SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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| MEGAN CARSON GRIFFITH,<br><br>Plaintiff,<br><br>- against -<br><br>THE DAILY BEAST, NOAH SHACHTMAN, and MAXWELL TANI,<br><br>Defendants. | Index No. 100114/2020<br><br>Hon. Kathryn E. Freed<br><br>Mot. Seq. No. 002 |

**MEMORANDUM OF LAW IN SUPPORT OF**
**DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT**

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Defendants The Daily Beast Company LLC (incorrectly sued as "The Daily Beast"), Noah Shachtman, and Maxwell Tani (collectively "Defendants") respectfully submit this memorandum of law in support of their motion for an order pursuant to CPLR 3211(a)(1) and (7) dismissing the First Amended Complaint with prejudice.

## INTRODUCTION

This defamation action arises out of an article published in *The Daily Beast*, which reports on the reasons why two journalists, Maya Kosoff and Anna Breslaw, who were hired to re-launch the popular online blog *Gawker*, quit their jobs after less than a month. Specifically, the article reports that Kosoff and Breslaw left after making allegations to the company's human resources department ("HR"), which, they said, were ultimately ignored. Many of the allegations related to their editorial director, Plaintiff Megan Carson Griffith ("Plaintiff" or "Griffith"), who they claimed made inappropriate comments in person, over email, and via Slack,[1] that caused them to feel uncomfortable in their workplace. Plaintiff alleges that by reporting on the reasons Kosoff and Breslaw gave for their departure from *Gawker*, the article defames her by depicting her as "racist, homophobic, xenophobic and transphobic."

Plaintiff filed the initial complaint in this action on January 23, 2020, which Defendants timely moved to dismiss on April 22, 2020. On July 23, 2020, rather than filing an opposition, Plaintiff's counsel filed the First Amended Complaint ("FAC")—the operative complaint in this action. But the FAC entirely fails to correct the defects in the initial complaint, and Plaintiff's defamation claim still fails for two reasons:

***First***, Plaintiff has not pled facts indicating and will never be able to show that Defendants were grossly irresponsible in publishing the article. On the contrary, the article relied on two on-

[1] Slack is a workplace instant messaging software.

the-record sources—the experienced journalists quoted in the story. More than that, the journalists provided *The Daily Beast* with recordings of their conversations with HR, confirming that they did, in fact, raise their alleged concerns prior to quitting. The journalists also gave *The Daily Beast* the Slack conversations and email threads discussed in the meetings with HR, further corroborating their accounts. Because it cannot, as a matter of law, be grossly irresponsible for Defendants to rely on two on-the-record sources and a substantial number of supporting documents, the FAC must be dismissed.

***Second***, the alleged defamatory meaning that Plaintiff asks this Court to find—that the article accuses her of being racist, homophobic, xenophobic, and transphobic—is not a reasonable reading of the article and should be rejected. The article simply reports that Kosoff and Breslaw made certain allegations to HR prior to quitting their jobs—it does not offer those statements as fact. Because the recordings of their meetings with HR corroborate that those allegations were in fact made, the article is "substantially true" and thus cannot give rise to a defamation claim. And even if this Court were to accept Plaintiff's aggressive reading of the article, many of the purportedly defamatory statements are shown to be substantially true by the email and Slack communications that Plaintiff herself references in the FAC.

Plaintiff's latest effort to plead her defamation claim fails as a matter of law. The FAC must be dismissed at the outset with prejudice.

## FACTUAL BACKGROUND

### I. THE PARTIES

Plaintiff is a journalist who was employed by Bustle Digital Group ("BDG") between November 2018 and August 2019 as the editorial director for a contemplated re-launch of the *Gawker* website. See Affirmation of Katherine M. Bolger ("Bolger Aff.") Ex. A (FAC) ¶ 1.

Defendant The Daily Beast Company LLC is a leading online media company that

publishes news and analysis through its website, www.thedailybeast.com ("*The Daily Beast*"). *Id.* ¶ 2. Defendant Tani is a media reporter at *The Daily Beast*. *Id.* ¶ 4. Defendant Shachtman is the editor-in-chief of *The Daily Beast*. *Id.* ¶ 3.

## II. THE CREATION OF GAWKER 2.0

*Gawker*, run by Gawker Media LLC, was formerly a blog that focused on reporting on media, lifestyle, and entertainment topics with a distinctive voice. In 2016, after a high-profile trial that ended in a $140 million judgment against the company, Gawker Media LLC filed for bankruptcy and ceased the blog's operations. *See* FAC ¶ 27. Following the bankruptcy, there was intense media speculation about who would purchase *Gawker*.[2] In July 2018, BDG bought *Gawker*'s archives and assets in a bankruptcy auction, and BDG CEO Bryan Goldberg later announced that he would be relaunching the site. *See id.* ¶ 32. In November 2018, Plaintiff was hired to serve as the revamped website's editorial director. *See id.* In January 2019, Maya Kosoff and Anna Breslaw were hired as two of the first writers for the site. *See id.*

## III. THE *SPLINTER* ARTICLE

On January 16, 2019, *Splinter*, an online news website unaffiliated with Defendants, published an article about the recent *Gawker* hires titled, "Here Are the Media Chuds Joining Fake

[2] *See, e.g.*, Sidney Ember, *Who Might Buy Gawker Media?* Here Are Some Possibilities, NEW YORK TIMES (Aug. 14, 2016), available at: https://www.nytimes.com/2016/08/15/business/who-might-buy-gawker-media-here-are-some-possibilities.html; *Peter Thiel makes offer to buy Gawker, the news site he helped bankrupt*, THE GUARDIAN, (Jan. 11, 2018, 7:47 p.m.), available at: https://www.theguardian.com/technology/2018/jan/11/peter-thiel-gawker-offer-buy-hulk-hogan-lawsuit; Jessica DiNapoli, *Gawker site finds bidder after court approves settlement with billionaire Thiel*, REUTERS, (May 17, 2018, 7:19 p.m.), available at: https://www.reuters.com/article/us-gawker-m-a-kevinlee/gawker-site-finds-bidder-after-court-approves-settlement-with-billionaire-thiel-idUSKCN1II34G; Ryan Holiday, *Gawker Domain & Archive Is Finally Up For Auction This Week. Who Might Win, and Why?* OBSERVER (Jul. 8, 2018, 8:00 a.m.), available at: https://observer.com/2018/07/gawker-auction-hulk-hogan-peter-thiel/.

Under CPLR § 4511, the Court may properly take judicial notice of these newspaper articles on a motion to dismiss. *See Grebow v. City of New York*, 173 Misc. 2d 473, 479 (Sup. Ct. N.Y. Cty. 1997) ("The court may take judicial notice of newspaper publications."); *Gomez-Jimenez v. N.Y. Law School*, 36 Misc. 3d 230, 256 (Sup. Ct. N.Y. Cty. 2012) (taking judicial notice of various articles for "informative background" on motion to dismiss); *Matter of Avon Prods., Inc Shareholder Litigation*, No. 651087/2012, 2013 N.Y. Misc. LEXIS 3506, *1, n. 1 (Sup. Ct. N.Y. Cty. Mar. 5, 2013) (noting that court may consider news articles and other "publicly available documents" as factual background for purpose of deciding motion to dismiss).

Gawker." *See* Bolger Aff. Ex. D.[3] Much of the article focused on Plaintiff, whom it described as a "bigoted, overgrown sorority girl." *Id.* at 1. In support of this statement, the article contained screenshots from Plaintiff's Twitter account, including Tweets in which she suggests her maid is stealing her clothes:


Tweets in which she refers to another user as a "homo":


And Tweets in which she refers to the employees at a nail salon as "the Asian":


Based on these Tweets, the article concluded, "it's assured [Griffith's] valuable perspective of a rich white lady will be a guiding light for Bryan Goldberg's Gawker." *Id.* at 2-4.

As of March 2020, the *Splinter* article had over 150,000 page views. *Id.* at 1.

[3] Plaintiff referenced this article in Paragraph 18 of her initial complaint. *See* Bolger Aff. Ex. B. ¶ 18. Any reference to the *Splinter* article is noticeably absent from the FAC.

## IV. KOSOFF AND BRESLAW REPORT GRIFFITH'S INAPPROPRIATE WORKPLACE BEHAVIOR TO HUMAN RESOURCES

Following the publication of the *Splinter* article, writers Kosoff and Breslaw met with representatives from BDG's human resources department to discuss what they believed to be inappropriate workplace behavior by Plaintiff that aligned with the sentiments expressed in her Tweets. Kosoff recorded this meeting, which lasted for over an hour. *See* Bolger Aff. Ex. E. During the meeting, Kosoff and Breslaw conveyed to HR that, among other things:

- When discussing diversity among potential new hires, Griffith said, "Black people really just like writing think pieces about their identity, and we don't really want that on our site." *See* Bolger Aff. Ex. E (Tape 1) at 1:55.

- Kosoff met with a non-binary person of color to discuss a potential job at *Gawker*. Kosoff explained, "I didn't tell [Griffith] beforehand because I knew she wouldn't get it." Kosoff said that she had to explain this person's preferred pronouns (they/them) to Griffith "several times" and told HR, "I'm scared to find out if they ever met." *See* Bolger Aff. Ex. E (Tape 1) at 2:14.

- During a discussion between Kosoff and Griffith about businessman Ben Lerer, Griffith told Kosoff, "I'll send you something about him." Griffith later forwarded an email chain from a group of her friends in which they discussed his penis size. Breslaw (to whom Kosoff forwarded the email) said that she found this email to be inappropriate. *See* Bolger Aff. Ex. E (Tape 2) at 3:58.

- During Breslaw's job interview, Griffith said "there's great snacks" in the office and noted, "I found a snack I had in my pocket that I took from the office. That's so poor person of me!" Breslaw said that she told her family about this incident after it occurred. *See* Bolger Aff. Ex. E (Tape 2) at 5:36.

Less than one week after their meeting with HR, after no action was taken in response to their concerns, Kosoff and Breslaw quit their jobs at Gawker. *See* FAC ¶ 61.

## V. *THE DAILY BEAST* COVERS KOSOFF AND BRESLAW'S DEPARTURE FROM *GAWKER*

On January 23, 2019, *The Daily Beast* published an article by reporter Maxwell Tani entitled "Gawker 2.0 Implodes as Its Only Reporters Quit" (the "Article"). FAC ¶ 44; Bolger Aff. Ex. C. The Article's sub-headline reads, "The new site's only two full-time writers exited

Wednesday in protest of editorial director Carson Griffith's offensive remarks about everything from race to penis size." Bolger Aff. Ex. C at 1.

The Article begins with a joint statement from Kosoff and Breslaw, in which they explain that they quit their jobs and rejected a severance package, noting:

> We're disappointed it ended this way, but we can't continue to work under someone who is antithetical to our sensibility and journalistic ethics, or for an employer who refuses to listen to the women who work for him when it's inconvenient.

*Id*. at 2. The Article goes on to recount the conversations Kosoff and Breslaw had with HR about Plaintiff's "offensive remarks," which led them to quit their jobs. Before doing so, however, the Article makes clear that Kosoff is a "former colleague and personal friend" of Tani's. *Id.* at 3.

The Article focuses on five specific complaints made by Kosoff and Breslaw:

- ***First***, the Article reports that Kosoff "described to human resources an incident in which Griffith forwarded an unsolicited email chain showing [her] friends boasting they knew the penis size of a prominent businessman." *Id.* at 3-4. The article notes that *The Daily Beast* reviewed this email thread. *Id.*

- ***Second***, the Article states that Kosoff and Breslaw "relayed to human-resources instances in which they believed Griffith . . . expressed an uncomfortably negative attitude on issues related to workplace diversity." *Id.* at 4. Specifically, the Article refers to a Slack message reviewed by *The Daily Beast*, in which Griffith "seemed to brag to Gawker staff that she had gotten them out of a company-wide diversity training session, though neither Kosoff nor Breslaw had asked her to do so." *Id.*

- ***Third***, the Article reports that, according to Breslaw, during a job interview, Griffith "noted that she had a snack saved in her pocket" and joked, "[t]hat's so poor person of me." *Id.* at 5.

- ***Fourth***, the Article recounts that Kosoff told Griffith that she would be meeting with a nonbinary person who uses they/them pronouns, but Griffith nonetheless later asked whether the person was a girl. *Id.* at 5-6.

- ***Fifth***, the Article reports that Kosoff and Breslaw told human resources that they were "particularly disturbed when Griffith commented . . . that it may be difficult to hire writers of color because, in her estimation, people of color prefer to only write serious pieces about race." *Id.* at 6.

The Article also mentions the *Splinter* piece, noting that Kosoff and Breslaw were concerned about the article, and, "[a]ccording to multiple sources, [Griffith's] tweets caused at least two potential new hires to express strong, newfound reservations about working with Gawker." *Id.* at 6-7.

Finally, the Article notes that before publication, *The Daily Beast* reached out to a *Gawker* spokesperson for comment. The spokesperson responded prior to publication, stating, "[w]e take all claims seriously and will continue to review." *Id.* at 8.

## VI. GRIFFITH SUES *THE DAILY BEAST*, SHACHTMAN, AND TANI

On January 23, 2020, Plaintiff, proceeding *pro se*, filed the initial complaint in this action, alleging a single count of defamation against Defendants. Defendants timely moved to dismiss the complaint on April 22, 2020. Following the submission of the motion to dismiss, a crowd-funding page—currently titled "Cancel Cancel Culture" (and previously titled "Sue Fake News")—and corresponding Twitter account appeared on the Internet alongside a letter from Plaintiff requesting donations to fund this action.[4] Boosted by an interview that Plaintiff gave to far-right commentator Michelle Malkin, during which Plaintiff discussed this litigation at length and touted herself as the poster child for "cancel culture," the site raised over $20,000, which apparently enabled Plaintiff to retain counsel.

On July 23, 2020, rather than serving an opposition, Plaintiff's counsel filed the FAC, which is largely a rehash of the initial complaint, alleging a single count of defamation. Plaintiff again alleges that Defendants defamed her by portraying her as "racist, homophobic, xenophobic,[5] and transphobic." FAC ¶ 65. Yet rather than correct the deficiencies in the initial complaint

[4] *See* https://www.cancelcancelculture.live/; https://twitter.com/CancelTheCancel.

[5] Plaintiff's initial Complaint did not specifically allege that the Article made her appear "xenophobic," only "racist, homophobic, and transphobic." *See* Bolger Aff. Ex. B, ¶ 7.

identified in Defendants' motion to dismiss, the FAC doubles down on them. Plaintiff still does not (because she cannot) deny that she sent any of the Slack messages or emails referenced in the Article but instead continues to complain that Defendants "cherry picked" when reporting on what she said. *Id.* ¶ 64. But whereas Plaintiff's initial complaint at least attached what she claimed were "full versions" of these message threads, the FAC wholly omits them (as well as the Article itself), asking the Court to take Plaintiff at her word that they do not support the statements made in the Article.[6]

Plaintiff alleges that the Article caused her reputation to be "completely and likely permanently blackened." *Id.* ¶ 89. As a result, she seeks, among other things, various forms of damages and unspecified injunctive relief. *Id.* at 17 (Prayer for Relief).

This motion follows.

## ARGUMENT

### I. THE FAC MUST BE ASSESSED AGAINST THE BACKDROP OF THE FIRST AMENDMENT

This Court should dismiss Plaintiff's claim pursuant to either CPLR 3211(a)(1) or (a)(7). When evaluating a motion to dismiss under CPLR 3211(a)(7) for failure to state a claim, the court must "determine whether, accepting as true the factual averments of the complaint, plaintiff can succeed on any reasonable view of the facts stated." *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 318 (1995) (citation omitted); *Klepetko v. Reisman*, 41 A.D.3d 551, 551 (2d Dep't 2007) (dismissing defamation claim). "However, factual allegations that do not state a viable

[6] On a motion to dismiss under CPLR 3211(a)(7), "[i]n assessing the legal sufficiency of a claim, the Court may consider those facts alleged in the complaint, documents attached as an exhibit thereto or incorporated by reference . . . and documents that are integral to the plaintiff's claims, even if not explicitly incorporated by reference." *Lore v. New York Racing Ass'n. Inc.*, 12 Misc. 3d 1159(A), at *3 (Sup. Ct. Nassau Cty. 2006). And on a motion to dismiss under CPLR 3211(a)(1), courts can consider documentary evidence. Accordingly, the relevant conversations between Plaintiff, Kosoff, and Breslaw can be considered on this Motion and are attached to the Bolger Affirmation as Exhibits F-H.

cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Skillgames, LLC v. Brody*, 1 A.D.3d 247, 250 (1st Dep't 2003). Similarly, a court may grant a motion to dismiss under CPLR 3211(a)(1) if the "documentary evidence submitted 'conclusively establishes a defense to the asserted claims as a matter of law.'" *Scott v. Bell Atl. Corp.*, 282 A.D.2d 180, 183 (1st Dep't 2001) (quoting *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994)). "A paper will qualify as 'documentary evidence' only if . . . (1) it is 'unambiguous', (2) it is of 'undisputed authenticity', and (3) its contents are 'essentially undeniable.'" *VXI Lux Holdco S.A.R.L. v. SIC Holdings, LLC*, 171 A.D.3d 189, 193 (1st Dep't 2019).

Further, as this case implicates Defendants' First Amendment right to report the news, the Court should consider this motion "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks." *Church of Scientology Int'l v. Time Warner, Inc.*, 903 F. Supp. 637, 640-41 (S.D.N.Y. 1995), *aff'd*, 238 F.3d 168 (2d Cir. 2001) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). According to the New York Court of Appeals, "[t]he threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." *Karaduman v. Newsday, Inc.*, 51 N.Y.2d 531, 545 (1980) (internal citation omitted); *see also Shiamili v. Real Estate Grp. of N.Y., Inc.*, 17 N.Y.3d 281 (2011); *Brian v. Richardson*, 87 N.Y.2d 46 (1995). As a result, New York courts routinely dispose of defamation claims at the earliest stage possible where they are "meritless." *Freeze Right Refrig. & Air Cond. Servs., Inc. v. City of N.Y.*, 101 A.D.2d 175, 181 (1st Dep't 1984).

This Court should do so here. Defendants published a well-sourced article based on reliable, on-the-record sources and further corroborated by the documents that Plaintiff attached to her initial complaint and incorporated by reference into the FAC. This case should be disposed of at the outset.

## II. PLAINTIFF'S DEFAMATION CLAIM FAILS AS A MATTER OF LAW

Under New York law, a plaintiff bringing a defamation claim must establish: (1) a false statement of fact, (2) of and concerning the plaintiff, (3) published to a third party, (4) that either causes special harm to the plaintiff or is defamatory *per se*, and (5) that was published with constitutional malice or gross irresponsibility. *See Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 N.Y.2d 196, 198-99 (1975); *Dillon v. City of N.Y.*, 261 A.D.2d 34, 38 (1st Dep't 1999). Here, Plaintiff's claim fails as a matter of law for two reasons—(1) she cannot show that Defendants published the Article in a grossly irresponsible manner; and (2) the allegedly defamatory statements are substantially true.

### A. Plaintiff Cannot Establish That Defendants Acted with Gross Irresponsibility

Plaintiff's defamation claim should be dismissed because the documentary evidence and the allegations in the FAC conclusively establish that Defendants did not act in a grossly irresponsible manner in publishing the Article.

In the landmark decision, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the United States Supreme Court revolutionized the tort of defamation and held for the first time that libel could not be a strict liability tort. Instead, a public figure plaintiff must prove by clear and convincing evidence that the defendants acted with actual malice—*i.e.* a subjective awareness of probable falsity—in publishing allegedly defamatory statements. *Id.* at 280. Ten years later, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340-41, 347-48 (1974), the Court held that each state

can set its own fault standard for libel plaintiffs who are not public officials or public figures[7] and are suing on a matter of public interest, provided that the standard is at least negligence.

In *Chapadeau*, the New York Court of Appeals announced such a governing standard under New York law—a standard well above mere negligence. The court explained:

> [W]here the content of the article is arguably within the sphere of legitimate public concern, which is reasonably related to matters warranting public exposition, the party defamed may recover; however, to warrant such recovery he must establish, by a preponderance of the evidence, that the publisher acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

38 N.Y.2d at 199. This "gross irresponsibility" standard is "an extremely high bar for a plaintiff to meet." *Cottrell v. Berkshire Hathaway, Inc.*, 8 Misc. 3d 564, 568 (Sup. Ct. Erie Cty. 2004). As a result, courts routinely dismiss defamation claims on pre-discovery motions to dismiss for failure to plead facts indicating gross irresponsibility, and those decisions have routinely been affirmed on appeal. *See, e.g.*, *Hayt v. Newsday, LLC*, No. 002302/2017 (Sup. Ct. Nassau Cty. Oct. 10, 2017), *aff'd*, 176 A.D.3d 787, 787-88 (2d Dep't 2019) (Newsday not grossly irresponsible in relying on law enforcement press release); *Sheridan v. Carter*, No. 18320/05, 2006 WL 8426998 (Sup. Ct. Nassau Cty. 2006), *aff'd as modified*, 48 A.D.3d 447, 448 (2d Dep't 2008) ("Taking the allegations in the complaint and supporting affidavit as true, and according the plaintiffs the benefit of every possible favorable inference, the plaintiffs failed to allege that [defendant] published its

[7] While Plaintiff contends that she is not a public figure, *see* FAC ¶ 11, New York courts have frequently held that journalists are at least limited-purpose public figures. *See, e.g.*, *Maule v. NYM Corp.*, 54 N.Y.2d 880, 881-82 (1981) (Sports Illustrated writer deemed public figure); *Farber v. Jeffreys*, 103 A.D.3d 514, 515 (1st Dep't 2013) (journalist who wrote numerous articles about HIV and AIDS deemed public figure); *Adler v. Conde Nast Publications, Inc.*, 643 F. Supp. 1558, 1564 (S.D.N.Y. 1986) ("We find that Adler's general fame or notoriety in the literary and journalistic community and pervasive involvement in the affairs of society render her a public figure with regard to her activities relating to literature, journalism and criticism."). And Plaintiff admits that she was well-known enough in the journalism sphere to be appointed a guest lecturer on the subject of celebrity media and to be asked to star as herself on an episode of the television series *Gossip Girl*. FAC ¶¶ 8-9. Plaintiff's public figure status is further evidenced by the fact that she was able to enlist the support of a prominent right-wing figure, Michelle Malkin, to help fund this litigation. For purposes of this Motion only, however, Defendants will assume that Plaintiff is a private figure.

statements in a grossly irresponsible manner."); *Crucey v. Jackall*, 275 A.D.2d 258, 258-59 (1st Dep't 2000) (defendant not grossly irresponsible when article was based on investigation conducted by elected officials); *Love v. William Morrow & Co.*, 193 A.D.2d 586, 588-89 (2d Dep't 1993) (defendant not grossly irresponsible in relying on plaintiff's term paper).

***1. The Article Involves a Matter of Public Concern***

New York courts grant great leeway to media organizations to decide for themselves what constitute "matters of public concern." As the Court of Appeals has explained, "[t]he press, acting responsibly, and not the courts must make the ad hoc decisions as to what matters are of genuine public concern, and, while subject to review, editorial judgments as to news content will not be second-guessed so long as they are sustainable." *Gaeta v. N.Y. News, Inc.*, 62 N.Y.2d 340, 349 (1984); *Huggins v. Moore*, 94 N.Y.2d 296, 303 (1999) (holding that, absent clear abuse, "the courts will not second-guess editorial decisions as to what constitutes matters of genuine public concern"). Accordingly, the matter at issue here is of public concern because editors at *The Daily Beast* believed it was of sufficient public interest to be worth publishing.

But, even if that were not the law, the Article clearly covers a matter that is "arguably within the sphere of legitimate public concern." *Chapadeau*, 38 N.Y.2d at 199. The Article focuses on major problems with the re-launch of *Gawker*, an iconic website that was forced to shutter after the staggering verdict in the Hulk Hogan privacy trial—one of the most infamous trials in recent history. In the aftermath of the trial, the media covered *Gawker's* bankruptcy extensively, including discussing who would purchase *Gawker*'s archives.[8] Goldberg's 2018 announcement that BDG was buying and relaunching the site received much press coverage,

[8] *See supra* note 2.

including speculation about who would join *Gawker*'s staff.[9] Indeed, the FAC itself recounts *Gawker*'s highly publicized past in great detail, noting that *Gawker*'s controversial articles "sparked *heavy* criticism, both within and outside Gawker," that the Hulk Hogan trial was "*widely* touted as one between privacy and freedom of the press," that Goldberg spoke with the *Wall Street Journal* after acquiring *Gawker*, and that the acquisition "was greeted with *widespread* resentment," *see* FAC ¶¶ 22, 25, 32, 34 (emphasis added). Clearly, the Article—one among a litany of stories about the public drama surrounding *Gawker* over the last five years—was more than mere workplace gossip.

Further, New York courts have historically found that the *Chapadeau* standard applies broadly to publications on matters far more private than the topic of the Article here, including a book discussing the sexual relationship between a woman and her psychiatrist, *see Weiner v. Doubleday & Co.*, 74 N.Y.2d 586 (1989), a television story about a dispute between a landlord and his tenant, *see Cottom v. Meredith Corp.*, 65 A.D.2d 165 (4th Dep't 1978), and an article about the accuracy of someone's application to judge a dog show, *see Abbott v. Harris Pubs., Inc.*, No. 97CIV. 7648(JSM), 2000 WL 913953 (S.D.N.Y. July 7, 2000). Accordingly, because the Article discusses a topic of legitimate public concern, this Court must apply *Chapadeau*'s "gross irresponsibility" standard in assessing Defendants' conduct.

### *2. Defendants' Reporting Was Not Grossly Irresponsible*

A "grossly irresponsible" publisher is one who fails to "utilize methods of verification that are reasonably calculated to produce accurate copy." *Karaduman*, 51 N.Y.2d at 549. Plaintiff has

[9] *See, e.g.*, Benjamin Mullin, *Bustle Owner Plans to Double Down on Gawker*, THE WALL STREET JOURNAL (Sept. 7, 2018, 3:03 p.m.), available at: https://www.wsj.com/articles/bustle-owner-plans-to-double-down-on-gawker-1537211032.

not alleged facts suggesting, and will never be able to establish, that Defendants' reporting fell to that level.

To the contrary, the Article—which reports on the reasons why Kosoff and Breslaw decided to leave their positions at *Gawker*—was based on first-hand, on-the-record interviews with Kosoff and Breslaw themselves, who obviously had intimate, unparalleled knowledge of their own reasons for leaving. As a matter of law, reliance on two first-hand, named sources where there is no reason to question their accuracy cannot constitute gross irresponsibility. *See, e.g.*, *Robart v. Post-Standard*, 74 A.D.2d 963, 963 (3d Dep't 1980) (holding that plaintiff could not show gross irresponsibility where defendant's reporter telephoned state police barracks and asked for "newsworthy items," even though report given by officer, and published by defendant, later proved inaccurate); *Visentin v. Haldone Cent. Sch. Dist.*, 4 Misc. 3d 918, 922 (Sup. Ct. Putnam Cty. 2004) ("[S]o long as the publisher relied on at least one authoritative source and had no good reason to doubt the veracity of that source or the accuracy of the information . . . even if that information ultimately proved to be incorrect or false, the publisher has appropriately discharged its duty."). Accordingly, even if Defendants had relied only on these two on-the-record journalistic sources and nothing more, Plaintiff could not establish that Defendants were grossly irresponsible in publishing the Article.

But Defendants did more than that—they reviewed recordings Kosoff and Breslaw had made of their conversations with BDG's human resources department, which were provided to Defendants prior to the Article's publication. *See generally* Bolger Aff. Ex. E. During the recorded meetings, Kosoff and Breslaw reported to HR what they perceived to be Plaintiff's inappropriate workplace behavior, which, in turn, is reported in the Article. *Id.* Defendants also reviewed copies of Kosoff and Breslaw's communications with Plaintiff, including Slack

messages and email threads, which supported the statements they had made to HR. *See* Bolger Aff. Exs. F-H. In addition, the claims that Kosoff and Breslaw made about Plaintiff recalled the substance and tenor of Plaintiff's own Tweets, which *Splinter* had published days before. This combination of multiple on-the-record sources supported by corroborating recordings and documentation is precisely the opposite of "grossly irresponsible" reporting.

In this way, the facts here closely resemble those in *Gaeta v. New York News*. There, the defendant published an article stating that the plaintiff's former husband had a mental breakdown caused by a "messy divorce" and the fact that "his son killed himself because his mother dated other men." *Gaeta*, 62 N.Y.2d at 346. Defendant's reporter received this information from the ex-husband's sister, who had been his legal guardian and had previously provided information to a Special Prosecutor's office. *Id.* at 351. The court explained that this information had "inherent plausibility," and the reporter would have had "no reason to doubt the veracity of the information received." *Id.* Here even more than in *Gaeta*, Defendants would have had no reason to doubt the reliability of the information provided by Kosoff and Breslaw about *their own* reasons for leaving *Gawker*, because those reasons closely aligned with public information about Plaintiff's past behavior as published by *Splinter* (in a piece hyperlinked in the Article) and documentary evidence of her most recent behavior. Defendants' publication, therefore, was not grossly irresponsible.

Plaintiff, in the FAC, raises five issues, none of which can alter the outcome compelled by the governing law:

***First***, Plaintiff alleges that Defendants only reported on "selections from conversations, presumably provided by Kosoff and Breslaw" that "omitted . . . relevant context." FAC ¶¶ 63-64. But Plaintiff never points to anything in the Slack and email communications that actually contradicts, or even undermines, the information reported in the Article. Rather, her argument

seems to be that Defendants should have read and reported the messages in a manner more favorable to her. *See* FAC ¶ 51 (alleging that, to the extent statements in the Article contain the literal truth, they "have been wrenched from context to distort their meaning and to place plaintiff in a false and defamatory light"). As New York courts have noted, however, "under *Chapadeau*'s 'gross irresponsibility' standard, the media publisher is not charged with any requirement of fairness [or] balance." *Visentin*, 4 Misc. 3d at 922; *cf. Mitchell v. Herald Co.*, 137 A.D.2d 213, 217 (4th Dep't 1988) ("[T]he newspaper is under no legal obligation to interview every possible witness to an incident or to write the most balanced article possible. The newspaper's obligation is to base its story on a reliable source."). Absent such a duty, Defendants' alleged failure to construe the messages relied upon for the Article in a manner more favorable to Plaintiff cannot be grossly irresponsible.

***Second***, Plaintiff alleges that Defendants should have reached out to her for comment rather than reaching out to her employer. *See* FAC ¶ 66. As the First Department recently held, however, this is not enough to raise an issue of gross irresponsibility. *See Starlight Rainbow v. WPIX, Inc.*, 179 A.D.3d 561, 562 (1st Dep't 2020) (holding that contacting Department of Education that employed teacher rather than contacting teacher directly did not constitute gross irresponsibility). More than that, the Article makes clear that, inasmuch as the Article was about issues at *Gawker*, Defendants did, in fact, contact *Gawker* for comment. Recognizing this, Plaintiff claims that Defendants reached out to *Gawker* "less than 40 minutes before the piece was scheduled to, and did, go online." FAC ¶ 67. Regardless of the timing of Defendants' contact, *Gawker* clearly had time to respond. Its spokesperson, who is quoted in the Article, stated: "We take all claims seriously and will continue to review." Bolger Aff. Ex. C at 8.

***Third***, Plaintiff contends that Defendants were biased against her. Initially, "gross

irresponsibility" is an objective standard that can be determined by "wholly objective proof." *Gaeta*, 465 N.Y.2d at 351. So long as a media organization engaged in responsible reporting, any personal ill will is irrelevant. *See Med-Sales Assocs., Inc. v. Lebhar-Friedman, Inc.*, 663 F. Supp. 908, 914 (S.D.N.Y. 1987) ("[A]ll publications have some sort of editorial slant, and, indeed, the variety of angles in the press is exactly what creates the spirited debate that is the aim of the First Amendment."); *Chaiken v. VV Publ'g Corp.*, 907 F. Supp. 689, 697-98 (S.D.N.Y. 1995) (holding that the *Village Voice* was not grossly irresponsible even though plaintiff claimed the article's author "had an anti-Israel, anti-Jewish or anti-[plaintiff] bias" because author had previously published numerous articles for the *Voice*, the article was subject to the normal editing process, and nothing in the article would put the *Voice* on notice that it would need additional verification), *aff'd*, 119 F.3d 1018 (2d Cir. 1997); *cf. Arpaio v. Zucker*, 414 F. Supp. 3d 84, 91-92 (D.D.C. 2019) ("The Court will not pry open the gates of discovery just because Mr. Arpaio believes the erroneous communications were motivated by differences in political opinions.").

But even if Plaintiff's claims of bias were relevant, there is nothing to them. Plaintiff first alleges that Tani and Kosoff were "good friend[s]," FAC ¶ 61, and that Defendants "did not disclose [Kosoff's] employment status, performance at Gawker or relationship with Tani," *id.* ¶ 62. This is incorrect. It is unclear what Plaintiff even means by Kosoff's "performance at Gawker," where, according to Plaintiff, she worked for all of nine days. But the Article expressly discloses to readers the friendship between Tani and Kosoff, *see* Bolger Aff. Ex. C at 3 ("Kosoff—a former colleague and personal friend of this reporter"), and states that Kosoff had left *Gawker* "over concerns about Carson Griffith, the recently hired editorial director," *id.* at 1. Further, as Goldberg admitted in an email to Shachtman, the media world is small, and "media reporting often requires people to report on acquaintances." *See* Bolger Aff. Ex. I.

Plaintiff then conjures up a supposed blood-feud between *Gawker* and *The Daily Beast*, claiming, "[o]n information and belief," that *The Daily Beast* "undertook to destroy the *Gawker* relaunch," FAC ¶ 41, and that it chose to do so by "destroying the least well-connected member of its editorial staff with accusations from the arsenal of the most effective contemporary mode of defamation," *id.* ¶ 42. Plaintiff, not surprisingly, alleges no facts to support this made-up theory. Conclusory claims of bias cannot suggest gross irresponsibility. Here, Defendants had two on-the-record sources, recordings showing that the sources made the same allegations to HR, and documented communications confirming their accounts—all hallmarks of objectively responsible reporting.

***Fourth***, Plaintiff alleges that Defendants should have updated the Article in light of: (1) a telephone call between Shachtman and Goldberg three days after the Article's publication; (2) receipt of an email summarizing that call; and (3) an (as yet unseen) internal investigation conducted by the Goodwin Procter law firm months later, which Plaintiff claims "was able to conclude that the allegations [against her] were false." FAC ¶¶ 69, 70, 77. But it is well established that it is not grossly irresponsible to decline to update an article with information acquired after publication. *See Thomas v. City of New York*, 17-cv-06079 (ARR)(JO), 2018 WL 5791965, at *11 (E.D.N.Y. Nov. 5, 2018) ("Plaintiffs provide no authority to support their argument that the *Chapadeau* standard imposes a duty to correct previously-acquired information—and the law does not recognize such an obligation."); *cf. McFarlane v. Sheridan Square Press, Inc.*, 91 F.3d 1501, 1515 (D.C. Cir. 1996) ("McFarlane presents no authority, however, nor are we aware of any, for the proposition that a publisher may be liable for defamation because it fails to retract a statement upon which grave doubt is cast *after* publication."). Thus, as a matter of law, Defendants' decision not to update the Article after the fact does not constitute gross irresponsibility.

In any event, none of the sources of information that Plaintiff cites actually casts doubt on the reporting. Although Plaintiff claims that a Goodwin Procter investigative report exonerated her of any wrongdoing, neither she nor BDG has ever provided this report to Defendants. To this day, Defendants have no way of knowing what or how Goodwin Procter investigated and what—if any—conclusions the firm reached about any of the statements in the Article.

Shachtman's telephone call with Goldberg and the subsequent email correspondence between the two also do not contradict the Article's reporting. Plaintiff was not present on the call between Shachtman and Goldberg and, therefore, has no personal knowledge of what was discussed. Nevertheless, she claims that during this call, Shachtman and Heather Dietrick[10] "acknowledged that the article was probably defamatory." FAC ¶ 70. This is not true. But even if it were, it does not meant that Defendants committed the tort of defamation, which requires establishing both defamatory meaning *and* falsity. *See* Section II.B, *infra*.

Further, in the following day's email correspondence, Goldberg failed to identify a single factual inaccuracy in the Article. Instead, he merely attached screenshots of the messages between Griffith and Kosoff (which *The Daily Beast* had reviewed prior to publication), which he claimed "cast serious doubt on Tani's most damaging accounts." Bolger Aff. Ex. I. But he did not explain why these communications cast such "doubt." Goldberg also claimed that the relationship between Tani and Kosoff was "extremely close" and attached Instagram posts showing Tani and Kosoff together. *Id*. This too was known to Defendants prior to publication. Shachtman noted the lack of evidence in his response to Goldberg, stating that *The Daily Beast* was "completely willing to follow the facts where they lead – even if those facts wind up contradicting [its] initial reporting." *Id.* Shachtman explained, however, that "a single screenshot from Slack isn't nearly sufficient,

[10] Dietrick is *The Daily Beast's* CEO. While Plaintiff alleges that Dietrick participated on the call with Goldberg and Shachtman, *see* FAC ¶ 70, that is untrue.

especially not when it matches what was reported in our story." *Id.* Goldberg replied, "Will follow up as we review more." *Id.* Plaintiff proffers no evidence of any further communication (and, indeed, there was none).

***Fifth***, and finally, Plaintiff selectively quotes an interview with Shachtman from a 2018 podcast episode in an apparent attempt to show that *The Daily Beast* is an irresponsible publication. Plaintiff quotes Shachtman as saying, "We really like the fun and we don't give that many fucks. We don't give zero fucks, but we don't give that many fucks," and noting that "[t]here's been very little successful litigation against us." FAC ¶ 38. Plaintiff contorts these statements into an assertion that *The Daily Beast* does not "give that many fucks about legal responsibility." *Id.* ¶ 40. While Plaintiff may be entitled to her view, it is not Defendants'. Rather, Shachtman was referring to *The Daily Beast's* willingness to take risks, not to its purported failure to adhere to journalistic ethics and legal standards. In fact, earlier in the same interview, when asked about how *The Daily Beast* covers the Trump White House, Shachtman explained: "*The basic journalistic principles apply for all time*, no matter who's in the White House, and no matter what the media environment is." *See* Bolger Decl. Ex. J. But Plaintiff's misconstructions aside, for the reasons already stated, Defendants' reporting here was undoubtedly responsible, and snippets from a two-year-old interview cannot change that conclusion.

Accordingly, this Court should dismiss the FAC because, in light of the reliable, on-the-record sources for the Article and the supporting documentary evidence reviewed by Defendants prior to publication, it is clear that, as a matter of law, Plaintiff cannot establish that Defendants were grossly irresponsible in publishing the Article.

**B. Plaintiff Cannot Establish that the Article Is Materially False**

The FAC should also be dismissed for the independent reason that the reporting in the Article is not reasonably susceptible of the defamatory meaning Plaintiff ascribes to it and the

actual content of the Article is substantially true based on the documents Plaintiff attached to her initial complaint and incorporated by reference into the FAC.

***1. The Article Is Not Susceptible to the Meaning Plaintiff Ascribes to it and the Actual Meaning of the Article Is Substantially True***

First, the Article simply does not say what Plaintiff says it does. Words are defamatory when they "arouse in the mind of the average person in the community an evil or unsavory opinion []or expose plaintiff to public hatred, contempt, or aversion." *Pritchard v. Herald Co.*, 120 A.D.2d 956, 956 (4th Dep't 1986). "It is for the court . . . to decide whether a publication is capable of the meaning ascribed to it," *Tracy v. Newsday, Inc.*, 5 N.Y.2d 134, 136 (1959), which is routinely determined at the pleading stage, *Jacobus v. Trump*, 156 A.D.3d 452 (1st Dep't 2017) (upholding grant of motion to dismiss for lack of defamatory meaning); *accord Aronson v. Wiersma*, 65 N.Y.2d 592 (1985) (same).

On a motion to dismiss, a court must evaluate challenged statements "in the context of the entire statement or publication as a whole," and "if not reasonably susceptible of a defamatory meaning, they are not actionable and cannot be made so by a strained or artificial construction." *Aronson*, 65 N.Y.2d at 594; *see also Rappaport v. VV Publ'g Corp.*, 163 Misc. 2d 1, 5 (Sup. Ct. N.Y. Cty. 1994) ("A defamatory implication must be present in the plain and natural meaning of the words used.") (citation omitted), *aff'd*, 223 A.D.2d 515 (1st Dep't 1996). "[C]ourts will not strain to find [defamation] where none exists." *Cohn v. Nat'l Broad. Co.*, 50 N.Y.2d 885, 887 (1980) (internal quotation marks omitted).

Here, Plaintiff incorrectly asserts that the defamatory meaning of the Article is that she is a "racist, homophobic, xenophobic, and transphobic" person. FAC ¶ 65. But the Article never makes that claim or anything fairly resembling it, and Plaintiff's hyperbolic reconstruction is therefore just the type of "tortured" reading of what the Article does say that courts frown upon.

The Article is about why Kosoff and Breslaw left *Gawker* after such a short time. In addressing that question, the Article reports that Kosoff and Breslaw "met with human resources to complain of several instances in which they felt personally uncomfortable working with Griffith." *See* Bolger Aff. Ex. C at 3.

And there can be no dispute that the Article is true. In order to establish a defamation claim, a plaintiff must show that a statement has a defamatory meaning that is "materially false." *See Fairley v. Peekskill Star Corp.*, 83 A.D.2d 294, 296 (2d Dep't 1981); *Cabello-Rondón v. Dow Jones & Co.*, 16-cv-3346 (KBF), 2017 WL 3531551, at *5 (S.D.N.Y. Aug. 16, 2017), *aff'd*, 720 F. App'x 87 (2d Cir. 2018); *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 42 N.Y.2d 369, 380 (1977) ("[T]he plaintiff must establish that the statement was, in fact, false.").

Thus, a complaint based upon a defamatory statement must be dismissed when that statement is "substantially true." *Tannerite Sports, LLC v. NBCUniversal News Grp.*, 864 F.3d 236, 242 (2d Cir. 2017). "[A] statement is substantially true if the statement would not have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Id.*; *cf. Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991) (holding that a statement is not "false" so long as "the substance, the gist, the sting, of the libelous charge [is] justified"). When assessing falsity, as when assessing defamatory meaning, "[t]he entire publication, as well as the circumstances of its issuance, must be considered." *Tannerite*, 864 F.3d at 243; *see also Stepanov v. Dow Jones & Co.*, 120 A.D.3d 28, 38 (1st Dep't 2014) ("Plaintiffs misapprehend the clear purpose of this small passage in the context of the entire article."). Courts apply this standard liberally, in order to prevent the media from being "damaged by an overly technical or exacting conception of truth in publication." *Tannerite*, 864 F.3d at 243. Here, it is undoubtedly true that during Kosoff and Breslaw's meetings with HR (which were recorded and provided to *The Daily*

*Beast*), they told HR that they were uncomfortable with Griffith's behavior and explained why. *See* Bolger Aff. Ex. E. Plaintiff does not and cannot dispute that the meeting with HR occurred; in her initial complaint, she admitted as much. Bolger Aff. Ex. B. ¶ 11. Plaintiff takes issue with the reasons Kosoff and Breslaw gave for the serious and escalating discomfort they felt with her that caused them to quit—in other words, with whether she really is as offensive as they considered her to be. But those were, in fact, the reasons that they gave and that were accurately reported in the Article. Thus, the statements in the Article explaining the conversations Kosoff and Breslaw had with human resources are substantially true and cannot form the basis of a defamation claim.

### *2. Even Plaintiff's Reading of the Article Is, as a Matter of Law, Substantially True*

Even if the Article has the overheated defamatory meaning Plaintiff imputes to it (which it does not), it is clear even at the pleading stage that most[11] of the allegedly defamatory statements contained in the Article are substantially true based on documentary evidence.

***First***, Plaintiff takes issue with statements in the Article that she made "offensive remarks" about "penis size." *See* FAC ¶ 46. But she mischaracterizes the content of the Article. Read as a whole, the Article reports that Plaintiff's "remarks" or "comments" about penis size consist of forwarding to Kosoff an email thread among Plaintiff and her friends, from which the Article quotes. *See* Bolger Aff. Ex. C at 3-4. In the FAC, Plaintiff does not deny—and therefore admits—that she sent this email chain to Kosoff; she merely argues that she made no "comments" about the email. FAC ¶ 50. But the pleaded truth—-that Griffith forwarded comments about penis size—creates no different impression in the mind of the reader than the allegedly defamatory statement—that Griffith made comments about penis size. The point is that Griffith engaged in

[11] While the statements about "poor person[s]" and "black writers" are based on Plaintiff's oral communications to Kosoff and Breslaw, rather than written communications, they should still be dismissed for the reasons included in Section II.A of this Motion.

behavior on the subject of penis size that made Kosoff uncomfortable enough to tell HR. The statements in the Article are substantially true.

In this respect, Plaintiff's claim is similar to that dismissed by the Second Department in *Udell v. NYP Holdings, Inc.*, 169 A.D.3d 954, 955 (2d Dep't 2019). There, the *New York Post* published an article stating that a judge's husband parked his car in a "special area" behind the courthouse that was used for law enforcement vehicles transporting individuals to and from prison. *Id.* The judge and her husband filed suit, claiming that the article defamed them by accusing them of putting the public in danger for their own benefit. *Id.* The court disagreed and dismissed the case, holding that because the plaintiff's husband "did not challenge the accuracy of the quotation attributed to him in which he admitted, in essence, that he parked where he should not have parked," he could not plead material falsity. *Id.* at 957. Thus, because the plaintiffs did not challenge the gist of the article—that the judge's husband parked where he should not have—their complaint was dismissed. Here, as there, Plaintiff cannot plead or prove that Defendants' statements are materially false.

***Second***, Plaintiff alleges that it was defamatory for Defendants to write: "In a Slack message reviewed by The Daily Beast, Griffith seemed to brag to Gawker staff that she had gotten them out of a company-wide diversity training session." FAC ¶ 52. But Plaintiff does not deny that she sent a Slack message stating that she got the writers "off the hook" ("lucky us!") for a four-hour meeting that HR was running, *see* Bolger Aff. Ex. F, nor that the meeting included a diversity training session. As a result, the statement is substantially true, and therefore not actionable.

***Third***, Plaintiff claims that it was defamatory for Defendants to write:

> Kosoff additionally told HR of an exchange in which Griffith took a dismissive stance towards the recruiting of a writer who identifies as non-binary. Kosoff, who

> was tasked with recruiting some new editorial staff, wrote in a Slack message that she was going to meet with a potential staffer 'who is a person of color and non-binary (uses they/them pronouns).' When she returned from the meeting two hours later, Griffith initially laughed off the preferred pronouns. 'lol is [name redacted] a girl?' Griffith asked.

*Id.* ¶ 54. But a comparison of the Slack message and the reporting shows that Defendants' account was true, even if Plaintiff sees the matter differently. *See Proskin v. Hearst Corp.*, 14 A.D.3d 782, 784 (3d Dep't 2005) (article that stated plaintiff "altered a client's will to leave $49,000 . . . to his own children" held not materially false when plaintiff admitted he changed client's will but claimed he did so at her insistence). In the Slack conversation, Kosoff writes:

> Hey just btw, I'm gonna grab a coffee down the street around 3 with a writer . . . who is a person of color and nonbinary (uses they/them pronouns). their stuff is really good.

Two hours later, Kosoff writes:

> Hey! Meeting went very well. [the writer's] definitely interested in a staff job and in gawker specifically. Could I possibly send an email connecting you with them?

Plaintiff later responds:

> Lol is [the writer] a girl.

Kosoff again explains:

> [the writer] is non-binary! Looks like a girl and used to identify as a woman but uses they/them pronouns now.

*See* Bolger Aff. Ex. G. While Plaintiff may believe that she was well-intentioned in sending this message or wish that it had been interpreted differently by Kosoff, she cannot deny that she sent it. Plaintiff, therefore, cannot establish falsity.[12]

Finally, even if the Article were susceptible of the defamatory meaning Plaintiff ascribes

[12] To the extent Plaintiff takes issue with the Article's reference to her as taking a "dismissive stance towards the recruiting of a writer who identifies as non-binary," that is a constitutionally protected statement of opinion based on the disclosed messages and therefore cannot form the basis of a defamation claim. *See, e.g.*, *Silverman v. Daily News, L.P.*, 129 A.D.3d 1054, 1055 (2d Dep't 2015) (dismissing case in which defendant referred to plaintiff's writings as "racist" because "there was full disclosure of the facts supporting the opinions").

to it—*i.e.*, that she makes inappropriate racial and other comments about people— that meaning is supported by her own admitted Tweets previously published by *Splinter*, which include insensitive statements about minorities and gay people. *See* Bolger Aff. Ex. C. These Tweets confirm the truth of even the tortured reading Plaintiff imputes to the Article.

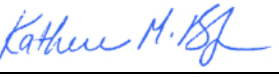
## CONCLUSION

Plaintiff apparently does not like the way she believes the Article characterizes her, but it is based on two on-the-record sources and substantial documentary evidence and is confirmed by her own statements. For the reasons set forth above, Defendants The Daily Beast Company LLC, Noah Shachtman, and Maxwell Tani request that this Court enter an order dismissing the FAC with prejudice and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 24, 2020

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: 

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