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

DR. MARK CRISPIN MILLER, Plaintiff, - against - ARJUN APPADURAI, DEBORAH BORISOFF, STEPHEN DUNCOMBE, ALLEN FELDMAN, LISA GITELMAN, RADHA S. HEGDE, NICHOLAS MIRZOEFF, SUSAN MURRAY, ARVIND RAJAGOPAL, MARITA STURKEN, AURORA WALLACE, JAMIE SKYE BIANCO, PAULA CHAKRAVARTTY, BRETT GARY, TED MAGDER, MARA MILLS, JUAN PINON, NATASHA SCHULL, NICOLE STAROSIELSKI, and ALEXANDER GALLOWAY, Defendants.	Index No. 160329/2020 Hon. Paul A. Goetz Mot. Seq. No. 1 **ORAL ARGUMENT REQUESTED**

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION BY DEFENDANTS PURSUANT TO CPLR 3211(a)(1), 3211(a)(7), AND 3211(g) AND CIVIL RIGHTS LAW 70-A, AND 76-A TO DISMISS COMPLAINT

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INTRODUCTION

In their Memorandum of Law in Support of their Motion to Dismiss ("Motion"), Defendants established that Plaintiff's defamation lawsuit is nothing more than a thinly veiled attempt to stifle his colleagues' exercise of their free speech rights in connection with matters of public interest. As such, this lawsuit falls squarely within New York's Anti-SLAPP Law, requiring Plaintiff to demonstrate that his claim has a "substantial basis in law."[1] He has not done so.

Indeed, this case is quite simple. Defendants sent a good faith letter filled with provably true statements and their opinion about Plaintiff's conduct to their NYU supervisors in the hope that the University would investigate Plaintiff's behavior. Plaintiff cannot demonstrate that any of the statements are false. He all but concedes the statements are subject to the common interest privilege. And he cannot overcome this privilege by showing malice—he does not allege that Defendants acted with common law malice, and his conclusory assertions of actual malice are insufficient to survive a simple 3211(a)(7) motion, let alone Defendants' Anti-SLAPP Motion.

Instead of addressing Defendants' arguments, Plaintiff treats this action as a referendum on academic freedom, claiming he brought it "on behalf of *all* who have been gagged or persecuted for their dissidence . . . for the last century," arguing the lawsuit is about "what it means to be a teacher," and airing his disappointment that his colleagues questioned his "lesson" challenging the authority on mask wearing during a pandemic. Miller Aff. ¶¶ 44-45. But this defamation action is not the proper vehicle to vindicate Plaintiff's conception of academic freedom. Plaintiff's retaliatory lawsuit must be dismissed, and Defendants are entitled to a fee award under the Anti-SLAPP Law.

[1] This Reply uses the same abbreviations and capitalization as in the Motion.

I. THE ANTI-SLAPP LAW APPLIES

As explained in Defendants' Motion, the Anti-SLAPP Law applies to this case. *See* Mot. at 8-9 (*citing* CRL § 76-a(1)(a)(2)). The four arguments Plaintiff now makes in opposition do not hold weight.

First, Plaintiff argues that the Letter is outside the Anti-SLAPP Law's scope because it was distributed internally. Opp. at 54-55. But Plaintiff ignores that the phrase "action involving public petition and participation" is defined by the Law to mean:

> (1) any communication in a place open to the public or a public forum in connection with an issue of public interest, or
>
> *(2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, ...*

CRL § 76-a(1)(a) (emphasis added). The Letter clearly falls under subsection (2), which, unlike subsection (1), does not require communication in a public forum.

Second, Plaintiff claims that the Letter did not pertain to a matter of public interest, but was "at bottom, a request that NYU expedite its internal disciplinary proceedings against plaintiff" made between "private parties." Opp. at 55. A review of the Letter refutes Plaintiff's contention. The Letter alerted Defendants' superiors to a professor who questioned the efficacy of NYU's guidelines on mask wearing amidst a global pandemic and their concern with the impact on the NYU community, the cyberbullying of an undergraduate student, and a professor's espousal of transphobic sentiments and Sandy Hook denial on a public platform. These are not "purely private matter(s)."[2] That Defendants disseminated this speech privately—because they knew the Letter discussed issues of public importance and would draw public attention—does not change this

[2] Even if Plaintiff's summary of the Letter were correct, "classroom instruction will often fall within the Supreme Court's broad conception of 'public concern.'" *Hardy v. Jefferson Community College*, 260 F.3d 671, 679 (6th Cir. 2001).

conclusion. Indeed, after Plaintiff posted about the masking controversy, at least three media organizations immediately covered the story, *see* Exs. 34-36, further demonstrating that the Letter concerns matters of public interest.

Third, in a radical departure from over a century of First Amendment jurisprudence, Plaintiff argues that the Anti-SLAPP Law does not apply because the "constitutional right of free speech" only concerns speech to the government. Opp. at 55. Plaintiff is wrong. The "constitutional right of free speech" extends to speech "in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *see also Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 790 (2011) (video games, books, plays, and movies are entitled to First Amendment protection); *City of N.Y. v. S&H Book Shop, Inc.*, 41 A.D.2d 637, 637 (1st Dep't 1973) ("The exhibition of motion pictures by means of coin-operated projection machines is encompassed within the First Amendment."). Moreover, because the Anti-SLAPP Law is a New York statute, the term "constitutional" also refers to the New York Constitution, which has "guarantees of free press and speech . . . [that are] often broader than the minimum required by the First Amendment." *O'Neill v. Oakgrove Const. Inc.*, 71 N.Y.2d 521, 529 n.3 (1988). Article I, § 8 assures the right to "freely speak, write, and publish." This is an affirmative right not limited to speech to the government, which Defendants were exercising.

Fourth, Plaintiff cites to cases discussing protected speech in the *public employee* context in order to claim that Defendants' Letter did not constitute an exercise of their "constitutional right of free speech." Opp. at 55 (*citing Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Ezekwo v. NYC HHS*, 940 F.2d 775 (2d Cir. 1991)). Plaintiff, however, misapplies these cases. The First Amendment is a restriction on *government* action. Thus, as explained in *Garcetti* and *Ezekwo*,

when the government is an employer, in order to balance the First Amendment with the need for an operational workplace, employees are protected from government action only when they speak as private citizens on matters of public concern. Defendants are not public employees. If the government were to take action against them because of their Letter, the First Amendment and New York Constitution would protect their speech. *See* *Brown*, 564 U.S. at 790-91 ("[A]s a general matter, … the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content," except in "a few limited areas" such as obscenity, incitement, and fighting words). Thus, the Letter was an exercise of Defendants' "constitutional right of free speech."

II. EACH STATEMENT IS SUBSTANTIALLY TRUE

As explained in Defendants' Motion, each of the challenged statements[3] is "substantially true" and, accordingly, not actionable. Mot. at 11-13. In response, Plaintiff issues haphazard denials, ignores Defendants' documentary evidence,[4] and cites his own documents that do not undercut the statements' truth.

FAC ¶¶ 12(c)-(e). Plaintiff does not dispute that he already admitted having "a highly visible website" that "prominently displays . . . his title as a full tenured professor," and that he

[3] Plaintiff now appears to challenge other statements in the Letter—that he engaged in "discrimination" and created an "unsafe learning environment." Opp. at 57-58. But the FAC is clear that Plaintiff challenges only those "factual" statements enumerated in paragraph 12, conceding that all other statements—including the two he now challenges—were Defendants' opinions. FAC ¶ 12 ("Defendants' factual statements, as opposed to their opinions, are enumerated below . . ."). Plaintiff cannot amend the FAC through his Opposition. *O'Brien v. Nat'l Prop. Analysts Partners*, 719 F. Supp. 222, 229 (S.D.N.Y. 1989) ("[I]t is axiomatic that the Complaint cannot be amended by the briefs in opposition to a motion to dismiss.").

[4] Courts consider documentary evidence in order to determine "substantial truth" on CPLR 3211(a)(1) dismissal motions. Mot. at 10; *see also* *Muhlhahn v. Goldman*, 93 A.D.3d 418, 418-19 (1st Dep't 2012) (dismissing claim where defendant's recordings of interviews with plaintiff established statements' substantial truth); *Chinese Consol. Benevolent Ass'n v. Tsang*, 254 A.D.2d 222, 223 (1st Dep't 1998) (defamation claim "was correctly dismissed based on the withdrawal slips apparently signed by defendant, who does not challenge their authenticity, and which establish the truth of the alleged statement").

takes "certain controversial positions" on the site. *See* Mot. at 11-12. Thus, his claim stemming from these statements must be dismissed.[5]

FAC ¶¶ 12(a)-(b). As for the statements that Plaintiff "circulat[ed] a petition accusing the department of violating his academic freedom" and conducted an "email campaign against the department," Plaintiff merely repeats his allegation that neither mentioned the Department. Opp. at 3. But in the email campaign, Plaintiff wrote, "[m]y whole department has sided with the Social Justice warrior who came after me on Twitter." Ex. 43. And in the Petition, Plaintiff cited the removal of his courses—an action undertaken by the Department Chair—as violating his academic freedom. Ex. 39. Even if, as Plaintiff claimed in his Retraction Letter, the email campaign and petition only criticized NYU, *see* Ex 48 at 1, the statement that Plaintiff criticized his Department would not have a different effect on the mind of a reader. *Daniel Goldreyer, Ltd. v. Van de Wetering*, 217 A.D.2d 434, 436 (1st Dep't 1995). Thus, these statements must also be dismissed as substantially true.

FAC ¶¶ 12(f)-(h). As to the three statements concerning Plaintiff's online postings: ***First***, Plaintiff does not—and cannot—deny that he "characterized transgender surgery as a eugenic form of sterilization." Exs. 16-19, 21-22. ***Second***, while Plaintiff broadly denies engaging in "direct mockery and ridicule of trans individuals," he does not contest the behavior underlying this statement—he admits making "public comment" about the "unfairness of allowing biologically male high school athletes to compete against biologically female athletes," Opp. at 56, does not

[5] In an effort to avoid dismissal of the challenged statements, Plaintiff cites to *Levy v. Smith*, 2013 NY Slip Op. 52300(U) (Sup. Ct. Putnam Cty. Dec. 3, 2013), suggesting that a Court cannot "isolate individual sentences . . . in order to render piecemeal determinations of their individual viability." Plaintiff's statement of the law is incorrect. The cases that the *Levy* court relies upon merely state that there can be only one cause of action for defamation regardless of how many statements are challenged. *See Kern v. News Syndicate Co.*, 6 A.D.2d 404, 406 (1st Dep't 1958). This does not mean that courts cannot assess the merits of individual challenged statements from a single defamation claim; courts *routinely* do so. *See, e.g.*, *Bacon v. Nygard*, 189 A.D.3d 530, 530 (1st Dep't 2020) (affirming partial motion to dismiss defamation claim based on certain statements); *Greenberg v. Spitzer*, 155 A.D.3d 27 (2d Dep't 2017) (same).

dispute that he misgendered these athletes, Exs. 12, 15, and even admits that he "deplored ['breast removal'] as not progressive and instead consistent with an extremist agenda," Miller Aff. ¶ 15. Plaintiff cannot objectively decide that this does not constitute "mockery." *See Turner v. Wells*, 879 F.3d 1254, 1264 (11th Cir. 2018) (statement that plaintiff engaged in "homophobic taunting" is non-actionable "subjective assessment of [plaintiff's] conduct"). Indeed, Plaintiff admits that he used "humor" in his postings. Miller Aff. ¶ 33. And while Plaintiff argues that he has "gay friends," *id.*, even if true, this does not negate his online mocking of trans persons. Thus, this statement is substantially true. ***Third***, while Plaintiff attempts to argue that he did not "take the position that the Sandy Hook shooting did not occur," the Letter never says this. It actually says:

> Over the years, many of us have been distressed and concerned over the positions that Professor Miller has espoused on his highly visible website . . . These positions include . . . denial of the Sandy Hook elementary shooting.

Ex. 3.[6] Plaintiff cannot deny that he "espoused" (or, said differently, "promoted") this position; indeed, he admits re-posting an article from a Sandy Hook denier. Ex. 12. While Plaintiff claims that his post "does not express the opinion that the Sandy Hook shootings did not occur," Opp. at 45, that is the subject of the article he shared. And he personally wrote: "To quote myself: 'Conspiracy theory' is something that, if true, you couldn't handle it," Ex. 12, suggesting that he too questions whether the massacre was real. Thus, the statement that he "espoused" Sandy Hook denial is also substantially true.

FAC ¶¶ 12(i)-(l). Plaintiff then argues that Defendants failed to prove the truth of the statements concerning student complaints about him. But Defendants proffered irrefutable documentary evidence showing that students complained about Plaintiff's acceptance of gender-

[6] Plaintiff often incorrectly summarizes the Letter's statements. The Court must look to the statements in the Letter—not Plaintiff's characterizations of those statements—when assessing the Motion. *See* CPLR 3016(a).

based slurs in his classroom, Ex. 10, use of race-based slurs, Ex. 13, espousal of "non-evidence based" conspiracy theories including that cell phones cause cancer and the moon landing was fake, Exs. 8, 24, and curt behavior toward dissenting students, Ex. 30. Plaintiff offers only two responses—***First***, he attaches laudatory notes from students. Miller Aff. Ex. 2. But some students enjoying his class does not negate others regularly complaining about his behavior. ***Second***, he claims that Defendants failed to identify "more than one or two stray student complaints." Opp. at 59. But Defendants attach numerous complaints—which are exemplary not exhaustive—and which, on their own, establish the truth of the Letter's statements.

FAC ¶¶ 12(m)-(q). As to the statements concerning the masking controversy, Plaintiff does not dispute that he "repeatedly and publicly identified the student" who criticized him, instead claiming that he made no "effort" to identify her, and this is simply how Twitter works. Miller Aff. ¶¶ 29-31. But Plaintiff continually referenced the student's name and Twitter account on his blog (linked to his Twitter), Exs. 32, 33, 38, 40, and even continues to name the student in his Opposition filings, Miller Aff. ¶¶ 11, 18, 29. Further, while Plaintiff claims he did not "attack[]" the student, he admits he sent messages to his list-serv claiming that the student's Tweets were "venomous" in "an attempt at self-defense." Opp. at 60; Miller Aff. ¶ 30. Further, Plaintiff himself recognizes that the student had "few followers" at the time she posted the Tweets. Miller Aff. ¶ 30. Thus, by sending her Tweets to his followers, he "open[ed] an opportunity for cyberbullying and threatening communication directed toward the student," exactly as Defendants' Letter states. *See* FAC ¶ 12(p). And, although Plaintiff claims that Defendants "cannot point to a scintilla of evidence that Plaintiff ever sought to or did intimidate anyone," Opp. at 60; FAC ¶¶ 12(n) & (q), to the extent "intimidation" is a factual statement, *see* Section III, *infra*, the student who Tweeted about Plaintiff's conduct reported that, based on Plaintiff's in-class behavior, she believed it

"wouldn't have been great for [her] eventual grade if [she] chimed in" and contradicted Plaintiff's positions on COVID-19. Ex. 30; *see also* Ex. 24 ("The course made me uncomfortable at times as Miller refuses to hear opinion that oppose his own. . . . I hesitated to speak out when I should have at the end of the [] semester as to not cause any issues.").

FAC ¶¶ 12(r)-(s). Once again ignoring Defendants' evidence, Plaintiff claims that Defendants "cannot point to examples" of Plaintiff engaging in "abuses of authority, aggressions and micro-aggressions, [or] explicit hate speech." Opp. at 61. But, if any of these statements are factual, *see* Section III, *infra*, Exhibit 13—which Plaintiff does not challenge—supports each of these statements. Plaintiff's student, of Asian ethnicity, claimed Plaintiff used a racial slur when responding to their question. *See* Ex. 13 at 2. The student believed that Plaintiff wanted to "elicit an emotional response . . . so that [they] would agree with him." *Id.* Separately, Plaintiff admits that he re-published the NYU undergraduate student's Tweets, sent his postings to his ardent followers, and requested that the Department Chair drop the student from the class. Ex. 37. As summarized by Defendant Murray at the time, this is "an abuse of his power." *Id.* These examples, and Plaintiff's other in-class and online behaviors, which he also does not deny, *e.g.*, Exs. 14-15, 19, prove these statements substantially true.

III. FOUR STATEMENTS ARE ALSO NON-ACTIONABLE OPINION

Defendants' Motion explained that statements referring to Plaintiff's conduct as "microaggressions," "aggressions," "hate speech," and "intimidation," FAC ¶¶ 12(n), (q)-(s), also are non-actionable opinion because these words are "loose, figurative, hyperbolic" language, Mot. at 13 n.10. In response, Plaintiff only claims, "in a university setting, such accusations subject the target to profound derision, isolation, and humiliation." Opp. at 61. But there is no "university setting" exception to an opinion defense.

Indeed, in *Jorjani v. New Jersey Institute of Technology*, 2019 WL 1125594 (D.N.J. March 12, 2019), a case similar to this one, professors at NJIT wrote statements in the school newspaper referring to the plaintiff as "unfit to teach," "morally repugnant," "peddling pseudoscience and racism," and "legitimizing discredited ideas." The court found each of these statements to be non-actionable opinion. It noted that what constitutes "racism, pseudo-science, and discredited ideas is subject to intense debate." *Id.* at *6. The same is true of the terms "microaggressions," "aggressions," "hate speech," and "intimidation." These terms cannot be defined with any degree of certainty (and to the extent they can, *see* Mot. at 12 n.9, Plaintiff's actions clearly fit within them). And while the professors' statements in *Jorjani* could just as easily have subjected the plaintiff to "derision, isolation, and humiliation" (indeed, he was fired), that did not save the complaint from dismissal. It cannot do so here either.

IV. THE COMMON INTEREST PRIVILEGE SHIELDS DEFENDANTS' LETTER

Finally, Plaintiff does not dispute that the common interest privilege applies to the Letter, Mot. at 14-15, or that he cannot establish common law malice, *id.* at 15-17, and, therefore, waives these arguments, *see Disla v. Biggs*, 2021 WL 501154, at *2 (1st Dep't Feb. 11, 2021) (certain of plaintiffs' claims "are deemed abandoned, as they were not addressed by either plaintiff . . . in opposition to the motions"); *Gary v. Flair Beverage Corp.*, 60 A.D.3d 413, 413 (1st Dep't 2009) ("[P]laintiff's failure to address this issue in its responding brief indicates an intention to abandon this basis of liability."). Instead, his only response is that he has pled actual malice—*i.e.*, knowledge of falsity or reckless disregard for the truth of the statements published, *see N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964)—sufficient to overcome the privilege. Opp. at 53. In support, Plaintiff makes three flawed arguments:

First, Plaintiff claims that he pled actual malice by stating the Letter was "maliciously intended to portray plaintiff in a negative light," Defendants acted in a "knowing" manner, and Defendants "intended to mis-portray plaintiff." Opp. at 51-52. But these statements are entirely conclusory and do not suffice to plead actual malice in New York. *See, e.g.*, *Abbitt v. Carrube*, 159 A.D.3d 408, 410 (1st Dep't 2018) (holding, on motion to dismiss, that common interest privilege applied because "Petitioner's allegation of malice . . . is conclusory and therefore insufficient to overcome the privilege."); *Gondal v. N.Y.C. Dep't of Educ.*, 19 A.D. 3d 141, 142 (1st Dep't 2005) (same); *Serratore v. Am. Port Servs., Inc.*, 293 A.D.2d 464, 465 (2d Dep't 2002) (same).

Indeed, this case is nearly indistinguishable from *Sandler v. Benden*, 67 Misc. 3d 1244(A) (Sup. Ct. N.Y. Cty. 2020). There, the plaintiff, sued her supervisor based on statements he made about her performance. The plaintiff, like Professor Miller, asserted that the supervisor "knew" his words were untrue when he wrote them and that he acted "maliciously" with an "intent to injure and damage" her. *See* 151606/2017, NYSCF No. 1, ¶ 57. The court dismissed the defamation claim under CPLR 3211(a)(7), holding that the common interest privilege applied and the plaintiff's conclusory allegations of malice were insufficient to overcome the privilege. *Sandler*, 67 Misc. 3d 1244(A) at *5. This case mandates the same result.

Second, Plaintiff claims that Defendants acted with actual malice because they did not conduct an investigation into the matters set forth in the Letter, including discussing the Letter with him before sending it. Opp. at 51. But, as the Motion explained, the mere failure to investigate does not support a finding of actual malice. Mot. at 18-19. Plaintiff ignores the extensive case law Defendants cite, as well as Defendants' argument that it would make little sense for them to investigate or speak with Plaintiff before sending the Letter, as initiating a formal

investigation was the Letter's very purpose. Holding otherwise would mean any time an employee files an internal complaint about a colleague, they must personally investigate the matter and consult with the colleague or else risk a defamation lawsuit. This would undermine University and other workplace reporting systems.

Third, Plaintiff claims Defendants did not retract the Letter after he sent them his Retraction Letter. Opp. at 51. But the actual malice inquiry is concerned with what Defendants knew *at the time they published the Letter*. *Bose Corp v. Consumer Union*, 466 U.S. 485, 512 (1984). Plaintiff's Retraction Letter post-dates the Letter, and thus "shed[s] no light on whether defendants made the statements with the requisite disregard for the truth." *L.Y.E. Diamonds, Ltd. v. Gemological Inst. of Am, Inc.*, 169 A.D.3d 589, 591 (1st Dep't 2019).[7] Moreover, "liability under . . . *New York Times v. Sullivan* cannot be predicated on mere denials, however vehement" because "such denials are so commonplace in the world of polemical charge and countercharge." *Edwards v. Nat'l Audubon Soc., Inc.*, 556 F.2d 113, 121 (2d Cir. 1977). As shown by Plaintiff's continued denial of indisputably true statements, his baseless denials would not give Defendants any indication that anything in the Letter was false.

For these reasons alone—even without considering Defendants' Affidavits—this case must be dismissed. However, under the Anti-SLAPP Law, this Court must also consider Defendants' Affidavits.[8] Doing so establishes that none of the Defendants doubted—or had any reason to doubt—the Letter.

[7] Even if post-publication conduct *were* probative of actual malice, Defendants received and reviewed the Ph.D. letter shortly after the Retraction Letter, giving them further comfort that the claims in their Letter were correct. Ex. 49.

[8] Under the Anti-SLAPP Law, this Court "*shall* consider . . . supporting and opposing affidavits stating the facts upon which the action or defense is based." CPLR 3211(g) (emphasis added). Plaintiff's argument that "affidavits . . . are not to be examined for the purpose of determining whether there is evidentiary support for the pleading," Opp. at 49, contradicts the law.

Plaintiff spends forty pages of the Opposition attempting to undercut the Affidavits. His arguments fall into four categories. ***First***, he claims that each Defendant did not have personal knowledge of every statement in the Letter. *E.g.*, Opp. at 8. Yet Plaintiff ignores that the standard for actual malice is knowledge of falsity, not certainty of truth. *Liberman v. Gelstein*, 80 N.Y.2d 429, 439 (1992). The Defendants who did not have personal knowledge of each statement indicated that they relied on their trusted colleagues, who they knew did have such knowledge. *E.g.*, Appadurai ¶ 7. Thus, these Defendants had no reason to doubt the veracity of the Letter's contents. ***Second***, Plaintiff claims that Defendants did not speak with him or personally investigate the Letter's statements. Opp. at 17. As previously stated, however, failure to investigate or speak with Plaintiff is not probative of actual malice. ***Third***, while Plaintiff acknowledges that many Defendants had conversations with their students and colleagues who felt uncomfortable with his conduct, he refers to these conversations as "hearsay." Opp. at 16. But these statements are not introduced for the truth of the matter asserted but, instead, to show Defendants' state of mind. *See Rivera v. City of N.Y.*, 200 A.D.2d 379, 379 (1st Dep't 1994) (because testimony was "not admitted for the truth of the matter asserted, but for the purpose of showing the technician's state of mind with respect to plaintiff's condition," it "thus was not hearsay at all"). In other words, Defendants did not doubt the Letter's statements because they aligned with previous reports of Plaintiff's conduct (regardless of whether those reports were true). ***Fourth***, Plaintiff claims that although many Defendants reviewed his online posts and found them troubling, they did not relate these views to anything occurring at NYU. Opp. at 23. But many of the challenged statements specifically relate to Plaintiff's website. FAC Ex. 1 at 1. And, as explained in Defendants' Affidavits, reviewing Plaintiff's dismissiveness toward sensitive topics on his website—including COVID-19—gave Defendants confidence that complaints about Plaintiff's similar in-class

behavior were true. *E.g.*, Chakravartty ¶ 12. In sum, Plaintiff's attempts to discredit the Affidavits fail, and Plaintiff does not—and cannot—show that his allegations of actual malice have any basis in law or fact.[9]

CONCLUSION

Defendants respectfully request that the Court dismiss the FAC with prejudice and award Defendants their costs, attorneys' fees, and any other relief deemed proper.

Dated: New York, New York
March 1, 2021

Respectfully submitted,

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[9] Plaintiff questions Defendant Murray's credibility because her Affidavit references Tweets attacking the NYU student, but two of those Tweets occurred after the Letter. Opp. at 27. But Professor Murray does not state that she reviewed all of these Tweets *prior* to signing the Letter. Murray ¶ 13. These are exemplary Tweets, showing that the student was bullied after Plaintiff amplified her Tweets.

Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules For the Supreme Court

I, Jeremy A. Chase, certify that, pursuant to Part 202 of the Uniform Civil Rules For the Supreme Court, Defendants' Reply Memorandum of Law in Further Support of Its Motion to Dismiss contains 4,197 words.

/s/ *Jeremy A. Chase*