wood and her ex, Jamie Bell. Warner alleges that Wood’s declaration attached a purportedly fabricated letter from the FBI, which states that Wood is a key witness in a criminal investigation of a well-known public figure and her safety is of utmost concern. But court filings are the quintessential example of protected activity, and Warner’s IIED claim is barred by both the litigation privilege and the First Amendment. It is also meritless, as Wood *did not* fabricate the FBI letter, Warner *is* the subject of an FBI investigation, and Warner cannot demonstrate *any* of the elements required to prevail on a claim for intentional infliction of emotional distress.

Second, Warner’s IIED claim based on Wood’s communications with other victims arises from protected activity and should be stricken. Wood’s communications were made in connection with legislative reforms, criminal investigations, and civil litigation, and they concern domestic abuse by a public figure—clearly a matter of public concern. And, again, Warner cannot prove the elements of IIED and his claim is barred by the First Amendment and common interest privilege.

Third, Warner asserts IIED and defamation per se claims based on statements purportedly made by another defendant that the actress in Warner’s *Groupie* video was underage when the sexual and violent film was made and is now dead. Courts have consistently found that statements about child abuse are protected activity, and that is particularly true here given Warner’s celebrity, the Defendants’ activism, and the ongoing criminal investigations and civil lawsuits (some of which purportedly repeat the statements about *Groupie*). Because Warner cannot demonstrate that Wood made any false statements, or that she acted with actual malice, his claims must be stricken.

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. Warner Abuses Wood During Their Four-Year Relationship.**

3 Wood met Warner in 2006 when she was just 18 years old. Wood Decl. ¶ 3. Warner sought
4 out Wood at a party and told her he was a big fan of her work in *Thirteen*, a teen drama where
5 Wood plays a seventh grader dabbling in drugs, sex, and crime. *Id.* Warner said he wanted to talk
6 to Wood about a project he was working on called *Phantasmagoria*. *Id.* By this time, Warner was
7 already a music icon, having taken on the “Marilyn Manson” persona in 1989. *Id.*

8 Although the relationship began as a friendship and professional collaboration, one day
9 Warner kissed Wood. Wood Decl. ¶ 4. Wood was still 18; Warner was 37. *Id.* Warner and Wood
10 then began a romantic relationship that continued, on and off, until 2010. *Id.* ¶ 5. Because Warner
11 and Wood are both celebrities, their relationship garnered a great deal of public attention. *Id.*

12 What started out as a seemingly loving relationship became increasingly abusive over time.
13 During the course of the relationship, Warner abused Wood by, among other things, raping her,
14 torturing her, tying her up, beating her, shocking sensitive parts of her body, threatening her life,
15 blackmailing her, hacking into her accounts, and isolating her from friends and family. Wood
16 Decl. ¶ 6. Finally, in 2010, Wood found the courage to leave Warner for good. *Id.* ¶ 7.

17 **B. Wood Advocates to Extend the Statute of Limitations for Victims of Abuse.**

18 Although she escaped from the relationship with Warner in 2010, coming to terms with the
19 profound effects of years of physical and emotional abuse—and feeling safe enough to talk about
20 it despite threats of retaliation—took much longer. Wood did not speak about the abuse until 2016,
21 and she was not ready to publicly name Warner as her abuser until years later. Wood Decl. ¶ 8.

22 Once Wood began speaking about the abuse, she connected with other activists. *Id.* ¶ 9. In
23 February 2018, Wood testified before the U.S. Congress to promote implementation of the 2016
24 Sexual Assault Survivor’s Bill of Rights across the country. *Id.* Wood testified to some of the
25 horrific details of the abuse she suffered, but she was not yet ready to name Warner as her abuser.
26 *Id.* Nevertheless, after testifying before Congress, Wood was contacted by other women who
27 claimed to have experienced similar abuse inflicted by Warner. *Id.* ¶ 10.

28 After learning that she was not Warner’s only victim, Wood approached a prominent

1 attorney with evidence of Warner’s abuse, but she learned that the statute of limitations for
2 Wood’s claims against Warner had already expired. Wood Decl. ¶ 11. Shocked that there was no
3 longer a remedy for the horrendous crimes committed against her, Wood began advocating to
4 extend the statute of limitations for survivors of domestic violence. *Id.* ¶¶ 11-12. In April 2019,
5 Wood testified again, this time before the California Senate in support of the Phoenix Act, a bill
6 that passed and extended the statute of limitations for charges of domestic violence. *Id.* Once
7 again, Wood testified to the type of abuse she had suffered, but declined to name Warner. *Id.*

8 **C. Wood Names Warner as Her Abuser; Many Other Women Come Forward.**

9 On February 1, 2021, Wood identified Warner as her abuser in an Instagram post, stating:

10 The name of my abuser is Brian Warner, also known to the world as Marilyn Manson.
11 He started grooming me when I was a teenager and horrifically abused me for years.
12 I was brainwashed and manipulated into submission.
13 I am done living in fear of retaliation, slander, or blackmail.
14 I am here to expose this dangerous man and call out the many industries that have enabled
15 him, before he ruins any more lives.
16 I stand with the many victims who will no longer be silent.

17 Wood Decl. Ex. 1. Many other women have also accused Warner of abuse. Kump Decl. Exs. 6-11.
18 Both the L.A. County Sherriff’s Department and the FBI have launched investigations of Warner,
19 and Wood has provided evidence in connection with them. Wood Decl. ¶ 18. At least four women
20 have also filed civil lawsuits against Warner based on his abuse. Kump Decl. Exs. 6-10.

21 **D. Warner Retaliates Against Wood by Filing the Present Lawsuit.**

22 On March 2, 2022, Warner retaliated by filing the present lawsuit against Wood and
23 another woman who worked on the Phoenix Act, Illma Gore. Warner filed the lawsuit less than
24 two weeks before the premiere of the HBO documentary *Phoenix Rising*, which chronicles
25 Wood’s experience as a domestic violence survivor and activist. Wood Decl. ¶ 13.

26 In the Complaint, Warner asserts causes of action for (1) intentional infliction of emotional
27 distress (“IIED”), (2) defamation per se, (3) violation of the Comprehensive Computer Data and
28 Access Fraud Act, and (4) impersonation over the Internet. Warner’s IIED cause of action includes
five claims based on the conduct alleged in Paragraph 63, subdivisions (a) through (e). This
motion seeks to strike Warner’s IIED claims based on the conduct alleged in Paragraph 63,
subdivisions (c), (d), and (e), and Warner’s cause of action for defamation per se.

1 **1. Warner’s Allegations and IIED Claim Based on the FBI Letter.**

2 Warner alleges that Wood and Gore “impersonated a federal agent by creating and
3 distributing a fictitious letter” (the “FBI Letter”). Compl. ¶ 32, Ex. A. The FBI Letter states:

4 Please be advised that Ms. Evan Rachel Wood is a key witness in connection to a
5 criminal investigation in Los Angeles, California involving an international and
6 well known public figure. The safety of Ms. Wood, her family, other victims, and
of their families are of the utmost concern during this time.

7 *Id.* Ex. A. Warner is not specifically named. The Complaint alleges that Wood submitted the FBI
8 Letter “*in a California custody proceeding*, using it as supposed evidence for why she should be
9 able to move her son to Tennessee.” *Id.* ¶ 36 (emphasis added). The Complaint also quotes from
10 Wood’s confidential declaration in the parentage action (*Matfin-Bell v. Wood*, L.A. Superior Court
11 Case No. 21STPT00170), alleging that the following statements by Wood were untrue: “that she
12 was ‘advised by criminal investigators that my and my family’s safety was at risk,’ and that ‘[t]o
13 punctuate the seriousness of the situation, I was provided with a correspondence from a
14 representative of the Federal Violent Crimes Department from the FBI.’” *Id.* The Complaint does
15 not specifically allege that Wood distributed the FBI Letter *other than in the custody proceedings*.

16 Warner’s IIED cause of action includes a claim based on Wood and Gore purportedly
17 “falsifying correspondence from a fictitious federal agent claiming that there was concern for the
18 safety of Wood, other alleged ‘victims’ of Warner, and their families as well as an ongoing federal
19 criminal investigation targeting Warner.” *Id.* ¶ 63(c).

20 **2. Warner’s Allegations and IIED Claim Based on “Recruiting” Victims.**

21 The Complaint alleges a separate IIED claim based on Wood and Gore purportedly
22 “recruiting, coordinating, and pressuring multiple women to make false accusations against
23 Warner and to be part of their film project.” Compl. ¶ 63(e). Specifically, Warner alleges that
24 Wood and Gore used their work advocating for the Phoenix Act, and in connection with the
25 *Phoenix Rising* documentary, “to recruit, coordinate, and pressure women who had been linked to
26 Warner to make false accusations of abuse against him.” *Id.* ¶ 25. According to the Complaint,
27 “Wood and Gore coordinated allegations and devised the specific buzzwords, phrases, and talking
28 points that prospective accusers would use when they gave interviews or posted their stories on

1 social media.” *Ibid.* The Complaint further alleges that Gore used Wood’s status as “a famous
2 actress” and the criminal investigation of Warner to get potential accusers to meet and “coordinate
3 allegations,” which “were filmed for Phoenix Rising.” *Id.* ¶¶ 27-28. Warner alleges that
4 purportedly false statements made to “prospective accusers” have been repeated in the civil
5 lawsuits filed against him. *See* Compl. ¶¶ 4, 30-31, 60.

6 **3. Warner’s Allegations and Claims of Defamation Per Se.**

7 The Complaint alleges an IIED claim and a cause of action for defamation per se based on
8 purported statements by Gore about Warner’s movie, *Groupie*. Compl. ¶¶ 63(d), 68-75.
9 Specifically, Warner alleges that Gore told unnamed third parties that “during the filming of
10 ‘Groupie,’ the actress in the video was a minor, and that the actress was ‘dead.’” Compl. ¶ 69.
11 Warner contends that Gore understood these statements “to mean that Warner’s role in the making
12 of ‘Groupie,’ *e.g.*, as child pornography was criminal,” adding that Gore “stated that ‘Groupie’
13 was evidence of a felony and that Warner would be indicted as a result.” *Ibid.* Warner does not
14 attribute any statements about *Groupie* to Wood, but alleges that “Wood condoned and
15 encouraged Gore to promulgate defamatory falsehoods about Warner.” Compl. ¶ 61.

16 **III. LEGAL STANDARD.**

17 Under the anti-SLAPP statute, any “cause of action against a person arising from any act of
18 that person in furtherance of that person’s right of petition or free speech ... in connection with a
19 public issue shall be subject to a special motion to strike, unless the court determines that the
20 plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” Civ.
21 Proc. Code § 425.16(b)(1). The legislature has mandated that the statute “shall be construed
22 broadly.” *Briggs v. Eden Council*, 19 Cal.4th 1106, 1119 (1999).

23 An anti-SLAPP motion need not attack an entire pleaded cause of action. *Baral v. Schnitt*,
24 1 Cal.5th 376, 392 (2016). “Mixed” causes of action—those that include both claims based on
25 protected activity and claims based on unprotected activity—are analyzed as follows:

26 At the first step, the moving defendant bears the burden of identifying all
27 allegations of protected activity, and the claims for relief supported by them.
28 When relief is sought based on allegations of both protected and unprotected
activity, ***the unprotected activity is disregarded at this stage***. If the court
determines that relief is sought based on allegations arising from activity

1 protected by the statute, the second step is reached. There, the burden shifts to the
2 plaintiff to demonstrate that *each challenged claim based on protected activity* is
legally sufficient and factually substantiated.

3 *Id.* at 396 (emph. added). In other words, “courts should analyze each claim for relief—each act or
4 set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of
5 action—to determine whether the acts are protected and, if so, whether the claim they give rise to
6 has the requisite degree of merit to survive the motion.” *Bonni v. St. Joseph Hlth. Sys.*, 11 Cal.5th
7 995, 1010 (2021). If the plaintiff cannot demonstrate that a claim for relief based on protected
8 activity has merit, “those particular allegations will be stricken.” *Id.* at 1012. Applying these steps
9 here leads to only one conclusion—the allegations and claims for relief based on the FBI Letter,
10 Wood’s communications with other victims, and the alleged defamation must be stricken.

11 **IV. THE IIED CLAIM BASED ON THE FBI LETTER SHOULD BE STRICKEN.**

12 **A. Warner’s Claim Arises from Protected Activity.**

13 Under the first step, Wood need only show that Warner’s claims arise, at least in part, from
14 Wood’s acts in furtherance of her right of petition or free speech. *See Equilon Enters. v. Consumer*
15 *Cause, Inc.*, 29 Cal.4th 53, 66 (2002). Wood meets her burden “by demonstrating that the act
16 underlying the plaintiff’s cause fits one of the categories spelled out in section 425.16, subdivision
17 (e).” *Cabral v. Martins*, 177 Cal.App.4th 471, 478 (2009).

18 **1. Filing the FBI Letter in a Parentage Action Is Protected Activity.**

19 Here, Warner’s IIED claim is based on a purportedly forged letter attached to Wood’s
20 declaration in a parentage action between Wood and Jamie Bell. Compl. ¶ 36; Wood. Decl. ¶¶ 19,
21 21-23. Court filings are a textbook example of protected activity. Section 425.16, subdivision (e),
22 defines an “act in furtherance of a person’s right of petition or free speech” to include both:
23 “(1) any written or oral statement or writing made before a legislative, executive, or judicial
24 proceeding, or any other official proceeding authorized by law,” and “(2) any written or oral
25 statement or writing made in connection with an issue under consideration or review by a
26 legislative, executive, or judicial body, or any other official proceeding authorized by law.” Civ.
27 Proc. Code § 425.16(e)(1)-(2). All petition-related acts performed by parties, or their attorneys, in
28 judicial proceedings *are per se protected*. *Contreras v. Dowling*, 5 Cal.App.5th 394, 408-09

1 (2016). By protecting all petitioning conduct, the Legislature created a “reasonable, bright-line test
2 applicable to a large class of potential section 425.16 motions.” *Briggs*, 19 Cal.4th at 1122.

3 Moreover, courts have consistently held that filings in family law proceedings are
4 protected activity. *E.g. Vivian v. Labrucherie*, 214 Cal.App.4th 267, 273-74 (2013) (claims arising
5 from family law action arose from protected activity); *S.A. v. Maiden*, 229 Cal.App.4th 27, 33
6 (2014) (granting special motion to strike claims arising from request for restraining order).

7 The FBI Letter, and any alleged communications between Wood and Warner’s other
8 victims about the FBI Letter or its contents, also constitute protected activity for the reasons
9 discussed in Section V.A *infra* (e.g., as statements in connection with official proceedings and in
10 connection with matters of public interest).

11 **2. The IIED Claim Arises from Wood’s Petitioning Activity.**

12 Warner’s IIED claim based on the FBI Letter arises from Wood’s petitioning activity.
13 Indeed, the Complaint specifically references the submission of the FBI Letter “in a California
14 custody proceeding” and quotes from Wood’s declaration attaching the letter. Compl. ¶ 36.

15 Warner may argue that his IIED claim does not arise from Wood’s *filing* of the FBI Letter,
16 but rather from the alleged *fabrication* of the letter. Any such argument would fail. First, whether
17 or not Warner’s allegations about the fabrication of the letter are true (*and they are not*), the act of
18 forging the letter cannot cause distress to someone unaware of its existence. It is the FBI Letter’s
19 *publication* through the court filing—not its *creation*—that would cause any purported distress.
20 Moreover, the act of preparing documents to file in court—even if perjurious or forged—qualifies
21 as privileged petitioning activity. *Rusheen v. Cohen*, 37 Cal.4th 1048, 1058-65 (2006). Otherwise,
22 every defamation claim based on an allegedly false statement in a declaration would fall outside of
23 anti-SLAPP protection. That is clearly not the law.

24 **B. Warner Cannot Establish a Probability of Prevailing on His Claim.**

25 Because Wood has demonstrated that the IIED claim based on the FBI Letter arises from
26 protected activity the burden shifts to Warner to establish, by competent and admissible evidence,
27 a probability of prevailing on his claims at trial. *Garcia v. Rosenberg*, 42 Cal.App.5th 1050, 1056
28 (2019). *See* Civ. Proc. Code § 425.16(b)(1). Warner cannot meet his burden.

1 **1. The Claim Is Barred by the Litigation Privilege.**

2 Warner cannot establish a probability of prevailing on his IIED claim based on the FBI
3 Letter because it is barred by the litigation privilege. *See Digerati Holdings, LLC v. Young Money*
4 *Entm't, LLC*, 194 Cal.App.4th 873, 888 (2011) (“A plaintiff cannot establish a probability of
5 prevailing if the litigation privilege precludes the defendant’s liability on the claim.”).

6 “The litigation privilege ... applies to ‘any communication (1) made in judicial or quasi-
7 judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the
8 objects of the litigation; and (4) that have some connection or logical relation to the action.’”
9 *Rohde v. Wolf*, 154 Cal.App.4th 28, 37 (2007). *See* Civ. Code § 47. “[C]ommunications with
10 “some relation” to judicial proceedings’ are ‘absolutely immune from tort liability’ by the
11 litigation privilege.” *Rusheen*, 37 Cal.4th at 1057. “To effect its purposes ... the litigation
12 privilege ‘is absolute and applies regardless of malice,’ and ‘has been given broad application.’”
13 *Bergstein v. Stroock & Stroock & Lavan LLP*, 236 Cal. App.4th 793, 814 (2015). “Put another
14 way, application of the privilege does not depend on the publisher’s ‘motives, morals, ethics or
15 intent.’” *Kashian v. Harriman*, 98 Cal.App.4th 892, 913 (2002). “Any doubt about whether the
16 privilege applies is resolved in favor of applying it.” *Ibid*.

17 Here, Wood’s declaration attaching the FBI Letter was filed in a parentage action. The
18 declaration and its exhibits are clearly communications with “some relation” to judicial
19 proceedings. *Rusheen*, 37 Cal.4th at 1057. Thus, they are “absolutely immune from tort liability”
20 by the litigation privilege. *Ibid*. This is true regardless of whether Wood forged the FBI Letter (*she*
21 *did not*), or made knowingly false statements in her declaration (*again, she did not*). “The
22 privilege has been applied specifically in the context of ... claims alleging the filing of false or
23 perjurious testimony or declarations.” *Id.* at 1058. *See also Kenne v. Stennis*, 230 CalApp.4th 953,
24 971 (2014) (IIED claim based on filing false police reports and prosecuting civil harassment
25 petitions was barred by the litigation privilege); *Pollock v. Univ. of S. Cal.*, 112 Cal.App.4th 1416,
26 1430-31 (2003) (regardless of whether declaration is perjurious, it “functions as written
27 testimony” and “is exactly the sort of communication the privilege is designed to protect”);
28 *Carden v. Getzoff*, 190 Cal.App.3d 907, 913-15 (1987) (claims for infliction of emotional distress

1 based on false evidence submitted in dissolution proceedings were barred by the litigation
2 privilege); *Pettitt v. Levy*, 28 Cal.App.3d 484, 489 (1972) (“Preparing and presenting false
3 documents is equivalent to the preparation and presentation of false testimony. Since there is no
4 exception to the privilege when the testimony is perjured, by a parity of reasoning no exception
5 should apply to the preparation and presentation of false documentary evidence.”).

6 **2. The Claim Is Also Meritless.**

7 Even if the litigation privilege did not apply, Warner could not meet his burden of
8 demonstrating a probability of prevailing on the merits. The elements of IIED are: “(1) outrageous
9 conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing
10 emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the
11 emotional distress.” *Wong v. Jing*, 189 Cal.App.4th 1354, 1376 (2010). Warner cannot meet his
12 burden with respect to *any* element, *and* his claim is barred by the First Amendment.

13 First, Wood’s conduct was not outrageous. Contrary to the allegations in the Complaint
14 (Compl. ¶¶ 32-37), Wood did not impersonate an FBI agent or forge a fictitious letter. Wood Decl.
15 ¶ 22. Rather, when Wood received a copy of the FBI Letter, and when she filed it in court, Wood
16 believed it to be authentic. *Id.* Wood had every reason to believe in the FBI Letter’s authenticity
17 because Wood has provided evidence to the FBI and the L.A. County Sheriff’s Office in
18 connection with investigations of Warner and fears for her safety based on Warner’s threats and
19 past conduct. *Id.* ¶¶ 6-7, 18, 20. Likewise, Wood did not knowingly make any false statements in
20 her declaration. *Id.* ¶ 22. In short, there was *no impersonation, no forgery, and no perjury*. Wood’s
21 actual conduct—explaining to the court why she fears living close to a man who has raped,
22 tortured, and threatened her—is in no way outrageous. It is *Warner* who has acted outrageously.

23 Second, Warner cannot meet his burden to prove that Wood filed the FBI Letter with an
24 *intent to cause Warner emotional distress*. Wood *did not* file the FBI Letter to cause Warner
25 distress, but rather to explain to the court why living in close proximity to Warner was distressing
26 to her. Wood. Decl. ¶ 23. Indeed, because the FBI Letter was submitted in connection with a
27 parentage action—to which Warner is not a party—Wood did not know that Warner would ever
28 receive a copy of the letter. *Id.* Documents and records filed in parentage actions are *not publicly*

1 *available* and are only subject to inspection “in exceptional cases upon an order of the court for
2 good cause shown.” Fam. Law ¶ 7643. Warner apparently became aware of the FBI Letter
3 because it was leaked to the press. *See* Compl. ¶ 36 n.17 (citing a Daily Mail article reporting on
4 the parentage action). But Wood did not distribute the FBI Letter outside of the custody dispute,
5 did not provide it to Warner, and did not leak it to the press. Wood Decl. ¶ 22. Thus, Warner
6 cannot prove that Wood intended to cause Warner distress by filing the letter.

7 Third, Warner cannot meet his burden to demonstrate severe emotional distress. Indeed,
8 apart from the conclusory allegation that “Warner has suffered severe emotional distress,” the
9 Complaint does not include *any* specific allegations or details about the purported “emotional
10 distress” Warner claims to have suffered. Compl. ¶ 65.

11 Fourth, Warner cannot meet his burden to prove that any distress he claims to have
12 suffered was caused by Wood filing the FBI Letter. If Warner has suffered distress, it is not
13 because a perfunctory letter, which does not mention Warner by name, was filed in a confidential
14 parentage action. Rather, it is because Warner committed horrific, criminal acts against numerous
15 women and is the subject of ongoing criminal investigations and civil lawsuits.

16 Finally, “[a] public figure,” like Warner, ““may not recover for the tort of intentional
17 infliction of emotional distress”” based on the publication of a statement about him ““without
18 showing ... that the publication contains a false statement of fact.”” *Lam v. Ngo*, 91 Cal.App.4th
19 832, 848-49 (2001). The FBI Letter states that (1) “Wood is a key witness in connection to a
20 criminal investigation ... involving an international and well known public figure,” and (2) the
21 safety of Wood, other victims, and their families is “of the utmost concern.” Compl. Ex. A. Both
22 statements are true (Wood Decl. ¶¶ 6-7, 18, 20), and the second statement is not an actionable
23 statement of fact. Thus, Warner’s claim based on the FBI Letter is barred by the First Amendment.

24 **V. THE IIED CLAIM BASED ON WOOD’S COMMUNICATIONS WITH OTHER**
25 **VICTIMS SHOULD BE STRICKEN.**

26 **A. Warner’s Claim Arises from Protected Activity.**

27 In addition to speech and petitioning activities in connection with legislative, executive,
28 and judicial proceedings (Section 425.16(e)(1)-(2)), protected activity also includes “(3) any

1 written or oral statement or writing made in a place open to the public or a public forum in
2 connection with an issue of public interest” and “(4) any other conduct in furtherance of the
3 exercise of the constitutional right of petition or the constitutional right of free speech in
4 connection with a public issue or an issue of public interest.” Civ. Proc. Code § 425.16(e)(3)-(4).
5 Warner asserts an IIED claim based on Wood and Gore purportedly “recruiting, coordinating, and
6 pressuring multiple women to make false accusations against Warner and to be part of their film
7 project.” Compl. ¶ 63(e). This claim arises from protected activity for several reasons:

8 **Domestic Violence.** The “accusations” Warner references are statements made by Wood
9 and many other victims accusing Warner of *domestic violence and abuse*. Compl. ¶¶ 4, 21, 29-30,
10 Ex. B. These statements were made on social media, in press interviews, and in a survivor’s
11 meeting filmed for *Phoenix Rising*. Compl. ¶¶ 4, 21, 25, 28, 30. Courts have consistently held that
12 communications regarding domestic violence and sexual abuse are a matter of public interest. *See*
13 *Sipple v. Found. for Nat’l Progress*, 71 Cal.App.4th 226, 238 (1999) (domestic violence is a
14 matter of public interest); *Cross v. Cooper*, 197 Cal.App.4th 357, 382 (2011) (protecting people
15 from sex offenders is a matter of public interest); *M.G. v. Time Warner, Inc.*, 89 Cal.App.4th 623,
16 329 (2001) (child molestation is a matter of public interest). Public interest in allegations of sexual
17 assault and domestic violence has only increased in the wake of the #MeToo movement. And
18 survivors of abuse *must* be able to speak to other survivors of abuse without the fear of being sued.

19 **Criminal Investigation.** Warner alleges that Wood and Gore “enticed potential accusers to
20 allege abuse by suggesting that [they were] already amassing evidence for a claimed ongoing
21 criminal investigation of Warner.” Compl. ¶ 28. Warner is the subject of criminal investigations
22 by the FBI and L.A. County Sherriff’s Department. Wood. Decl. ¶ 18. Statements in anticipation
23 of, or in connection with, a criminal investigation are protected activity. *See Terry v. Davis Cmty.*
24 *Church*, 131 Cal.App.4th 1534, 1547 (2005) (meetings regarding a matter referred to police were
25 protected activity even though police concluded there was insufficient evidence of a crime);
26 *Dwight R. v. Christy B.*, 212 Cal.App.4th 697, 710-11 (2013) (alleged conspiracy to falsify
27 evidence that plaintiff was molesting a minor, and alleged improper coaching of minor, were
28 protected activity as “acts preparatory to or in anticipation of official proceedings”).

1 **Legislation.** Warner also alleges that Wood and Gore used the Phoenix Act and Wood’s
2 work as an activist to recruit and attract “potential accusers.” Compl. ¶¶ 20, 25-27. Speech and
3 petitioning activities in connection with issues under legislative review—such as the Phoenix Act
4 and other legislative reforms affecting survivors of domestic violence—are protected activity
5 under subdivisions (e)(2), (e)(3), and (e)(4). *See, e.g., Annette F. v. Sharon S.*, 119 Cal.App.4th
6 1146, 1161 (2004) (statements in newspaper concerning allegations at issue in ongoing judicial
7 proceedings were protected activity); *Averill v. Superior Court*, 42 Cal.App.4th 1170, 1175
8 (1996) (private statements about an issue subject to review by the city were protected activity).

9 **Public Figure.** The fact that Wood and the other victims are accusing a world-famous
10 celebrity of domestic violence heightens the public interest in the accusations. It is axiomatic that
11 speech regarding a public figure is more likely to be deemed a matter of public interest. *See, e.g.,*
12 *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal.5th 133, 145 (2019) (“whether the subject of the
13 speech or activity ‘was a person or entity in the public eye’” is one of the primary considerations
14 in determining what constitutes a matter of public interest); *Hall v. Time Warner, Inc.*, 153
15 Cal.App.4th 1337, 1347 (2007) (Marlon Brando’s celebrity rendered decisions about the
16 distribution of his assets an issue of public interest); *Sipple*, 71 Cal.App.4th at 238-39 (allegations
17 of domestic violence against prominent media strategist were a matter of public interest).

18 **Litigation.** At least four women have filed civil lawsuits against Warner. Kump Decl. Exs.
19 6-10. In the Complaint, Warner alleges that some of the purportedly false statements made to
20 “prospective accusers” have “since been repeated by those accusers in court filings.” Compl. ¶ 4.
21 The Complaint also *quotes directly from the civil lawsuits* filed against Warner. *Compare* Compl.
22 ¶ 30 *with* Kump Decl. Ex. 7 at ¶¶ 127-129. *See* Compl. ¶¶ 4, 31, 60 (referencing civil lawsuits).
23 Statements made in connection with civil litigation are protected activity. *See* Section IV.A.1.

24 **B. Warner Cannot Establish a Probability of Prevailing on His Claim.**

25 Because the IIED claim arises from protected activity, the burden shifts to Warner to
26 demonstrate a probability of prevailing on the merits. Warner cannot do so.

27 First, Wood has never pressured anyone to make false accusations against Warner or to be
28 part of the *Phoenix Rising* documentary. Wood Decl. ¶ 16. Rather, after Wood testified before

1 Congress, Wood was contacted by other women who claimed to have experienced similar abuse
2 by Warner. *Id.* ¶ 10. Some of Warner’s victims met in 2020 to discuss their experiences, and
3 portions of that meeting were filmed for *Phoenix Rising*. *Id.* ¶ 14. Notably, however, some victims
4 who attended the meeting declined to appear in the film. *Id.* Their wishes were respected. *Id.* Thus,
5 Warner cannot show “outrageous conduct” by Wood based on her communications with other
6 victims. *See Comstock v. Aber*, 212 Cal.App.4th 931, 954 (2012) (plaintiff alleging that defendant
7 made false reports of sexual assault did not demonstrate outrageous conduct).

8 Second, Warner cannot identify any false statement of fact made by Wood to any of the
9 other victims, and therefore Warner’s IIED claim based on Wood’s communications with other
10 victims is barred by the First Amendment. *See Lam*, 91 Cal.App.4th at 848-49 (public figure may
11 not recover for IIED based on exercise of free speech without showing “a false statement of fact”).

12 Third, Warner cannot meet his burden to prove severe emotional distress that was directly
13 or proximately caused by Wood’s communications with other victims. *See Section IV.B.2 supra*.

14 Finally, Warner’s claim is barred by the common interest privilege. *See Civ. Code*
15 § 47(c). “The common interest privilege applies to a communication made without malice to a
16 person interested in the communication’s subject matter by another person also interested in the
17 communication’s subject matter.” *Hicks v. Richard*, 39 Cal.App.5th 1167, 1177 (2019). Here, the
18 communications among Warner’s victims were made without malice among those with a common
19 interest—processing the abuse inflicted by Warner. Wood. Decl. ¶ 14. Thus, the IIED claim based
20 on those communications is barred. *See Hecimovich v. Encinal Sch. PTO*, 203 Cal.App.4th 450,
21 471-72 (2012) (claims based on communications about youth coach were barred); *Terry*, 131
22 Cal.App.4th at 1556-58 (IIED claim based on communications about plaintiff’s inappropriate
23 relationship with minor was barred).

24 **VI. THE CLAIMS BASED ON ALLEGED DEFAMATION SHOULD BE STRICKEN.**

25 **A. Warner’s Claims Arise from Protected Activity.**

26 Warner asserts an IIED claim based on Wood and Gore purportedly “making knowingly
27 false and defamatory statements against Warner, including that the actress in the ‘Groupie’ video
28 was a minor, and that Warner was manufacturing child pornography.” Compl. ¶ 63(d). Warner

1 also asserts a cause of action for defamation per se based on Gore’s statements about *Groupie*. *Id.*
2 ¶¶ 68-75. Like Wood’s communications with other victims, Gore’s statements concern a matter of
3 public interest and are protected activity because they were made in connection with legislative
4 reforms, criminal investigations, and civil litigation, and because they concern abusive conduct by
5 a public figure. In fact, the safety of minors is a textbook example of a matter of public interest.
6 *See, e.g., Cross*, 197 Cal.App.4th at 376 (“preventing child sexual abuse and protecting children
7 from sexual predators are issues of widespread public interest”); *Terry*, 131 Cal.App.4th at 1548
8 (“protection of children in church youth programs ... is an issue of public interest”); *M.G.*, 89
9 Cal.App.4th at 329 (“child molestation in youth sports ... is significant and of public interest”).

10 **B. Warner Cannot Establish a Probability of Prevailing on His Claims.**

11 Warner cannot establish a probability of prevailing on his claims against Wood because
12 (1) there is no evidence that *Wood* made false statements about *Groupie* or conspired with Gore to
13 make any such statements; and (2) Warner cannot meet his burden to demonstrate actual malice.

14 Warner cannot sue *Wood* for defamation based on statements that *Wood* did not make. The
15 Complaint does not allege that *Wood* made false statements about *Groupie*. *See* Compl. ¶¶ 56-61,
16 63(d), 68-75. Nor has Warner identified any other *specific statement by Wood* that Warner
17 contends forms the basis of his defamation-based claims. Absent a false statement of fact by
18 *Wood*, Warner’s defamation per se claim, and associated IIED claim, must be stricken.

19 Moreover, Warner cannot demonstrate that *Wood* acted with actual malice when Gore
20 allegedly made false statements about *Groupie*. “[P]ublic figures ... may not recover for the tort of
21 intentional infliction of emotional distress by reasons of publications ... without showing in
22 addition that the publication contains a false statement of fact which was made with ‘actual
23 malice,’ *i.e.*, with knowledge that the statement was false or with reckless disregard as to whether
24 or not it was true.” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988). In the context of an
25 anti-SLAPP motion, “[a] public figure suing for [defamation] must ... establish a probability that
26 [he] will be able to produce clear and convincing evidence of actual malice.” *Annette F.*, 119
27 Cal.App.4th at 1167. “‘The clear and convincing standard requires that the evidence be such as to
28 command the unhesitating assent of every reasonable mind.’” *Ibid.* The “crucial issue” is the

1 “defendant’s actual belief concerning the truthfulness of the publication,” not the defendant’s
2 attitude toward the plaintiff. *Reader’s Digest Assn. v. Superior Court*, 37 Cal.3d 244, 257 (1984).

3 Warner cannot meet this burden. The statements at issue are that the actress in *Groupie*
4 was a minor and is dead. Compl. ¶ 69. Warner contends that these statements were meant to
5 implicate Warner in child pornography, alleging that Gore stated that “‘Groupie’ was evidence of
6 a felony and that Warner would be indicted as a result.” *Ibid*. Warner cannot meet his burden to
7 produce clear and convincing evidence that Wood knew the alleged statements were false. Indeed,
8 in January 2002, *Warner himself* publicly bragged that when he showed *Groupie* to his manager,
9 his manager said, “‘Please hide the masters. If anyone sees this, you’ll go to jail, and your career
10 will be over.’” Wood Decl. ¶¶ 16, 23, Ex. 3 at 9 & Ex. 4. In that same discussion, Warner joked
11 that the actress may have been under 18, and Andy Dick claimed that “people start bleeding at
12 some point.” *Ibid*. Moreover, in a publicly-filed complaint, one of Warner’s victims has alleged
13 that Warner made her watch *Groupie*, that the actress “looked like a young teenager,” and that she
14 repeatedly asked Warner if the girl in the video was dead but Warner would not answer. Kump
15 Decl. Ex. 8 at ¶¶ 20-26. Nor would this be the only time Warner has been accused of child abuse.
16 *See* Wood Decl. ¶ 16, Ex. 2. In light of these facts, Warner cannot demonstrate by clear and
17 convincing evidence that Wood did not believe Gore’s alleged statements to be true when they
18 were purportedly made.

19 **VII. WOOD IS ENTITLED TO ATTORNEYS’ FEES AND COSTS.**

20 “[A] prevailing defendant on a special motion to strike shall be entitled to recover his or
21 her attorney’s fees and costs.” Civ. Proc. Code § 425.16(c). The award of attorney’s fees and costs
22 to a prevailing defendant is “mandatory,” not discretionary. *Ketchum v. Moses*, 24 Cal.4th 1122,
23 1131 (2001). Accordingly, should the Court grant this motion, in whole or in part, Wood
24 respectfully requests that the Court order Warner to pay all reasonable attorneys’ fees incurred in
25 connection with the motion. In such case, Wood will file a separately noticed motion to establish
26 the amount of those fees and costs. *See Melbostad v. Fisher*, 165 Cal.App.4th 987, 992 (2008).

27 **VIII. CONCLUSION.**


28 For the foregoing reasons, Wood respectfully requests that the Court grant her motion.

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DATED: April 28, 2022

Respectfully submitted,

KINSELLA WEITZMAN ISER KUMP HOLLEY LLP

By: 

Michael J. Kump
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, CA 90401.

On April 28, 2022, I served true copies of the following document(s) described as **DEFENDANT EVAN RACHEL WOOD'S NOTICE OF SPECIAL MOTION TO STRIKE AND SPECIAL MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16 AND FOR ATTORNEYS' FEES** on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address MSanks@kwikhlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on April 28, 2022, at Santa Monica, California.



Mary L. Sanks



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Number of Motions:
1

Case Number:
22STCV07568

Case Title:
BRIAN WARNER, P/K/A MARILYN MANSON vs EVAN
RACHEL WOOD, et al.

Filing Party:
Evan Rachel Wood (Defendant)

Location:
Stanley Mosk Courthouse - Department 50

Date/Time:
December 13th 2022, 2:00PM

Confirmation Code:
CR-4J7XCVLGRKMZY9GPQ

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
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