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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF MENDOCINO**

10 MARK GOLOB,

11 Plaintiff,

12 v.

13 SEAN KELLY,

14 Defendant.

15 **CASE NO. SUUK CV PO-1463543**

16 **REPLY OF DEFENDANT SEAN
17 KELLY TO PLAINTIFFS'
18 EVIDENTIARY OBJECTIONS**

19 **Date: April 11, 2014**

20 **Time: 9:30 a.m.**

21 **Dept.: E (Hon. Richard Henderson)**

22 **Complaint Filed: Feb. 5, 2014**

23 Defendant Sean Kelly prefaces these responses to plaintiff Mark Golob's evidentiary
24 objections by noting that in an anti-SLAPP action to strike, the plaintiff, not the defendant, bears
25 the evidentiary burden of establishing that the plaintiff will probably prevail at trial on its
26 challenged claims. *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1117; *Robertson v.*
27 *Rodriguez* (1995) 36 Cal.App.4th 347, 359. In addition, a plaintiff responding to an anti-SLAPP
28 motion to dismiss must negate defenses raised by the defendant to establish that the plaintiff will
probably prevail at trial. *Traditional Cat Association v. Gibreath* (2004) 118 Cal.App.4th 392.
Thus, defendant Sean Kelly does not have any evidentiary burden on prevailing at trial, instead
plaintiff Mark Golob must establish that he will probably prevail at trial. He has not.

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

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

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

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

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

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

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

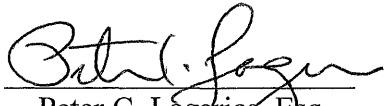
24 As to the specific objection of hearsay as to paragraphs 9, 10, 11, 12, 13, 17, and 22, of
25 the March 13, 2014 declaration of Sean Kelly, the objections are without merit. The statements
26 are primarily authentication of documents and other matters within the personal knowledge of
27 defendant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

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Dated: April 2, 2014

LAGARIAS LAW OFFICES

By: 
Peter C. Lagarias, Esq.
Attorneys for Defendant Sean Kelly

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