

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**STEVE COLEMAN,**

**Plaintiff**

Case No. 1:18-cv-05663 (JBW) (RLM)

**V.**

**MARIA KIM GRAND,**

**Defendant**

**PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

## **I. Introduction**

Plaintiff's lawsuit is about much more than Defendant's assertions that he did not behave to her liking. As discussed at length in Plaintiff's Response in Opposition, Defendant drafted and sent a letter accusing Coleman of using his position as a teacher and band leader to extort sex from her after September 2013, and until September of 2016.<sup>1</sup> Grand also accuses Coleman of forcing her to stay with him against her will, for the purpose of having sex, which is tantamount to a criminal accusation of false imprisonment. In addition to accusing Coleman of criminal conduct, Grand's Letter makes the four false statements addressed in Plaintiff's Statement of Undisputed Material Facts.<sup>2</sup> Grand knows that her statements are not true, and her subsequent actions, such as lying under oath<sup>3</sup>, repeated attempts to contact journalists,<sup>4</sup> her involvement in the schemes described in Section A(3) of Plaintiff's Response in Opposition, and her attempts to cover up her communications and actions by withholding relevant discovery materials<sup>5</sup> demonstrate not only that her Letter contains lies, but that she knows it contains lies, and that she published those lies purposefully and maliciously. Grand extends her lies to intentionally misleading the Court. In her Response in Opposition, she writes:

“...in a September 2015 email that Coleman sent Grand while she was touring with his ensemble and refused to sleep with him, Coleman stated, “[y]ou know what I want, don't pretend,” and demanded that Grand “tak[e] care of me the moment we arrive at the hotel in Paris without delays, arguments or debates.” He acknowledged that she did not want to sleep with him, but his needs come first, and he was getting nothing “but the bluest balls humanly possible.”<sup>6</sup>

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<sup>1</sup> Ex. 12 to Grand Depo. (The Letter)

<sup>2</sup> Pl. SUF ¶ 51-54 *see also* Pl. Memo in Support of MSJ Section B Subsection 3.

<sup>3</sup> FN 27 of Plaintiff's Response to Defendant's Motion for Summary Judgment.

<sup>4</sup> Pl. SUF ¶ 41-50.

<sup>5</sup> FN 23 and 30 of Plaintiff's Response to Defendant's Motion for Summary Judgment.

<sup>6</sup> Ex. A to Cooper Decl. in Support of Pl. Reply. (*quoted email attached in its entirety*).

This email is actually the second in a series of three communications. On September 3, 2015 the Parties were in Bordeaux, France. On September 4, 2015, the Parties were in Paris, France where they had sex. Initially, Grand propositions Coleman while they are in Bordeaux.

[9/3/15, 7:32 PM] Steve Coleman : U r just stringing me along to get what u want.

[9/3/15, 7:33 PM] Maria Grand : No... I really am just horny.

[9/3/15, 7:33 PM] Maria Grand : Not expecting anything.

[9/3/15, 7:33 PM] Maria Grand : But I could use a licking.

[9/3/15, 7:34 PM] Steve Coleman : Hahahaha!!!! YOU can use a licking????

[9/3/15, 7:34 PM] Maria Grand : yea

Then Coleman sends her the email attached as Exhibit A hereto, excerpted above.<sup>7</sup> Finally, Grand follows through with her initial proposition once they reach Paris.<sup>8</sup>

[9/4/15, 7:44 AM] Maria Grand : If you promise to treat me really nicely and that I'll only do what I want to do, I'll come to your room now.

[9/4/15, 7:44 AM] Maria Grand : So we can get some stress relief.

[9/4/15, 7:46 AM] Maria Grand : Hum, I just got your email. Maybe we can just be nice to each other now...

[9/4/15, 7:46 AM] Steve Coleman : OK, but the problem before was always that you didn't want to do anything! Hahaha! I'm in 801.

[9/4/15, 7:46 AM] Steve Coleman : Not much time.

[9/4/15, 7:47 AM] Maria Grand : OK

[9/4/15, 7:47 AM] Maria Grand : 2 minutes, brushing my teeth

Note that Grand offers to come to Coleman's room in Paris *before* she receives his intervening email. Nonetheless, Grand presents only the middle email from Coleman in her Response, takes it out of context, and tries to use it as proof that *he* was demanding sex from *her*. This occurred

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<sup>7</sup> The proper time of Coleman's email to Grand is 9/4/15 3:39 EDT (sent while on the train ride from Bordeaux to Paris), so Grand did not receive this email until later in Paris. The text times are also in EDT. The Defendant's version of this email appears to be in France Summer Time (i.e., 9:39 AM is CEST), but it is the same communication.

<sup>8</sup> The first time on the 9/4 text is 1:44 PM Paris time, at the band hotel.

in 2015, two years after Grand states that Coleman began sexually harassing her in a professional relationship.

The Court should also note that in an early draft of Grand's Letter, she admits that she offered to give Coleman a massage in September of 2016, during the time when she alleges he was extorting sex from her.<sup>9</sup> Grand omitted this from the published version of her Letter, and she has not publicly admitted to pursuing Coleman after September 2013, in order to paint Coleman as a sexual predator.

Interestingly, in a July 2016 email to herself, a journal entry of sorts, Grand admits that when she's excluded, one of her typical patterns is to create a scene in hopes of getting more attention.<sup>10</sup> She has certainly succeeded on that score. In this same email to herself, Grand says "That's what happened with Steve, but I had decided that I was going to belong with him" She goes on to lament that Coleman had abandoned her, "which is one of the things that hurt me the most"<sup>11</sup> Grand wrote this email to herself *3 years after* she claims that Coleman began continuously extorting sex from her, yet there is no mention of the alleged harrassment that supposedly made her "professional life with [Coleman] a complete nightmare".<sup>12</sup> When Grand is writing to herself, there is no need for her to lie. When she writes to herself, what hurts is Coleman's rejection of her. When she writes to others, what hurts is Coleman allegedly extorting sex from her, with no mention of her desire to "belong with him" after September 2013.

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<sup>9</sup> Ex. B to Cooper Decl. in Support of Pl. Reply at MG051718; Draft Letter "*One thing that I am really sad about is that at some point in the same month I actually volunteered to give him a massage.*"

<sup>10</sup> Ex. C to Cooper Decl. in Support of Pl. Reply - MG 010631- MG010632; Grand email to self dated 07/09/2016.

<sup>11</sup> Ibid, P. 1.

<sup>12</sup> Ex. 12 to Grand Depo., P. 4

Finally, Defendant suggests that the paucity of case law wherein a public figure's Motion for Summary Judgment is granted is reason enough for this Court to summarily reject Coleman's Motion for Summary Judgment. On the contrary, the law must be applied to the specific facts of each unique case. Heightened standards do apply to public figures,<sup>13</sup> and in this case, Coleman has proffered evidence sufficient to meet the heightened standard, whether he is required to do so or not. Coleman has offered so much evidence that Grand's statements are false and defamatory that no reasonable jury could find otherwise, therefore, he is entitled Summary Judgment.

**II. The Facts, Viewed in the Light Most Favorable to Grand, do not Support Summary Judgment.**

It is comical that the entire Section II of Grand's Response in Opposition discusses facts that she can prove at trial when the crux of her argument for summary judgment in her favor is that her Letter states no facts at all.<sup>14</sup> The mere existence of this section of Grand's Response belies the argument she makes in her Motion, and is one of many reasons why her Motion should be denied. Grand has relied entirely on the idea that her Letter was "protected opinion," that contained no clear statements of fact, yet now she presents snippets of text messages and emails, devoid of their proper context, as "facts" she can "prove at trial."

Grand goes so far as to include Exhibit N to her response, an email that concerns Coleman's relationship with another woman, Jen Shyu, after pursuing a protective order to prevent Coleman from addressing her relationships with other men. Such evidence is inadmissible under F.R.E. 404, and represents a disappointing, but not surprising, attempt to use

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<sup>13</sup> Coleman does not admit that he is a public figure, that is Defendant's burden to prove. He merely submits that it doesn't matter because he can and has demonstrated that Grand acted with actual malice.

<sup>14</sup>Defendant's Motion for Summary Judgment Section IV(A).

unsupported allegations about Mr. Coleman's relationships with other women to sway the court's opinion of him. This honorable Court should not entertain that attempt. In fact, Grand did not turn over a significant number of communications between herself and Shyu during discovery. Grand's communications with journalist Anastasia Tsioulcas make it clear that Grand had confirmed that Shyu was willing to be an anonymous source in support of Grand,<sup>15</sup> yet Grand's communications with Shyu to that effect were not produced. Plaintiff subpoena'd relevant communications between Grand and Shyu from Jen Shyu, and Shyu also did not produce the communications.<sup>16</sup> For this reason also, this honorable Court should preclude, or at minimum make a negative inference regarding, any and all evidence that relates to, or purports to relate to, Jen Shyu. Coleman doesn't know what Grand and Shyu are hiding, but this honorable Court can safely presume that they are hiding something.

Even viewed in the light most favorable to Grand, her admissible proof could not, in the mind of any reasonable juror, overcome the mountain of evidence Coleman has produced in support of his defamation claim. For this reason, he is entitled to Summary Judgment.

### **III. Standard on Motion for Summary Judgment**

"Summary judgment is appropriate if there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *McCarthy v. Am. Int'l Grp., Inc.*, 283 F.3d 121, 123-24 (2d Cir. 2002). The moving party bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

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<sup>15</sup> Ex. H to Pl. Resp. in Opp. to Def. MSJ; *Tsioulcas Emails* MG048626, MG048603, MG048627, MG020454

<sup>16</sup> Ex. D to Cooper Decl. in Supp. Reply

any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The court “must also be mindful of the underlying standards and burdens of proof... because the evidentiary burdens that the respective parties will bear at trial guide district courts in their determination of summary judgment. *Rojas v. Splendor Landscape Designs Ltd.*, 268 F. Supp. 3d 405 at 409 (E.D.N.Y. 2017). Once that initial burden is met, the burden shifts to the nonmoving party to “come forward with specific facts showing that there is a genuine issue for trial.” *McCarthy*, 283 F.3d at 124.

#### **IV. Argument**

##### **A. Plaintiff’s is Entitled to Summary Judgment on his Defamation Claim as a Matter of Law.**

##### **1. Coleman Has Identified at Least Six Statements That are Defamatory and False.**

Coleman has presented copious evidence in support of his assertion that the four statements listed by Defendant in Section IV(A)(1)(a) through IV(A)(1)(d) of her Response in Opposition are defamatory and false,<sup>17</sup> so he will not present it again here. Plaintiff has also addressed the defamatory nature of Grand’s Letter as a whole.<sup>18</sup> In his Response in Opposition to Grand’s Motion for Summary Judgment, Coleman further identifies two allegations of criminal conduct that are defamatory *per se*.<sup>19</sup> No reasonable juror could misinterpret those six statements as “protected opinion.”

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<sup>17</sup>Pl. SUF ¶ 41-50.

<sup>18</sup> Pl. Memo in Support Section B(4).

<sup>19</sup> Pl. Resp. in Opp. Section A(1).

In truth, Grand's false statements aren't confined to her Letter. Maria maliciously told publicist Matt Merewitz that Coleman beat his ex-wife Geri Allen, and that Coleman was currently blackmailing another woman, again without a shred of proof.<sup>20</sup> Grand also told composer/pianist Vijay Iyer that Coleman visited Geri Allen when she was hospitalized and terminally ill, and that Coleman cried and apologized for abusing her years ago when they were briefly married. There is no way to characterize those statements as "protected opinion." In reality, Ms. Allen's long-time manager of 30 years was at the hospital with her, and is the person who arranged for Ms. Allen's visitors. Coleman did not see Ms. Allen while she was in the hospital, did not know what hospital she was in, had not seen her in years before she passed away,<sup>21</sup> and did not beat her when they were married or together. Coleman submits that he is entitled to Summary Judgment on his claim because Grand's cannot demonstrate the presence of any genuine issue of fact as to whether the many statements identified by Coleman are defamatory and false.

## **2. Coleman Has Identified Special Damages and Damages *Per Se*.**

Defendant again misleads the Court with her discussion of Coleman's earnings in 2018. Coleman clearly testified that, in the Parties' industry, gigs, tours, residencies and the like are scheduled about one year in advance.<sup>22</sup> It is simple, then, to figure out that the work he had during 2018 would have been contracted for during 2017, before Grand wrote and distributed her Letter. After she wrote and distributed her Letter, from late 2017 to present, Coleman experienced a significant reduction in the amount of work offered to him, resulting in a 2019 that

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<sup>20</sup> Ex. F to Def. Resp. in Opp. (*Merewitz Production - Full*); Pp 1-3, P6

<sup>21</sup> Coleman Decl. in Support of Reply ¶ 5

<sup>22</sup> Coleman Declaration to Pl's MSJ ¶ 24.



included only five (5) gigs and was his worst year since 1985.<sup>23</sup> Expert economist Kristin Kucsma estimated Coleman's special damages to be one million eight hundred-forty-nine thousand, four hundred and thirty-seven dollars (\$1,849,437).<sup>24</sup>

Coleman is entitled to *per se* damages because of the nature of Grand's defamatory comments. Not only would her comments tend to injure someone like Coleman in his professional capacity, her comments *did* injure Coleman professionally when he lost valued band members and work opportunities.<sup>25</sup> Furthermore, Grand's assertions that Coleman is libel-proof are baseless. Whether he had an open marriage, or is, or was, an adulterer in his personal life is not at issue here. He is not suing her for damage to his personal reputation. Coleman's personal morals and sexual preferences have never been an impediment to his professional success. It is Grand's allegations that he used his *professional status* as a musician, mentor, and teacher, to extort sex from her that, when viewed in light of the #MeToo movement, has damaged his *professional* reputation to the point that he is entitled to *per se* damages regardless of whether and to what extent he proves special damages.

### **3. Coleman Has Demonstrated the Requisite Fault**

Coleman has demonstrated the requisite fault in spades. Grand wrote to Steve Rowland that she was going to call Coleman "X" in her letter because it was what "looks least like revenge."<sup>26</sup> She (Grand) was copied on an email that she authorized Okkyung Lee send to Julia Newport where Lee was expressing their shared desire to get this "poisonous person" out of the

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<sup>23</sup> *Id.*

<sup>24</sup> Kucsma Report P. 19

<sup>25</sup> *See* Pl. Resp. in Opp. Section B(1).

<sup>26</sup> Pl. SUF 40, Ex. J-12 to Cooper Decl. in Support of MSJ

industry.<sup>27</sup> Grand engaged in several schemes to get the media to report her accusations<sup>28</sup>, and then she lied about it under oath<sup>29</sup> and withheld documents related thereto.<sup>30</sup> Rather than repeat pages upon pages of argument demonstrating Grand's malice, plaintiff refers the Court to Section B(3) of his Memorandum in Support of his Motion for Summary Judgment, and Section A(3) of his Response in Opposition to Grand's Motion for Summary Judgment.

With regard to the documents Grand has withheld, Coleman points out to the court that he has not received original copies of every version of the Letter that Grand sent to her colleagues. For example, Grand sent her Letter to Miles Okazaki. Coleman received that original from Okazaki, in response to a subpoena. Grand did not produce that communication during discovery. Okazaki was also not among the 38 people Grand admitted sending the Letter to. Grand has withheld this and other originals most likely because 1) what she says in the various cover emails would be incriminating; and 2) the identities of persons who may be blind copied on those emails would be incriminating. For these reasons, Coleman submits to the court that, in addition to having proven actual malice, he is entitled to ask the Court for a negative presumption against Grand in that regard.

**B. Coleman is Entitled to Summary Judgment on Grand's Counterclaims.**

For all of the reasons discussed in Section C of Coleman's Memo in Support of his Motion for Summary Judgment, Grand's counterclaims must fail. There is no need to repeat Coleman's arguments to that effect.<sup>31</sup>

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<sup>27</sup> See Pl. Resp. in Opp. to Def. MSJ Section A(3) ; Ex. J-5 to Cooper Decl. in Support of Pl. MSJ

<sup>28</sup> Pl. Resp. Defendant's MSJ Section A(3).

<sup>29</sup> FN 27 to Pl. Resp. in Opp.

<sup>30</sup> FN 23,30 to Pl. Resp. in Opp.

<sup>31</sup> See Pl. Memo in Support of MSJ Section C.

**V. Conclusion**

For the reasons elaborated upon herein, and discussed more fully in the moving papers and in his Response in Opposition to Defendant's Motion for Summary Judgment, Plaintiff prays this honorable Court enter Summary Judgment in his favor on his claim for defamation and upon Defendant's counterclaims.

Respectfully Submitted this 19th day of December, 2019.



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of December, 2019, a copy of the foregoing *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment* was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to counsel for parties below. Counsel for parties may access this filing by use of the court's electronic filing system.

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A handwritten signature in black ink, appearing to read "Joyce W. Cooper", with a long, sweeping horizontal flourish extending to the right.

Joyce W. Cooper, Esq.  
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