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APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 17-1256

KATHRINE MAE MCKEE,

Plaintiff-Appellant,

v.

WILLIAM H. COSBY, JR.,

Defendant-Appellee.

MANDATE

Entered: December 28, 2017

In accordance with the judgment of October 18, 2017, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:
/s/ Margaret Carter, Clerk

cc:
John J. Egan
Alan A. Greenberg
Michael G. McDonough
Robert L. Quinn
Frederick William Salo

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 17-1256

KATHRINE MAE MCKEE,

Plaintiff-Appellant,

v.

WILLIAM H. COSBY, JR.,

Defendant-Appellee.

Before
HOWARD, Chief Judge, TORRUELLA, LYNCH,
THOMPSON, KAYATTA and BARRON,
Circuit Judges.

ORDER OF COURT

Entered: December 20, 2017

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be *denied*.

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By the Court:
/s/ Margaret Carter, Clerk

cc:
Frederick William Salo
Robert L. Quinn
John J. Egan
Alan A. Greenberg
Michael G. McDonough

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 17-1256

KATHRINE MAE MCKEE,
Plaintiff-Appellant,

v.

WILLIAM H. COSBY, JR.,
Defendant-Appellee.

JUDGMENT

Entered: October 18, 2017

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's order dismissing all counts of Kathrine Mae McKee's amended complaint is affirmed.

By the Court:
/s/ Margaret Carter, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 17-1256

KATHRINE MAE MCKEE,
Plaintiff-Appellant,

v.

WILLIAM H. COSBY, JR.,
Defendant-Appellee.

Appeal from the United States District Court for the
District of Massachusetts, Western Division.
No. 3:15-cv-30221-MGM — Hon. Mark G.
Mastroianni, U.S. District Judge.

Before
LYNCH, STAHL, and THOMPSON,
Circuit Judges

OPINION

Decided: October 18, 2017

LYNCH, Circuit Judge. Kathrine McKee sued William H. Cosby, Jr., whom she had accused in a 2014 interview published in the New York Daily News of raping her, for defamation after the content of a purportedly confidential letter penned to the paper by

Cosby's attorney in Cosby's defense was disseminated and reported on by news outlets and websites worldwide. The district court granted Cosby's motion to dismiss, primarily on *First Amendment* grounds, see *McKee v. Cosby*, 236 F. Supp. 3d 427 (D. Mass. 2017), and McKee appealed. We affirm.

I.

We accept as true the well-pleaded factual allegations from McKee's amended complaint and draw all reasonable inferences in McKee's favor. See *Stanton v. Metro Corp.*, 438 F.3d 119, 123 (1st Cir. 2006). McKee is a performer and actress who has been working in the entertainment industry for over fifty years. Cosby is an internationally renowned celebrity and entertainer. McKee met Cosby around 1964, while she was a showgirl in Las Vegas. In 1971, McKee appeared as an actress on the "Bill Cosby Show," and then socialized with Cosby and his wife on several occasions between 1971 and 1974. In 1974, Cosby invited McKee to meet him in his hotel room in Detroit, Michigan, before heading out to a party. Immediately after McKee arrived and entered the hotel room, Cosby forcibly raped her.

In December 2014, after more than twenty other women had publicly accused Cosby of sexual assault, McKee revealed the rape during an interview with Nancy Dillon, a reporter for the New York Daily News. On December 22, 2014, the Daily News published an article describing the rape as McKee had recounted it. Later that same day, Cosby's attorney, Martin Singer, e-mailed a six-page letter to the Daily

News' New York office, addressing the article (the "Singer Letter" or "Letter").

The Singer Letter, which bears prominent "Confidential Legal Notice" and "Publication or Dissemination Is Prohibited" disclaimers on its front page, admonishes the Daily News for its decision to publish an article disclosing McKee's rape allegations against Cosby. The Letter asserts repeatedly that the newspaper "maintains virtually no journalistic standard[s] or credibility threshold" for its stories, as illustrated by its willingness to publish McKee's "never-before-heard tale" while deliberately ignoring or inexcusably failing to investigate "[a]mple . . . readily available" "evidence undermining [McKee's] reliability." Referencing "[e]asily available public information" that "belie[s] the Daily News' Story" and demonstrates that McKee's rape "story lacks credibility," the Letter lists, in a string of bullet points, statements that McKee allegedly made pertaining to her social relationship with Cosby, as well as her past life as a Las Vegas showgirl. Each set of attributed statements is accompanied by a footnote with a citation to a news article or other source. Then, asserting that "the Daily News is not alone," the Letter goes on to more broadly bemoan the "reckless[ness]" of "irresponsible media" that "blindly ignores the dubious background of sources," including inter alia the "[c]riminal backgrounds of various accusers." In closing, the Letter demands "[p]ublication of a retraction and correction" of the Daily News' "malicious defamatory article."

According to McKee, on the same day Singer sent the Letter to the Daily News, he leaked copies of it to

the media. Within hours, excerpts and quotes appeared in news outlets around the world and were further reported on by various news organizations and websites. McKee alleges that the rapid and widespread dissemination of the statements contained in the Letter defamed her, causing harm to her reputation nationally within "days, weeks or even months."

In December 2015, McKee sued Cosby for defamation in federal court in Massachusetts, invoking diversity jurisdiction. In July 2016, McKee filed an amended complaint in which she asserted twenty-four defamation counts pertaining to various portions of the Singer Letter. Cosby moved to dismiss McKee's amended complaint for failure to state a claim. In February 2017, the district court granted Cosby's motion. See *McKee*, 236 F. Supp. 3d at 454. The court held that the "gist" of the Letter was the author's opinion that McKee lacked credibility and that the Daily News improperly ignored or failed to investigate publicly available information undermining her rape allegations. *Id.* at 439-40. The court deemed non-actionable the opinion as to McKee's credibility because it was "not capable of being objectively verified or disproven" and, in any event, the Letter "adequately disclosed the non-defamatory facts underlying the opinion[]." *Id.* at 440. The court then individually addressed each of the allegedly false and defamatory statements singled out in the twenty-four counts of McKee's complaint, and found all of them to be non-actionable under *First Amendment* principles and/or under Michigan defamation law. See *id.* at 444-54. McKee appeals

from entry of judgment against her, arguing that her claims should go to trial.

II.

We review de novo the district court's grant of a motion to dismiss a defamation suit. *Stanton*, 438 F.3d at 123. We accept as true the complaint's well-pleaded factual allegations, and draw all reasonable inferences in favor of the non-moving party. *Id.* Before turning to the merits, we describe the applicable law that will guide our analysis, and address lingering disputes about that law.

A. Choice of Law

The parties disagree as to which state's defamation law should apply. McKee advocates for the law of Massachusetts, asserting that Massachusetts has "the most compelling interest in this action." Cosby maintains that "either Michigan or Nevada law applies," emphasizing that although McKee was living in Michigan at the time the Singer Letter was published and its allegedly defamatory content disseminated, she later moved to Nevada. The district court applied Michigan law, and did not err in doing so.

In deciding which state's substantive law applies, federal courts follow the forum state's choice of law rules. *In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 14 (1st Cir. 2012). In Massachusetts, courts resolve choice-of-law questions "by assessing various choice-influencing considerations,' including those provided in the

Restatement (Second) of Conflict of Laws (1971)." *Cosme v. Whitin Mach. Works, Inc.*, 417 Mass. 643, 632 N.E.2d 832, 834 (Mass. 1994) (citation omitted) (quoting *Bushkin Assocs. v. Raytheon Co.*, 393 Mass. 622, 473 N.E.2d 662, 668 (Mass. 1985)); see also *Bushkin*, 473 N.E.2d at 669 (treating the Restatement as an "obvious source of guidance" for choice of law questions). When a defamatory statement is published in multiple states, the Restatement applies the law of the state with the "most significant relationship to the occurrence and the parties," *Restatement (Second) of Conflict of Laws* § 150(1) (1971), which "will usually be the state where the [defamed] person was domiciled at the time, if the matter complained of was published in that state," *id.* § 150(2).

Almost immediately after Singer emailed the Letter to the Daily News in New York on December 22, 2014, its content was disseminated and reported on by news outlets nationally and "around the world," causing, McKee alleges, reputational harm in all fifty states within "days, weeks, or even months." At that time, McKee's state of domicile was Michigan. McKee resided in Michigan from 1994 until July 2015. McKee alleges in her brief that she "incurred damages for personal humiliation, mental anguish and suffering in Michigan" from December 22, 2014 through July 2015. To be sure, other states are also implicated in this case in one way or another: the Letter was initially sent to the Daily News in New York; McKee permanently moved to Nevada approximately six months after the Letter was published; and Cosby was domiciled in Massachusetts when the Letter was written. But we agree with the district court that the

state with the "most significant" relationship to this suit is that in which McKee resided when the Letter was published and for decades preceding the alleged "impairment of [her] reputation and standing in the community," *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). Since Michigan was McKee's longstanding state of domicile when she was allegedly defamed, the district court soundly chose to apply Michigan law.

B. Legal Principles

Under Michigan law, the elements of a defamation claim are:

- (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication.

Mitan v. Campbell, 474 Mich. 21, 706 N.W.2d 420, 421 (Mich. 2005) (citations omitted). A statement is "defamatory" if "it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual." *Ireland v. Edwards*, 230 Mich. App. 607, 584 N.W.2d 632, 636 (Mich. App. Ct. 1998) (citation omitted).

Superimposed on any state's defamation law are *First Amendment* safeguards. See *Pan Am Sys., Inc. v. Atl. Ne. Rails & Ports, Inc.*, 804 F.3d 59, 64 (1st Cir.

2015) ("Modern defamation law is a complex mixture of common-law rules and constitutional doctrines."). We highlight here the most relevant principles.

First, "defamatory statements are not punishable unless they are capable of being proved true or false." *Pan Am Sys.*, 804 F.3d at 65. There is no "wholesale defamation exemption for anything that might be labeled 'opinion.'" *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990); see also *id.* at 19 (declining to create an "artificial dichotomy between 'opinion' and fact"). The critical question is whether the challenged statement "reasonably would be understood to declare or imply provable assertions of fact." *Phantom Touring, Inc. v. Affiliated Publ'ns*, 953 F.2d 724, 727 (1st Cir. 1992). A statement, even if "couch[ed] . . . as an opinion," will give rise to liability if it "implies the existence of underlying [false and] defamatory facts" as its basis; conversely, a statement is "immunize[d]" so long as the speaker discloses all of the facts undergirding it and none of them are both false and defamatory. *Piccone v. Bartels*, 785 F.3d 766, 771 (1st Cir. 2015). In other words, when the speaker "outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the *First Amendment*." *Riley v. Harr*, 292 F.3d 282, 289 (1st Cir. 2002) (quoting *Partington v. Bugliosi*, 56 F.3d 1147, 1156-57 (9th Cir. 1995)). "[E]ven a provably false statement is not actionable if 'it is plain that the speaker is expressing a subjective view . . . rather than claiming to be in possession of objectively verifiable facts.'" *Id.* (quoting

Gray v. St. Martin's Press, Inc., 221 F.3d 243, 248 (1st Cir. 2000)).

Second, if the plaintiff is either a public official or a public figure, he or she may not recover damages for a defamatory statement unless he or she can prove that the statement was made with "actual malice" -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). Public figure status can arise in one of two ways. An individual becomes a "general-purpose" public figure if he "achieve[s] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Gertz*, 418 U.S. at 351; *Lluberes v. Uncommon Prods., LLC*, 663 F.3d 6, 13 (1st Cir. 2011). Alternatively, an individual becomes a "limited-purpose" public figure if he "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues," the scope of which is determined by the "nature and extent of [his] participation in the particular controversy giving rise to the defamation." *Gertz*, 418 U.S. at 351-52; *Lluberes*, 663 F.3d at 13. Either way, a public-figure plaintiff bears the "heavy, and often insurmountable" burden of proving that the defendant acted with "actual malice." *Lluberes*, 663 F.3d at 14.

McKee argues that the district court erred when it found her to be a limited-purpose public figure with respect to "the public controversy over [Cosby's] alleged sexual assault of [McKee] and others." *McKee*, 236 F. Supp. 3d at 453 n.25. There was no error.

The critical questions for limited-purpose public figure status are whether a matter of "public controversy" existed prior to the alleged defamation, and whether the defamed individual deliberately "thrust [herself] into the vortex" of that controversy or otherwise "engage[d] the public's attention in an attempt to influence its outcome." *Gertz*, 418 U.S. at 351-52; see also *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 590-91 (1st Cir. 1980). While ascertaining public-figure status may in some cases require a "detailed fact-sensitive determination," *Penobscot Indian Nation v. Key Bank*, 112 F.3d 538, 561 (1st Cir. 1997), the matter is resolved as a question of law, *Pendleton v. City of Haverhill*, 156 F.3d 57, 68 (1st Cir. 1998), and when possible, it is "perfectly reasonable to . . . decide whether a plaintiff is a . . . public figure during pretrial proceedings." *Mandel v. Bos. Phx., Inc.*, 456 F.3d 198, 204 (1st Cir. 2006).

In our case, the web of sexual assault allegations implicating Cosby, an internationally renowned comedian commonly referred to as "America's Dad," constitutes a public controversy. McKee portrays her dispute with Cosby as a self-contained, private dispute -- "purely a matter of private concern" -- and argues that "Cosby's alleged criminal behavior has not become a matter of 'public controversy.'" Cf. *Time, Inc. v. Firestone*, 424 U.S. 448, 454, 96 S. Ct. 958, 47 L. Ed. 2d 154 (1976) (finding private high-society divorce proceeding was not a "public controversy" despite being a "cause célèbre" in the media). However, the context in which McKee decided to reveal her rape to the press in December 2014, following decades of silence, belies this narrative: McKee came forward

after more than twenty other women had levelled highly publicized sexual assault accusations against Cosby, who in response allegedly hired a team of lawyers and investigators "to discredit them, to intimidate them, and to intimidate any future would-be accusers."

By purposefully disclosing to the public her own rape accusation against Cosby via an interview with a reporter, McKee "thrust" herself to the "forefront" of this controversy, seeking to "influence its outcome." *Gertz*, 418 U.S. at 345; see also *Street v. Nat'l Broad. Co.*, 645 F.2d 1227, 1235 (6th Cir. 1981), cert. granted, 454 U.S. 815, 102 S. Ct. 91, 70 L. Ed. 2d 83 (1981), and cert. dismissed, 454 U.S. 1095, 102 S. Ct. 667, 70 L. Ed. 2d 636 (1981) (sexual assault plaintiff who "gave press interviews and aggressively promoted her version of the case outside of her actual courtroom testimony" was a public figure because she "had effective access to the media and encouraged public interest in herself"). McKee points out that "[a] private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157, 167, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979). But in stark contrast to the plaintiff in *Wolston*, who was "dragged unwillingly into the controversy," *id.* at 166, and "never discussed th[e] matter with the press," *id.* at 167, McKee deliberately came forward and accused Cosby of rape in an interview with a reporter, thereby engaging the public's attention and "invit[ing] public scrutiny" of the credibility of her allegations. *Pendleton*, 156 F.3d at 69. In other words, McKee took concerted steps meant to influence the public's

perception of whether Cosby was, in fact, a sexual predator. For these reasons, we hold as a matter of law that McKee is a limited-purpose public figure. As a result, to the extent any statements made in the Singer Letter meet the tests for falsity and for defamation, McKee bears the burden of plausibly alleging that Cosby made such statements with either "knowledge" that they were false or "reckless disregard" for their truth or falsity. *Sullivan*, 376 U.S. at 279-80.

C. Analysis

We apply the above rules to the pleading here. We focus first on the message of the Singer Letter as a whole, before considering individual statements McKee has challenged. From McKee's perspective, Singer, acting on Cosby's behalf, crafted the Letter to "communicate to the world the defamatory message that Ms. McKee is a liar with regard to the Cosby rape allegation"; the Letter's "sting" is that "McKee's rape allegation is false." According to Cosby, the Letter focused instead "on the conduct of the Daily News, not McKee," and was meant to "criticize[] the media generally and the Daily News specifically" for their low journalistic standards and failure to properly vet their sources. It is fair to say the Letter does both. It "raises doubts as to [McKee's] credibility and castigates the Daily News" for failing to acknowledge readily available evidence that undermined McKee's reliability. *McKee*, 236 F. Supp. 3d at 443.

It is manifest from the face of the Singer Letter that its purpose is to undermine McKee's credibility, not merely to lambast the Daily News. The Letter is

replete with assertions and innuendo leading to the conclusion that McKee is not credible: "To say that Ms. McKee is not a reliable source is a gross understatement"; "The glaring inconsistency [sic] . . . was alone a basis to question [McKee's] veracity and render her an unreliable source"; "Ms. McKee has admitted, 'I had to do a lot of lying.'" General statements about a person's credibility may well be a matter of opinion that is not capable of being "objectively verified or disproven." *McKee*, 236 F. Supp. 3d at 440. Assessing credibility requires "a quintessential 'expression[] of personal judgment' that is 'subjective in character.'" *Piccone*, 785 F.3d at 772 (quoting *Gray v. St. Martin's Press, Inc.*, 221 F.3d 243, 248 (1st Cir. 2000)).

With that being said, the Singer Letter does more than merely attack McKee's credibility generally. The Letter implies that McKee's allegations of rape are not credible. Referring to the Daily News article containing "McKee's . . . allegations . . . accusing [Cosby] of rape," the Letter asserts that McKee's "story lacks credibility," that her "never-before-heard tale . . . is completely contradicted by her own prior published statements," and that "[a]mple published information . . . completely undermines [her] story." In addition, the bulk of the factual information and quotations highlighted in the Letter relate to the nature of McKee's relationship with Cosby and the plausibility of the rape allegation, rather than McKee's alleged general propensity to lie. All in all, the Letter says not only that McKee lacks credibility, but also that her rape "tale" is not credible.

Nevertheless, even if we treat the Singer Letter as asserting both that McKee lacks credibility and that McKee's rape allegations are not truthful, Singer adequately disclosed the nondefamatory facts underlying these assertions, thereby immunizing them from defamation liability. See *McKee*, 236 F. Supp. 3d at 440; see also *Hill*, 665 F. App'x at 175 ("[E]ven if Singer's Statement does imply Ms. Hill is a liar, it is still not actionable because it includes the facts supporting that implication." (alteration in original)). The Letter is "heavily footnoted with citations to articles and other sources," "detail[ing] extensive underlying facts" as support for the author's assertions as to McKee's lack of credibility. *McKee*, 236 F. Supp. 3d at 440, 442. Whether we deem these underlying facts to be probative is immaterial, so long as the facts presented for the readers' consideration are not both false and defamatory. See *Yohe v. Nugent*, 321 F.3d 35, 42 (1st Cir. 2003).

McKee posits that a reader would infer that Singer was basing his assertions about McKee's credibility on knowledge of undisclosed facts. Nothing in the Singer Letter warrants such an inference. To the contrary, the Letter details upfront, in multiple bullet points footnoted with citations and hyperlinks to the underlying sources, the "published information" that, according to the view expressed in the Letter, undermines the credibility of McKee's allegations. As the Letter is "based on facts accessible to everyone," a reasonable reader would not understand Singer "to be suggesting that he was singularly capable of evaluating" McKee's credibility based on undisclosed evidence. *Phantom Touring*, 953 F.2d at 730-31. Rather, the reader can "draw [his] own conclusions"

from the information provided. *Id. at 731*. McKee argues that the Letter should have provided a more "balanced two-sided story," as the defendant had arguably done in Phantom Touring, but there is no such requirement in the law.

We turn to McKee's individual counts of defamation. The bulk of the statements McKee challenges as defamatory declare that McKee generally, and her rape allegations in particular, lack credibility. Our analysis thus far forecloses these claims.

However, McKee also makes a different claim -- that the Singer Letter attributes statements to her that she says she did not make and that portray her in a bad light. In a few instances, McKee claims that the Letter deliberately misquotes or misconstrues her, with defamatory effect. Most serious is her argument that the Letter asserts that "Ms. McKee has admitted, 'I had to do a lot of lying' and 'lies landed her a job' as a Vegas showgirl," citing an article published by C&G Newspapers in 2010. McKee denies she ever made the statement attributed to her and alleges that the Letter quotes the C&G article "out of context" in order to falsely portray McKee as a "liar for pecuniary gain." She emphasizes that the C&G article was actually "referring to the fact that she was forced to conceal her mixed-race parentage in order to 'pass' for white in order to be a showgirl in the racist and segregationist atmosphere of 1960's Las Vegas." Singer admittedly does not include this important contextual information in the Letter itself, but the quotations, themselves accurate, are immediately followed by a hyperlink to the source article, allowing readers to put

McKee's statements into proper context. On these facts, we cannot conclude that Singer knowingly or recklessly published a falsehood.

In other instances, McKee claims that the Singer Letter mischaracterizes actions she took or statements she made, but does not contend that she never took the actions or made the statements. For example, she challenges the statement that she "liked" one of Cosby's comedy videos online and "posted a fond message" without denying that she actually "liked" the video or posted the message. Singer's "subjective characterizations" of otherwise accurately reported actions or statements are not capable of being proven true or false. *McKee*, 236 F. Supp. 3d at 447, 453.

In yet other instances, McKee claims that the Singer Letter misleadingly uses statements to imply that she was an unchaste woman. For example, the Letter quotes McKee as having said that "it was very common to be in and out of affairs," and her sister as having said that McKee was "always wild" and "always doing inappropriate things." The Letter provides links to the articles from which these quotes are drawn, enabling readers to examine the sources for themselves and consider the comments in context. These statements are not actionable.

Lastly, McKee claims that the Singer Letter deliberately (and falsely) implies that she has a criminal record. After detailing evidence "ignored" by the Daily News allegedly demonstrating that McKee's allegations are not credible, the Letter states that "the Daily News is not alone" in its failure to apply

"credibility threshold[s]." The Letter goes on to bemoan how "[t]he media has consistently refused to look into or publish information about various women whose stories are contradicted by their own conduct or statements," and has thereby "routinely ignored relevant information including: . . . [c]riminal backgrounds of various accusers, . . . [i]nformation from third party sources disputing the credibility of sources . . . [and] [i]ndependent evidence proving accusations impossible." The Letter adds that "the media's approach is to publish virtually any tale 'no questions asked' told by anyone willing to vouch for it, without questioning their motivations, their pasts, or even the criminal records of some accusers."

It is clear from the language and context of these statements that they are not about McKee. Rather than specifically criticize the Daily News for its publication of McKee's story, they express generalized grievances about the media as a whole for publishing allegations by other women against Cosby. The Singer Letter refers to "various women" whose accusations are contradicted by various types of information, and mentions that a subset of those women -- "some accusers" -- have criminal records. It neither states nor implies that McKee herself has a criminal record. Because the challenged statements do not "concern" McKee, they are not actionable. See *Curtis v. Evening News Ass'n*, 135 Mich. App. 101, 352 N.W.2d 355, 356 (Mich. Ct. App. 1984) (to succeed on claim for defamation, plaintiff must prove statement is "concerning" him).

III.

For the foregoing reasons, we affirm the district court's order dismissing all counts of McKee's amended complaint.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

3:15-cv-30221-MGM

KATHRINE MAE MCKEE,)
)
 Plaintiff,)
)
 v.)
)
WILLIAM H. COSBY, JR.,)
)
 Defendant.)

MEMORANDUM AND ORDER REGARDING
DEFENDANT'S MOTION TO DISMISS

I. Introduction

In this action, Katherine Mae McKee ("Plaintiff") asserts defamation claims against William H. Cosby, Jr. ("Defendant") for various statements contained in a letter written to the New York Daily News ("Daily News") in response to the newspaper's publication of Plaintiff's accusation that Defendant sexually assaulted her in the 1970s. The letter, itself detailed in the media, demanded that the Daily News retract the article containing Plaintiff's allegations and faulted that newspaper for failing to consider "[e]asily available public information" purportedly undermining Plaintiff's credibility. (Dkt. No. 30, Am.

Compl., Ex. A.) Presently before the court is Defendant's motion to dismiss Plaintiff's amended complaint for failure to state a claim upon which relief can be granted.

II. Standard of Review

When considering a motion to dismiss pursuant to *Rule 12(b)(6) of the Federal Rules of Civil Procedure*, the court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); see also *San Gerónimo Caribe Project, Inc. v. Acevedo-Vilá*, 687 F.3d 465, 471 (1st Cir. 2012). The burden is on the moving party to demonstrate that even when viewed in the light most favorable to the plaintiff, the complaint lacks "sufficient factual matter" to state an actionable claim for relief that is "plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

In evaluating the sufficiency of the factual allegations contained in the complaint, the court must be careful to credit the factual assertions made by the plaintiff while disregarding "legal conclusions," such as "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* "Determining whether a complaint states a plausible claim for relief" is a "context-specific task that requires the reviewing court to draw on its judicial

experience and common sense." *Id. at 679*. A complaint must survive a motion to dismiss if the facts alleged are sufficient as to each element to "raise a right to relief above the speculative level." *Twombly, 550 U.S. at 555*; see also *Lister v. Bank of Am., N.A., 790 F.3d 20, 23 (1st Cir. 2015)* ("Dismissal for failure to state a claim is appropriate if the complaint does not set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." (internal quotation marks omitted)).

III. Background

The following facts come directly from Plaintiff's amended complaint and the attachment thereto. Plaintiff, who resided in Nevada when she commenced this action, is an accomplished performer and actress and has worked in the entertainment industry for over fifty years. (Dkt. No. 1, Compl. ¶ 1; Am. Compl. ¶ 2.) She currently works as an independent casting director. (Am. Compl. ¶ 3.) Defendant, who resides in Massachusetts, is an internationally well-known celebrity and entertainer. (*Id.* ¶ 4.)

Plaintiff first met Defendant around 1964, when she was working as an aspiring actress and "showgirl" in Las Vegas, Nevada. (*Id.* ¶ 9.) In 1971, Plaintiff appeared as an actress on the "Bill Cosby Show." (*Id.* ¶ 10.) Thereafter, Plaintiff believed Defendant was a friend and socialized with him and his wife on various occasions. (*Id.* ¶ 11.)

One day in 1974, by coincidence, both Plaintiff and

Defendant were in Detroit, Michigan, and Defendant asked Plaintiff to meet him socially. (*Id.* ¶ 12.) He requested that she bring ribs from a local restaurant to his hotel room, after which he would take her to a party on a friend's boat docked in the Detroit River. (*Id.* ¶ 13.) When Plaintiff arrived at the hotel room, Defendant, who was wearing a bathrobe and a knit wool cap, invited her in. (*Id.* ¶ 14.) Immediately after Plaintiff entered the room, Defendant physically attacked her, grabbing the ribs from her hand and tossing them aside. (*Id.* ¶¶ 15-16.) Defendant "violently and forcefully grabbed [Plaintiff] and spun [her] around so that she was facing away from [Defendant] and toward the door." (*Id.* ¶ 18.) Defendant then "violently lifted her dress," "pulled down her panties," and "proceeded to forcibly rape [Plaintiff] while both were still standing near the door." (*Id.* ¶¶ 19, 21.)

In mid-December of 2014, Nancy Dillon of the Daily News interviewed Plaintiff, who revealed the rape perpetrated by Defendant. (*Id.* ¶ 23.) On December 22, 2014, the Daily News published a news article written by Dillon describing the rape. (*Id.* ¶ 24.) That same day, Defendant, through his attorney Martin Singer, wrote a six-page letter to the Daily News addressing the article ("Singer Letter" or "Letter"). (*Id.* ¶ 36, Ex. A.) In general, the Singer Letter admonished the Daily News for publishing the article despite what Singer claimed were publicly available statements from Plaintiff (and her sister) demonstrating her lack of credibility.¹ (Am. Comp.,

¹The full Singer Letter is set forth in an appendix to this opinion. The specific statements Plaintiff challenges as defamatory are

Ex. A.) The Singer Letter disclosed those alleged statements and provided webpage links to the sources in footnotes. (*Id.*) The Singer Letter criticized the Daily News's "journalistic standard[s]" in covering Plaintiff's allegations as well as "the media" in general in covering the "stories" of "various [other] women." (*Id.* at 2.) Singer accused the Daily News of "publishing a malicious defamatory article" and stated the newspaper "will have only itself to blame if it finds itself in court attempting to defend its ongoing pattern of recklessly and maliciously publishing stories about my client fitting with its predetermined smear agenda." (*Id.* at 1, 4.) Notably, Singer stated that Defendant himself "risks being sued for defamation (as has already occurred)² if he so much as denies any scurrilous accusations made against him." (*Id.* at 4.) Singer demanded "[p]ublication of a retraction and correction of the defamatory Story." (*Id.*) The Singer Letter closed by stating: "This letter is a confidential legal communication and is not for publication."³ (*Id.*)

On December 22, 2014, Singer sent the Letter to the Daily News's head office in New York City via email. (Am. Compl. ¶ 38.) Plaintiff alleges Singer also

also discussed in the analysis below.

² A separate defamation action brought against Defendant based on different statements, which is also pending in this court, was filed on December 10, 2014. *See generally Green v. Cosby*, 138 F. Supp. 3d 114 (D. Mass. 2015).

³ The Singer Letter also contained a disclaimer at the top of the first page stating: "CONFIDENTIAL LEGAL NOTICE" and "PUBLICATION OR DISSEMINATION IS PROHIBITED." (*Id.* at 1.)

leaked a copy of the letter to the Hollywood Reporter as well as other media outlets that same day. (*Id.*) Also on December 22, 2014, various statements from the Singer Letter were published in news stories around the world, including by the Daily Mail website, the Associated Press, and the Spanish-language periodical "Reforma."⁴ (*Id.* ¶ 47.) The following day, the Daily News published a news article about the Singer Letter wherein it described at least some of the letter's content, as did HollywoodReporter.com. (*Id.* ¶¶ 44, 45.)

Plaintiff alleges the Singer Letter caused harm to her reputation "days, weeks or even months" after it was originally sent to the Daily News, due to the publication of the news articles which reported on its content. (*Id.* ¶¶ 65, 67.) "Over time, [Plaintiff's] reputation was damaged equally in all fifty . . . states." (*Id.* ¶ 67.) Plaintiff resided in the State of Michigan on December 22, 2014, when the Singer Letter was first sent to the Daily News. (*Id.* ¶ 68.) However, "she was in the process of changing her residence to the State of Nevada" at that time. (*Id.*) Approximately six months later, in June of 2015, Plaintiff moved her residence to Nevada with the intent to remain there. (*Id.*)⁵

⁴ Plaintiff alleges "[t]he only explanation for the rapid dissemination of the Singer Letter on December 22, 2014, is that Singer himself intentionally leaked [it] to media outlets." (*Id.*)

⁵ Although Plaintiff alleges that on December 22, 2014, Michigan was not her domicile—because she "had already formed the intent to move to Nevada," (*id.* ¶ 69)—the court does not credit this allegation, as it is plainly a legal conclusion not entitled to the presumption of truth. *Iqbal*, 556 U.S. at 678 ("[T]he tenet that a court must accept as true all of the allegations contained

Plaintiff, proceeding without the assistance of counsel at the time, commenced this action on December 21, 2015, invoking the court's diversity jurisdiction under 28 U.S.C. § 1332. (Compl.) After the court granted Plaintiff an extension of time for accomplishing service, Defendant filed a motion to dismiss targeting Plaintiff's original complaint on June 10, 2016. (Dkt. Nos. 9, 22.) In response, Plaintiff, after obtaining counsel, filed the operative amended complaint as a matter of course pursuant to *Fed. R. Civ. P. 15(a)(1)(B)*, and Defendant withdrew his original motion to dismiss. (Dkt. Nos. 30, 32.) Defendant filed the pending motion to dismiss targeting Plaintiff's amended complaint on August 16, 2016, Plaintiff (after obtaining two extensions) filed an opposition on October 12, 2016, and Defendant filed a reply brief on October 24, 2016. (Dkt. Nos. 41, 47, 50.) The court held a hearing on November 15, 2016. (Dkt. No. 55.)

IV. Discussion

A. Choice of Law

Before resolving the merits of Defendant's motion to dismiss, the court must determine the substantive law that governs this dispute. Because this is a diversity action, state substantive law applies (subject

in a complaint is inapplicable to legal conclusions."). Rather, in its choice of law analysis, the court considers only the factual allegations contained in the amended complaint and applies those facts to the legal standard for determining an individual's domicile.

to certain constitutional protections, as discussed below). *Gasperini v. Ctr. For Humanities, Inc.*, 518 U.S. 415, 427, 116 S. Ct. 2211, 135 L. Ed. 2d 659 (1996). Moreover, in deciding *which* state's substantive law applies, the court follows the choice-of-law rules of the forum state: Massachusetts. *In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 14 (1st Cir. 2012). As this court explained in *Green v. Cosby*, a separate defamation action brought against Defendant, "Massachusetts courts 'consider choice-of-law issues by assessing various choice-influencing considerations, . . . including those provided in the *Restatement (Second) of Conflict of Laws* (1971).'" 138 F. Supp. 3d 114, 124 (D. Mass. 2015) (quoting *Cosme v. Whitin Mach. Works, Inc.*, 417 Mass. 643, 632 N.E.2d 832, 834 (Mass. 1994)). And "[p]ursuant to section 150 of the *Restatement (Second) of Conflict of Laws*, 'the law of the state where the defamed person was domiciled at the time of publication applies if the matter complained of was published in that state.'" *Id.* (quoting *Davidson v. Cao*, 211 F. Supp. 2d 264, 274 (D. Mass. 2002)). Accordingly, in *Green*, this court applied the law of the states where each plaintiff "was domiciled when the alleged publication occurred"—namely, California and Florida—because "[t]he statements at issue . . . were published nationally." *Id.*

When the statements in this case were published, Plaintiff was and had been living in Michigan; however, each party tactically advocates for application of another state's law. Defendant emphasizes the conclusory allegations made in Plaintiff's complaint that Michigan "was no longer [Plaintiff's] domiciliary state." (Am. Compl. ¶ 69.)

Defendant argues Nevada law governs because Plaintiff intended to change her residence to that state when the Singer Letter was published and it is where Plaintiff was domiciled when she was *harmed* by the defamation. As for Plaintiff, she emphasizes her intent to relocate to Nevada but contends Massachusetts law should be applied because it is the state with the most compelling interest in this action.

Despite Plaintiff's future intention to move, the fact remains that she did not do so until over six months after the Singer Letter was sent to the Daily News and had been reported on both nationally and internationally. (*Id.* ¶¶ 44-45, 47, 68.) "A person may have only one domicile at a time and, until a new one is acquired, the established one continues." *Hawes v. Club Ecuestre El Comandante*, 598 F.2d 698, 701 (1st Cir. 1979); *Tuells v. Flint*, 283 Mass. 106, 186 N.E. 222, 223 (Mass. 1933). And "to effect a change to one's legal domicil, two things are indispensable: First, residence in a new domicil; and second, the intention to remain there." *Hawes*, 598 F.2d at 701 (quoting *Sun Printing & Publishing Ass'n v. Edwards*, 194 U.S. 377, 383, 24 S. Ct. 696, 48 L. Ed. 1027 (1904)); see *Tuells*, 186 N.E. at 223 ("Intention without the concurrence of the fact of residence is not sufficient to change or to create domicil."). As of December 22, 2014, Plaintiff had not yet changed her residence to Nevada, so her domicile could not have changed. Plaintiff has also filed a declaration explaining that she lived in Michigan from 1994 to July of 2015. (Dkt. No. 47, Ex. Y, Pl.'s Decl. PP 18, 20.) In addition, Plaintiff asserted that as of December 22, 2014, she was registered to vote, had a driver's license, registered her car, and owned a business in Michigan.

(*Id.* ¶ 25.) See *Meléndez-García v. Sánchez*, 629 F.3d 25, 41 (1st Cir. 2010) (discussing factors for determining domicile, including where the individual is registered to vote, has a driver's license, and operates a business); *Caffyn v. Caffyn*, 441 Mass. 487, 806 N.E.2d 415, 420 (Mass. 2004).

In addition, Plaintiff has alleged she was harmed within "days, weeks, or even months" of the Singer Letter's publication to the Daily News. (Am. Compl. ¶ 68.) The amended complaint alleges that articles reporting on the content of the Singer Letter were published in "news outlets around the word" beginning on December 22, 2014. (*Id.* ¶¶ 44-45, 47.) The court therefore infers Plaintiff suffered harm from the alleged defamation while she was domiciled in Michigan.⁶ Accordingly, where application of state substantive law is required, this court will apply that of Michigan.

B. Merits

1. General Defamation Principles

"Modern defamation law is a complex mixture of common-law rules and constitutional doctrines." *Pan Am Sys., Inc. v. Atl. Ne. Rails & Ports, Inc.*, 804 F.3d 59, 64 (1st Cir. 2015). Under Michigan common law,

⁶ Again, this conclusion is consistent with Plaintiff's declaration: "On or about December 23, 2014, and continuing thereafter, I learned about the defamatory statements contained in the Singer Letter from various news reports, which appeared in printed form and on the internet." (Pl.'s Decl. ¶ 24.)

[t]o prevail on a claim for defamation, a plaintiff must establish the following elements: "(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication [defamation per quod]."

Armstrong v. Shirvell, 596 F. App'x 433, 441 (6th Cir. 2015) (unpublished) (quoting *Mitan v. Campbell*, 474 Mich. 21, 706 N.W.2d 420, 421 (Mich. 2005)). In Michigan, a communication is considered "defamatory" if "it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual." *Id.* (quoting *Ireland v. Edwards*, 230 Mich. App. 607, 584 N.W.2d 632, 636 (Mich. App. Ct. 1998)). Moreover, under the "substantial truth doctrine" recognized in Michigan, "a 'statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" *Collins v. Detroit Free Press, Inc.*, 245 Mich. App. 27, 627 N.W.2d 5, 9 (Mich. App. Ct. 2001) (quoting *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517, 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991)). In other words, "minor differences are immaterial if the literal truth produces the same effect" as the challenged communication. *Koniak v. Heritage Newspapers, Inc.*, 198 Mich. App. 577, 499 N.W.2d 346, 348 (Mich. App. Ct. 1993); see also *Rouch v. Enquirer & News of Battle Creek (After Remand)*,

440 Mich. 238, 487 N.W.2d 205, 215 (Mich. 1992) ("Minor inaccuracies do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge be justified." (quoting *Masson*, 501 U.S. at 517)).

"On the constitutional side, the Supreme Court—reading the *First Amendment* (made binding on the states through the *Fourteenth*)—'has hedged about defamation suits' with lots of 'safeguards designed to protect a vigorous market in ideas and opinions.'" *Pan Am Sys.*, 804 F.3d at 65 (quoting *Desnick v. Am. Broad. Co.*, 44 F.3d 1345, 1355 (7th Cir. 1995)); see also *Gray v. St. Martin's Press, Inc.*, 221 F.3d 243, 248 (1st Cir. 2000) ("[T]he Supreme Court has read the *First Amendment* . . . to impose additional limitations on defamation cases, whether or not they are also part of state law."). One such *First Amendment* limitation is that "defamatory statements are not punishable unless they are capable of being proved true or false." *Pan Am Sys.*, 804 F.3d at 65; see also *Green*, 138 F. Supp. 3d at 130. "Because defamation requires a false statement at its core, opinions typically do not give rise to liability since they are not susceptible" to objective verification. *Piccone v. Bartels*, 785 F.3d 766, 771 (1st Cir. 2015); see also *Veilleux v. Nat'l Broad Co.*, 206 F.3d 92, 108 (1st Cir. 2000) ("[O]nly statements that are 'provable as false' are actionable; hyperbole and expressions of opinion unprovable as false are constitutionally protected."). Moreover, the First Circuit has explained that "even a provably false statement is not actionable if 'it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively

verifiable facts." *Riley v. Harr*, 292 F.3d 282, 289 (1st Cir. 2002) (quoting *Gray*, 221 F.3d at 248).

"Merely couching a statement as an opinion, however, will not automatically shield the speaker from liability where the statement implies the existence of underlying defamatory facts." *Piccone*, 785 F.3d at 771; see *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990). On the other hand, "defamation cannot arise where the speaker communicates the non-defamatory facts that undergird his opinion." *Piccone*, 785 F.3d at 771. "Thus, the speaker can immunize his statement from defamation liability by fully disclosing the non-defamatory facts on which his opinion is based." *Id.*; see *Riley*, 292 F.3d at 289 ("[W]hen an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the *First Amendment*." (quoting *Partington v. Bugliosi*, 56 F.3d 1147, 1156-57 (9th Cir. 1995)). For *First Amendment* purposes, therefore, "the relevant question is not whether challenged language may be described as an opinion, but whether it reasonably would be understood to declare or imply provable assertions of fact." *Piccone*, 785 F.3d at 771 (quoting *Phantom Touring, Inc. v. Affiliated Publ'ns*, 953 F.2d 724, 727 (1st Cir. 1992)).⁷

⁷In the classic example, the Supreme Court explained: "If a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth." *Milkovich*, 497 U.S. at 18. In contrast, the Court observed, "the statement, 'In my opinion Mayor Jones shows abysmal ignorance by accepting the teachings of Marx and

This question "is of constitutional dimension and, thus, federal law controls." *Pendleton v. City of Haverhill*, 156 F.3d 57, 68 (1st Cir. 1998).⁸ As such, the court is bound by First Circuit precedent; it "owes no deference to state-court interpretation of the United States Constitution" or the interpretations of other circuit or district courts (but, of course, may

Lenin,' would not be actionable." *Id.* at 20. Justice Brennan cited a similar example of a nonactionable statement in his dissent:

A writes to B about his neighbor C: "He moved in six months ago. He works downtown, and I have seen him during that time only twice, in his backyard around 5:30 seated in a deck chair with a portable radio listening to a news broadcast, and with a drink in his hand. I think he must be an alcoholic."

Id. at 27 n.3 (Brennan, J., dissenting) (quoting *Restatement (Second) of Torts* § 566, cmt. c).

⁸ It is also a question of law for the court in the first instance. See *Gray*, 221 F.3d at 248 ("[T]he courts treat the issue of labeling a statement as verifiable fact or as opinion as one ordinarily decided by judges as a matter of law." (citing *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 510-11, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984))); *Levinsky's, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 127 (1st Cir. 1997) ("[T]he deference traditionally shown by courts toward factfinders' determinations is muted when defamation issues implicate free speech concerns" as "'a rule of federal constitutional law' that 'reflects a deeply held conviction that judges . . . must exercise such review in order to preserve the precious liberties established and ordained by the Constitution.'" (quoting *Bose*, 466 U.S. at 510-11)). If, however, the court concludes "a statement is capable of carrying a defamatory meaning" and "a reasonable fact-finder could interpret it as containing false assertions of fact," whether such a statement ultimately constitutes defamation must be decided by the fact-finder. *Ogle v. Hocker*, 279 F. App'x 391, 397 (6th Cir. 2008) (unpublished).

consider those sources to the extent they are consistent with First Circuit and Supreme Court precedent). *TMJ Implants, Inc. v. Aetna, Inc.*, 498 F.3d 1175, 1181 (10th Cir. 2007); see *Nobles v. Boyd*, 2015 U.S. Dist. LEXIS 60560, 2015 WL 2165962, at *9 (E.D.N.C. May 7, 2015) ("Although the court previously has determined California law governs plaintiff's defamation claims, the court's analysis now must also include considerations of federal law, because the requirement that an alleged defamatory statement be of fact, rather than opinion, flows from the *First Amendment*. . . . Thus, the Fourth Circuit's interpretation of the *First Amendment* controls." (citation omitted)). The court notes, however, "the common law of defamation, federal constitutional law, and the constitutional law of the various states reflect many of the same underlying principles," and state common or constitutional law may provide even more extensive protections than those afforded by the United States Constitution. *TMJ Implants, Inc.*, 498 F.3d at 1181-82 (discussing the difficulty of determining whether the source of a limitation on defamation claims in state-court decisions derives from state or federal law).⁹ Here, the court need not consider whether Michigan constitutional or common law is more protective of "opinions" than the United States Constitution because Defendant has not made that argument and because the court concludes the relevant statements are protected by the *First Amendment*. See *Phantom Touring*, 953 F.2d at 727

⁹In this court's previous analysis of *First Amendment* issues in *Green*, it, in retrospect, should have focused more on federal law, but the state-court-driven analysis produced the same results as would a direct application of federal law.

n.4.

2. Application of General Defamation Principles to the Singer Letter as a Whole

Read as a whole, the "gist" or "sting" of the Singer Letter is: Plaintiff lacks credibility, and thus is an unreliable news source, and the Daily News either failed to investigate or ignored certain publicly available information purportedly undermining Plaintiff's claim. The Singer Letter, therefore, contains both opinionated statements regarding Plaintiff's credibility and the facts on which those opinions are based. The court analyzes the two sets of statements separately, asking: (1) under the *First Amendment*, whether the "opinions" are capable of being proven true or false or imply undisclosed defamatory facts; and (2) under state law, whether the facts provided are false and defamatory. See *Milkovich*, 497 U.S. at 18-19; see also *TMJ Implants*, 498 F.3d at 1185 ("[A]lthough an opinion based on disclosed defamatory facts is not itself subject to liability, the disclosure of the defamatory facts on which the opinion rests may still create liability if the facts themselves are false; it is the publication of the defamatory facts, however, rather than the expression of opinion, that is actionable." (citing *Restatement (Second) of Torts* § 566 cmts. b, c & illus. 5 (1977), and concluding that *Milkovich*, 497 U.S. at 18-19, stands for the same proposition)).

As discussed below, the court concludes the opinions as to Plaintiff's credibility are not capable of being objectively verified or disproven. The court also concludes the Singer Letter adequately disclosed the

non-defamatory facts underlying the opinions so as to "immunize his [opinions] from defamation liability." *Piccone*, 785 F.3d at 771. Of particular importance is the breadth of the Singer Letter, which is six pages long and heavily footnoted with citations to articles and other sources supporting the author's view. See *Phantom Touring*, 953 F.2d at 730. The Singer Letter ostensibly recites all the facts supporting the opinions¹⁰ and provides no indication that the opinions are based upon undisclosed objective facts. See *Piccone*, 785 F.3d at 772-73 ("Defendant explained the circumstances of the encounter, thus providing [the listener] with the factual basis underlying his opinion of Plaintiff's conduct." (citing *Restatement (Second) of Torts* § 566 cmt. b (1977)); *Milkovich*, 497 U.S. at 27 n. 3 (Brennan, J., dissenting) ("[C]lear disclosure of a comment's factual predicate precludes a finding that the comment implies other defamatory facts . . .").

¹⁰ Moreover, as discussed below, all the recited facts are either substantially true or non-defamatory (or both), except arguably two. See footnotes 23 and 25, *infra*. Those two facts, however, derive from a publicly available news story in which Plaintiff was interviewed. In addition, Plaintiff—a limited-purpose public figure—has not alleged facts demonstrating Singer or Defendant knew or recklessly disregarded the possibility that the story falsely recounted Plaintiff's statements. Accordingly, the inclusion of these facts, the accuracy of which Defendant had no reason to doubt, does not destroy the protection of the opinions asserted in the Singer Letter. See *Riley*, 292 F.3d at 289 ("[W]hen an author outlines the facts *available to him*, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the *First Amendment*." (quoting *Partington*, 56 F.3d at 1156-57) (emphasis added)).

In this way, the Singer Letter is similar to the statements at issue in *Piccone*. There, the plaintiffs—one of whom was seeking temporary custody of her brother's children after the parents fled the state—had a "tense exchange" with a town police chief regarding preparations for taking the children into the sister's care. *Piccone*, 785 F.3d at 768. Following the encounter, the police chief called the plaintiffs' employer¹¹ to complain about their unprofessional behavior and stated he believed the plaintiffs knew the whereabouts of the missing parents. *Id.* at 768-70. In doing so, he provided the employer details regarding the encounter and the investigation into the missing family. *Id.* The First Circuit explained that "[w]hether or not a particular person's behavior may

¹¹The plaintiffs both worked for the United States Department of Homeland Security. *Id.* at 768. The First Circuit, however, did not consider whether the plaintiffs qualified as "public officials under the *First Amendment*." *Id.* at 775 n.3; cf. *Riley*, 292 F.3d at 288 ("In the case of a public-figure plaintiff the *First Amendment* requires clear and convincing proof of actual malice on the part of the defendant."). Nor did the First Circuit state that the defendant's speech related to a matter of "public concern." Instead, the First Circuit relied exclusively on the principle that the *First Amendment* limits state defamation law when the speech is not capable of being proved true or false and does not imply undisclosed defamatory facts. See *Piccone*, 785 F.3d at 771-72; see also *Phantom Touring*, 953 F.2d at 731 n.13 (explaining that in *Milkovich* the Supreme Court's reaffirmation of a line of earlier cases "confirmed that, to be actionable, a challenged statement must be understood as stating actual facts about an individual. That principle unquestionably excludes from defamation liability not only statements of rhetorical hyperbole—the type of speech at issue in the [earlier line of] cases—but also statements clearly recognizable as pure opinion because their factual premises are revealed").

be characterized as 'professional' or exhibiting 'professional courtesy' will often be a quintessential 'expression[] of personal judgment' which is 'subjective in character,'" and therefore cannot be objectively verified. *Id. at 772* (quoting *Gray*, 221 F.3d at 248). In addition, the defendant's disclosure of "the non-defamatory facts about the confrontation . . . allowed [the listener] to form his own impression" of the plaintiffs' professionalism. *Id. at 773*. As for the statement regarding the plaintiffs' possible knowledge of the missing family's whereabouts, the First Circuit explained that assertion "'seems sufficiently factual to be proved true or false,' . . . and thus could, under certain circumstances, give rise to defamation liability." *Id.* (quoting *Levinsky's, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 131 (1st Cir. 1997)). However, the First Circuit again concluded the defendant's disclosure of the non-defamatory facts underlying his belief protected him from defamation liability. *Id. at 773-74*.

This court reached the opposite conclusion in *Green*, 138 F. Supp. 3d 114. Unlike the Singer Letter in this case and the statements in *Piccone*, the three statements substantively addressed in *Green* ¹² do

¹² A fourth challenged statement in *Green*, the "Washington Post Statement," asserted that the allegations of one of the plaintiffs, Tamara Green (whose maiden name is Tamara Lucier), were "absolutely false" and that "Mr. Cosby does not know the name Tamara Green or Tamara Lucier and the incident she describes did not happen." *Id. at 123* (alteration removed). Unlike the other three statements in *Green*, Defendant did not argue the Washington Post Statement failed to contain or imply factual assertions that were capable of being proven false. *Id. at 129 & n.13*.

imply undisclosed defamatory facts. For example, the "Newsweek Statement"—"This is a 10-year-old, discredited accusation that proved to be nothing at the time, and is still nothing"—could be understood to imply the false and defamatory assertion "that there was some unidentified investigation or hearing into the allegations which officially determined [the plaintiff's] accusation was false." *Id. at 121, 133*. The "November 20, 2014 Statement," which responded to an allegation that Defendant offered the plaintiff pills from a briefcase before assaulting her, stated in relevant part: "Ms. Traitz is the latest example of people coming out of the woodwork with fabricated or unsubstantiated stories about my client. . . . There was no briefcase of drugs, and this is an absurd fabrication." *Id. at 121-22*. That statement could be read to imply (or state) that the plaintiff "intentionally made absurdly false sexual assault allegations against Defendant." *Id. at 135*. The "November 21, 2014 Statement" provided in relevant part:

The new, never-before-heard claims from women who have come forward in the past two weeks with unsubstantiated, fantastical stories about things they say occurred 30, 40, or even 50 years ago have escalated far past the point of absurdity. . . . Over and over again, we have refuted these new unsubstantiated stories with documentary evidence, only to have a new uncorroborated story crop up out of the woodwork.

Id. at 122. Similar to the Newsweek Statement, the reference to "documentary evidence," without explanation, could be read to imply the existence of

undisclosed evidence clearing Defendant of misconduct.¹³ Critically, the court believed a fact-finder could conclude the statements did not fully disclose the non-defamatory factual bases underlying the opinions expressed. In this way, these statements differed from the Singer Letter here and the statements in *Piccone*, both of which detailed extensive underlying facts.

Granted, the Singer Letter, unlike the articles at

¹³In *Green*, the "documentary evidence" language was an unmistakably obvious part of the "entirety" of the November 21, 2014 Statement deemed to be actionable as defamation. *See id. at 136-37* ("[W]hen read in its entirety, the statement is capable of being understood as asserting not just that the allegations made during the previous two weeks were unsubstantiated, but also as implying they were false and entirely without merit."); *see also Ruehli v. Cosby, 15-cv-13796-MGM (Dkt. No. 26), 2016 U.S. Dist. LEXIS 184712*. The Third Circuit recently affirmed the dismissal of a different defamation case brought against Defendant in the Western District of Pennsylvania based, in part, on the November 21, 2014 Statement on the grounds that it was an opinion that the plaintiff lied. *See Hill v. Cosby, 665 Fed. Appx. 169, 2016 U.S. App. LEXIS 22199, 2016 WL 7229817, at *3-5 (3d Cir. Dec. 14, 2016)* (unpublished). But that *is* an objective fact capable of being proved true or false, which can be viewed as defamation under Supreme Court rationale. *See Milkovich, 497 U.S. at 18* ("If a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth."). Moreover, as explained, when combined with the "documentary evidence" language, the "entirety" could clearly be understood as "an assertion of objective fact based on undisclosed evidence." *Riley, 292 F.3d at 292*. Though this court is not persuaded by the Third Circuit's thoughtful analysis, these cases certainly demonstrate the "complex" and "dizzying" nature of judicial interpretation and application of defamation law. *Pan Am Sys., 804 F.3d at 64*.

issue in *Phantom Touring*, 953 F.2d at 730, does not include "information from which readers might draw contrary conclusions," *i.e.*, information unfavorable to Defendant's position. However, the December 22, 2014 Daily News article obviously did include such contrary information, namely, Plaintiff's allegation that Defendant raped her. Therefore, an objective reader, considering both sources, would have had both sides of the "verbal debate," *id.*, "leaving the reader free to draw his own conclusions," *Riley*, 292 F.3d at 289 (quoting *Partington*, 56 F.3d at 1157). *See also Piccone*, 785 F.3d at 774 (noting that although the defendant's statements "present[ed] a somewhat skewed view of his interaction with" the plaintiffs and the defendant "may well have been acting with a vindictive motive," "[a]n expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified or unreasonable the opinion may be or how derogatory it is" (quoting *Yohe v. Nugent*, 321 F.3d 35, 42 (1st Cir. 2003))).

The court also recognizes the facts here are different from some defamation cases, because Defendant (on whose behalf Singer wrote the letter) is not an objective, third-party observer; rather, he presumably has personal knowledge as to the truth or falsity of Plaintiff's allegations. Nevertheless, as Plaintiff's counsel pointed out at the hearing, the Singer Letter does not actually deny that an incident in the Detroit hotel room occurred. (Dkt. No. 56, Tr. of Mot. Hr'g Nov. 15, 2016, at 34 ("[N]owhere does he deny—Mr. Cosby or Mr. Singer—deny the rape. They don't say the rape never happened. I didn't do it. I didn't have sex with that woman. There's no such

statement.".) Instead, it merely raises doubts as to Plaintiff's credibility and castigates the Daily News for failing to include or consider information allegedly relevant to that issue, discoverable through "a simple Google search."¹⁴ (Am. Compl., Ex. A at 1.) In the court's view, there is a subtle, yet fundamental, difference between stating or implying that an accuser's allegations are completely fabricated (and failing to fully disclose the non-defamatory facts underlying this assertion), as in *Green*, and disputing an accuser's credibility based on fully disclosed non-defamatory facts, as here.

Perhaps an argument can be made that the Singer Letter (or any other statement made by or on behalf of Defendant about the various sexual assault accusations) could constitute defamation because it necessarily implies the allegations are false simply due to Defendant's personal knowledge of the incident. The court, however, rejects this contention. At bottom, any implication supporting a defamation claim must derive primarily from the specific language used (or the "gist" derived from that language), not *merely* the known or speculative circumstances surrounding a given statement. See *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 152, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967) ("[L]ibel remains

¹⁴The court, however, rejects Defendant's argument that the Singer Letter was merely and laudably intended to address the "journalistic standards" of the Daily News and the media in general. As a legal argument, this is entirely lacking merit and plausibility. Rather, the purpose of the Singer Letter was obviously to present an opposing view and rebuke of Plaintiff's allegations based on—in Singer's assessment—her questionable credibility.

premised on the content of speech"); *Levinsky's*, 127 F.3d at 131 (explaining that a "court must evaluate a speaker's statement as it was given"); *Phantom Touring*, 953 F.2d at 729 (looking to "[t]he sum effect of the format, tone and entire content of the articles"). Individuals publicly accused of misconduct cannot be held completely incapable of issuing any statement in response to the allegation, other than "no comment." They cannot be entirely chilled from navigating, at their own peril, what may be viewed as a web of defamation law to produce a responsive statement that does not subject themselves to liability.¹⁵ Alternatively, an accused person cannot be foreclosed, during their responsive navigation, from considering the issuance of a simple and unequivocal denial—free from overall defamatory triggers or contextual themes.¹⁶ In the court's view, such a

¹⁵ Many states recognize a form of "litigation privilege," which prohibits defamation claims for statements made during the course of, or in contemplation of, litigation. Some states also recognize a "conditional privilege of reply" (sometimes called a "conditional self-defense privilege"), which allows individuals, in some circumstances, to publish certain responsive statements necessary to defend their reputations. See *Green*, 138 F. Supp. 3d at 140-42 (discussing common law "conditional self-defense privilege"). Defendant contends both privileges apply here under Nevada and, to a lesser extent, Massachusetts law, which the parties view as the tactically correct choice-of-law options. Defendant provides no analysis regarding the existence of such privileges in the legally correct choice-of-law state of Michigan.

¹⁶ Arguably, a general denial of an accusation, without any additional defamatory language, is not actionable as defamation because it cannot reasonably be understood to state or imply specific facts which are capable of being proved true or false. See *McNamee v. Clemens*, 2013 U.S. Dist. LEXIS 107551, 2013 WL 3968740, at *3-4 (E.D.N.Y. July 21, 2013) (distinguishing "between general denials of accusations and specific denials or

situation would be inconsistent with basic *First Amendment* principles. Cf. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777, 106 S. Ct. 1558, 89 L. Ed. 2d 783 (1986) ("[S]uch a 'chilling' effect would be antithetical to the *First Amendment's* protection of true speech on matters of public concern . . ."). Of course, if the statement is true and does not imply other false and defamatory facts, it cannot give rise to a defamation claim. See *Pan Am Sys.*, 804 F.3d at 65 ("Because truth can set a defendant free, so to speak, it follows that defamatory statements are not punishable unless they are capable of being proved true or false."); *Piccone*, 785 F.3d at 771 ("[D]efamation requires a false statement at its core . . ."); see also *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) ("The legitimate state interest underlying the law of libel is the compensation of individuals for harm inflicted on them by defamatory *falsehood*." (emphasis added)).

Having framed the relevant defamation principles and considered the Singer Letter as a whole, the court will now address the twenty-four statements in the Singer Letter Plaintiff challenges as defamatory (each constituting a separate count). In doing so, the court addresses the statements in separate groups for organizational purposes.

statements of fact that can be proven true or false"); see also *Giuffre v. Maxwell*, 165 F. Supp. 3d 147, 152 (S.D.N.Y. 2016) (explaining, in addressing statements that the plaintiff's accusations of underage sexual abuse against the defendant "are untrue," have been "shown to be untrue," and "are obvious lies," that the statements "constitute[] more than a general denial"). Neither in *Green* nor in this case, however, has the court faced such a general denial.

3. Counts 3, 11, 12, 17, 18, 20, 21, 22, 23, and 24

Plaintiff alleges the following statements in the Singer Letter, each specifically declaring that her allegations lack credibility, are defamatory:

- The *Daily News* could have done a simple Google search to learn that her story lacks credibility. (Am. Compl. ¶ 89, Ex. A at 1.)
- Ms. McKee's never-before-heard tale about something she claims happened back in the 1970's is completely contradicted by her own prior published statements. Ms. McKee's own statements and conduct confirming that she considers Mr. Cosby a wonderful, lovely person who treated her well, and lauding about her association with Mr. Cosby, can easily be found with just a few clicks on Google. (*Id.* ¶ 137, Ex. A at 2.)
- Instead, a mountain of evidence undermining your source's reliability was ignored by the *Daily News* in its malicious quest to publish a salacious defamatory "scoop." (*Id.* ¶ 141, Ex. A at 2.)
- To say that Ms. McKee is not a reliable source is a gross understatement. (*Id.* ¶ 163, Ex. A at 3.)
- Ample published information readily available to the *Daily News* completely undermines this story. (*Id.* ¶ 166, Ex. A at

3.)

If someone was treated improperly, was assaulted, or was even raped, it is inconceivable that they would make these laudatory, positive statements about the alleged perpetrator. Why would someone who was allegedly raped "like" a comedy video by their alleged attacker? Why would someone who claims to have been assaulted have as their top Google+ post an episode of a television series acting along side her purported attacker? Why would she list her appearance on his show at the top of her list of professional accomplishments? It defies credulity. (*Id.* ¶ 175, Ex. A at 3.)

- The glaring inconsistency between Ms. McKee's past affectionate public sentiments about my client and what she is now claiming was alone a basis to question her veracity and render her an unreliable source. (*Id.* ¶ 184, Ex. A at 3.)
- Moreover, Ms. McKee's own description of her *private* words and conduct at the time of the alleged incident also contradicts the *Daily News'* Story. (*Id.* ¶ 189, Ex. A at 3-4 (emphasis in original).)
- When you add to the mix Ms. McKee's constant name-dropping of her association with Mr. Cosby, and her "liking" of a comedy Cosby video a year ago and reaching out to get in touch with an old friend, and her

recent proud post of a video clip showing her acting alongside Mr. Cosby in the 1970's, the enormous disparity between the *Daily News* Story and her public words and conduct establish that the Story was published recklessly and with Constitutional malice. (*Id.* ¶ 196, Ex. A at 4.)

- The media blindly ignores the dubious background of sources, ignores the absence of evidence to corroborate decades-old accusations, and ignores the existence of contradictory evidence undermining its sources' claims or reliability. (*Id.* ¶ 202, Ex. A at 4.)

The court concludes the *First Amendment* precludes these statements from giving rise to defamation liability.¹⁷ "The sum effect of the format, tone and entire content of the [Singer Letter] is to make it unmistakably clear that [Singer] was expressing a point of view only" based on the information he was referencing. *Phantom Touring*, 953 F.2d at 729.

The judgment of an individual's credibility is not an objective fact capable of being proven true or false. *See Piccone*, 785 F.3d at 772 ("Where an expressive

¹⁷The court emphasizes that in this section it is only directly analyzing the subjective portions of these statements—the assertions that Plaintiff lacks credibility. To the extent these statements explicitly include certain facts, those facts, which are subject to a separate analysis, are sufficiently addressed in separate sections below.

phrase, though pejorative and unflattering, cannot be 'objectively verified,' it 'belongs squarely in the category of protected opinion.'" (quoting *Levinsky's*, 127 F.3d at 130)); see also *Turkish Coalition of Am. v. Bruininks*, 678 F.3d 617, 625 (8th Cir. 2012) ("Such an evaluation of credibility is essentially an opinion, 'not capable of being proven true or false,' and thus not actionable in defamation"). Like the "unprofessional" statements in *Piccone*, whether an individual's words or actions support a characterization that the person "lacks` credibility" or is an "unreliable source" is "a quintessential 'expression[] of personal judgment' which is 'subjective in nature.'" *Piccone*, 785 F.3d at 772 (quoting *Gray*, 221 F.3d at 248). The same is true as to the assertions that: Plaintiff's allegations are "completely contradicted" and "undermine[d]" "by her own prior published statements," "it is inconceivable" that the statements would be made by an assault victim, there is a "glaring inconsistency" and "enormous disparity" between the statements and Plaintiff's allegations, and Plaintiff's own description of the incident "contradicts" the article. The court "can imagine no objective evidence that might conclusively prove or disprove" these assertions. *Levinsky's*, 127 F.3d at 130. They are merely subjective opinions based upon disclosed information, and "[u]nder the *First Amendment* there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Gertz*, 418 U.S. at 339-40. So long as the author fully outlines the non-defamatory facts supporting those opinions and does not imply the assertion of an undisclosed defamatory fact, such statements are not

actionable. *See Piccone, 785 F.3d at 771.* That is the situation here. As discussed, unlike in *Green*, Singer adequately "communicate[d] the non-defamatory facts that undergird his opinion." *Id.*

In the end, the subjective statements regarding Plaintiff's credibility constitute opinions, and the Singer Letter discloses the factual bases underlying those opinions without implying additional defamatory facts. As a result, the statements are protected by the *First Amendment* and are not actionable.

4. Counts 1, 2, 13, 15, and 19

a. Count 1

In Count 1, Plaintiff labels as defamation the statement that "[t]he *New York Daily News* engaged in reckless conduct by publishing a malicious defamatory article with Katherine McKee's wild allegations about my client accusing him of rape." (Am. Compl. ¶ 82, Ex. A at 1.) In the very important overall context of the Singer Letter as a whole, the court concludes this is a protected, nonactionable statement. In particular, the phrase "wild allegations," in the court's view, is the type of "loose, figurative language that no reasonable person would believe presented facts." *Levinsky's, 127 F.3d at 128; see also Phantom Touring, 953 F.2d at 729* ("Whether or not the allegation of intentional deception meets the 'provable as true or false' criterion, however, we think the context of each article rendered the language not reasonably interpreted as stating 'actual facts' about appellant's honesty.").

As to the word "defamatory" in the statement, while a successful defamation claim generally requires proof a given statement is both false and defamatory, the law treats those terms as separate requirements. *See, e.g., Restatement (Second) of Torts § 558* ("To create liability for defamation there must be . . . a false *and* defamatory statement concerning another (emphasis added)); *see Bustos v. A & E Networks, 646 F.3d 762, 763 (10th Cir. 2011)* ("But to concede that a statement is defamatory is just to say it hurts. It says nothing about the truth of the matter."). Thus, the court reads the word "defamatory" in the statement to refer to the requirement that "[a] communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Restatement (Second) of Torts § 559*; *see also Koniak, 499 N.W.2d at 348* ("Although the popular sense of a legal term may not be technically accurate, . . . 'if technical and common parlance yield different interpretations of the same word, the constitutionally required breathing space affords protection of the writer's choice.'" (quoting *Rouch, 487 N.W.2d at 217*)). Again, Singer never actually states that Plaintiff's allegation of sexual contact generally or the specific rape allegation as appears in the complaint is false. Instead, Singer goes on to explain why—in his view—there were a number of red flags casting doubt on Plaintiff's credibility which were ignored or not investigated by the Daily News. According to Singer, the fact that the Daily News ignored or failed to investigate these alleged red flags demonstrates "[c]onstitutional malice." (Am. Compl., Ex. A at 3; *see*

also id. at 4 n.11 (citing *Goldwater v. Ginzburg*, 414 F.2d 324, 337 (2d Cir. 1969) (discussing constitutional "actual malice" standard for defamation claims brought by "public figure" plaintiffs).) However, because Singer disclosed the facts underlying his subjective assertion, the statement is not actionable.

b. Count 2

In Count 2, Plaintiff challenges the statement that "[e]asily available public information, including Ms. McKee's own laudatory words about Mr. Cosby, belie the *Daily News*' Story." (Am. Compl. ¶ 85, Ex. A at 1.) Specifically, Plaintiff takes issue with the description of her words as "laudatory." (*Id.* ¶ 85.) This, again, is an inherently subjective characterization, incapable of being proven true or false. Moreover, the Singer Letter directly discloses the alleged statements, allowing readers to review them and reach their own conclusions, so there are no implied, undisclosed defamatory facts.

c. Count 13

In Count 13, Plaintiff challenges Singer's statement that "[t]he *Daily News* was so intent on smearing my client that it recklessly labeled as 'rape' an alleged sexual encounter in the 1970's during which (according to your own story) the accuser *never objected, never said no, did not attempt to end the encounter, went to a party that night with her alleged attacker (and drove him to the party in her own car).*" (Am. Compl. ¶ 145, Ex. A at 2 (emphasis in original).) Contrary to Plaintiff's allegation, Singer did not assert these facts but, rather, claimed Plaintiff did in

the December 22, 2014 article. Singer further opined that the Daily News recklessly labeled the "alleged" encounter as rape. The article quotes Plaintiff as stating: "I was mad at my own self for not saying, 'What the f---?' Why didn't I stop it and get him away from me? But it happened too fast. I was absolutely flabbergasted." (Dkt. No. 42, Ex. C at 3; Dkt. No. 47, Ex. A at 3.) Moreover, the article states:

McKee said she quickly fled to the bathroom to compose herself. Cosby got dressed, and the two shared an icy silence in the elevator down to the lobby, where someone was waiting to escort them to the boat party. "I never said a word. I was too uncomfortable about it," she recalled. "Bill was so rude and cold toward me the rest of the night. I thought, 'when this boat docks, I'm out of here.' I just left." (*Id.*)¹⁸

Clearly, the assertions in the complaint could substantiate a rape allegation, and the court must presume those allegations are true at this stage of the litigation.¹⁹ But the actual claim here is that of

¹⁸To be sure, the article does not actually state that Plaintiff drove Defendant to the party in her own car. However, this one inaccurate assertion, in the court's view, does not render the statement as a whole materially false and is not itself "defamatory," in light of the other facts contained in the article and accurately recounted by the Singer Letter.

¹⁹Plaintiff alleges in the amended complaint that Defendant "intimidated, terrified, and terrorized [her] with pain and overwhelming physical force," and that "[t]he rape was an unprovoked and violent act" which "was shocking, scary and horrible." (Am. Compl. ¶¶ 20, 22.)

defamation based on the Singer Letter, and the court must narrowly rule only on the motion to dismiss the legal claim raised in the complaint. In this regard, the court observes the facts underlying the opinion in the Singer Letter actually come from the December 22, 2014 article itself, and Plaintiff does not dispute their accuracy. Again, "[a]n expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified or unreasonable the opinion may be or how derogatory it is." *Piccone*, 785 F.3d at 774 (quoting *Yohe*, 321 F.3d at 42). As a result, this statement is not actionable.

d. Count 15

In Count 15, Plaintiff alleges the following is a "false and defamatory communication of and concerning" her:

The media has routinely ignored relevant information including:

- Criminal Backgrounds of various accusers, such as arrests for lying to the police and other crimes involving dishonesty
- Information from third party sources disputing the credibility of sources and their accusations
- Independent evidence proving accusations impossible

(Am. Compl. ¶¶ 156-57, Ex. A at 3.) In context, however, it is clear these statements are not

"concerning" Plaintiff. *See, e.g., Curtis v. Evening News Ass'n*, 135 Mich. App. 101, 352 N.W.2d 355, 356 (Mich. Ct. App. 1984) (emphasizing that to succeed on a claim for defamation, the plaintiff must prove the statement is "concerning" the plaintiff). Directly preceding the challenged statement, the Singer Letter states:

This Story confirms the *Daily News* maintains virtually no journalistic standard or credibility threshold for publishing the stories of anyone who approaches your paper with accusations about my client. The *Daily News* has sunk to a new low in what it is passing off as "journalism." Unfortunately, the *Daily News* is not alone. The media has consistently refused to look into or publish information about various women whose stories are contradicted by their own conduct or statements.

(Am. Comp., Ex. A at 2-3.) After stating "the *Daily News* is not alone," Singer is clearly referencing other women who have come forward with similar allegations of sexual assault against Defendant. Accordingly, the bullet-points do not reference Plaintiff and, as a result, these statements are not actionable.

e. Count 19

In Count 19, Plaintiff also alleges the following is a "false and defamatory communication of and concerning" her: "Now, the media's approach is to publish virtually any tale 'no questions asked' told by anyone willing to vouch for it, without questioning

their motivations, their pasts, or even the criminal records of some accusers." (Am. Compl. ¶¶ 170-71, Ex. A at 3.) In particular, Plaintiff challenges the alleged assertion that she has a "criminal record[]." (Am. Compl. ¶ 172.) Again, however, this statement is not "concerning" Plaintiff. In the court's view, the references to "the media's approach" and "the criminal records of *some* accusers," especially when read in context with the Singer Letter as a whole, makes clear that the statement is not sufficiently directed at Plaintiff to be actionable. (*Id.*, Ex. A at 3 (emphasis added).)

5. Counts 4, 5, 7, 9, and 10

a. Counts 4 and 9

In Count 4, Plaintiff challenges the statement: "Ms. McKee's published statements in 2010 confirm that she counts Bill Cosby as a *friend*, and that he is among a group of '*very wonderful, lovely men*' whom she says '*treated me wonderfully*.'" (Am. Compl. ¶ 93, Ex. A at 1 (emphasis in original.) Plaintiff asserts that she "never said [Defendant] is 'wonderful' or a 'lovely man'" and that Singer misquoted the article cited as support for this statement.²⁰ (Am. Compl. ¶ 95.) In Count 9, Plaintiff challenges the statement: "Ms. McKee has said about the time while she was Sammy Davis, Jr.'s '*road wife*,' 'it was very common to be in and out of affairs' and 'As far as I'm concerned, my life has been wonderful. It's been blessed with lovely, wonderful men. I was free, and single and *I had fun*

²⁰ Plaintiff does not take issue with the word "friend" in Count 4, but does in Count 14, discussed below.

and I had a wonderful life." (Am. Compl. ¶ 124, Ex. A at 2 (emphasis in original).) Again, Plaintiff asserts that "in the article cited by Singer, [she] did not include [Defendant] among the men that she said treated her wonderfully." (Am. Compl. ¶ 125.)

The article cited as support for both statements, linked to its webpage in the Singer Letter via footnotes following the challenged statements, is entitled "Former Vegas showgirl reflects on wild youth"; it was published by C & G Newspapers on July 10, 2010 and written by Jennie Miller. (Dkt. No. 42, Ex. D; Dkt. No. 47, Ex. C.) The article, which contains numerous quotes from Plaintiff regarding her early career and associations with celebrities, states in relevant part:

She had a secret love affair with Johnny Carson. She dated Christopher Walken, Tony Curtis, Ben Gazzara and Clifton Davis. She counts Billy Crystal and Bill Cosby as friends. "Show business is a whole 'nother world," McKee said. "People in show business are out there meeting so many wonderful people, and it's very common to be in and out of affairs, unless you're married. You're in the limelight, people are after you, men are chasing you. And these were very wonderful, lovely men. They treated me wonderfully."

Those who are still alive today—like Clifton Davis—McKee said she maintains a friendship with.

"I didn't burn any bridges," she said. "As far as

I'm concerned, my life has been wonderful. It's been blessed with lovely, wonderful men. I was free, and single and I had fun and I lived a wonderful life." (*Id.* at 2-3.)²¹

Plaintiff argues the C & G Newspapers article "plainly shows that [she] never said [Defendant] treated her wonderfully." (Pl.'s Mem. in Opp'n to Mot. to Dismiss at 10.) The court, however, is not convinced. The article is ambiguous as to whether the "wonderful, lovely men" whom Plaintiff claimed "treated [her] wonderfully" refers only to the men she dated, as Plaintiff claims in her declaration, (Pl.'s Decl. ¶ 59), or whether the statement refers to all the aforementioned men, including Billy Crystal and Defendant, who are merely listed as friends. Because Singer's interpretation of the article is reasonable and the Singer Letter provides citations and webpage links to the article—so that readers can examine the text themselves and determine whether Singer's interpretation finds support—the challenged statements are not actionable. *See Masson, 501 U.S. at 519* ("The protection for rational interpretation serves *First Amendment* principles by allowing an author the interpretative license that is necessary when relying upon ambiguous sources.")²²

²¹In the December 22, 2014 Daily News article, Plaintiff is quoted as saying: "Back then, I was [Sammy Davis Jr.'s] road wife. He had an open marriage, and we were lovers. That's how it went." (Dkt. No. 42, Ex. C at 2; Dkt. No. 47, Ex. A at 2.)

²²Plaintiff does not assert in Counts 4 and 9 that the C & G Newspapers article itself is defamatory and that Defendant is liable for repeating another's defamatory statement. Even if she had, however, the court would conclude such a claim fails for the

b. Count 5

In Count 5, Plaintiff challenges the statement that "[a] year ago, Ms. McKee 'liked' one of Mr. Cosby's YouTube comedy videos and posted a fond message wanting to get in touch with him, saying 'Hey Bill I am trying to reach you.'" (Am. Compl. ¶ 98, Ex. A at 1.) In particular, Plaintiff alleges she "did not post a fond message about [Defendant]" but, rather, "posted a comment that she wanted to contact [Defendant] in order to confront [him] about the rape that he committed in 1974." (Am. Compl. ¶ 100.) Plaintiff further alleges Defendant responded to her YouTube comment by stating "I bet you are." (*Id.* ¶ 101.)

Plaintiff does not deny that she "liked" Defendant's video on YouTube or that she posted the message quoted in the Singer Letter. As to her assertion the comment was not "a fond message," the comment itself provides no indication as to the reason Plaintiff was "trying to reach" Defendant. Moreover, the characterization of the comment, on its face, as "fond" or otherwise is not capable of objective verification or defamatory meaning. Accordingly, the statement is not actionable.

c. Count 7

In Count 7, Plaintiff challenges the statement that "Ms. McKee has admitted, 'I had to do a lot of lying'

reasons discussed in footnote 25, *infra*.

and 'lies landed her a job' as a Vegas showgirl." (Am. Compl. ¶ 109, Ex. A at 1.) Plaintiff alleges that in the July 10, 2010 C & G Newspapers article cited as support, she was not quoted as saying "lies landed her a job"; rather, that statement was made by the reporter. (Am. Compl. ¶ 114.) Plaintiff also alleges she was misquoted as having said "I had to do a lot of lying." (*Id.* ¶ 113.) In addition, Plaintiff alleges Singer misconstrued the article, which discussed Plaintiff's need to "downplay the fact that she was mixed-race, and that she was only sixteen . . . years old at the time," in light of the "well-known segregationist policy that [the hotels in Las Vegas] would never hire a black showgirl" at the time. (*Id.* ¶¶ 112, 117.)

The article, after discussing Plaintiff's "dreams of making it big in show business" and the fact that she knew she had to leave Michigan and "go to California" to pursue those dreams, states in relevant part:

She also said she had to lie.

"In the 1960s, when I left home, there was still a lot of segregation," said the woman whose mother was German, Finish and Swedish, and whose father was African-American and American Indian.

"I just said I was white, but I'm mixed," she said. "Back then, it was easier to get doors to open. It wasn't accepted to be mixed and to have black blood in you. I had to do a lot of lying. I said I was white. And I said I was 23 years old, but I was 16."

The lies landed her a job. She signed a contract at the Stardust Hotel to be a showgirl—reportedly the first black Vegas showgirl—wearing very little clothing but larger-than-life regalia with colorful feathers and shimmering accessories. Dkt. No. 42, Ex. D at 2; Dkt. No. 47, Ex. C at 2.)

Plaintiff is correct that the article does not actually quote her as stating "lies landed her a job." Nevertheless, despite this misattribution, the challenged statement is substantially true. See *Masson*, 501 U.S. at 516 (rejecting "any special test of falsity for quotations" and relying on the common law substantial truth doctrine). The article does state—and Plaintiff does not deny—that Plaintiff lied "in order to get a job as a Las Vegas Showgirl." (Am. Compl. ¶ 112.)²³ Accordingly, the challenged statement would not "have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Collins*, 627 N.W.2d at 9 (quoting *Masson*, 501 U.S. at 517). In addition, the Singer Letter provides a link to the article, so the reader can learn the larger context of the segregationist practices of the Las Vegas hotels in the 1960s, which necessitated Plaintiff's misrepresentation. As a result, the statement is not

²³ Again, however, Plaintiff does deny she gave the specific statement "I had to do a lot of lying," quoted in the article. (*Id.* ¶ 113.) Even assuming Singer's statement is materially false and defamatory in claiming Plaintiff stated those words, the complaint does not allege sufficient facts demonstrating "actual malice," which is required for a limited-purpose-public-figure plaintiff. See footnote 25, *infra*.

actionable.

d. Count 10

In Count 10, Plaintiff challenges the statement:

Her own younger sister, Lonette, who worked as Mr. Cosby's secretary, has said about Katherine McKee during the relevant era that her "older sister, she was walking on the wild side, was always wild, was always a rebel, always doing inappropriate things, never conformed, thought she could break all the rules and did." (Am. Compl. ¶ 130, Ex. A at 2.)

Plaintiff alleges that

Singer's statements are false, misleading and defamatory as follows: (1) [Plaintiff's] younger sister Lonette McKee was only 17 years old when she allegedly worked as [Defendant's] "secretary"; (2) Lonette McKee was never the secretary of [Defendant], but instead worked as a "go-fer," or what would be called an "intern" today, on the set of "The Bill Cosby Show" in 1970 or 1971; (3) the substance of what Lonette McKee said must be understood in the context of the full quote of what Lonette actually said, which is that Lonette McKee was preparing to play a dramatic role of a character called "Sister" in the movie picture "Sparkle" released in 1976. Lonette McKee said in that interview that she modeled her dramatic portrayal on several people including her older sister [Plaintiff] and some of [Plaintiff's] friends.

Lonette McKee's comments had nothing to do with [Defendant], nor with [Plaintiff's] allegation that [Defendant] raped her. Singer deliberately and with actual malice, defamed [Plaintiff] by misconstruing the four-year old interview given by [Plaintiff's] younger sister in an attempt to discredit [Plaintiff]. (Am. Compl. ¶ 134.)

The court concludes the challenged statement is neither materially false nor defamatory. Again, the Singer Letter provides links to both the article in which Lonette McKee is quoted as having made the statement attributed to her by Singer—which Plaintiff does not deny as being accurate—as well as a 1986 People Magazine article stating that she worked as a secretary for Defendant. The statement, in the court's view, does not imply Plaintiff's sister made the comment with reference to Defendant or Plaintiff's rape allegation, and readers can examine the article for themselves, using the link provided in the Singer Letter, to learn the larger context of the comment. The statement, therefore, is not actionable.

6. Counts 6, 8, 14, and 16

a. Counts 6 and 8

In Count 6, Plaintiff challenges the statement: "On a promotional webpage for an acting 'Master Class' with Ms. McKee 'For the period: Dec. 16-22, 2014,' she touts her association with Mr. Cosby, saying she 'has enjoyed a 40-year career in show business' and has 'worked with such legends as . . . Bill Cosby.'" (Am. Compl. ¶ 103, Ex. A at 1.) Plaintiff alleges that she

"obtained her screen actor's guild card as a result of appearing on 'The Bill Cosby Show' in 1971" and that "[t]his acting credit appears along with other acting credits on her filmography found on the internet. Singer has distorted this historical fact into a defamatory statement by implying some kind of duplicity on the part of [Plaintiff] which does not exist." (Am. Compl. ¶¶ 105-06.) In Count 8, Plaintiff challenges the statement: "This month, Ms. McKee posted on her own Google+ page a 1970 video clip of herself acting with my client on the *Bill Cosby Show*, with her gloating caption, 'That's me with Bill Cosby 1970.'" (Am. Compl. ¶ 120, Ex. A at 2.) Plaintiff appears to take issue with the word "gloating." (Am. Compl. ¶ 22.)

Although Plaintiff alleges, with regard to both statements, that "[t]his is a false and defamatory communication of and concerning [Plaintiff], which is not privileged or opinion, and was published to the New York Daily News," (*id.* ¶¶ 104, 121), the court considers such allegations to be just the type of "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," which are not entitled to the presumption of truth. *Iqbal*, 556 U.S. at 678. Plaintiff's complaint fails to provide any minimal factual development in support of the assertion that these statements are "false." *See id.* ("A pleading that offers 'label and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' . . . Nor does a complaint suffice if it renders 'naked assertion[s]' devoid of 'further factual enhancement.'" (quoting *Twombly*, 550 U.S. at

555, 557)).²⁴

In any event, even if the court did presume falsity, it could not conclude that the statements are susceptible to a defamatory meaning in the sense of being harmful to Plaintiff's reputation. The assertion that Plaintiff stated on a promotional website for an acting class that she "has enjoyed a 40-year career in show business" and "worked with such legends as . . . Bill Cosby" does not "tend to lower [Plaintiff's] reputation in the community or deter third persons from associating or dealing with" her. *Armstrong*, 596 F. App'x at 441 (quoting *Ireland*, 584 N.W.2d at 636). Nor does the assertion that Plaintiff posted a video clip of her acting with Defendant on her Google+ page with the caption: "That's me with Bill Cosby 1970." As for the assertions that Plaintiff "tout[ed] her association with" Defendant on the promotional website and included a "gloating caption" on her Google+ page, these are subjective characterizations, not capable of being proven true or false. Accordingly, Plaintiff has failed to state claims upon which relief may be granted in Counts 6 and 8.

b. Count 14

In Count 14, Plaintiff challenges the statement that she "remained [Cosby's] friend and traded on his name for 40 years." (Am. Compl. ¶ 150, Ex. A at 2.) Plaintiff alleges she "does not consider [Defendant] a friend, and has never 'traded on his name,'" as she

²⁴ The court cannot verify for itself whether the sources contain the alleged statements, because the webpage links provided in the Singer Letter no longer work.

"realized [he] was not her friend" after the rape and "has never attributed any success in her career in the entertainment industry to [Defendant]." (Am. Compl. ¶¶ 152-53.) However, as discussed above, the July 10, 2010 C & G Newspapers article, in which Plaintiff was interviewed, did state Plaintiff "counts Billy Crystal and Bill Cosby as friends." (Dkt. No. 42, Ex. D at 2; Dkt. No. 47, Ex. C at 2.) Reading the Singer Letter as a whole, the court concludes a reasonable reader would not believe Singer was claiming Plaintiff and Defendant remained friends but, rather, that the article containing the assertion could be found through easily available public sources, such as "a simple Google search," and that the Daily News either ignored or failed to investigate these sources.²⁵

²⁵The court notes that many states subject re-publishers of defamatory statements to liability in the same manner as the original publisher, *see Gray, 221 F.3d at 249-50; Restatement (Second) of Torts § 578* ("[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it."), although it is unclear whether Michigan recognizes this doctrine. Therefore, to the extent a reader could believe Singer was claiming Plaintiff previously stated she considered Defendant a "friend" in a newspaper interview, and assuming that statement is both false and susceptible to a defamatory meaning, Defendant may be argued to be liable under this republication doctrine. Even under that scenario, however, Defendant also contends he is not liable because Plaintiff is a limited purpose public figure and the complaint does not allege facts supporting "actual malice." The court agrees. By publicly disclosing her allegations during an interview with Nancy Dillon of the Daily News, Plaintiff "voluntarily inject[ed] [herself] . . . into a particular controversy and thereby bec[ame] a public figure for a limited range of issues," *i.e.*, the public controversy over Defendant's alleged sexual assault of Plaintiff and others. *Lluberes v. Uncommon Prods., LLC, 663 F. 3d 6, 13 (1st Cir. 2011)* (quoting *Gertz, 418 U.S. at 351*). As such, to recover for defamation, Plaintiff must

Moreover, as to the assertion that Plaintiff "traded on [Defendant's] name for 40 years," this, again, is not an objective fact capable of being proven true or false. Plaintiff herself admits that she has listed her appearance on *The Bill Cosby Show* in 1971—which "allowed [her] to get [her] Screen Actors Guild card"—"first in a chronological list of [her] acting credits," "as is custom and practice in the entertainment industry." (Pl.'s Decl. ¶¶ 44, 46; *see also* Am. Compl. ¶¶ 105-06.) Whether such a listing of Plaintiff's professional acting credits amounts to "trad[ing] on [Defendant's] name" is a subjective characterization and, therefore, may not form the basis for a defamation claim. *See Levinsky's, 127 F.3d at 129* ("The vaguer a term, or the more meanings it reasonably can convey, the less likely it is to be actionable."). Accordingly, the challenged statement is not actionable.

c. Count 16

Lastly, Plaintiff challenges the statement that her rape allegation against Defendant is a "four-decade old but never-before-heard tale." (Am. Compl. ¶ 160,

demonstrate Defendant acted with "actual malice"—that is, with knowledge that [the statement] was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan, 376 U.S. 254, 280, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)*. Plaintiff's complaint, however, fails to allege facts plausibly suggesting Defendant knew the statement attributed to Plaintiff by the C & G Newspapers article was not actually uttered by Plaintiff or recklessly disregarded that possibility. *See Shay v. Walters, 702 F.3d 76, 82-83 (1st Cir. 2012)* (discussing pleading requirements for demonstrating fault in defamation claims).

Ex. A at 3.) Despite alleging in conclusory fashion that "[t]his statement is a false and defamatory communication," Plaintiff fails to allege that she disclosed the rape allegation prior to her interview with Nancy Dillon of the Daily News in December of 2014. In fact, Plaintiff asserts in her declaration: "I never spoke publicly about the rape, before telling Nancy Dillon about it in December 2014, because I was afraid of [Defendant]." (Pl.'s Decl. ¶ 35; *see also id.* ¶ 43 ("It was not until the Nancy Dillon interview in December 2014, that I felt comfortable talking about the rape publicly for the first time.")). Accordingly, both the timing of the alleged rape and the fact that it had never previously been publicly disclosed are actually undisputed. *See Green, 138 F. Supp. 3d at 136* ("The truth of portions of the statement, such as the length of time between when the incidents allegedly occurred and the date on which any particular allegation become public, is uncontested."). The word "tale" is closer to the line but, in light of the Singer Letter as a whole, is too subjective to give rise to defamation liability. *See Piccone, 785 F.3d at 772* (collecting First Circuit cases which have rejected defamation claims based on the words "trashy," "fake" and "phony," and "scam"); *see also Milkovich, 497 U.S. at 16-17*.²⁶

²⁶ Although the November 21, 2014 Statement in *Green* contains a similar phrase—"the new, never-before-heard claims"—that language was not why the court held the statement actionable. *See Green, 138 F. Supp. 3d at 136*. The November 21, 2014 Statement also characterized the sexual assault allegations as "fantastical stories" which "have escalated far past the point of absurdity," in addition to referencing, without explanation or support, "documentary evidence" used to "refute[] these new unsubstantiated stories." *Id. at 122*. As discussed above, the November 21, 2014 Statement in *Green* is different from the

V. Conclusion

For these reasons, the court **ALLOWS** Defendant's motion to dismiss. (Dkt. No. 41.)

It is So Ordered.

/s/ Mark G. Mastroianni
MARK G. MASTROIANNI
United States District Judge

Singer Letter when both are read as a whole, considering the extensive facts cited as support for the opinions in the Singer Letter; each statement asserts or implies far different messages. As explained, the Singer Letter, viewed in its "entirety," sends an opinionated credibility message based on cited detail. Compare footnote 13, *supra* (explaining that the "entirety" of the November 21, 2014 Statement in *Green* deemed to be actionable includes the unexplained "documentary evidence" language (citing *Green*, 138 F. Supp. 3d at 136-37 and *Ruehli*, 15-cv-13796-MGM (Dkt. No. 26), 2016 U.S. Dist. LEXIS 184712)).

Appendix to District Court's Memorandum
The Singer Letter

December 22, 2014

CONFIDENTIAL LEGAL NOTICE PUBLICATION OR
DISSEMINATION IS PROHIBITED

VIA EMAIL: calderman@nydailynews.com
legal@nydailynews.com

Cyna J. Alderman, Esq.
SVP and General Counsel
Daily News, L.P.
4 New York Plaza, 6th Floor
New York, NY 10004

VIA EMAIL: ndillon@nydailynews.com
Ms. Nancy Dillon
West Coast Bureau Chief
New York Daily News

Re: Bill Cosby / *New York Daily News*. Daily News,
L.P., *et al.*

Our File No.: 980-49

Dear Ms. Alderman and Ms. Dillon:

We are litigation counsel to Bill Cosby. The *New York Daily News* engaged in reckless conduct by publishing a malicious defamatory article with Kathrine McKee's wild allegations about my client accusing him of rape. Easily available public information, including Ms. McKee's own laudatory words about Mr. Cosby, belie the *Daily News'* Story.

The *Daily News* could have done a simple Google search to learn that her story lacks credibility. What would you have found?

- Ms. McKee's published statements in 2010 confirm that she counts Bill Cosby as a *friend*, and that he is among a group of "*very wonderful, lovely men*" whom she says "*treated me wonderfully*"¹
- A year ago, Ms. McKee "liked" one of Mr. Cosby's YouTube comedy videos and posted a fond message wanting to get in touch with him, saying "Hey Bill....I am trying to reach you"²
- On a promotional webpage for an acting "Master Class" with Ms. McKee "For the period: Dec. 16-22, 2014," she touts her association with Mr. Cosby, saying she "has enjoyed a 40-year career in show business" and has "worked with such legends as ... Bill Cosby"³
- Ms. McKee has admitted, "*I had to do a lot of lying*" and "*lies landed her a job*" as a Vegas showgirl⁴
- This month, Ms. McKee posted on her own Google+ page a 1970 video clip of herself acting with my client on *The Bill Cosby Show*, with her gloating caption, "That's me with Bill Cosby 1970"⁵
- Ms. McKee has said about the time while she was Sammy Davis, Jr.'s "*road wife*," "it was very common to be in and out of affairs" and "As far as I'm concerned, my life has been

wonderful. It's been blessed with lovely, wonderful men. I was free, and single and *I had fun and had a wonderful life*"⁶

- Her own younger sister, Lonette, who worked as Mr. Cosby's secretary,⁷ has said about Kathrine McKee during the relevant era that her "older sister, she was walking on the wild side, was always wild, was always a rebel, always doing inappropriate things, never conformed, thought she could break all the rules and did."⁸

Ms. McKee's never-before-heard tale about something she claims happened back in the 1970's is completely contradicted by her own prior published statements. Ms. McKee's own statements and conduct confirming that she considers Mr. Cosby a wonderful, lovely person who treated her well, and lauding about her association with Mr. Cosby, can easily be found with just a few clicks on Google. Instead, a mountain of evidence undermining your source's reliability was ignored by the *Daily News* in its malicious quest to publish a salacious defamatory "scoop." It is obvious that the *Daily News* did not even bother to do something as simple as a web search before recklessly accusing my client of rape and publishing its "EXCLUSIVE" article "RAT PACK ATTACK | Bill Cosby accused of raping ex-girlfriend of Sammy Davis Jr." (the "Story").

Your source claims that 40 years ago, during the time that she says she was Sammy Davis, Jr.'s "road wife," my client allegedly raped her standing at the door of a Detroit hotel room after she brought him

ribs, *following which she went to a party with him*. The *Daily News* was so intent on smearing my client that it recklessly labeled as "rape" an alleged sexual encounter in the 1970's during which (according to your source's own story) the accuser *never objected, never said no, did not attempt to end the encounter, went to a party that night with her alleged attacker (and drove him to the party in her own car), and remained his friend and traded on his name for 40 years*.

This Story confirms that the *Daily News* maintains virtually no journalistic standard or credibility threshold for publishing the stories of anyone who approaches your paper with accusations about my client. The *Daily News* has sunk to a new low in what it is passing off as "journalism." Unfortunately, the *Daily News* is not alone. The media has consistently refused to look into or publish information about various women whose stories are contradicted by their own conduct or statements. The media has routinely ignored relevant information including:

- Criminal backgrounds of various accusers, such as arrests for lying to police and other crimes involving dishonesty
- Information from third party sources disputing the credibility of sources and their accusations
- Independent evidence proving accusations impossible

It is obvious that either the *Daily News* failed to do

even the most simplistic and rudimentary investigation of Ms. McKee's story before rushing to publish her four-decade-old but never-before-heard tale, or alternatively, that the *Daily News* actually knew that Ms. McKee's own prior statements and conduct are totally inconsistent with and undermine her new story, but published the "rape" story anyway. In either case, the *New York Daily News* published its story with Constitutional malice.

To say that Ms. McKee is not a reliable source is a gross understatement. Ample published information readily available to the *Daily News* completely undermines this story. The fact that the *Daily News* ran this Story reveals that, like many of its media cohorts, its publication standards have sunk to depths that in past decades even supermarket tabloids would not deign to sink. Now, the media's approach is to publish virtually any tale "no questions asked" told by anyone willing to vouch for it, without questioning their motivations, their pasts, or even the criminal records of some accusers. This is not journalism. Such biased reporting is outrageous and unconscionable. It also gives rise to substantial liability.

The evidence that the *Daily News* ought to have found and considered before running this defamatory Story runs that gamut from recent published interviews, to praise posted on social media, to professional promotional listings. If someone was treated improperly, was assaulted, or was even raped, it is inconceivable that they would make these laudatory, positive statements about the alleged perpetrator. Why would someone who was allegedly raped "like" a comedy video by their alleged attacker?

Why would someone who claims to have been assaulted have as their top Google+ post an episode of a television series acting alongside her purported attacker? Why would she list her appearance on his show at the top of her list of professional accomplishments?⁹ It defies credulity. Tellingly, the *Daily News* never bothered to ask such questions, quick to advance its agenda of labeling my client a rapist.

The glaring inconsistency between Ms. McKee's past affectionate public sentiments about my client and what she is now claiming was alone a basis to question her veracity and render her an unreliable source.¹⁰ Moreover, Ms. McKee's own description of her *private* words and conduct at the time of the alleged incident also contradicts the *Daily News*' Story. When you add to the mix Ms. McKee's constant name-dropping of her association with Mr. Cosby, and her "liking" of a comedy Cosby video a year ago and reaching out to get in touch with an old friend, and her recent proud post of a video clip showing her acting alongside Mr. Cosby in the 1970's, the enormous disparity between the *Daily News* Story and her public words [**56] and conduct establish that the Story was published recklessly and with Constitutional malice.

This defamatory Story is the latest example of your coverage demonstrating that your newspaper maintains virtually no standard or credibility threshold for publishing the stories of anyone who approaches the *Daily News* with accusations about my client, no questions asked. The media blindly ignores the dubious background of sources, ignores the

absence of evidence to corroborate decades-old accusations, and ignores the existence of contradictory evidence undermining its sources' claims or reliability. Meanwhile, as has been amply publicized and commented upon by legal scholars, my client risks being sued for defamation (as has already occurred) if he so much as denies any scurrilous accusations made against him.

Like other irresponsible media, the *Daily News* is recklessly clamoring to add to the din of "me too" claims without investigating the reliability of its sources. This exposes the *Daily News* to very significant liability.¹¹

"Freedom of the press under the *First Amendment* does not include absolute license to destroy lives or careers."¹² The *Daily News* should stop resorting to "scandal sheet" journalism. It will have only itself to blame if it finds itself in court attempting to defend its ongoing pattern of recklessly and maliciously publishing outlandish stories about my client fitting with its predetermined smear agenda. Publication of a retraction and correction of the defamatory Story is demanded.

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

Sincerely,
/s/ Martin D. Singer
MARTIN D. SINGER

¹"She counts Billy Crystal and Bill Cosby as friends. 'People in show business are out there meeting so many wonderful people, and it's very common to be in and out of affairs, unless you're married. You're in the limelight, people are after you, men are chasing after you. And these were very wonderful, lovely men. They treated me wonderfully.' Those who are still alive today ... McKee said she maintains a friendship with. 'I didn't burn any bridges,' she said. 'As far as I'm concerned, my life has been wonderful. It' s been blessed with lovely, wonderful men. I was free, and single and I had fun and I had a wonderful life.'" *C & G Newspapers, "Former Vegas showgirl reflects on wild youth"* (July 7, 2010) <<http://www.candgnews.com/Homepage-Articles/2010/07-07-10/Katherine-McKee-showgirl.asp>>

² <<https://www.youtube.com/user/kathrinemckee>>
<<https://www.youtube.com/watch?v=cUZgOlcVrnc>>

³"McKee is excited to share her experiences in Hollywood with the people of Detroit and bring to Michigan some of the many stars and celebrities she has known and worked with throughout her long career in show business. McKee, herself, has enjoyed a 40-year career in show business that has taken her around the globe. She has worked with such legends as Richard Pryor, Sammy Davis Jr., Bill Cosby and Clifton Davis." *Encore Michigan* (Dec. 16-22, 2014) <<http://www.encoremichigan.com/article.html?article=3251>>

⁴ *C & G Newspapers, "Former Vegas showgirl reflects on wild youth"* (July 7, 2010) <<http://www.candgnews.com/Homepage-Articles/2010/07-07-10/Katherine-McKee-showgirl.asp>>

⁵ <<https://plus.google.com/113662289241530517375/posts>>

⁶ *C & G Newspapers, "Former Vegas showgirl reflects on wild youth"* (July 7, 2010) <<http://www.candgnews.com/>>

Homepage-Articles/2010/07-07-10/Katherine-McKee-showgirl.asp>

⁷ *People Magazine*, "After Singing Her Own Blues, Lonette Mckee Finds a Perch as Off Broadway's Billie Holiday" (November 3, 1986) <<http://www.people.com/people/archive/article/0,,20094908,00.html>>

⁸ PopMatters, "Giving Us Something We Can Feel: An Interview with Lonette McKee" (August 11, 2010) <<http://www.popmatters.com/feature/129327-giving-us-something-we-can-feel-an-interview-with-lonette-mckee/>>

⁹ <<http://www.kathymckeeasting.com/biography.html>>

¹⁰ See *Suzuki Motor Corp. v. Consumers Union of United States, Inc.*, 330 F. 3d 1110, 1134 (9th Cir. 2003) ("the jury may nevertheless infer that the publisher was aware of the falsity if it finds that there were 'obvious reasons to doubt' the accuracy of the story, and that the defendant did not act reasonably in dispelling those doubts.").

¹¹ See *Goldwater v. Ginzburg*, 414 F.2d 324, 337 (2nd Cir. 1969) ("[r]epetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports").

¹² *Gertz v. Robert Welch, Inc.*, 680 F.2d 527, 539 (7th Cir. 1982) (quoting *Curtis Publ's Co. v. Butts*, 388 U.S. 130, 170, 87 S. Ct. 1975, 1999, 18 L. Ed. 2d 1094 (1967)) in the context of discussing an article written with a pre-conceived agenda and published with reckless disregard of its truth or falsity.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

Civil Action No. 3:15-cv-30221-MGM

KATHRINE MAE McKEE,

Plaintiff,

v.

WILLIAM H. COSBY, JR.,

Defendant.

AMENDED COMPLAINT

Plaintiff Kathrine Mae McKee, by and through her attorney F. William Salo, Esq., complaining of the Defendant, respectfully alleges for her Amended Complaint which is hereby served as a matter of course pursuant to Fed R. Civ. P. 15(a)(1)(B), as follows:

Parties

1. The Plaintiff Kathrine Mae McKee, who is also known as Kathy McKee (hereinafter “Ms. McKee” or “Plaintiff”), is domiciled in the City of Las Vegas, in the State of Nevada, and is a citizen of the United States.

2. Ms. McKee is an accomplished performer and actress, and has been working in the entertainment industry for over fifty (50) years.

3. Today, Ms. McKee is an independent casting director.

4. The Defendant William H. Cosby, Jr., who is also known as Bill Cosby (hereinafter “Cosby” or “Defendant”), is domiciled in the City of Shelburne Falls, in the County of Franklin, in the Commonwealth of Massachusetts, and is a citizen of the United States.

5. Defendant is an internationally well-known celebrity and entertainer.

Jurisdiction and Venue

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1), because this is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States

7. Venue is proper under 28 U.S.C. § 1391(b)(1), as it is based upon the residence of the Defendant.

8. Filing the Complaint in the Western Division is proper pursuant to Local Rule 40.1(D)(1)(c) of the Local Rules of the United States District Court for the District of Massachusetts, since the defendant resides in Franklin County, Massachusetts (*see* Local Rule 40.1(C)(3)).

FACTS OF THE CASE:

How Ms. McKee Met Cosby:

9. Ms. McKee first met Cosby in or about 1964, when Ms. McKee was working as an aspiring actress and as a showgirl in Las Vegas, Nevada.

10. In 1971, Ms. McKee appeared as an actress on “The Bill Cosby Show”, a popular American television program which aired from 1969 to 1971.

11. After appearing on “The Bill Cosby Show”, and during the period from 1971 through 1974, Cosby led Ms. McKee to believe that Cosby was her friend, so that Ms. McKee felt comfortable accepting social invitations from Cosby, and Ms. McKee did socialize with Cosby, including having dinner with Cosby and his wife Camille Cosby on several occasions during that time period.

The 1974 Rape in Detroit

12. On one day in 1974, when both Ms. McKee and Cosby happened to be in Detroit, Michigan coincidentally, Cosby asked Ms. McKee to meet him socially.

13. Cosby asked Ms. McKee to get some ribs from a local restaurant and then pick him up at his hotel, and he promised that he would then take Ms. McKee to a party on a friend’s boat docked in the Detroit River.

14. When Ms. McKee arrived at the hotel room, Cosby invited Ms. McKee into the hotel room, and she observed that Cosby was wearing a bath robe and a knit wool cap.

15. Ms. McKee stepped a few steps into the hotel room when she was immediately set upon and physically attacked by Cosby.

16. Cosby snatched the ribs from her hands and tossed them aside.

17. Cosby was wild and aggressive, and was acting nothing like the man Ms. McKee had known professionally.

18. Cosby violently and forcefully grabbed Ms. McKee and then spun Ms. McKee around so that she was facing away from Cosby and toward the door.

19. Cosby violently lifted her dress and pulled down her panties.

20. Cosby intimidated, terrified, and terrorized Ms. McKee with pain and overwhelming physical force.

21. Cosby proceeded to forcibly rape Ms. McKee while both were still standing very near the door.

22. The rape was an unprovoked and violent attack. The rape was shocking, scary and horrible.

**The New York Daily News Story
dated December 22, 2014**

23. In mid-December 2014, Ms. McKee was interviewed by reporter Nancy Dillon of the New York Daily News and upon being questioned, Ms. McKee told Nancy Dillon about the aforesaid rape perpetrated by Cosby in Detroit in 1974.

24. On Monday, December 22, 2014, the New York Daily News published a news article by Nancy Dillon which described the aforesaid 1974 rape of Ms. McKee perpetrated by Cosby in a hotel in Detroit.

CAUSE OF ACTION FOR DEFAMATION:

Cosby's Plan to Discredit Ms. McKee with Defamatory Statements:

25. Sometime in 2014, Cosby decided to employ a strategy of defaming his accusers in an attempt to discredit them, to intimidate them, and to intimidate any future would-be accusers.

26. In various published reports which appeared in December 2014, Cosby stated that he intended to discredit his accusers generally, and that he intended to discredit Ms. McKee specifically by name.

27. Also according to published reports, Cosby hired California attorney Martin Singer, who upon information and belief charges \$850 per hour, and who upon further information and belief revels in being described variously in the media as the "pit-bull of Beverly Hills" [New York Times, May 11, 2011], and the "attack dog of L.A. law" [Los Angeles Magazine,

May, 2000], and the lawyer “whose job is to dive into the gutter of a litigious, capitalistic society and win at all costs” [Profile of Martin Singer found on his own website, at www.LavelySinger.com/RagingBulls.html].

28. At all times relevant hereto, Martin Singer was the attorney for Cosby, and was his agent, servant, and employee, and was authorized in law and fact to speak for Cosby.

29. According to a New York Post story published on December 29, 2014, Cosby hired attorney Martin Singer to run “a scorched-earth strategy in which anything negative in the accusers’ pasts is fair game”.

30. According to the same New York Post story, as part of Cosby’s coordinated plan to discredit his accusers with defamation, Cosby paid more than one hundred thousand dollars (\$100,000) to a firm of private investigators based in Glendale, California to dig up information that Cosby could use to discredit his victims and accusers generally, and Ms. McKee specifically.

31. According to the New York Post, the Glendale, California-based firm dedicated six (6) former LAPD detectives to Cosby’s self-described “scorched-earth strategy”.

32. As part of his plan to discredit Ms. McKee, Cosby intended to use any and all personal information the he could gather about Ms. McKee to intimidate, harass, embarrass and defame her by

presenting said personal information in a distorted and untrue manner.

33. Cosby planned to use, and did use, the personal information that he uncovered about Ms. McKee in a misleading and defamatory way, by presenting false statements and distortions of events from Ms. McKee's life, as described below.

34. In various media outlets, attorney Martin Singer has denounced Ms. McKee specifically, and has defamed her as being part of the group of women whose allegations of rape against Cosby are "fantastical", "unsubstantiated", and "uncorroborated".

35. According to a published report which appeared in the global online news service of the Daily Mail Newspaper on December 28, 2014, Cosby was reported to have said that he believed that his defamatory plan to discredit Ms. McKee was working.

The Singer Letter

36. On December 22, 2014, as part of his defamatory plan to discredit Ms. McKee, and in response to the aforementioned New York Daily News article dated December 22, 2014 written by Nancy Dillon, Cosby, by and through his attorney Martin Singer, wrote a six-page letter to the New York Daily News wherein Cosby denied that he raped Ms. McKee, and wherein Cosby called Ms. McKee a liar (directly and indirectly), and wherein Cosby imputed unchastity to Ms. McKee, and wherein Cosby made other false and defamatory statements about Ms.

McKee (hereinafter referred to as the “Singer Letter”). A copy of the Singer Letter is attached hereto as Exhibit A.

37. Cosby intended that the Singer Letter would defame and intimidate Ms. McKee, as part of his strategy to undermine her credibility and to damage her reputation for truthfulness among the people who make up the national readership of the New York Daily News, and to damage her reputation to all other people who would learn of the content of the Singer Letter through re-prints and re-reports in various other online reports.

38. On December 22, 2014, and continuing thereafter, Martin Singer published the Singer Letter to the New York Daily News via email to the newspaper’s head office in New York, New York, and upon information and belief, leaked a copy to the HollywoodReporter.com, and further upon information and belief, also leaked a copy of the letter to other media outlets as well.

39. Simply put, the Singer Letter claims that Ms. McKee lied about being raped by Cosby.

40. The Singer Letter further falsely states that Ms. McKee’s allegation of rape is contradicted by Ms. McKee’s own past conduct and by her own past statements.

41. The Singer Letter deliberately distorts Ms. McKee’s past personal life and accomplishments, and misquotes her past statements which have appeared

in prior news articles, all for the purpose of defaming Ms. McKee by portraying her in a false light.

42. The Singer Letter also imputes unchastity to Ms. McKee, an unmarried woman.

43. Finally, the Singer Letter directly and openly called Ms. McKee a liar, and indirectly uses false light, artifice, fallacy, innuendo and inference to cast further doubt on Ms. McKee's reputation for truthfulness, honesty, integrity, and good moral character.

44. Upon information and belief, on or about December 23, 2014, or soon thereafter, the New York Daily News published a news article about the Singer Letter wherein it reported that Cosby (through Martin Singer) denied the rape allegation of Ms. McKee, and further reported that Cosby asserted in the Singer Letter that Ms. McKee "had [done] a lot of lying", and that Ms. McKee "defied credibility", and that Ms. McKee is "used to lying".

45. On December 23, 2014, the HollywoodReporter.com published a news article which described in detail parts of the Singer Letter including that Singer stated that Ms. McKee's allegation of rape "defies credibility", and that Ms. McKee "did a lot of lying", and repeated Singer's misleading statement that Ms. McKee "liked" one of Cosby's YouTube videos, and also repeated Singer's false and misleading statement that Ms. McKee had said that Cosby "treated me wonderfully."

46. The HollywoodReporter.com also quoted the false accusation from the Singer Letter that Ms. McKee's "background and her previous conduct toward Cosby were enough to make her story unreliable".

47. On the same day Singer published the Singer Letter to the New York Daily News via email, *i.e.*, December 22, 2014, various defamatory statements contained within the Singer Letter appeared in other news outlets around the world, and were published in stories that appeared in the [Daily] MailOnline.com, and the Associated Press, and which were further reported and disseminated by various other international news organizations and websites, including but not limited to the Spanish language periodical "*Reforma*" which is published in Mexico, and a Dutch newspaper. The only explanation for the rapid dissemination of the Singer Letter on December 22, 2014, is that Singer himself intentionally leaked the Singer Letter to media outlets.

48. In late December 2014, Singer made additional defamatory statements when he stated that Ms. McKee had "praised Cosby's stand-up act and wrote favorably about him", and falsely claimed that there existed prior statements of Ms. McKee which were published in various newspapers and websites that contradicted McKee's rape allegation against Cosby.

49. It is currently unknown to Ms. McKee if the full text of the Singer Letter has ever been published in its entirety, but the defamatory statements

contained within the Singer Letter mentioned above, have appeared globally.

50. Cosby's intention was not only to defame Ms. McKee to the New York Daily News and the Hollywood Reporter, but also to defame Ms. McKee to the world at large, by causing a news story to appear in the New York Daily News and other news outlets, wherein Cosby would call Ms. McKee a liar, all for the purpose of discrediting Ms. McKee and to damage her reputation for truthfulness and honesty, and further to embarrass, harass, humiliate, intimidate, and shame Ms. McKee.

51. And in fact, Cosby's defamatory statements were effectively published and disseminated broadly to the world at large, through the internet, television, and through other newsprint organizations to a very broad community.

52. Cosby's statements in the Singer Letter are false, and Cosby knew them to be false when they were made.

53. Cosby made the statements in the Singer Letter with reckless disregard for the truth, and/or actual malice toward Ms. McKee.

54. At all times relevant hereto, Cosby knew that Ms. McKee was telling the truth, and Cosby knew that he did in fact rape Ms. McKee in a hotel room in Detroit in 1974.

55. Cosby's statements in the Singer Letter are not privileged.

56. Cosby's statements in the Singer Letter are not opinion.

57. Cosby damaged Ms. McKee's reputation by asserting openly and through insinuation that Ms. McKee was a liar, thus creating the impression that she is unethical or immoral to a considerable and respectable segment of the community.

58. Cosby knowingly made false statements contained in the Singer Letter with the intention of damaging Ms. McKee's reputation in the community generally, and in the entertainment industry specifically, and to harm her credibility.

Choice of Law Analysis:

59. Under the rule of *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S. Ct. 1020 (1941), the federal district court must apply the choice-of-law principles of its forum state in order to establish the substantive rule of decision for Ms. McKee's non-federal claims.

60. This Court must therefore apply Massachusetts choice-of-law rules to determine which substantive tort law should be applied to Ms. McKee's pendent defamation claim.

61. Massachusetts has abandoned the mechanical rule of *lex loci delicti* in favor of the more functionally-oriented "interest analysis" or "most significant relationship" approach of the Second Restatement. See *Bi-Rite Enterprises, Inc. v. Bruce*

Miner Co., 757 F.2d 440, 442 (1st Cir. 1985); *A. Johnson & Co. v. Aetna Cas. & Surety Co.*, 741 F. Supp. 298, 299 (D. Mass. 1990), *aff'd*, 933 F.2d 66 (1st Cir. 1991).

62. The Second Restatement states “[w]hen a natural person claims that [s]he has been defamed by an aggregate [i.e., multistate] communication, the state of most significant relationship will usually be the state where the person was domiciled at the time, if the matter complained of was published in that state.” [emphasis added] Restatement (Second) of Conflict of Laws § 150; *see also Continental Cablevision v. Storer Broadcasting Co.*, 653 F. Supp. 451, 455 (D. Mass. 1986).

63. Applying the functional approach of the Restatement Second, Massachusetts’ substantive tort law should be applied to the defamation claim asserted by the Ms. McKee, for the reasons stated below.

64. First, Cosby originally published the Singer Letter in the State of New York via an email, but the sum and substance of the defamatory statements contained within the Singer Letter were subsequently re-published in news articles which appeared around the world via the internet.

65. Cosby intended to damage Ms. McKee’s reputation in the aggregate in all fifty (50) states.

66. Ms. McKee’s reputation was therefore damaged first in the State of New York, and then later across the entire country.

67. However, the damage to Ms. McKee's reputation did not occur instantly when Martin Singer pressed the send button which transmitted his email of the defamatory Singer Letter to the New York Daily News, but rather it took days, weeks or even months to harm Ms. McKee. Over time, Ms. McKee's reputation was damaged equally in all fifty (50) states.

68. Although Ms. McKee was a resident of the State of Michigan on the day the Singer Letter was published via email to the New York Daily News, she was in the process of changing her residence to the State of Nevada, and officially changed her domicile to the State of Nevada approximately six (6) months after the Singer Letter was published to the New York Daily News when she moved her residence to Nevada with intent to remain in Nevada in June 2015.²

69. On December 22, 2014, Ms. McKee had already formed the intent to move to Nevada, and as such Michigan was no longer her domiciliary state, since domicile requires residence plus the intent to remain.³

² [T]he elements of domicile are "residence in fact, coupled with the intent to make the place of residence one's home." *Texas v. Florida*, 306 U.S. 398, 424, 59 S. Ct. 563 (1939).

³ *See id.*

70. As such, Michigan was merely the residence and not the domicile state of Ms. McKee on the day the Singer Letter was published to the New York Daily News, and thus Michigan has little interest in this case under the functional analysis of the Second Restatement.

71. The Commonwealth of Massachusetts, however, has a more compelling interest in this case than any other state.

72. The other candidates include, in the order of interest: New York, California, Michigan and Nevada. However, on balance, after considering the totality of the circumstances, Massachusetts wins out by reason of the following relationships: Cosby is domiciled in Massachusetts, Massachusetts has a compelling local interest in the tortious conduct of its citizens, Cosby caused the Singer Letter to be written while Cosby was domiciled in Massachusetts, and finally under the current long-arm jurisdiction analysis of the United States Supreme Court, which discourages forum shopping, the only clearly appropriate forum for Ms. McKee to sue Cosby was his home state of Massachusetts.

73. Therefore, under the “interest analysis” or “most significant relationship” tests preferred by the Second Restatement, the state with the most compelling interest or relationship to this case is Massachusetts.

74. Furthermore, under the “fair play and substantial justice test”⁴ borrowed from long-arm jurisdictional analysis, Cosby cannot claim prejudice or surprise at having his defamation case adjudicated under the substantive law of Massachusetts, since it was Cosby who chose Massachusetts as his domicile state after residing *inter alia* in the states of Pennsylvania, New York and California.

75. And finally, since Cosby intended to defame Ms. McKee in every state in the country as stated above, Cosby cannot object to the application of the law of his home state, since he damaged Ms. McKee’s reputation in the Commonwealth of Massachusetts as well.

76. Michigan’s interest in this case is limited solely to being the residence of Ms. McKee on the date the Singer Letter was published via email to the New York Daily News, and for six (6) months thereafter.

77. Similarly, Nevada has a limited interest in this case since it is Ms. McKee’s current domiciliary state.

78. California has some interest in this case, since it is the domiciliary state of Martin Singer, and it is home to the motion picture industry.

79. New York has an even stronger interest in this case than either Michigan, Nevada or California,

⁴ See, *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945).

since it is the state where Martin Singer published his defamatory letter, and it is the ancestral home of the entertainment and media industries.

80. However, on balance, for the reasons stated above, Massachusetts has the most compelling interests in this case for choice of law purposes.

Defamation Count No.1:

81. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 81, as if fully set forth herein.

82. In the Singer Letter at p. 1, first full paragraph, first sentence: Singer states that “*The New York Daily News* engaged in reckless conduct by publishing a malicious defamatory article with Kathrine McKee’s wild allegations about [Cosby] accusing him of rape.” [emphasis in original.]

83. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

Defamation Count No. 2:

84. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 84, as if fully set forth herein.

85. In the Singer Letter at p. 1, first full paragraph, second sentence: Singer states that Ms.

McKee has in the past spoken or written “laudatory words about Mr. Cosby”.

86. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

87. Ms. McKee has not spoken or written any laudatory words about Cosby. Furthermore, it implies that Ms. McKee is duplicitous, which is false.

Defamation Count No. 3:

88. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 88, as if fully set forth herein.

89. In the Singer Letter at p. 1, first full paragraph, fourth sentence, Singer describes Ms. McKee’s rape accusation against Cosby as a “story” which “lacks credibility.”

90. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

91. This statement was made with actual malice, and is defamatory *per se* in all states which recognize such a claim, and is defamatory without need to prove damages or economic losses in the Commonwealth of Massachusetts.

Defamation Count No. 4:

92. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 92, as if fully set forth herein.

93. In the Singer Letter at p. 1, first bullet point: Singer asserts that Ms. McKee said that Cosby “is among a group of ‘very wonderful, lovely men’ whom she says ‘treated [her] wonderfully’.” [emphasis removed.]

94. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

95. Ms. McKee never said Cosby is “wonderful” or a “lovely man”.

96. Singer has falsely and with actual malice misquoted the article he cites, for a defamatory purpose.

Defamation Count No. 5

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97. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 97, as if fully set forth herein.

98. In the Singer Letter at p.1, second bullet point: Singer asserts that Ms. McKee “liked” one of Cosby’s YouTube Comedy videos and posted a fond message about Cosby.

99. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

100. Ms. McKee did not post a fond message about Cosby. Instead, Ms. McKee posted a comment on Cosby's YouTube video page which Cosby entitled "Cosby Secret Sharing Club". Ms. McKee posted a comment that she wanted to contact Cosby in order to confront Cosby about the rape that he committed in 1974. Singer knew, or should have known, that her post on YouTube was Ms. McKee's means of posting a comment that Cosby would read, and does not mean that Ms. McKee actually likes or feels positively about Cosby.

101. Furthermore, Singer knew or should have known that Cosby responded to Ms. McKee's comment on his YouTube page with the following comment: "I bet you are." Cosby subsequently disabled the ability for the people to leave comments on his "Cosby Secret Sharing Club" YouTube video. See <https://www.youtube.com/watch?v=cUZgOlcVrnc>.

Defamation Count No. 6:

102. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 102, as if fully set forth herein.

103. In the Singer Letter at p. 1, third bullet point: Singer asserts that Ms. McKee said she "worked with such legends as ... Bill Cosby".

104. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

105. Ms. McKee obtained her screen actor's guild card as a result of appearing on "The Bill Cosby Show" in 1971.

106. This acting credit appears along with other acting credits on her filmography found on the internet. Singer has distorted this historical fact into a defamatory statement by implying some kind of duplicity on the part of Ms. McKee which does not exist.

107. After Cosby raped Ms. McKee in 1974, Ms. McKee avoided contact with Cosby.

Defamation Count No. 7:

108. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 108, as if fully set forth herein.

109. In the Singer Letter at p. 1, fourth bullet point: Singer asserts that "Ms. McKee has admitted 'I had to do a lot of lying' and that 'lies landed her a job' as a Vegas showgirl."

110. Singer has deliberately and with actual malice misconstrued and misquoted the C&G Newspapers story dated July 7, 2010, in an attempt to allege that Ms. McKee has lied for pecuniary gain in the past.

111. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

112. In reality, in the interview Ms. McKee told a reporter from C&G Newspapers that in the years 1966 and 1967, the hotels in Las Vegas, Nevada had a well-known segregationist policy that they would never hire a black showgirl. Therefore, in order to get a job as a Las Vegas Showgirl in the 1960's, hotel management personnel made it clear to Ms. McKee that she had to downplay the fact that her mother was white and her father was black, and that she was only 16 years old at the time.

113. In the 2010 article from C&G Newspapers, Ms. McKee was mis-quoted to have said that in the 1960's, "[i]t wasn't accepted to be mixed [race] and to have black blood in you. I had to do a lot of lying. I said I was white. And I said I was 23 years old, but I was 16."

114. Furthermore, Ms. McKee was never quoted to have said that "lies landed her a job". The statement "lies landed her a job", is not a quote of Ms. McKee, but rather is a statement made by the reporter.

115. Furthermore, the C&G Newspapers reporter misidentified the hotels where Ms. McKee worked in 1966-67, which were the Mint Hotel and the Silver Slipper, and not the Stardust Hotel as appears in the article.

116. In his letter, Singer twisted the quotation attributed to Ms. McKee in a defamatory manner to imply that Ms. McKee had lied for pecuniary gain, which is defamation *per se*.

117. In reality, the obvious meaning of the article is that Ms. McKee stated that due to the racially discriminatory hiring practices of the hotels in Las Vegas, Nevada in 1966-67, she felt compelled to downplay the fact that she was mixed-race, and that she was only sixteen (16) years old at the time.

118. Martin Singer defamed Ms. McKee by deliberately misquoting the C&G Newspaper article in such a way as to imply that Ms. McKee was a liar, in order to try to discredit her allegation that Cosby raped her.

Defamation Count No. 8:

119. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 119, as if fully set forth herein.

120. In the Singer Letter at p. 2, first bullet point on that page, Singer states that “Ms. Mckee posted on her own Google+ page a 1970 video clip of herself acting with [Cosby] on the *The Bill Cosby Show*, with her gloating caption ‘That’s me with Bill Cosby 1970’.”

121. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

122. Ms. McKee has never “gloated” on any negative story about Cosby. Instead, Ms. McKee has merely come forward with her own true story that Ms. McKee met Cosby in the late 1960’s, and that Ms. McKee had appeared on “The Bill Cosby Show” in 1971, and that Cosby later preyed upon her trust and raped her in a hotel in Detroit in 1974.

Defamation Count No. 9:

123. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 123, as if fully set forth herein.

124. In the Singer Letter at p. 2, second bullet point, Singer states “Ms. McKee has said about the time while she was Sammy Davis, Jr.’s ‘road wife,’ ‘it was very common to be in and out of affairs’ and ‘As far as I’m concerned, my life has been wonderful. It’s been blessed with lovely, wonderful men. I was free, and single and I had fun and I had a wonderful life.’” [emphasis removed.]

125. First, this statement is false and misleading: in the article cited by Singer, Ms. McKee did not include Cosby among the men that she said treated her wonderfully. Singer has deliberately and with actual malice misquoted the 2010 C&G Newspaper article for a defamatory purpose.

126. Second, this statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

127. Finally, this statement is defamatory *per se* because it imputes unchastity to Ms. McKee, an unmarried woman⁵, in all states which recognize such a claim.

128. In Massachusetts, such a statement would also be “defamatory *per se*”, but Massachusetts has abolished the distinction, since there is no requirement in Massachusetts to prove actual damages or economic losses for any kind of defamation, and as such all defamation in Massachusetts is defamation *per se*. See *Sharratt v. Housing Innovations, Inc.*, 365 Mass. 141 (Mass. 1974).

Defamation Count No. 10:

129. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 129, as if fully set forth herein.

130. In the Singer Letter at p. 2, third bullet point, Singer asserts that Ms. McKee’s younger sister “Lonette, who worked as Mr. Cosby’s secretary, has said about Kathrine McKee during the relevant era that her ‘older sister, was always walking on the wild side, was always wild, was always a rebel, always doing inappropriate things, never conformed, thought she could break all the rules and did’.”

⁵ See, New York Civil Rights Law § 77; *see also* Michigan Revised Judicature Act of 1961, § 600.2911.

131. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

132. Singer used personal information that he gathered about Ms. McKee and about Ms. McKee's younger sister, Lonette McKee, in a defamatory manner.

133. Singer deliberately and with actual malice misquoted Lonette McKee's statements which appeared in an August 11, 2010 interview with PopMatters.com⁶, in an attempt to defame and discredit plaintiff Kathrine McKee.

134. Singer's statements are false, misleading, and defamatory as follows: (1) Ms. McKee's younger sister Lonette McKee was only 17 years old when she allegedly worked as Cosby's "secretary"; (2) Lonette McKee was never the secretary of Cosby, but instead worked as a "go-fer", or what would be called an "intern" today, on the set of "The Bill Cosby Show" in 1970 or 1971; (3) the substance of what Lonette McKee said must be understood in the context of the full quote of what Lonette Mckee actually said, which is that Lonette McKee was preparing to play a

⁶ See,

[https://en.wikipedia.org/wiki/Sparkle_\(1976_film\)](https://en.wikipedia.org/wiki/Sparkle_(1976_film));
and see Aug. 11, 2010 Interview with Lonette McKee,
at <http://www.popmatters.com/feature/129327-giving-us-something-we-can-feel-an-interview-with-lonette-mckee/P0/>

dramatic role of a character called “Sister” in the motion picture “Sparkle” released in 1976. Lonette McKee said in that interview that she modeled her dramatic portrayal on several people including her older sister Kathrine McKee and some of Kathrine McKee’s friends. Lonette McKee’s comments had nothing to do with Cosby, nor with Kathrine McKee’s allegation that Cosby raped her. Singer deliberately and with actual malice, defamed Ms. McKee by misconstruing the four-year old interview given by Ms. McKee’s younger sister in an attempt to discredit Ms. McKee.

135. Finally, to the extent that Singer’s statement imputes a lack of chastity on the part of Ms. McKee, this statement is defamatory *per se*, in all states which recognize such a claim, and is defamatory without need to prove damages in Massachusetts.

Defamation Count No. 11:

136. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 136, as if fully set forth herein.

137. In the Singer Letter at p. 2, ¶1, Singer asserts “Ms. McKee’s never-before-heard tale about something [*i.e.*, the rape] she claims happened back in the 1970’s is completely contradicted by her own prior published statements. Ms. McKee’s own statements and conduct confirming that she considers [Cosby] a wonderful, lovely person who treated her well, and lauding [*sic*] about her association with [Cosby], can easily be found with just a few clicks on Google.”

138. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

139. Singer deliberately and with actual malice distorts the plain meaning of the actual quotes from Ms. McKee which can be found on the internet, all for the defamatory purpose of undermining the credibility of Ms. Mckee.

Defamation Count No. 12:

140. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 140, as if fully set forth herein.

141. In the Singer Letter at p. 2, ¶1, Singer asserts that there exists “a mountain of evidence undermining [Ms. McKee’s] reliability [which was] ignored by the [New York] *Daily News*”. [emphasis in original.]

142. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

143. Singer deliberately and with actual malice, falsely alleged the existence of evidence which undermines Ms. McKee’s credibility, although none exists.

Defamation Count No. 13:

144. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 144, as if fully set forth herein.

145. In the Singer Letter at p. 2, ¶ 2, Singer defamed Ms. McKee *per se*, as he imputes a lack of chastity on the part of Ms. McKee, when he blames her for the rape, by arguing that Ms. McKee “never objected, never said no, did not attempt to end the encounter, went to a party that night with her alleged attacker (and drove him to the party in her own car)”.

146. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

147. Singer here has shamelessly resurrected the time-worn dodge of the rapist wherein the rapist (and/or his apologist) blames the victim for not resisting enough, or for not fighting back to the point of death or serious bodily injury. This vicious canard has been soundly rejected by Courts in the past, and should not be countenanced now.

148. Singer’s victim-blaming statement is morally abhorrent, outrageous, and is defamatory *per se*, in all states that recognize such a claim, and is defamatory without need to prove actual damages in the Commonwealth of Massachusetts.

Defamation Count No. 14:

149. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 149, as if fully set forth herein.

150. In the Singer Letter at p. 2, ¶ 2, Singer alleges that Ms. McKee “remained [Cosby’s] friend and traded on his name for 40 years.”

151. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

152. Ms. McKee does not consider Cosby a friend, and has never “traded on his name”.

153. Ms. McKee at one time believed Cosby was her friend in the late 1960’s and early 1970’s, but when Cosby raped Ms. McKee in a hotel room in Detroit in 1974, Ms. McKee realized that Cosby was not her friend. Ms. McKee has never attributed any success in her career in the entertainment industry to Cosby.

154. All of Singer’s allegations to the contrary are false and defamatory since they imply some kind of duplicitousness on the part of Ms. McKee which does not exist.

Defamation Count No. 15:

155. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 155, as if fully set forth herein.

156. In the Singer Letter at p. 3, at three bullet points at the top of the page, Singer states that Ms. McKee is among the “various women” who should not be believed for the following reasons: (1) “Criminal backgrounds of various accusers, such as arrests for lying to police and other crimes involving dishonesty”; (2) “Information from third party sources disputing the credibility of sources and their accusations”; and (3) “Independent evidence proving accusations impossible”.

157. These statements are false and defamatory communication of and concerning Ms. McKee, which were not privileged or opinion, and which were published to the New York Daily News.

158. Furthermore, all of these statements are defamatory *per se* in all states that recognize such a claim, and are defamatory without need to prove actual damages in the Commonwealth of Massachusetts.

Defamation Count No. 16:

159. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 159, as if fully set forth herein.

160. In the Singer Letter at p. 3, second full paragraph, Singer states that Ms. McKee’s rape allegation against Mr. Cosby is a “four-decade-old but never-before-heard tale”.

161. This statement is a false and defamatory communication of and concerning Ms. McKee, which

was not privileged or opinion, and which was published to the New York Daily News.

Defamation Count No. 17:

162. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 162, as if fully set forth herein.

163. In the Singer Letter at p. 3, second full paragraph, Singer states “[t]o say that Ms. McKee is not a reliable source is a gross understatement.”

164. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

Defamation Count No. 18:

165. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 165, as if fully set forth herein.

166. In the Singer Letter at p. 3, second full paragraph, Singer asserts that “[a]mple published information readily available to the *Daily News* completely undermines [Ms. McKee’s] story.” [emphasis in original.]

167. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

168. There is no evidence which undermines Ms. McKee.

Defamation Count No. 19:

169. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 169, as if fully set forth herein.

170. In the Singer Letter at p. 3, second full paragraph, Singer asserts that the reader should question Ms. McKee's "motivation[], [her past], or even [her] criminal record[]."

171. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

172. Singer has defamed Ms. McKee with false allegations of improper "motivation", and he references in a defamatory manner a phantom "past" which does not exist, and he falsely cites a "criminal record" that does not exist.

173. All of these statements are defamatory *per se* in all states that recognize such a claim, and is defamatory without need to prove actual damages in the Commonwealth of Massachusetts.

Defamation Count No. 20:

174. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 174, as if fully set forth herein.

175. In the Singer Letter, at p. 3, third paragraph, Singer states: “ If someone was treated improperly, was assaulted, or was even raped, it is inconceivable that they would make these laudatory, positive statements about the alleged perpetrator. Why would someone who was allegedly raped ‘like’ a comedy video by their alleged attacker? Why would someone who claims to have been assaulted have as their Google+ post an episode of a television series acting along side their purported attacker? Why would she list her appearance on his show at the top of her list of professional accomplishments? It defies credulity [sic].”

176. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

177. Singer here is deliberately and with actual malice distorting things that Ms. McKee has done and said in a defamatory manner, in an attempt to undermine her credibility.

178. Ms. McKee appeared on “The Bill Cosby Show” in 1971. Ms. McKee obtained her screen actor’s guild card as a result of appearing on that show, which was a milestone achievement in her professional career.

179. In 1971, Ms. McKee considered Cosby a friend, but that changed after Cosby raped her in Detroit in 1974.

180. Ms. McKee has never denied appearing on “The Bill Cosby Show”.

181. Ms. McKee has not made “laudatory, positive comments about [Cosby]”.

182. Ms. McKee posted a comment on Cosby’s YouTube video page in order to confront him about the rape, as described above and below.

Defamation Count No. 21:

183. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 183, as if fully set forth herein.

184. In the Singer Letter, at p. 3, last paragraph, Singer states: “The glaring inconsistency between Ms. McKee’s past affectionate public sentiments about [Cosby] and what she is now claiming was alone a basis to question her veracity and render her an unreliable source.”

185. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

186. There is no basis for anyone to question the veracity of Ms. McKee.

187. There is nothing which renders Ms. McKee an unreliable source.

Defamation Count No. 22:

188. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 188, as if fully set forth herein.

189. In the Singer Letter, at pp. 3-4, last paragraph on p. 3, Singer states: “Ms. McKee’s own description of her *private* words and conduct at the time of the alleged incident also contradicts the *Daily News* Story.” [emphasis in original.]

190. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

191. Singer falsely states that he has gathered or obtained evidence of Ms. McKee’s “private words and conduct at the time of the alleged [rape]”. [emphasis added].

192. Singer has no such evidence of Ms. McKee’s “private words and conduct” at the time of the rape.

193. Singer is simply making it up in an attempt to discredit Ms. McKee. Here, Singer deliberately used the word “private” to imply that he is holding secret evidence, or some other kind of non-public evidence, in an attempt to cast doubt on Ms. McKee’s credibility.

194. However, such allegation is false and defamatory.

Defamation Count No. 23:

195. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 195, as if fully set forth herein.

196. In the Singer Letter at p. 4, first paragraph, Singer asserts: “When you add to the mix Ms. McKee’s constant name-dropping of her association with [Cosby], and her ‘liking’ of a comedy Cosby video a year ago and reaching out to get in touch with an old friend, and her recent proud post of a video clip showing her acting alongside [Cosby] in the 1970’s, the enormous disparity between the *Daily News* Story and her public words and conduct establish that the Story was published recklessly and with Constitutional malice.”

197. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

198. This statement is false in that Ms. McKee has never engaged in “name-dropping of her association with [Cosby]”, and she did not “like” a Cosby comedy video in order to get in touch with an old friend, but rather to confront her rapist, and there is no disparity between the New York Daily News story and her public words and conduct.

199. Singer is trying to undermine the credibility of Ms. McKee in order to discredit the story with appeared in the New York Daily News on December 22, 2014.

200. As such, the Singer Letter was not written in anticipation of litigation. It was written to impugn the reputation of Ms. McKee, and to impugn the reputation of the New York Daily News, and was part of Cosby's misguided strategy to exonerate or exculpate himself in the media through a consistent and defamatory message about his accusers.

Defamation Count No. 24:

201. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 201, as if fully set forth herein.

202. In the Singer Letter, at p. 4, second paragraph, Singer states: "The media blindly ignores the dubious background of sources, ignores the absence of evidence to corroborate decades-old accusations, and ignores the existence of contradictory evidence undermining its sources' claims or reliability. Meanwhile, as has been amply publicized and commented upon by legal scholars, [Cosby] risks being sued for defamation (as has already occurred) if he so much as denies any scurrilous accusations made against him."

203. This statement is a false and defamatory communication of and concerning Ms. McKee, which was not privileged or opinion, and which was published to the New York Daily News.

204. This statement falsely implies the following: Ms. McKee has a "dubious background" (she does not); Ms. McKee needs evidence to corroborate her

allegation that Cosby raped her in 1974 (she does not); and there exists contradictory evidence which undermines the credibility of Ms. McKee (there is none).

Fault for Defamation and Damages:

205. Ms. McKee repeats and restates all of the foregoing allegations contained in Paragraphs 1 through 205, as if fully set forth herein.

206. Cosby is at fault in making the defamatory statements contained in the Singer Letter, since he knew them to be false, and further since his purpose was to discredit Ms. McKee's rape allegation by damaging Ms. McKee's reputation for truthfulness and honesty, and by having the defamatory statements published to the community generally, and to the entertainment industry specifically.

207. Cosby's false statements have unfairly tainted and permanently damaged the reputation of Ms. McKee in the eyes of the general public, and in the eyes of people in the entertainment industry who are now unwilling to hire Ms. McKee as a casting director for their upcoming entertainment projects.

208. Cosby's statements have caused Ms. McKee economic loss in loss of her reputation.

209. Cosby's statements are actionable as defamation without proof of economic loss under the common law of the State of Massachusetts, and elsewhere as defamation *per se*.

210. The aforesaid loss of reputation was caused solely by the actions of Cosby, his agent(s), servant(s), and/ or employee(s), and without any negligence of Ms. McKee contributing thereto.

211. Cosby is liable for the negligent actions and/or defamatory statements published by his agent(s), servant(s), and/ or employee(s) under the principle of *respondeat superior*.

WHEREFORE, Plaintiff demands judgment against the Defendant in a sum in excess of the minimum jurisdictional threshold of this Court, in both compensatory and punitive damages, plus pre- and post-judgment interest, together with attorney's fees, and the costs and disbursements of this action.

Demand for Jury Trial

Plaintiff hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38(b)(1), on all issues, claims, and causes of action against Defendant.

Dated: New York, New York
July 1, 2016

/s/ F. William Salo
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CERTIFICATE OF SERVICE

I hereby certify under the penalty of perjury, that on June 21, 2016, this document and its supporting documents (if any) were filed through the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants:

/s/ F. William Salo
F. William Salo, Esq.

*EXCLUSIVE: Bill Cosby Accused of Raping
Ex-Girlfriend of Sammy Davis Jr.*

Katherine McKee 65, told the Daily News that Cosby raped her in a Michigan hotel room in the early 1970s when she was on tour with Davis. She said she never told Davis about the alleged sexual assault. In addition, model Chloe Goins, 24, claims Cosby drugged and sexually assaulted her inside the Playboy Mansion in 2008.

By Nancy Dillon
New York Daily News
Monday, December 22, 2014, 2:30 AM

[Photograph omitted.] Caption: Actress and casting director Kathy McKee said Bill Cosby sexually assaulted her inside a Michigan hotel room in the 1970s.

Bill Cosby was a rat who stalked prey in his own pack, a former girlfriend of Sammy Davis Jr. says.

Katherine McKee alleges Cosby raped her in a Michigan hotel room in the early 1970s when she was on tour with Davis.

She joins more than 20 other women who have accused the comedian known as "America's Dad" of sexual assault.

McKee, an actress and former Vegas showgirl, said she partied regularly with Davis' notorious Rat Pack in the late 1960s and had known Cosby for eight years

when the alleged assault took place.

“Back then, I was Sammy’s road wife. He had an open marriage, and we were lovers. That’s how it went,” McKee told the Daily News, talking about the alleged sexual assault for the first time.

*Bill Cosby took advantage of me in Detroit
hotel:actress — NY Daily News*

She said Cosby, 77, ambushed her out of the blue one night after she decided to extend her stay around a Detroit gig so she could visit family. Cosby was in town too and invited her to a party on a boat, she said.

“He was a buddy. He knew I was Sammy’s girl,” she said about accepting the invitation.

McKee, now 65, said Cosby asked her to get some ribs from local hotspot Checker Bar-B-Q and then pick him up at his hotel.

“I remember I walked in the door, and he had a robe and cap on. He took the ribs from my hands and just grabbed me,” McKee said of Cosby

*Bill Cosby raped me, and this is why I'm
coming forward: actress — NY Daily News*

“He spun me around, pulled my panties down, and just took it. We were still standing at the door when he attacked me,” she told The News. “It was so fast and so shocking and so unbelievable,” she said.

“To me, there was a different personality involved. He

was a different man. It felt like a different person performing that act.”

McKee said she quickly fled to the bathroom to compose herself. Cosby got dressed, and the two shared an icy silence in the elevator down to the lobby, where someone was waiting to escort them to the boat party.

“I never said a word. I was too uncomfortable about it,” she recalled. “Bill was so rude and cold toward me the rest of the night. I thought, ‘When this boat docks, I’m out of here.’ I just left.”

McKee said she never uttered a peep to Davis about what allegedly happened. “I didn’t want to put that in Sammy’s head,” McKee said.

“I was mad at my own self for not saying, ‘What the f---?’ Why didn’t I stop it and get him away from me? But it happened too fast. I was absolutely flabbergasted,” she said.

“And I had the guilt. I questioned myself, ‘Why did I go there? Why did I bring him those ribs? Maybe he thought that’s what I wanted too?’”

The actress, who appeared on “The Bill Cosby Show” in 1971 before the alleged attack, and “Sanford and Son” in 1972 said she just buried the freaky episode.

“I figured, ‘If I don’t think about it, it won’t bother me.’ Of course, with all these women surfacing now, it flushed it out,” said McKee, who later became a casting agent.

“It was a rape, but it seemed so strange to call it that. We think of rape as a stranger who attacks you in a parking lot,” she said.

“I chalked it up to another powerful person in Hollywood who just felt he could take what he wanted from women.”

Like McKee, many of the women accusing Cosby of sexual misconduct cite incidents from decades ago for which the statute of limitations has expired.

Several have said Cosby drugged them by putting something in their drinks.

Cosby has never been charged criminally and maintains his innocence. His lawyer and spokesman did not return requests for comment.

In a more recent case, a Las Vegas woman says Cosby drugged and sexually assaulted her inside the Playboy Mansion in 2008.

Model Chloe Goins, 24, claims she passed out after drinking a beverage provided by Cosby at the famed pleasure palace and woke to him licking and kissing her naked body, her Florida lawyer Spencer Kuvin confirmed to The News.

Kuvin said Goins wants criminal charges filed against Cosby and is due to sit down with Los Angeles police to give a statement early next month.

“She’s very afraid, very nervous. But she wants to do

the right thing. She understands her significance and importance since all the other women are older and nothing can be done with respect to their cases,” he said.

McKee said she'd like to see Cosby sit for a lie-detector test.

She also called it “embarrassing” that Cosby’s wife of 51 years, Camille, released a statement suggesting her husband was the “victim.”

“I knew (Camille). We’d been to dinner, all of us, many times,” McKee said. “This is not a stupid woman. She has her head buried in the sand.”

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[Photograph omitted.] Caption: Sammy Davis Jr. and Kathy McKee on stage.

[Photograph omitted.] Caption: Kathy McKee in an episode of 'Sanford and Son.'