1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 9 GINA KIM. on behalf of a class Cause No. 2:11-CV-00214 RSM consisting of herself and all other 10 persons similarly situation, DECLARATION OF CHRISTOPHER CARNEY IN SUPPORT OF MOTION 11 Plaintiffs. TO STRIKE AND FOR SANCTIONS PURSUANT TO WASHINGTON'S 12 ANTI-SLAPP STATUTE, RCW vs. 4.24.525 13 COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a 14 Maryland corporation, 15 Defendants. 16 I, Christopher Carney, declare as follows: 17 1. I am over the age of eighteen and competent to make the statements contained in this 18 declaration. 19 2. I am one of the attorneys of record for Gina Kim in this matter, and I am one of the 20 defendants named in defendant Coach, Inc.'s counterclaim, alleging that I and my colleague Jay 21 Carlson have defamed Coach, Inc. ("Coach"). 22 3. Shortly after Mr. Carlson, Mr. Moore and I filed and served the class action complaint 23 against Coach, I was contacted by a reporter from King 5 News, a local television news 24 broadcaster. Neither I nor anyone else associated with lawsuit had sought the attention of this 25 reporter. The reporter requested an interview with Ms. Kim's attorneys concerning the nature of 26 the claims in the lawsuit. 27 In order to reach an audience likely containing additional prospective class members and Cause No. 2:11-CV-00214 RSM CARLSON LEGAL 28 100 W. HARRISON ST. DECLARATION OF CHRISTOPHER CARNEY - 1 SUITE N440 SEATTLE, WA 98119

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to solicit their participation in the class action lawsuit, Mr. Carlson and I agreed to be interviewed about the lawsuit. During the interview, we answered questions about the claims and discussed portions of the class complaint that we had filed and served.

- 5. In response to the reporter's questions, I remarked that Ms. Kim had offered for sale a handbag that she acquired directly from Coach and that the bag was unquestionably legitimate. From my investigation of the lawsuit I knew that the handbag was a genuine Coach product. I knew that Ms. Kim had previously worked for a Coach retailer and had purchased the handbag from Coach. I also knew that no one working on behalf of Coach had ever contacted Ms. Kim to inquire about the handbag's authenticity and origin. Based on this knowledge, I expressed the opinion that Coach had not investigated its threats against her or its unequivocal, and false, statement that she was selling a counterfeit Coach handbag.
- 6. At the time that I made the statements in the interview concerning Coach's failure to investigate their threats against Ms. Kim, I certainly believed them to be true. I knew that Coach had falsely claimed that Ms. Kim was selling a counterfeit product, a claim it easily could have checked through even minimal investigation. Ms. Kim had even posted photos of the actual handbag at issue, which was a legitimate Coach bag, in her eBay ad. Coach never contacted her, never looked at the handbag, and apparently never analyzed the photos of the handbag. There was certainly a good faith basis for my contemporaneous belief in the truth of my opinion about Coach's lack of investigation.
- 7. Since that time, Coach, in correspondence and in its Answer, has claimed that Ms. Kim's colloquial use of the term "new" in her eBay listing was alone sufficient to justify Coach's unequivocal statement that she had committed trademark infringement, and its threats of litigation against her. See dkt # 6, p. 13-14, ¶ 13-14. This demonstrates what I have always believed: that Coach and/or its attorneys did nothing to investigate their claims against Ms. Kim, they simply read her listing and dispatched threatening and defamatory letters to Ms. Kim and to eBay without investigation. Moreover, Ms. Kim's use of the word "new" to describe the handbag was entirely accurate. According to the American Heritage Dictionary of the English Language, new is defined as: "Never used or worn before now." Under this commonly accepted Cause No. 2:11-CV-00214 RSM

definition, the handbag at issue, which had never been used, was "new." Coach could have easily determined this for itself, with minimal investigation that it did not do.

- 8. Coach seems to be confused about some of its defamation allegations. For example, at page 15 of Coach's Answer (dkt # 6, ¶ 23), Coach asserts that I "falsely asserted that Coach uses accusations of trademark infringement to stifle second-hand sales of authentic products." First, I made no such statement. Mr. Carlson made the statement to which Coach is apparently referring. Secondly, accurately quoted, the statement is clearly an expression of opinion by Mr. Carlson: "we think they want to force consumers to only buy new Coach products, and only buy them in Coach stores." Coach ignored and pointedly omitted the "we think" language in their counterclaim, and mischaracterized this particular statement as some sort of expression of known fact, rather than an obvious statement of opinion.
- 9. The video of the interview as it was aired can be found at http://www.king5.com/home/Woman-threatened-with-a--2-million-lawsuit-for-selling-bags-on-EBay-115680179.html.

Dated this March 10, 2011, in Seattle, Washington.

I HEREBY DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

/s/	
Christopher Carney, Declarant	