

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Janice Dickinson’s allegations that Bill Cosby drugged and raped her must be accepted as true
4 on this motion, because Ms. Dickinson has submitted a sworn declaration on those facts and
5 remarkably, Mr. Cosby has submitted no declaration denying them.

6 Press statements made on his behalf calling Ms. Dickinson a liar are therefore provably false,
7 not opinion. Either the rape happened, or it did not happen. Since on this motion the Court must take
8 as true that it did happen, Mr. Cosby’s calling Ms. Dickinson a liar was a false statement made with
9 malice, i.e. knowledge that it was false, as Mr. Cosby was present when he raped Ms. Dickinson.

10 Ms. Dickinson easily meets the “minimal merit” standard on each element of her claims.

11 **II. FACTUAL BACKGROUND**

12 **A. MR. COSBY DRUGGED AND RAPED MS. DICKINSON IN OR ABOUT 1982**

13 In or about 1982 in Lake Tahoe, Mr. Cosby drugged and raped Ms. Dickinson (the “Rape”).
14 (Dickinson Decl. ¶ 2.)

15 **B. MS. DICKINSON’S PRIOR DISCLOSURES OF THE RAPE, 1982-2010**

16 Ms. Dickinson disclosed the Rape to the following individuals:

17 (a) In 1982, to her friend Edward Tricomi. (Dickinson Decl. ¶ 4; Tricomi Decl. ¶ 3.)

18 (b) Shortly thereafter, to her friend Sandy Linter. (Dickinson Decl. ¶ 5; Linter Decl., ¶ 3.)

19 (c) In or about 2001, to Pablo Fenjves, the ghostwriter of her 2002 autobiography *No*
20 *Lifeguard on Duty* (“*No Lifeguard*”). (Dickinson Decl. ¶ 6; Fenjves Decl. ¶ 7.)

21 (d) In or about 2002, to Judith Regan, the president and publisher of Regan Books, an imprint
22 of HarperCollins and the publisher of *No Lifeguard*. (Dickinson Decl. ¶ 7; Regan Decl. ¶ 5.)

23 Ms. Regan and Mr. Fenjves would not allow Ms. Dickinson to disclose the Rape in *No*
24 *Lifeguard* because they were concerned that Mr. Cosby would sue or otherwise retaliate against
25 HarperCollins. (Fenjves Decl. ¶ 9 and Regan Decl. ¶ 6, respectively.) Although Ms. Dickinson
26 begged them to include her Rape in the book, they would only allow a milder negative story about
27 Mr. Cosby. (Fenjves Decl. ¶ 11; Regan Decl. ¶¶ 7-9; Dickinson Decl. ¶ 8.) Notably, HarperCollins’
28 refusal to include the Rape came shortly before HarperCollins completed publication of two Cosby
books, *Friends of a Feather* and *I Am What I Ate*. (Bloom Decl. **Exh. 1.**)

1 (e) In 2010, Ms. Dickinson disclosed to Dr. Drew Pinsky that she had been raped by a
2 prominent celebrity, whose name she feared to say. (Dickinson Decl. ¶ 11; Pinsky Decl. ¶ 14.)

3 **C. MS. DICKINSON PUBLICLY DISCLOSES THE RAPE**

4 On November 18, 2014, Ms. Dickinson disclosed the Rape in a CBS television interview.

5 **D. MR. COSBY QUICKLY RETALIATES BY DEFAMING MS. DICKINSON**

6 Mr. Cosby’s attorney immediately publicly branded Ms. Dickinson a liar in a November 18,
7 2014 press statement (the “November 18 Press Statement”, Bloom Decl. **Exh. 2**) and in a November
8 19, 2014 press statement (the “November 19 Press Statement”, Bloom Decl. **Exh. 4**) (collectively,
9 “the Press Statements”) which were immediately broadcast by CBS, BuzzFeed, and thousands of
10 other media outlets, as Mr. Cosby, an experienced media personality, surely foresaw and intended.

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

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

20 (Bloom Decl. **Exh. 2**.)

21 The November 19 Press Statement contained the following false statements of fact:

- 22 • “Janice Dickinson’s story accusing Bill Cosby of rape is a lie.”
- 23 • “Documentary proof and Ms. Dickinson’s own words show that her new story
24 about something she now claims happened back in 1982 is a fabricated lie.”

25 (Bloom Decl. **Exh. 4**.)

26 Mr. Cosby has never sued any media outlet that published the Press Statements, nor
27 any of the thousands that reported rape allegations against him. (Bloom Decl. ¶13.)

28 **E. MR. COSBY REFUSES TO RETRACT THE FALSE STATEMENTS**

Prior to this litigation, by letter sent to three attorneys for Mr. Cosby, Ms. Dickinson
demanded a retraction. (Bloom Decl. **Exh. 5**.) No retraction occurred. (Bloom Decl. ¶ 14.)

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

1 In a prior civil action,¹ Mr. Cosby admitted giving women an illegal sedative:

2 [Lawyer]: “You gave [Quaaludes] to other people?”

3 Cosby: “Yes.”

4 See Plaintiff’s Request for Judicial Notice, **Exhibit A** (Document 48, page 8 of 66).

5 Later in the deposition, Mr. Cosby conceded he did so for sexual purposes:

6 [Lawyer]: “When you got the Quaaludes, was it in your mind that you were going to use these
7 Quaaludes for young women that you wanted to have sex with?”

8 Cosby: “Yes.”

9 See Plaintiff’s Request for Judicial Notice, **Exhibit B** (Document 50, page 3 of 49).

10 Mr. Cosby also failed to deny a strikingly similar allegation of drugging a woman for the
11 purpose of rape:

12 [Lawyer]: “She [another accuser] said that she believes she was not in the position to consent
13 to intercourse after you gave her the drug. Do you believe that is correct?”

14 Cosby: “I don’t know.”

15 (Bloom Decl., **Exh. 11.**)

16 **III. LEGAL ARGUMENT**

17 **A. DEFENDANT MUST SATISFY BOTH PRONGS OF THE ANTI-SLAPP STATUTE**

18 The Anti-SLAPP statute, C.C.P. § 425.16, posits a two-step process for determining whether
19 an action is a SLAPP. First, the court decides whether the defendant's acts were taken “in furtherance
20 of the person's right of petition or free speech . . . in connection with a public issue” (§ 425.16(b)(1)),
21 i.e., that the challenged cause of action is one “arising from protected activity.” *Navellier v. Sletten*,
22 29 Cal.4th 82, 88 (2002). If the court finds this threshold showing has been made, it must then
23 determine whether “the plaintiff has established that there is a probability that the plaintiff will
24 prevail on the claim.” C.C.P. § 425.16(b)(1).

25 “Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute--i.e., that arises
26 from protected speech or petitioning *and* lacks even minimal merit--is a SLAPP, subject to being
27 stricken under the statute.” *Id.* (emphasis added). In making these determinations, the Court considers

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

1 “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or
2 defense is based.” C.C.P. § 425.16 (b)(2).

3 **B. DEFENDANT FAILS THE FIRST PRONG BECAUSE HIS PRESS STATEMENTS**
4 **ARE NOT “PROTECTED ACTIVITY” UNDER THE ANTI-SLAPP STATUTE**

5 **1. The November 18 Press Statement was Not a Privileged Pre-Litigation Demand**

6 “A prelitigation communication is privileged only if it ‘relates to litigation that is
7 contemplated in good faith *and* under serious consideration.’ *Action Apartment Ass’n, Inc. v. City of*
8 *Santa Monica*, 41 Cal. 4th 1232, 1251 (2007) (emphasis added). The communication must be “in
9 furtherance of the objects of the litigation” and thus “be connected with, or have some logical relation
10 to, the action.” *Silberg v. Anderson*, 50 Cal. 3d 205, 219-220 (1990). This requirement is “an issue of
11 fact.” *Action Apartment, supra*, at 1251.

12 Mr. Cosby asserts that the November 18 Press Statement (and only that one) is a “classic”
13 pre-litigation demand because it “constitutes a statement or writing in connection with a judicial
14 proceeding.” (Motion at 5:27- 6:4.) False. The November 18 Press Statement was not connected to
15 any judicial proceeding, nor is one identified. Ms. Dickinson’s claim for sexual assault was time
16 barred, and she never threatened any litigation for the sexual assault. As for a possible case against
17 the media, to whom the November 18 Press Statement was directed, Mr. Cosby did not sue a single
18 one of the press outlets to whom he sent the Press Statements. Nor any others, ever. Second, despite
19 submitting declarations from three lawyers, Mr. Cosby offers no evidence any such action was ever
20 under “serious consideration.” Third, the letter itself does not even threaten litigation. Fourth, Mr.
21 Singer, an experienced celebrity attorney, sent the letter to reporters, not attorneys -- compelling
22 evidence it was not intended as confidential. Fifth, the recipients, Buzzfeed and others, understood it
23 to be a press release, and immediately posted it on their sites. Bloom Decl. ¶11 and **Exh. 3**.

24 **2. A Cause of Action Containing a Mix of Unprotected and Protected Activity Should**
25 **Not be Stricken if Plaintiff Can Prevail on any Part of Her Claim**

26 In *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 82 (2011), the California Supreme
27 Court held that if a plaintiff “can show a probability of prevailing on any part of its claim, the cause
28 of action is not meritless” and will not be stricken under the anti-SLAPP statute. “[O]nce a plaintiff
shows a probability of prevailing on any part of its claim, the plaintiff has established that its cause of

1 action has some merit and the entire cause of action stands.” *Id.* (citing *Mann v. Quality Old Time*
2 *Service, Inc.*, 120 Cal.App.4th 90, 106 (2004).) *See also Haight Ashbury Free Clinics, Inc. v.*
3 *Happening House Ventures*, 184 Cal.App.4th 1539, 1551 (2010); *Martinez v. Metabolife Intl., Inc.*,
4 113 Cal.App.4th 181, 188 (2003). Thus even if this Court finds the November 18 Press Statement is
5 privileged, Ms. Dickinson’s claims would not be subjected to the anti-SLAPP statute because no such
6 privilege applies to the November 19 Press Statement, even according to Defendant.

7 **3. Defendant has Alleged in Another Court that Rape Allegations are a Private Matter**

8 Mr. Cosby claims here that the anti-SLAPP statute governs because he, through counsel,
9 spoke out on a matter of public interest. But just last year, Mr. Cosby argued in a court filing that
10 “there is no public interest” in similar rape allegations against him, that “Defendant’s status as a well-
11 known comedian and entertainer does not render him a ‘public’ person,” and that “a case does not
12 involve ‘public’ issues or persons merely because one of the litigants is a celebrity.” *See* Plaintiff’s
13 Request for Judicial Notice, **Exhibit C** at 11-12. If the matter was not a public issue in that case,
14 neither is it here, and Defendant Cosby should be estopped from arguing otherwise in this forum.

15 **C. DEFENDANT FAILS THE SECOND PRONG BECAUSE MS. DICKINSON FAR**
16 **EXCEEDS THE “MINIMAL MERIT” TEST ON EACH ELEMENT OF HER CLAIMS**

17 **1. Plaintiff Need Only Establish “Minimal Merit” to Survive a SLAPP Motion**

18 In the context of a SLAPP motion, the plaintiff need only establish that his or her claim has
19 “minimal merit” to avoid being stricken as a SLAPP. *Soukup v. Law Offices of Herbert Hafif*, 39
20 Cal.4th 260, 291 (2006); *see also Jarrow Formulas, Inc. v. LaMarche*, 31 Cal.4th 728, 738 (2003)
21 (“the anti-SLAPP statute requires only a minimum level of legal sufficiency and triability”).

22 **2. Plaintiff Can Establish “Minimal Merit” on Each Element of Her Defamation Claim**

23 Defamation is the intentional publication of a statement of fact that is false, unprivileged, has
24 a natural tendency to injure or that causes special damage. *Grenier v. Taylor*, 234 Cal. App. 4th 471,
25 486 (2015). On this motion, it is “the court’s responsibility . . . to accept as true evidence favorable to
26 the plaintiff” *HMS Capital, Inc. v. Lawyers Title Co.*, 118 Cal.App.4th 204, 212 (2004).

27 **a. The Press Statements Contain Multiple Provably False Statements**

28 Ms. Dickinson’s Rape account is fully set forth in the Complaint and in her declaration. It is
substantially corroborated. Ms. Dickinson told individuals years ago that Mr. Cosby had raped or

1 attacked her. Decls. of Tricomi, Fenjves, Regan, and Linter. *Ms. Dickinson told each of these four*
2 *witnesses about Mr. Cosby's assault on her years before the first public accusation of Mr. Cosby for*
3 *rape in 2005. See Dickinson Decl. ¶¶ 4-7.* Moreover, Mr. Cosby's 2006 admission to drugging
4 women for sex – notably, including women not named in that case -- further corroborates
5 Dickinson's account. *Constand v. Cosby, supra*; Plaintiff's Request for Judicial Notice, **Exhibit A**.

6 All of Mr. Cosby's arguments have been carefully reviewed and soundly rejected by a federal
7 judge in a recent strikingly similar case, *Green v. Cosby*, 2015 WL 5923553 (D. Mass 2015)².
8 Applying California law, District Judge Hon. Mark Mastroianni held that allegations of sexual assault
9 against Mr. Cosby are provable, and his representatives' public statements that his accusers were liars
10 were provably false: "Plaintiff Green's allegations detail a specific set of events that either occurred
11 substantially as alleged or were fabricated, leaving no room for an honest mistake." Req. for Judicial
12 Notice, **Exhibit D**, at 23. Denying Mr. Cosby's motion to dismiss three women's defamation claims,
13 the *Green* court held: "[T]he gist of the statement – that Plaintiff Green fabricated her allegations –
14 is also provable as true or false. It may take a trial to produce such proof, but Defendant's
15 allegations are sufficiently specific 'to be susceptible to proof or disproof.'" **Exhibit D**, at 22.

16 Here, Mr. Cosby relies on the absence of the rape disclosure in *No Lifeguard* while accusing
17 Ms. Dickinson of statements she never made and actions she never took. First, he alleges that Ms.
18 Dickinson "repeatedly stated publicly in her 2002 autobiography and in the media that the alleged
19 assault did not occur." (Motion at 1:10-11.) False. The book describes Mr. Cosby in unflattering
20 terms and is entirely silent on the topic of rape. Revealingly, Mr. Cosby fails to cite to any page
21 where she supposedly denies the Rape. The omission has no effect on her credibility. In fact, Ms.
22 Dickinson wanted to include the Rape account in the book, but HarperCollins refused to allow it.
(Regan and Fenjves Decls. ¶ 6 and ¶ 9, respectively).

23 Mr. Cosby claims that Ms. Dickinson "told essentially the same story" in a 2002 interview
24 with the *New York Observer*. However, the only quote attributed to Ms. Dickinson in that article
25 regarding Mr. Cosby is:

26 "Oh, he's so sad," Janice Dickinson said. "He dangled a TV role.
27 And he called me in rehab to come to Tahoe. In rehab!"

28 _____
² Request for Judicial Notice, Exhibit D.

1 (Singer Decl. Exhibit E). This is hardly a denial of drugging and rape.

2 Second, Mr. Cosby asserts that Ms. Dickinson falsely claimed that Mr. Cosby and his
3 attorneys pressured her to leave him out of her book. In fact, no admissible evidence supports this
4 allegation. While Mr. Cosby submits several video recordings of Ms. Dickinson's limited television
5 appearances in 2014 accusing Mr. Cosby of rape, nowhere on those videos does she make such a
6 claim. Mr. Cosby attaches several press articles, but, again, none quotes her making such a claim.

7 Instead, one web reporter attributes this statement to Ms. Dickinson, without quotation marks
8 around it, based on a video interview where Ms. Dickinson does not make the statement. (Singer
9 Decl. Exh. A.) The ET.com web article containing the reporter's recounting of what she claims Ms.
10 Dickinson said is double hearsay and inadmissible on this motion. Other media outlets simply
11 repeated this false report, without any further basis for it. Bloom Decl. ¶ 9. Mr. Cosby's lawyer
12 claims counsel for Ms. Dickinson "retracted" this claim. This never happened. Bloom Decl. ¶ 5.

13 **b. The Press Statements Were Unprivileged**

14 **i. The Litigation Privilege does not apply to the Press Statements**

15 Mr. Cosby cannot hide behind the litigation privilege as no litigation was happening or
16 seriously contemplated at the time. *See* Point III.B.1 *supra*. Press statements are not privileged even
17 when litigation has commenced. *Rothman v. Jackson*, 49 Cal.App.4th 1134, 1149 (1996) ("we hold
18 that the litigation privilege should not be extended to 'litigating in the press'"); *accord Get Fugu, Inc.*
19 *v. Patton Boggs LLP*, 74 Cal.App.4th 141, 153-54 (2013) (press release actionable, not privileged).

20 **ii. The Press Statements are not privileged as "predictable opinion" because**
21 **they were not issued in the context of pending or completed litigation**

22 Defendant claims that the Press Statements are not actionable because they are "predictable
23 opinion" much like the self-defense privilege. (Mot. at 12:1-19.) The self-defense privilege is not
24 recognized in California. *See, e.g., Finke v. Walt Disney Co.*, 2 Cal. Rptr.3d 436, 459 (2003). And the
25 predictable opinion defense is recognized in California only in the narrow context of pending or
26 completed litigation. *See, e.g., Ferlauto v. Hamsher*, 74 Cal.App.4th 1394, 1403 (use of colorful
27 terms such as "frivolous" or "stupid" to describe lawsuit deemed predictable opinion); *Get Fugu, Inc.*,
28 *supra*, at 156 (attorney tweet characterizing lawsuit as "frivolous" deemed predictable opinion);
Dreamstone Entertainment, Ltd. v. Maysalward, Inc., 2014 WL 4181026, *6 (C.D. Cal. 2014)

1 (comments by attorneys about pending litigation "predictable opinion"). Significantly, the
2 "predictable opinion privilege" does not permit character assassination. *Rothman v. Jackson, supra*
3 (attorney's public accusation that plaintiff knowingly made false statements goes beyond mere denial
4 and is actionable defamation); *see, e.g., Green v. Cosby, supra* (press statements by defendant
5 Cosby's agent Martin Singer accusing plaintiffs of fabricating claims of sexual assault actionable, not
6 predictable opinion).

7 Here, no litigation was pending when the Press Statements were issued. Defendant's response
8 to the Rape claim was not limited to a denial nor couched in colorful language that diluted its literal
9 meaning. On the contrary, he pointedly called her a liar and stated that she had intentionally
10 fabricated the Rape. But whether Ms. Dickinson was raped is not opinion at all: it is a fact, and one
11 assumed as true on this motion.

12 **iii. Defendant's Press Statements are not "indisputably true"**

13 According to Defendant, the Press Statements were based on prior inconsistent statements by
14 Ms. Dickinson and a related "fabricated lie" that his lawyers had pressured Harper Collins to excise
15 the Rape from the book. (Mot. at 12:24-28.) Defendants thus argue that calling Ms. Dickinson a liar
16 was "indisputably true" and based on fully disclosed facts. (*Id.* at 13:1-4 and 6-26.)

17 However, the evidence submitted herein contradicts Defendant's evidence. On this motion,
18 Ms. Dickinson's proffered evidence must be accepted as true on its face without any assessment of
19 credibility or evaluation as to the weight of the evidence. *See Get Fugu, Inc.* 74 Cal.App.4th at 154-
20 55. Moreover, even assuming the libelous statements can be interpreted as either opinion or false
21 facts, the issue must be decided by the finder of fact, *i.e.*, the jury. *Ferlauto*, 74 Cal.App.4th at 1401.

22 **c. Ms. Dickinson was Harmed**

23 Ms. Dickinson has built an impressive public reputation as an honest – sometimes brutally
24 honest -- person. Taylor Decl. ¶¶ 6-7; Pinsky Decl. ¶ 11; Silver Decl. ¶ 13. Being publicly branded a
25 liar "was a shocking, major blow to Ms. Dickinson's reputation and 'brand.'" Taylor Decl. ¶ 10. Her
26 long time publicist avers, "Many media consumers do not read carefully. They see an article where
27 someone is called a liar and assume it has been conclusively proven. Because Ms. Dickinson was
28 singled out from the fifty other Cosby accusers in this very public way, many people now believe that

1 she is a proven liar...” Taylor Decl. ¶ 10. Ms. Dickinson’s reputation has been significantly
2 undermined, and “she lost specific business opportunities as a result.” Taylor Decl. ¶ 11.

3 **d. Mr. Cosby, As Principal, Is Liable For Media Statements Made By His Attorney**

4 **i. An Attorney’s Actions Bind the Principal**

5 The lawyer-client relationship is an agency relationship, “[h]ence, the client as principal is
6 bound by the acts of the attorney-agent within the scope of his actual authority (express or implied) or
7 his apparent or ostensible authority” *Blanton v. Womancare, Inc.*, 38 Cal.3d 396, 403 (1985).
8 “An agent represents his principal for all purposes within the scope of his actual or ostensible
9 authority, and all the rights and liabilities . . . accrue to the principal.” Civil Code § 2330.

10 Mr. Cosby’s current attorney, Monique Pressley, has publicly affirmed this obvious truth,
11 acknowledging that Mr. Cosby sends attorneys out to speak for him. Bloom Decl. ¶22, **Exh. 12**.

12 If there were any doubt that Mr. Cosby approved the Press Statements, it is dispelled by the
13 fact that “Mr. William H. Cosby” is copied on the November 18 Press Statement to Buzzfeed, Bloom
14 Decl. **Exh. 2**; and again on the November 18, 2014 statement to Good Morning America. Singer
15 Decl. Exh. F. Mr. Cosby therefore had contemporaneous knowledge and approval of the statements.

16 “If an agent is guilty of defamation, the principal is liable so long as the agent was apparently
17 authorized to make the defamatory statement.” *American Society of Mechanical Engineers v. Hydro*
18 *Level Corporation*, 456 U.S. 556, 566 (1982), *citing* Restatement of Agency 254 (2d) (same); *Bridge*
19 *C.A.T. Scan Associates v. Ohio-Nuclear, Inc.*, 608 F.Supp. 1187, 1197 (S.D.N.Y. 1985) (client may
20 be responsible for attorneys’ statements made within the scope of his legal representation).³

21 In the alternative, if this Court finds that Plaintiff has not adequately demonstrated that Mr.
22 Singer’s Press Releases bind Mr. Cosby, Plaintiff renews her request to lift the discovery stay and
23 permit the depositions of Mr. Singer and Mr. Cosby on this issue, as this Court previously ruled.

24 **ii. A Principal's Silence to an Agent's Action is a Form of Ratification**

25 A principal is liable “when the principal knows the agent holds himself or herself out as
26 clothed with certain authority and remains silent.” *NORCAL Mut. Ins. Co. v. Newton*, 84 Cal. App.

27 ³ “[D]efamation is effective, in part at least, because of the personality of the one publishing it. Thus, one who appears to
28 have authority to make statements for the employer gives to his statements the weight of the employer's reputation. For
this reason, the liability of the master may be based upon apparent authority.” Restatement (2d) of Agency 254, Comment
C. The Press Statements were quoted by thousands of media outlets worldwide precisely because they were made on
behalf of Mr. Cosby. Had Mr. Singer made them on his own, little republication would have followed.

1 4th 64, 78 (2000). A principal's failure to promptly disaffirm an agent's conduct on his or her behalf
2 constitutes ratification. *Id.* at 78-79. Failure to object to the act of an agent, after full knowledge of it,
3 may be a ratification and may constitute prior authorization of it. *Heck v. Heck*, 63 Cal. App. 2d 470,
4 474 (1944). Even an attorney's unauthorized act may bind a client if the client ratifies such action.
5 *Toal v. Tardif*, 178 Cal. App. 4th 1208, 1222 (2009).

6 For ten years Mr. Singer publicly disparaged Cosby accusers, and Mr. Cosby kept him on
7 until 2015, after the filing of this lawsuit. Bloom Decl. ¶23 and **Exh 13**. None of the three attorney
8 declarations submitted by Mr. Cosby herein claim that Mr. Singer "went rogue." And even if he did,
9 Mr. Cosby ratified the press statements by refusing to retract them after Ms. Dickinson demanded he
10 do so several months prior to the filing of this lawsuit. Bloom Decl. ¶14.

11 **e. Mr. Singer, on Mr. Cosby's Behalf, Acted with Malice⁴**

12 Defendant's knowledge that his statement was false or made with reckless disregard for the
13 truth constitutes actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Harte-Hanks*
14 *Comm'ns, Inc. v. Connaughton*, 491 U.S. 657, 667 (1989). "Reckless disregard" exists when there is
15 "sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as
16 to the truth of his publication," *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) or a "high degree of
17 awareness of . . . probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).

18 The Court may rely on inferences drawn from circumstantial evidence to find actual
19 malice. *Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 257-58 (1984). "A failure to
20 investigate, anger and hostility toward the plaintiff, reliance upon sources known to be unreliable, or
21 known to be biased against the plaintiff . . . may . . . indicate that the publisher himself had serious
22 doubts regarding the truth of his publication." *Id.* at 258; *Sanders v. Walsh*, 219 Cal. App. 4th 855,
23 873 (2013).

24
25 ⁴ Out of an abundance of caution and to preserve her rights, Plaintiff discusses malice here because
26 the Court, on January 28, 2016, did not indicate whether the hearing on the anti-SLAPP motion
27 would defer a determination on the issue of actual malice until Plaintiff had the opportunity to
28 conduct discovery on this issue. Plaintiff's discussion on the element of actual malice is not a waiver
of her request to conduct such discovery and Plaintiff hereby renews her request to depose Defendant
Cosby and Martin Singer on this issue should the Court find that Plaintiff has not met the requisite
test for a showing of malice.

1 Similarly, “[t]he actual malice finding may be upheld ‘where there are obvious reasons to
2 doubt the veracity of the informant or the accuracy of his reports’ (*Harte-Hanks Commc'ns, Inc.*, 491
3 U.S. at 682-683) and the republisher failed to interview obvious witnesses who could have confirmed
4 or disproved the allegations.” *Khawar v. Globe Int’l, Inc.*, 19 Cal. 4th 254, 276 (1998). Here Mr.
5 Singer, an experienced entertainment attorney, had “obvious reasons to doubt the veracity” of the
6 information he now claims he relied upon.

7 First, Mr. Singer was Mr. Cosby’s attorney in 2005 when Mr. Cosby admitted to drugging
8 women for sex and failed to deny nonconsensual sex. *See* Request for Judicial Notice, **Exhibits A**
9 **and B**. He knew of many other women with similar accounts of rape by Mr. Cosby. *See* Bloom Decl.,
10 **Exh. 13**.

11 Second, Mr. Singer “failed to interview obvious witnesses” – including the only two who
12 were present at the Rape, Mr. Cosby and Ms. Dickinson. Actual malice may be found upon a
13 showing of "purposeful avoidance of the truth." *Harte-Hanks Commc'ns, Inc.*, 491 U.S. at 692. Mr.
14 Singer’s November 18, 2014 Press Statement sternly warns the media that if they run they story but
15 fail to “check the facts with neutral independent sources who will provide you with facts
16 demonstrating that the Story is false and fabricated, you will be acting recklessly and with
17 Constitutional malice.” The irony is thick. Mr. Singer failed to do precisely that. The only two Harper
18 Collins witnesses involved have submitted declarations here strongly supporting Ms. Dickinson. *See*
19 *Regan and Fenjves Decls.* Mr. Singer’s own statement reveals his knowledge that he was “acting
20 recklessly and with Constitutional malice.”

21 Third, Mr. Singer’s “research” is shockingly deficient. To establish the purported truth of his
22 statements, Mr. Singer cites five items he claims to have found online. The timing is suspect. Ms.
23 Dickinson’s first interview, with Entertainment Tonight, took place on November 18, 2014. The very
24 same day, the November 18 Press Statement was disseminated. There was insufficient time to
25 genuinely and in good faith search for the truth.

26 A real question exists as to whether Mr. Singer even did his research on November 18, 2014.
27 *Each of his exhibits curiously bears a “Capture Timestamp” of June 15, 2015 – seven months later.*
28 Singer Decl., Exhs. H, I, L and M. No metadata is submitted showing an earlier download date.

1 And if Mr. Singer did review his research before sending out the Press Statements, he
2 certainly did not look for verifiable facts. Unable to find a single reputable news source to support his
3 “liar” claim, he instead relies on the least credible form of “evidence” – anonymous Internet trolls
4 making snarky comments about celebrities – none of whom claim to have met Ms. Dickinson, and
5 none of whom offered any support for their loose claims that she lied. (Silver Decl., ¶ 10-12).

6 And apparently, Mr. Singer did not read his own sources, because two of the five stand for the
7 proposition that Ms. Dickinson is a truthful person! Judge Cristina of *Cristina’s Court*, for example,
8 *finds for Ms. Dickinson* in the face of a claim from an angry young model who she had fired. Mr.
9 Singer submits the transcript of only the first portion of that TV show, in which the model accuses
10 Ms. Dickinson of wrongfully terminating him. But the ending of the show, conveniently omitted by
11 Mr. Singer, shows the judge rejecting that claim entirely, finding Ms. Dickinson to be compassionate
12 and motherly, and the model’s claims to be without merit. Taylor Decl. ¶ 19.

13 In another of Mr. Singer’s “sources,” a video on a shabbily-made Minneapolis lead generating
14 website (Exhibit I to Singer Decl.), clicking through to the original post by “bill55ted” reveals a
15 passionate defense of Ms. Dickinson’s integrity. “bill55ted” tells a story that while some unnamed
16 person in a group therapy session once branded Ms. Dickinson a pathological liar for claiming that
17 she’d been a supermodel and dated Mick Jagger, *she’d proved them wrong* by bringing in magazine
18 covers and press articles to back it up. “bill55ted” concludes strongly that Ms. Dickinson had been
19 unfairly attacked, when in fact, she was truthful and was able to prove it. “Janice Dickinson proved to
20 everyone in her treatment group that she was telling the truth,” “bill55ted” notes. He concludes: “I
21 have been branded a pathological liar for things I have done. Unlike Janice I was never allowed to
22 prove I was telling the truth.” Taylor Decl. ¶ 18 and Exh. C attached thereto.

23 Another Internet source cited by Mr. Singer is a blog on Zap2It.com, a site which “does not
24 require from its writers that they provide reliable sources for their claims,” Silver Decl. ¶ 10, which
25 “merely hosts salacious commentary” and “clearly does not fit the definition of a reliable source.”
26 Silver Decl. ¶ 10. And oddly, Mr. Singer cites a Daily Mail article which is “completely silent as to
27 Ms. Dickinson’s credibility,” Silver Decl. ¶ 12.

28 Additionally, Mr. Singer cites to a television show, Dr. Drew On Call, incorrectly titling it
“Recovering Celeb Addicts, Reformed Liars.” Singer Decl. ¶ 16(d). Dr. Drew Pinsky himself submits

1 a declaration in support of Ms. Dickinson and correcting the record, stating that Mr. Singer’s
2 interpretation of the clip is “incorrect”: “The show was not intended to brand Janice Dickinson as a
3 liar, nor would that be a fair interpretation.” Pinsky Decl. ¶ 8-9. He states flatly: “I believe that Ms.
4 Dickinson is an honest person.” Pinsky Decl. ¶ 4.

5 Finally, Mr. Singer vaguely alludes to Ms. Dickinson having made false claims against an
6 unnamed former client of his. Ms. Dickinson vigorously denies this. Dickinson Decl. ¶ 18.

7 While Mr. Singer busied himself with Internet trolls and distortions, he ignored reliable,
8 easily accessible reputable sources such as CBS and NBC News profiles of Ms. Dickinson attesting
9 to her reputation for rigorous honesty. Silver Decl. ¶ 13. He also ignored decades of Mr. Cosby’s
10 open obsession with drugging women into sexual submission, and Mr. Cosby’s own deposition
11 admissions. *See* Request for Judicial Notice, Exhibits A and B. This is precisely the type of
12 “purposeful avoidance of the truth” the *Harte-Hanks* Court found to be actual malice. *See* 491 U.S. at
13 692.

14 **f. Mr. Cosby Acted With Actual Malice in Authorizing and Ratifying the Statements**

15 As the Rape perpetrator, Mr. Cosby knows that Ms. Dickinson was raped. Yet, Mr. Cosby
16 authorized his agent (*see* Bloom Decl., **Exhibits 2, 4, 12 and 13**) to call Ms. Dickinson a liar. If there
17 was any doubt as to Cosby authorizing the Press Statements, his refusal to retract removes any such
18 doubt. Actual malice must be logically inferred. As stated above, the Court may rely on inferences
19 drawn from circumstantial evidence to find actual malice. *Reader's Digest Assn., supra* at 257-58.

20 Defendant argues that “Mr. Cosby cannot be held directly liable for defamation absent any
21 evidence that he furnished the [Press] Statements” (Motion, p.9, lines 18-20), yet fails to offer any
22 authority in support. Instead, Defendant cites to *Mitchell* (Motion, p.9, line 20), where a principal
23 source was found liable after it gave information with the expectation it would be published. While
24 the principal in *Mitchell* was found liable, *Mitchell* did *not* maintain that the defamatory statements
25 *must* be furnished by the principal in order for the principal to be held liable. Defendants then cite to
26 *Smith v. Maldonado* (Motion, p.9, line 20), a case that does not discuss principal’s liability for an
agent’s act, but rather, republication of defamatory content – a matter not at issue here.

27 Lastly, Defendants cite to *Masson* (Motion, p.10, line 5), which held that agency rules do not
28 apply in a constitutional context. *Masson* is distinguishable. In *Masson*, the Court denies Plaintiff’s

1 argument that the principal should be liable because its agent acted with malice. Here, however, it is
2 alleged that *Mr. Cosby* too acted with malice in authorizing his agent to issue the Press Statements.

3 **3. Plaintiff's False Light Claim is Not Duplicative, But Should Be Decided on Demurrer**

4 Defendant argues that Ms. Dickinson's claim for false light invasion of privacy should
5 dismissed because it is identical to her defamation claim. It is not.

6 Plaintiff's false light claim alleges, among other things, that Defendant's statement that her
7 rape disclosure was "new" or that she made the allegation in 2014 "for the first time" is by
8 implication saying her rape disclosure was concocted after other women made similar claims.
9 Complaint at ¶56(i). This smear by implication is the essence of a false light claim.

10 As a procedural matter, Defendant's argument is inapt because it is outside the boundaries of
11 the anti-SLAPP motion. Defendant has not cited to a single case where this issue of duplication was
12 decided during an anti-SLAPP motion. Accordingly, the Court should deny Defendant's motion to
13 strike the false light claim and decide the issue in connection with Defendant's demurrer, where
14 plaintiff can brief the issue more fully.

15 **4. Ms. Dickinson Sets Forth a Prima Facie Showing of Facts to Sustain a Favorable**
16 **Judgment on her Claim of Intentional Infliction of Emotional Distress ("IIED")**

17 "[T]o state a cause of action for intentional infliction of emotional distress a plaintiff must
18 show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless
19 disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or
20 extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the
21 defendant's outrageous conduct." *Trerice v. Blue Cross of California*, 209 Cal.App.3d 878, 883
(1989).

22 Publicly declaring a rape victim a liar constitutes outrageous conduct. The outrageousness is
23 compounded by the fact that the public declaration occurred less than 24 hours after Ms. Dickinson
24 bravely came out as a rape victim. This demonstrates Mr. Cosby's intention or, at the very least,
25 recklessness in causing Ms. Dickinson's emotional distress.

26 Defendant contends that Ms. Dickinson's IIED claim fails "for the same reasons that her
27 defamation claim must fail." (Mot. at 14:19-20.) However, as discussed above, Ms. Dickinson has
28 shown that she will prevail on her defamation cause of action.

1 Courts allow both libel and IIED causes of action based on the same facts. *See, e.g., Finke 2*
2 *Cal. Rptr.3d, supra*, at 459, 463 (evidence supporting libel cause of action and evidence of plaintiff's
3 pain and suffering sufficient to show that she will prevail on her cause of action for intentional
4 infliction of emotional distress); *see also Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988) (public
5 figures may recover for both torts).

6 Additionally, Ms. Dickinson's IIED cause of action alleges a separate basis for damages
7 independent of the defamatory conduct wherein Mr. Cosby "joke[d] about drugging women's drinks
8 in a comedy show after the disclosure by Ms. Dickinson and many other women that he had done so
9 and then raped them, causing them pain, suffering and trauma." (Complaint ¶ 70); Bloom Decl., **Exh.**
10 **15**. *See also* Plaintiff's Request for Judicial Notice, **Exhibit E**, of Mr. Cosby's filing in the
11 concurrent federal matter, *AIG Property Casualty Co. v William H. Cosby and Janice Dickinson*,
12 Case No. 2:15-CV-04842-BRO-RAO, wherein Mr. Cosby concedes that "this allegation [of making
13 jokes about drugging women's drinks in a comedy show] is divorced from, and certainly does not
14 depend on, any alleged act of sexual misconduct." (ECF No. 24, p.24 (p.31 of 33 of the ECF
15 document), lines 15-16).

16 **D. MS. DICKINSON IS ENTITLED TO ATTORNEYS' FEES**

17 A party who partially prevails on an anti-SLAPP motion must generally be considered a
18 prevailing party for purposes of an attorney's fee award. *Lin v. City of Pleasanton*, 176 Cal. App. 4th
19 408, 425 (2009); Cal. Civ. Proc. Code § 425.16(c). The term "prevailing party" must be "interpreted
20 broadly to favor an award of attorney fees to a partially successful defendant. *Lin*, at 425-426. Should
21 the Defendant's motion be denied or denied in part, Plaintiff respectfully requests that this Court
22 award attorney's fees and costs in an amount to be established by subsequent motion.

23 **IV. CONCLUSION**

24 For the reasons set forth above, Plaintiff respectfully requests that the Defendant's Anti-
25 SLAPP motion be denied in its entirety.

26 DATED: February 16, 2016

27 THE BLOOM FIRM



28 Lisa Bloom

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