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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 REPLY
IN SUPPORT OF REQUEST FOR
JUDICIAL NOTICE 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

1 Defendant Ashley Gore (“Defendant”) respectfully submits this reply in support of
2 her May 24, 2022 Request for Judicial Notice (“RJN”).

3 **Gore’s State of Mind Is Relevant to Actual Malice.**

4 Contrary to Plaintiff’s assertion, the materials of which Gore requests judicial
5 notice are offered not for their truth, but for Gore’s state of mind—as Gore’s RJN made
6 explicitly clear. (RJN at 3:3-6.) Gore’s state of mind is relevant to whether she acted with
7 actual malice in making statements concerning *Groupie*.

8 The First Amendment requires a public figure such as Warner to establish that the
9 defendant acted with actual malice in order to prevail on a claim of defamation. *New York*
10 *Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964); *Khawar v. Globe Int’l, Inc.*, 19
11 Cal.4th 254, 262 (1998). Actual malice is defined as a defamatory statement made “with
12 knowledge that it was false or with reckless disregard of whether it was false or not.” *New*
13 *York Times*, 376 U.S. at 280. Reckless disregard, in turn, means that the defendant “in
14 fact entertained serious doubts as to the truth of his publication.” *St. Amant v. Thompson*,
15 390 U.S. 727, 731 (1968). To prove actual malice, a plaintiff must “demonstrate with clear
16 and convincing evidence [1] that the defendant realized that his statement was false or
17 [2] that he subjectively entertained serious doubts as to the truth of his statement.” *Bose*
18 *Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 fn. 30(1984); *see also McCoy*
19 *v. Hearst Corp.* (1986) 42 Cal. 3d 835, 860; *Khawar*, 19 Cal. 4th at 275.

20 Actual malice is a “subjective test” that questions the defendant’s “actual belief
21 concerning the truthfulness” of the statement at issue. *Reader’s Digest Ass’n. v. Sup. Ct.*,
22 37 Cal.3d 244, 257 (1984). “[R]eckless conduct is **not** measured by whether a
23 reasonably prudent man would have published, or would have investigated before
24 publishing. There must be sufficient evidence to permit the conclusion that the defendant
25 ***in fact entertained serious doubts as to the truth of his publication.*** Publishing with
26 such doubts shows reckless disregard for truth or falsity and demonstrates actual
27 malice.” *Id.* at 256 (citations omitted) (emphasis added).

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1 **Information Gore Reviewed Is Relevant to Her State of Mind** (Exs. 5, 6, 8)

2 Gore testified that she reviewed Warner's online statements concerning *Groupie*
3 and relied on them in forming her belief that *Groupie* depicted something illegal.
4 Supplemental King Decl., Ex. F, at 26:15-27:13; 47:4-11, 62:23-63:6, 64:13-17. In
5 explaining why she construed Warner's statements in the *Dinner for Five* interview
6 (Exhibit 5) to mean that *Groupie* depicted illegal content, Gore explained:

7 The Witness: Because Mr. Warner's visuals are violent generally and
8 objectify women or glorify domestic violence. It seemed odd that he would
9 speak of indictment and prosecution, or his manager would, and not release
10 the film if it was generally violence. The general understanding I had from
the "Dinner For Five" interview and his other interviews was that he
objectified underage fans, joked about it...

11 Ziemianek Decl. Ex. 9 at 115:10-20; see also *id.* at 44:23-45:10.

12 Gore confirms that Exhibits 5 and 6 to the Ziemianek Declaration are among the
13 materials she referenced in her deposition. See Declaration of Ashley Gore at ¶¶ 2; see
14 also King Supp. Decl., Ex. F, at 26:21-27:13; 92:8-25. Exhibit 5 cites Warner's statement
15 that the film was not released because his manager (Tony Ciulla) told him he would go to
16 jail if anyone saw it. Exhibit 6 similarly states that Ciulla "begged Manson to prevent the
17 public distribution or public viewing of *Groupie*, citing fears that it would be considered
18 sufficient evidence to convict Manson if a criminal case was ever brought against him."¹

19 The statements by Manson himself in Exhibits 5 and 6 that *Groupie* was not
20 released after his manager expressed concern that it would land him in jail are further
21 relevant to assessing whether Gore's conduct in repeating similar statements can be
22 defamatory.² For example, in *Shoemaker v. Friedberg*, 80 Cal.App.2d 911, 916 (1947),

23

24 ¹ As discuss in the Responses to Objections to Evidence filed concurrently herewith,
25 Warner's own admissions are admissible for their truth. Evid. Code § 1220.

26 ² Warner's self-serving statements later in the interview that the actress was "portraying"
27 a youngster are belied by his initial comments in the interview. Gore testified that, in light
28 of the totality of evidence concerning *Groupie*, she still believes that Polard was featured
in the film. See King Decl., Ex. F. at 45:12-23. Notably, Warner never identified Weiss as
the *Groupie* actress in this interview (or subsequent interviews). Indeed Warner offers no

1 the defendant doctor repeated the results of an STD test to plaintiff in front of other
2 people, which were explained in a letter that plaintiff previously received. Plaintiff had
3 previously disclosed the contents of the letter to some of the people who heard the
4 doctor's statements. The Court held that, as to those individuals, “defendant had no part
5 in this publication to them by plaintiff, he cannot be held responsible for it.” Similarly here,
6 it is Warner who told the world the film was not distributed after his manager expressed
7 concerns it would land him in jail. Gore cannot be held liable for defamation for repeating
8 essentially the same statement. *See id.*

9 Gore further testified that information she learned concerning Warner’s abuse of
10 minors from other sources played a role in her continued belief that *Groupie* depicts
11 illegal content. See Supp. King Decl., Ex. F at 59:14-25; 62:14-63:6. Information available
12 to Gore concerning Warner’s sexual exploitation of minors, women, and disabled
13 individuals, such as Exhibit 8, is relevant to establishing her state of mind and belief in
14 the truth of the statements she made concerning the *Groupie* film.³ Gore confirms that
15 Exhibit 8 is among the online research materials she reviewed. Gore Decl., ¶ 4.

16 Unlike Plaintiff’s cited case of *All One God Faith, Inc. v. Organic & Sustainable*
17 *Indus. Standards, Inc.*, 183 Cal. App. 4th 1186, 1198 (2010), Gore is not offering the
18 articles for their truth (except as to Warner's admissions therein), but rather for her state
19 of mind and the impact those materials had on her, which is relevant to Plaintiff’s claims of
20 defamation and intentional infliction of emotional distress. *See id.* at 1191, 1198 n.12
21 (denying request for judicial notice of a newspaper article in “Women’s Wear Daily”
22

23 _____
24 evidence that Weiss was *ever* identified by *anyone* as the *Groupie* star, between its
25 filming in 1996 and Weiss’ statements in 2021. Individuals who have seen the film attest
26 that Pola Weiss looks nothing like the actress featured in *Groupie*. See 4/28/22 Kump
27 Decl., Ex. 8 at ¶ 27.

28 ³ Plaintiff is correct that Exhibit 4 to the Ziemianek Declaration is the wrong document.
Defendant intended to include the material available at the following locations:
https://en.wikipedia.org/wiki/Courtney_Love#cite_note-205 and
<https://twitter.com/cocainecross/status/1568748045113896961> . However, Defendant will
withdraw the request as to Exhibit 4.

1 because the truth of the contents were not judicially noticeable and “irrelevant to the
2 issues” involving cosmetics labeling standards and unfair competition.)

3 **Judicial Notice Is Proper As to Material Incorporated By Reference in the**
4 **Complaint** (Ex. 1)

5 Exhibit 1 is cited in the Complaint itself, making it a proper matter for judicial
6 notice. Plaintiff cannot cite Exhibit 1 as purported evidence that Weiss was the star of
7 *Groupie*,⁴ while ignoring the 25 page article discussing evidence of Warner’s abuse of
8 women and minors, compiled from Rolling Stone’s nine months of research and
9 interviews of more than 55 people. None of Plaintiff’s cited cases opposing exhibit 1 are
10 applicable because none of the judicial notice requests in those cases were included in
11 the plaintiff’s complaint. See RJN Opp. at 3 (citing *Zelig v. Cnty. of L.A.*, 27 Cal. 4th 1112,
12 1141 n.6 (2002), *Voris v. Lampert*, 7 Cal. 5th 1141, 1147 n.5, and *Malek Media Grp., LLC*
13 *v. AXQG Corp.*, 58 Cal.App.5th 817, 826 (2020)).

14 To the extent the Court considers Gore’s tweet in response to learning Warner had
15 sued her (Supp. King Decl., Ex. G), Exhibit 1 is also relevant to her state of mind in
16 forming her opinions about Warner.

17 **Judicial Notice Is Proper As to Matters Not Reasonably Subject to Dispute** (Ex. 3)

18 Exhibit 3 is a news article reporting that the LA Sheriff’s Department executed a
19 search warrant at Warner’s home in or about November 2021, in connection with an
20 investigation. Exhibit 3 reflects widely reported public information, the accuracy of which
21 Warner does not appear to dispute.

22 The information is relevant in several respects. First, it is relevant to Warner’s state
23 of mind, and the alleged emotional distress that he claims to have suffered due to
24 Defendant’s conduct, since it offers an alternate explanation for the source of any alleged
25 distress. It also undermines Warner’s claim that pending investigations concerning him
26 are not matters of public interest, sufficient to trigger protection of the anti-SLAPP statute.

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28 ⁴ Notably, Manson did not identify Pola Weiss in the interview to corroborate his new
claim that she was the actress featured in the film.

1 See *Seelig v. Infinity Broadcasting Corp.*, 97 Cal. App. 4th 798, 807 n.5 (taking judicial
2 notice of news articles “discussing topics provoked by” the television show in which
3 Plaintiff appeared); see *also* King Decl., Ex. F at 125:12-127:19 (Gore testimony that she
4 provided information to the L.A. Sheriff’s department regarding Plaintiff in 2021).

5 DATED: November 22, 2022

HANSON BRIDGETT LLP

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