



1 In this action, Lutfi claims that he has been defamed by Lynne. Recognizing that he cannot  
 2 sue Lynne or the court for the world-wide publicity he received in February of 2008 in connection  
 3 with the TRO because judicial proceedings are absolutely privileged, Lutfi styles his complaint as if  
 4 his damage comes from the publication of the same facts in Lynne's later-published memoir. Lutfi  
 5 asserts that he has been the subject of ridicule in magazine headlines, television shows, and internet  
 6 gossip sites, and he contends that the publication of Lynne's memoir in the fall of 2008 is the  
 7 proximate cause of such ridicule. Notably, however, the only specific facts from Lynne's memoir  
 8 that Lutfi has identified as being allegedly defamatory are those contained in Lynne's declaration  
 9 filed in this Court and widely-reported in connection with the February 2008 TRO. The evidence  
 10 will show that the book could not have been the cause of any harm to Lutfi, and that his reputation  
 11 was already widely established well in advance of the book.

12 California's anti-SLAPP statute protects the exercise of an individual's constitutional right to  
 13 freedom of speech. To apply, California Code of Civil Procedure 425.16 first requires that the  
 14 defendant establish that a claim arises from a defendant's protected activity. Here, there is no  
 15 question that Lutfi's claim are based on Lynne's exercise of her free speech rights (i.e. publication)  
 16 and that the memoir addressed an issue of interest to the public. As such, the claims arise from a  
 17 protected activity. *Nygaard, Inc. v. Uusi Kertula*, 159 Cal.App.4<sup>th</sup> 1027, 1042 (2008) (holding that  
 18 anti-SLAPP applies to magazine article on any issue in which the public is interested, even "tabloid"  
 19 issues.) Once the defendant meets the burden of showing the claims arise from protected activity,  
 20 the burden shifts to the plaintiff to show a probability of success on his claims at this early, pleading  
 21 stage. Civ. Proc. Code § 425.16. To do so, Lutfi must show that he has pled a legally sufficient  
 22 claim and produce admissible evidence sufficient to sustain a favorable judgment. *Nygaard*, 159  
 23 Cal.App.4<sup>th</sup> at 1044 (2008). In other words, to defeat this motion Lutfi must introduce admissible  
 24 evidence on each element of each of his claims against Lynn sufficient to establish a *prima facie*  
 25 case on each cause of action.

26 Lutfi has brought three purported causes of action against Lynne: one for "defamation," one  
 27 for "libel," and one for intentional infliction of emotional distress. Lutfi's "defamation" claim is  
 28 based on various characterizations of Lutfi as a "fake," a "Svengali," "a predator," "a gatekeeper,"

1 and "the General." [First Amended Complaint ("FAC") ¶ 37.] These characterizations are mere  
 2 statements of opinion, and as such are protected speech as a matter of law and therefore not  
 3 actionable. *Nygaard*, 159 Cal.App.4<sup>th</sup> at 1048-49. Lutfi's "defamation" claim fails as a matter of law  
 4 and is therefore legally insufficient within the meaning of the statute. Lutfi's second cause of action  
 5 must be struck.

6 Lutfi's separate "libel" claim is based on six specific statements about Lutfi, each of which  
 7 first was published in Lynne's original, widely-reported declaration and only repeated later in her  
 8 memoir. As an initial matter, Lutfi will bear the burden of proving that each element of a libel  
 9 claim, starting with proof that each statement was false. Lynne already has testified under oath that  
 10 those statements were true. In addition, if his causes of action are to survive this motion to strike,  
 11 Lutfi also must show that it was the publication of the statements in the book that allegedly caused  
 12 him his supposed harm, given the overall context in which those statements were made. In light of  
 13 the massive world-wide publicity that arose out of Britney's conservatorship and the TRO in  
 14 February of 2008, Lutfi cannot demonstrate any probability that the mere repetition of those same  
 15 statements just six months later, in a relatively unsuccessful book, caused him any additional harm.

16 Finally, Lutfi's claim for intentional infliction of emotional distress merely incorporates his  
 17 prior allegations against Lynne for "defamation" and "libel." Since the defamation claim cannot  
 18 stand as a matter of law, and since the libel claim must fall under the evidence, this claim also must  
 19 be struck. As a result, all three of Lutfi's claims against Lynne should be stricken, in their entirety  
 20 and judgment should be entered in Lynne's favor.

## 21 II. FACTUAL BACKGROUND

22 In considering a motion to strike under Section 425.16, the Court considers the pleadings, the  
 23 evidentiary submissions from both sides, and matters subject to judicial notice. Civ. Proc. Code §  
 24 425.16.

### 25 A. **ON FEBRUARY 1, 2008, THE PROBATE DEPARTMENT OF THE LOS ANGELES 26 SUPERIOR COURT ISSUED A TEMPORARY RESTRAINING ORDER AGAINST PLAINTIFF OSMA ("SAM") LUTFI.**

27 On February 1, 2008, the Probate Department of this Court placed Britney Spears under a  
 28 temporary conservatorship in the case *In re the Conservatorship of the Person of Britney Jean*