No. B268140

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 8

WILLIAM H. COSBY, JR.,

Petitioner,

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

Respondent,

JANICE DICKINSON,

Real Party in Interest

From an Order of the Superior Court for the County of Los Angeles
Case No. BC 580909
The Honorable Debre Weintraub
(213) 633-0647

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes and Rules

INTRODUCTION

This Petition presents a straightforward question: whether the Superior Court abused its discretion by ordering discovery on the issue of actual malice ***before*** requiring full briefing and argument on the legal defenses asserted in Defendant's special motion to strike. Plaintiff's sole argument on the matter is that the Courts of Appeal have "endorse[d]" allowing such discovery to take place. That is the exact opposite of what the Courts of Appeal have done. Those courts and many others have made clear that lifting the automatic stay to permit discovery on the issue of malice before deciding legal defenses constitutes an abuse of discretion that jeopardizes the core protections of the SLAPP statute.

Plaintiff also argues that the Superior Court has "carefully reviewed every argument raised" in the special motion to strike. That is not possible. The briefing is not scheduled to completed until January 13, 2016, and the hearing is scheduled for January 21, 2016. To be sure, the trial judge made comments on a few points raised by the special motion to strike, but many of the legal arguments asserted in the special motion to strike were not addressed at all, and none were—or could have been—decided.

The Opposition recites at length allegations from the complaint[1], as well as undisputed basic principles of anti-SLAPP law. None of that material bears on the issue at hand—*e.g.*, whether depositions on malice should go forward before the legal defenses are decided. The Opposition also argues the merits of the legal defenses in the anti-SLAPP motion, which Plaintiff claims constitute "grounds to deny the anti-SLAPP motion." But that is not the issue here. Indeed, Plaintiff has yet to file a memorandum of points and authorities with supporting evidence in opposition to the special motion to strike. In any event, each of these arguments fail, and further confirm that these significant legal issues must be decided before discovery on malice can be considered.

ARGUMENT

I. PLAINTIFF MISSES THE POINT IN ARGUING THAT SHE IS ENTITLED TO DISCOVERY BECAUSE MALICE IS AN ELEMENT OF HER CLAIM

Plaintiff describes the "issue presented" in this petition as whether the Superior Court erred by ordering "depositions on the issue of malice where it is undisputed that Plaintiff-Respondent must offer evidence of

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[1] Plaintiff cites the First Amended Complaint filed on November 16, 2015. Because this amendment was filed while Defendant's anti-SLAPP motion was still pending, it violates California Code of Civil Procedure Section 425.16. The additional statements and defendant named in the First Amended Complaint are not properly before any court, and are disregarded for purposes of this petition. Even if they were properly before the court, these additional allegations would not alter the question presented on this writ, or its analysis.

malice in opposition to the anti-SLAPP motion." Opp. at 5, 43. Plaintiff's apparent conclusion is that because Defendant asserted malice as a defense, and Plaintiff requested discovery on that issue, the Superior Court's order granting the request *must* be valid.

This construction completely elides the real issue on this petition: whether the Superior Court erred by ordering discovery on malice ***before*** resolving the many legal defenses asserted in the special motion to strike that have nothing to do with malice. Defendant does not dispute Plaintiff's right to respond to every defense raised in the special motion to strike, including malice, ***if*** Plaintiff can demonstrate that the legal defenses raised are not dispositive. Those defenses should be resolved after full briefing, in the context of the anti-SLAPP motion.

However, if any of the complete legal defenses unrelated to malice are decided in Defendant's favor, there will be no need for burdensome discovery on malice, because the case will have been dismissed. *See, e.g.*, *Garment Workers Center v. Superior Court*, 117 Cal. App. 4th 1156, 1163 (2004) (granting petition to reverse order lifting discovery stay before legal defenses were decided); *Paterno v. Superior Court*, 163 Cal. App. 4th 1342, 1351 (2008) (same). If the legal defenses are instead resolved in Plaintiff's favor, and malice remains in dispute, Plaintiff may seek discovery on that issue upon a showing of good cause. If, at that stage,

discovery on malice were granted, the Superior Court could of course consider that discovery before deciding the issue on the merits. Pet. at 26.

There is thus no chance that Plaintiff would face a "Catch-22" of being forced to establish discoverable issues of malice without first having an opportunity to take and present that discovery. Opp. at 1. Nor do any of the basic precepts asserted by Plaintiff support abandoning the process well-established by the Courts of Appeal in favor of the Superior Court's decision to grant discovery before deciding the legal defenses that may dispose of Plaintiff's claim and render the malice issue irrelevant.[2]

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[2] For instance, Plaintiff discusses how she has a due process right to "present a defense" to the anti-SLAPP motion, Opp. at 11-13. Defendant does not dispute this basic point. Plaintiff also notes that the Superior Court has discretion to allow discovery if good cause is shown. Opp. at 13-14; *see also* Opp. at 14-19, 28-31 (reciting additional basic tenants of anti-SLAPP law). Again, Defendant agrees—the stay may be lifted upon a showing of good cause. Defendant does not agree, however, that "a court must exercise [this] discretion liberally." The source of that language is *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, 37 Cal. App. 4th 855 (1995). As discussed in Section II.A, the *Lafayette* court was not faced with an actual request for discovery, so its discussion of the good cause standard is dicta. Furthermore, subsequent courts have recognized that the "liberal" language of *Lafayette* is no longer viable. *See, e.g., Paterno*, 163 Cal. App. 4th at 1351 ("The court in *Lafayette* . . . hinted, in dicta, that trial courts should 'liberally' exercise their discretion to authorize reasonable discovery . . . The *Lafayette []* decision 'predates the 1997 amendment requiring a broad interpretation of section 425.16.' Accordingly, we join the courts that have limited the reach of *Lafayette Morehouse's* language.").

II. THE NARROW ISSUE HERE IS WHETHER LEGAL DEFENSES MUST BE RESOLVED BEFORE DISCOVERY ON MALICE CAN BE CONSIDERED

A. Plaintiff Acknowledges That She Is Only Entitled To Discovery Of Malice If She Has Good Cause, But Ignores Case Law Holding That Good Cause Requires The Trial Court To First Determine Other Defenses

Plaintiff claims that Defendant "completely misconstrues" the Court of Appeal's decisions in *Garment Workers* and *Paterno*. Opp. at 31. According to Plaintiff, those cases "*do not* show that all other defenses to the Anti-SLAPP motion must be resolved before discovery on the issue of malice may take place." *Id.* Yet Plaintiff acknowledges that these authorities "endorse discovery on the issue of malice *if there is good cause*." *Id.* (emphasis added).

Notably, Plaintiff never addresses the unequivocal language in *Garment Workers* that

> [P]ermitting discovery on the issue of actual malice before first determining, after briefing and argument, whether the plaintiffs had a reasonable probability of establishing the other elements of their libel cause of action [is an abuse of discretion.]

117 Cal. App. 4th at 1159. Plaintiff does not cite any language in the Court of Appeal's decision indicating that, to the contrary, discovery on malice can be permitted before legal defenses asserted in a special motion to strike are resolved. That is because none exists.

Defendant is at a loss to understand the point of Plaintiff's long quotation of *Garment Workers'* discussion of dicta from *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, 37 Cal. App. 4th 855 (1995). Opp. at 32. In *Lafayette*, the Court of Appeal affirmed the grant of defendant's anti-SLAPP motion on several grounds, including substantial truth and privilege. *Lafayette*, 37 Cal. App. 4th at 869-70. No request to lift the automatic stay had been made, and in fact the plaintiff had never requested any discovery at all. The issue of discovery arose only because the plaintiff argued on appeal that the SLAPP statute's automatic stay was unconstitutional as a general matter. *Id.* at 867. The court rejected that argument because the application of the automatic stay was not before the court. In dicta, the court went on to note that the statute's allowance of discovery for good cause offered sufficient protection to claimants. *Id.*

The *Garment Workers* court stated that it was "in general agreement" with the *Lafayette* court's observation that whether evidence necessary to establish a prima facie case was in defendant's possession should be part of the analysis. *Garment Workers*, 117 Cal. App. 4th at 1162. However, immediately after the portion cited by Plaintiff, the *Garment Workers* court stated that was "not the only factor . . . If, for example, the defendant contends the plaintiff cannot establish a probability of success on the merits because its complaint is legally deficient, no amount of discovery will cure that defect." *Id.* Thus, *Garment Workers'*

discussion of dicta in *Lafayette* merely formed part of its holding that "good cause" requires ***both*** that necessary evidence be in defendant's possession ***and*** a resolution of all legal defenses.

Similarly, Plaintiff refers to general prerequisites discussed by the court in *Paterno*, but ignores the holding. Opp. at 31-32. The court in *Paterno* granted the defendant's writ petition because the lower court failed to properly resolve the specific legal defenses raised in the special motion to strike before permitting discovery on actual malice. 163 Cal. App. 4th at 1345-46. Many other courts have also held that discovery on actual malice must be delayed until *after* resolving legal defenses that can be decided without discovery. *See, e.g.*, Pet. at 18 nn.3, 4 (gathering cases).

Plaintiff argues that "nothing" in *Paterno* "stated that all elements of Plaintiff/Respondent's defense to the anti-SLAPP motion must be decided before the trial court grants a motion lifting the stay on discovery." Opp. at 32; *see also id.* at 19-21. According to Plaintiff, *Paterno* "concluded that once the lower court determines that the allegedly defamatory statements are provably false assertions, the court can allow discovery based on good cause." *Id.* at 33.

In fact, the *Paterno* court concluded that good cause to lift the stay was *not* limited to whether statements were "provably false." 163 Cal. App. 4th at 1351, 55. In *Paterno*, the defendant asserted a series of legal defenses in its special motion to strike, among them that the "gist" of the

statements was true, and statements were privileged. *Id.* at 1351-57. The lower court granted plaintiff's request for discovery on actual malice without resolving these specific defenses. *Id.* at 1347, 51-52. On defendant's writ petition, the Court of Appeal analyzed all the legal defenses in detail and found that many—including substantial truth and privilege—barred plaintiff's claim as a matter of law. *Id.* at 1351-57. The Court of Appeal held that the lower court's failure to decide these issues "jeopardizes the protections afforded by the anti-SLAPP statute," and ordered that plaintiff's discovery motion be denied. *Id.* at 1357.

Paterno noted "provably false assertions" is a *prerequisite* to discovery, *id.* at 1351, 55-57, but nowhere in the opinion did the *Paterno* court hold that "provably false assertions" is the *only* legal issue that must be decided before discovery can be considered. In fact, the Court of Appeal found it necessary to resolve the issue of litigation privilege:

> Ampersand has not introduced sufficient evidence to establish a prima facie case of falsity or unprivileged statements. Consequently, the trial court erred in permitting discovery concerning Paterno's actual malice.
> . . .
>
> [B]ecause the litigation privilege applies, no basis exists to explore whether Paterno's statement was misleading. Consequently, the predicate for Ampersand's good cause showing for discovery is absent.

See id. at 1351, 55.

Notably, the Opposition does not contain a single case where the automatic stay was actually lifted to allow discovery before the legal defenses asserted in the special motion to strike were resolved. The Opposition, just like Plaintiff's submissions to the Superior Court, is instead replete with cases where requests to lift the stay were *denied*. *See*, *e.g.*, *Tutor-Saliba Corp. v. Herrera*, 136 Cal. App. 4th 604, 617-18 (2006) (affirming grant of anti-SLAPP motion because statements were privileged, and affirming denial of request for discovery on issues unrelated to that defense); *Blanchard v. DIRECTV, Inc.*, 123 Cal. App. 4th 903, 922 (2004) (affirming grant of anti-SLAPP motion and rejecting argument that discovery should have been allowed, because the evidence sought was "irrelevant to the court's determination").[3]

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[3] *See also Fuchs v. Levine*, 2011 WL 507258, at *13 (Cal. Ct. App. Feb. 15, 2011) (unpublished) (denying request for discovery because "while issues of malice and favorable termination might have turned on the mindset of [defendants], the ultimately dispositive issue of probable cause largely did not"); *McGarry v. University of San Diego*, 154 Cal. App. 4th 97, 123 (2007) (affirming grant of anti-SLAPP motion and affirming denial of request for discovery where the testimony sought "would not have satisfied [plaintiff's] anti-SLAPP burden to show a likelihood of success on his claim"); *Britts v. Superior Court*, 145 Cal. App. 4th 1112, 1129 (2006) (reversing grant of discovery and holding that the automatic stay applies even to discovery motions already pending at the time the special motion to strike was filed); *Carver v. Bonds*, 135 Cal. App. 4th 328, 359 (2005) (affirming grant of anti-SLAPP motion and denial of request for discovery that was unnecessary to the issues dispositive of the anti-SLAPP motion); *1-800 Contacts, Inc. v. Steinberg*, 107 Cal. App. 4th 568, 593 (2003) (affirming grant of Anti-SLAPP motion and denial of discovery); *Schroeder v. Irvine City Council*, 97 Cal. App. 4th 174, 191 (2002)

The one case cited by Plaintiff where the automatic stay was lifted at all further confirms that is appropriate only *after* all legal defenses are resolved. In *Ruiz v. Harbor View Community Ass'n*, 134 Cal. App. 4th 1456, 1474-76 (2005), the lower court denied the plaintiff's request for discovery on the issue of publication because it granted the anti-SLAPP motion on other grounds. The Court of Appeal recognized that the lower court "did not have reason" to allow discovery at that time. Only after fully analyzing the legal defenses asserted in the anti-SLAPP motion, and finding that one of the statements was actionable *and* the issue of publication remained in dispute, did the Court of Appeal order that the lower court reconsider discovery. The remainder of the anti-SLAPP cases cited by Plaintiff have no bearing at all on this petition because they did not involve requests to lift the discovery stay.[4]

(affirming denial of request for limited discovery where material sought was readily available from other sources).

[4] *See Hawran* v. *Hixson,* 209 Cal. App. 4th 256, 263 (2012) (affirming partial denial of anti-SLAPP motion on the issue of "commercial speech"); *Christian Research Institute v. Alnor*, 148 Cal. App. 4th 71, 76 (2007) (reversing denial of anti-SLAPP motion on malice grounds); *Slauson Partnership v Ochoa*, 112 Cal. App. 4th 1005, 1009 (2003) (deciding anti-SLAPP motion related to injunctive relief order for protest activities); *Mattel, Inc. v Luce, Forward, Hamilton & Scripps*, 99 Cal. App. 4th 1179, 1183 (2002) (anti-SLAPP motion denied in malicious prosecution case); *Antonovich v. Superior Court*, 234 Cal. App. 3d 1041, 1053-54 (1991) (deciding defamation claim at summary judgment phase).

B. The Superior Court Did Not And Could Not Resolve The Specific Legal Defenses Asserted In The Special Motion To Strike Because Briefing And Oral Argument Has Yet To Occur

Plaintiff contends that the Superior Court "carefully reviewed every argument raised" on the special motion to strike before ordering discovery. Opp. at 8. This assertion is based on the Superior Court's comment during oral argument that "plaintiff has satisfied the prerequisite of provable false facts." *Id.* at 8, 19-23. The Superior Court said this, but the court could not have actually decided the issue. Defenses asserted in a special motion to strike must be decided in the context of that motion, *after* that motion is fully briefed. As stated by the court in *Garment Workers*:

> [T]he trial court abused its discretion in permitting discovery on the issue of actual malice before first determining, ***after briefing and argument,*** whether the plaintiffs had a reasonable probability of establishing the other elements of their libel cause of action.

117 Cal. App. 4th at 1159 (emphasis added).

Here, the special motion to strike was not fully briefed when the Superior Court ordered discovery, and *is still not* fully briefed. Plaintiff has not been required to present counter-arguments to each of the defenses asserted in the special motion to strike, and Defendant has not had the opportunity to respond. That the Superior Court "reviewed the motion and opposition" *on Plaintiff's motion to lift the stay* is no substitute for full briefing and hearing on the special motion to strike. Opp. at 21.

Even if the briefing on the motion to stay could have served as an avenue to resolve the issues raised in the motion to strike, it did not serve that purpose here. Plaintiff's opening brief on the motion to lift the stay addressed malice; Plaintiff did not even attempt to argue the merits of the legal defenses. *See* Appendix in Support of Petition ("App.") at 225-38. Only in her reply brief did Plaintiff argue the merits of some of the legal defenses—to which Defendant did not have the opportunity to respond. Thus, argument on the defenses asserted in the special motion to strike has still not been fully made before the Superior Court.

Plaintiff also contends that the Superior Court *actually* decided "every argument raised" in the special motion to strike. *See* Opp. at 8. To the contrary, *nowhere* in the order or hearing on the motion to lift the stay did the Superior Court analyze whether Defendant's attorney's statement that Plaintiff lied about the alleged sexual assault is protected under California law because it is based on the undisputed fact that Plaintiff told a completely inconsistent story in her autobiography. *See* Pet. at 19-24; App. at 400-22. Nor did the Superior Court ever attempt to reach the question of whether the attorney's response to these serious charges is protected as "predictable opinion" under California law. *Id.* The same is true for many of the other legal arguments asserted in the special motion to strike. *Id.*

Thus, the Superior Court's declaration that "plaintiff has satisfied the prerequisite of provable false facts" was premature.[5] App. at 406. In *Garment Workers* and *Paterno*, like in this case, the lower court ordered discovery without deciding the specific legal issues underlying the "provably false assertions of fact" inquiry. It makes no difference that the Superior Court here said it did so, whereas the lower court in *Paterno* "apparently" did so by implication.

C. Plaintiff's Arguments Regarding The Other Good Cause Factors Are Premature

Plaintiff argues that discovery on malice would likely be in Defendant's possession and not readily available from other sources. Opp. at 23-28. Plaintiff also asserts that discovery is "narrowly tailored." *Id.* at 30-31. Plaintiff is begging the question raised by the Petition. Again, the threshold question is whether legal defenses dispose of Plaintiff's claim and make malice irrelevant. It is an issue for another day whether a client may be deposed based on statements by his attorney.

Plaintiff does not address at all the argument that even if the discovery request was not premature, it should still be denied for the

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[5] The Superior Court stated that it "does not appear that the litigation privilege would apply" because Defendant "does not explain what litigation" the statements relate to. *See* Pet. at 24 n.5. Defendant *has* explained, and will further argue on briefing in the special motion to strike, that the November 18 statement is a pre-litigation demand letter that is protected under California law.

reasons stated in Defendant's Opposition to the Motion to Lift the Stay.[6] In addition, *if* the question of discovery on malice ever becomes ripe, it must be decided on the facts and procedural posture of the case as they exist at that time, not now. The legal and factual positions asserted by the parties may well change in the interim, which may further obviate the need for discovery.

III. PLAINTIFF'S ARGUMENTS AS TO THE MERITS OF LEGAL DEFENSES ARE NOT PERTINENT BECAUSE THESE ISSUES MUST BE RESOLVED IN THE CONTEXT OF THE ANTI-SLAPP MOTION

Plaintiff includes a long discussion of the merits of some of the defenses asserted in the special motion to strike. Opp. at 33-43. Plaintiff concludes her arguments are "grounds to deny the anti-SLAPP motion." *Id.* at 33. This Court need not decide whether the anti-SLAPP motion should be granted or denied. This Petition seeks to have the Superior Court do that after full briefing and argument. Nonetheless, if the Court is curious as to whether the anti-SLAPP motion has merit, Defendant will briefly address the points raised by Plaintiff.

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[6] *See* App. at 305-07 (explaining that discovery should be denied because (a) the discovery Plaintiff seeks is inextricably tied to the content of privileged communications between Defendant and his attorney, (b) the statements by were at most a one-sided account of facts made by Defendant's attorney in his capacity as counsel, and (c) Defendant's attorney has already submitted a sworn declaration detailing his process when he made the statements).

A. The Statements Are Protected As "Predictable Opinion"

The "predictable opinion" doctrine protects what "generally might be considered as statements of fact" when made as a defense to accusations by another. *See* Pet. at 20. Plaintiff referred to the Superior Court's comment that "rape is a fact," Opp. at 34, but the issue is whether a denial of an accusation is actionable defamation. When a party takes to the media to respond to accusations, the law considers it predictable and protectable for the accused to state their innocence. *See* App. at 33 (gathering cases).

Plaintiff also cites a Massachusetts court's decision in an unrelated defamation case against Defendant. *See* Opp. at 36. That case concerned different statements, regarding different accusations, by a different plaintiff, who was not a public figure or subject to the constitutional malice standard. *See* App. at 342-79.[7] In any event, the Massachusetts court's decision that the predictable opinion doctrine applies only to statements made when formal litigation had been commenced has no relevance to California law. The Massachusetts court's limitation is notably contrary to the plain language of the Ninth Circuit decision from which the doctrine derives, which encouraged full consideration of the circumstances in which

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[7] Similarly, the deposition testimony cited by Plaintiff was taken ten years ago in an unrelated case brought by a different person. Opp. at 37-38. The brief excerpts of this days-long deposition are far from "astonishing," as they do not contain *any* statement that Defendant ever drugged or assaulted *anyone*, and certainly not Plaintiff in particular.

statements are made. *See Info. Control Corp. v. Genesis One Comput. Corp*, 611 F.2d 781, 784 (9th Cir. 1980) (holding that statements are protected "when made in public debate, heated labor dispute, or other circumstances in which an 'audience may anticipate efforts by the parties to persuade others to their positions.'") (quoting *Gregory v. McDonnell Douglas Corp.*, 17 Cal. 3d 596, 601 (1976)).[8]

B. The Statements Express Opinion Based On Disclosed Facts

Plaintiff does not deny that California courts recognize that statements based on disclosed facts are not defamatory.[9] Here, in the denial of Plaintiff's accusation, former counsel disclosed that his statement was based on Plaintiff's book, and her statements to the press that Defendant's attorneys pressured her to alter the book. Plaintiff asserts that her description of her encounter with Defendant would not justify counsel's denial because "nowhere in the book do I say that Mr. Cosby did not rape

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[8] *See also Roe v. Doe*, 2009 WL 1883752, at *10 (N.D. Cal. Jun. 30, 2009) ("The court must look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed. When the statements are made in the arena of a public debate or controversy, the court must examine the whole record.") (citations omitted).

[9] The single California case cited by Plaintiffs in the predictable opinion context confirms that is so. *See* Opp. at 34 (citing *Franklin Dynamic Details, Inc.*, 116 Cal. App. 4th 375, 378 (2004) (holding that statements were not actionable because they were based on provably true facts)).

me." *See* App. at 322. She did, however, say what Defendant had done, and it was not rape. It was not anything actionable at all. Plaintiff's autobiography clearly describes how, on the night of the alleged assault, Plaintiff rejected Defendant's advances and returned to her own room alone. Pet. at 3-4. The undeniable fact is that Plaintiff's public statements in her autobiography flat-out contradict her more recent public statements. Defendant's then counsel disclosed those inconsistent facts and thus the conclusion he draws from Plaintiff's contradicting herself is not actionable defamation.

C. The Statements Cannot be Imputed To Defendant Under Agency Principles

The anti-SLAPP Motion asserts that Defendant's attorney's statements cannot be automatically imputed to Defendant because general agency rules do not apply in a case subject to the constitutional malice standard. Pet. at 22-23. Plaintiff responds by discussing a pair of cases, including the aforementioned Massachusetts decision, that did not involve the constitutional malice standard. Opp. at 38-40. Both cases are irrelevant because they applied the "general agency principles" that do not apply to this case.

D. The Statements Are Substantially True

Tellingly, Plaintiff does not address at all the argument that Defendant's former attorney's statements are not defamatory because the

"gist" and "substance" of the statements are true. Pet. at 21-22. Plaintiff, having published two inconsistent accounts of what happened to her, cannot sue simply because the attorney pointed out the inconsistency of those statements. The "substantial truth" of the attorney's statement that Plaintiff had contradicted herself is a complete defense under California law.

CONCLUSION

For the reasons stated herein, and in Defendant's Petition for Writ of Mandate, Plaintiff respectfully requests that the Court issue a writ of mandate directing the Superior Court to (a) set aside and vacate its Order granting Plaintiffs Motion to Lift the Stay, (b) enter a new and different Order denying the Motion to Lift the Stay, (c) resolve the legal defenses raised be Defendant's anti-SLAPP Motion, after full briefing and argument of that motion, before considering lifting the stay of discovery, and (d) consider lifting the stay to allow discovery on the issue of actual malice only if Defendant's legal defenses have been denied and actual malice remains an unresolved issue of fact.

DATED: November 30, 2015 Respectfully submitted,

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WORD COUNT

Counsel for Petitioner William H. Cosby, Jr. certifies that the brief contains 4,428 words, based on the "Word Count" feature of Microsoft Word.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is Apex Attorney Services, 1055 West 7th Street, Suite 2240, Los Angeles, CA 90017.

On November 30, 2015, I served true copies of the following document(s) described as **REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

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BY PERSONAL SERVICE: I personally delivered the document(s) to the person at the addresses listed in the Service List. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

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

Executed on November 30, 2015, at Los Angeles, California.

George Ramirez