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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 JANICE DICKINSON, an individual,
14 Plaintiff,
15 v.
16 WILLIAM H. COSBY, JR., an individual
17 Defendant.

Case Number: BC 580909

**NOTICE OF MOTION TO LIFT STAY
OF DISCOVERY PURSUANT TO CCP §
425.16(g)**

Hearing Date: November 18, 2015
Hearing Time: 8:30 a.m.
Dept.: 47
Judge: Hon. Debre Weintraub

Action Filed: May 20, 2015

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 18, 2015 at 8:30 a.m. or as soon thereafter
as the matter may be heard in Department 47 of the above-titled court, located at the Stanley
Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012, Plaintiff Janice Dickinson
will respectfully move this Court to lift the stay of discovery imposed by 425.16(g) of the Code

1 of Civil Procedure and order that limited discovery be conducted, namely in allowing plaintiff
2 to depose William H. Cosby Defendant (hereafter "Defendant") and Martin Singer Defendant's
3 counsel and agent (hereafter "Mr. Singer").

4 Plaintiff's motion is made on the grounds that there is good cause to lift the stay of
5 discovery and to conduct limited discovery. There is good cause to lift the stay because the
6 depositions of Defendant and Mr. Singer are required to oppose Defendant's Anti-SLAPP
7 motion, specifically to establish actual malice. Further, the relevant evidence is principally in
8 the control of Defendant and not readily available from other sources or through informal
9 discovery.

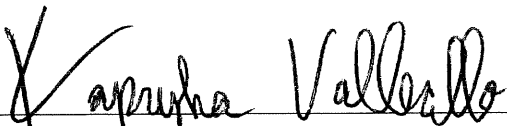
10 Pursuant to Section 425.16(g), the court is provided a statutorily mandated exception to
11 the automatic stay of discovery that it imposes. Section 425.16(g) of the Code of Civil
12 Procedure states that although discovery proceedings shall be stayed upon the filing of an anti-
13 SLAPP motion, the court, on notice motion and for good cause shown, may order that specified
14 discovery be conducted.

15 This motion is based on this notice of motion and motion, the attached Request to Take
16 Judicial Notice, the attached supporting memorandum and supporting declaration of Lisa
17 Bloom, all pleadings, records, and files in this action, and such further oral and documentary
18 evidence as may be presented at the time of the hearing of this matter.

19
20 DATED: September 20, 2015

Respectfully submitted,

21 THE BLOOM FIRM

22 

23 KAPRISHA VALLECILLO

24 LISA BLOOM

25 Attorneys for Plaintiff Janice Dickinson

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13 JANICE DICKINSON, an individual,
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16 WILLIAM H. COSBY, JR., an individual
17 Defendant.

Case Number: BC 580909

**PLAINTIFF'S MOTION TO LIFT STAY
OF DISCOVERY PURSUANT TO CCP §
425.16(g); AND MEMORANDUM OF
POINTS AND AUTHORITIES**

**[Request for Judicial Notice; Declaration
of Kaprisha Vallecillo; and Proposed
Order Filed Concurrently]**

Hearing Date: November 18, 2015

Hearing Time: 8:30 a.m.

Dept.: 47

Judge: Hon. Debre Weintraub

Action Filed: May 20, 2015

1 (a) In 1982, Ms. Dickinson disclosed the Rape to her friend Edward Tricomi (**Exhibit**
2 **2**).

3 (b) In or about 2001, Ms. Dickinson disclosed the Rape to Pablo Fenjves, the
4 ghostwriter of her 2002 autobiography *No Lifeguard on Duty* (“*No Lifeguard*”) (Declaration of
5 Pablo Fenjves, **Exhibit 3** at ¶¶4-8).

6 (c) In or about 2001, Ms. Dickinson disclosed the Rape to Judith Regan, the president
7 and publisher of Regan Books, an imprint of HarperCollins and the publisher of *No Lifeguard*
8 (Declaration of Judith Regan, **Exhibit 4** at ¶5).

9
10 Ms. Regan and Mr. Fenjves would not allow Ms. Dickinson to disclose the Rape in *No*
11 *Lifeguard*, citing fear that Mr. Cosby would sue or otherwise retaliate against HarperCollins.
12 Ms. Dickinson “fought” and “pleaded” to include her rape disclosure in the book, but the
13 publisher instead “modified” her story to avoid “legal problems.” (Declaration of Judith Regan,
14 at ¶¶7, 9; Declaration of Pablo Fenjves, at ¶¶9-11). Notably, HarperCollins’ refusal to include
15 the Rape disclosure came shortly before HarperCollins completed publication of two Cosby
16 books, *Friends of a Feather* and *I Am What I Ate* (**Exhibit 5**).

17
18 In 2006, Ms. Dickinson said publicly on The Howard Stern Show:

19
20 Bill Cosby was the only guy I couldn’t write about in the book
21 because [HarperCollins was] afraid of lawsuits... wouldn’t touch
22 that one. And I don’t want to get near that because I don’t have
23 the shekels that you do or that Cosby does ... **The guy’s a bad**
24 **guy. Let me just say that. He’s not a nice guy. He preys on**
25 **women** that just come out of rehab. I’ll just say that. (Emphasis
26 added.)

27 In 2010, Ms. Dickinson disclosed to Dr. Drew Pinsky that she had been
28 raped by a prominent celebrity, whose name she feared to say.

C. MS. DICKINSON PUBLICLY DISCLOSES THE RAPE

1 On or about November 18, 2014, Ms. Dickinson disclosed the Rape in a CBS television
2 interview. At the time, she was the most high profile accuser to come forward against Mr.
3 Cosby.

4 **D. MR. COSBY IMMEDIATELY RETALIATES BY DEFAMING MS.**
5 **DICKINSON**
6

7 That same day, Mr. Cosby, through his authorized representative, issued a
8 statement to news media producers (the “November 18 Press Statement”) (**Exhibit 6**),
9 which was immediately broadcast by CBS, Buzzfeed, and thousands of other media
10 outlets, as Mr. Cosby, an experienced media personality, surely foresaw and intended.

11 The November 18 Press Statement contained the following false statements of fact:

- 12
- 13 1. “We are writing regarding your planned story regarding Janice
14 Dickinson’s new false and outlandish claims about Mr. Cosby in her recent
15 Entertainment Tonight interview, asserting that he raped her in 1982 (the
16 ‘Story’).”
 - 17 2. “That Story is fabricated and is an outrageous defamatory lie . . .”
 - 18 3. “Her new Story claiming that she had been sexually assaulted is a
19 defamatory fabrication . . . “
 - 20 4. “That never happened, just like the alleged rape never happened.”
 - 21 5. “Ms. Dickinson completely fabricated the Story of alleged rape.”
(Kapriisha Vallecillo Decl.)

22 The following day, Mr. Cosby, through his authorized representative, sent the news media a
23 second press release (the “November 19 Press Statement”) (**Exhibit 7**), containing the following
24 false statements:
25

- 26 1. “Janice Dickinson’s story accusing Bill Cosby of rape is a lie.”
- 27 2. “Documentary proof and Ms. Dickinson’s own words show that her new
28 story about something she now claims happened back in 1982 is a fabricated
lie.”
(Kapriisha Vallecillo Decl.)

E. MR. COSBY REFUSES TO RETRACT THE FALSE STATEMENTS ABOUT
MS. DICKINSON

1 Through counsel, Ms. Dickinson contacted three attorneys for Mr. Cosby demanding a
2 public retraction. Nadia Taghizadeh Decl. Mr. Cosby refused. At no point did any attorney for
3 Mr. Cosby, orally or in writing, claim that the November 18 or November 19 Press Statement
4 (collectively, the "Press Statements") was not fully authorized by Mr. Cosby (see Declaration of
5 Kaprisha Vallecillo, Decl.).

6
7 **F. MR. COSBY ADMITS UNDER OATH TO DRUGGING WOMEN FOR SEX**

8 In a prior civil action,¹ *Andrea Constand v. William H. Cosby, Jr.*, Mr. Cosby admitted
9 under oath to obtaining Quaaludes for the purpose of drugging women into sexual submission:

10 [Lawyer for Andrea Constand]: Why didn't you ever take the
11 quaaludes?

12 Cosby: Because I used them.

13 [Lawyer for Andrea Constand]: For what?

14 Cosby: The same as a person would say, "Have a drink."

15 [Lawyer for Andrea Constand]: You gave them to other people?

16 Cosby: Yes.

17 [Lawyer for Andrea Constand]: Did (the doctor) know when he
18 gave you those prescriptions that you had no intention of taking
19 them?

20 Cosby: Yes.

21 [Lawyer for Andrea Constand]: Did you believe at that time
22 that it was illegal for you to dispense those drugs?

23 Cosby: Yes.

24 [Lawyer for Andrea Constand]: And you did it anyway; is that
25 correct? You have to answer yes or no.

26 Cosby: Why do I have to answer that? It's obvious. I just finished
27 telling you I gave them.

28 (Plaintiff Request for Judicial Notice.)

Later in this deposition, Mr. Cosby failed to deny a strikingly similar allegation of
drugging a woman for the purpose of raping her.

[Lawyer for Andrea Constand]: "She said that she believes she
was not in the position to consent to intercourse after you gave her
the drug. Do you believe that is correct?"

Cosby: "I don't know."

G. MR. COSBY AND HIS REPRESENTATIVES ROUTINELY

¹ *Constand v. Cosby*, Case No: 2:05-cv-01099-ER, United States District Court, Eastern District of Pennsylvania, filed 03/08/2005.

1 for conducting discovery. *1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal. App. 4th 568, 593.
2 A prima facie showing requires proof of facts from which a legal conclusion can be drawn. *Cal.*
3 *Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board, supra*, 178 Cal.App.2d at 274.
4 “Before discovery has unearthed relevant facts and evidence, it may be difficult to define the
5 precise formulation of the required prima facie case in a particular case. Given that the prima
6 facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid
7 pleading standard for discrimination cases.” *Swierkiewicz v. Sorema N.A.* (2002) 534 U.S. 506,
8 512.

9 Ms. Dickinson should be allowed to depose Defendant and Mr. Singer to gather
10 necessary facts which are not readily available from other sources or through informal discovery
11 to prove actual malice. There is good cause and Ms. Dickinson has made a prima facie showing
12 for the necessity of this limited discovery.

13 **a. There is good cause to Lift Stay Where Discovery is Needed**

14 **i. Ms. Dickinson must show actual malice to successfully oppose the Anti-**
15 **SLAPP motion because she is a public figure**

16 In *New York Times*, the Court held that to bring an action for defamation, a public figure
17 must prove an additional element of “actual malice”. *New York Times Co. v. Sullivan* (1964)
18 376 U. S. 254, 279-280. The Court opined that a public official cannot recover monetary
19 damages for a defamatory falsehood relating to his official conduct unless he proves that the
20 statement was made with actual malice, *i.e.*, with knowledge that the alleged defamatory
21 statement was false or with reckless disregard as to its truth or falsity. *Id.*

22 Indeed as the United States Supreme Court further explained, “The question whether the
23 evidence in the record in a defamation case is of the convincing clarity required to strip the
24 utterance of First Amendment protection is not merely a question for the trier of fact. Judges, as
25 expositors of the Constitution, must independently decide whether the evidence in the record is
26 sufficient to cross the constitutional threshold that bars the entry of any judgment that is not
27 supported by clear and convincing proof of ‘actual malice.’” *Bose Corp. v. Consumers Union of*
28 *U.S., Inc.* (1984) 466 U.S. 485, 511.

1 Ms. Dickinson bears the burden of proving Defendant's actual malice by clear and
2 convincing evidence. Thus, unlike the element of falsity, Ms. Dickinson must make the
3 requisite showing of malice by "by clear and convincing evidence, which is a burden of proof in
4 that exceeds the more typical preponderance of evidence standard in civil litigation. *Hoffman v.*
5 *Capital Cities/ABC, Inc.* (9th Cir.2001) 255 F.3d 1180, 1186–1187. The clear and convincing
6 evidentiary standard has been described as proof that requires a finding of high probability that
7 is sufficiently weighty to "command the unhesitating assent of every reasonable mind." (*Copp*
8 *v. Paxton* (1996) 45 Cal.App.4th 829, 846.) *Christian Research Institute v. Alnor* (2007) 148
9 CA4th 71, 84.

10 To successfully oppose Defendant's anti-SLAPP motion, Ms. Dickinson has to prove
11 actual malice; and to gather evidence to make the required affirmative showing she needs to
12 take the depositions of Defendant and his agent Mr. Singer. Defendant through his agent made
13 defamatory statements regarding Ms. Dickinson including, "Ms. Dickinson completely
14 fabricated the Story of alleged rape." Defendant knows very well that the he raped Ms
15 Dickinson. And, Mr. Singer was not present when Defendant raped Ms. Dickinson. To oppose
16 Defendant's anti-SLAPP motion, Ms. Dickinson has the burden of demonstrating that the
17 statements were made with actual malice. While Plaintiff will conclusively establish that
18 Defendant's statements are provably false factual allegations, Defendant's malice is still highly
19 relevant and can only be uncovered and demonstrated through the oral deposition testimony of
20 Defendant and Mr. Singer.

21 **ii. Discovery is needed to establish actual malice**

22 The court in *Christian Research Institute*, 148 CA4th 71 concluded that discovery may
23 be necessary to establish actual malice in an action for defamation of a public figure. Mr.
24 Singer's statements on behalf of the Defendant were knowingly false or were made with
25 reckless disregard as to their falsity. "Reckless disregard for the truth 'is not measured by
26 whether a reasonably prudent man would have published, or would have investigated before
27 publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact
28 entertained serious doubts as to the truth of his publication.' (*St. Amant, supra*, 390 U.S. at p.
731.) *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 846.

1 Mr. Singer has served as Defendant's counsel for many years. In 2006, Mr. Singer was
2 one of the several attorneys who represented the Defendant in a case that is remarkably similar
3 to the case at hand where Defendant was accused of drugging and sexually assaulting Andrea
4 Constand. More than three dozen women have now come forward with accounts of sexual
5 assault against the Defendant that mirror Ms. Dickinson's and Ms. Constand's allegations. As
6 Mr. Cosby's counsel, and his agent in trashing and defaming the reputations of the many women
7 who have finally summoned the courage to come forward to hold Mr. Cosby accountable for his
8 heinous actions over the course of many years, Mr. Singer presumably knows of the truth
9 underlying such allegations. In Ms. Dickinson's case, Defendant through his agent Martin
10 Singer made defamatory statements ridiculing Ms. Dickinson's rape allegations and trashing her
11 reputation knowing that such statements were palpably false. *See* Exhibit 6 and 7. Mr. Singer
12 as Defendant's agent, at the very least, seriously must have doubted the truth of his statements.

13 "To support a finding of actual malice, the failure to investigate must fairly be
14 characterized as ' "the purposeful avoidance of the truth" ' or the ' "product of a deliberate
15 decision not to acquire knowledge of facts that might confirm the probable falsity of [the
16 subject] charges." ' ' (Rosenaur v. Scherer (2001) 88 Cal.App.4th 260, 277, 105 Cal.Rptr.2d
17 674.) *Christian Research Institute v. Alnor*, supra, 148 CA4th at p. 90.

18 "In *Antonovich v. Superior Court* (1991) 234 Cal.App.3d 1041, 1052-1053, 285
19 Cal.Rptr. 863, of this charge, and failed to investigate after his opponent had offered contrary
20 proof. In *Christian Research Institute*, the court determined that a reasonable trier of fact could
21 conclude that the defendant's failure to investigate " "was a product of a deliberate decision not
22 to acquire knowledge of facts that might confirm the probable falsity of [the subject] charges,' "
23 amounting to a " 'purposeful avoidance of the truth' " sufficient to support a finding of malice.
24 (*Id.* at p. 1053, 285 Cal.Rptr. 863.) *Christian Research Institute v. Alnor*, supra, 148 CA4th at
25 p. 90.

26 Here, it appears that Mr. Singer deliberately elected not question when he could have
27 simply question his client, the Defendant, regarding the truth or falsity of Ms. Dickinson's rape
28 allegations. Instead he based his reasoning on anonymous Internet trolls calling Ms. Dickinson

1 names. (See Singer's Decl. ¶¶ 15, 16.) Mr. Singer's action (or lack thereof) amounts to
2 purposeful avoidance of the truth.

3 In *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, the court explained that,
4 “[M]otions under section 425.16 commonly will be filed early in the legal proceedings, before
5 the plaintiff has the opportunity to conduct (or complete) significant and necessary discovery. If
6 the plaintiff makes a timely and proper showing in response to the motion to strike, that a
7 defendant or witness possesses evidence needed by plaintiff to establish a prima facie case, the
8 plaintiff must be given the reasonable opportunity to obtain that evidence through discovery
9 before the motion to strike is adjudicated[.]” *Lafayette Morehouse, Inc. v. Chronicle Publishing*
10 *Co.* (1995) 37 Cal.App.4th 855, 868, 44 Cal.Rptr.2d 46.

11 Depositions of both the Defendant and Mr. Singer are significant and necessary for Ms.
12 Dickinson to establish a prima facie case and to successfully oppose Defendant’s anti-SLAPP
13 motion. Defendant’s failure to put forth any evidence about his intent makes his deposition
14 vital for Plaintiff to establish malice. The same is true for Defendant's agent Mr. Singer. Ms.
15 Dickinson will establish Defendant’s malice through these oral depositions.

16 “To establish a probability of prevailing, the plaintiff ‘ ‘must demonstrate that the
17 complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to
18 sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’ ’ [Citation.]
19 In doing so, the trial court considers the pleadings and evidentiary submissions of both the
20 plaintiff and the defendant. [Citation.] Although ‘the court does not weigh the credibility or
21 comparative probative strength of competing evidence, it should grant the motion if, as a matter
22 of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish
23 evidentiary support for the claim.’ [Citation.] Moreover, the plaintiff cannot rely on the
24 allegations of the complaint, but must produce evidence that would be admissible at trial.
25 [Citation.]’ (*Integrated Healthcare, supra*, 140 Cal.App.4th at p. 527, 44 Cal.Rptr.3d 517.)”
26 *Christian Research Institute v. Alnor, supra*, 148 CA4th at p. 80.

27 **b. Information Plaintiff Seeks to Obtain is not Readily Available from Other Sources**
28 **and Must be Obtained Through Formal Discovery**

1 The discovery stay required by California Civil Procedure Section 425.16(g), if literally
2 applied in all cases, “might well adversely implicate a plaintiff’s due process rights” by placing
3 the burden on the plaintiff to show prima facie case without permitting the collection of
4 evidence needed to satisfy that burden. *Lafayette Morehouse, Inc. v. Chronicle Publ'g Co.*, 37
5 Cal. App. 4th 855, 867-68, 44 Cal. Rptr. 2d 46, 54 (1995). California courts acknowledge the
6 need to lift the discovery in cases where the defendant is the principal source of the required
7 information and the information is not available through other sources. *Schroeder v. Irvine City*
8 *Council* (2002) 97 Cal. App. 4th 174, 190-91. It is important to note that Defendant’s anti-
9 SLAPP motion attempts to obfuscate Defendant’s malice by misdirecting the issue of malice
10 from Defendant to Defendant’s counsel. In doing so, Defendant provides no insight into his
11 personal mental state in publishing defamatory statements regarding Ms. Dickinson.

12 Generally, good cause for lifting the discovery stay exists where the evidence required to
13 establish plaintiff’s prima facie case is in the hands of the Defendant. *Garment Workers Ctr. v.*
14 *Superior Court* (2004)117 Cal. App. 4th 1156, 1162. However, the trial court should also
15 consider whether the information the plaintiff seeks to obtain through formal discovery
16 proceedings is readily available from other sources or can be obtained through informal
17 discovery. (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 191-192, 118
18 Cal.Rptr.2d 330.)” *Id.*

19 In a libel suit, plaintiff’s discovery is of prime importance because typically the
20 defendant will generally be the principal or exclusive source of material evidence, such as,
21 “whether the defendant knew the statement published was false, or published the statement in
22 reckless disregard of whether the matter was false and defamatory, or acted negligently in
23 failing to learn whether the matter published was false and defamatory.” *Lafayette Morehouse,*
24 *Inc. v. Chronicle Publishing Co., supra*, 37 Cal.App.4th at page 868. The court’s opinion
25 suggests it would have found good cause to permit the plaintiff to engage in discovery on the
26 issue of malice prior to the hearing on defendant’s SLAPP motion had the plaintiff sought such
27 permission.” *Garment Workers Ctr. v. Superior Court, supra*, 117 Cal. App. 4th at 1162.

28 Only the Defendant knows his state of mind when he ratified Mr. Singer’s statements
and declined to retract his defamatory statements when Ms. Dickinson demanded that he do so.

1 (Compl. ¶¶ 43-46). Defendant has not provided an explanation for making the defamatory
2 statements at issue here. It is unclear from Defendant’s anti-SLAPP motion, in light of his
3 inexplicable silence and his failure to explicitly deny the rape allegation against him, whether
4 Defendant himself contends that he did not rape Ms. Dickinson. The fact that the evidence
5 necessary to establish Plaintiff’s prima facie case is in the hands of the Defendant, “goes a long
6 way toward showing good cause for discovery.” *Garment Workers Ctr. v. Superior Court*,
7 *supra*, 117 Cal. App. 4th at 1162; *Fuchs v. Levine*, No. B220010, 2011 WL 507258, at *12 (Cal.
8 Ct. App. Feb. 15, 2011).

9 Despite publishing that the rape of Ms. Dickinson is a lie and refusing to retract said
10 statements, Defendant has not introduced any evidence showing that he himself believes that the
11 published statements about Ms. Dickinson are true. Defendant does not deny being present in
12 the same city and state as Ms. Dickinson on the night of the rape. Defendant does not deny
13 being in the same hotel as Ms. Dickinson on the night of the rape. Defendant does not deny that
14 he engaged in sexual acts with Ms. Dickinson on the night of the rape. ***Defendant does not deny***
15 ***that the sexual acts he engaged in with Ms. Dickinson were non-consensual.***

16 Even though, Ms. Dickinson herself knows that she was raped and drugged by
17 Defendant, Defendant is the principal in control of information about his intent when he
18 published false and injurious statements regarding Ms. Dickinson and called Ms. Dickinson a
19 liar for claiming that she was raped and drugged by Defendant.

20 **B. DISCOVERY SOUGHT IS LIMITED TO ISSUES RAISED BY**
21 **DEFENDANT’S ANTI-SLAPP MOTION**

22 The statutorily imposed discovery stay upon the filing of an Anti-SLAPP motion may be
23 lifted to permit specified discovery limited to issues raised in the special motion to strike. *Ruiz*
24 *v. Harbor View Community Association* (2005) 134 Cal.App.4th 1456, 1475. Defendant’s anti-
25 SLAPP motion pointedly raises the issue of malice. In Defendant’s anti-SLAPP motion,
26 Defendant argues that, “a public figure alleging defamation must prove, by clear and convincing
27 evidence, that the speaker made the allegedly libelous statements with actual malice...” (*See*
28 Defendant’s anti-SLAPP motion, at. 10.) Accordingly, Ms. Dickinson must now produce
evidence known to Defendant and Mr. Singer pertaining to Defendant’s actual malice, and can

1 do so only if this Court lifts the present stay of discovery. *See Garment Workers Ctr.*, 117
2 Cal.App.4th at 1162 (“The court should also consider the plaintiff’s need for discovery in the
3 context of the issues raised in the SLAPP motion.”)

4 Defendant’s anti-SLAPP motion avoids the most significant contentious issue in this
5 case, Defendant’s intent (malice) in publishing the defamatory statements. Ms. Dickinson seeks
6 to lift the current stay of discovery for the narrow purpose of deposing Defendant and his agent,
7 Mr. Singer. Deposing the Defendant and his agent will demonstrate that Defendant either
8 published the defamatory statements either knowing of their falsity or in reckless disregard of
9 the truth.

10 The Court, therefore, must liberally exercise its discretion by authorizing reasonable and
11 specified discovery timely petitioned for by a Plaintiff in a case such as this, when evidence to
12 establish a prima facie case is reasonably shown to be held, or known, by defendant or its agents
13 and employees. Lifting the discovery stay at this time for the narrow purpose of deposing
14 Defendant and his agent Mr. Singer would allow Ms. Dickinson to make the requisite showing
15 that Defendant’s statements were made with actual malice.

16 **C. ANY COMMUNICATIONS BETWEEN DEFENDANT AND MARTIN**
17 **SINGER ARE NOT PROTECTED FROM DISCOVERY**

18 Plaintiff anticipates that Defendant will contend that any communications between
19 Defendant and Mr. Singer constitute privileged attorney-client communications. The
20 communications between the Defendant and Mr. Singer are not protected by attorney-client
21 privilege. “As we explained in *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 397,
22 15 Cal.Rptr. 90, 364 P.2d 266: “Knowledge which is not otherwise privileged does not become
23 so merely by being communicated to an attorney. [Citation.] Obviously, a client may be
24 examined on deposition or at trial as to the facts of the case, whether or not he has
25 communicated them to his attorney. [Citation.] While the privilege fully covers communications
26 as such, it does not extend to subject matter otherwise unprivileged merely because that subject
27 matter has been communicated to the attorney.’ ” Thus, “a litigant may not silence a witness by
28 having him reveal his knowledge to the litigant’s attorney....” (*D.I. Chadbourne, Inc. v. Superior*

1 *Court, supra*, 60 Cal.2d at p. 734, 36 Cal.Rptr. 468, 388 P.2d 700.)” *Costco Wholesale Corp. v.*
2 *The Superior Court of LA County* (2009) 47 Cal.4th 725, 735.

3 The attorney-client privilege is waived as to all matters in Mr. Singer’s declaration in
4 support of Defendant’s anti-SLAPP motion. The attorney-client privilege is waived where third
5 parties were present. The attorney-client privilege is waived when attorney is merely acting as a
6 publicist. “Plaintiffs next point out that the attorney-client privilege does not attach to an
7 attorney's communications when the client's dominant purpose in retaining the attorney was
8 something other than to provide the client with a legal opinion or legal advice. (*2,022 Ranch v.*
9 *Superior Court, supra*, 113 Cal.App.4th at pp. 1390–1391, 7 Cal.Rptr.3d 197; *Aetna Casualty &*
10 *Surety Co. v. Superior Court* (1984) 153 Cal.App.3d 467, 475, 200 Cal.Rptr. 471.) For example,
11 the privilege is not applicable when the attorney acts merely as a negotiator for the client or is
12 providing business advice (see *Aetna Casualty & Surety Co.*, at p. 475, 200 Cal.Rptr. 471); in
13 that case, the relationship between the parties to the communication is not one of attorney-
14 client.” *Costco Wholesale Corp. v. The Superior Court of LA County, Supra*, 47 Cal.4th at 735.
15 Ms. Dickinson is entitled to inquire as to facts and circumstances surrounding the press
16 statements to gather necessary evidence to illustrate Defendant’s and Mr. Singer’s actual malice
17 in opposing Defendant’s anti-SLAPP motion.

18 “When the facts, or reasonable inference from the facts, shown in support of or in
19 opposition to the claim of privilege are in conflict, the determination of whether the evidence
20 supports one conclusion or the other is for the trial court, and a reviewing court may not disturb
21 such finding if there is any substantial evidence to support it (*Holm v. Superior Court*, 42 Cal.2d
22 500, 507, 267 P.2d 1025, 268 P.2d 722; *San Diego Professional Ass'n. v. Superior Court*, 58
23 Cal.2d 194, 202, 23 Cal.Rptr. 384, 373 P.2d 448). The party claiming privilege carries the
24 burden of showing that the evidence which it seeks to suppress is within the terms of the statute.
25 (*Tanzola v. De Rita*, 45 Cal.2d 1, and cases cited at p. 6, 285 P.2d 897, and cases cited at p. 899;
26 see also, *Brotsky v. State Bar*, 57 Cal.2d 287, 303, 19 Cal.Rptr. 153, 368 P.2d 697.)” *D. I.*
27 *Chadbourne, Inc. v. The Superior Court of the City and County of San Francisco* (1964) 60
28 Cal.2d 723, 729.

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12 Attorneys for Plaintiff JANICE DICKINSON

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 JANICE DICKINSON, an individual,

14 Plaintiff,

15 v.

16 WILLIAM H. COSBY, JR., an individual

17 Defendant.

Case Number: BC 580909

**DECLARATION OF KAPRISHA
VALLECILLO IN SUPPORT OF
PETITIONER'S MOTION TO LIFT
STAY OF DISCOVERY PURSUANT TO
CCP § 425.16(g)**

Hearing Date: November 18, 2015

Hearing Time: 8:30 a.m.

Dept.: 47

Judge: Hon. Debre Weintraub

Action Filed: May 20, 2015

25 I, Kaprisha Vallecillo, declare as follows:

- 26 1. I am an attorney duly admitted to practice before this Court. I am an associate
27 attorney with The Bloom Firm, attorneys of record for Plaintiff Janice Dickinson
28 (hereafter "Ms. Dickinson") in this action.

- 1 2. I have personal knowledge of the matters set forth herein and could and would
2 testify if called upon to do so, except for those matters stated on information and
3 belief.
- 4 3. I submit this declaration in support of Ms. Dickinson's Motion to Lift the Stay of
5 Discovery Pursuant to CCP § 425.16(g) and allow Ms. Dickinson to orally depose
6 Defendant and his attorney Martin Singer.
- 7 4. I am informed and believe that Defendant has engaged in suppressing the truth of
8 what he did to over three dozen victims over 43 years. Defendant and his attorneys
9 have trashed and maligned the reputations of Defendant's victims, and Defendant
10 has demeaned and taunted his victims by publicly joking about drugging women and
11 taking advantage of them. A true and correct copy of the article is attached hereto as
12 **Exhibit 1**.
- 13 5. Plaintiff Janice Dickinson is one such victim who has been defamed and humiliated
14 publicly by Defendant.
- 15 6. Before any other woman publicly alleged that Mr. Cosby had raped her, Ms.
16 Dickinson
17 disclosed the Rape to some of her close friends and business acquaintances, some of
18 these individuals are as follows:
- 19 (a) In 1982, Ms. Dickinson disclosed the Rape to her friend Edward Tricomi. A true
20 and correct copy of Edward Tricomi's Declaration is attached hereto as **Exhibit 2**.
- 21 (b) In or about 2001, Ms. Dickinson disclosed the Rape to Pablo Fenjves, the
22 ghostwriter of her 2002 autobiography No Lifeguard on Duty ("No Lifeguard"). A
23 true and correct copy of Pablo Fenjves' Declaration is attached hereto as **Exhibit 3**
24 (Relevant ¶¶4-8).
- 25 (c) In or about 2001, Ms. Dickinson disclosed the Rape to Judith Regan, the
26 president and publisher of Regan Books, an imprint of HarperCollins and the
27 publisher of No Lifeguard. A true and correct copy of Judith Regan's Declaration is
28 attached hereto as **Exhibit 4** (Relevant ¶5).

1 7. I am informed and believe that Ms. Regan and Mr. Fenjves would not allow Ms.
2 Dickinson to disclose the Rape in No Lifeguard, citing fear that Mr. Cosby would
3 sue or otherwise retaliate against HarperCollins. Ms. Dickinson “fought” and
4 “pleaded” to include her rape disclosure in the book, but the publisher instead
5 “modified” her story to avoid “legal problems.” (Declaration of Judith Regan, at ¶¶7,
6 9; Declaration of Pablo Fenjves, at ¶¶9-11).

7 8. I am informed and believe that HarperCollins’ refusal to include the Rape disclosure
8 came shortly before HarperCollins completed publication of two Cosby books,
9 Friends of a Feather and I Am What I Ate. A true and correct copies of the books’
10 cover pages are attached hereto as **Exhibit 5**.

11 9. I am informed and believe that in 2006, Ms. Dickinson said publicly on The Howard
12 Stern Show:

13 Bill Cosby was the only guy I couldn’t write about in the book because
14 [HarperCollins was] afraid of lawsuits... wouldn’t touch that one. And I don’t want
15 to get near that because I don’t have the shekels that you do or that Cosby does ...
16 The guy’s a bad guy. Let me just say that. He’s not a nice guy. He preys on women
17 that just come out of rehab. I’ll just say that.

18 10. I am informed and believe that on or about November 18, 2014, Ms. Dickinson
19 disclosed the Rape in a CBS television interview. At the time, she was the most high
20 profile accuser to come forward against Mr. Cosby.

21 11. That same day, Mr. Cosby, through his authorized representative, issued a statement
22 to news media producers (the “November 18 Press Statement”), which was
23 immediately broadcast by CBS, Buzzfeed, and thousands of other media outlets, as
24 Mr. Cosby, an experienced media personality, surely foresaw and intended. A true
25 and correct copy of the November 18 Press Statement is attached hereto as **Exhibit**
26 **6**.

27 12. The November 18 Press Statement contained the following false statements of fact:
28

1 “We are writing regarding your planned story regarding Janice Dickinson’s new
2 false and outlandish claims about Mr. Cosby in her recent Entertainment Tonight
3 interview, asserting that he raped her in 1982 (the ‘Story’).”

4 “That Story is fabricated and is an outrageous defamatory lie . . .”

5 “Her new Story claiming that she had been sexually assaulted is a defamatory
6 fabrication . . . “

7 “That never happened, just like the alleged rape never happened.”

8 “Ms. Dickinson completely fabricated the Story of alleged rape.”

9 13. The following day, Mr. Cosby, through his authorized representative, sent the news
10 media a second press release (the “November 19 Press Statement”), (a true and
11 correct copy of the November 19 Press Statement is attached hereto as **Exhibit 7**),
12 containing the following false statements:

13 “Janice Dickinson’s story accusing Bill Cosby of rape is a lie.”

14 “Documentary proof and Ms. Dickinson’s own words show that her new story about
15 something she now claims happened back in 1982 is a fabricated lie.”

16 14. The Bloom Firm on behalf of Ms. Dickinson contacted three attorneys for Mr. Cosby
17 demanding a public retraction. Mr. Cosby refused. At no point did any attorney for
18 Mr. Cosby, orally or in writing, claim that the November 18 or November 19 Press
19 Statement (collectively, the “Press Statements”) was not fully authorized by Mr.
20 Cosby.

21 15. I am informed and believe that when forced to answer questions under oath about his
22 predatory behavior, Mr. Cosby has admitted to drugging women for the purpose of
23 having sex with them. Yet he has often branded his victims as liars, through his
24 attorneys. For example, in December 2014, a CNN Senior Vice President chastised
25 Mr. Cosby’s attorney, Martin Singer, for his “remarkable dishonesty” in attempting
26 to smear Cosby accuser Beverly Johnson, a supermodel colleague of Ms. Dickinson.
27 A true and correct copy of this article is attached hereto as **Exhibit 8**.

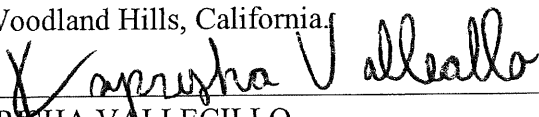
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16. I am informed and believe that Mr. Singer's declaration is silent as to any denial by Mr. Cosby of Ms. Dickinson's rape allegations. Mr. Cosby himself submitted no declaration denying the rape.

I declare under penalty of perjury that the foregoing is true and correct except for those matters stated on information and belief, which I believe to be true and correct.

Executed September 20, 2015, in Woodland Hills, California.



KAPRISHA VALLECILLO

EXHIBIT 1



Cosby jokingly warns woman about drinking around him during show

Published January 09, 2015

| Associated Press

LONDON, Ontario – Bill Cosby jokingly warned a woman in the audience during a show in Canada Thursday night to be careful drinking around him.

Cosby made the remark at his second performance in a row after a string of cancellations that followed sexual assault allegations from more than 15 women. Some of the women accused Cosby of drugging them by slipping something in their drinks before he assaulted them

A woman who got up from one of the front rows and walked past the stage was asked by Cosby where she was going. When she answered that she was going to the lobby to grab a drink Cosby responded: "You have to be careful about drinking around me." The remark was met with loud applause.

A few minutes later a heckler yelled at Cosby that he was a rapist.

Cosby stood up as the crowd started to boo the man and asked them not to respond. "No, no, stop," he said, waving his hands.

The man was removed from the theater by a police officer while one member of the audience yelled "we love you" to Cosby.



Cosby later addressed the disruption — the first at a show since the allegations surfaced — in a statement.

"Dear Fans: One outburst but over 2,600 loyal, patient and courageous fans enjoyed the most wonderful medicine that exist for human-kind. Laughter. I thank you, the theatre staff (Budweiser Gardens), the event organizers and the London, ON Community for your continued honor and support. I'm Far From Finished," Cosby said in the statement issued by his publicist following the show.

Cosby, 77, is also scheduled to appear at the Hamilton Place Theatre in Hamilton on Friday and in a number of shows throughout the U.S. over the next few months, including two shows in Denver on Jan. 17.

The comedian, who starred as Dr. Cliff Huxtable on "The Cosby Show" from 1984 to 1992, earning a reputation as "America's Dad," has never been charged in connection with any of the sexual assault allegations. A 2005 lawsuit by a Pennsylvania woman was settled before it went to trial, and he is

being sued by a woman who claims he molested her in 1974 and by three other women who allege they were defamed by the comedian when his representatives denied some of the allegations.

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EXHIBIT 2

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DECLARATION OF EDWARD TRICOMI

I, EDWARD TRICOMI, declare as follows;

1. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.

2. I have been a celebrity hair stylist for many years. I've known Janice Dickinson professionally and personally for almost 40 years. In mid to late 1970s, Ms. Dickinson and I were roommates for two years.

3. Ms. Dickinson and I have spent many hours talking about everything. In 1982, in one of our conversations when we were standing outside in the street together, Ms. Dickinson told me that Dr. Bill Cosby ("Dr. Cosby") had drugged and raped her. Her words were, "He drugged me. That fucker raped me." My conversation with Ms. Dickinson was very brief.

4. Ms. Dickinson has always been one to speak her mind and is very straightforward.

5. She seemed very angry and hurt when she talked about this horrific incident.

6. We did not talk about this incident again.

7. Ms. Dickinson is an outspoken person. She also has a reputation for honesty. I've not known Janice to lie.

8. At the time, when Ms. Dickinson told me the story, I had no doubt in my mind that she was telling the truth and that Dr. Cosby had drugged and raped her.

9. Ms. Dickinson is a credible person. I've found no reason to find her otherwise.

10. In addition, I find it hard to understand why anyone would claim that Ms. Dickinson was not raped by Dr. Cosby or that she is lying about the incident.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 17, 2015, in Myr Mex

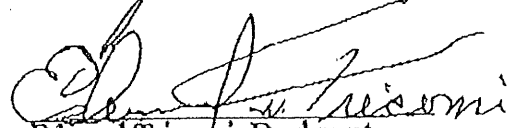

Edward Tricomi, Declarant

EXHIBIT 3

DECLARATION OF PABLO FENJVES

I, PABLO FENJVES, declare as follows;

1. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.
2. I am a screenwriter and ghostwriter. I helped Janice Dickinson with her 2002 memoir, *No Lifeguard on Duty*.
3. To help her with the memoir, Janice and I had many in depth conversations in 2001 and 2002.
4. In the course of our conversations, Janice mentioned a horrific experience with Bill Cosby ("Cosby"), the entertainer.
5. Janice told me Cosby had invited her to visit him in Lake Tahoe to talk about her interest in television.
6. However, when Janice got to Lake Tahoe, Cosby showed no real interest in helping her with her career.
7. Janice told me that instead, Cosby drugged her and raped her.
8. As Janice recounted the details, she was visibly distraught.
9. Unfortunately, I had to tell her that we would not be able to include much of the story in her book, if any, because Cosby was a powerful man and he would undoubtedly sue to protect his reputation.
10. I subsequently had a brief conversation about the matter with Judith Regan, then head of Regan Books, at Harper Collins.
11. At the end of the day, we decided not to include the story to avoid a lawsuit, and instead went with a sanitized version of the encounter.
12. Janice was upset with this decision because she had hoped to include the entire story.
13. Instead, I wrote that Janice rebuffed Cosby's sexual advances and retreated to her room.

14. This is what we talk about when we talk about “dramatic liberties”.

15. The story Janice shared with her readers was true, but she left out the damaging details, at our insistence, to avoid a lawsuit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 5, 2015, in Los Angeles, California.

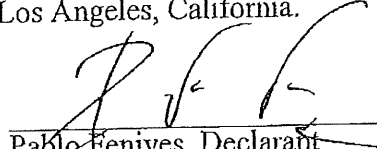

Pablo Fenjves, Declarant

EXHIBIT 4

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DECLARATION OF JUDITH REGAN

I, JUDITH REGAN, declare as follows;

1. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.

2. In 2002, I was the President and Publisher of ReganBooks, an imprint of HarperCollins.

3. ReganBooks was the publisher of Janice Dickinson's autobiography, *No Lifeguard on Duty*.

4. In 2002, I had many conversations with Janice Dickinson regarding her autobiography and her life story.

5. While working on the book, Ms. Dickinson told me, as did the ghostwriter, Pablo Fenjves, that she had been raped by Bill Cosby. Ms. Dickinson stated this with certainty and pleaded with me to include this in her book.

6. I was very disturbed by this conversation. I discussed it with the legal department at Harper Collins and the legal department told me that we could not include it without corroboration. I made an argument to the legal department that it would be very difficult to corroborate instances such as rape and I believed Janice to be credible.

7. As a publisher, I felt like I had a duty to publish the true story, so I argued with the legal department but ultimately the decision by the legal department was not to include it.

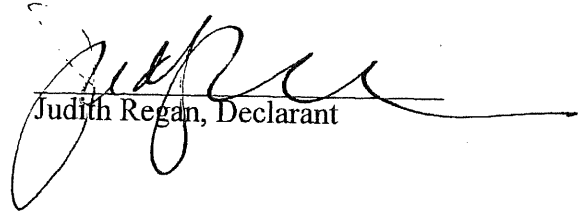
8. Ms. Dickinson fought with me about this decision. She was very passionate about it and very much wanted to include her rape by Mr. Cosby in the book.

9. Mr. Cosby was mentioned in the book to satisfy Ms. Dickinson in some way; however, the story was modified to deal with this issue without any legal problems.

10. I found Ms. Dickinson credible when I worked with her. I found her stories to be credible. Nonetheless, because of the legal position of Harper Collins the story she told of the Cosby rape was not included in the book.

1 I declare under penalty of perjury under the laws of the State of California that the above is
2 true and correct.

3 Executed on January 12, 2015, in California.

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7 Judith Regan, Declarant

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EXHIBIT 5



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Book Overview

Author Info



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Meet Slipper, Feathers, and Hog. Three of the rarest birds ever known to humankind.

Now people say birds of a feather tend to flock together, but not on the Beach by the Rock. That's where these three unique friends meet for the first time, performing risky feats for one another and then later for the hundreds of folks who gather to watch.

But when the stunts of the most gifted and eager-to-please bird are overshadowed by the sheer beauty of his best friend, an attempt to borrow back the limelight nearly ends in disaster. Why do these birds stunt fly at all? What do they expect from the skies, one another, and the crowds below? And just what are the people on the beach looking for from them?

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And Other Digressions from the Doctor of Comedy
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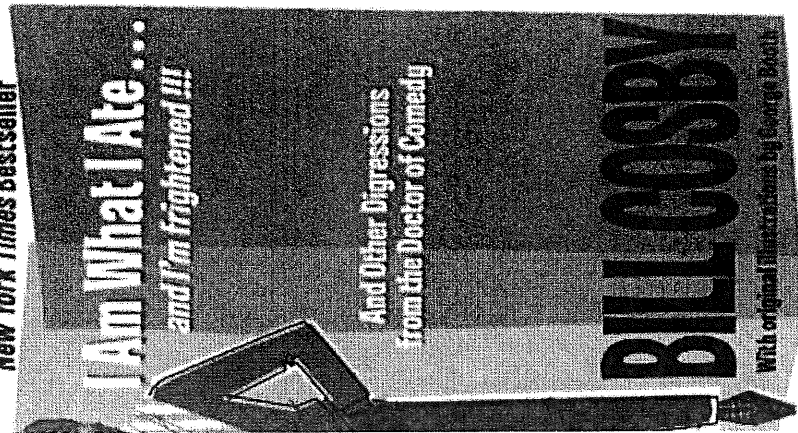
Book Overview

Author Info

About the Book

From the #1 US bestselling author, the hilarious US bestselling book of original essays for the adult market focusing on themes of health and food, which explores why Americans are hooked on such bad eating, drinking and other self-indulgent and self-destructive behaviours throughout their lives.

The legendary Bill Cosby, America's most well-known comic, wants food lovers and over indulgers everywhere to know that they are not alone. This is an original collection of hilarious musings and digressions about our obsessions and addictions, from hoagies to stogies, from one of the funniest bestselling authors in the world.



ENLARGE BOOK COVER

Recommend

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EXHIBIT 6

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JONATHAN M. KLEIN

ALLISON S. HART
HENRY L. SELF, III
OF COUNSEL

ALSO ADMITTED IN:
CALIFORNIA, NEW YORK

November 18, 2014

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PUBLICATION OR DISSEMINATION IS PROHIBITED

VIA EMAIL: kate.aurthur@buzzfeed.com

Ms. Kate Aurthur
Chief Los Angeles Correspondent
Buzzfeed

Re: **Bill Cosby / Janice Dickinson, et al.**

Dear Ms. Arthur:

We are litigation counsel to Bill Cosby. We are writing regarding your planned story regarding Janice Dickinson's new false and outlandish claims about Mr. Cosby in her recent *Entertainment Tonight* interview, asserting that he raped her in 1982 (the "Story"). That Story is fabricated and is an outrageous defamatory lie. In the past, Ms. Dickinson repeatedly confirmed, both in her own book and in an interview she gave to the *New York Observer* in 2002, that back in 1982 my client "blew her off" after dinner because she did not sleep with him. Her new Story claiming that she had been sexually assaulted is a defamatory fabrication, and she is attempting to justify this new false Story with yet another fabrication, claiming that Mr. Cosby and his lawyers had supposedly pressured her publisher to remove the sexual assault story from her 2002 book. That never happened, just like the alleged rape never happened. Prior to publishing this Story with Ms. Dickinson's new defamatory assertions, you should contact neutral third parties, such as her own publisher, to confirm that she is lying.

Neither Mr. Cosby nor any of his attorneys were ever told by Harper Collins that Ms. Dickinson had supposedly planned to write that he had sexually assaulted her, and neither Mr. Cosby nor any of his representatives ever communicated with the publisher about any alleged rape or sexual assault story planned for the book. Because you can confirm with independent sources the falsity of the claim that my client's lawyers allegedly pressured the publisher to kill the story, it would be extremely reckless to rely on anything Ms. Dickinson has to say about Mr. Cosby since the story about the publisher is patently false.

Ms. Dickinson completely fabricated the Story of alleged rape. In a transparent effort to justify the glaring contradiction between her new rape claim and what she wrote in her book and what she told to the *New York Observer* in her September 9, 2002 interview "*Interview*"

Re: Bill Cosby / Janice Dickinson, et al.

November 18, 2014

Page 2

*With a Vamp.*¹ she also manufactured the story that my client and my client's lawyers pressured her publisher to take the purported rape story out of her 2002 book. If you contact Harper Collins, the publisher will undoubtedly confirm that Mr. Cosby and his lawyers were never told that Ms. Dickinson claimed she had been raped and intended to write about it in her book. The first Mr. Cosby and his lawyers ever heard of Ms. Dickinson's specious rape allegation was not back in 2002, it was now, in Ms. Dickinson's *Entertainment Tonight* interview, a dozen years after Ms. Dickinson's book was published, a dozen years after she confirmed to the *New York Observer* what she wrote in her book, and more than 30 years after their dinner in Lake Tahoe.

Prior to publication of Ms. Dickinson's book, her publisher sent the pages about Mr. Cosby to his publicist, who responded "good luck." There was no mention of rape or sexual assault whatsoever. Nobody tried to kill any sexual assault or rape story. These facts can be confirmed with the publisher. If you proceed with the false Story when you can check the facts with neutral independent sources who will provide you with facts demonstrating that the Story is false and fabricated, you will be acting recklessly and with Constitutional malice.

It would be extraordinarily reckless to disseminate this highly defamatory Story when Ms. Dickinson herself told an entirely different story in her book, when she confirmed that same entirely different story in an interview with the *New York Observer* a dozen years ago, when you may independently confirm with her publisher the falsity of her new assertion that my client's lawyers supposedly pressured her publisher to delete the alleged rape story from her book, and when her new allegation of rape was made for the first time only now, when it appears that she seeking publicity to bolster her fading career.

More than three decades have passed since the 1982 Lake Tahoe dinner described in Ms. Dickinson's book about how she was *not* intimate with my client, and a dozen years have passed since her book came out and she confirmed that same story to the media. You can easily confirm that the manufactured story that my client's lawyers pressured the publisher to take the rape story out of the book is utterly fabricated. Since at a minimum Ms. Dickinson fabricated the assertion my client's lawyers pressured the publisher more than a decade ago to take out the sexual assault story — a story we heard now for the first time — it would be reckless to rely on Ms. Dickinson in this matter.

Ms. Dickinson's new assertion that she was raped by my client back in 1982 is belied by her own words, which completely contradict her current fabrications. We caution you in the strongest possible terms to refrain from disseminating the outrageous false Story. If you recklessly publish the Story instead of checking readily available information demonstrating its falsity, all those involved will be exposed to very substantial liability.

¹ <<http://observer.com/2002/09/interview-with-the-vamp/>>

Re: Bill Cosby / Janice Dickinson, et al.

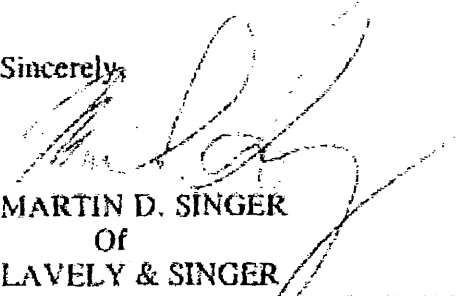
November 18, 2014

Page 3

You proceed at your peril.

This does not constitute a complete or exhaustive statement of all of my client's rights or claims. Nothing stated herein is intended as, nor should it be deemed to constitute a waiver or relinquishment, of any of my client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved. This letter is a confidential legal communication and is not for publication.

Sincerely,



MARTIN D. SINGER
Of
LAVELY & SINGER
PROFESSIONAL CORPORATION

MDS/lbg

cc: Mr. William H. Cosby
John Schmitt, Esq. (via email)
Mr. David Brokaw (via email)
Lynda B. Goldman, Esq.

K:\000-111814\MDS-BUZZ\FED 111814.wpd

EXHIBIT 7

- HOME
- TV
- NEWS

Bill Cosby Lawyer Disputes Janice Dickinson's Rape Claim

- EmailPrint
- 15Talk
-
-
-



Getty Images
November 19, 2014 | 07:58AM PT

Cynthia Littleton

Managing Editor: Television@Variety_Cynthia

UPDATE: NBC has dropped its Bill Cosby comedy project from development. Here is the full statement by attorney Martin Singer:

Janice Dickinson's story accusing Bill Cosby of rape is a lie. There is a glaring contradiction between what she is claiming now for the first time and what she wrote in her own book and what she told the media back in 2002. Ms. Dickinson did an interview with the New York Observer in September 2002 entitled "Interview With a Vamp" completely contradicting her new story about Mr. Cosby. That interview a dozen years ago said "she didn't want to go to bed with him and he blew her off." Her publisher Harper Collins can confirm that no attorney representing Mr. Cosby tried to kill the alleged rape story (since there 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 off. Documentary proof and Ms. Dickinson's own words show that her new story about something she now claims happened back in 1982 is a fabricated lie.

Attorney Martin Singer is disputing the claim made by former model Janice Dickinson that she was raped by Bill Cosby in 1982.

Singer, a top showbiz litigator who is frequently hired by celebs facing PR and legal crises, has blasted the accusations Dickinson leveled against Cosby on Tuesday's edition of "Entertainment Tonight."

"Janice (Dickinson's) story accusing Bill Cosby of rape is a complete lie," Marty Singer, Cosby's attorney, said in a statement. "There is documentary proof that Janice Dickinson is fabricating and lying about Bill Cosby."

Dickinson told "ET" in a lengthy interview that Cosby drugged and assaulted her after inviting her into his hotel room in Lake Tahoe, where he was performing. She claimed that she tried to tell the story in her 2002 autobiography but was blocked by Cosby's legal team. Singer asserted this claim was also untrue.

See More: Janice Dickinson Says Bill Cosby Sexually Assaulted Her in 1982

"The only story she gave 12 years ago in her autobiography as well as her interview with the media was that she refused to sleep with Mr. Cosby and he blew her off," Singer said. "You can confirm with (publisher) Harper Collins that she never claimed Mr. Cosby raped her, that no attorney representing Bill Cosby tried to kill the story (since there was no such story) and no one tried to prevent anything she wanted to say about Bill Cosby in her book."

Singer's statement marks a change in how Cosby's camp is handling of the growing allegations against the comedian from multiple women. The comedian himself has refused

to comment, and another Cosby attorney on Sunday issued a short statement denying what he called “discredited” claims from other women but refused to elaborate.

The mushrooming scandal has already had major fallout for the comedian, who has for decades been one of America’s most beloved entertainers. Cosby has canceled media appearances, and on Tuesday night Netflix confirmed it would delay the planned release of an hourlong comedy special “Bill Cosby 77,” which had been set to bow on Nov. 28.

There is strong speculation in the biz that NBC will be forced to put on hold its development of a new domestic comedy that was to star Cosby as the patriarch of an eclectic family.

Singer has experience dealing with clients who are facing salacious sexual allegations. Earlier this year, he guided director Bryan Singer through a lawsuit brought by Michael Egan, who made splashy claims in April that he was raped by Singer and others years before when he was underage. The case was dropped by Egan in August.

Filed Under:

- Bill Cosby

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EXHIBIT 8

THE

WRAP

Covering Hollywood

TheWrap Covering Hollywood

CNN Fires Back at Bill Cosby's Attorney for Remarkable 'Dishonesty'

TV | By Jethro Nededog on December 22, 2014 @ 2:13 pm Follow @therealjethro

I respond to your letter of late Friday evening, December 19, 2014.

Your letter is remarkable for its dishonesty.

I have reviewed the transcripts of the Burk and Gibble interview, your characterization of CNN's conduct and the discussions that took place in respect to Mr. Burk, what becomes clear both from the interview and the transcript: 1) he had no specific knowledge of Ms. Johnson's claims at the time period when she claims she was assaulted and 2) he was not an observer.

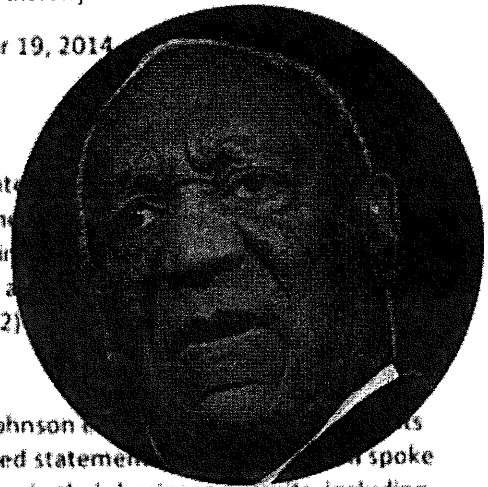
Mr. Burk essentially says he has no recollection of Ms. Johnson's claims as to him during the time he knew her. He offers generalized statements that he spoke in support of many different prominent African Americans in their business pursuits, including sometimes Mr. Cosby.

What you neglected to inform CNN about Mr. Burk was that he has a history of threatening and abusive behavior towards Ms. Johnson. Indeed, he is the subject of multiple restraining orders relating to her. This includes choking Ms. Johnson and even threatening to kill her, for which he pled guilty, was convicted and a criminal protective order was issued. Burk suggested to CNN that this conviction was subsequently vacated, but a review of the docket shows only that it was *affirmed* several months later. CNN even had a California attorney search the docket for anything that supported Burk's claim. No record of the conviction being vacated was found.

Related



Bill Cosby Accused of Sexually Assaulting Sammy Davis Jr.'s Girlfriend Katherine McKee





'SNL' Preempted by Dr. Evil Schooling Sony and North Korea (Video)



Bill Cosby Attorney Says CNN Decided Not to Use Interview Challenging Beverly Johnson Accusation

The cable news network responds to Martin Singer's claim that it's running a smear campaign against the famous comedian

CNN fired back at Bill Cosby's attorney's claims that the news network isn't conducting a fair investigation of the claims against the comedian.

"Your letter is remarkable for its dishonesty," CNN Worldwide's senior vice president of legal, David Vigilante, wrote in a letter obtained by TheWrap.

In a letter to CNN president Jeffrey Zucker that surfaced on Saturday, Cosby's attorney, Martin Singer, said that CNN decided not to use an interview with Beverly Johnson's live-in boyfriend from 2006-2009, Mark Burk, because he didn't corroborate her story of being drugged by the "Cosby Show" star for an upcoming special planned by the cable news network.

See photos: Bill Cosby's NBC Sitcom Is Dead: 10 Other TV Dads Who Adopted a New Family

In addition, Singer alleged that the news organization wasn't vetting Cosby's accusers to the same level it vetted those who contradicted the accusers' statements.

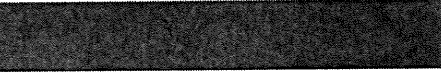
In response, Vigilante wrote, "Mr. Burk essentially says he has no recollection of Ms. Johnson ever mentioning any incidents to him during the time he knew her. He offers generalized statements that Ms. Johnson spoke in support of many different prominent African Americans in their business pursuits, including sometimes Mr. Cosby."

Also Read: New York Post Writer Agrees With Bill Cosby: 'Black Media' Comments Are Being 'Totally Misconstrued'

Additionally, Vigilante said that Singer failed to mention in his previous letter that Burk had a history of "threatening and abusive behavior" towards Johnson, which he pled guilty to and was subject to a criminal protective order. Also, he sought palimony from Johnson, which was dismissed by the court. Read the letter below:

VIA ELECTRONIC MAIL & REGULAR MAIL

Martin D. Singer
Lavelly & Singer



Re: Response to your letter of December 19, 2014

Dear Mr. Singer:

I respond to your letter of late Friday evening, December 19, 2014.

Your letter is remarkable for its dishonesty.

I have reviewed the transcripts of the Burk and Gible interviews and they show that your characterization of CNN's conduct and the discussions themselves is demonstrably false. With respect to Mr. Burk, what becomes clear both from the interview and from our research is that 1) he had no specific knowledge of Ms. Johnson's claims and did not know Ms. Johnson during the time period when she claims she was assaulted and 2) he is far from a disinterested observer.

Mr. Burk essentially says he has no recollection of Ms. Johnson ever mentioning any incidents to him during the time he knew her. He offers generalized statements that Ms. Johnson spoke in support of many different prominent African Americans in their business pursuits, including sometimes Mr. Cosby.

What you neglected to inform CNN about Mr. Burk was that he has a history of threatening and abusive behavior towards Ms. Johnson. Indeed, he is the subject of multiple restraining orders relating to her. This includes choking Ms. Johnson and even threatening to kill her, for which he pled guilty, was convicted and a criminal protective order was issued. Burk suggested to CNN that this conviction was subsequently vacated, but a review of the docket shows only that it was *affirmed* several months later. CNN even had a California attorney search the docket for anything that supported Burk's claim. No record of the conviction being vacated was found.

In assessing Burk's credibility, it is also notable that he filed a legal action seeking "palimony" payments from Ms. Johnson. This lawsuit was dismissed because the court found him to be a vexatious litigant. As I am sure you already know, a vexatious litigant is someone who the court determines repeatedly makes meritless or false claims.

We also talked with Mr. Gible and looked into his background. Ms. Johnson says she has no memory of this man who claims to have managed her from 1992-1994. Mr. Gible was unable to provide any documentary evidence that such a relationship existed. Mr. Gible gave us the name of a casting agent he said could corroborate his claims but, despite multiple attempts using multiple numbers over the past two days, CNN has been unable to reach her.

As with Mr. Burk, Mr. Gible admits he did not know Ms. Johnson at the time the alleged incident occurred. And like Mr. Burk, our research shows that Mr. Gible also has a criminal history. Indeed, he is a convicted felon -- a detail you again omitted in your prior correspondence. CNN learned that around the time period he claims he was managing Ms. Johnson, Gible was tried and convicted for receiving stolen property and conspiracy to commit the robbery of a former client, for which he spent two years in prison.

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In early December, Johnson came forward with Beverly Johnson Accuses Bill Cosby of Drugging Her During Audition for 'The Cosby Show' [href="http://www.thewrap.com/model-beverly-johnson-accuses-bill-cosby-of-drugging-her-during-audition-for-the-cosby-show/" target="_blank">accusations that Cosby drugged her during an audition for "The Cosby Show" in the mid-80s in an essay for Vanity Fair. The supermodel said that she was able to fight back, which caused the comedian to place her in a taxi home before any type of possible assault could occur.](http://www.thewrap.com/model-beverly-johnson-accuses-bill-cosby-of-drugging-her-during-audition-for-the-cosby-show/)

Also Read: Bill Cosby Accused of Sexually Assaulting Sammy Davis Jr.'s Girlfriend Katherine McKee Johnson is just one of more than 20 women who have come forward with accusations of being drugged and sexually assaulted by Cosby.

In the wake of the mounting allegations against the 77-year-old comedian, Singer released a statement saying, "The new, never-before-heard claims from women who have come forward in the past two weeks with unsubstantiated, fantastical stories about things they say occurred 30, 40, or even 50 years ago have escalated far past the point of absurdity."

Since the allegations against Cosby surfaced, NBC has abandoned plans to develop a comedy that would have starred Cosby, while Netflix has postponed a comedy special featuring the comedian. Also, several shows on Cosby's standup tour have been canceled.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANICE DICKINSON, an individual,
Plaintiff,
v.
WILLIAM H. COSBY, JR., an individual
Defendant.

Case Number: BC 580909

**[PROPOSED] ORDER RE PLAINTIFF'S
MOTION TO LIFT STAY OF
DISCOVERY**

Hearing Date: November 18, 2015
Hearing Time: 8:30 a.m.
Dept.: 47
Judge: Hon. Debre Weintraub
Action Filed: May 20, 2015

This matter came on regularly before the Court for hearing on November 18, 2015. The Court, having reviewed the moving and opposing papers on Plaintiff's Motion to Lift Stay of Discovery pursuant to section 425.16(g) of the Code of Civil Procedure in the pending action; and oral argument of counsel having been received by the Court.

The Court finds, adjudges and orders as follows:

1 IT IS HEREBY ORDERED that the stay of discovery imposed by California Civil Code
2 section 425.16(g) is hereby lifted for the limited discovery to enable Plaintiff to take the
3 depositions of Defendant William H. Cosby, Jr. and his counsel Martin Singer.

4 IT IS HEREBY ORDERED that Plaintiff's Request To Take Judicial Notice is
5 GRANTED.

6
7 DATED: _____

8 HON. DEBRE K. WEINTRAUB, JUDGE
9 Los Angeles County Superior Court

1 Lisa Bloom, Esq. (SBN 158458)
Jivaka Candappa, Esq. (SBN 225919)
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7 Nadia@TheBloomFirm.com
8 Attorneys for Plaintiff JANICE DICKINSON

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
12

13 JANICE DICKINSON, an individual,
14 Plaintiff,
15 v.
16 WILLIAM H. COSBY, JR., an individual
17 Defendant.
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Case Number: BC 580909

**REQUEST TO TAKE JUDICIAL
NOTICE**

**Filed concurrently with Plaintiff's
NOTICE OF MOTION AND MOTION
TO LIFT STAY OF DISCOVERY (CCP
§ 425.16(g)) IN PENDING ACTION
AGAINST WILLIAM H. COSBY, JR.**

Hearing Date: November 18, 2015

Hearing Time: 8:30 a.m.

Dept.: 47

Judge: Hon. Debre Weintraub

Action Filed: May 20, 2015

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

1
2 Plaintiff Janice Dickinson hereby requests that this Court take judicial notice of the
3 Motion For Leave To File Plaintiff's Reply To the National Enquirer's Memorandum of Law in
4 Opposition to Plaintiff's Motion to Compel, filed on January 5, 2006 in the matter Andrea
5 Constand vs. William H. Cosby, Civil Action No. 05-CV-1099 in the United States District
6 Court for the Eastern District of Pennsylvania for consideration in conjunction with Plaintiff's
7 Motion to Lift The Stay of Discovery Imposed by Code of Civil Procedure § 425.16(g).
8 Specifically, page 9 of ECF Document 68 of the court record Motion For Leave To File
9 Plaintiff's Reply To the National Enquirer's Memorandum of Law in Opposition to Plaintiff's
10 Motion to Compel shows that Martin Singer was present at the oral deposition of William H.
11 Cosby, Jr. on Thursday, September 29, 2005. This request is made pursuant to Evidence Code
12 § 452(d) that judicial notice may be taken of records of any court of record of the United States
13 or of any state of the United States.

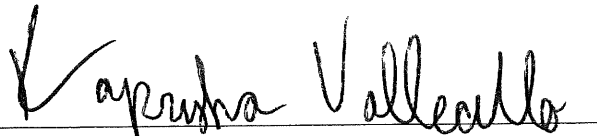
14 Pursuant to Cal. Rules of Court, rule 3.1306(c), the parties are hereby provided with true
15 and correct copies of the matters of which judicial notice is requested, as such materials is
16 attached hereto, respectively, as Exhibits "A".

17 Pursuant to Cal. Rules of Court, rule 3.1306(c), the parties are hereby provided with true
18 and correct copies of the parts of the court file of which judicial notice is requested, as such
19 materials is attached hereto, respectively, as Exhibits "A". Plaintiff will make arrangements
20 with the clerk of the Court to have the file in the courtroom at the time of the hearing

21 Respectfully submitted,

22 DATED: September 20, 2015

THE BLOOM FIRM

23
24 

25 KAPRISHA VALLECILLO

26 Attorneys for Plaintiff Janice Dickinson

TROIANI/KIVITZ, L.L.P.

ATTORNEYS AT LAW

DOLORES M. TROIANI, ESQUIRE
BEBE H. KIVITZ, ESQUIRE

38 NORTH WATERLOO ROAD
DEVON, PA 19333
(610) 688-8400
FAX (610) 688-8426

January 5, 2006

(Hand-Delivered)

Office of the Clerk of Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106

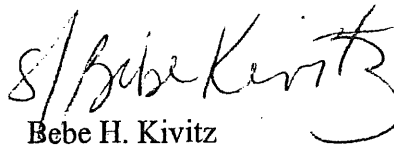
RE: Andrea Constand vs. William H. Cosby, Civil Action No. 05-CV-1099
Motion For Leave To File Plaintiff's Reply To the National Enquirer's
Memorandum of Law In Opposition to Plaintiff's Motion To Compel

Dear Sir/Dear Madam:

Enclosed for filing in the above-captioned matter, please find an original and a disk.

Thank you for your anticipated cooperation.

Respectfully submitted,


Bebe H. Kivitz

BHK:m

Enclosure

cc: Patrick J. O'Connor, Esquire (w/enclosure-first class mail)
Andrew D. Schau, Esquire w/enclosure -first class mail)
Andrea Constand (w/enclosure - first class mail)

(68)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

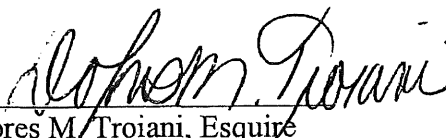
ANDREA CONSTAND,	: CIVIL ACTION
Plaintiff	:
v.	: NUMBER 05-1099
	:
WILLIAM H. COSBY, JR.,	: FILED UNDER SEAL
Defendant	:

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
REPLY MEMORANDUM OF LAW IN RESPONSE TO
NATIONAL ENQUIRER'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA FOR DOCUMENTS**

Plaintiff Andrea Constand respectfully moves for leave to file the attached Memorandum of Law in response to The National Enquirer's Memorandum in Opposition to Plaintiff's Motion to Compel The National Enquirer's Compliance with a Subpoena. A reply is necessary to respond to legal arguments which have been asserted by The National Enquirer for the first time in their response.

Respectfully submitted,

TROIANI/KIVITZ, L.L.P.

By: 
Dolores M. Troiani, Esquire
I.D. No. 21283
Bebe H. Kivitz, Esquire
I.D. No. 30253
38 North Waterloo Road
Devon, Pennsylvania 19333
(610) 688.8400

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND,	:
Plaintiff	: CIVIL ACTION
	:
v.	: NO. 05-CV-1099
	:
WILLIAM H. COSBY, JR.,	: FILED UNDER SEAL
Defendant	:

**PLAINTIFF'S REPLY TO THE NATIONAL ENQUIRER'S MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

Plaintiff Andrea Constand submits the following Reply Memorandum of Law in support of her Motion to Compel. The arguments presented here are limited to the privilege issues raised by the National Enquirer. Further briefing in connection with the service issues is unnecessary because the National Enquirer concedes the facts necessary to conclude that service was proper: it admits that it has a New York office, and that half of its staff works there; and it admits that a process server left a copy of the subpoena with the (only) receptionist at the National Enquirer address of record, after a person named "Mark" declined to retrieve it from the receptionist's desk. *See*, Introduction, National Enquirer's Memorandum of Law, at 1; *See also*, Memorandum of Law, National Enquirer, at 8 and 11 ("The National Enquirer is located in New York").

ARGUMENT

The Discovery Materials Sought by Plaintiff Should be Produced because Plaintiff is not seeking Confidential Source Materials and to the Extent that National Enquirer has Made Source Materials Public it Has Waived its Privilege.

Plaintiff has sued Defendant for defamation for statements he made to the media, including those made in an exclusive interview published by the National Enquirer. Plaintiff

may also have claims against the media in connection with those publications. Therefore, what Defendant said to the National Enquirer reporter, what he revised, if anything, and what he was shown, are all relevant to Plaintiff's claims and to decisions concerning joinder. The National Enquirer is the *only* entity that possesses the notes of Defendant's conversations with National Enquirer's reporter, Barry Levine, and the drafts of the Ferrier and Cosby interviews. Moreover, although Mr. Cosby or his counsel presumably have an original or copy of the actual contract Defendant entered into with the tabloid, *Defendant has refused to produce it without a confidentiality agreement.*

The National Enquirer argues that all unpublished information related to Defendant's and Beth Ferrier's interviews are confidential and protected. Under the circumstances presented here, however, the National Enquirer's position is without merit. Defendant testified at his deposition that he learned from Martin Singer, Esquire, his representative, that Beth Ferrier, another woman accusing him of sexual misconduct, had made a statement to the National Enquirer. (Cosby dep. 9/29/05, p. 148, Exhibit A). In response, Defendant and the National Enquirer entered into a written agreement wherein Cosby agreed to an exclusive interview with the National Enquirer in exchange for the National Enquirer's agreeing to kill the Beth Ferrier story. (Cosby dep. 9/29/05, pp. 155-156, 161, Exhibit A). At the time of the agreement, Defendant was aware of Beth Ferrier's allegations and may have been aware of a polygraph taken by her at the request of the National Enquirer. (Cosby dep. 9/29/05, p. 166-168, Exhibit A). Most importantly, Defendant testified that he was read a draft of Beth Ferrier's story by his counsel, Jack Schmitt, Esquire. (Cosby dep. 9/29/05, p. 169, Exhibit A). Clearly, the National Enquirer had voluntarily disclosed the Beth Ferrier story and the facts in connection with the story to the Defendant.

The National Enquirer's disclosure extends even further. Defendant testified that he was given the opportunity to review his own interview before it was published. (Cosby dep. 9/29/05, pp. 171, 182, Exhibit A). According to Defendant, Barry Levine had accurately quoted him. *Id.* At the deposition, his attorneys, including John Schmitt, Esquire, who accompanied Defendant at the meeting with the National Enquirer, stipulated that Defendant had, in fact, said everything that the National Enquirer placed in quotation marks, as coming from him, in its published interview. (Cosby dep. 9/29/05, pp. 172-173, Exhibit A).

The material that Plaintiff seeks, therefore, is vastly different than "source" material protected by the Pennsylvania Shield Law. 42 Pa. C.S. § 5942(a). Indeed, once a newspaper's source materials are made public or disclosed to those outside of the newspaper, its privilege is waived and will not protect the materials from disclosure to third parties. *See, Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 278 (3d Cir. 1980) (shield law protects all sources of information persons, documents, and recordings with *exception* of information for which privilege was waived by actual publication or public disclosure) (*citing Re Taylor and Selby Appeals*, 412 Pa. 32, 193 A.2d 181 (1963)). *See also Anderson v. Nixon*, 444 F. Supp 1195 (D.D.C. 1978) (Reporter waived the privilege by filing suit to vindicate his rights).

Accordingly, the National Enquirer may not assert a privilege over materials it has printed or made public by revealing same to the Defendant or his agents. Once shared with non-newspaper individuals, the Ferrier draft shown by the National Enquirer to Defendant and Mr. Schmitt, cannot be deemed privileged. Similarly, Defendant's "draft" interview, whether revised by him, or simply endorsed and adopted by him, has already been shown to Defendant and his representative. Thus, it, too, can no longer be characterized as privileged.

Even assuming that the National Enquirer has not waived its privilege, Plaintiff does not seek the identity of newspaper “sources”. It is clear that the only sources are Defendant and Ms. Ferrier themselves, and both agreed to have their stories published. Defendant’s interview was published in the National Enquirer; Ms. Ferrier’s story was ultimately published by the Philadelphia Daily News.

To the extent that the requested discovery materials contain source information related to sources other than the Defendant and Ms. Ferrier, the law does not bar their production in a defamation action. In *Hatchard v. Westinghouse Broadcasting*, 516 Pa. 184, 532 A.2d 346 (1987), in which plaintiff attempted to obtain videos prepared but not shown in a broadcast, the Pennsylvania Supreme Court reviewed the scope of the protection offered by the Shield Law in the particular context of a defamation suit. The Court refused to preclude disclosure of all unpublished information in the media’s possession, holding that “unpublished documentary information . . . is discoverable by a Plaintiff in a libel action to the extent [it] does not reveal the identity of a personal source of information or may be redacted to eliminate the revelation of a personal source of information. 516 Pa. at 195. This is so regardless of whether the defamation action is against the media entity itself or some other person. Following *Hatchard*, the Court in *Davis v. Glanton*, 705 A.2d 879 (1997), held that the newspaper was required to produce material, which had been used for a published article. The Court stated:

Regardless of whether the defendant in the defamation action is the media entity itself or some other person, the public figure Plaintiff faces the same hurdle; the burden of proving that a defamatory statement was maliciously published and that the statement was false. *If the media are permitted to withhold information that is relevant to this burden, whether or not the media are themselves the Defendants, the obstacles placed in the way of a plaintiff in attempting to vindicate his constitutionally protected interest in his reputation are rendered almost insurmountable.* 705 A.2d at

884-885 (emphasis added).

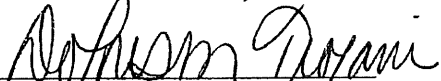
CONCLUSION

Accordingly, Plaintiff seeks the following:

- 1) The contract entered into between Defendant and the National Enquirer concerning his exclusive interview, which is not “privileged” and, of course, does not relate to sources.
- 2) The notes of the reporter’s interviews with Defendant, which are critical to Plaintiff’s defamation claim, and again, do not reveal – or can be redacted to eliminate – the identity of any sources.
- 3) The drafts and/or any revisions, endorsements, or mark-ups of the Cosby article and Beth Ferrier article already shown to and read by Defendant and his representative. Both articles are relevant to Defendant’s state of mind in making statements as to Plaintiff. The newspaper’s knowledge, Plaintiff’s defamation claim, and Defendant’s credibility. Once shown to non-newspaper members of the public, the National Enquirer has waived its argument that any privilege attaches to the above documents.

For all of the above reasons, Plaintiff respectfully requests that the National Enquirer be ordered to produce the requested materials on an expedited basis.

Respectfully submitted,
TROIANI/KIVITZ, L.L.P.

By: 

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND : CIVIL ACTION

- VS - : NO. 05-CV-1099

WILLIAM H. COSBY, JR. : VOLUME II

COPY

Oral deposition of WILLIAM H. COSBY,
JR., taken pursuant to notice, held at the
Rittenhouse Hotel, 210 West Rittenhouse
Square, Philadelphia, Pennsylvania, on
Thursday, September 29, 2005, beginning at
approximately 9:20 a.m., before Jen
Marchesani, a Certified Professional Reporter
and a Commissioner of the Commonwealth of
Pennsylvania.

KAPLAN, LEAMAN AND WOLFE

The Bourse Building, Suite 970
111 South Independence Mall East
Philadelphia, Pennsylvania 19106

(215) 922-7112

William Cosby, Jr.

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you knew that Beth Ferrier would give a statement to the press?

A. Maybe about eight, nine months ago.

Q. How did you know that?

A. I got a call about it.

Q. From whom?

A. I hope I'm accurate, counsel.

Q. You have four counsel sitting here. Which counsel was it?

A. It was Marty Singer.

Q. What did he say to you in that call?

MR. O'CONNOR: Please don't answer that. It's attorney-client privilege. You know it is. It's absurd.

THE WITNESS: Would she do that?

BY MS. TROIANI:

Q. What was Mr. Singer representing you in when he called you?

William Cosby, Jr.

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Q. Do you have a public relations person who negotiates with newspapers when you give them an interview?

A. Yes.

Q. Did someone negotiate your interview with the Enquirer?

MR. O'CONNOR: Don't answer that question if it was an attorney. If it was not an attorney, you can answer the question.

THE WITNESS: I cannot answer the question.

BY MS. TROIANI:

Q. Did you have a written contract with the Enquirer to give this interview?

MR. O'CONNOR: Which interview?

MS. TROIANI: Your interview, my story.

MR. O'CONNOR: That was dramatic. Can you answer the question?

William Cosby, Jr.

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THE WITNESS: Yes.

BY MS. TROIANI:

Q. Please do.

A. I did.

Q. You did have -- then my question was can you answer the question.

You do have a written contract with the Enquirer then?

A. Yes.

MS. TROIANI: Are you taking the position that that is also privileged, Mr. O'Connor?

MR. O'CONNOR: Yes, just like Ms. Ferrier's contract was. I would consider exchanging her contract and her payment.

MS. TROIANI: I don't have anything from her.

MR. O'CONNOR: I'm not going to allow anything like that to get in. I allowed him to answer the question it was a contract. I'm not going to allow him to divulge the discussions

William Cosby, Jr.

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couldn't tell me.

MR. O'CONNOR: That's outrageous. Let's break for lunch.

(At this time, a lunch break was taken.)

BY MS. TROIANI:

Q. What is your understanding of the agreement that you had with the National Enquirer concerning the story that appeared in the National Enquirer which was your exclusive interview termed my story?

A. I would give them an exclusive story, my words.

Q. What would they give you in return?

A. They would not print the story of -- print Beth's story.

Q. Why did you make that agreement?

A. It was at a time when I did not want any tabloid-type accusations, sexual accusations going into a paper.

Q. What do you mean by

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William Cosby, Jr.

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now?

A. Yes.

Q. At the time you made this agreement with the Enquirer, did you know what her allegations were?

A. Say that part again. At the time --

Q. You made the agreement with the National Enquirer to give your story, did you know what Beth's allegations were?

A. Her story, I knew at least the National Enquirer's story.

Q. The National Enquirer's version of what Beth said; is that what you're saying?

A. Yes.

Q. Did you know that Beth had been given a polygraph?

MR. O'CONNOR: That she had given one?

MS. TROIANI: Had been given one.

THE WITNESS: When did I

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William Cosby, Jr.

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know this?

BY MS. TROIANI:

Q. I'm asking, at any time did you know that Beth had been given a polygraph?

A. That's what they said.

Q. Who said?

A. Somebody told me. I don't remember who.

Q. Do you know if you knew that before --

A. I think it went into print somewhere. I think it was in one of your papers.

Q. So, you don't believe you knew she passed the polygraph before you made the deal with the National Enquirer?

MR. O'CONNOR: I object to the form. I mean, that it was reported that she passed the polygraph [I think would be a fair question.

BY MS. TROIANI:

I'm asking your knowledge.

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William Cosby, Jr.

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asked?

BY MS. TROIANI:

Q. I'll clarify that. That's fair.

Did someone read to you Beth's story that she had given to the National Enquirer?

A. Yes.

Q. When was that?

A. That was before it was supposed to come out.

Q. Did she say anything in that story different than the one that we reviewed this morning?

A. I think that I will not say anything because it was read to me by my counsel.

MR. O'CONNOR: I was just advised, and I want to put this on the record, by Mr. Schmitt that his understanding of that article came through an attorney-client relationship with his counsel.

MS. TROIANI: Marty Singer?

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William Cosby, Jr.

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Q. Did you tell them, because some of the things you said are in quotes, and some of it is just the story.

MR. O'CONNOR: This is in quotes, too, Cosby declared no man.

MS. TROIANI: It's also in quotes, the charge can --

MR. O'CONNOR: I want it in context. That's all I'm saying. His quote starts with no one wants to see his family put in the position of having these kinds of allegations come out and for your loved ones to suffer emotional stress, then it goes on.

MS. TROIANI: That's fine. I didn't really care about that quote. I'll ask you about every quote that's in here.

THE WITNESS: Please don't do that. Go ahead. I'm sorry.

MR. O'CONNOR: We're going to stipulate to what's quoted I believe as coming from his mouth;

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William Cosby, Jr.

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isn't that correct?

MR. SCHMITT: Yes.

MR. O'CONNOR: We'll stipulate that whatever is in quotation marks from Mr. Cosby he said.

MS. TROIANI: That's fine. It doesn't mean I still can't ask him the question.

MR. O'CONNOR: I know that. I was trying to save some time.

BY MS. TROIANI:

Q. The charge can influence the view that family and friends have of him as a good person.

A. Did I say that?

Q. It has quotations around it, yes. Do you remember saying that?

A. No, I don't remember saying it, of course not. But when the grammar gets to of him, we're still talking about no man wants to. And then when you get to of him, so I'm talking about no man.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND,	:	CIVIL ACTION
Plaintiff	:	
v.	:	NUMBER 05-1099
	:	
WILLIAM H. COSBY, JR.,	:	FILED UNDER SEAL
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that on, January 5, 2006, the undersigned were served in the following manner, a true and correct copy of: **Plaintiff's Motion For Leave to File A Reply Memorandum of Law to The National Enquirer's Memo in Opposition to Plaintiff's Motion To Compel Compliance with Subpoena Issued to the National Enquirer and Memorandum of Law.**

NAME

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Date: 1/5/06

PROOF OF SERVICE

JANICE DICKINSON v. WILLIAM H. COSBY, JR.

LASC No: BC 580909

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 20700 Ventura Blvd., Suite 301, Woodland Hills, CA 91364.

On September 21, 2015, I served the following document(s) described as:

NOTICE OF MOTION TO LIFT STAY OF DISCOVERY PURSUANT TO CCP SECTION 425.16(g); PROPOSED ORDER RE PLAINTIFF'S MOTION TO LIFT STAY OF DISCOVERY; AND REQUEST TO TAKE JUDICIAL NOTICE.

The above-referenced documents were served on the interested parties in this action by placing true and correct copies thereof, enclosed in sealed envelopes, addressed as follows:

Attorneys for Defendant;

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BY OVERNIGHT MAIL SERVICE: I am readily familiar with the firm's practice of collection and processing correspondence by overnight mail. Under that same practice it would be deposited with United Parcel Service on that same day with charges made to our account with that firm at Woodland Hills, California in the ordinary course of business.

STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 21, 2015, at Woodland Hills, California.

STEVEN K. CONLON
(Print or Type Name)


(Signature of Declarant)

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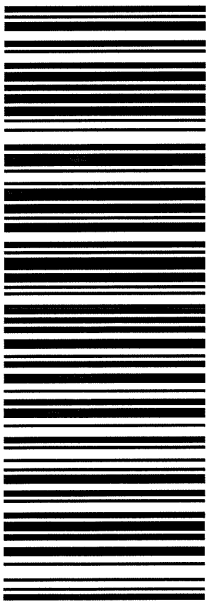

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