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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

**PLAINTIFF'S REPLY TO
DEFENDANT'S OPPOSITION TO
MOTION TO LIFT STAY OF
DISCOVERY PURSUANT TO CCP §
425.16(g); MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATIONS
OF LISA BLOOM AND JANICE
DICKINSON AND EXHIBITS
THERE TO**

Hearing Date: November 2, 2015
Hearing Time: 8:30 a.m.
Dept.: 47
Judge: Hon. Debre Weintraub

Action Filed: May 20, 2015
Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

Without the limited depositions sought on this motion, Plaintiff Janice Dickinson (“Dickinson”) is in a Catch-22: in opposition to Defendant’s anti-SLAPP motion, she is required to offer admissible evidence in support of each element of her defamation claim, including malice. Yet because discovery has been stayed by the anti-SLAPP statute, she is unable to obtain the best evidence of malice: Mr. Cosby’s and Mr. Singer’s testimony as to their thinking (or lack thereof) and investigation (or lack thereof) when they decided to publicly and falsely excoriate her as a liar immediately after she revealed that Mr. Cosby raped her. To address precisely this type of situation, Cal. Code of Civil Procedure § 425.16(g) offers an out: “the court . . . for good cause shown, may order that specified discovery be conducted.” Defendant’s suggestion that Plaintiff should be satisfied with Mr. Singer’s carefully crafted, self-serving, selective declaration submitted on Defendant’s anti-SLAPP motion is absurd. Having put malice at issue on the anti-SLAPP motion, Defendant himself has established “good cause” for Ms. Dickinson to conduct reasonable limited discovery on that element.

And Mr. Cosby’s deafening silence on the anti-SLAPP motion – he submitted no declaration whatsoever -- speaks volumes. He has not denied drugging Ms. Dickinson. He has not denied raping Ms. Dickinson. He has not denied directing his lawyer of at least a decade, Mr. Singer, to publicly vilify her. He does not deny reviewing the libelous statements in advance. He does not deny ratifying them afterwards. He does not deny that he refused to retract them when requested by Ms. Dickinson’s counsel prior to this litigation. He does not deny that he knew that calling her a liar was a vicious falsehood, because he knows he raped her, and he knows her rape disclosure was truthful. Thus, this Court may readily infer that the defamatory statements are provably false.

II. LEGAL ARGUMENT

A. Good Cause Exists To Lift The Discovery Stay

The anti-SLAPP statute empowers the courts to allow plaintiffs to conduct limited discovery upon a noticed motion and demonstration of good cause. Cal. Code of Civil Procedure § 425.16(g). Generally, good cause for lifting the discovery stay exists where the

1 evidence required to establish plaintiff's prima facie case is in the hands of the Defendant.

2 *Garment Workers Ctr. v. Superior Court* (2004) 117 Cal. App. 4th 1156, 1162.

3 To satisfy the “good cause” standard, the moving party must show that evidence “is
4 reasonably shown to be held, or known, by defendant or its agents and employees” that would
5 defeat the motion to strike by demonstrating that the plaintiff has “establish[ed] a prima facie
6 case.” *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868.

7 In this defamation action, Mr. Cosby argues in his anti-SLAPP motion that Ms.
8 Dickinson, a public figure, must prove malice. Malice is a question of knowledge, motive and
9 investigation – all matters provable only via testimony from Mr. Singer and Mr. Cosby as to
10 what they thought and did or failed to do on or about November 18 and 19, 2014, when they
11 went on the attack against Ms. Dickinson. Malice is provable by evidence of defendant's
12 knowledge that his statement was false or with reckless disregard of whether it was false or not.
13 *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 285-286; *Harte-Hanks Commc'ns, Inc. v.*
14 *Connaughton*, (1989) 491 U.S. 657, 667. "Reckless disregard" is established when there is
15 "sufficient evidence to permit the conclusion that the defendant in fact entertained serious
16 doubts as to the truth of his publication" *St. Amant v. Thompson*, (1968) 390 U.S. 727, 731 or a
17 “high degree of awareness of ... probable falsity,” *Garrison v. Louisiana*, (1964) 379 U.S. 64,
18 74. A defendant's failure to investigate that is a product of a deliberate decision not to acquire
19 knowledge of facts that might confirm the probable falsity of [the subject] charges,” amounts to
20 a “ ‘purposeful avoidance of the truth’ ” sufficient to support a finding of malice. (*Antonovich v.*
21 *Superior Court* (1991) 234 Cal.App.3d 1041, 1053) *Christian Research Institute v. Alnor*,
22 (2007) 148 CA4th 71, 90.

23 The testimony that Ms. Dickinson seeks to obtain – on the issue of the knowledge,
24 motives and investigation of facts by Defendant and his lawyer -- is not readily available from
25 any other source. “Informal discovery” is not an option, as members of Mr. Cosby’s team will
26 not speak with Plaintiff’s counsel informally. Good cause therefore exists for the depositions.

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1 **B. *Garment Workers* Is Distinguishable Because That Case Did Not Require**
2 **Plaintiff To Prove Malice**

3 In his opposition, Defendant relies heavily on *Garment Workers Ctr. v. Superior Court*
4 (2d Dist., 2004) 117 Cal. App. 4th 1156. Because Defendant himself has put malice at issue in
5 the instant case, *Garment Workers* is easily distinguishable.

6 In *Garment Workers*, the court begins by upholding the language in *Lafayette* that “the
7 fact evidence necessary to establish the plaintiff’s prima facie case is in the hands of the
8 defendant or a third party goes a long way toward showing good cause for discovery.” 117
9 Cal.App.4th at 1162. The court goes on to say that other factors may be at play as well: whether
10 the information sought is readily available from other sources (not present here); whether malice
11 is required to be established based on the face of the complaint (Defendant himself has put it at
12 issue here); whether plaintiff cannot prevail because the complaint is legally deficient (not
13 present here). *Id.*

14 *Garment Workers* turned on a finding that because plaintiffs in that case might not even
15 be required to prove malice, ordering a pre-anti-SLAPP motion depositions on the issue of
16 malice was unnecessary:

17 The only basis for requiring proof of actual malice in this case is GWC’s characterization
18 of the disagreement between it and Fashion 21 as a “labor dispute.” Fashion 21 disputes
19 this characterization. Again, this issue may be decided as a matter of law based on the
20 evidence already in the record. If the trial court determines Fashion 21 and GWC are not
21 engaged in a labor dispute then there would be no need for discovery on the issue of
22 actual malice.

23 *Id.* at 1163.

24 In the instant case, Defendant himself insists on his anti-SLAPP motion that Ms.
25 Dickinson must prove malice. Hence *Garment Workers* is inapposite.

26 In addition, the *Garment Workers* court balanced the equities, finding that the plaintiff,
27 “a large, well-financed corporation” was “acting in its corporate interest against a small,
28 nonprofit organization advocating for social justice,” and that denying the depositions sought in
that lopsided action was thus “particularly compelling.” *Id.* at 1163. The instant action presents

1 the polar opposite situation: Mr. Cosby has a reported worth of \$400 million, while Ms.
2 Dickinson recently declared bankruptcy. Reply Decl. of Lisa Bloom, Exhibit A; Dickinson
3 Declaration, par. 15. Balancing of the equities favors Ms. Dickinson.

4
5 **C. Defendant's Defamatory Statements Are Provably False Factual Allegations**

6 Relying on *Paterno v. Superior Court* (2008) 163 Cal. App. 4th 1342, Defendant argues
7 that Ms. Dickinson is not entitled to a lift of the stay because she cannot show that Defendant's
8 statements are "provably false." This is no more than a requirement that Ms. Dickinson allege
9 false statements of fact, rather than opinion¹, as the basis for her libel claims. *Milkovich v.*
10 *Lorain Journal Co.* (1990) 497 U.S. 1, 21.

11 This she has done. Ms. Dickinson revealed that Mr. Cosby drugged and raped her. The
12 defamatory statements accuse her of lying on this very serious subject. Those statements were
13 factually false, because Ms. Dickinson was telling the truth. Rape is not a matter of opinion, it is
14 a real event that happened to Ms. Dickinson. Sadly, rape is an accusation proven or disproven in
15 American courts every day. Hence, Defendant's statements are provably false.

16 Defendant confuses *provably false* (capable of being proven false at trial) with *proven*
17 *false* (having already been proven false). While Ms. Dickinson's Declaration sets forth her
18 testimony on this issue, Ms. Dickinson cannot fully prove her case until she has prevailed on the
19 anti-SLAPP motion, had a full and fair opportunity to conduct discovery, and had her day in
20

21 ¹ Even statements of opinion do not enjoy broad protection, if they imply "false,
22 defamatory implications" or "a knowledge of facts which lead to a defamatory conclusion." "In
23 *Milkovich*, the United States Supreme Court rejected the contention that statements of opinion
24 enjoy blanket constitutional protection. The Supreme Court reasoned that "[s]imply couching
25 such statements in terms of opinion does not dispel these [false, defamatory] implications"
26 because a speaker may still imply "a knowledge of facts which lead to the [defamatory]
27 conclusion" (*id.* at p. 18). The Court explained that expressions of opinion may imply an
28 assertion of objective fact. For example, "[i]f a speaker says, 'In my opinion John Jones is a liar,'
he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if
the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or
incomplete, or if his assessment of them is erroneous, the statement may still imply a false
assertion of fact." Statements of opinion that imply a false assertion of fact are actionable."
Franklin v. Dynamic Details, Inc. (2004) 116 Cal. App. 4th 375, 385 (citations omitted.)

1 court at trial in this action. This is not a summary judgment motion requiring Ms. Dickinson to
2 prove up her entire case.

3 *Paterno* is inapposite. In *Paterno*, a media critic published an article critical of a local
4 newspaper. The trial court concluded that twenty-nine of the thirty-two allegedly defamatory
5 statements were nonactionable opinion, rather than factual statements. Of the remaining three
6 allegedly libelous statements, the plaintiff newspaper publisher admitted that the statements
7 were substantially true, insisting only that additional information putting it in a more favorable
8 light should have been included in the article. The court found the media critic was under no
9 obligation to include extraneous information – what the court called a “novel theory of liability”
10 -- “defamation by omissions.” *Paterno*, 163 Cal. App. 4th at 1352. “Media defendants are liable
11 for calculated falsehoods, not for their failure to achieve some undefined level of objectivity.
12 Slanted reporting, however, does not by itself constitute malice.” *Id.* at 1352.

13 None of this, of course, has any bearing on the instant case, which presents a simple,
14 straightforward factual issue: did Mr. Cosby drug and rape Ms. Dickinson? If so, his use of
15 representatives to call her a liar is factually false. No issue of “defamation by omission” is
16 alleged here. There is no “substantial truth” in the defamatory statements attacking Ms.
17 Dickinson’s veracity on her very personal and painful revelations of rape.

18 **1. In a strikingly similar action, the U.S. District Court found that Mr. Cosby’s**
19 **representatives’ accusations of lying against other alleged rape victims were**
20 **“provable as true or false.”**

21 All of Mr. Cosby’s arguments have been carefully reviewed and soundly rejected by a
22 federal judge in a recent strikingly similar case, *Green v. Cosby*, Case No. 3:14-cv-30211-
23 MGM. *See* Reply Declaration of Lisa Bloom, Exhibit B, The United States District Court,
24 District of Massachusetts Judge’s Memorandum and Order Regarding Defendant’s Motions to
25 Dismiss Plaintiff’s Complaint (the “Order”)². Applying California law, District Judge Mark
26 Mastroianni held that allegations of sexual assault against Mr. Cosby are provable, and his
27 representatives’ public statements that his accusers were liars were provably false: “Plaintiff

28 ² *Tamara Green, et al. v. William H. Cosby, Jr.*, Case No. 3:14-cv-30211-MGM, United States District
Court, District of Massachusetts, filed 10/09/15, PACER Document 89.

1 Green’s allegations detail a specific set of events that either occurred substantially as alleged or
2 were fabricated, leaving no room for an honest mistake.” Bloom Decl., Exh. B at 23.

3 Denying Mr. Cosby’s motion to dismiss three women’s defamation claims, the *Green*
4 court held: “[T]he gist of the statement – that Plaintiff Green fabricated her allegations – is
5 also provable as true or false. It may take a trial to produce such proof, but Defendant’s
6 allegations are sufficiently specific ‘to be susceptible to proof or disproof.’ ” Order dated
7 October 9, 2015 at 22, Bloom Reply Declaration, Exhibit B.

8 **2. Mr. Cosby himself has admitted to significant corroborating facts, such as**
9 **illegally drugging women for sex.**

10 Mr. Cosby has substantially corroborated Ms. Dickinson’s claims in yet another a
11 strikingly similar action, *Constand v. Cosby*, where he admitted under oath to illegally obtaining
12 sedatives from a shady doctor and using them to drug unnamed women into sexual submission.
13 (Mr. Singer was present at that deposition.) Ms. Dickinson, sadly, is one of those women.

14 In the *Constand* matter, Mr. Cosby was asked in a deposition:

15 **Q. When you got the Quaaludes, was it in your mind that you were going to use**
16 **these Quaaludes for young women that you wanted to have sex with?**

17 **Mr. Cosby: Yes.**

18 Bloom Reply Decl., Exhibit C.

19 Mr. Cosby admitted obtaining the sedatives fraudulently from a gynecologist and
20 dispensing them illegally:

21 Q. Did he [Dr. Amar] know when he gave you those prescriptions that you had no
22 intention of taking them?”

23 Mr. Cosby: Yes.

24 Q. Did you believe at that time that it was illegal for you to dispense those drugs?”

25 Mr. Cosby: Yes.

26 Bloom Reply Decl., Exhibit D.

27 Further, Mr. Cosby admitted that he gave the drugs to unnamed “other women” who had
28

1 not come forward as of the 2005-6 deposition. Ms. Dickinson is one of those other women. She
2 did not publicly reveal that Mr. Cosby raped her until 2014. This deposition testimony was not
3 made public until July 2015. Bloom Reply Decl., Exhibit E.

4 Perhaps most astonishing, when twice given the opportunity, Mr. Cosby **did not even**
5 **deny nonconsensual sexual intercourse** with a Jane Doe, i.e. rape:

6 Q. She [a Jane Doe] believes she was not in the position to consent to intercourse after
7 you gave her the drug. Do you believe that is correct?

8 Mr. Cosby: I don't know.

9 Q. Why don't you know?

10 Mr. Cosby: That's her statement. I don't know . . .

11 In stark contrast to Mr. Cosby's quick press releases attacking the credibility of women
12 accusing him of rape, Mr. Cosby has issued no statements denying the authenticity of this
13 widely reported deposition testimony. Bloom Reply Decl, par. 6.

14 **3. Ms. Dickinson's declaration establishes that Mr. Cosby's defamatory**
15 **statements were provably false**

16 In the alternative, in the event this Court requires a minimal showing of proof in support
17 of Ms. Dickinson's allegations, her sworn declaration averring to the drugging, rape and
18 aftermath is submitted herewith. *See* attached Dickinson Declaration.

19 **D. Defendant Is Liable For Mr. Singer's Statements Directly And Under**
20 **Respondeat Superior Liability**

21 Mr. Cosby as principal is bound by the acts of his attorney-agent Mr. Singer "within the
22 scope of his actual authority (express or implied) or his apparent or ostensible authority..."
23 *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 403. "An agent represents his principal for
24 all purposes within the scope of his actual or ostensible authority, and all the rights and
25 liabilities ... accrue to the principal." Civil Code §2330.

26 The *Green* court rejected Mr. Cosby's attempt to escape liability for the defamation
27 committed in his name by his attorney Mr. Singer and others. As a matter of California law, the
28 *Green* court found Mr. Cosby was "subject to respondeat superior liability, a form of vicarious

1 liability,” for Mr. Singer’s public statements accusing three woman of lying when they revealed
2 that Mr. Cosby had raped them. Bloom Decl., Exhibit B at 31. The court found:

3 Given Defendant’s prominence in the entertainment field, the court infers he
4 surrounded himself with people accomplished in media relations and legal matters.

5 The court also infers those making Defendant’s public statements had an open line of
6 communication with him as well as some historical perspective on his public
7 relations matters. Based on the facts and inferences, the court finds it plausible at this
8 point to conclude (1) those agents would have had, at a minimum, some sense of
9 Defendant’s alleged conduct, such that their duty of care would have required them
10 to take steps to determine the truth or falsity of the statements, and (2) the content of
11 their responsive statements demonstrates such reasonable care was not taken.

12 Bloom Decl., Exhibit B at 31-2. All of those inferences are equally reasonable here.

13 The *Green* court also found probable direct liability against Mr. Cosby:

14 [I]t does not take a speculative leap for the court to conclude Defendant would be
15 personally involved in reviewing these types of accusations against him, crafting or
16 approving the responsive statements, and directing the dissemination. The SAC
17 alleges Defendant was an ‘internationally known’ entertainment figure and the
18 people making statements for him were acting either as attorney or publicist and/or
19 authorized representative or employee. At this stage of the litigation, it would be
20 unreasonable to view these particular circumstances, responding to the very serious
21 accusations of the nature involved here, as not having the direct involvement of
22 Defendant.”

23 Bloom Decl., Exhibit B at 33.

24 **E. No Litigation Privilege Applies To Press Statements**

25 As is set forth in the Complaint, two written statements from Mr. Singer, on behalf of
26 Mr. Cosby, were transmitted to reporters, the November 18 Statement and the November 19
27 Statement. **Defendant asserts a claim of privilege only to the first.** Even Mr. Singer concedes
28 that his November 19 statements were press releases. Singer Decl., par. 13.

1 Mr. Cosby cannot hide behind the litigation privilege for statements made outside the
2 scope of any anticipated litigation. As of November 18 and 19, 2014, Ms. Dickinson had not
3 sued or threatened him with litigation for the drugging and sexual assault. Nor could she, as
4 applicable statutes of limitations had expired.

5 Instead, Mr. Cosby's privilege argument claims that his November 18 letters were pre-
6 litigation demands to media. If so, a sophisticated attorney like Mr. Singer would surely have
7 sent them to media lawyers, not directly to reporters, who predictably immediately posted them
8 online.

9 Privilege attaches to statements where litigation is "contemplated in good faith and
10 under serious consideration" *Action Apartment Assoc., Inc. v. City of Santa Monica* (2007) 41
11 Cal.4th 1232, 1251. Mr. Cosby did not sue ABC, CBS, Buzzfeed nor any of the media outlets to
12 whom Mr. Singer sent his letters, **nor, fatally, does Mr. Singer state in his declaration that**
13 **litigation against them was seriously considered.** Mr. Cosby has never sued any of the
14 thousands of news organizations worldwide that have run stories about the more than fifty
15 women who now accuse him of sexual assault. Instead, his attorney hoped to invoke the
16 protection of the litigation privilege while trashing Ms. Dickinson's reputation directly to
17 reporters, an obvious ruse.

18 III. CONCLUSION

19 For the foregoing reasons, Ms. Dickinson respectfully requests that this Court grant her
20 Motion to Lift Stay on Discovery and permit the depositions of Mr. Singer and Mr. Cosby
21 forthwith on the issue of malice.

22 DATED: October 26, 2015

Respectfully submitted,

23 THE BLOOM FIRM

24 *Lisa Bloom*

25 _____
LISA BLOOM

26 Attorneys for Plaintiff Janice Dickinson

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 October 26, 2015, I served the following document(s) described as: PLAINTIFF’S REPLY TO DEFENDANT’S OPPOSITION TO MOTION TO LIFT STAY OF DISCOVERY PURSUANT TO CCP § 425.16(G); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF LISA BLOOM AND JANICE DICKINSON AND EXHIBITS THERETO; DECLARATION OF PLAINTIFF JANICE DICKINSON IN SUPPORT OF PLAINTIFF’S REPLY TO DEFENDANT’S OPPOSITION TO MOTION TO LIFT STAY OF DISCOVERY PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16(G) WITH EXHIBITS; and DECLARATION OF LISA BLOOM IN SUPPORT OF PLAINTIFF’S REPLY TO DEFENDANT’S OPPOSITION TO MOTION TO LIFT STAY OF DISCOVERY PURSUANT TO CCP § 425.16(g) WITH EXHIBITS on the interested parties in this action by placing a true and correct copy in an enclosed sealed envelope as follows:

Attorneys for Defendant;

Christopher Tayback, Esq.
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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 Overnight Express on that same day with charges made to our account with that firm at Los Angeles, California in the ordinary course of business.

BY E-MAIL TRANSMISSION I caused the said document(s) to be transmitted electronically to the addressee at the above referenced.

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

Executed on October 26, 2015 at Los Angeles, California.

Steve Conlon
(Print or Type Name)


(Signature of Declarant)