Keith A. Fink, Bar No. 146841
Olaf J. Muller, Bar No. 247372
KEITH A. FINK & ASSOCIATES
11500 Olympic Boulevard, Suite 316
Los Angeles, California 90064
Telephone: (310) 268-0780
Facsimile: (310) 268-0790

Attorneys for Defendant
COURTNEY LOVE COBAIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DAWN SIMORANGKIR, aka DAWN YOUNGER-SMITH, aka BOUDOIR QUEEN, an individual, Plaintiff, v. COURTNEY MICHELLE LOVE, an individual; and DOES 1 through 25, inclusive, Defendants.	CASE NO. **BC410593** [Assigned to the Honorable Aurelio Munoz, Dept 47] **DEFENDANT COURTNEY LOVE COBAIN'S SPECIAL MOTION TO STRIKE PURSUANT TO C.C.P. § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF COURTNEY LOVE COBAIN AND OLAF J. MULLER IN SUPPORT THEREOF** Hearing Date: October 26, 2009 Time: 8:30 A.M. Dept.: 47 Trial Date: May 11, 2010 Time: 8:30 A.M. Dept: 47

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2009, at 8:30 a.m. in Department 47 of the above-entitled courthouse, Defendant COURTNEY LOVE COBAIN ("Love" and/or "Defendant") will and does move this Court to strike Plaintiff DAWN SIMORANGKIR A/K/A DAWN YOUNGER-SMITH A/K/A BOUDOIR QUEEN'S ("Simorangkir" and/or "Plaintiff) First Amended Complaint pursuant to C.C.P. § 425.16.

Defendant's Motion is based on the attached Memorandum of Points and Authorities, the Declarations of Courtney Love and Olaf J. Muller in support thereof, the pleadings and papers on file with the Court filed concurrently herewith, and such additional matters as may be raised at the hearing.

PLEASE TAKE FURTHER NOTICE that should the Court grant Defendant's underlying Special Motion to Strike, Defendant further reserves the right to file a separate Motion against Plaintiff and her attorneys of record Freedman and Taitelman, LLP for the recovery of attorneys' fees and costs pursuant to Code of Civil Procedure § 425.16(c).

The Court is also requested to take Judicial Notice under Code of Civil Procedure §§ 430.30(a) and 438(d) and Evidence Code §§ 451 and 452 of the following pleadings on file with the Court:

1. Conciliation Court Agreement and Stipulated Order Re Custody and Parenting Plan, filed on April 11, 2005, in the matter of Dawn Simorangkir v. Chocky Simorangkir, Los Angeles Superior Court Case No. BD375732. A true and correct copy of this pleading is attached to the accompanying Declaration of Olaf J. Muller ("Decl. Muller") as **Exhibit N**.
2. Plaintiff Samantha Ronson's Complaint against Defendant Mario Lavandeira d/b/a Perez Hilton, filed on July 12, 2007, Los Angeles Superior Court Case No. BC374174. A true and correct copy of Plaintiff's Complaint for Libel is attached to the Decl. Muller as **Exhibit E**.
3. Lavandeira's Special Motion to Strike pursuant to C.C.P. § 425.16 in Los Angeles Superior Court Case No. BC374174, filed on September 4, 2007. A true and correct copy of this Motion is attached to the Decl. Muller as **Exhibit F**.
4. Certified Copy of Transcript from November 1, 2007 Hearing on Lavandeira's Special Motion to Strike containing the Court's Ruling on the Motion. A true and correct copy of this transcript is attached to the Decl. Muller as **Exhibit G**.

DATED: August 19, 2009

KEITH A. FINK & ASSOCIATES

By: _____

Keith A. Fink
Olaf J. Muller
Attorneys for Defendant
COURTNEY LOVE COBAIN

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF PERTINENT FACTS

In or around 2008, Love discovered http://www.etsy.com ("Etsy"), a website that functions as an online shopping mall containing stores of various individual vendors, including but not limited to Simorangkir's store. See the accompanying Declaration of Courtney Love Cobain ("Decl. Cobain") at ¶ 2. Plaintiff Simorangkir is a celebrity fashion designer based in Texas who specializes in "up-cycling" clothing, which is a method of taking used and vintage clothing and using additional materials and textiles to re-work clothing into more unusual and unique fashion items. See **Exhibit B** to the accompanying Declaration of Olaf J.Muller ("Decl. Muller"). Simorangkir calls herself the "Boudoir Queen" to signify the fact that she is the "Queen" of boudoir fashion and style, which is reminiscent of 1920's "flapper" clothing. Id. Plaintiff holds herself out on her website as "a model/muse and make-up artist to the stars," a "style icon," and "her client list of starlets as a make-up artist sparkles with names like Lisa Marie Presley, Maude Adams, Susan Tyrell from Andy Warhol's BAD and many more." Id.

Plaintiff voluntarily associates with celebrities to drum up additional business for herself. She repeatedly features photos of herself with celebrities wearing her clothing on her website and separate blog, has written about her various celebrity friends, including but not limited to Love, on her website, and has even posted pictures of Love wearing Plaintiff's clothing on her website. See **Exhibit C** to the Muller Decl. Plaintiff has gone so far as to *post links* connecting Love's MySpace blog to Plaintiff's own website after Courtney decided to write about how much she enjoyed Plaintiff's clothing in December 2008. Id. Plaintiff also Love "ROCK ROYALTY"," a "bad-ass my dream come true Muse!" on her website, posted a photograph of Love wearing Plaintiff's clothing, and instructed her customers to visit Love's "myspace blog to see her mention of us!" Id. Plaintiff further states on her website that "her hollywood home was photographed by Titanic star Billy Zane," "you will see many recording artists coming in for an appointment with 'The Boudoir Queen," and "Dawn's designs have been featured in many magazine publications such as Katie Grands new LOVE magazine, "Elle," "Paste," "Tribeza," "Brilliant," and "No Depression." See **Exhibit D** to the Muller Decl.

Some time thereafter, Love contacted Simorangkir through her online store and they struck up a friendly relationship. See Decl. Love at ¶ 3. After several months of online communications, Love asked Simorangkir to travel from Texas to California to meet with Love in person to make several custom pieces of clothing for Love using approximately several hundred thousand dollars' worth of

textiles, vintage clothing, and other raw materials Love had collected over nearly a decade. Id. at ¶ 4. Simorangkir visited Love in Los Angeles on or about December 3, 2008, at which meeting Love gave her these materials. Id. at ¶ 5. Simorangkir subsequently visited Love a second time in Los Angeles on or around January 28, 2009, this time bringing her husband, Mark Younger-Smith. See Decl. Love at ¶ 6. Love again gave her tens of thousands of dollars' worth of textiles, vintage clothing, and other raw materials for her to "up-cycle" in several large bags. Simorangkir and Love agreed that any materials Love gave to Simorangkir that she did *not* use would have to be returned to Love immediately. Id.

During their second face-to-face meeting, Simorangkir repeatedly asked Love both to partake in and to procure cocaine, Percoset, and other illegal and prescription drugs for herself and her husband, and she discussed both her past drug use and drug dealing. See Decl. Love at ¶ 7. Simorangkir also drank heavily, repeatedly telephoning Love's room service at the Chateau Marmont to bring up several bottles of premium vodka to her room. Id. Simorangkir asked Love about songs Love had written, including the song "Teenage Whore." See Decl. Love at ¶ 8. After Love described some of the emotions and personal stories that led her to write this song, Simorangkir told her that she had worked in the past as a prostitute, had been one of "Nikki's girls," a well-known California prostitution ring, had outstanding arrest warrants for assault, and had been molested as a child. Id. at ¶¶ 8-10. After Love and Simorangkir talked about Love's daughter Frances, Simorangkir told Love about her estranged son and that she lost custody to the son's father, her ex-husband, years before in part because of her past as a drug dealer, drug user, and prostitute, which her ex-husband had highlighted in detail to the Family Court. Id. Simorangkir also exhibited racist, homophobic, and generally mean-spirited behavior with Love, repeatedly referring to one of her seamstresses, Jasmine, a Latina woman, as "the beaner that works for me," and joked that she paid her little or no money notwithstanding Jasmine's hard work and excellent work product. Id. at ¶ 11.

On or around March 13, 2009, Love received her first invoice for the custom pieces from Simorangkir, which prices did not match the previously-agreed prices. See Decl. Love at ¶ 13. After Love demanded Simorangkir lower her prices, Simorangkir refused and told Love that she would not deliver any of the items she had "up-cycled" until she paid the invoiced prices, effectively holding Love's clothing "hostage." Id. at ¶ 14. Love subsequently learned that Simorangkir sold these items and materials to third parties. Id. at ¶ 15. Love also subsequently learned that Simorangkir had stolen ideas and designs that Love left lying around her hotel room (which Simorangkir secretly

photographed) and put up various items for sale incorporating Love's ideas and designs on her Etsy website. Id. at ¶ 12. Outraged, Love believed it incumbent on her to warn other consumers about her nightmare experience with Simorangkir and Simorangkir's pattern of criminal and bad faith conduct. See Decl. Love at ¶ 16.

II. LEGAL ARGUMENT

A. LEGAL STANDARD GOVERNING C.C.P. § 425.16 SLAPP MOTION

Under C.C.P. § 425.16(b)(1), "a cause of action against a person arising from any act of that person in furtherance of that person's right of petition or free speech... shall be subject to a special motion to strike....." In 1992, the California Legislature enacted C.C.P. § 425.16 in direct response to the "disturbing increase" in meritless lawsuits designed "to chill the valid exercise of the constitutional rights of freedom of speech...." See C.C.P. § 425.16(a). In 1997, the Legislature amended C.C.P. § 425.16(a), expressly instructing California Courts to "broadly... construe[]" this statute. See Stats. 1997, ch. 271, § 1; amending 425.16(a). In 1999, the California Supreme Court further directed all California Courts "whenever possible... [to] interpret the First Amendment and section 425.16 in a manner 'favorable to the exercise of freedom of speech, not to its curtailment.'" See Briggs v. Eden Council for Hope and Opportunity (1999) 19 Cal.4th 1106, 1119 (quoting Bradbury v. Superior Court (1996) 49 Cal.App.4th 1170, 1176).

C.C.P. § 425.16 sets forth a two-step process under which any Special Motion to Strike / Anti-SLAPP must be analyzed. First, the Court must decide whether Defendant has made a sufficient threshold showing that the challenged cause of action is subject to a special Motion to Strike under C.C.P. 425.16(e). If the threshold showing has been made, the Court must next determine whether the Plaintiff has demonstrated a probability of prevailing on her claims. See e.g., Weinberg v. Feisel (2003) 110 Cal.App.4th 1122, 1130.

B. THIS COURT SHOULD STRIKE PLAINTIFF'S COMPLAINT BECAUSE PLAINTIFF'S CLAIMS IMPERMISSIBLY TARGET DEFENDANT'S FREE SPEECH ACTIVITY PROTECTED BY C.C.P. § 425.16.

Under C.C.P. § 425.16(e), an act in furtherance of a person's right to free speech expressly includes "(3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest [and/or] (4) or any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of

public interest." As set forth in greater detail below, all of Love's purported statements were admittedly made in a public forum regarding a matter of public interest sufficient to invoke the protection of C.C.P. § 425.16. To the extent that the statements constitute statements of fact about Plaintiff, they are a warning to consumers *not* to use Plaintiff's services and a description of Love's unfortunate experience doing business with Plaintiff Simorangkir.

1. Defendant's Allegedly-Wrongful Statements Were Admittedly Made in a Public Forum - The Internet.

All of Love's purportedly wrongful statements were made in a public forum - the Internet - and specifically on her publicly-available MySpace blog, her publicly-available Twitter page, and the publicly-available Etsy customer feedback section, all of which websites have public comment sections. See Plaintiff's FAC at ¶¶ 28-31; Decl. Love at ¶¶ 15-16.

The term "public forum" as used in Section 425.16 has been defined as "a place that is open to the public where information is freely exchanged." See Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, 475. It is not limited to a physical setting but also includes various other non-physical locations of public communication. Id. at 476. A publicly-accessible website is considered to be a public forum for purposes of C.C.P. § 425.16. See ComputerXpress Inc. v. Jackson (2001) 93 Cal.App.4th 993, 1007; Barrett v. Rosenthal (2006) 146 P.3d 510, 514, fn. 4. The website itself does not require a comment section or other public participation to be considered a public forum. See Wilbanks v. Wolk (2001) 121 Cal.App.4th 883, 897.

Plaintiff herself acknowledges that all of these statements were made in a public forum by referring to Love's statements as "marathon rants in multiple *public forums*," Love "*publicly* warned Simorangkir," and "Love escalated her assault through the constant barrage of malicious, false, and defamatory statements in *various public forums*" (emphasis added). See Plaintiff's FAC at ¶¶ 1, 20.

2. Defendant's Allegedly-Wrongful Statements Were Made In Connection With an Issue of Public Interest.

All of Love's allegedly-wrongful statements were made in connection with a matter of public interest. They constitute a warning *not* to use Plaintiff's services or do business with her in any manner and why, they are made by and concern celebrities, and they concern other matters of public interest such as drug and alcohol abuse and child abuse. Love described in detail how she contracted with Plaintiff for custom-made clothing and was price-gouged by Plaintiff, Love described how Plaintiff refused to return Love's extremely valuable property, and Love further described how Plaintiff's

irrational decision first to gouge Love and then publicly attack her was in keeping with Plaintiff's criminal background, drug and alcohol abuse, and emotional difficulty dealing with her estranged son:

> "i flew her up the first time she came to la, and it was alot [sic] of havoc that day but i did giveher [sic[over 300,000 of my insured and photographed pieces we sogned [sic] a cotract [sic] ilstingthe [sic] pieces and the date they were to be upcycled and returned to me for a certain sum, and then she wanted 5000 more so i gave it to her like an idiot andanother [sic] 5000 and now shes [sic] holding my shit hostage and imnoteven [sic] includingthe [sic] overpaying netsy [sic]." See Plaintiff's FAC at ¶ 31(h);

> "you dont [sic] charge someone 40,000$ and then give hem [sic] a deadline DEc [sic] 10th and here we are in march and deliver them a few items, and shopw [sic] the rest as though they didnt [sic] belong to you made of your textiles...." Id. at ¶ 31(aa).

"The most commonly articulated definitions of 'statements made in connection with a public issue' focus on whether (1) the subject of the statement or activity precipitating the claim was a person or entity in the public eye; (2) the statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants; and (3) whether the statement or activity precipitating the claim involved a topic of widespread public interest.'" See Commonwealth Energy Corp. v. Investor Data Exchange, Inc. (2003) 110 Cal.App.4th 26, 33; Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO (2003) 105 Cal.App.4th 913, 924.

C.C.P. § 425.16(e)(3)'s requirement that the defendant's allegedly-wrongful activity be "'in connection with an issue of public interest' ...is to be '***construed broadly***' so as to encourage participation by all segments of our society in vigorous public debate related to issues of public interest" (emphasis added). See Seelig v. Infinity Broadcasting Corp. (2002) 97 Cal.App.4th 798, 808. Courts should "err on the side of free speech" in deciding whether an issue is one of public interest. See Gallagher v. Connell (2004) 123 Cal.App.4th 1260, 1275.

"Consumer information... generally is viewed as information concerning a matter of public interest." See Wilbanks v. Wolk (2004) 121 Cal.App.4th 883, 899. Courts have expounded on this general principle as follows:

> "Members of the public have recognized their roles as consumers and through concerted activities, both private and public, have attempted to improve their... positions vis-a-vis the [suppliers] and manufacturers of consumer goods. They clearly have an interest in matters which affect their roles as consumers, and peaceful activities, such as plaintiffs', which inform them about such matters are protected by the First Amendment.'" See Paradise Hills Associates v. Procel (1991) 235 Cal.App.3d 1528, 1544.

In Paradise Hills, the Court struck down a libel suit brought by plaintiff developer in which defendant admittedly posted signs on her house stating that "my house leaks and no one gives a damn,"

"we moved to Paradise Hills but we Live in Hell," "Unhappy Homeowner - Ask Me Why," and "Beware: You Have Now Entered the 'Paradise Zone' Honesty?? Quality?? Promises?? Luxury?? Heartbroken for sure." See Paradise Hills, supra, 235 Cal.App.3d at 1535. The Court held that defendant's comments regarding the quality of life in the home built by plaintiff developer constituted a matter of public interest, such that this speech was protected. Id. Because Love's statements were warnings to consumers *not* to do business with Simorangkir and further explained why, they concern a matter of public interest.

An event of "significant interest to the public and the media" also satisfies the public interest element for purposes of C.C.P. § 425.16. See Seelig v. Infinity Broadcasting Corp. (2002) 97 Cal.App.4th 798, 807-808. In Seelig, the Court held that a radio "shock jock's" commentary regarding plaintiff's decision to appear on a television show was made in connection with an issue of public interest protected by the First Amendment. Id. Specifically, the Court held:

> "The offending comments arose in the context of an on-air discussion between the talk-radio cohosts and their on-air producer about a television show of significant interest to the public and the media... Before and after its network broadcast, *Who Wants to Marry a Millionaire* generated considerable debate within the media... *By having chosen to participate as a contestant in the Show, plaintiff voluntarily subjected herself to inevitable public scrutiny and potential ridicule by the public and the media*" (emphasis added). See Seelig, 97 Cal.App.4th at 807.

Matters involving a celebrity's personal life constitute matters of public interest if the celebrity herself is the subject of widespread public interest. See Hall v. Time Warner, Inc. (2007) 153 Cal.App.4th 1337, 1347. Statements about a "nationally known figure" necessarily concern a matter of public interest. See Sipple v. Foundation for Nat. Progress (1999) 71 Cal.App.4th 226, 239. Because Love's statements concern both herself and Simorangkir, both of whom are celebrities, Love's statements concern matters of public interest.

In Hall, the Court found that plaintiff, the former housekeeper for actor Marlon Brando sued the producers of the national television show "Celebrity Justice" after it was revealed that Brando had named Hall a beneficiary of his living trust. Id. In reversing the trial court's denial of defendants' special motion to strike, the Court held as follows:

> "The public's fascination with Brando and widespread public interest in his personal life made Brando's decisions concerning the distribution of his assets a public issue or an issue of public interest. *Although Hall was a private person and may not have voluntarily sought publicity or to comment publicly on Brando's will, she nevertheless became involved in an issue of public interest by virtue of being named in Brando's will*" (emphasis added). See Hall, 153 Cal.App.4th at 1347.

"Major societal ills are issues of public interest." See Lieberman v. KCOP Television, Inc. (2003) 110 Cal.App.4th 156, 165. Criminal conduct, particularly with regard to drug use, constitute matters of public interest. See M.G. v. Time Warner, Inc. (2001) 89 Cal.App.4th 623, 629. News reports concerning current criminal activity serve important public interests. See Briscoe v. Reader's Digest Association, Inc. (1971) 4 Cal.3d 529, 536. Because many of Love's statements concern criminal conduct by Simorangkir, as well as Simorangkir's drug and alcohol abuse and have an effect on all Etsy and Boudoir Queen consumers both past and present, they constitute matters of public interest.

Love's statements regarding Simorangkir's custody over her child are a matter of public record and therefore concern a matter of public interest. "Public records by their very nature are of interest to the public and an important benefit is performed when they are published...." See Gates v. Discovery Communications, Inc. (2004) 34 Cal.4th 679, 688 (quoting Cox Broadcasting Corp. v. Cohn (1975) 420 U.S. 469, 495).

Statements regarding matters of even lesser public significance have been held as matters of public interest sufficient to invoke the protection of C.C.P. § 425.16. For example, in Ingels v. Westwood One Broadcasting Services, Inc. (2005) 129 Cal.App.4th 1050, the Court held that an interchange on a radio call-in show regarding whether a caller was too old to participate in the show involved a matter of public interest protected by the First Amendment. In Dowling v. Zimmerman (2001) 85 Cal.App.4th 1400, 1420, the Court held that defendant's statement that someone entered tenants' locked garage and turned off the dial of their water heater involved a matter of public interest protected by the First Amendment "even though it directly affected only two tenants."

Plaintiff's counsel Freedman & Taitelman, LLP of all firms should understand that the protections of the First Amendment in conjunction with C.C.P. § 425.16 bar Plaintiff's suit here because they filed and won a Special Motion to Strike in 2007 on behalf of their client Mario Lavandeira d/b/a Perez Hilton when he was sued by Samantha Ronson, Los Angeles Superior Court Case No. BC374174. See **Exhibit E** to the Decl. Muller. Lavandeira argued at length in his Special Motion to Strike that "regardless of Ronson's own celebrity status or whether she voluntarily sought publicity in connection with the Accident, she nevertheless became involved in an issue of public interest *by virtue of being involved in the Accident. Additionally, by publicly associating herself with Lohan, Ronson also voluntarily subjected herself to the inevitable scrutiny... by the public and media*"

(emphasis added). See **Exhibit F** to the Decl. Muller.

Plaintiff herself acknowledges that Love's statements were made to warn other consumers not to use Plaintiff's services by bringing suit for several statements Love purportedly made on Etsy's consumer feedback comment section. Three of Plaintiff's cited defamatory statements were admittedly made on Plaintiff's "Etsy feedback page," an online forum specifically created to elicit consumer feedback, both good and bad, from Plaintiff's past customers to be used by Plaintiff's future customers. See Plaintiff's FAC at ¶ 30; **Exhibit No. 2** to Plaintiff's FAC. Plaintiff further alleges that "there was a strong probability that Simorangkir's clients would continue to purchase Boudoir Queen clothing and apparel from Simorangkir" and "Love's above-referenced intentional acts, *in particular Love's defamatory conduct*, were designed to disrupt Simorangkir's relationship with her clients. Love intended to intimidate Simorangkir's clients *and discourage them from doing business with Simorangkir*" (emphasis added). See Plaintiff's FAC at ¶¶ 49, 51.

C. THIS COURT SHOULD STRIKE PLAINTIFF'S COMPLAINT BECAUSE PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON HER CLAIMS AGAINST DEFENDANT.

Once a defendant has established that the basis of plaintiff's claims constitute free-speech activity protected by C.C.P. § 425.16 and the First Amendment, the burden shifts to Plaintiff to demonstrate a probability of success on her claim. See Globetrotter Software, Inc v. Elan Computer Group (N.D.Cal. 1999) 63 F.Supp.2d 1127, 1130. Plaintiff cannot simply rely on allegations in the complaint to make this showing. See Paul for Council v. Hanyecz (2001) 85 Cal.App.4th 1356, 1364. Instead, Plaintiff must be able to provide sufficient evidence to permit the court to determine whether there is a probability that plaintiff *will likely* prevail on her claims. See DuPont Merck Pharmaceutical Co. v. Superior Court (2000) 78 Cal.App.4th 562, 568.

1. Plaintiff Cannot Establish a Probability of Prevailing on Her First Cause of Action for Libel.

Under Civil Code § 45, "libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation."

//

//

a. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Defendant's Allegedly-Libelous Statements Are Mere Hyperbole and Not Actionable.

"The statutory definitions of libel... 'can be meaningfully applied only to statements that are capable of being proved as false or true.'" See Savage v. Pacific Gas & Electric Co. (1993) 21 Cal.App.4th 434, 445. "To state a libel claim which is not defeated by the freedom of speech protections of the First Amendment, [a plaintiff] must allege a statement that is provably false." See Ferlauto v. Hamsher (1999) 74 Cal.App.4th 1394, 1401 (citing Milkovich v. Lorain Journal Co. (1990) 497 U.S. 1, 20).

Plaintiff has brought suit against Love for calling Plaintiff among other things "an "asswipe nasty lying hosebag thief," a "52 year old desperate cokes out ass," "[]one extremely rotten apple," "the nastiest lying worst person I have ever known, a thief a liar," "total scumbag, a lying ripoff...," "THAT BLACK CLPID [sic] OF VAMPITIC [sic] ENERGY THAT IS AROUND PEOPLE WHO SOLD DRUGS OR WERE MOLESTED OR its that grey and bits of black in the aura," and "this insanely nasty Etsy person." See Plaintiff's FAC at ¶¶ 29-31. Plaintiff has also brought suit because Love allegedly made the following statements about her: "austin police are morethan [sic] ecstatic to pick her up she has a history of dealing cocaine, lost all custody of her child, assualt [sic] and burglary"; "scorched earth ignore and blacklist, few people ever deserve our toal [sic] ignoring butthis [sic] thief and burglar does, austin police loathher! [sic] orange"; and "is my clothes my WARDROBE! oi vey dont [sic] fuck with my wradrobe [sic] or you willend [sic] up in a circle of corched [sic] eaeth [sic] hunted til your [sic] dead,new [sic] job." Id.

"California courts use a 'totality of circumstances' test to determine if a statement is one of fact or of opinion." See Baker v. Los Angeles Herald Examiner (1986) 42 Cal.3d 254, 260. "In determining whether statements are of a defamatory nature, and therefore actionable, 'a court is to place itself in the situation of the hearer or reader, and determine the sense or meaning of the language of the complaint for libelous publication according to its natural and popular construction.'" See Balzaga v. Fox News Network, LLC (2009) 173 Cal.App.4th 1325, 1338 (quoting Morningstar v. Superior Court (1994) 23 Cal.App.4th 676, 688). In making this determination, "'the context in which the statement was made must be considered.... 'The publication in question must be considered in its entirety; '[it] may not be divided into segments and each portion treated as a separate unit.'" See Balzaga, supra, 173 Cal.App.4th at 1338 (quoting Monterey Plaza Hotel v. Hotel Employees &

Restaurant Employees (1999) 69 Cal.App.4th 1057, 1064-1065).

"'Rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of... contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection" and as such are *not* actionable. See Ferlauto v. Hamsher (1999) 74 Cal.App.4th 1394, 1401; Hustler Magazine v. Falwell (1988) 485 U.S. 46, 53-55; James v. San Jose Mercury News, Inc. (1993) 17 Cal.App.4th 1, 15; Mikovich v. Lorain Journal Co. (1990) 497 U.S. 1, 20.

The following cases are particularly instructive. In Greenbelt Cooperative Pub. Assn. v. Bresler (1970) 398 U.S. 6, 13-14, the U.S. Supreme Court that a defendant's published statement regarding "blackmail" committed by the plaintiff was *not* defamatory because "no reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging the plaintiff with the commission of the statutory criminal offense of blackmail, ...even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, and ...there was no evidence that anyone thought that the plaintiff had been charged with a crime." Id. In Ferlauto, supra, the California Supreme Court held that defendant's calling plaintiff attorney a "loser wannabe lawyer," was *not* actionable for libel because "the average reader would deem [defendant's] comments about plaintiff as subjective expressions of opinion devoid of factual matter." See Ferlauto, supra, at 1398-1406. In James v. San Jose Mercury News, Inc. (1993) 17 Cal.App.4th 1, 27, the Court found defendant newspaper's descriptions of plaintiff defense attorney's conduct as "a common and sleazy tactic to ruin kids as witnesses," "a sad lesson in justice," and "a fishing expedition to attack the character of the kid." to be protected "imaginative expression" and "rhetorical hyperbole."

Here, every single one of the allegedly defamatory statements made by Love for which Plaintiff has brought suit constitutes "rhetorical hyperbole," "vigorous epithet[s]," "lusty and imaginative expression[s] of... contempt," and language used "in a loose, figurative sense" that has been accorded free speech protection as a statement of opinion rather than an actionable statement of fact. See Ferlauto, supra, 74 Cal.App.4th at 1401 (citing Greenbelt, supra, 398 U.S. at 14; Letter Carriers v. Austin (1974) 418 U.S. 264, 286). None of Love's statements for which Plaintiff has brought suit actually reference Plaintiff by name. See generally Plaintiff's FAC. Most of these statements do not set forth any "actual fact" that can be provably true or false. Id. There are no dates, citation records, criminal arrest or conviction references, references to news articles, references to witnesses, or any other supporting facts in these statements that could lead a reasonable person to believe any actual facts

about anyone. See generally Plaintiff's FAC. None of these statements is made by a reporter or journalist. Id. When taken in context and particularly when read together, none of these purportedly wrongful statements can be reasonably construed as stating an "actual fact" that is provably false, nor would any reasonable person reading these statements perceive them as anything more than precisely the kind of rhetorical hyperbole afforded full free speech protection by the First Amendment. Id. For this reason alone, Plaintiff cannot prevail on the merits of her claim for Libel.

Plaintiff herself implicitly acknowledges in her own FAC that these statements are *not* actionable and that no reasonable person would perceive these statements as anything more than rhetorical hyperbole and lusty and imaginative expressions of contempt. Plaintiff alleges that Love's statements were "caused by a drug induced psychosis" and/or "a warped understanding of reality." See Plaintiff's FAC at ¶ 1. How can Plaintiff claim that a reasonable person would believe as fact these purportedly defamatory statements as statements of actual fact if Plaintiff simultaneously claims that they were "caused by a drug induced psychosis" and/or "a warped understanding of reality"?

The press coverage of this suit also reflects the fact that no reasonable person would believe the statements made by Love to constitute actual statements of fact. In a story posted by Zimbio, "an interactive magazine with over 18 million readers a month," the author quoted a portion of Love's allegedly defamatory statements and then told readers not to "worry if you had trouble understanding that. It's not meant to be intelligible." See Zimbio, "Designer Sues Courtney Love Over Dirty Words" (March 27, 2009), available at http://www.zimbio.com/Dawn+Simorangkir/articles/2/Designer +Sues+Courtney+Love+Over+Dirty+Words. See **Exhibit H** to the Decl. Muller. PopCrunch, another online gossip blog, reported that "Courtney Love's grammatically-challenged online rants have landed the eccentic [sic] rocker in a Los Angeles courtroom." See PopCrunch, "Courtney Love Online Rants Lawsuit–Designer Dawn Simorangkir Sues" (March 27, 2009), available at http://www.popcrunch. com/courtney-love-online-rants-lawsuit-designer-dawn-simorangkir-sues/. See **Exhibit I** to the Decl. Muller.

b. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Of The Context of the Allegedly-Defamatory Statements.

The context of Love's purportedly defamatory statements further underscores their non-actionable and non-factual nature. The statements made were not made by a newspaper or online news columnist, nor did they appear in a news article referencing said statements or even a nationally-

published magazine, as in Milkovich v. Lorain Journal Co. (1990) 497 U.S. 1, Greenbelt Cooperative Publishing Assn, Inc. v. Bresler (1970) 398 U.S. 6, and Hustler Magazine v. Falwell (1988) 485 U.S. 46. Instead, thirty-eight of the forty-one purportedly defamatory statements were made on either MySpace or Twitter. See **Exhibit J**, **K,** and **L** to the Decl. Muller. Because the non-journalistic context of Love's statements alone make it extremely unlikely for a reasonable reader to perceive the statements made as actual facts, Plaintiff cannot prevail on her libel cause of action.

MySpace is a "social networking" website that "focuses on building online communities of people who share interests and/or activities, or who are interested in exploring the interests and activities of others." See Wikipedia, "MySpace" (August 18, 2009), available at http://en.wikipedia.org/wiki/Myspace; Wikipedia, "Social network service" (August 18, 2009), available at http://en.wikipedia.org/wiki/Social_network_service. See **Exhibit J** to Decl. Muller. "Twitter is a free social networking and micro-blogging service that enables its users to send and read messages known as *tweets*.... Senders... by default, allow open access." See Wikipedia, "Twitter" (August 18, 2009), available at http://en.wikipedia.org/wiki/Twitter. See **Exhibit L** to Decl. Muller. In August 2009, BBC News reported that under a new market research study, "40.5% of the messages sent via [Twitter]" were "pointless babble... of the 'I'm eating a sandwich' type.'" See BBC News, "Twitter tweets are 40% 'babble'" (August 17, 2009) available at http://news.bbc.co.uk/2/hi/technology/8204842.stm. See **Exhibit M** to Decl. Muller. According to this same study, "only 8.7% of messages could be said to have 'value' as they passed along news of interest," and the remaining portion were "conversational tweets that bounded back and forth between two users...." Id.

c. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Plaintiff Cannot Establish That Many of the Contested Statements Describe or Even Reference Plaintiff.

"[I]n defamation actions, the First Amendment... requires that the statement on which the claim is based *must specifically refer to* or be 'of or concerning' the plaintiff in some way.... The 'of and concerning' or specific reference requirement limits the right of action for injurious falsehood... denying it to whose who merely complain of nonspecific statements that they believe cause them some hurt. *To allow a plaintiff who is not identified, either expressly or by clear implication, to institute such an action poses an unjustifiable threat to society*" (emphasis added). See Blatty v. New York Times Co. (1986) 42 Cal.3d 1033, 1042-1044; see also Ferlauto, supra, 74 Cal.App.4th at 1404.

Here, the overwhelming majority of Love's allegedly-wrongful statements do not refer to or

reference Plaintiff in any manner whatsoever. None of these statements references Plaintiff as "Dawn Simorangkir" or "Dawn Younger-Smith." See Plaintiff's FAC at ¶¶ 28-31. Only ***two*** of the forty-one (41) statements referenced by Plaintiff in her FAC reference Plaintiff by her pseudonym "Boudoir Queen" and one of these same two statements references Plaintiff as "Dawn." Id. Only ***three*** additional statements could possibly be attributed to Plaintiff and only because they were purportedly posted on Plaintiff's own Etsy customer feedback website. Id. The remaining statements reference no one in particular. Id. All remaining statements were posted on Love's Twitter page and MySpace page, both of which are generally available to the public and both of which have ***nothing*** to do with Plaintiff, ***nothing*** to do with Etsy, and ***nothing*** to do with clothing in general. Id. These statements further are made in the context of various other statements that admittedly have ***nothing*** to do with Plaintiff, ***nothing*** to do with Etsy, and ***nothing*** to do with clothing in general. Id. As such, no reasonable reader would attribute the bulk of the allegedly-defamatory statements as applying to Plaintiff. For this reason alone, Plaintiff cannot prevail on her claim for Libel.

d. Plaintiff Cannot Prevail on Her Libel Cause of Action Because Plaintiff Cannot Show With Clear and Convincing Evidence That Defendant Acted With Actual Malice.

Plaintiff will have to meet a higher evidentiary burden, that of "clear and convincing evidence," to make a prima facie claim for Libel because Plaintiff is a public figure and because the allegedly defamatory statements concern a matter of public interest. Plaintiff further will have to show with clear and convincing evidence that Love acted with "actual malice," meaning Love had serious doubts about the truth of the statements made but made them anyway. As set forth below, Plaintiff will fail to meet her heavy evidentiary burden.

The standard of evidence sufficient to establish a cause of action for libel is much stronger and more difficult for a plaintiff to overcome if plaintiff is a public figure. "[A] "public figure" plaintiff" is someone who "has undertaken some voluntary act through which he seeks to influence the resolution of the public issues involved." See Live Oak, supra, 234 Cal.App.3d at 1289 (quoting Brown v. Kelly Broadcasting Co. (1989) 48 Cal.3d 711, 744) (citing Kaufman v. Fidelity Fed. Sav. & Loan Assn. (1983) 140 Cal.App.3d 913, 920). "[T]he First Amendment limits California's libel law in various respects. When, as here, the plaintiff is a public figure, he cannot recover unless he proves by *clear and convincing evidence* that the defendant published the defamatory statement with actual malice, i.e. with 'knowledge that it was false or with reckless disregard of whether it was false or not.' Mere

negligence does not suffice. Rather, the plaintiff must demonstrate that the author 'in fact entertained serious doubts as to the truth of his publication'" (emphasis added). Masson v. New Yorker Magazine (1991) 501 U.S. 496, 510; see also Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 258.

"Even as to private-figure plaintiffs, there are now significant constitutional restrictions on the right to recover damages.... [W]hen the speech involves a matter of public concern, [plaintiff] must also prove New York Times malice, [New York Times Co. v. Sullivan (1964) 376 U.S. 254], to recover presumed or punitive damages." "The First Amendment trumps the common law presumption of falsity in defamation cases involving private-figure plaintiffs when the allegedly defamatory statements pertain to a matter of public interest." Nizam-Aldine v. City of Oakland (1996) 47 Cal.App.4th 364, 375.

"[I]ll will toward the plaintiff is not 'actual malice'" for purposes of this rule. See Live Oak Publishing Company, Inc. v. Cohagan (1991) 234 Cal.App.3d 1277, 1291-1292 (citing to McCoy v. Hearst Corp. (1986) 42 Cal.3d at p. 872). As the United States Supreme Court explained in Hustler Magazine, supra, 485 U.S. at 53, "'[d]ebate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth.'" (quoting Garrison v. Louisiana (1964) 379 U.S. 64, 73). Likewise, "[t]he failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy." See Live Oak, supra, 234 Cal.App.3d at 1292 (citing Reader's Digest, supra, 37 Cal.3d at 258).

Plaintiff cannot meet this higher evidentiary burden because Love did not make any statement with "actual malice" and did not seriously doubt the validity of anything she stated online regarding Plaintiff. See generally Love Decl. Plaintiff cannot establish with clear and convincing evidence that Love entertained serious doubts about the factual accuracy of these statements because the statements themselves contain few "actual facts" that are "provably false," as set forth in greater detail above, nor do they necessarily concern Plaintiff at all as far as the average reader is concerned. Id. To the extent that the statements *do* contain provably false facts that *are* reasonably understood as regarding Plaintiff, they are true and accurate as far as Love understood them. Id. Love had personal knowledge of some of these facts - the theft, "blackmail," breach of contract, price gouging, drug and alcohol abuse - and Plaintiff herself described other facts to Love in detail - Plaintiff's estranged son, custody battle,

prostitution record, arrest warrants, assault history, criminal background, child molestation, emotional difficulties. Id. At least some public records, particularly those having to do with Plaintiff's effective loss of custody of her son, support Love's statements as correct. See **Exhibit N** to the Decl. Muller. For these reasons, too, Plaintiff will be unable to make a prima facie claim for Libel against Love.

2. Plaintiff Cannot Establish a Probability of Prevailing on Her Second Cause of Action for Invasion of Privacy - False Light or Her Third Cause of Action for Intentional Interference with a Prospective Economic Advantage.

"[C]onstitutional protection does not depend on the label given the stated cause of action; it bars not only actions for defamation, but also claims for invasion of privacy." See Reader's Digest Assn., Inc. v. Superior Court (1984) 37 Cal.3d 244, 265. "When a false light claim is coupled with a defamation claim, ***the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action***" (emphasis added). See Eisenberg, supra, 74 Cal.App.4th at 1385, fn. 13. "Although the limitations that define the First Amendment's zone of protection for the press were established in defamation actions, they are not peculiar to such actions but ***apply to all claims whose gravamen is the alleged injurious falsehood of a statement***: '[that] constitutional protection does not depend on the label given the stated cause of action'" (emphasis added). See Blatty v. New York Times Company (1986) 42 Cal.3d 1033, 1042 (citing Reader's Digest, supra, 37 Cal.3d at 265). "If these limitations applied only to actions denominated 'defamation,' they would furnish little if any protection to free-speech and free-press values: plaintiffs suing press defendants might simply affix a label other than 'defamation' to their injurious falsehood claims - a task that appears easy to accomplish as a general matter." See Blatty, supra, 42 Cal.3d at 1044-1045 (citing Reader's Digest, supra, 37 Cal.3d at 265).

Here, Plaintiff's causes of action for Invasion of Privacy - False Light and for Intentional Interference with Prospective Economic Advantage are identical for all intents and purposes to Plaintiff's cause of action for Libel. Because Plaintiff will be unable to make a prima facie claim for Libel for the reasons set forth above, Plaintiff will similarly be unable to make either additional cause of action for Invasion of Privacy - False Light or for Intentional Interference with Prospective Economic Relations.

III. CONCLUSION

For the foregoing reasons, Defendant Love respectfully requests this Court to grant her Special Motion to Strike and dismiss Plaintiff's First Amended Complaint.

//

DATED: August 19, 2009

KEITH A. FINK & ASSOCIATES

By: _____
Keith A. Fink
Olaf J. Muller
Attorneys for Defendant
COURTNEY LOVE COBAIN

DECLARATION OF OLAF J. MULLER

I, Olaf J. Muller, declare as follows:

1. I am an attorney of the law firm of Keith A. Fink and Associates, counsel of record for DEFENDANT COURTNEY LOVE COBAIN ("Love" and/or "Defendant"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. A true and correct copy of PLAINTIFF DAWN SIMORANGKIR A/K/A DAWN YOUNGER-SMITH A/K/A BOUDOIR QUEEN'S ("Plaintiff" and/or "Simorangkir") First Amended Complaint against Love is attached hereto as **Exhibit A**.

3. Following a dispute between the parties over proper service of the Complaint and Summons, both parties agreed to a date of service of July 20, 2009, with a responsive pleading due date of August 19, 2009, and Love withdrew her pending Motion to Quash Service.

4. Plaintiff Simorangkir is a celebrity fashion designer based in Texas who specializes in "up-cycling" clothing, which is a method of taking used and vintage clothing and using additional materials and textiles to re-work clothing into more unusual and unique fashion items. Plaintiff holds herself out on her website as "a model/muse and make-up artist to the stars," a "style icon," and "her client list of starlets as a make-up artist sparkles with names like Lisa Marie Presley, Maude Adams, Susan Tyrell from Andy Warhol's BAD and many more." A true and correct sample print-out of Plaintiff's web-blog and press section is attached hereto as **Exhibit B**.

5. Plaintiff repeatedly features photos of herself with celebrities wearing her clothing on her website, has written about her various celebrity friends, including but not limited Love on her website, and has even posted pictures of Love wearing Plaintiff's clothing on her website. True and correct copies of Plaintiff's website featuring these photos and articles are attached hereto as **Exhibit C**. Plaintiff has gone so far as to *post links* connecting Love's MySpace blog to Plaintiff's own website after Courtney decided to write about how much she enjoyed Plaintiff's clothing in December 2008. Id. Plaintiff also Love "ROCK ROYALTY"," a "bad-ass my dream come true Muse!" on her website, posted a photograph of Love wearing Plaintiff's clothing, and instructed her customers to visit Love's "myspace blog to see her mention of us!" Id. Plaintiff further states on her website that "her

hollywood home was photographed by Titanic star Billy Zane," "you will see many recording artists coming in for an appointment with 'The Boudoir Queen," and "Dawn's designs have been featured in many magazine publications such as Katie Grands new LOVE magazine, "Elle," "Paste," "Tribeza," "Brilliant," and "No Depression." True and correct copies of Plaintiff's website with these comments are attached hereto as **Exhibit D**.

6. Plaintiff Samantha Ronson filed suit against Defendant Mario Lavandeira d/b/a Perez Hilton on July 12, 2007, Los Angeles Superior Court Case No. BC374174. A true and correct copy of Plaintiff Ronson's Complaint for Libel is attached hereto as **Exhibit E**.

7. Defendant Lavandeira as represented by Freedman & Taitelman, LLP, the same attorneys as for Plaintiff Simorangkir here, filed a Special Motion to Strike on Lavandeira's behalf on September 4, 2007. A true and correct copy of this Motion is attached hereto as **Exhibit F**.

8. On November 1, 2007, the Court heard and granted Lavandeira's Special Motion to Strike. A true and correct certified copy of the hearing transcript is attached hereto as **Exhibit G**.

9. A true and correct copy of the Zimbio article entitled "Designer Sues Courtney Love Over Dirty Words" (March 27, 2009) and available at http://www.zimbio.com/Dawn+Simorangkir/articles/2/Designer+Sues+Courtney+Love+Over+Dirty+Words is attached hereto as **Exhibit H**.

10. A true and correct copy of the PopCrunch article entitled "Courtney Love Online Rants Lawsuit–Designer Dawn Simorangkir Sues" and available at http://www.popcrunch.com/courtney-love-online-rants-lawsuit-designer-dawn-simorangkir-sues/ is attached hereto as **Exhibit I**.

11. MySpace is a "social networking" website that "focuses on building online communities of people who share interests and/or activities, or who are interested in exploring the interests and activities of others." See Wikipedia, "MySpace" (August 18, 2009), available at http://en.wikipedia.org/wiki/Myspace; Wikipedia, "Social network service" (August 18, 2009), available at http://en.wikipedia.org/wiki/Social_network_service. True and correct copies of these two articles are attached hereto as **Exhibit J**.

12. According to MySpace's Quick Tour web-page, the website's primary focus is *not* news, journalism, or research but rather a way to "express yourself," "keep up with your friends," and

"share what you're up to." See MySpace QuickTour available at http://www.myspace.com/index.cfm?fuseaction=userTour.home. A true and correct print-out of MySpace's Quick Tour page is attached hereto as **Exhibit K**.

13. "Twitter is a free social networking and micro-blogging service that enables its users to send and read messages known as *tweets*.... Senders... by default, allow open access.... It is sometimes described as the 'SMS of the Internet....'" See Wikipedia, "Twitter" (August 18, 2009), available at http://en.wikipedia.org/wiki/Twitter. A true and correct copy of this article is attached hereto as **Exhibit L**.

14. In August 2009, BBC News reported that under a new market research study, "40.5% of the messages sent via [Twitter]" were "pointless babble... of the 'I'm eating a sandwich' type.'" See BBC News, "Twitter tweets are 40% 'babble'" (August 17, 2009) available at http://news.bbc.co.uk/2/hi/technology/8204842.stm. A true and correct copy of this article is attached hereto as **Exhibit M**.

15. The parties in the matter of Dawn Simorangkir v. Chocky Simorangkir, Los Angeles Superior Court Case No. BD375732 filed a Conciliation Court Agreement and Stipulated Order Re Custody and Parenting Plan on April 11, 2005. A true and correct copy of this pleading is attached hereto as **Exhibit N**.

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

Executed on August 18, 2009, at Los Angeles, California.

_____
Olaf J. Muller

DECLARATION OF COURTNEY LOVE COBAIN

I, Courtney Love Cobain, declare as follows:

1. I am the named Defendant in the underlying suit by PLAINTIFF DAWN SIMORANGKIR A/K/A DAWN YOUNGER-SMITH A/K/A BOUDOIR QUEEN ("Simorangkir" and/or "Plaintiff"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. In or around 2008, I discovered http://www.etsy.com ("Etsy"), a website that functions as an online shopping mall containing stores of various individual vendors, including but not limited to Simorangkir's store. I visited Simorangkir's online store among others on Etsy and in reviewing her online catalogue, decided to purchase some of her clothing and accessories. I initially purchased a handful of small items, which I paid for promptly and in full as invoiced.

3. Some time thereafter, I contacted Simorangkir through her online store and we struck up a friendly relationship based on our mutual appreciation for fashion and design. Simorangkir represented herself to me as a fashion designer to the stars and to other notable figures within the fashion industry.

4. After several months of online communications, I asked Simorangkir to travel from Texas, her state of residence, to California to meet with me in person. I told Simorangkir that I wanted her to make several custom pieces of clothing for me using approximately several hundred thousand dollars' worth of textiles, vintage clothing, and other raw materials I had collected over nearly a decade. I also wanted to meet her personally as I considered her a friend and fellow artist after our months of online communication.

5. Simorangkir visited me in Los Angeles on or about December 3, 2008. I gave her hundreds of thousands of dollars' worth of textiles, vintage clothing, and other raw materials for her to "up-cycle" or transform into more unusual and unique fashion items.

6. Simorangkir subsequently visited me a second time in Los Angeles on or around January 28, 2009, this time bringing her husband, Mark Younger-Smith. I again gave her tens of thousands of dollars' worth of textiles, vintage clothing, and other raw materials for her to "up-cycle" in several large bags. Simorangkir and I agreed that any materials I gave to Simorangkir that she did

not use for "up-cycling" would have to be returned to me immediately.

7. During our second face-to-face meeting, Simorangkir repeatedly asked me both to partake in and to procure cocaine, Percoset, and other illegal and prescription drugs for herself and her husband. I told Simorangkir that my "hard-partying" days were in the past, and I declined to use any of her and her husband's drugs. During the ensuing conversation, Simorangkir told me that she used to "deal drugs" herself in the past. Simorangkir drank heavily during this meeting, repeatedly telephoning my room service at the Chateau Marmont to bring up several bottles of premium vodka to my room. Although Simorangkir's requests for drugs and her heavy drinking worried me, I decided to maintain our business relationship at least until she delivered the remaining order of custom clothing because her personal troubles thus far had not affected the quality of her work.

8. During our second meeting, Simorangkir also asked me about a song I had written and my band Hole performs called "Teenage Whore." After I described some of the emotions and personal stories that led me to write this song, Simorangkir told me that she had worked in the past as a prostitute and had been one of "Nikki's girls," which according to her was a well-known prostitution ring in California. As part of this story, Simorangkir also told me that she was a "tough street girl" who knew how to handle herself in a physical altercation, had been in fights in the past, and still had outstanding warrants for her arrest.

9. Simorangkir also asked me about my daughter Frances Bean Cobain. After I talked to her at length about Frances and some of the custody disputes over Frances I had in the past, Simorangkir told me that she had a teenage son whom she rarely saw because she lost custody to the son's father, her ex-husband, years before. Simorangkir further told me that part of the reason she lost custody of her child to her ex-husband was because of her past as a drug dealer, drug user, and prostitute, which her ex-husband had highlighted in detail to the Family Court. Simorangkir further made disparaging remarks to me regarding her estranged son, which deeply disturbed me as a single parent.

10. After Simorangkir asked me about some other songs I had written during our second meeting, I told her stories about my parents and my childhood. During this conversation, Simorangkir told me that she had been molested as a child.

11. Simorangkir also exhibited racist, homophobic, and generally mean-spirited behavior in my presence during our second meeting. She repeatedly referred to one of her seamstresses, Jasmine, a Latina woman, as "the beaner that works for me," and joked that she paid her little or no money notwithstanding Jasmine's hard work and excellent work product. Simorangkir also casually used the word "nigger" in front of me, and used other derogatory language regarding homosexuals in front of me. Notwithstanding Simorangkir's bizarre and mean-spirited behavior during this second meeting, I decided that I would wait until she delivered my remaining order for "up-cycled" clothing and then move on to other vendors and fashion designers in the future.

12. I draw pictures of my own fashion designs, which drawings I left lying around my hotel room. I also collect boudoir dolls and other items of vintage clothing, which I had lying around my hotel room. After Simorangkir left Los Angeles, I subsequently learned that my assistant had caught Simorangkir photographing these drawings and other items when I was away from my room. I learned later that Simorangkir had stolen my ideas and designs and put up various items for sale incorporating my ideas and designs on her Etsy website. I also subsequently learned that Simorangkir posted a video onto the video website YouTube of her Austin, Texas showroom, entitled "There's No Place Like Here: Boudoir Queen," which video is available at http://www.youtube.com/watch?v= JBaf9IcgViA. The items and layout of this shop mirrored the items and layout of clothing, boudoir dolls, and other items in my hotel room as photographed by Simorangkir.

13. On or around March 13, 2009, I received my first invoice for the custom pieces from Simorangkir. When I saw that the amounts invoiced were considerably higher than the prices I had previously agreed to with Simorangkir, I contacted her and requested that she lower her prices to those on which we had previously agreed. Simorangkir's quoted prices were particularly high in light of the fact that she used materials that I had provided to her, which saved her the time and trouble of gathering and paying for them herself.

14. Simorangkir refused to lower her prices, notwithstanding my repeated requests that she deliver the agreed-upon materials as promised. Simorangkir told me that she would not deliver any of the items she had "up-cycled" for me using my materials until I paid her invoiced prices plus shipping and insurance charges. Simorangkir also told me that she would withhold the remaining unused

vintage clothing, textiles, and other raw materials I had given her until I paid her the invoiced prices, effectively holding my clothing "hostage" until I paid Simorangkir the amount she demanded.

15. After I visited Simorangkir's website several weeks later, I saw that she had sold several items containing my vintage clothes and materials to other parties. In several new items up for sale, I saw that Simorangkir had copied designs and ideas from my drawings of clothing I had shown her and which were lying around my Chateau Marmont hotel room. I also learned through other Etsy vendors that Simorangkir had made disparaging remarks regarding me publicly, and I further learned that Simorangkir was sending harassing e-mail messages, Twitter messages, and prank telephone calls to various other Etsy designers whom I had befriended and purchased items from. I have since learned that in the past few months, Simorangkir has continued her pattern of harassment and bullying against other Etsy vendors with whom I have done business.

16. I was outraged by Simorangkir's malicious attempt to gouge additional money out of me, particularly in light of the fact that she previously had treated me as a friend and had promised to uphold the terms of our agreement for "up-cycled" clothes. As a musician and artist, I believe strongly in free speech rights, and I further believe strongly in the right of consumers to publicly warn other consumers about unscrupulous vendors. I live my life in the public eye, and I maintain both a MySpace page and Twitter page to ensure that my personal perspective on the events of my life is publicized rather than the viewpoint of someone else. For these reasons, I made several comments in March 2009 on the Etsy consumer feedback page for Simorangkir in which I described how Simorangkir had manipulated her personal relationship with me to steal hundreds of thousands of textiles, vintage clothing, and related raw materials from me to use for her own ends. Because I strongly believed and still strongly believe that Simorangkir's bad faith refusal to honor her contractual duties stem from her admitted drug and alcohol abuse, her admitted criminal background, and her admitted emotional difficulties dealing with her estranged son, it was incumbent on me to warn other Etsy consumers about Simorangkir's pattern of unethical conduct to ensure that no one else would be defrauded as I have been by Simorangkir.

17. To the extent that I make statements of fact regarding Simorangkir on my MySpace page, Twitter page, and Simorangkir's Etsy feedback comment section, I never once made any

statement online that I believed to be factually inaccurate, nor did I make any statements with actual malice toward Simorangkir, nor did I entertain any doubts about the factual accuracy of the statements I made about Simorangkir.

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

Executed on August 19, 2009, at New York, NY.

_____
Courtney Love Cobain

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 11500 W. Olympic Boulevard, Suite 316, Los Angeles, California, 90064.

On August 19, 2009, I served the document described as **DEFENDANT COURTNEY LOVE COBAIN'S SPECIAL MOTION TO STRIKE PURSUANT TO C.C.P. § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF COURTNEY LOVE COBAIN AND OLAF J. MULLER IN SUPPORT THEREOF** on all interested parties in this action as follows:

[X] by placing [ ] the original [X] true copies thereof enclosed in sealed envelopes addressed as follows:

Bryan J. Freedman
Jesse A. Kaplan
FREEDMAN & TAITELMAN, LLP
1901 Avenue of the Stars, Suite 500
Los Angeles, CA 90067
Tel. 310-201-0005
Fax. 310-201-0045

[X] (BY MAIL) As follows: I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

[ ] (BY FACSIMILE) Using fax number (310) 268-0790 I transmitted such document by facsimile machine, pursuant to California Rules of Court 2001 et seq. The facsimile machine complied with Rule 2003(3). The transmission was reported as complete. I caused the machine to print a transmission report of the transmission, a copy of which is attached to this declaration. I am employed in the County of Los Angeles, State of California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: August 19, 2009

_____
Steven Vanderberg