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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
15

16 JANICE DICKINSON,

17 Plaintiff.

18 v.

19 WILLIAM H. COSBY, JR.,

20 Defendant.  
21  
22  
23

Case No. BC 580909

[Hon. Robert L. Hess – Dept. 24]

**DEFENDANT WILLIAM H. COSBY, JR.'S  
NOTICE OF MOTION AND SPECIAL  
MOTION TO STRIKE PLAINTIFF'S  
COMPLAINT PURSUANT TO CODE OF  
CIVIL PROCEDURE SECTION 425.16;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATIONS OF  
MARTIN D. SINGER, JOHN P. SCHMITT,  
AND LYNDA B. GOLDMAN**

Date: October 6, 2015

Time: 8:30 a.m.

Dept: 24

Complaint Filed: May 20, 2015  
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

2 PLEASE TAKE NOTICE that, on October 6, 2015, at 8:30 a.m. or as soon thereafter as this  
3 matter may be heard, in Department 24 of the above-titled court, located at the Stanley Mosk  
4 Courthouse, 111 North Hill Street, Los Angeles, California 90012, Defendant William H. Cosby, Jr.  
5 will and hereby does move the Court for an Order striking the Complaint of Plaintiff Janice Dickinson  
6 and dismissing it with prejudice in its entirety, pursuant to California Code of Civil Procedure §  
7 425.16, also known as the anti-SLAPP statute.

8 This Special Motion to Strike is made on the grounds that the Complaint arises from an act in  
9 furtherance of the right of free speech or petition arising under the United States or California  
10 Constitution in connection with a public issue (California Code of Civil Procedure, Section  
11 425.16(e)(1-4)), and Plaintiff cannot establish a probability of prevailing on her claims. The  
12 statements that gave rise to this action were made in connection with an issue concerning potential  
13 litigation, or were made in a public forum and concern an issue of public interest, and therefore fall  
14 within the scope of the anti-SLAPP statute. Plaintiff cannot meet her burden of establishing a  
15 probability of success on the merits of her first cause of action for defamation because (1) Defendant  
16 did not publish the statements, and liability cannot be imputed to him under agency principles; (2) the  
17 statements were not published by the speaker with actual malice; (3) the statements are privileged; and  
18 (4) Plaintiff cannot show that she suffered any damages. Plaintiff cannot succeed on her second cause  
19 of action for false light because it is duplicative of her defamation claim. Plaintiff cannot succeed on  
20 her third cause of action for intentional infliction of emotional distress because it is based on the same  
21 facts as her defamation claim, and she may not impose liability indirectly where she cannot do so  
22 directly on her first cause of action.

23 PLEASE TAKE FURTHER NOTICE that Defendant shall also seek an award of reasonable  
24 attorneys' fees and costs incurred, pursuant to Code of Civil Procedure § 425.16(c), upon the granting  
25 of his Special Motion to Strike.

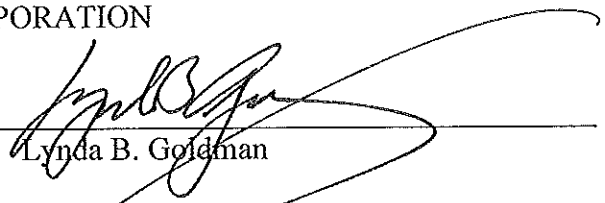
26 This Motion is made and based upon this Notice of Motion, the attached Memorandum of  
27 Points and Authorities, the attached declarations of Martin D. Singer, John P. Schmitt, and Lynda B.  
28 Goldman, any and all Exhibits and attachments thereto, all pleadings and documents on file in this

1 action, all matters upon which the Court may take judicial notice, and upon any further oral or written  
2 argument and evidence as the Court may receive prior to or at the time of the hearing of the Motion.

3  
4 DATED: June 19, 2015

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

LAVELY & SINGER PROFESSIONAL  
CORPORATION

7  
8 By  Lynda B. Goldman

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10 Attorneys for Defendant  
11 WILLIAM H. COSBY, JR.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND SUMMARY OF ARGUMENT

3 Plaintiff Janice Dickinson—a celebrity, self-promoter and confessed persistent liar— filed this  
4 lawsuit complaining that she has been branded a liar, when, in fact, lying is part of her “brand.” After  
5 years of cultivating her reputation for dishonesty by, for example, appearing on television shows like  
6 “Recovering Celeb Addicts, Reformed Liars,” she used the national media to accuse Defendant  
7 William H. Cosby, Jr. of sexual assault. Significantly, however, this is not an action for sexual assault.  
8 More than thirty years have elapsed since the alleged assault purportedly occurred, and the statute of  
9 limitations has long since expired for any such claim. During that time, not only did Ms. Dickinson  
10 file no criminal complaint or civil tort action against Mr. Cosby, but she repeatedly stated publicly in  
11 her 2002 autobiography and in the media that the alleged assault did not occur. But after other women  
12 accused Mr. Cosby of sexual misconduct, and a media frenzy developed, Ms. Dickinson decided to  
13 cash in on that publicity and she completely changed her story. When she publicized her assault  
14 accusation in November 2014, in a transparent attempt to justify changing her story from what  
15 appeared in her book twelve years ago, Ms. Dickinson lied publicly that Mr. Cosby and his lawyers  
16 pressured her publisher not to publish her assault allegations in her 2002 autobiography. It never  
17 happened. Decl. of Martin D. Singer (“Singer Decl.”), ¶¶6, 17. After being caught in that lie, she  
18 retracted it. Decl. of John P. Schmitt (“Schmitt Decl.”) ¶¶3-4. Ms. Dickinson’s brazen lie about  
19 pressure on her publisher was addressed in a privileged pre-litigation demand letter and related  
20 statement sent by Mr. Cosby’s litigation counsel after investigating the facts. Singer Decl. ¶¶6, 11, 13,  
21 17, 19, Exs. F, G. Those communications are the subject of this action for defamation, false light, and  
22 intentional infliction of emotional distress.

23 This lawsuit is precisely the type of frivolous and retaliatory litigation the anti-SLAPP statute  
24 was intended to address. It arises from statements made in a public forum and made in the exercise of  
25 petitioning activity. And, given the widespread attention Ms. Dickinson’s accusations and Mr. Cosby’s  
26 denials have received in the press and on the Internet, it concerns an issue of public interest, both with  
27 respect to those accusations and denials, and with respect to the larger issue of how to deal fairly with  
28 both accuser and accused in cases of alleged sexual assault that have gone unreported for decades.

1           Because this lawsuit arises from statements on an issue of public interest, the anti-SLAPP  
2 statute places the burden on Ms. Dickinson to prove that she has a probability of success on the merits  
3 of her claims. This she cannot do. First, Ms. Dickinson has no cause of action for defamation against  
4 Mr. Cosby since he did not publish the challenged statements; they were made by his litigation  
5 counsel, who had no reason to doubt (and many reasons to believe) the truth of his statements that Ms.  
6 Dickinson's new story is a fabrication, such that the statements were not made with Constitutional  
7 malice. Moreover, since the statements complained of are protected by the litigation privilege (Civ.  
8 Code § 47(b)), Ms. Dickinson cannot possibly establish a probability of prevailing. Further, Ms.  
9 Dickinson cannot prove injury to a reputation for truthfulness that she does not possess. Second, Ms.  
10 Dickinson cannot succeed on her false light claim, because in an action for defamation a false light  
11 claim based on the same facts is superfluous and automatically dismissed. Third, Ms. Dickinson's  
12 claim for intentional infliction of emotional distress must fail because a defamation plaintiff may not  
13 impose liability indirectly under the guise of that tort where she could not do so directly as defamation.  
14 In sum, Ms. Dickinson has no probability of success on any of her claims, and her case against Mr.  
15 Cosby should be dismissed as a SLAPP.

## 16       **II.     FACTUAL BACKGROUND**

### 17       **A.     Ms. Dickinson attempts to cash in on the recent media frenzy surrounding Mr. Cosby**

18           In late 2014, a number of women came forward with allegations of sexual misconduct against  
19 Mr. Cosby. In many cases, the alleged sexual misconduct purportedly occurred decades earlier, and  
20 each purported victim had taken no legal action in the intervening years. The accusations were (and  
21 continue to be) the subject of widespread media attention. Singer Decl. ¶3.

22           In an apparent attempt to cash in on that media frenzy, in a November 18, 2014 television  
23 interview broadcast on *Entertainment Tonight*, Ms. Dickinson claimed that Mr. Cosby drugged and  
24 raped her after they had dinner in Lake Tahoe in 1982, and that her autobiography told a different tale  
25 because her publisher had supposedly been pressured by Mr. Cosby and his lawyers. Singer Decl. ¶¶4,  
26 5, Exs. A, B. On December 8, 2014, Ms. Dickinson repeated her rape allegations in a nationally  
27 televised interview with journalist Nancy Grace. Singer Decl. ¶7, Ex C. As addressed below, Ms.  
28 Dickinson's new 2014 story completely contradicts what she repeatedly said in the past.

1 Ms. Dickinson's accusations against Mr. Cosby received extensive media coverage. They also  
2 sparked a debate about how to address allegations of decades-old sexual abuse in a manner that is fair  
3 to both the alleged victim and the accused. Singer Decl. ¶20, Exs. M, N, O, P. Ms. Dickinson's own  
4 remarks on the Nancy Grace show were reported as follows:

5 "I am protesting because of the unresolved issues due to rape from Bill Cosby... I will  
6 say this, I sobbed all weekend. Not just for me, but for what's going on for women  
7 everywhere[.]" ... Her tone escalated when she discussed her rights as a U.S. citizen,  
especially with regards to the First Amendment. Singer Decl. ¶7, Ex. C.

8 **B. Ms. Dickinson's current story contradicts what she has said previously**

9 In 2002, Ms. Dickinson published her autobiography, *NO LIFEGUARD ON DUTY: THE*  
10 *ACCIDENTAL LIFE OF THE WORLD'S FIRST SUPERMODEL* (2002) ("Autobiography"), in which she gave a  
11 very different account of her 1982 encounter with Mr. Cosby in Lake Tahoe. Ms. Dickinson wrote  
12 that, after dinner, Mr. Cosby invited her back to his room, and when she declined his invitation he  
13 "gave [her] the dirtiest, meanest look in the world, stepped into his suite, and slammed the door in  
14 [her] face." Singer Decl. ¶8, Ex. D. The Autobiography makes no mention of rape, or of any physical  
15 contact whatsoever.

16 Ms. Dickinson told essentially the same story in an interview promoting the Autobiography  
17 with the *New York Observer* in 2002. Singer Decl. ¶9, Ex. E. When asked on *Entertainment Tonight*  
18 why her current rape story did not appear in the Autobiography, she claimed that Mr. Cosby and his  
19 legal team pressured her publisher, HarperCollins, to remove it. Singer Decl. ¶5, Ex. B. That  
20 accusation was a fabrication, and Dickinson later recanted it. Schmitt Decl. ¶4.

21 **C. Mr. Singer's November 18, 2014 letter and November 19, 2014 statement**

22 On November 18, 2014, Mr. Cosby's attorney, Martin D. Singer wrote a confidential pre-  
23 litigation demand letter to an executive producer of *Good Morning America (GMA)* about a segment  
24 the program was planning to run about Ms. Dickinson's accusations broadcast on *Entertainment*  
25 *Tonight* (the "November 18 Letter"). In that letter, Mr. Singer identified himself as litigation counsel  
26 and stated that Ms. Dickinson's rape story was "fabricated" and "an outrageous and defamatory lie."  
27 He pointed out that Ms. Dickinson had confirmed, both in her Autobiography and in her 2002  
28 interview with the *New York Observer*, that Mr. Cosby "blew her off" when she refused to sleep with

1 him on the same occasion in Lake Tahoe when she now claims the rape occurred. Mr. Singer also  
2 advised *GMA* that Ms. Dickinson's allegations about Mr. Cosby and his lawyers supposedly pressuring  
3 HarperCollins were fabricated, and advised *GMA* to contact the publisher before broadcasting a story  
4 about Ms. Dickinson's accusations against Mr. Cosby, warning *GMA* that it would otherwise be  
5 "exposed to very substantial liability." Singer Decl. ¶11, Ex. F.

6 The next day, Mr. Singer sent a statement to the press echoing the statements in his pre-  
7 litigation demand letter (the "November 19 Statement" and together with the November 18 Statement,  
8 the "Statements"). Like the pre-litigation demand letter sent the previous day, the November 19  
9 Statement pointed out the "glaring contradiction" between Ms. Dickinson's rape story and what she  
10 had written in the Autobiography and previously told the press, and also suggested that HarperCollins  
11 could confirm that no attorney representing Mr. Cosby ever pressured the publisher. The November 19  
12 Statement concluded that "[d]ocumentary proof and Ms. Dickinson's own words show that her new  
13 story about something she now claims happened back in 1982 is a fabricated lie." Singer Decl. ¶13,  
14 Ex. G.

15 **D. Ms. Dickinson retracts her claim about Cosby pressuring her publisher**

16 Ms. Dickinson tried to justify changing her story by claiming that her publisher had been  
17 thwarted by Mr. Cosby -- something that never happened. Singer Decl. ¶¶6, 17. However, after being  
18 caught in that lie, Ms. Dickinson later retracted that patently false assertion. Schmitt Decl. ¶¶3-4.

19 **E. Ms. Dickinson's reputation as a liar and substance abuser**

20 Ms. Dickinson claims that Mr. Singer branded her a liar, when, in fact, lying is part of her  
21 "brand." In her quest to remain in the public eye, Ms. Dickinson has actively cultivated a reputation  
22 for outrageous behavior that includes substance abuse, mental lapses, and lying. One journalist has  
23 described Ms. Dickinson as: "The world's first supermodel, a photographer, a parent, a giant liar to all  
24 her clients, emotionally unstable, 75% silicon and 15% botox, and a crazy (w)itch." Singer Decl. ¶6,  
25 Ex. H. Another article quotes one of Ms. Dickinson's fellow rehab patients as saying "no one in  
26 therapy believed her real life stories. She was branded as a pathological liar." *Id.* Ex. I.

27 Ms. Dickinson has publicly admitted that her alcoholism and drug abuse led to "humiliation of  
28 myself, losing clients, lying to people, lying to myself." *Id.* Ex. J. She has also said that she was born

1 with a “mental illness” and “came from a house where she lied because her dad was a pedophile.” *Id.*  
2 Ex. K. She has also admitted that her substance abuse has induced memory lapses. A 2007 article  
3 quoted her as saying: “I was the wildest model ever. Famous people wanted to sleep with me. ...  
4 People ask me what it was like... but I don’t remember. We were all so high.” *Id.* Ex. L.

5 **F. Mr. Singer’s personal experience with Ms. Dickinson**

6 Mr. Singer was not only aware of Ms. Dickinson’s cultivated reputation as a liar who is  
7 unreliable from publications like those quoted above, but also had personal knowledge that reasonably  
8 led him to believe that Ms. Dickinson fabricated stories on matters of importance. He knew of Ms.  
9 Dickinson’s untruthfulness in connection with matters he handled for another of his clients many years  
10 ago, during which Ms. Dickinson lied about paternity and other issues for pecuniary gain. Singer Decl.  
11 ¶15.

12 **III. MS. DICKINSON’S CLAIMS ARISE FROM ACTIVITY PROTECTED**  
13 **UNDER THE ANTI-SLAPP STATUTE**

14 Code of Civil Procedure § 425.16(b)(1) directs a court to grant a motion to strike a “cause of  
15 action against a person arising from any act of that person in furtherance of the person’s right of  
16 petition or free speech under the United States Constitution or the California Constitution in  
17 connection with a public issue, unless the court determines that the plaintiff has established that there is  
18 a probability that the plaintiff will prevail on the claim.” The statute was enacted so that courts could  
19 “dismiss at an early stage nonmeritorious litigation meant to chill the valid exercise of the  
20 constitutional rights of freedom of speech and petition in connection with a public issue.” *Sipple v.*  
21 *Found. For Nat’l Progress*, 71 Cal.App.4th 226, 235 (1999). This action is precisely the type of  
22 meritless litigation for which section 425.16 was created. Indeed, the protected activity on which this  
23 action is based falls within multiple subdivisions of section 425.16(e).

24 An “act in furtherance of a person’s right of petition or free speech ... in connection with a  
25 public issue” is defined to include “any written or oral statement or writing made in connection with an  
26 issue under consideration or review by a legislative, executive, or judicial body, or any other official  
27 proceeding authorized by law.” Code Civ. P. §425.16(e)(2). A pre-litigation demand letter constitutes a  
28

1 statement or writing in connection with a judicial proceeding, and is therefore protected petitioning  
2 activity under subsections (e)(1) and (e)(2).<sup>1</sup>

3 The November 18 Letter, sent by Mr. Singer in his capacity as Mr. Cosby's lawyer, is a classic  
4 pre-litigation demand. The letter is captioned "LEGAL NOTICE," and it begins by informing *GMA*  
5 that the sender is "litigation counsel to Bill Cosby." The letter threatens legal action against *GMA*  
6 should it proceed to air a segment rebroadcasting Ms. Dickinson's accusations. It sets forth both the  
7 factual and legal basis for such litigation, noting that Ms. Dickinson's accusation with respect to  
8 HarperCollins is provably false, and that *GMA* would be "acting recklessly and with Constitutional  
9 malice" if it proceeded to air the story. The November 18 Letter "concerns the subject of the dispute"  
10 and was sent in anticipation of litigation, and it falls within the scope of section 425.16(e)(2).

11 The anti-SLAPP statute also protects "any written or oral statement or writing made in a place  
12 open to the public or a public forum in connection with an issue of public interest." Code. Civ. Proc.  
13 §425.16(e)(3).<sup>2</sup> Here, the November 19 Statement was disseminated to various periodicals and  
14 broadcasters and was republished on the Internet. The November 19 Statement was therefore made in  
15 a public forum for the purposes of section 425.16(e)(3).

16 The term "public interest" as used in the anti-SLAPP statute is "not limited to governmental  
17 matters," but is "broadly construed." *Hailstone v. Martinez*, 169 Cal.App.4th 728, 737 (2008). An  
18 "issue of public interest" within the meaning of section 425.16(e)(3) "is *any issue in which the public*  
19

20 <sup>1</sup> See *Briggs v. Eden Council for Hope and Opportunity*, 19 Cal.4th 1106, 1115 (1999)  
21 ("communications preparatory to or in anticipation of the bringing an action" are protected by section  
22 425.16); *Digerati Holdings, LLC. v. Young Money Entm't LLC*, 194 Cal.App.4th 873, 887 (2011) (pre-  
23 litigation communication informing film distributors that film was not authorized and threatening  
24 litigation was a "statement[ ] made in anticipation of a court action or other official proceeding" for  
25 purposes of anti-SLAPP statute); *Rohde v. Wolfe*, 154 Cal.App.4th 28, 38 (2007) (communication of  
26 intent to commence litigation is protected). A pre-litigation demand letter constitutes protected speech  
27 so long as it "concern[s]the subject of the dispute" and is made "in anticipation of litigation." See  
28 *Digerati Holdings*, 194 Cal.App.4th at 887 (citation and quotation marks omitted).

<sup>2</sup> "A 'public forum' traditionally has been defined as a place that is open to the public where  
information is freely exchanged." *Nygaard, Inc. v. Uusi-Kerttula*, 159 Cal.App.4th 1027, 1036 (2008)  
(citing *Clark v. Burleigh*, 4 Cal.4th 474, 482 (1992)). Newspapers and magazines are public fora  
within the meaning of section 425.15(e)(3). See *id.* at 1038; *Damon v. Ocean Hills Journalism Club*,  
85 Cal.App.4th 468, 476-77 (2000). Websites that are accessible to the public free of charge, and  
where members of the public "may read the views and information posted and post their own  
opinions," are also public fora for purposes of subsection (e)(3). *Ampex Corp. v. Cargle*, 128  
Cal.App.4th 1569, 1576 (2005).

1 *is interested*. In other words, the issue need not be ‘significant’ to be protected by the anti-SLAPP  
2 statute – it is enough that it is one in which the public takes an interest.” *Nygaard, Inc.*, 159 Cal.App.4th  
3 at 1042 (emphasis in original). Consistent with that principle, California courts have described three  
4 “nonexclusive and sometimes overlapping” categories of statements that have been given anti-SLAPP  
5 protection under section 425.16(e)(3). *See Cross v. Cooper*, 197 Cal.App.4th 357, 373 & n.7 (2011).  
6 These include statements that concern (1) “a person or entity in the public eye,” (2) “conduct that could  
7 directly affect a large number of people beyond the direct participants,” or (3) “a topic of widespread,  
8 public interest.” *Id.* (citing and quoting *Rivero v. Fed’n of State, County, and Municipal Emps., AFL-*  
9 *CIO*, 105 Cal.App.4th 913, 924 (2003)).

10 The November 19 Statements falls within all of these categories. First, Ms. Dickinson, “a  
11 successful television star on many reality shows,” and Mr. Cosby, “an internationally known comedian,  
12 actor and author” (Compl. ¶¶ 8, 10), were both prominently in the public eye for decades before Ms.  
13 Dickinson’s accusations. Second, as Ms. Dickinson herself maintained, her coming forward with her  
14 rape allegation was a “protest” regarding “what’s going on for women everywhere,” and the alleged  
15 defamatory response denied that allegation. The accusations and response are part of a larger public  
16 conversation about how to deal with allegations of decades-old sexual misconduct in a manner that is  
17 fair to both the alleged victim and the accused. *See Singer Decl. Ex. N* (commentary on *New York*  
18 *Times* website that the statute of limitations is a “two-way street” because “in the absence of a verdict,  
19 people remember only the accusations, regardless of their merit”); *id. Ex. O* (*USA Today* editorial  
20 observing that, “[f]rom the Salem witch trials to ... Stalin’s Russia, collective accusing doesn’t always  
21 add up to a convincing case”). Third, the Dickinson allegation is just one of several issued against  
22 Mr. Cosby in 2014 that have been the subject of extensive reporting by the media, and intense public  
23 comment and speculation in the press and on the Internet. *See id. Ex. P* (comedian’s “comic rant”  
24 about Mr. Cosby “was the lighted match that touched off a firestorm” that has “engulfed the legendary  
25 entertainer”). Because the November 19 Statement was made in a public forum and concerns an issue  
26 of public interest, it qualifies for protection on section 425.16(e)(3).

27 Dickinson’s claims are also subject to subdivision (e)(4) of the anti-SLAPP statute because they  
28 arise from actual and alleged “conduct in furtherance of the exercise of the constitutional right of

1 petition or the constitutional right of free speech in connection with a public issue or an issue of public  
2 interest.” Code Civ. P. § 425.16(e)(4).<sup>3</sup>

3 **IV. MS. DICKINSON CANNOT ESTABLISH A PROBABILITY OF**  
4 **PREVAILING ON ANY OF HER CLAIMS**

5 Once a “defendant has made a threshold showing that the plaintiff’s cause of action arises from  
6 the defendant’s free speech or petitioning activity, the burden shifts to the plaintiff to establish a  
7 probability of prevailing on the claim.” *Wallace v. McCubbin*, 196 Cal.App.4th 1169, 1195 (2011); *see*  
8 *also* Cal. Code Civ. Proc. §425.16(b). In order to establish a probability of prevailing, Ms. Dickinson  
9 “must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima  
10 facie showing of facts to sustain a favorable judgment if the evidence submitted by [her] is credited.”  
11 *Navellier v. Sletten*, 29 Cal.4th 82, 88-89 (2002) (quotation marks omitted). *See also Simpson-Strong-*  
12 *Tie Co. v. Gore*, 49 Cal.4th 12, 21 (2010). “[I]n order to satisfy its burden under the second prong of  
13 the anti-SLAPP statute, it is not sufficient that plaintiff’s complaint [could] survive a demurrer.  
14 Plaintiffs must also substantiate the legal sufficiency of their claim.” *DuPont Merck Pharm. Co. v.*  
*Super. Ct.*, 78 Cal.App.4th 562, 568 (2007).

15 **A. Ms. Dickinson cannot establish a probability of success on the merits of her defamation**  
16 **claim**

17 Ms. Dickinson cannot meet her burden with respect to her defamation claim for many reasons.

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

19 Ms. Dickinson has no chance of success with respect to any of her claims arising from the  
20 November 18 Letter, because it is protected by the litigation privilege. Civ. Code § 47(b) codifies a  
21 common law “litigation privilege” under which communications made in contemplation of, or as part  
22 of, a judicial proceeding cannot serve as the basis for liability. *See Action Apt. Ass’n, Inc. v. City of*  
23 *Santa Monica*, 41 Cal.4th 1232, 1241 (2007). The purpose of the litigation privilege is to protect

24 \_\_\_\_\_  
25 <sup>3</sup> The requirement that the activity be “‘in connection with an issue of public interest’ . . . is to be  
26 ‘construed broadly’ so as to encourage participation by all segments of our society in vigorous public  
27 debate related to issues of public interest.” *Seelig v. Infinity Broadcasting Corp.*, 97 Cal.App.4th 798,  
28 808 (2002). Subdivision (e)(4) covers “even private communications, so long as they concern a public  
issue.” *Wilbanks v. Wolk*, 121 Cal.App.4th 883, 897 (2004); *see also Dowling v. Zimmerman*, 85  
Cal.App.4th 1400, 1418-1420 (2001); *Terry v. Davis Community Church*, 131 Cal.App.4th 1534,  
1545-46 (2005) (statements to members of church that two of its youth group leaders had an  
inappropriate relationship with a minor female are covered by subd. (e)(4)).



1 required level of fault is “actual malice,” defined as knowing falsity or reckless disregard for the truth.  
2 *Reader's Digest Assn. v. Superior Court*, 37 Cal.3d 244, 256 (1984) (citing *New York Times Co. v.*  
3 *Sullivan*, 376 U.S. 254, 285-86 (1964)). Because that showing of fault requires that the speaker’s state  
4 of mind be proved by clear and convincing evidence, “general agency rules do not apply in the  
5 constitutional context.” *Masson v. New Yorker Magazine, Inc.*, 832 F. Supp. 1350, 1370 (N.D. Cal.  
6 1993). As one federal court has explained, “the stringent standards required by the First Amendment  
7 make application of agency theory inappropriate” in the defamation context. *Murray v. Bailey*, 613 F.  
8 Supp. 1276, 1281 (M.D. Cal. 1985). The fact that Mr. Singer was acting generally on behalf of Mr.  
9 Cosby when he issued the Statements does not make Mr. Cosby liable for their content.<sup>5</sup>

10 Even if the doctrine of *respondeat superior* were appropriate in the First Amendment context, a  
11 principal’s vicarious liability “turns on whether the agent is liable.” Restatement (Third) of Agency  
12 §7.03 & cmt. b (2006) (emph. added). As a respected federal appellate judge and libel expert has  
13 explained, in the context of defamation a principal can only be vicariously liable if “the person who  
14 actually utters the defamation is personally at fault.” Sack on Defamation §2.10, at 2-174 (4th ed.  
15 2010). For the reasons below, Ms. Dickinson cannot prove that Mr. Singer issued the Statements with  
16 actual malice, and thus there is no liability on the part of Mr. Singer as agent to impute to Mr. Cosby.

17 **3. Mr. Singer did not issue either Statement with actual malice**

18 Ms. Dickinson cannot succeed on her defamation claim based on either Statement because she  
19 cannot demonstrate that Mr. Singer, who published them, acted with the constitutionally required  
20 degree of fault. As discussed above, a public figure alleging defamation must prove, by clear and  
21 convincing evidence, that the speaker made the allegedly libelous statements with actual malice--that

22  
23 issues.” See *Gertz*, 418 U.S. at 351. Ms. Dickinson has done both. As an “internationally known  
24 fashion model, photographer and author,” the “world’s first supermodel,” “the face of ad campaigns  
25 for many products,” and an individual with “popularity and marketability on reality television and in  
26 publishing,” Compl. ¶¶ 7-8, Ms. Dickinson is a general purpose public figure. Having interjected  
herself into the controversy surrounding Mr. Cosby with her highly publicized accusations against him  
as a “protest” in support of women everywhere, she is a public figure for the range of issues associated  
with that controversy as well.

27 <sup>5</sup> Mr. Cosby’s alleged failure to retract the Statements post-dates their publication and is not  
28 publication in itself, and therefore does not establish constitutionally required fault. See *New York*  
*Times*, 376 U.S. at 286 (newspaper’s failure to retract upon plaintiff’s demand was “not adequate  
evidence of malice for constitutional purposes”).

1 is, with knowledge that they were false or with reckless disregard of whether they were false or not.  
2 As the Supreme Court has explained, that standard requires proof of a “high degree of awareness of  
3 [the statement’s] probable falsity.” *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). Where the alleged  
4 defamatory statement is based on documentary or other evidence, the actual malice standard cannot be  
5 satisfied by speculation that the speaker may not have believed what he was saying. *See Dodds v. Am.*  
6 *Broadcasting Co.*, 145 F.3d 1053, 1061-62 (9th Cir. 1998); *Franklin v. Dynamic Details, Inc.*, 116  
7 Cal.App.4th 375, 387-88 (2004) (citing *Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430 (9th  
8 Cir. 1995).

9 Ms. Dickinson cannot establish that Mr. Singer acted with actual malice because he had  
10 substantial reasons to conclude that her latest story was a fabrication when he issued the Statements.  
11 Mr. Singer knew that Ms. Dickinson did not say in the Autobiography, and in an interview in 2002, that  
12 she had been raped, but inconsistently claimed that she resisted advances by Mr. Cosby. Mr. Singer  
13 was aware of the large volume of prior reporting regarding Ms. Dickinson in which she was  
14 persistently characterized as a liar who even cultivated that reputation herself. Singer Decl. ¶¶15-16,  
15 Exs. H-L. Mr. Singer also had personal experience with her lying in connection with another one of  
16 his clients. *Id.* ¶15. Mr. Singer also knew that there was no truth to Ms. Dickinson’s claim that her  
17 publisher had been “pressured” by Mr. Cosby or his lawyers (and Ms. Dickinson’s lawyer ultimately  
18 withdrew that specious claim). In sum, Mr. Singer had every reason to think that Ms. Dickinson’s story  
19 was a fabrication, and no reason to think that the Statements denying her accusations were false in any  
20 way. Indeed, Ms. Dickinson has since retracted a major element of her claim—that Mr. Cosby or his  
21 attorneys “pressured” HarperCollins in 2002 to delete the rape accusation from the Autobiography.  
22 Schmitt Decl. ¶4. So that portion of the Statements was not only published without actual malice, but  
23 was simply true.

24 In the absence of *any* evidence that Mr. Singer acted with reckless disregard of truth or falsity,  
25 Ms. Dickinson cannot possibly establish by clear and convincing evidence that the Statements were  
26 made with actual malice, and the Court should grant Mr. Cosby’s special motion to strike her  
27 defamation claim on that basis alone. *See Young v. CBS Broadcasting, Inc.*, 212 Cal.App.4th 551, 562-  
28 63 (2012); *Rosenaur v. Scherer*, 88 Cal.App.4th 260, 270 (2001).

1           **4. The Statements are not actionable because they are privileged opinion**

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

3           A defamation claim must fail where the defendant was privileged to make the statement at  
4           issue. Ms. Dickinson cannot establish a probability of success because the Statements, even if deemed  
5           to have been made by Mr. Cosby, are privileged.

6           At common law, an individual is entitled to protect his reputation by publishing statements in  
7           response to, or to refute injurious statements made by another, the so-called “self-defense privilege.”  
8           *See generally Foretich v. Capital Cities/ABC*, 37 F.3d 1541, 1559 (4th Cir. 1994) (collecting cases). In  
9           California, a version of this defense is recognized under the doctrine of “predictable opinion”—i.e., a  
10          one-sided statement made by an individual “from [his] own perspective to paint [himself] in a better  
11          light.” *Dreamstone Entm’t Ltd. v. Maysalward Inc.*, No. 2:14-cv-02063-CAS(SSx), 2014 U.S. Dist.  
12          LEXIS 116977, \*17-19 (C.D. Cal. Aug. 18, 2014). “[W]here potentially defamatory statements are  
13          published in a setting . . . in which the audience may anticipate efforts by the parties to persuade others  
14          to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be  
15          considered as statements of fact may well assume the character of statements of opinion.” *Ferlauto v.*  
16          *Hamsher*, 74 Cal. App.4th 1394, 1401-1402 (1999) (internal citations and quotations omitted).

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

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

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

1 Each of those stated reasons for believing that Ms. Dickinson was lying in her rape accusation was  
2 indisputably true. Each Statement was explicit that the conclusion that the rape story was “a fabricated  
3 lie” was based on those facts. The Statements are thus non-actionable expressions of opinion based on  
4 fully disclosed facts, and Ms. Dickinson cannot establish a probability that she will succeed on the  
5 merits of her defamation claim.

6 **5. Ms. Dickinson cannot show that she has suffered damages.**

7 **a. The Statements are substantially true**

8 If the Statements are deemed to constitute an unprivileged assertion of fact, i.e., that Ms.  
9 Dickinson is a liar, that message is substantially true. “California law permits the defense of  
10 substantial truth and would absolve a defendant even if she cannot ‘justify every word of the matter; it  
11 is sufficient if the substance of the charge proved to be true, irrespective of slight inaccuracy in the  
12 details.’” *GetFugu, Inc. v. Patton Boggs LLP*, 220 Cal.App.4th 141, 154 (2013) (quoting *Masson v.*  
13 *New Yorker Magazine, Inc.*, 501 U.S. 496, 516-17 (1991) (quotation marks omitted). The defense of  
14 “substantial truth” absolves a defendant “so long as the substance, the gist, the sting of the libelous  
15 charge be justified.” *Masson*, 501 U.S. at 517. The test for substantial truth is whether the statement  
16 “would have had a different effect on the mind of the reader from that which the pleaded truth would  
17 have produced.” *Id.*

18 Here, Ms. Dickinson alleges that the “sting” of the November 19 Statement is that it branded  
19 her as a liar. Even if that allegation is accepted, the effect of this allegedly false statement is the same  
20 as that of the unquestionably true statements that Ms. Dickinson told a very different story in her  
21 autobiography and 2002 interview, and that she lied about Mr. Cosby’s lawyers having pressured  
22 HarperCollins. Based on those statements, a reasonable reader would conclude that Ms. Dickinson had  
23 either lied in 2002 when she said that she didn’t want to go to bed with Mr. Cosby and he “blew her  
24 off,” or that she was lying when she offered her rape story, and that she lied about HarperCollins (a lie  
25 now admitted). Therefore, if the gist of the Statements is that Ms. Dickinson is a liar, that conclusion  
26 is substantially true, and bars Ms. Dickinson’s defamation claim.

27 **b. Ms. Dickinson cannot prove damages**

28 In order to succeed on her defamation claim, Ms. Dickinson must prove that the Statements had

1 “a natural tendency to injury or cause[d] special damage.” *Wong v. Jing*, 189 Cal.App.4th 1354, 1369  
2 (2010) (citing *Taus v. Loftus*, 40 Cal.4th 683, 720 (2007)). Long before the Statements, Ms. Dickinson  
3 had a widespread reputation for outrageous behavior that included substance abuse, mental lapses, and  
4 lying. Indeed, that is a reputation she actively cultivated and commercially exploited by appearing on  
5 various “reality TV” shows such as “Recovering Celeb Addicts, Reformed Liars.” Singer Decl. Exs.H,  
6 J, K. Due in large part to Ms. Dickinson’s own self-promotion efforts, she established for herself a  
7 pervasive reputation as a liar. Any claim that Ms. Dickinson has suffered damages either personally or  
8 professionally as a result of the Statements would be baseless.

9 **B. Ms. Dickinson cannot establish a probability of success on her false light claim because it  
10 is duplicative of her defamation claim**

11 Under California law, a plaintiff has no viable claim for false light invasion of privacy where  
12 defamation is alleged on the same facts. *McClatchy Newspapers, Inc. v. Superior Court*, 189 Cal  
13 App.3d 961, 965 (1987). *See also Kapellas v. Kofman*, 1 Cal.3d 20, 35 n.16 (1969). Where, as here,  
14 the cause of action for false light incorporates all of the allegations in a separate cause of action for  
15 defamation based on the same statements, it is “in effect, a duplication” and must be dismissed.  
16 *Selleck v. Globe Int’l, Inc.*, 166 Cal.App.3d 1123, 1136 (1985). Ms. Dickinson’s second cause of  
17 action simply restates all of the allegations in her first cause of action for defamation, and is therefore  
18 subject to dismissal. She cannot demonstrate a probability of success on that claim.

19 **C. Ms. Dickinson cannot demonstrate probability of success on her intentional infliction of  
20 emotional distress claim because it is based on the same facts as her defamation claim**

21 Ms. Dickinson cannot succeed on her third cause of action for intentional infliction of  
22 emotional distress for the same reasons that her defamation claim must fail. The constitutional  
23 protection afforded those who criticize public figures “does not depend on the label given the stated  
24 cause of action,” and applies to actions for intentional infliction of emotional distress as well. *Hustler  
25 Magazine v. Falwell*, 485 U.S. 46, 56 (1988); *Reader’s Digest Assn. v. Superior Court*, 37 Cal.3d 244,  
26 265 (1984). The law thus recognizes that “to allow an independent cause of action for the intentional  
27 infliction of emotional distress, based on the same acts which would not support a defamation action,  
28 would allow plaintiffs to do indirectly that which they could not do directly.” *Flynn v. Higham*, 149  
Cal.App.3d 677, 682 (1983). Here, Ms. Dickinson cannot prove her defamation claim. Consequently,  
her cause of action for intentional infliction of emotional distress must also fail.

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

8 **V. DEFENDANT SHOULD BE AWARDED ATTORNEY’S FEES AND COSTS**

9 An award of attorney’s fees to the “prevailing defendant” on an anti-SLAPP motion is  
10 mandatory. *See* Code of Civil Procedure § 425.16(c)(1); *Ketchum v. Moses*, 24 Cal.4th 1122, 1131  
11 (2001). Accordingly, if Mr. Cosby’s special motion to strike is granted, he respectfully requests that  
12 this Court award attorney’s fees and costs, in an amount to be established by subsequent motion.

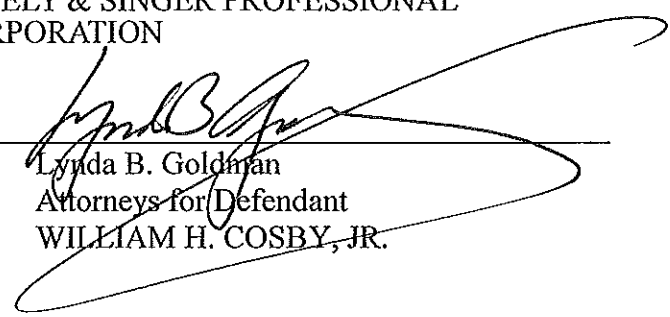
13 **VI. CONCLUSION**

14 Ms. Dickinson should not be allowed to use this action to punish Mr. Cosby for exercising his  
15 right to defend himself publicly against accusations that she herself has taken pains to make public.  
16 Ms. Dickinson’s claims arise from activity protected by the anti-SLAPP statute, and she cannot  
17 establish a probability of prevailing on any of them. The Court should therefore grant Defendant’s  
18 special motion to strike and award Defendant his attorney’s fees and costs.

19 DATED: June 19, 2015

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

21 LAVELY & SINGER PROFESSIONAL  
CORPORATION

22  
23 By   
24 Lynda B. Goldman  
25 Attorneys for Defendant  
26 WILLIAM H. COSBY, JR.  
27  
28

**PROOF OF SERVICE**

1013A(3) C.C.P. Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 2049 Century Park East, Suite 2400, Los Angeles, California 90067-2906.

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

**DEFENDANT WILLIAM H. COSBY, JR.'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MARTIN D. SINGER, JOHN P. SCHMITT, AND LYNDA B. GOLDMAN**

on the interested parties in this action by placing:  a true and correct copy -OR-  the original document thereof enclosed in sealed envelopes addressed as follows:

Lisa Bloom, Esq. Nadia Taghizadeh, Esq. THE BLOOM FIRM 20700 Ventura Blvd., Suite 301 Woodland Hills, California 91364 TEL: (818) 914-7314 FAX: (866) 852-5666 EMAIL: <a href="mailto:Lisa@TheBloomFirm.com">Lisa@TheBloomFirm.com</a> <a href="mailto:Nadia@TheBloomFirm.com">Nadia@TheBloomFirm.com</a>	Attorneys for Plaintiff:  JANICE DICKINSON
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BY MAIL:

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed June 19, 2015 at Los Angeles, California.

**ORIGINAL SIGNED**

H. Hancock