

SERVICE COPY

1 Lynda B. Goldman – Bar No. 119765  
lgoldman@lavelysinger.com  
2 LAVELY & SINGER  
PROFESSIONAL CORPORATION  
2049 Century Park East, Suite 2400  
3 Los Angeles, CA 90067-2906  
Tel: (310) 556-3501  
4 Fax: (310) 556-3615

5 Robert P. LoBue – New York Bar No. 1530039 (*pro hac* application pending)  
rplobue@pbwt.com  
6 PATTERSON BELKNAP WEBB & TYLER LLP  
1133 Avenue of the Americas  
7 New York, NY 10036  
Tel: (212) 336-2000  
8 Fax: (212) 336-2222

9 Attorneys for Defendant  
WILLIAM H. COSBY, JR.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

15 JANICE DICKINSON,  
16 Plaintiff.

17 v.

18 WILLIAM H. COSBY, JR.,  
19 Defendant.

Case No. BC 580909

[Hon. Robert L. Hess – Dept. 24]

**DEFENDANT WILLIAM H. COSBY, JR.’S  
NOTICE OF HEARING ON DEMURRER,  
DEMURRER TO PLAINTIFF JANICE  
DICKINSON’S COMPLAINT, AND  
MEMORANDUM OF POINTS &  
AUTHORITIES**

**[Request for Judicial Notice and Declaration  
of Martin D. Singer Filed Concurrently]**

Date: October 14, 2015  
Time: 8:30 a.m.  
Dept: 24

Complaint Filed: May 20, 2015  
Trial Date: NONE

1 NOTICE OF HEARING ON DEMURRER

2 TO THE ABOVE-NAMED PLAINTIFF AND TO HER ATTORNEY:

3 PLEASE TAKE NOTICE that, on **October 14, 2015**, or as soon thereafter as the matter may  
4 be heard, in Department 24 of the above-titled court, located at the Stanley Mosk Courthouse, 111  
5 North Hill Street, Los Angeles, California 90012, Defendant William H. Cosby, Jr. shall and does  
6 demur to Plaintiff's Complaint and to each cause of action contained therein.

7 Defendant demurs to Plaintiff's Complaint, as detailed below, pursuant to Code of Civil  
8 Procedure § 430.10(e), (f), Code of Civil Procedure §430.30(a), and the other authorities identified in  
9 Defendant's Memorandum of Points and Authorities, on the grounds that the Complaint, and each  
10 cause of action contained therein, is uncertain, ambiguous and unintelligible, and fails to state a cause  
11 of action against Defendant as a matter of law.<sup>1</sup>

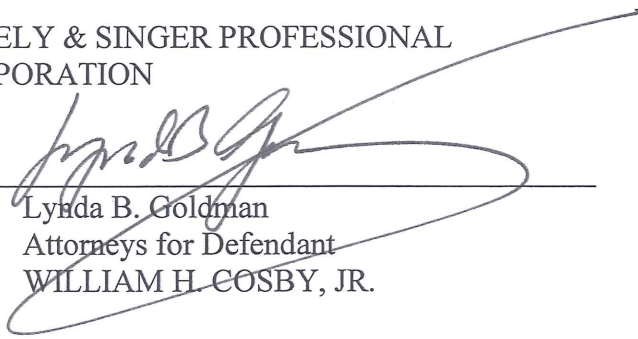
12 This Demurrer is made and based upon this Notice of Hearing, the attached Memorandum of  
13 Points and Authorities in support, the concurrently filed Request for Judicial Notice and the  
14 Declaration of Martin D. Singer attached thereto, and any and all Exhibits and attachments thereto, the  
15 attached Request for Judicial Notice, all pleadings and documents on file in this action, all matters  
16 upon which the Court may take judicial notice, and upon any further oral or written argument and  
17 evidence as the Court may receive prior to or at the time of the hearing on the Demurrer.

18  
19 DATED: June 22, 2015

PATTERSON BELKNAP WEBB & TYLER LLP  
Robert P. LoBue (*pro hac* application-pending)

20  
21 LAVELY & SINGER PROFESSIONAL  
CORPORATION

22  
23 By \_\_\_\_\_

  
Lynda B. Goldman  
Attorneys for Defendant  
WILLIAM H. COSBY, JR.

24  
25  
26 <sup>1</sup> Because Plaintiff's claims arise from acts in furtherance of the rights of free speech or petition,  
27 Defendant has filed a Special Motion to Strike pursuant to Code of Civil Procedure §425.16 (anti-  
28 SLAPP motion), which is currently set for hearing on October 6, 2015, and should be heard by the  
court prior to ruling on the instant Demurrer since the granting of the anti-SLAPP motion will render  
this Demurrer moot.

1 **DEMURRER TO PLAINTIFF’S COMPLAINT**

2 Defendant William H. Cosby, Jr. demurs to the Complaint herein pursuant to Code of Civil  
3 Procedure § 430.10(e), (f), and Code of Civil Procedure §430.30(a), on the following grounds:

4 **ENTIRE COMPLAINT**

- 5 1. The entirety of the Complaint does not state facts sufficient to constitute the causes of  
6 action. Code of Civil Procedure §430.10(e).
- 7 2. The entirety of the Complaint is uncertain in that it is ambiguous as to statements that  
8 are alleged as the basis of the claims asserted in the Complaint. Code of Civil  
9 Procedure §430.10(f).
- 10 3. The entirety of the Complaint is subject to demurrer on the basis of matters of which  
11 judicial notice may be taken. Code of Civil Procedure §430.30(a).

12  
13 **DEMURRER TO FIRST CAUSE OF ACTION**

- 14 4. The First Cause of Action for Defamation fails to state facts sufficient to constitute a  
15 cause of action because, among other things: (1) one of the two statements on which  
16 that claim is based is subject to the litigation privilege codified at Civil Code § 47(b);  
17 and (2) both statements are privileged as “predictable opinion” and as opinion based  
18 on disclosed facts. Code of Civil Procedure §430.10(e).
- 19 5. The First Cause of Action for Defamation is uncertain in that it is ambiguous as to  
20 statements that are alleged as the basis of the claims asserted. Code of Civil  
21 Procedure §430.10(f).
- 22 6. The First Cause of Action for Defamation is subject to demurrer on the basis of  
23 matters of which judicial notice may be taken. Code of Civil Procedure §430.30(a).

24  
25 **DEMURRER TO SECOND CAUSE OF ACTION**

- 26 7. The Second Cause of Action (false light) fails to state facts sufficient to constitute a  
27 cause of action, because among other things, it is based on the same facts as  
28 Plaintiff’s defamation claim and may not be pleaded in the alternative. Code of Civil



1 Procedure §430.10(e).

2 8. The Second Cause of Action (false light) is uncertain in that it is ambiguous as to  
3 statements that are alleged as the basis of the claims asserted. Code of Civil  
4 Procedure §430.10(f).

5 9. The Second Cause of Action (false light) is subject to demurrer on the basis of  
6 matters of which judicial notice may be taken. Code of Civil Procedure §430.30(a).

7 **DEMURRER TO THIRD CAUSE OF ACTION**

8 10. The Third Cause of Action (intentional infliction of emotional distress) fails to state  
9 facts sufficient to constitute a cause of action because, among other things, the claim  
10 is based on the same facts as Plaintiff's defamation claim, and Plaintiff may not  
11 impose liability indirectly where she cannot do so directly for defamation. Code of  
12 Civil Procedure §430.10(e).

13 11. The Third Cause of Action (intentional infliction of emotional distress) is uncertain in  
14 that it is ambiguous as to statements that are alleged as the basis of the claims  
15 asserted. Code of Civil Procedure §430.10(f).

16 12. The Third Cause of Action (intentional infliction of emotional distress) is subject to  
17 demurrer on the basis of matters of which judicial notice may be taken. Code of  
18 Civil Procedure §430.30(a).

19 WHEREFORE, Defendant respectfully requests that his Demurrer be sustained in its entirety,  
20 without leave to amend.

21 DATED: June 22, 2015

PATTERSON BELKNAP WEBB & TYLER LLP  
Robert P. LoBue (*pro hac* application pending)

LAVELY & SINGER PROFESSIONAL  
CORPORATION

22  
23  
24  
25 By \_\_\_\_\_

Lynda B. Goldman  
Attorneys for Defendant  
WILLIAM H. COSBY, JR.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND SUMMARY OF ARGUMENT

3 Plaintiff Janice Dickinson used the national media to accuse Defendant William H. Cosby, Jr. of  
4 sexual assault. But this is not an action for sexual assault. More than thirty years have elapsed since  
5 the alleged assault purportedly occurred, and the statute of limitations has long since expired for any  
6 such claim. During that time, not only did Ms. Dickinson file no criminal complaint or civil tort action  
7 against Mr. Cosby, but she repeatedly stated publicly in her 2002 autobiography and in the media that  
8 the alleged assault did not occur. (See Compl. ¶¶ 20, 21, 22.) But after other women accused Mr. Cosby  
9 of sexual misconduct, and a media frenzy developed, Ms. Dickinson joined the publicity furor, but  
10 completely changed her story from what appeared in her autobiography. (See Compl. ¶¶ 30, 31.) In  
11 response to her accusations, Mr. Cosby's litigation attorney sent a privileged pre-litigation demand  
12 letter and commented in the same media, pointing out the disparity between what she was currently  
13 saying and what she said in her 2002 book and in interviews, and addressed Ms. Dickinson's false  
14 claims that her publisher had supposedly been pressured by Mr. Cosby's lawyer to keep her sexual  
15 assault story out of her book. Ms. Dickinson used those communications as a basis to concoct an action  
16 against Mr. Cosby for defamation, false light, and intentional infliction of emotional distress.<sup>2</sup>

17 Ms. Dickinson's Complaint does not state facts sufficient to constitute a cause of action on any  
18 of her claims, all of which must fail as a matter of law. First, Ms. Dickinson has no cause of action for  
19 defamation because the statements that are the subject of the allegations set forth in the Complaint are  
20 legally privileged on multiple grounds. Second, Ms. Dickinson cannot state a false light claim,  
21 because in an action for defamation a false light claim based on the same facts is superfluous and  
22 automatically dismissed. Third, the Complaint does not state a claim for intentional infliction of  
23 emotional distress because a defamation plaintiff may not impose liability indirectly under the guise of  
24 that tort where she could not do so directly as defamation. In sum, the Complaint does not state a  
25 cause of action on any of Ms. Dickinson's claims, and the Court should sustain Mr. Cosby's demurrer.

26 <sup>2</sup> Because Plaintiff's claims arise from acts in furtherance of the rights of free speech or petition,  
27 Defendant has filed a Special Motion to Strike pursuant to Code of Civil Procedure §425.16 (anti-  
28 SLAPP motion), which is currently set for hearing on October 6, 2015, and should be heard by the  
court prior to ruling on the instant Demurrer, since the granting of the anti-SLAPP motion will render  
this Demurrer moot.

1 **II. FACTUAL BACKGROUND**

2 **A. Ms. Dickinson’s story in her 2002 Autobiography and her contradictory 2014 accusation**

3 In 2002, Ms. Dickinson published her autobiography, NO LIFEGUARD ON DUTY: THE  
4 ACCIDENTAL LIFE OF THE WORLD’S FIRST SUPERMODEL (2002) (“Autobiography”), in which she gave  
5 an account of her 1982 encounter with Mr. Cosby in Lake Tahoe -- a story far different from the one  
6 she told the media a dozen years later. In her Autobiography, Ms. Dickinson wrote that, after dinner,  
7 Mr. Cosby invited her back to his room, and when she declined his invitation, he gave her a “dirty  
8 look” and left her alone. (Compl. ¶¶ 21, 22.) The Autobiography makes no mention of rape, or of any  
9 physical contact whatsoever.<sup>3</sup>

10 In late 2014, a number of women came forward with allegations of sexual misconduct against  
11 Mr. Cosby. (Compl. ¶ 30.) On or about November 18, 2014, Ms. Dickinson claimed in a television  
12 interview that Mr. Cosby had drugged and raped her after they had dinner in Lake Tahoe in 1982. (*Id.*  
13 ¶¶ 31, 32.) What she said in November of 2014 starkly contrasted with what she said a dozen years  
14 earlier in her Autobiography and to the media. In her public allegations in 2014, in an effort to deflect  
15 questions about why she had told a different story about her encounter with Mr. Cosby in Lake Tahoe  
16 earlier, Ms. Dickinson stated that she wanted to include the rape story in the Autobiography, but that  
17 her publisher, HarperCollins, was pressured by Mr. Cosby’s legal team, and would not allow her to do  
18 so. (Request for Judicial Notice and Singer Decl. Exs. A, B.)

19 **B. Mr. Singer’s November 18, 2014 letter and November 19, 2014 statement**

20 On November 18, 2014, Mr. Cosby’s litigation attorney, Martin D. Singer, wrote a confidential  
21 pre-litigation demand letter to an executive producer of *Good Morning America (GMA)* about a  
22 segment the program was planning to run about Ms. Dickinson’s accusations (the “November 18  
23 Letter”). (Request for Judicial Notice and Singer Decl. ¶ 2, Ex. A.)<sup>4</sup> The November 18 Letter was

24 <sup>3</sup> Ms. Dickinson told essentially the same story in an interview promoting the Autobiography with the  
25 *New York Observer* in 2002. (Request for Judicial Notice and Singer Decl. Exs. A, B.)

26 <sup>4</sup> The Court may take judicial notice of this statement, and of the November 19 statement discussed  
27 below, because the Complaint cites, quotes, and relies on them. *See Haggis v. City of L.A.*, 22 Cal.4th  
28 490, 501, n.3 (2000) (full reports may be judicially noticed in order to “fill out or qualify allegations  
regarding those reports in the complaint”); *Ingram v. Flippo*, 74 Cal.App.4th 1280, 1285 n.3 (1999)  
(taking judicial notice of documents quoted in complaint and stating that “[s]ince the contents of the  
letter and media release form the basis of allegations in the complaint, it is essential that we evaluate  
the complaint by reference to these documents.”); *Salvaty v. Falcon Cable Television*, 165 Cal.App.3d

1 prominently captioned “CONFIDENTIAL LEGAL NOTICE” and “PUBLICATION OR  
2 DISSEMINATION IS PROHIBITED.” (*Id.*) In that letter, Mr. Singer identified himself as litigation  
3 counsel and stated that Ms. Dickinson’s rape story was “fabricated” and “an outrageous and  
4 defamatory lie.” He pointed out that Ms. Dickinson had confirmed, both in the Autobiography and in a  
5 2002 interview with the *New York Observer*, that Mr. Cosby “blew her off” when she refused to sleep  
6 with him on the same occasion in Lake Tahoe that is now when she claims the rape occurred. (*Id.*) Mr.  
7 Singer also advised *GMA* that Ms. Dickinson’s allegations about HarperCollins were fabricated, and  
8 urged *GMA* to contact the publisher before broadcasting any story about Ms. Dickinson’s accusations  
9 against Mr. Cosby. Mr. Singer warned *GMA* that it would otherwise be “exposed to very substantial  
10 liability.” (*Id.*)

11 The following day, Mr. Singer sent a statement to the press echoing the statements in the pre-  
12 litigation demand letter (the “November 19 Statement” and together with the November 18 Letter, the  
13 “Statements”). Like the pre-litigation demand letter sent the previous day, the November 19 Statement  
14 pointed out the “glaring contradiction” between Ms. Dickinson’s rape story and what she had written in  
15 the Autobiography and previously told the press, and that HarperCollins could confirm that no attorney  
16 representing Mr. Cosby ever pressured the publisher. The November 19 Statement read as follows:

17 **STATEMENT OF MARTIN D. SINGER**

18 **ATTORNEY FOR BILL COSBY**

19  
20 Janice Dickinson’s story accusing Bill Cosby of rape is a lie. There is a glaring  
21 contradiction between what she is claiming now for the first time and what she  
22 wrote in her own book and what she told the media back in 2002. Ms. Dickinson  
23 did an interview with the *New York Observer* in September 2002 entitled  
24 “Interview With a Vamp” completely contradicting her new story about Mr.  
25 Cosby. That interview a dozen years ago said “she didn’t want to go to bed with  
26 him and he blew her off.” Her publisher Harper Collins can confirm that no  
27 attorney representing Mr. Cosby tried to kill the alleged rape story (since there  
28 was no such story) or tried to prevent her from saying whatever she wanted about  
Bill Cosby in her book. The only story she gave 12 years ago to the media and in  
her autobiography was that she refused to sleep with Mr. Cosby and he blew her

---

798, 800 n.1 (1985) (taking judicial notice because “[g]iven the references to the agreement in the  
complaint, [Defendants] were entitled to present the trial court with the complete document”).



1 off. *Documentary proof and Ms. Dickinson's own words* show that her new story  
2 about something she now claims happened back in 1982 is a fabricated lie.

3 (Request for Judicial Notice and Singer Decl. ¶ 3, Ex. B (emphasis added).)<sup>5</sup> The “documentary proof  
4 and Ms. Dickinson’s words” to which the November 19 Statement refers are the Autobiography and  
5 Ms. Dickinson’s statements to the press about her 1982 encounter with Mr. Cosby prior to her  
6 November 2014 accusations.

### 7 **C. The Complaint’s conclusory allegations about the Statements**

8 The Complaint alleges that, “[o]n or about November 18, 2014 ... Defendant Cosby issued a  
9 press statement about Ms. Dickinson to the news media.” (Compl. ¶ 32.) The November 18 Letter was  
10 self-evidently not a “Press Statement,” but was instead a confidential privileged pre-litigation demand  
11 letter sent by an attorney identifying himself as litigation counsel who prominently captioned it “not  
12 for publication.” The Complaint also contains the conclusory assertion that the Statements were  
13 “unprivileged as no litigation has been filed, threatened or contemplated by or between Ms. Dickinson  
14 and Mr. Cosby at that time.” But the November 18 Letter referred specifically to potential litigation  
15 between Mr. Cosby and the media organizations to which it was directed, placing them on notice of  
16 their potential exposure to “very substantial liability” and reserving all of his “rights and remedies,  
17 whether legal or equitable.” (Request for Judicial Notice and Singer Decl. Ex. A.)

### 18 **III. MS. DICKINSON’S COMPLAINT DOES NOT STATE A CAUSE OF** 19 **ACTION ON ANY OF HER CLAIMS, WHICH MUST FAIL AS A MATTER OF** 20 **LAW**

21 A defendant may object to a complaint by demurrer on the ground that it does not state facts  
22 sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). In reviewing the sufficiency of  
23 a complaint against a general demurrer, a court “treat[s] the demurrer as admitting all material facts  
24 properly pleaded, but not contentions, deductions or conclusions of fact or law.” *Blank v. Kirwan*, 39  
25 Cal.3d 311, 318 (1985). A court will also consider matters that may be judicially noticed. *Id.* See also

26 <sup>5</sup> Tellingly, Ms. Dickinson selectively quotes the November 19 Statement in her Complaint. Her  
27 failure to quote the Statement in its entirety offers further grounds for sustaining Mr. Cosby’s  
28 demurrer. See *Kahn v. Bower*, 232 Cal. App. 3d 1599, 1612, 284 Cal.Rptr. 244, 253 (Ct. App. 1991),  
*reh'g denied and opinion modified* (Sept. 6, 1991) (“The general rule is that the words constituting an  
alleged libel must be specifically identified, if not pleaded verbatim, in the complaint”); *Des Granges*  
*v. Crall*, 27 Cal.App. 313 (1915) (failure to plead the alleged defamatory words grounds for demurrer).



1 Code Civ. P. § 430.30(a); Evid. Code § 452; *Serrano v. Priest*, 5 Cal.3d 584, 591 (1971) (on demurrer,  
2 court may “refer to relevant information which has been drawn to [its] attention either by the parties or  
3 by [its] independent research”). Where facts pleaded prove insufficient to state one cause of action,  
4 other causes of action asserted based on those same facts, or on legal conclusions drawn from them,  
5 cannot prevail against a demurrer. *See Wellman v. Security-First Nat’l Bank*, 108 Cal.App.2d 254, 263  
6 (1951). Applying these principles to Ms. Dickinson’s Complaint, Mr. Cosby’s demurrer must be  
7 sustained.

8 **A. The Complaint does not state a cause of action for defamation because the Statements are**  
9 **privileged**

10 Where the statements that form the basis of a defamation claim are privileged, a general  
11 demurrer should be sustained. *See Whelan v. Wolford*, 164 Cal.App.2d 689, 693 (1958) (where the  
12 “libelous matter complained of is absolutely privileged,” the complaint “fails to state a legal cause and  
13 the language complained of is not actionable”).<sup>6</sup> Ms. Dickinson’s cause of action for defamation relies  
14 entirely on privileged statements and therefore fails to state a cause of action for defamation as a matter  
15 of law.

16 **1. The November 18 Letter is protected under the litigation privilege**

17 The facts set forth in the Complaint with respect to the November 18 Letter are insufficient to  
18 state a cause of action for defamation because the very document on which the cause of action is  
19 premised on its face is protected by the litigation privilege.

20 Civ. Code § 47(b) codifies a common law “litigation privilege” under which communications  
21 made in contemplation of, or as part of, a judicial proceeding cannot serve as the basis for liability.  
22 *See Action Apt. Ass’n, Inc. v. City of Santa Monica*, 41 Cal.4th 1232, 1241 (2007). The purpose of the  
23 litigation privilege is to protect litigants’ right of access to the courts “without [the] fear of being  
24 harassed subsequently by derivative tort actions.” *Healy v. Tuscan Hills Landscape & Recreation*

25 \_\_\_\_\_  
26 <sup>6</sup> *Whelan* further holds that it is “unnecessary to set up the claim of privilege by either answer or  
27 demurrer” where the complaint “affirmatively discloses” that the alleged defamatory statements are  
28 privileged.” 164 Cal.App.2d at 693. It would have been plain on the face of the Complaint that the  
November 18 Letter was privileged had Ms. Dickinson not mischaracterized a confidential pre-  
litigation demand letter as a “press release,” and that the November 19 Statement was a statement of  
opinion, had she quoted them in their entirety.

1 Corp., 137 Cal.App.4th 1, 5 (2006) (quotation marks omitted). A communication in anticipation of or  
2 preparatory to commencing litigation qualifies for protection under § 47(b). See *Briggs v. Eden*  
3 *Council for Hope & Opportunity*, 19 Cal.4th 1106, 1115 (1999). The privilege does not require that  
4 litigation be imminent, so long as the pre-litigation statements are made “in serious and good faith  
5 consideration of litigation.” *Rohde v. Wolf*, 154 Cal.App.4th 28, 36 (2007); see also *Action Apt. Ass’n.*,  
6 41 Cal.4th at 1251.

7 The November 18 Letter, sent by Mr. Singer in his capacity as Mr. Cosby’s lawyer, is a classic  
8 pre-litigation demand. The letter is captioned “LEGAL NOTICE,” and it begins by informing *GMA*  
9 that the sender is “litigation counsel to Bill Cosby.” The letter threatens legal action against *GMA*  
10 should it proceed to air a segment rebroadcasting Ms. Dickinson’s accusations. It sets forth both the  
11 factual and legal basis for such litigation, noting that Ms. Dickinson’s accusation with respect to  
12 HarperCollins is provably false, and that *GMA* would be “acting recklessly and with Constitutional  
13 malice” if it proceeded to air the story. The November 18 Letter was sent in “serious and good faith  
14 consideration of litigation,” and it is privileged under § 47(b). It cannot serve as the basis of any of  
15 Ms. Dickinson’s claims, and the facts she has pleaded with respect to that Statement are insufficient to  
16 state any cause of action.

17 **2. The Statements are not actionable because they are privileged opinion**

18 The Complaint does not state a cause of action for defamation because both Statements are  
19 privileged opinion.

20 **a. The Statements are privileged as “predictable opinion”**

21 At common law, an individual is entitled to protect his reputation by publishing statements in  
22 response to, or to refute injurious statements made by another, the so-called “self-defense privilege.”  
23 See generally *Foretich v. Capital Cities/ABC*, 37 F.3d 1541, 1559 (4th Cir. 1994) (collecting cases). In  
24 California, a version of this defense is recognized under the doctrine of “predictable opinion”—i.e., a  
25 one-sided statement made by an individual “from [his] own perspective to paint [himself] in a better  
26 light.” *Dreamstone Entm’t Ltd. v. Maysalward Inc.*, No. 2:14-cv-02063-CAS(SSx), 2014 U.S. Dist.  
27 LEXIS 116977, \*17-19 (C.D. Cal. Aug. 18, 2014). “[W]here potentially defamatory statements are  
28 published in a setting in which the audience may anticipate efforts by the parties to persuade others to

1 their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be  
2 considered as statements of fact may well assume the character of statements of opinion.” *Ferlauto v.*  
3 *Hamsher*, 74 Cal.App.4th 1394, 1401-1402 (1999) (internal citations and quotations omitted).

4 In this case, the Statements issued by an attorney for Mr. Cosby in response to Ms. Dickinson’s  
5 accusations in the same public forum in which she chose to make them would be understood to be  
6 “predictable opinions.” The Statements are hyperbolic, one-sided expressions of opinion that are  
7 entirely predictable and therefore not actionable as defamation.

8 **b. The Statements express opinion based on disclosed facts**

9 The contested Statements also are not actionable because the allegedly defamatory gist of the  
10 statements—that Ms. Dickinson is lying—is based on disclosed facts. Pejorative statements based on  
11 disclosed or assumed facts are not defamatory, no matter how derogatory or unreasonable the  
12 conclusion is. *See Franklin v. Dynamic Details, Inc.*, 116 Cal. App.4th 375, 387 (2004). The  
13 Statements recited the facts on which the conclusion that Ms. Dickinson’s rape story was a fabrication  
14 was based, namely that (1) she told a different story in her 2002 Autobiography, (2) she repeated *that*  
15 story in her 2002 interview with the *New York Observer*, and (3) she fabricated the related story that  
16 Mr. Cosby’s lawyers had pressured HarperCollins to keep the rape story out of her Autobiography.

17 None of those stated reasons for believing that Ms. Dickinson was lying in her rape accusation  
18 is alleged in the Complaint to be false—indeed, the Complaint admits that Ms. Dickinson told a  
19 different story in her Autobiography, and avoids any mention of her prior assertion that Mr. Cosby’s  
20 agents pressured her publisher. Each Statement was explicit that the conclusion that the rape story was  
21 “a fabricated lie” was based on those facts. The Statements are therefore non-actionable expressions of  
22 opinion based on fully disclosed facts not claimed to be false, and the facts set forth in the Complaint  
23 regarding the Statements are legally insufficient to establish a cause of action for defamation.

24 **B. The Complaint does not state a cause of action for false light because that claim relies on**  
25 **the same facts as Ms. Dickinson’s defamation claim**

26 Under California law, a plaintiff has no viable claim for false light invasion of privacy where  
27 defamation is alleged on the same facts. *McClatchy Newspapers, Inc. v. Superior Court*, 189 Cal  
28 App.3d 961, 965 (1987). *See also Kapellas v. Kofman*, 1 Cal.3d 20, 35 n.16 (1969). Where, as here,

1 the cause of action for false light incorporates all of the allegations in a separate cause of action for  
2 defamation based on the same statements, it is “in effect, a duplication” and must be dismissed.  
3 *Selleck v. Globe Int’l, Inc.*, 166 Cal.App.3d 1123, 1136 (1985). Ms. Dickinson’s second cause of  
4 action simply restates all of the allegations in her first cause of action for defamation. It expressly  
5 incorporates all of the allegations in her defamation cause of action. (Compl. ¶ 55.) As a matter of law,  
6 those facts are insufficient to state a separate cause of action for false light.

7 **C. The Complaint does not state a cause of action for intentional infliction of emotional**  
8 **distress because it fails to state a cause of action for defamation**

9 The facts set forth in the Complaint are insufficient to state Ms. Dickinson’s third cause of  
10 action for intentional infliction of emotional distress for the same reasons that her defamation claim  
11 must fail. The constitutional protection afforded those who criticize public figures “does not depend  
12 on the label given the stated cause of action,” and applies to actions for intentional infliction of  
13 emotional distress as well. *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988); *Reader’s Digest Assn.*  
14 *v. Superior Court*, 37 Cal.3d 244, 265 (1984). The law thus recognizes that “to allow an independent  
15 cause of action for the intentional infliction of emotional distress, based on the same acts which would  
16 not support a defamation action, would allow plaintiffs to do indirectly that which they could not do  
17 directly.” *Flynn v. Higham*, 149 Cal.App.3d 677, 682 (1983). Here, Ms. Dickinson’s defamation claim  
18 fails as a matter of law. Consequently, her cause of action for intentional infliction of emotional  
19 distress must also fail.

20 Furthermore, where a plaintiff asserts a claim for intentional infliction of emotional distress  
21 based on allegedly defamatory statements, “[w]hether treated as an element of the prima facie case or  
22 as a matter of defense, it must also appear that the defendant’s conduct was unprivileged.” *Fletcher v.*  
23 *Western Nat’l Life Ins. Co.*, 10 Cal.App.3d 376, 394 (1970); *see also Moyer v. Amador Valley Joint*  
24 *Union High School Dist.*, 225 Cal.App.3d 720, 726 (1990). As discussed above, the November 18  
25 Letter is subject to the litigation privilege, while both Statements are privileged as predictable opinion  
26 or as an opinion based on disclosed true facts. The facts set forth in the Complaint therefore cannot  
27 support a claim for intentional infliction of emotional distress.



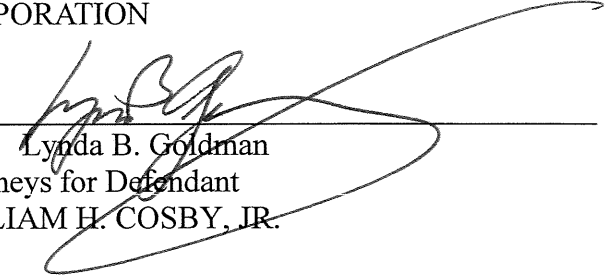
1 **IV. CONCLUSION**

2 Ms. Dickinson should not be allowed to use this action to punish Mr. Cosby for exercising his  
3 right to defend himself publicly against accusations that she herself has taken pains to make public.  
4 Her Complaint is insufficient as a matter of law, and the Court should sustain Mr. Cosby's demurrer.

5 DATED: June 22, 2015

PATTERSON BELKNAP WEBB & TYLER LLP  
Robert P. LoBue (*pro hac* application pending)

LAVELY & SINGER PROFESSIONAL  
CORPORATION

8  
9 By   
10 Lynda B. Goldman  
11 Attorneys for Defendant  
12 WILLIAM H. COSBY, JR.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**  
2 1013A(3) C.C.P. Revised 5/1/88

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of  
5 18 and not a party to the within action. My business address is 2049 Century Park East, Suite  
6 2400, Los Angeles, California 90067-2906.

7 On the date listed below, I served the foregoing document described as:

8 **DEFENDANT WILLIAM H. COSBY, JR.'S NOTICE OF HEARING ON DEMURRER,  
9 DEMURRER TO PLAINTIFF JANICE DICKINSON'S COMPLAINT, AND  
10 MEMORANDUM OF POINTS & AUTHORITIES**

11 **[Request for Judicial Notice and Declaration of  
12 Martin D. Singer Filed Concurrently]**

13 on the interested parties in this action by placing:

14  a true and correct copy -OR-  the original document  
15 thereof enclosed in sealed envelopes addressed as follows:

16 **Lisa Bloom, Esq.**  
**Nadia Taghizadeh, Esq.**  
**THE BLOOM FIRM**  
**20700 Ventura Blvd., Suite 301**  
**Woodland Hills, California 91364**  
**TEL: (818) 914-7314**  
**FAX: (866) 852-5666**  
**EMAIL: *Lisa@TheBloomFirm.com***  
***Nadia@TheBloomFirm.com***

**Attorneys for Plaintiff:**  
**JANICE DICKINSON**

17  BY MAIL:

- 18  I deposited such envelope in the mail at Los Angeles, California. The envelope  
19 was mailed with postage thereon fully prepaid.  
20  As follows: I am "readily familiar" with the firm's practice of collection and  
21 processing correspondence for mailing. Under that practice it would be  
22 deposited with U.S. postal service on that same day with postage thereon fully  
23 prepaid at Los Angeles, California in the ordinary course of business. I am  
24 aware that on motion of the party served, service is presumed invalid if postal  
25 cancellation date or postage meter date is more than one day after date of  
26 deposit for mailing in affidavit.

27 I declare under penalty of perjury under the laws of the State of California that the  
28 above is true and correct. Executed **June 22, 2015**, at Los Angeles, California.

**ORIGINAL SIGNED**

\_\_\_\_\_  
*H. Hancock*