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LOS ANGELES SUPERIOR COURT

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US WEEKLY LLC and IAN DREW

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT

BRITNEY SPEARS, an individual,  
  
Plaintiff,  
  
vs.  
  
US WEEKLY LLC, a Delaware corporation;  
IAN DREW, a California resident; and DOES  
2 through 50, inclusive,  
  
Defendants.

) Case No. SC087989  
)  
) **DEFENDANTS' REPLY TO PLAINTIFF'S**  
) **OPPOSITION TO SPECIAL MOTION TO**  
) **STRIKE FIRST AMENDED COMPLAINT;**  
) **SUPPLEMENTAL DECLARATION OF**  
) **ROBYN ARONSON WITH EXHIBITS X-Z**  
)  
) Assigned to the Hon. Lisa Hart Cole  
) Dept. X  
)  
) Date: March 16, 2006  
) Time: 9:00 a.m.  
)  
) Action Filed: December 19, 2005  
)  
) [Objections to Plaintiff's Evidence and  
) Appendix of Non-California Authorities Filed  
) Concurrently]

Defendants US Weekly LLC and Ian Drew (collectively "US Weekly") respectfully submit  
the following Reply to plaintiff Britney Spears' Opposition to US Weekly's Special Motion to  
Strike her First Amended Complaint.

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## 1. INTRODUCTION

In her Opposition, plaintiff Britney Spears goes to great lengths to try to salvage her complaint. She rewrites her libel claim, reinvents her own personal history, and relies on “evidence” that is nothing but rank hearsay. But despite her tactics, she has not come close to meeting her burden of demonstrating a probability of prevailing on her claim. As US Weekly established in its motion, the article does not give rise to the allegedly defamatory implication identified in Spears’ complaint – that she acted “goofy” while watching a sex tape – and even if it did, that implication would not be actionable. Moreover, if Spears were allowed to refashion her libel claim, she still could not prevail because it is not defamatory to state that a married woman (especially one with Spears’ sexual reputation) made a home sex tape with her husband. Nor has Spears remotely demonstrated – much less with clear and convincing evidence – that US Weekly knew that the article was false or recklessly disregarded its probable falsity. For each of these independent reasons, the Court should grant this motion and strike Spears’ claim.

## 2. SPEARS BEARS A HEAVY BURDEN UNDER THE ANTI-SLAPP STATUTE.

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Importantly, Spears does not dispute that US Weekly has made a threshold showing that her libel claim arises from the magazine’s protected speech. Opp. at 3:9-4:24. As the California Supreme Court has explained, the burden thus shifts to Spears to “demonstrate[] a probability of prevailing” on her claim. *Navellier v. Sletten*, 29 Cal. App. 4th 82, 88 (2002). If she cannot do so, her claim must be stricken. *Id.*; C.C.P. § 425.16(b)(1).

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Spears fundamentally misapprehends her burden under the anti-SLAPP statute. First, she insists that the anti-SLAPP statute affords less protection to media entities like US Weekly. Opp. at 4:9-24. But the Second District dismissed this exact argument in *Sipple v. Foundation for Nat’l Progress*, 71 Cal. App. 4th 226, 240 (1999). There, the court explained that the “[a]ppellant’s assertion that the [anti-SLAPP] statute was aimed at protecting economically weak individuals, rather than the media, has been addressed and rejected” in other cases. *Id.* Noting the statute’s broad language and the authorities extending its reach to the media, the Court concluded that “[i]n light of [its] agreement with these authorities,” it would “not discuss this matter further.” *Id.*

1 Next, Spears mistakenly believes that her “evidence” in opposition to US Weekly’s motion  
2 need not comply with basic rules of admissibility. Yet, the Second District recently observed that  
3 “[i]t is well settled that in opposing a SLAPP motion the plaintiff’s showing of a probability of  
4 prevailing on its claim must be based on *admissible evidence*.” *Fashion 21 v. Coalition for*  
5 *Humane Immigrant Rights*, 117 Cal. App. 4th 1138, 1147 (2004) (emphasis added). For that  
6 reason, courts deciding anti-SLAPP motions must “exclude[] evidence which would be barred at  
7 trial by the hearsay rule.” *Id.* Nonetheless, Spears’ opposition is supported only by inadmissible  
8 hearsay, including statements purportedly made to her counsel by an unidentified American Media  
9 lawyer, by unidentified former US Weekly employees, and by a Katten Muchin lawyer who  
10 represented Spears in other matters. *See* Opp. at 2:10-22 and n.2, 9:19-21; Singer Decl. at ¶¶ 2-5,  
11 8. Incredibly, while in a state of high dudgeon over US Weekly’s use of hearsay in a news article,  
12 Spears proffers no admissible evidence to support her claim that US Weekly published the article  
13 with actual malice, and even acknowledges that hearsay, like her “evidence,” is “not admissible in  
14 court.” Opp. at 10:16. *See also* US Weekly’s concurrently filed Evidentiary Objections.

15 Under controlling case law, it is clear that Spears must “meet [US Weekly’s] constitutional  
16 defenses,” *Robertson v. Rodriguez*, 36 Cal. App. 4th 347, 359 (1995), and present “competent”  
17 evidence establishing that she will “probably prevail at trial.” *Bradbury v. Superior Court*, 49 Cal.  
18 App. 4th 1108, 1117 (1996). Because she has done neither, her claim should be stricken.

### 19 **3. SPEARS CANNOT SHOW A PROBABILITY OF PREVAILING.**

#### 20 **A. Spears’ Opposition Misstates The Gravamen Of Her Libel Claim.**

21 While California has liberal pleading rules, certain claims – including libel – must be pled  
22 with particularity. *See, e.g., Vogel v. Felice*, 127 Cal. App. 4th 1006, 1017 n. 3 (2005). Therefore,  
23 a plaintiff’s cause of action for libel must specifically identify the allegedly defamatory statement  
24 or implication at issue. *Id.* Courts also have made clear that a plaintiff cannot evade the anti-  
25 SLAPP statute by restyling or amending her claims after a special motion to strike has been filed.  
26 *See Sylmar Air Conditioning v. Pueblo Contracting Svcs.*, 122 Cal. App. 4th 1049, 1053-56 (2004).

27 Ignoring these rules, Spears uses her Opposition as a vehicle to rewrite her libel claim.  
28 Although her complaint alleges that the article defamed her by “portraying [her] as acting ‘goofy’

1 while watching” the home sex tape “during a meeting with her estate planning lawyers” (FAC at  
2 ¶ 21; emphasis in original), she now insists that “this lawsuit is not about [her] acting ‘goofy.’”  
3 Opp. at 5:3. Instead, she conjures up two new purported defamatory implications: that the article  
4 portrays her “as someone who would film herself and her husband having sex for the purpose of  
5 watching it over and over again” and as someone who would “recklessly allow[] a member of her  
6 entourage to find and threaten to release a copy” of the tape. *Id.* at 5:9-10, 27-28. Yet, neither  
7 implication is supported by the article; nor did Spears plead such claims in her complaint.<sup>1</sup>

8 On this motion, Spears is bound by the allegations in her complaint, which concern the  
9 article’s purported description of her “goofy” behavior while showing the tape to her lawyers. FAC  
10 at ¶ 21; *see Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073-74 (2001) (no amendment of  
11 claims permitted after filing of anti-SLAPP motion). Because the article does not give rise to the  
12 alleged implication of acting “goofy,” and because any such implication is far too subjective to be  
13 defamatory (*see* Motion at 6-8), Spears cannot demonstrate a probability of prevailing on her libel  
14 claim, as it is pleaded. Her complaint should be stricken for this reason alone.

15 **B. The Article’s Description Of The Sex Tape Is Not Defamatory.**

16 Even if the Court accepted the new alleged implications identified in the Opposition, Spears  
17 still has not shown that those implications would be defamatory. She strains to paper over the holes  
18 in her argument by relying on two easily distinguishable cases. In the first, *Montandon v. Triangle*  
19 *Publ.*, 45 Cal. App. 3d 938 (1975), the plaintiff, who authored a book entitled *How To Be A Party-*  
20 *Girl*, alleged that she was defamed by a *TV Guide* column that described her with the phrase “from  
21 party girl to call girl.” The court held that *TV Guide*’s statement was defamatory because it  
22 suggested that the plaintiff had engaged in prostitution. *Id.* at 944-945. Here, of course, US

23 \_\_\_\_\_  
24 <sup>1</sup> The article said nothing about Spears’ intent in creating the tape; nor did it allude to any  
25 carelessness on Spears’ part. To the contrary, the story reported that she prudently and responsibly  
26 consulted with legal counsel to nip any possible controversy in the bud. Ex. A. Similarly, without  
27 any foundation, Spears strains to claim that readers would assume that the tape portrays “improper  
28 sexual conduct.” Opp. at 7:14. Spears’ fanciful interpretation of the article defies case law and  
logic. *See Forsher v. Bugliosi*, 26 Cal. 3d 792, 803 (1980) (“[j]ust as the court must refrain from a  
‘hair-splitting analysis’ of what is said in an article to find an innocent meaning, so must it refrain  
from scrutinizing what is not said to find a ‘defamatory meaning which the article does not convey  
to a lay reader’”; citations omitted).

1 Weekly simply reported that Spears and her husband made a sex tape; there is no allegation of  
2 prostitution or any other illegal activity. Ex. A.

3 More incredibly, Spears heavily relies on *Menefee v. Codman*, 155 Cal. App. 2d 396, 399,  
4 406 (1958), a nearly 50-year-old relic where the court praised the plaintiff for enjoying “an  
5 excellent reputation as a housewife,” and found defamatory impact in the defendant’s statement  
6 that the plaintiff was poorly dressed during a trip to Paris (as it could be construed to mean that her  
7 husband had failed to “furnish[] her with proper clothes for her trip”). The “sexually deviant  
8 behavior” referred to by the *Menefee* court was simply “narcissism,” which at that time, relying on  
9 Freud, was interpreted to mean “[e]rotic feeling aroused by one’s own body and personality.” *Id.* at  
10 403. No California court has cited *Menefee* in the last 40 years.

11 Spears fails to cite a single case – contemporary or otherwise – where a court held that it  
12 was defamatory to state that a husband and wife had consensual sex or taped themselves doing so.  
13 Such an assertion does not impute “criminal” conduct, as in *Montandon*, or “sexually deviant  
14 behavior,” as in *Menefee*. Nor does Spears rebut US Weekly’s showing that societal definitions of  
15 “sexually deviant behavior” have changed rather significantly in the last half-century. In other libel  
16 cases, courts have recognized that evolving social and sexual mores inform what statements may be  
17 deemed to be defamatory. Fifty years ago, for example, it was libelous *per se* to describe someone  
18 as homosexual, but modern courts have rejected this rule. *See, e.g., Albright v. Morton*, 321 F.  
19 Supp. 2d 130, 132 (D. Mass. 2004); *Hayes v. Smith*, 832 P.2d 1022, 1025 (Colo. App. 1991).  
20 Likewise, years ago, it was defamatory *per se* to impute “unchastity to a woman”; that category of  
21 defamatory speech is now limited to imputations of “serious sexual misconduct.” *Compare*  
22 Restatement of Torts § 574 with Restatement (Second) of Torts § 574. Spears disregards these  
23 evolving social and sexual mores (from which she certainly has benefited; it is difficult to imagine  
24 her song about phone sex getting air time on 1950s-era Dick Clark’s *American Bandstand*).

25 The futility of Spears’ argument is underscored by her curious insistence that she never has  
26 cultivated a “highly sexualized public persona,” even while she concedes that she sings about sex  
27 and has posed for sexually provocative photographs. Spears Decl. at ¶ 5. Given the sexually  
28 revealing nature of her reality show *Chaotic*, in which she unabashedly discussed her sexual desires

1 and practices, recorded Federline naked in the shower, and recorded another scene where she  
2 describes herself as being naked in her tour bus – not to mention her other highly sexualized images  
3 – it is inconceivable that Spears could be defamed by a statement that she and her husband recorded  
4 themselves having sex. *See* Exs. B-O, R-T. Spears’ libel claim thus fails as a matter of law.

5 **C. Even If Spears Could Overcome US Weekly’s Other Defenses, She Could Not Show**  
6 **That US Weekly Published The Article With Actual Malice.**

7 Not surprisingly, while she does not dispute that she “must present clear and convincing  
8 evidence of actual malice,” Spears glosses over the rigorous actual-malice standard, which requires  
9 her to show that US Weekly published the article “with knowledge that it was false or with reckless  
10 disregard of whether it was false or not.” *Masson v. The New Yorker*, 501 U.S. 496, 516 (1991)  
11 (citations and internal quotations omitted); *Colt v. Freedom Communications*, 109 Cal. App. 4th  
12 1551, 1560 (2003). To meet this standard, Spears must show that US Weekly “was actually aware  
13 that the contested publication was false,” *Woods v. Evansville Press Co.*, 791 F.2d 480, 484 (7th  
14 Cir. 1986), or that US Weekly “actually had a high degree of awareness ... of probable falsity.”  
15 *Harte-Hanks v. Connaughton*, 491 U.S. 657, 688 (1989). In another recent SLAPP case, the court  
16 reiterated that evidence of actual malice must be compelling enough “to command the unhesitating  
17 assent of every reasonable mind.” *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1579 (2005).  
18 This standard of proof imposes a “heavy burden ..., far in excess of the preponderance sufficient  
19 for most civil litigation.” *Eastwood v. National Enquirer*, 123 F.3d 1249, 1252 (9th Cir. 1997).  
20 Spears does not come close to meeting this burden.

21 **1. Spears Cannot Show “Purposeful Avoidance” Of The Truth.**

22 Spears does not dispute that US Weekly repeatedly sought comment about its story, from  
23 two Katten Muchin representatives and from Spears’ publicist. Nor does she dispute that the  
24 magazine received no denials. Rather, she argues that US Weekly “purposefully avoided the truth”  
25 because it did not seek comment from the people *she* thinks should have been called, Laura Zeigler  
26 or Spears’ litigation counsel, Martin Singer. *Opp.* at 8:12-25. These arguments are without merit.

27 Initially, even if there had been no attempt to confirm the story with Spears – which there  
28 was – courts recognize that a “plaintiff cannot rely on defendant’s failure to consult with him prior

1 to publication as proof of ‘actual malice.’” *Eastwood*, 123 F.3d at 1254 n.10 (citations omitted).  
2 As another court explained, the “Plaintiff’s suggestion that Defendants’ failure to contact [the  
3 plaintiff’s representatives] before publishing [the] article evidences actual malice is ... legally  
4 misguided. Defendants were not required to contact the subjects of the article before publication.”  
5 *DARE America v. Rolling Stone*, 101 F. Supp. 2d 1270, 1284 n.3 (C.D. Cal. 2000) (citation  
6 omitted). Indeed, even if denials were received (unlike here) actual malice “cannot be predicated  
7 on mere denials, however vehement,” because “such denials are so commonplace ... that, in  
8 themselves, they hardly alert the conscientious reporter to the likelihood of error.” *Edwards v.*  
9 *Nat’l Audubon Society*, 556 F.2d 113, 121 (2d Cir. 1977).

10 Here, far from avoiding the truth, US Weekly *did* seek Spears’ comment and Katten  
11 Muchin’s comment. First, rather than calling her litigation counsel,<sup>2</sup> its editors took the more  
12 logical and well-established step of contacting her high-profile publicist, Leslie Sloane Zelnick,  
13 who regularly responds to queries regarding Spears. It is undisputed that the magazine sent a “high  
14 importance” email to Zelnick on October 3, asking her to comment on the story. Drew Decl. at ¶  
15 11; Steele Decl. at ¶ 6 and Ex. W; Zelnick Decl. at ¶ 4. It also is undisputed that Zelnick did not  
16 respond. Drew Decl. at ¶ 11; Steele Decl. at ¶ 6; Zelnick Decl. at ¶¶ 4-6. Because a publicist’s  
17 failure to respond to such a request often signals that a story is true, Zelnick’s silence bolstered US  
18 Weekly’s confidence in the report. Steele Decl. at ¶ 6. While Spears speculates that US Weekly  
19 should have known that Zelnick would be observing the Jewish New Year on October 3, and that  
20 she would not be monitoring her email from a Rosh Hashanah dinner (Opp. at 8:18-19), the  
21 magazine’s failure to anticipate Zelnick’s religious observance is far from evidence of actual  
22 malice.

23  
24 <sup>2</sup> It would be unreasonable, to say the least, to fault US Weekly for not seeking comment  
25 from Singer, Spears’ acclaimed “pitbull entertainment lawyer.” Ex. X. Singer’s zealous advocacy  
26 for his clients comes with a reputation of denying provably true information. Most recently, while  
27 representing Spears in this action, he also threatened to sue thesmokinggun.com if it “falsely”  
28 reported that Singer’s client, James Frey, author of *A Million Little Pieces*, fabricated many events  
in his best-selling memoir, as it is now known he did. Ex. Y (Singer’s 01/06/06 letter; threatening  
that “[a]ny story that states or implies that [Frey] lied in his book ... would be defamatory”). See  
also *Eastwood*, 123 F.3d at 1254 n.10 (a publication need not seek comment from an individual  
from whom it could not reasonably expect to receive accurate information).

1 Perhaps most disingenuous is Spears' focused attack on US Weekly's decision not to call  
2 Zeigler for comment. At the time of publication, the magazine was not in a position to divulge  
3 Susan Self as its source, and contacting Ziegler directly would have necessarily done so. Instead of  
4 contacting an associate of the firm, US Weekly responsibly went to those who are charged with  
5 speaking on behalf of the law firm, Katten Muchin's marketing director, Melissa Kim, and the  
6 firm's publicist, Cari Brunelle, and asked them about the story. Drew Decl. at ¶ 10. Notably, it is  
7 undisputed that Kim and Brunelle did *not* deny the existence of the tape. *Id.*

8 In essence, Spears does not argue that US Weekly did not investigate its story; rather, she  
9 argues that the magazine did not conduct the type of investigation into the story that she would  
10 have liked. But as the Supreme Court has made clear, "reckless disregard" is not measured "by  
11 what a reasonably prudent man would have published, or would have investigated before  
12 publishing." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Even if Spears could show that  
13 US Weekly acted negligently – which she cannot – "[m]ere negligence does not suffice" to show  
14 actual malice, *Masson*, 501 U.S. at 510, nor does "gross or even extreme negligence." *McCoy v.*  
15 *Hearst Corp.*, 42 Cal. 3d 835, 860 (1986). In fact, not even "an extreme departure from accepted  
16 professional standards of journalism" is sufficient to establish actual malice. *Newton v. NBC*, 930  
17 F.2d 662, 669 (9th Cir. 1990). Spears' criticisms of US Weekly's reporting thus do not enable her  
18 to show that US Weekly purposefully avoided the truth.<sup>3</sup>

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20  
21 <sup>3</sup> The actual-malice cases that Spears cites do not assist her. While she cites *Harte-Hanks* in  
22 passing, she conspicuously does not discuss the facts of that case, where the United States Supreme  
23 Court found purposeful avoidance where a newspaper failed to interview the key witness in a  
24 dispute, knew that the plaintiff and five other witnesses had denied the charges against plaintiff,  
25 and, most strikingly, failed to review a critical taped interview in the newspaper's possession that  
26 would have discredited the report. 491 U.S. at 691. These facts are significantly more egregious  
27 than anything even alleged, much less substantiated, here. The other cases mentioned in the  
28 Opposition likewise are inapposite. See *Akins v. Altus Newspapers*, 609 P.2d 1263, 1267 (Okla.  
1977) (newspaper reporter made no attempt to confirm information with anyone involved in police  
incident in small town); *Kerwick v. Orange County Pubs.*, 53 N.Y.2d 625, 627 (N.Y. 1981) (one-  
paragraph decision finding actual malice without discussion); *Suzuki Motors v. Consumers Union*,  
330 F.3d 1110, 1134-35 (9th Cir. 2003) (finding triable issue of fact on actual malice where  
magazine reported that plaintiff's sport-utility vehicle was prone to rollovers, even though SUV  
successfully completed magazine's standard handling course 37 times before magazine created new  
course, supposedly to induce plaintiff's SUV to tip over during cornering maneuvers).

1           **2.       US Weekly Did Not Have “Serious Doubts” About The Story.**

2           Spears’ argument that US Weekly “seriously doubted the accuracy of the article” (Opp. at  
3 9:18) understandably ignores the indisputable fact that learning that Spears and her husband had  
4 made a sex tape was not only plausible, but likely – particularly in the context of their *cinema verite*  
5 *Chaotic*, where Spears videotapes Federline in the shower and openly talks about having sex three  
6 times in a day. Indeed, where numerous celebrities had fallen victim to wrongly misappropriated  
7 sex tapes leaked by associates, US Weekly had no reason to doubt the accuracy of Self’s report.  
8 Instead, in an attempt to conjure up “serious doubts,” Spears relies on nothing more than  
9 inadmissible hearsay and speculation – hardly the “clear and convincing” evidence required to  
10 establish actual malice. The “evidence” that Spears offers to support this argument consists of her  
11 counsel’s supposed conversations with an unidentified lawyer at American Media and with  
12 unidentified “former employees of US Weekly.” Opp. at 9:19-21; Singer Decl. at ¶¶ 2-5. All of  
13 this purported evidence is inadmissible hearsay, and may not be considered by this Court. See US  
14 Weekly’s concurrently filed Evidentiary Objections.

15           Grounded in hearsay, Spears’ claim that US Weekly had serious doubts about the story is  
16 premised on her erroneous accusation that the magazine held the story “for several weeks” because  
17 of alleged “concerns over sourcing.” Opp. at 2:10-16. She provides no support for this unfounded  
18 charge. See Singer Decl. at ¶¶ 4-5. Moreover, Spears’ admissible evidence actually corroborates  
19 Drew’s and Self’s unequivocal testimony that Self first relayed the information about the tape to  
20 Drew on the morning of October 3. Drew Decl. at ¶ 3; Self Decl. at ¶ 3. Specifically, both Self and  
21 Zeigler confirm that Zeigler attended a concert with Self’s sister, Lisa Tyler (Zeigler Decl. at ¶¶ 2-  
22 4; Self Decl. at ¶ 3), and it was immediately after the concert that Self told Drew about the tape.  
23 Self Decl. at ¶ 3. In her declaration, Zeigler reveals that the concert in question was “the Neil  
24 Diamond concert.” Zeigler Decl. at ¶ 3. Diamond performed in Los Angeles on September 30,  
25 October 1, and October 2, 2005 (Suppl. Aronson Decl. at ¶ 4 and Ex. Z),<sup>4</sup> which fits squarely into  
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28           <sup>4</sup> This Court may take judicial notice of the dates of Diamond’s Los Angeles concerts. Cal.  
Evid. Code § 452(h).

1 the timeline set forth in Drew’s and Self’s declarations, and discredits Spears’ unsubstantiated  
2 assertion that the magazine held the story “for weeks” because of doubts about its reliability.

3 Finally, Spears insists that US Weekly’s decision not to call Zeigler shows that the  
4 magazine doubted the story. Opp. at 10:4-13. Yet, far from evidencing “doubt,” as set forth above,  
5 US Weekly chose not to call Zeigler to avoid exposing Self as its source. Instead, to obtain  
6 comment, the magazine called those charged with speaking on behalf of the law firm – its publicist  
7 and its marketing director. Drew Decl. at ¶ 10; Steele Decl. at ¶ 6. Neither woman denied the  
8 story, which gave it even greater credibility. Drew Decl. at ¶ 10; Steele Decl. at ¶ 6.

9 Spears’ rank hearsay does not come remotely close to offering clear and convincing  
10 evidence that US Weekly entertained serious doubts about the story. Because she cannot show  
11 actual malice, her libel claim should be stricken.

#### 12 4. SPEARS IS NOT ENTITLED TO DISCOVERY.

13 Spears contends that “[i]f the Court is... inclined to grant the pending motion, there is good  
14 cause to permit Spears to conduct the discovery in order to meaningfully oppose it on the issue of  
15 actual malice.” Opp. at 14:1-2. US Weekly respectfully directs the Court to the magazine’s  
16 opposition to Spears’ February 27, 2005 *ex parte* application, which responds in detail to Spears’  
17 discovery request. In short, *Garment Workers Center v. Superior Court*, 117 Cal. App. 4th 1156,  
18 1162, 1163 (2004), explicitly held that it is an abuse of discretion to order discovery on the issue of  
19 actual malice where, as here, an anti-SLAPP motion may be granted on other grounds.

20 Discovery also is unnecessary on actual malice, which focuses on the defendant’s subjective  
21 belief at the time of publication. US Weekly has submitted declarations from Drew, Self, and  
22 Steele demonstrating how and when Drew received the information about the tape, how that tip was  
23 researched and vetted, and why the magazine found the information credible and had no doubts  
24 about its accuracy. As discussed more fully in US Weekly’s opposition to the *ex parte* application,  
25 a plaintiff opposing a special motion to strike is not permitted to depose declarants simply to test  
26 the truth of their statements – no matter how “self-serving” those statements may appear to the  
27 plaintiff – even if the discovery relates to an actual-malice defense. *Sipple*, 71 Cal. App. 4th at 247;  
28 *see also 1-800 Contacts, Inc. v. Steinberg*, 107 Cal. App. 4th 568, 593 (2003). Thus, Spears is not

1 entitled to depose Drew, Self, or Steele. And a deposition of Lisa Tyler or an American Media  
2 lawyer would be irrelevant because US Weekly had no contact with them before publication; the  
3 magazine's source was Self.


4 The fact is that courts routinely have granted anti-SLAPP motions based on an actual-  
5 malice defense, without permitting discovery by the plaintiff. *See, e.g., Ampex*, 128 Cal. App. 4th  
6 at 1578-80; *Vogel*, 127 Cal. App. 4th at 1017-19; *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146,  
7 1166-67 (2004); *Colt*, 109 Cal. App. 4th at 1560-61; *Kashian v. Harriman*, 98 Cal. App. 4th 892,  
8 932-33 (2002); *Rosenaur v. Scherer*, 88 Cal. App. 4th 260, 275-78 (2001); *Sipple*, 71 Cal. App. 4th  
9 at 247-50; *Bradbury*, 49 Cal. App. 4th at 1117; *Beilenson v. Superior Court*, 44 Cal. App. 4th 944,  
10 952 (1996); *Robertson*, 36 Cal. App. 4th at 358-60; *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1110  
11 (N.D. Cal. 1999). To uphold the anti-SLAPP statute's purpose, which is to expeditiously and  
12 inexpensively dispose of meritless claims that target a defendant's exercise of free-speech rights,  
13 this Court should do the same here.

#### 14 5. CONCLUSION

15 Even if she is, as she puts it, just a simple "married woman who is enjoying her life with her  
16 husband and baby" (Spears Decl. ¶ 5), Spears is also one of the world's most recognizable  
17 entertainers. FAC at ¶ 7. As a result, she often finds herself the subject of media coverage.  
18 Sometimes the coverage consists of soft-focus photo shoots and anodyne interviews approved by  
19 her publicist; other times the coverage consists of unflattering stories leaked to the press, or shots of  
20 her posing for the press on a public balcony with her hands down her husband's swim trunks. But  
21 that scrutiny is part and parcel of her public-figure status.

22 In the end, US Weekly's story that Spears feared that she was to become the next victim of  
23 a leaked sex tape was entirely credible and consistent with her well-orchestrated, highly sexualized  
24 public image, and was not remotely defamatory of her. Even if it were defamatory, however,  
25 Spears' rank hearsay "evidence" falls far short of meeting her burden of showing actual malice by  
26 clear and convincing evidence. For each of these reasons, the Court should grant this motion.

27 DATED: March 9, 2006

By:   
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