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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 v.

15 EVAN RACHEL WOOD, ASHLEY GORE
16 a/k/a ILLMA GORE,

17 Defendants.
18

Case No. 22STCV07568

**DEFENDANT ASHLEY GORE'S
RESPONSES TO PLAINTIFF'S
OBJECTIONS TO EVIDENCE IN
SUPPORT OF SPECIAL MOTION TO
STRIKE COMPLAINT ("ANTI-SLAPP")**

Date: December 1, 2022
Time: 10:00 a.m.
Dept. 50
Before: Hon. Teresa Beaudet

Action Filed: March 2, 2022

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Defendant Gore’s Responses to Plaintiff’s Objections to the Declaration of Margaret Ziemianek and Exhibits Thereto

Obj. No.	Exhibit	Objections	Responses	Court’s Ruling
14.	Exh. 1	See Warner’s Opposition to Gore’s RJN	See Gore's Reply ISO RJN(contents of article are deemed incorporated by reference into the Complaint, because Ex. 1 is cited in footnote 27 of the Complaint. See, e.g., <i>Lumbermens Mut. Cas. Co. v. Vaughn</i> , 199 Cal. App. 171, 178 (1988). Courts may “accept as true the contents” of the incorporated exhibit, and “treat as surplusage the pleader’s allegations” to the extent the allegations “conflict with the content of the exhibits in the complaint.” <i>Barnett v. Fireman’s Fund Ins. Co.</i> , 90 Cal. App. 4th 500, 505 (2001); see also <i>Hoffman v. Smithwoods RV Park, LLC</i> , 179 Cal.App.4th 390, 400 (“courts ‘will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents . . . ”)).	RJN opposition Sustained: ____ Overruled: ____
		Hearsay, and hearsay within hearsay (Evid. Code § 1200)	Hearsay: The article is admissible for its effect on Gore’s state of mind. See Evid. Code § 1200(a).	Hearsay Sustained: ____ Overruled: ____

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Lacks personal knowledge (Evid. Code § 702)Lacks foundation (Evid. Code § 403)	Foundation & Personal Knowledge Inapplicable objections. It is a news article, not witness testimony.	Lacks Personal Knowledge Sustained: ____ Overruled: ____ Lacks Foundation Sustained: ____ Overruled: ____
		Prejudicial (Evid. Code § 352)	Prejudicial Evidence "is not 'prejudicial' merely because it is harmful" to Plaintiff's case. <i>People v. Lapenias</i> , 67 Cal.App.5th 162, 174 (2021). Rather, the risk of "undue prejudice" must "substantially outweigh" the probative value. <i>Id.</i> ; Evid. Code § 352. The probative value of the article outweighs the minimal, if any, prejudice to Plaintiff. The existence of numerous allegations of sexual abuse and violence against Plaintiff are probative of Defendant Gore's knowledge, intent, and state of mind at issue in her anti-SLAPP motion, while placing no undue prejudice upon Plaintiff. Further, Plaintiff put the article at issue by relying on it in Footnote 27 of his Complaint. See Compl. ¶ 59 & n.27. He cannot cherry-pick the portions he likes and	Prejudicial Sustained: ____ Overruled: ____

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Irrelevant (Evid. Code § 403)	<p>ignore the portions he does not.</p> <p>Relevance The article is relevant to Gore's state of mind with respect to statements made about <i>Groupie</i>. Media coverage of abuse regarding Warner is relevant to whether Gore was unreasonable in believing the <i>Groupie</i> video reflected illegal conduct. See Evid. Code § 210; King Decl. Ex. F at 26:21-27:13; 37:5-14; 92:8-25; 144:21-145:2; Ziemianek Supp. Decl. Ex. 9 at 115:5-20; <i>Kieu Hoang v. Phong Minh Tran</i>, 60 Cal. App. 5th 513, 537-38 (no actual malice where reporter relied in part on newspaper coverage of plaintiff for statements). Plaintiff put the article at issue in his Complaint. Compl. ¶ 59 & n.27</p>	<p>Relevance</p> <p>Sustained: ____ Overruled: ____</p>
15.	Exh. 3	See Warner's Opposition to Gore's RJN	<p>See Gore's Reply ISO RJN: Exhibit 3 is a news article about a law enforcement action against Plaintiff. The existence of the article, and the fact of the L.A. County Sheriff's execution of a search warrant in Plaintiff's home are "not reasonably subject to</p>	<p>RJN opposition</p> <p>Sustained: ____ Overruled: ____</p>

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
			dispute,” and Plaintiff does not dispute the fact that the Sherriff searched his home. See Evid. Code § 452. The information is further relevant to Warner's state of mind and alleged emotional distress, and whether reports of abuse against him constitute matters of public interest.	
		Hearsay, and hearsay within hearsay (Evid. Code § 1200)	Hearsay: It is not hearsay. Gore offers the article as evidence of the existence of law enforcement investigations (which Defendants participated in), not for the truth of the matters stated therein. See Evid. Code § 1200(a). Plaintiff does not dispute the fact of the search warrant execution.	Hearsay Sustained: ____ Overruled: ____
		Lacks personal knowledge (Evid. Code § 702)	Foundation & Personal Knowledge Inapplicable objections. It is a news article, not witness testimony.	Lacks Personal Knowledge Sustained: ____ Overruled: ____
		Prejudicial (Evid. Code § 352)	Prejudicial Evidence “is not ‘prejudicial’ merely because it is harmful” to Plaintiff’s case. <i>People v. Lapenias</i> , 67 Cal.App.5th 162, 174 (2021). Rather, the risk of “undue prejudice” must “substantially	Prejudicial Sustained: ____ Overruled: ____

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Irrelevant (Evid. Code § 403)	<p>outweigh" the probative value. <i>Id.</i>; Evid. Code § 352.</p> <p>The probative value of the article outweighs the minimal, if any, prejudice to Plaintiff. Defendant Gore's participation in law enforcement investigations into Plaintiff's alleged criminal conduct is one basis for her anti-SLAPP motion, and is not "unduly prejudicial" to Plaintiff.</p> <p>Relevance The article is relevant to Gore's intent and state of mind in stating Warner was under criminal investigation. <i>Jackson v. Paramount Pictures, Corp.</i>, 68 Cal. App. 4th 10, 34 (reporter did not act with malice in reporting on purported existence of videotape showing Jackson inappropriately touching an underage boy, in part based on other news reports of DA searching for such a video).</p>	<p>Relevance</p> <p>Sustained: ____</p> <p>Overruled: ____</p>
16.	Exh. 4	See Warner's Opposition to Gore's RJN	Counsel for Defendant inadvertently attached an incorrect exhibit referenced as Exhibit 4. As the Exhibit is cumulative of various other proper, judicially noticeable Exhibits,	

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
			Defendant Gore withdraws Exhibit 4 from its RJN.	
17.	Exh. 5	See Warner's Opposition to Gore's RJN	<p>See Gore's Reply ISO RJN: Exhibit 5 is a transcript of the "Dinner for Five" episode that contains Plaintiff's statements about <i>Groupie</i>, which are relevant to Gore's state of mind, intent, and knowledge about the film, as discussed in her anti-SLAPP motion. It is also relevant to Gore's defense to Plaintiff's defamation claim, because Gore testified she relied on the transcript in forming her opinions concerning <i>Groupie</i>. Decl. of Illma Gore ¶ 2; see also Order on Plaintiff's Motion for Discovery at 12, n.4. The statements by Warner cited therein also constitute admissions.</p> <p>It is judicially noticeable under Evidence Code § 452 because the existence of the interview and Plaintiff's statements are not "reasonably subject to dispute," and in fact Plaintiff does not dispute he made the statements.</p>	<p>RJN opposition</p> <p>Sustained: ____ Overruled: ____</p>
18.	Exh. 6	See Warner's Opposition to	See Gore's Reply ISO RJN:	RJN opposition

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Gore's RJN	Exhibit 6 is an online article that discusses <i>Groupie</i> and contains comments about the video from Plaintiff's former manager, Tony Ciulla. The existence of the article and Mr. Ciulla's comment is not reasonably subject to dispute, and the Court may properly take judicial notice of the existence of the article because it is relevant to Gore's state of mind. See Gore's Reply ISO RJN; Evid. Code § 452(h); <i>Ragland v. U.S. Bank Ntl. Assn.</i> , 209 Cal. App. 4th 182, 193 (2012); <i>Kashian v. Harriman</i> , 98 Cal. App. 4th 892, 900, n.3 (2002).	Sustained: ____ Overruled: ____
		Hearsay, and hearsay within hearsay (Evid. Code § 1200)	Hearsay: It is not hearsay. Gore offers the article as probative evidence of her state of mind, knowledge, and intent in making statements regarding <i>Groupie</i> , and that the statements were made, not for the truth of the matters stated therein. Decl. of Illma Gore ¶ 2; see also Order on Plaintiff's Motion for Discovery at 12, n.4. The statements by Warner cited therein also constitute admissions.	Hearsay Sustained: ____ Overruled: ____

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Lacks personal knowledge (Evid. Code § 702) and Lacks foundation (Evid. Code § 403)	See Evid. Code § 1200(a). Notably, Plaintiff does not dispute the veracity of the contents. Foundation & Personal Knowledge Inapplicable objections. It is a website article, not witness testimony.	Lacks Personal Knowledge Sustained: ___ Overruled: ___ Lacks Foundation Sustained: ___ Overruled: ___
		Prejudicial (Evid. Code § 352)	Prejudicial Evidence "is not 'prejudicial' merely because it is harmful" to Plaintiff's case. <i>People v. Lapenias</i> , 67 Cal.App.5th 162, 174 (2021). Rather, the risk of "undue prejudice" must "substantially outweigh" the probative value. <i>Id.</i> ; Evid. Code § 352. The probative value of the article outweighs the minimal, if any, prejudice to Plaintiff. The existence of online discussions about the <i>Groupie</i> film is one basis for her anti-SLAPP motion and to her defense to Plaintiff's defamation claim, which requires him to prove actual malice. The article is thus highly probative, and is not	Prejudicial Sustained: ___ Overruled: ___

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Irrelevant (Evid. Code § 403)	<p>“unduly prejudicial” to Plaintiff.</p> <p>Relevance The article is relevant as it has a tendency to prove or disprove disputed facts raised in Plaintiff’s Complaint that is consequential to Defendants’ anti-SLAPP motions. See Evid. Code § 210. It is probative of Gore’s knowledge, intent, and state of mind regarding the contents of the <i>Groupie</i> film, which is relevant to her defense against Plaintiff’s defamation claim.</p>	<p>Relevance</p> <p>Sustained: ____ Overruled: ____</p>
19.	Exh. 8	See Warner’s Opposition to Gore’s RJN	<p>See Gore’s Reply ISO RJN: Exhibit 8 is an online article that discusses Plaintiff’s encounter with a deaf fan. It is not offered for its truth. Rather, the existence of the article and description of the encounter is not reasonably subject to dispute, and the Court may properly take judicial notice of the existence of the article and to the extent it provides context. See Evid. Code § 452(h); <i>Ragland v. U.S. Bank Ntl. Assn.</i>, 209 Cal. App. 4th 182, 193 (2012); <i>Kashian v. Harriman</i>, 98</p>	<p>RJN opposition</p> <p>Sustained: ____ Overruled: ____</p>

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Hearsay, and hearsay within hearsay (Evid. Code § 1200)	<p>Cal. App. 4th 892, 900, n.3 (2002).</p> <p>Hearsay: It is not hearsay. Gore offers the article as probative evidence of her state of mind, knowledge, and intent, and that the statements were made, not for the truth of the matters stated therein. See Evid. Code § 1200(a); Decl. of Illma Gore ¶ 6.</p> <p>Notably, Plaintiff does not dispute the veracity of the contents.</p>	<p>Hearsay</p> <p>Sustained: ___ Overruled: ___</p>
		<p>Lacks personal knowledge (Evid. Code § 702) and</p> <p>Lacks foundation (Evid. Code § 403)</p>	<p>Foundation & Personal Knowledge</p> <p>Inapplicable objections. It is a website article, not witness testimony.</p>	<p>Lacks Personal Knowledge</p> <p>Sustained: ___ Overruled: ___</p> <p>Lacks Foundation</p> <p>Sustained: ___ Overruled: ___</p>
		Prejudicial (Evid. Code § 352)	<p>Prejudicial Evidence "is not 'prejudicial' merely because it is harmful" to Plaintiff's case. <i>People v. Lapenias</i>, 67 Cal.App.5th 162, 174 (2021). Rather, the risk of "undue prejudice" must "substantially outweigh" the probative value. <i>Id.</i>; Evid. Code § 352.</p> <p>The probative value of the article outweighs the</p>	<p>Prejudicial</p> <p>Sustained: ___ Overruled: ___</p>

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Obj. No.	Exhibit	Objections	Responses	Court's Ruling
		Irrelevant (Evid. Code § 350)	<p>minimal, if any, prejudice to Plaintiff. The existence of the article and statements about Plaintiff urinating on a deaf fan are probative of the required "malice" for defamation and causation of Plaintiff's alleged injuries.</p> <p>The article is thus highly probative, and is not "unduly prejudicial" to Plaintiff. Notably, Plaintiff does not dispute the contents of the article</p> <p>Relevance The article is relevant as it has a tendency to prove or disprove disputed facts raised in Plaintiff's Complaint that is consequential to Defendants' anti-SLAPP motions. See Evid. Code § 210. It is probative of the causation of Plaintiff's damages, and Gore's knowledge, intent, and state of mind regarding Plaintiff, which is relevant to her defense against Plaintiff's claims. See Decl. of Illma Gore ¶ 6.</p>	<p>Relevance</p> <p>Sustained: ____</p> <p>Overruled: ____</p>

GORE'S RESPONSE TO PLAINTIFF'S OBJECTION NO. 6, FOOTNOTE 1


Plaintiff uses the procedural tool of evidentiary objections to dispute and argue

1 with the allegations of abuse against him that the *Phoenix Rising* documentary contains.
2 Ironically, his argument here exposes the reason he brings this lawsuit: to chill the free
3 speech about, and participation in, public discussions of sexual assault at the hands of a
4 global celebrity in the public eye. See Code Civ. Proc. § 425.16(a); *Bonni v. St. Joseph*
5 *Health System*, 11 Cal.5th 995, 1008-09 (2021).

6 Plaintiff's arguments are meritless, bordering on frivolous. First, the video of the
7 documentary itself is an admissible "original writing" that is the best evidence of its
8 content. See Evid. Code §§ 250, 1520-1521. Second, the portion of the video's content to
9 which Gore cited is not hearsay. Video footage of Gore "carrying boxes" into an elevator
10 at an FBI building is not a "statement" or conduct that was "intended . . . as a substitute
11 for oral or written verbal expression" for purposes of the hearsay rule. Evid. Code §§ 225,
12 1200; see also Gore Mot. at 2, 4; Pltf Objections to Evid., n.1 at 3. Gore also cited a
13 portion of the video as one example of proof of her participation in law enforcement
14 investigations and proof of Defendant Gore's state of mind and knowledge, not for the
15 truth of whatever "statement" Plaintiff claims occurred. Gore Mot. at 4. Gore's
16 participation in law enforcement investigations is protected activity that is at issue in the
17 anti-SLAPP motion. See *id.* at 6-7. The video is therefore relevant, and not hearsay.

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19 DATED: November 22, 2022

HANSON BRIDGETT LLP

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21 By: 
22 MARGARET A. ZIEMIANEK
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24 Attorneys for Defendant
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