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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF MENDOCINO		
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10	MARK GOLOB,		
11	Plaintiff,) CASE NO. SUUK CV PO-1463543	
12	v.	REPLY OF DEFENDANT SEAN KELLY TO PLAINTIFFS'	
13	SEAN KELLY,	EVIDENTIARY OBJECTIONS	
14	Defendant.	Date: April 11, 2014 Time: 9:30 a.m.	
15		Dept.: E (Hon. Richard Henderson)	
16		Complaint Filed: Feb. 5, 2014	
17			
18	Defendant Sean Kelly prefaces these responses to plaintiff Mark Golob's evidentiary		
19	objections by noting that in an anti-SLAPP action to strike, the plaintiff, not the defendant, bears		
20	the evidentiary burden of establishing that the plaintiff will probably prevail at trial on its		
21	challenged claims. <i>Bradbury v. Superior Court</i> (1996) 49 Cal.App.4 th 1108, 1117; <i>Robertson v.</i>		
22	Rodriguez (1995) 36 Cal.App.4 th 347, 359. In addition, a plaintiff responding to an anti-SLAPP		
23	motion to dismiss must negate defenses raised by the defendant to establish that the plaintiff will		
24			
25	probably prevail at trial. <i>Traditional Cat Association v. Gibreath</i> (2004) 118 Cal.App.4 th 392.		
26	Thus, defendant Sean Kelly does not have any evidentiary burden on prevailing at trial, instead		

Defendant Sean Kelly nonetheless has evidence properly before the court as he

plaintiff Mark Golob must establish that he will probably prevail at trial. He has not.

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established personal knowledge of his website and blog postings, correspondence with counsel for plaintiff Golob, and lawsuits and articles he used in his opinions. Evidence Code Section 702.

The lawsuits, Exhibits B, C, E, I, J, K to the March 13, 2014 declaration of defendant Sean Kelly, are admissible as not hearsay, i.e., not presented for truth of matter but rather for the existence of lawsuits. Evidence Code Section 1200. They are also properly admissible under judicial notice which was not objected to by plaintiff. Evidence Code Sections 451, 452.

The articles published by defendant Sean Kelly, Exhibits A, F and G, are likewise not offered for truth of matters but to show what was published and are not hearsay. Evidence Code Section 1200.

Two other documents, Exhibit D (Butterfly Life FDD) and Ex. H (Scott Hammel attorney for Golob), are also statements by party on its agents and therefore admissible hearsay. Evidence Code Section 1220.

The news article, Exhibit L, is also admissible as containing statements by plaintiff Mark Golob admissible hearsay by a party declarant. Evidence Code Section 1220. Nor is it inadmissible as not offered for truth of matter.

As to the text of the Sean Kelly declaration of March 13, 2014, the boilerplate objections of conclusory and speculation are without merit. The declaration of Sean Kelly is based on his personal knowledge of facts he recited including documents he prepared and posted on his website blog, correspondence he had with counsel for plaintiff Mark Golob, and documents he reviewed in formulating opinions.

As to the specific objection of hearsay as to paragraphs 9, 10, 11, 12, 13, 17, and 22, of the March 13, 2014 declaration of Sean Kelly, the objections are without merit. The statements are primarily authentication of documents and other matters within the personal knowledge of defendant Sean Kelly. A hearsay objection is without basis, and as to the document exhibits

1	themselves, they are (as set forth above) not hearsay as not offered for the truth of the matter.	
2	Finally the statements of fact in Paragraphs 17 and 22 are just that and not objectionable	
3	conclusions.	
4	7	
5	Dated: April, 2014	LAGARIAS LAW OFFICES
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7		By: Sith Joseph
8		Peter C. Lagarias, Esq. Attorneys for Defendant Sean Kelly
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	II	

1 PROOF OF SERVICE BY MAIL, FACSIMILE, FEDERAL EXPRESS CCP 11 1013a, 2015.5 2 3 I, Michelle M. Hughes, declare as follows: 4 I am over the age of 18 years, and not a party to the within action; my business address is 1629 Fifth Avenue, San Rafael, California 94901-1828; I am employed in Marin County. On the 5 date set forth below. I served copies of the following documents(s): 6 Reply Memorandum of Points and Authorities of Defendant Sean Kelly in Support 1. of Special Motion to Strike 7 2. Reply Declaration of Defendant Sean Kelly in Support of Defendant's Special 8 Motion to Strike 9 3. Reply of Defendant Sean Kelly to Plaintiffs' Evidentiary Objections 10 4. Defendant Sean Kelly's Objections to Declaration Evidence of Plaintiff Mark Golob 11 12 Said document(s) were addressed as follows: 13 Nikolaus W. Reed, Esq. Law Offices of Nikolaus W. Reed 14 135 10th Street San Francisco, CA 94103 15 16 The described document(s) were served by the method(s) indicated as following: 17 (BY MAIL) The above-described document(s) will be deposited with the United States []Postal Service on this same date in the ordinary course of business, in a sealed envelope(s) 18 with postage thereon fully prepaid and placed for collection in the United States mail at San Rafael, California. 19 (BY FEDERAL EXPRESS) I caused such envelope(s) with postage thereon fully prepaid [X]20 to be placed in the Federal Express office at San Rafael, California. 21 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 2, 2014, at San 22 Rafael, California. 23 Michelle M. Hughes 24 Legal Assistant 25 N:\ACTIVE\Kelly, Sean\Proof\Reed 4-2-14.doc 26 27 28