CASE NO. 2024-10775

Nassau County Clerk's Index No. 602511/24

NEW YORK SUPREME COURT

APPELLATE DIVISION—SECOND DEPARTMENT

MILES VENTURA,

Plaintiff-Counterclaim-Defendant-Respondent,

—against—

JESSICA TODARO,

Defendant-Counterclaim-Plaintiff-Appellant.

NOTICE OF MOTION OF NATIONAL WOMEN'S LAW CENTER & 35 SURVIVOR ADVOCATE ORGANIZATIONS FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANT

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Joseph M. Sanderson, dated March 31, 2025, and all exhibits attached thereto, including the accompanying proposed brief *amici curiae*, and upon all papers, pleadings, and proceedings had herein, the National Women's Law Center, American Association of University Women (AAUW), American Sexual Health Association, Autistic Self Advocacy Network, California Women's Law Center, Desiree Alliance, Equal Rights Advocates, Feminist Majority Foundation, Hutchinson, Black, and Cook,

LLC, Title IX Group, International Action Network for Gender Equity & Law (IANGEL), Jane Doe Inc., Justice and Joy National Collaborative, KWH Law Center, Legal Momentum, The Women's Legal Defense & Education Fund, National Alliance to End Sexual Violence, National Association of Commissions for Women, National Association of Women Lawyers, National Consumers League, National Council of Jewish Women, National Network to End Domestic Violence, National Organization for Women Foundation, National Women's Political Caucus, New York State Coalition Against Domestic Violence, NSRH, Our Bodies Ourselves, Public Counsel, Religious Community for Reproductive Choice, Shriver Center on Poverty Law, Southwest Women's Law Center, Victim Rights Law Center, Virginia Sexual and Domestic Violence Action Alliance, Women Employed, Women's Bar Association of the District of Columbia, Women's Institute for Freedom of the Press, Women's Law Project, and WV FREE will move this Court, on April 14, 2025 at 10:00 a.m., or as soon thereafter as counsel may be heard, at the courthouse located at 45 Monroe Place, Brooklyn, NY 11201, for an order granting them leave, pursuant to 22 N.Y.C.R.R. § 1250.4(f), to serve and file an *amici curiae* brief, in support of Defendant-Counterclaim-Plaintiff-Appellant Jessica Todaro.

Dated: March 31, 2025
New York, NY

Respectfully submitted,

/s/ Joseph M. Sanderson

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CASE NO. 2024-10775

Nassau County Clerk's Index No. 602511/24

NEW YORK SUPREME COURT

APPELLATE DIVISION—SECOND DEPARTMENT

MILES VENTURA,

Plaintiff-Counterclaim-Defendant-Respondent,

—against—

JESSICA TODARO,

Defendant-Counterclaim-Plaintiff-Appellant.

AFFIRMATION OF JOSEPH M. SANDERSON IN SUPPORT OF MOTION OF NATIONAL WOMEN'S LAW CENTER & 35 SURVIVOR ADVOCATE ORGANIZATIONS FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANT

Joseph M. Sanderson, pursuant to CPLR 2106, affirms the following under penalty of perjury:

1. I am an attorney in good standing admitted to the Bar of the State of New York and Of Counsel at the law firm of Steptoe LLP, counsel to the proposed amici curiae National Women's Law Center, American Association of University Women (AAUW), American Sexual Health Association, Autistic Self Advocacy Network, California Women's Law Center, Desiree Alliance, Equal Rights Advocates,

Feminist Majority Foundation, Hutchinson, Black, and Cook, LLC, Title IX Group, International Action Network for Gender Equity & Law (IANGEL), Jane Doe Inc., Justice and Joy National Collaborative, KWH Law Center, Legal Momentum, The Women's Legal Defense & Education Fund, National Alliance to End Sexual Violence, National Association of Commissions for Women, National Association of Women Lawyers, National Consumers League, National Council of Jewish Women, National Network to End Domestic Violence, National Organization for Women Foundation, National Women's Political Caucus, New York State Coalition Against Domestic Violence, NSRH, Our Bodies Ourselves, Public Counsel, Religious Community for Reproductive Choice, Shriver Center on Poverty Law, Southwest Women's Law Center, Victim Rights Law Center, Virginia Sexual and Domestic Violence Action Alliance, Women Employed, Women's Bar Association of the District of Columbia, Women's Institute for Freedom of the Press, Women's Law Project, and WV FREE.

2. The National Women's Law Center's (NWLC) mission is to fight for gender justice in the courts, in public policy, and in our society, working across the issues that are central to the lives of women and girls. It uses the law in all its forms to change culture and drive solutions to the gender inequities that shape our society and to break down barriers that harm all of us—especially women and girls of color, LGBTQI+ people, and low-income women and families. Since 1972, NWLC

has worked to advance educational opportunities, income security, access to child care, workplace justice, and health and reproductive rights for women and girls and has participated as counsel or amicus curiae in a range of federal and state cases, including defamation cases filed by abusers against sexual assault survivors.

3. NWLC and the additional amici, 35 other organizations, are groups whose mission is to prevent and address sexual assault and other harassment through litigation, policy, and culture change work. They have significant experience representing and advocating for sexual assault survivors and, from that expertise, are familiar with the host of barriers survivors face in reporting and the range of retaliation they all too often face when they do report. Amici are committed to protecting the rights of survivors to report sexual assault without facing retaliation, including in the form of baseless defamation lawsuits.

4. Amici seek to file the proposed brief in order to assist the Court with understanding the broader significance of this matter. Sexual assault affects millions of people in this country, including 4.4 million women in New York State in their lifetime. Survivors face substantial hurdles to reporting, and when they do report the abuse, whether to a school, employer, or on social media, they frequently face retaliation. One increasingly common form of retaliation survivors face is being sued or threatened with a defamation lawsuit by their assailant. All too often, the threat of a retaliatory defamation lawsuit has its desired effect: survivors do not

report, sexual assailants harm more victims, and the vicious cycle repeats. That was precisely what the New York Legislature sought to tackle by amending its law protecting against Strategic Lawsuits Against Public Participation (SLAPPs).

5. New York's anti-SLAPP statute explicitly protects defendants from liability when they make a "communication in … a public forum in connection with an issue of public interest," which encompasses "*any* subject other than a purely private matter." N.Y. Civ. Rights Law §§ 76-a(a), 76-a(d) (emphasis added). Accordingly, New York courts have repeatedly recognized that public allegations of sexual and domestic violence are matters of public interest covered by the anti-SLAPP law. But in this matter, the trial court allowed the retaliatory defamation suit against defendant Jessica Todaro to proceed and denied her protections that New York law affords to all those making public allegations of misconduct, including sexual assault. In doing so, the trial court flouted the Legislature's express intent when it amended the anti-SLAPP law in 2020, proclaiming repeatedly in legislative memoranda, press releases, and other public statements that the prior law had allowed survivors to be dragged through the courts on retaliatory claims solely intended to silence them, and that the new law would protect survivors. The trial court's decision allowing this SLAPP to proceed unchecked should be reversed.

6. The accompanying brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than amici, their members, and their counsel, contributed money that was intended to fund preparation or submission of this brief.

7. A copy of the proposed amici curiae brief is annexed hereto as **Exhibit A**.

8. A copy of the notice of appeal with the trial court's decision is annexed hereto as **Exhibit B**.

9. Proposed amici have thus demonstrated their interest in this matter and that they can provide special assistance to the Court in resolving this matter. For the foregoing reasons, and for those stated in the proposed amici curiae brief, amici respectfully seek the Court's permission to serve and file the attached proposed amici curiae brief.

I affirm this 31st day of March, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: March 31, 2025
New York, NY

Respectfully submitted,

/s/ Joseph M. Sanderson

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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

MILES VENTURA,

Plaintiff-Counterclaim-Defendant,

-against-

JESSICA TODARO

Defendant-Counterclaim-Plaintiff.

NOTICE OF APPEAL

Index No. 602511/2024

PLEASE TAKE NOTICE that Defendant-Counterclaim-Plaintiff Jessica Todaro hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the Decision and Order of the Supreme Court of the State of New York, Nassau County, dated October 8, 2024, NYSCEF Doc. No. 44, denying Defendant's motion to dismiss.

Dated: November 4, 2024
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

/s/

Zoe Salzman
Eric Abrams
Sydney Zazzaro
600 Fifth Avenue, 10th Floor
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Attorneys for Defendant

Exhibit A

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

MILES VENTURA

- against -

JESSICA TODARO

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☐ Statutory	☐ Taxation	☒ Torts

Appeal

Paper Appealed From (Check one only):

If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: Nassau
Dated: 10/09/2024	Entered: 10/10/2024
Judge (name in full): Sarika Kapoor	Index No.: 602511/2024
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ■ No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Defendant-Counterclaim-Plaintiff Jessica Todaro appeals from the Decision and Order of the Supreme Court, Nassau County dated October 9, 2024, which denied Defendant-Counterclaim-Plaintiff Todaro's motion to dismiss Plaintiff's claims pursuant to New York's Anti-SLAPP law, N.Y. Civ. Rights Law § 76-a and CPLR 3211(g).

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court erred in denying Defendant-Counterclaim-Plaintiff's motion to dismiss pursuant to the Anti-SLAPP law, N.Y. Civ. Rights Law § 76-a and CPLR 3211(g), in deciding that Defendant-Counterclaim-Plaintiff's statements on which Plaintiff-Counterclaim-Defendant's claims are founded were not made within the "public interest" under the Anti-SLAPP law.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Miles Ventura	Plaintiff	Respondent
2	Jessica Todaro	Defendant	Appellant
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Zoe Salzman, Emery Celli Brinckerhoff Abady Ward & Maazel LLP			
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Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): Jessica Todaro			
Attorney/Firm Name: Eric Abrams, Emery Celli Brinckerhoff Abady Ward & Maazel LLP			
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Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): Jessica Todaro			
Attorney/Firm Name: Sydney Zazzaro, Emery Celli Brinckerhoff Abady Ward & Maazel LLP			
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Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): Jessica Todaro			
Attorney/Firm Name: Andrew Miltenberg, Nesenoff & Miltenberg, LLP			
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Party or Parties Represented (set forth party number(s) from table above): Miles Ventura			
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City: Boston	State: MA	Zip: 02110	Telephone No: 617-209-2188
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Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): Miles Ventura			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

Informational Statement - Civil

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

MILES VENTURA, ***Plaintiff,*** **v.** **JESSICA TODARO,** ***Defendant.***	**Index No. 602511/2024** **ORDER & NOTICE OF ENTRY**

PLEASE TAKE NOTICE, that within is a true copy of the Decision and Order on Motion issued by The Honorable Sarika Kapoor, A.J.S.C., of Part 34 of the Supreme Court of the State of New York, County of Nassau, dated October 8, 2024, and filed with the Clerk of the Court on October 8, 2024.

Dated: New York, New York
October 10, 2024

Respectfully submitted,

NESENOFF & MILTENBERG, LLP

Attorneys for Plaintiff Miles Ventura

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SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: HON. SARIKA KAPOOR
ACTING JUSTICE OF THE SUPREME COURT

MILES VENTURA,

Plaintiff,

- against -

JESSICA TODARO,

Defendant.

TRIAL/IAS PART 34
Index No.: 602511/2024

DECISION AND ORDER

Motion Seq. No.: 001
Motion Submission Date: 08/01/2024

NYSCEF docs. 6-43 were read and considered in deciding this motion.

Relief Requested

The defendant moves, pre-answer, pursuant to CPLR 3211(g), (a)(1), and (a)(7) to dismiss the complaint. The plaintiff opposes the motion.

Background

"In considering a motion pursuant to CPLR 3211(a)(7) to dismiss a complaint, the court must accept the facts as alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Moreover, the court may consider affidavits submitted by the plaintiff to remedy any defects in the complaint, and upon considering such an affidavit, the facts alleged therein must also be assumed to be true" (*Town of Riverhead v Kar-McVeigh, LLC*, 229 AD3d 735, 737-738 [2d Dept 2024] [citations and internal quotation marks omitted]). Accepting the allegations of the complaint and the plaintiff's affirmation as true, the facts are as follows:

The plaintiff, Miles Ventura, commenced this action against the defendant, Jessica Todaro, alleging that this action arises out of a personal vendetta and jealous revenge plot by Todaro to destroy his life and reputation. Ventura asserts that, intent on causing him maximum damage after he finally ended their casual, on-and-off sexual relationship that spanned years including through their time together in college, Todaro knowingly published numerous false and defamatory statements to the social media application YikYak, falsely accusing Ventura of rape and being a pathological liar. Ventura alleges that Todaro also verbally shared these same false accusations with numerous individuals. According to the complaint, Todaro's emotional attachment to Ventura became clear through her relentless posts to the social media application TikTok, which

displayed her state of mind and how she viewed Ventura, including that she sought revenge and embraced her manipulator. Ventura asserts that, in response to Todaro's defamatory statements, he felt threatened and sought protective measures from Binghamton University (hereinafter the University), which they both attended. Ventura alleges that Todaro went so far as to file a formal complaint against him with the University and, after hearing with live testimony and cross examination, the University exonerated Ventura by finding him not responsible of all allegations. Ventura further alleges that Todaro continues to perpetuate her vendetta against him via social media posts. Ventura alleges that, as a result of Todaro's false allegations and defamatory statements, he has suffered, and continues to suffer, severe emotional distress, including loss of appetite, insomnia, and lack of concentration in his daily life, as well as damage to his reputation despite full exoneration, a delayed entry into the work force in his chosen field, and delayed receipt of his degree. Ventura alleges that Todaro's actions will continue to impact him if they are not stopped (Complaint ¶ 1-8).

The complaint and Ventura`s affidavit allege that, in the spring of 2019, Ventura, then a senior in high school, and Todaro, a year behind him in school, began dating after meeting on Instagram. Ventura made it clear to Todaro that he was not interested in a serious relationship because he would be departing for the University in the fall. The two went their separate ways in July 2019. When Ventura went to college that fall, he and Todaro lost touch, but during Thanksgiving break, the two consensually kissed. Ventura learned that Todaro also planned to attend the University that upcoming fall. Todaro contacted a woman who Ventura was dating at that time, and told the woman that she would be attending the University the next fall and would "make Miles" hers (Complaint ¶ 13-22; Ventura Aff. ¶ 4-9).

Upon return to the University for his sophomore year in the fall of 2020, Ventura knew that Todaro would be attending the same University, as a freshman. Ventura and Todaro reconnected and began to engage in a sexual dating relationship, seeing each other nearly every day, and engaging in sexual activity often. During this time, Todaro asked Ventura whether he would be willing to engage in a type of sexual role play that she saw popularized on social media. Before the parties ever engaged in this role play, they engaged in many discussions on the topic, and established boundaries, general ground rules, and a "safe word." The parties always established consent prior to engaging in the role play and it would often arise when the two were already engaged in sexual activity. Todaro often initiated role play sex, and even clearly indicated a desire to so in text message exchanges (Complaint ¶ 24-37; Ventura Aff. ¶ 10-21).

Upon return to the University for the spring 2021 semester, Ventura found himself spending less time with Todaro and began meeting with a therapist to aid with his mental health. Todaro ended the relationship with Ventura in late January or early February 2021. Ventura wished her well when they parted. Sometime in or around May 2021, Todaro reached out to Ventura, and the two engaged in a casual dating relationship, and resumed their sexual relationship, which continued until July 2021. During this time, Todaro did not express that their role play agreement only applied to when they were in a formal relationship but did express that she thought she was Ventura`s future wife (Complaint 38-43; Ventura Aff. ¶ 24-29).

The parties resumed their consensual sexual relationship in the fall and winter of 2021, but only after Ventura first declined Todaro's request to engage in sexual activity. Throughout

November and early December 2021, the parties engaged in consensual sexual activity, including role play sex. Each time, they consensually engaged with each other, in both regular sexual activity and role play sexual activity (Complaint ¶ 44-48; Ventura Aff. ¶ 30-35).

In his affirmation, Ventura asserts that, by way of example and not limitation, the sexual encounters between Ventura and Todaro during this time included: (a) on or around November 4, 2021, Ventura asked whether he could complete inside of Todaro that day, and she responded with a clear "yes"—indicating full consent, and then spent the night with Ventura (Ventura Aff. ¶ 36-38); (b) on November 21, 2021, Todaro asked Ventura to have sex and stated that she would look elsewhere to "get[ ] laid" if it was not with him; however, Ventura and Todaro ultimately did engage in sexual intercourse that evening, with Todaro sleeping over Ventura's apartment (Ventura Aff. ¶ 41-45); (c) after Todaro contacted the plaintiff on November 28, 2021, to engage in sex, they did so (Ventura Aff. ¶ 49-51); and, (d) both regular sex and role play sex on or around November or December 2021 (Ventura Aff. ¶ 52).

On or around December 11, 2021, Ventura stopped contacting Todaro because he wanted something more meaningful. A few days later, he noticed his car was vandalized when he went to take a final exam (Complaint ¶ 49-51; Ventura Aff. ¶ 57-59).

Ventura returned home for his winter break of 2021-2022, but that did not stop Todaro from attempting contact, as she penned an anonymous letter to Ventura, which Ventura recognized as her handwriting, sharing that he was loved and if he ever needed anything he could reach out. Todaro also sent a series of text messages to the plaintiff, stating that she wished they were engaged in role play sex and wishing him a happy new year (Complaint ¶ 53-56; Ventura Aff. ¶ 64-68).

Ventura and Todaro briefly again reconnected in the spring of 2022. They began talking to each other through text message and then moved their conversation in person. Eventually, they engaged in a casual dating relationship, with regular sexual encounters. It was during this time that Ventura gave Todaro the code to his apartment. The two went their separate ways once again and Ventura began dating another woman (Complaint ¶ 57-59; Ventura Aff. ¶ 69-71).

In the fall of 2022, Ventura's apartment was broken into by a person in a red hoodie, which Ventura thought was an old sweatshirt of his that Todara had in her possession. Additionally, although Ventura's apartment had multiple bedrooms, and only his bedroom had items missing. All items missing from Ventura's bedroom were of a sentimental nature, except for some cash; the sentimental items included his cat's first collar and a coin from the Smithsonian that he obtained during a trip with his father (Complaint ¶ 60-62; Ventura Aff. ¶ 72-74).

The parties once again reconnected in November 2022, when Todaro shared that she was dissatisfied with her boyfriend at that time. At that same time, Ventura, along with the person whom he was dating, mutually decided to go on a break. On December 5, 2022, however, the person whom Ventura had been dating experienced roommate problems, so Ventura offered her a safe place to stay that evening. On the night of December 5, 2022, Ventura and this person did not engage in sexual intercourse. The next day, Ventura and Todaro engaged in consensual sex for the last time. Later that same day, December 6, 2022, the person who needed a safe space to stay while experiencing roommate issues again went to Ventura's apartment to spend the night,

where nothing sexual occurred. Todaro reached out to express her discontent over this via text message and expressly stated that she did not want Ventura spending any time with the other person, at all (Complaint 63-69; Ventura Aff. ¶ 76-81).

On or around January 8, 2023, Todaro posted a video to TikTok that shared the text "embrace the male manipulator in you" (Complaint ¶ 72; Ventura Aff. ¶ 82).

On or around February 11, 2023, Ventura claims that Todaro defamed him while he was out of the country attending a family funeral. Ventura claims, "upon information and belief," that Todaro publicly stated to numerous individuals—including his fraternity brothers and friends—that Ventura allegedly raped her. Ventura adds that, "upon further information and belief," that Todaro posted to YikYak, a social media application, that Ventura allegedly raped her with the words "miles ventura is a r*pist" among other posts and follow up posts, which Todaro later admitted in her own affirmation (Complaint ¶ 74-80; Ventura Aff. ¶ 85-89; *see* Todaro Aff. ¶ 48-52, NYSCEF 8).

In March 2023, Todaro filed a complaint against Ventura at the University alleging non-consensual sexual contact and "domestic violence or dating violence," which Ventura learned of for the first time in a meeting with the University. On May 23, 2023, Ventura, along with his advisor, Todaro, and Todaro's advisor appeared for a University hearing (the "hearing") before a hearing panel. At the hearing, Ventura set forth his innocence of the allegations, including but not limited to the following: (a) Ventura never once stated to Todaro that she allegedly liked being raped by me; (b) Ventura never once called her a bum; (c) Ventura never touched Todaro without her consent while she slept, ever; (d) Ventura never gave Todaro hickeys without her consent; (e) the occasion that Todaro mentioned wherein Ventura allegedly gave her a hickey due to her having a date with another guy never happened; and (f) Todaro's allegations that Ventura pulled her pants down and covered her mouth were completely false. At the hearing, Ventura set forth instances of how Todaro gave consent, including but not limited to her frequently wrapping her legs around him and pulling him closer. At the hearing, Ventura acted respectfully and cordially towards all participants. Todaro, on the other hand, rolled her eyes, openly scoffed, laughed, and shook her head while Ventura spoke at multiple points in the proceeding including his opening and closing statements, and during important periods of question and answer. The hearing chairperson verbally asked Todaro to stop engaging in such behavior; however, she did not (Complaint ¶ 83-90; Ventura Aff. ¶ 94-104).

Additionally, Ventura maintains that, notably, Todaro displayed her lack of credibility at the hearing by contradicting herself several times. For instance: (a) Todaro asserted at the hearing and in her affirmation that role play sex only occurred while "dating." At the hearing, however, she admitted to asking for, and engaging in, role play sex after she and Ventura "dated," which prompted a discussion amongst the parties to establish the comfort and consensual nature of the role play sex; (b) Todaro also admitted that she did not tell her "witness" S.N. about the "specifics" of the role play sex or their sexual encounters in general; (c) Todaro admitted to utilizing sex in an attempt to manipulate Ventura; and, (d) Todaro stated that she would have "loved to be [in a relationship] with [him]" (Ventura Aff. ¶ 107).

Ultimately, the University found Ventura not responsible for any of the allegations against him. Todaro's claims were determined not to rise to the level of a policy violation under the University policy, which utilizes a preponderance of the evidence standard. With this finding in hand, Ventura sought to move on with his life and ultimately, in October of 2023, through counsel, both parties agreed to vacate orders of protection. Since that time, the parties have not contacted each other (Complaint ¶ 88-90; Ventura Aff. ¶ 109-113).

The complaint asserts three causes of action; (1) defamation per se; defamation; libel per se; libel; (2) defamation per se; defamation; slander per se; slander; and (3) intentional infliction of emotional distress. In the first cause of action, Ventura alleges that Todaro libeled and defamed him in her YikYak post on or around February 11, 2023, where she, upon information and belief, wrote "miles ventura is a r*pist." Ventura further alleges that Todaro libeled and defamed him in her YikYak posts on or around February 13, 2023, where she, upon information and belief, wrote "miles ventura in asig is a r*pist"; "we used to have a complicated relationship and he manipulated me to the point where i didn't realize he was r*ping me regularly"; "not just talking coercion, he physically pinned me down, pushed my underwear to the side, & shoved his dick in me as fast as he could while i was pushing away & repeatedly saying no. this was often"; "he's also a pathological liar. people need to know about this." Ventura contends that, when Todaro admitted to making these posts, she stated, upon information and belief, that she wanted to alert others as to what happened and "make sure" they were "safe." Ventura contended that these statements were false and that Todaro knew they were false. In the second cause of action, Ventura alleges that Todaro slandered and defamed him by spreading false allegations of rape, sexual assault, and of him being a pathological liar to numerous individuals in February 2023 and throughout the investigation. In the third cause of action, Ventura alleges that Todaro intentionally inflicted emotional distress upon him by falsely accusing him of rape, sexual assault, and being a pathological liar.

Motion Seq. 001

Todaro moves, pre-answer, pursuant to CPLR 3211(g), (a)(1), and (a)(7) to dismiss the complaint. In support of the motion, counsel for Todaro asserts that Ventura's defamation and intentional infliction of emotional distress causes of action fall far short of the heightened pleading standard required by New York's anti-SLAPP statute and must be dismissed. Counsel submits that the anti-SLAPP statute was recently amended specifically to protect "survivors of sexual abuse and others [from] being dragged through the courts on retaliatory legal challenges solely intended to silence them" (New York Bill Jacket, 2020 A.B. 5991, Ch. 250). Defense counsel argues that black letter law establishes that Todaro's social media posts about sexual assault are protected by the anti-SLAPP law. Defense counsel argues that, to survive a motion to dismiss under that statute, a plaintiff must prove by clear and convincing evidence that defendant acted with "actual malice," i.e., knowingly lied. Counsel contends that, as a matter of law, Ventura fails to plead, let alone prove by clear and convincing evidence, that Todaro knowingly lied. Counsel submits that, in fact, Todaro intended to warn other girls. Defense counsel asserts that this action is precisely the type of "retaliatory legal challenge" that the Legislature sought to sanction, and therefore this Court should dismiss the complaint and award Todaro attorneys' fees and costs as mandated by the anti-SLAPP statute.

In support of the motion, Todaro submits, inter alia, her own affirmation. Todaro states, among other things, that she made the posts on YikYak because she "wanted to warn other Binghamton female students about becoming romantically or sexually involved with [Ventura] because she wanted to prevent [Ventura] from sexually assaulting others." She further stated that Ventura was "a well-known figure at [the] University due to his involvement in a popular fraternity. I included his fraternity's name in one of my YikYak posts, again to warn other girls at [the] University (many of whom often attended fraternity events and parties)."

In opposition, counsel for Ventura argues that Todaro's motion to dismiss should be denied because New York's Anti-SLAPP statute is not a "bar" Ventura's claims, as Todaro engaged in a purposeful, unlawful, and utterly misguided campaign to defame Ventura's name and character, after the two engaged in an on-and-off casual and dating relationship. Counsel argues that Todaro's malicious pursuit of branding Ventura as a perpetrator of sexual assault stemmed from her own anger and frustration over their own failed relationship. Counsel argues that should this Court find that New York's Anti-SLAPP statute does apply, Ventura's claims have a substantial basis in law. Counsel contends that Ventura's claims for defamation, defamation per se, libel, libel per se, slander, and slander per se, not only have a substantial basis in law but there is also clear and convincing evidence that Todaro acted with actual malice. Counsel argues that Ventura's claim against Todaro for intentional infliction of emotional distress also has a substantial basis in law because, inter alia, Todaro engaged in conduct that amounted to a deliberate and malicious campaign to destroy Ventura's reputation.

In reply, counsel for Todaro asserts that the anti-SLAPP statute requires Ventura to prove that the Todaro acted with actual malice in making the YikYak posts. Defense counsel contends that Ventura has no such evidence, much less the clear and convincing evidence. Counsel contends that Ventura admits that Todaro said she made the social media posts "to alert others as to what happened and 'make sure' others were 'safe.'" Counsel contends that the exhibits to the motion include text messages in the weeks leading up to and reflecting the reasons for her posts: her good-faith, genuine belief that Ventura repeatedly sexually assaulted her, that Ventura had sexually assaulted another girl on multiple occasions, and that Ventura had sex with a 15-year-old girl when he was a freshman in college. According to Todaro, her evidence also included a text message on the same day as her YikYak posts contemporaneously explaining that she was motivated by her concern to warn other girls about Ventura's pattern of abusive conduct. Counsel contends that Ventura's opposition does not address this evidence. According to the defense counsel, Ventura tries to use speculation and cherry-picked social media messages to recast himself as the victim. Counsel contends that there is no evidence to support Ventura's fantasy that Todaro was obsessed with him and alleged rape in retaliation for their breakup. According to Todaro, she and Ventura had a complicated on-again-off-again relationship and both parties initiated break-ups multiple times. Defense counsel contends that Todaro had no reason to believe that their last break-up in December 2022 would be any different from the previous ones. According to defense counsel, the turning point that motivated Todaro to make the YikYak posts was her discussions with another girl that was involved with the Ventura, which caused the Todaro to realize that some of her interactions with Ventura rose to the level of assault, that she was not alone in that experience, and that she wanted to warn other girls to make sure they were safe. Counsel for Todaro contends that it is undisputed Todaro removed the posts within days after posting them and the parties had no contact for over a year. Defense counsel adds that the parties also mutually agreed to withdraw

their petitions for orders of protection and, belying Ventura's claim that he "desired to move forward with [his] life," he instead initiated this baseless and "retaliatory legal challenge[ ] solely intended to silence" a "survivor[ ] of sexual abuse," the precise type of lawsuit the legislature sought to prevent when it expanded the anti-SLAPP statute. Therefore, defense counsel argues, Ventura's complaint must be dismissed.

Relevant Law and Discussion

A motion pursuant to CPLR 3211(a)(7) and (g) to dismiss cases involving public petition and participation "shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law" (*VIP Pet Grooming Studio, Inc. v Sproule*, 224 AD3d 78, 85 [2d Dept 2024] [internal quotation marks omitted]). In determining motions pursuant to CPLR 3211(a)(7) and (g), the burden of proof is "flipped" such that "the party moving for dismissal need not establish a procedural or substantive defense on the merits of the action, as otherwise required under other provisions of CPLR 3211, but rather, need only establish that the true nature of the action is one within the scope of anti-SLAPP. The actual burden of proof as to the action's meritoriousness is thereupon shifted in the context of anti-SLAPP immediately to the plaintiff, which is unique" (*id.* at 83).

In 2020, the New York Legislature enacted amendments to expand the protections of the anti-SLAPP statute. The definition of "action involving public petition and participation" was expanded to include "a claim based upon (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, or in furtherance of the exercise of the constitutional right of petition" (*id.* at 84, citing Civil Rights Law § 76-a[1][a]). The statute further provides that the term "public interest" "shall be construed broadly, and shall mean any subject other than a purely private matter" (*VIP Pet Grooming Studio, Inc. v Sproule*, 224 AD3d at 84).

"Matters of public concern include matters of political, social, or other concern to the community, even those that do not affect the general population. When determining whether content is within the sphere of legitimate public concern, allegedly defamatory statements can only be viewed in the context of the writing as a whole and courts must examine the content, form, and context of the statements. Statements falling into the realm of mere gossip and prurient interest are not matters of public concern nor are publications directed only to a limited, private audience" (*Aristocrat Plastic Surgery, P.C. v Silva*, 206 AD3d 26, 29-30 [1st Dept 2022] [citations, alterations, and internal quotation marks omitted]).

The Appellate Division, Second Judicial Department (hereinafter the Second Department) recently held that "Facebook . . . qualified as a 'public forum' as that term is used under the anti-SLAPP statute" (*Nelson v Ardrey*, ___ AD3d ___, ___, 2024 NY Slip Op 04147, *2 [2d Dept 2024]). The Second Department explained that "[a]n analysis of the legislative history of the anti-SLAPP statute reveals that the Legislature intended to include Facebook and other social media platforms within the meaning of public forum" (*id.* at *3). Based on the foregoing, the social media posts at issue here were made in a "public forum" for purposes of the anti-SLAPP statute.

The next step in analyzing Todaro's motion is determining whether the social media posts at issue here concern "an issue of public interest" or a "purely private matter" (Civil Rights Law § 76-a[1][d]).

Since the enactment of the 2020 amendments to the anti-SLAPP statute, a number of courts have found that statements accusing an individual of sexual assault were subject to the anti-SLAPP statute (*see e.g. LeMos v Uhlir*, 2024 NY Misc. LEXIS 3078, *9 [Sup Ct, Westchester County 2024] [holding that social media posts accusing the plaintiff of sexual assault and abuse were matters of public interest where the plaintiff was "a person who is heavily involved in the electronic music industry and nightlife community, who interacts with many other prominent people and organizations, performs in front of crowds, and has influence and connections"]; *Coleman v Grand*, 523 F Supp 3d 244, 260 [ED NY 2021] [an email regarding the sexual impropriety of the plaintiff, "a prominent musician of interest to the jazz community," and the power dynamics in the music industry "amid the rising tide of public concern over workplace sexual harassment known as the #MeToo movement," were matters of public interest for purposes of New York's anti-SLAPP statute]).

On August 7, 2024, the Second Department held in *Nelson v Ardrey* (___ AD3d ___; 2024 NY Slip Op 04147 [2d Dept 2024]) that social media posts accusing the plaintiff of sexual assault did not fall within the ambit of the anti-SLAPP statute. In *Nelson*, the defendants, Tyshawn Ardrey and Iriana Ardrey, posted a series of responses to a post on the personal Facebook page of the plaintiff, Glennis M. Nelson, alleging that the plaintiff had sexually abused Iriana Ardrey approximately 17 years prior when she was 4 years old (*see id.* at *1). The Second Department held that the action, which was to recover damages for defamation per se, was "not subject to the anti-SLAPP statute because the defendants' statements published on the plaintiff's Facebook page concerned 'a purely private matter' and were 'directed only to a limited, private audience'" (*id.* at *3 [citations omitted]).

Like the defendants in *Nelson*, although Todaro "made generic reference to issues of broad public interest, [her] primary focus was not an issue of broad public interest" (*id.*). Moreover, like the situation in *Nelson*, the social media posts at issue here are "private allegations of the plaintiff's alleged crimes" (*id.*). Under these circumstances, and guided by *Nelson*, it is this Court's determination that Todaro's social media posts are "not within the sphere of public interest" (*id.* at *4). Accordingly, those branches of Todaro's motion which are pursuant to CPLR 3211(a)(7) and (g) to dismiss the first and second causes of action, alleging defamation per se, defamation, libel per se, and libel (first cause of action) and defamation per se, defamation, slander per se, and slander (second cause of action) must be denied.

That branch of Todaro's motion which is pursuant to CPLR 3211(a)(7) to dismiss the third cause of action, alleging intentional infliction of emotional distress, must be granted. This cause of action is duplicative of the first two causes of action alleging, inter alia, defamation (see *Reeves v Associated Newspapers, Ltd.*, ___ AD3d ___, ___; 2024 NY Slip Op 04286, *4 [1st Dept 2024]; *Mees v Buiter*, 186 AD3d 1670, 1672 [2d Dept 2020]).

The parties' remaining contentions have been considered and do not warrant discussion.

Conclusion

Based on the foregoing, it is hereby

ORDERED that those branches of the defendant's motion which are pursuant to CPLR 3211(a)(7) and (g) to dismiss the first and second causes of action are **DENIED**; and it is further,

ORDERED that the branch of the defendant's motion which is pursuant to CPLR 3211(a)(7) to dismiss the third cause of action is **GRANTED**.

Any requests for relief not specifically granted herein are **DENIED**.

This shall constitute the decision and order of this Court.

Dated: October 8, 2024
Mineola, New York

ENTER:

HON. SARIKA KAPOOR, A.J.S.C.

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EXHIBIT B

CASE NO. 2024-10775

Nassau County Clerk's Index No. 602511/24

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND JUDICIAL DEPARTMENT

MILES VENTURA,

Plaintiff-Counterclaim-Defendant-Respondent,

—against—

JESSICA TODARO,

Defendant-Counterclaim-Plaintiff-Appellant.

BRIEF OF AMICI CURIAE NATIONAL WOMEN'S LAW CENTER & 35 SURVIVOR ADVOCATE ORGANIZATIONS IN SUPPORT OF APPELLANT

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PRELIMINARY STATEMENT

New York's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute, amended in 2020, applies to any public statement about "an issue of public interest." The statute directs that "an issue of public interest" should be "construed broadly" and encompasses "any subject other than a purely private matter." Civ. Rights Law §§ 76-a(1)(a), (d). Both state and federal courts in New York have repeatedly held that public allegations of sexual assault are matters of "public interest."

As public-facing allegations of sexual assault, defendant Jessica Todaro's statements and social media posts at issue in this case are unquestionably matters of public interest. She "publicly stated to numerous individuals" and wrote on the social media application Yik Yak that the plaintiff raped her. RA24, Compl. ¶¶ 74, 76-80.[1] She made the posts available to the public of Binghamton University, *see* RA7-8, Op. 5-6, and she wrote that "*people need to know* about this" and that

[1] Citations to "RAXX" are to the Record on Appeal.

she "wanted to *alert others* as to what happened and *'make sure' others were 'safe.'*" RA24, Compl. ¶ 80 (emphases added).

The trial court erred in casting these statements as "private allegations" outside the scope of New York's anti-SLAPP law. RA10, Op. 8. As numerous courts in New York—including the First Department and the Eastern and Southern Districts of New York—have held, this kind of public allegation of sexual abuse made to a community at large—including on social media platforms—is a statement on a matter of public interest and is therefore protected under the anti-SLAPP law's plain language.

Furthermore, even if the statute were ambiguous (and it is not), its legislative history and broader social context overwhelmingly show that the Legislature intended for the law to protect statements like Todaro's. Sexual assault is widely prevalent yet vastly underreported, and survivors who come forward commonly face retaliation, whether at school, in the workplace, or in the broader community. Since #MeToo went viral in 2017 and prompted more survivors to speak out and hold their assailants accountable, more and more assailants have been threatening and filing defamation suits to retaliate against their

victims or to prevent them from coming forward. The prospect of defending against such lawsuits, which can be invasive, traumatic, and prohibitively expensive, intimidates and coerces many survivors into silence instead.

Recognizing that the prior anti-SLAPP law was insufficient in protecting survivors' right to speech and public participation, the Legislature amended the law in 2020, proclaiming repeatedly in legislative memoranda, press releases, and other public statements that it intended to bring survivors under the law's protection. For example, when the bill passed, the Legislature's press release noted that it would remedy a "broken system" that had resulted in "survivors of sexual abuse and others being dragged through the courts on retaliatory legal challenges solely intended to silence them." New York State Legislature, Press Release, Senate and Assembly Majorities Advance Anti-SLAPP Legislation to Protect Free Speech (July 22, 2020), https://nyassembly.gov/Press/files/ 20200722a.php (hereinafter Legislature Press Release). Similarly, upon the bill's passage, its lead senate sponsor, Senator Brad Hoylman, stated that "[t]his bill is going

to protect survivors,"[2] and that "[s]urvivors in New York must be able to speak without threat of impoverishment and intimidation."[3]

Accordingly, this Court should reverse the trial court's erroneous decision and grant Todaro's anti-SLAPP motion.

ARGUMENT

I. By Its Plain Text, the Anti-SLAPP Law Applies Because Todaro's Post Alleging Sexual Violence Was "in Connection with an Issue of Public Interest."

New York's anti-SLAPP law applies to an "action involving public petition and participation," which includes "a claim based upon" a "communication in … a public forum in connection with an issue of public interest." Civ. Rights Law § 76-a(1)(a). "'Public interest,'" the statute makes clear, "shall be construed broadly, and shall mean *any* subject other than a purely private matter." *Id.* § 76-a(1)(d) (emphasis added). Notably, the Legislature drew the outer boundary of the law's

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[2] Senator Brad Hoylman (@bradhoylman), Twitter (July 22, 2020), https://twitter.com/bradhoylman/status/1286002032701210626?s=20 (hereinafter Hoylman Tweet #1).

[3] Senator Brad Hoylman (@bradhoylman), Twitter (July 22, 2020), https://twitter.com/bradhoylman/status/1286032867152334851?s=20 (hereinafter Hoylman Tweet #2).

protection at *purely* private matters. *See id.*; *see also* N.Y. Stat. § 231 (McKinney) ("In the construction of a statute, meaning and effect should be given to all its language, if possible, and words are not to be rejected as superfluous when it is practicable to give to each a distinct and separate meaning."). A public-facing report of sexual assault is in no sense "purely private"—it serves to warn and inform the community. Public-facing allegations of sexual violence like Todaro's are, therefore, issues of public interest, and the anti-SLAPP statute plainly protects them.

Unsurprisingly, New York courts have repeatedly recognized that public allegations of sexual and domestic violence are matters of "public interest." *See Reeves v. Associated Newspapers, Ltd.*, 232 A.D.3d 10, 19 (1st Dep't 2024) (anti-SLAPP law "provide[s] that 'public interest' shall be broadly construed," and "[m]anifestly, this includes allegations of domestic violence, as reported in [an] online article"); *Gillespie v. Kling*, 217 A.D.3d 566, 567, 80 (1st Dep't 2023) (defendant's statements made on a podcast "regarding the domestic violence she experienced … concerned 'an issue of public interest'"); *Carey v. Carey*, 74 Misc. 3d 1214(A), 2022 N.Y. Slip. Op. 50124(U), at *5 (Sup. Ct. N.Y. Cnty. 2022),

aff'd, 220 A.D.3d 477 (1st Dep't 2023) (allegations of domestic violence in a book are "a matter of legitimate public interest"). *See also Watson v. NY Doe 1*, No. 19-CV-533 (JGK), 2023 WL 6540662, at *5 (S.D.N.Y. Oct. 6, 2023) (social media messages and posts about sexual abuse in the advertising industry were of public interest); *Goldman v. Reddington*, No. 18-CV-3662(RPK)(ARL), 2021 WL 4099462, at *4 (E.D.N.Y. Sept. 9, 2021) (social media posts accusing plaintiff of sexual assault were of public interest); *Coleman v. Grand*, 523 F. Supp. 3d 244, 259 (E.D.N.Y. 2021) (open letter about sexual harassment in the music industry was of public interest).

In fact, a court in the Second Department recognized that posts in a private Facebook group called "Are We Dating The Same Guy? | Nassau Suffolk Long Island" criticizing an individual as a romantic partner were "a matter of public concern for purposes of New York's anti-SLAPP statute." *Acosta v. Vann*, 83 Misc. 3d 1217(A), 2024 N.Y. Slip Op. 50740(U), at *5 (Sup. Ct. Nassau Cnty. 2024). These rulings are consistent with not only the Legislature's clear intent, *see infra* at Part II.C, but also the fact that reports of sexual and domestic abuse—

or even just misconduct—are of public interest because they warn potential victims and educate the public.[4]

Of course, as this Court held in *Nelson v. Ardrey*, 231 A.D.3d 179, 185 (2d Dep't 2024), if the allegations are not made public, they may remain purely private. In *Nelson*, the defendants accused the plaintiff of child sexual abuse on the plaintiff's Facebook page within the "limited, private audience" of the plaintiff and his friends. *Id*. The defendants buried the accusations in responses to a post about the plaintiff's daughter's birthday. This Court held Facebook qualified as a "public forum" for purposes of the anti-SLAPP statute. *Id*. at 183. But "[u]nder these circumstances," the Court emphasized, where the "defendants made these statements on what was a limited personal Facebook post concerning the birthday of the plaintiff's daughter and not on a forum of broader scope," the statements were "private allegations." *Id*. at 185

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[4] *See, e.g.*, David Oliver, *What 'The Red Zone' on college campuses teaches us about sexual assault*, USA Today (Aug. 11, 2023), https://www.usatoday.com/story/life/health-wellness/2023/08/11/sexual-assault-college-campus-red-zone/70484634007 (discussing prevalence of sexual assault on college campuses; outlining strategies for mitigating it).

(quotation omitted). These responses on Facebook were, essentially, the equivalent of guests at a private birthday party held in a public park accusing the host of sexual assault—the broader setting may have been public, but the statements were confined to a private audience. *Nelson*, therefore, stands for the proposition that even if remarks are on a topic of great public interest—like child sexual abuse—they can stay "purely private" if aimed at a sufficiently private audience.

Todaro's public-facing social media posts and statements alleging that Ventura raped her are exactly the kind of reports the anti-SLAPP law protects. They were addressed through the social media application YikYak to the public of Binghamton University. *See* RA 7-8, Op.5-6. As Todaro explicitly stated, she intended them to serve as warnings to others in the community because "people need to know about this" and "she wanted to alert others as to what happened and 'make sure' others were 'safe.'" RA24, Compl. ¶¶ 79-80. As their text underscores, the allegations were sent, and explicitly addressed, to "people" generally—i.e., the public. *Id*. If the remarks in *Nelson* were like accusations leveled in a private party in a public park, Todaro's were like flyers posted throughout the park. This case is therefore no different from the

many others in which courts have recognized that accusations of sexual abuse made to a community at large are matters of public interest. *See supra* at 9-10.

II. Legislative History and Context Show That the Legislature Intended the Anti-SLAPP Law to Apply to Statements like Todaro's.

Millions of people in New York and across the United States are sexually assaulted in their lifetime, but very few survivors come forward to seek help, and those who do frequently face retaliation. To make matters worse, sexual assailants have increasingly targeted their victims with retaliatory defamation lawsuits, effectively silencing many survivors from speaking out altogether. Against this backdrop, the Legislature took decisive action in 2020, expressly announcing its intent to "protect survivors"[5] and amending New York's anti-SLAPP statute to prevent "survivors of sexual abuse and others [from] being dragged through the courts on retaliatory legal challenges solely intended to silence them." Legislature Press Release, *supra*. It is unmistakably

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[5] Hoylman Tweet #1, *supra* note 2.

clear that the Legislature intended for the anti-SLAPP law to protect statements alleging sexual assault like Todaro's.

A. Sexual Assault Is Common Yet Underreported, and Survivors Routinely Face Retaliation.

Although sexual assault is extraordinarily commonplace, very few survivors report it. When a survivor is courageous enough to come forward, they face a high risk of retaliation—whether from their institutions, communities, or assailants. Unfortunately, the myth persists that false accusations of sexual assault are rampant, despite the reality that they are exceedingly rare.

1. Sexual Assault Is Pervasive but Vastly Underreported.

Sexual assault is not just an everyday occurrence—it is almost an every-*minute* occurrence. Every sixty-eight seconds, someone in the United States is sexually assaulted.[6] The CDC estimates that in the United States, 54% of women and 31% of men experience some form of

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[6] *Victims of Sexual Violence: Statistics*, Rape, Abuse & Incest National Network, https://rainn.org/statistics/victims-sexual-violence (last visited Mar. 6, 2025) (hereinafter RAINN Statistics).

sexual violence in their lifetime.[7] In New York State, nearly 4.4 million women have been victims of sexual violence, including 2.2 million victims of completed or attempted rape.[8] Sexual assault has remained at those same epidemic levels for decades.[9]

Sexual assault impacts people of all ages. An NWLC study found that in 2017, 21% of girls ages fourteen to eighteen had been kissed or touched without their consent.[10] Among undergraduates, approximately

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[7] Ctrs. for Disease Control & Prevention, *National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence* 3 (June 2022), https://web.archive.org/web/20250130113405/https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualViolence.pdf.

[8] Ctrs. for Disease Control & Prevention, *National Intimate Partner and Sexual Violence Survey: 2016/2017 State Report* 25-26 (Dec. 2023), https://web.archive.org/web/20241206151940/https://www.cdc.gov/nisvs/documentation/NISVS-2016-2017-State-Report-508.pdf.

[9] See Patricia Tjaden *et al.*, *Prevalence, Incidence, and Consequence of Violence Against Women: Findings from the National Violence Against Women Survey* 3 (1998), https://www.ojp.gov/pdffiles/172837.pdf.

[10] Kayla Patrick & Neena Chaudhry, NWLC, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence* 1 (2017), https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_HarassmentViolence-1.pdf (hereinafter *Stopping School Pushout*).

one in four women, one in five transgender and nonbinary students, and one in fifteen men have been sexually assaulted since enrolling.[11] More than 70% of undergraduate survivors reported, as Todaro did, that they were assaulted by a fellow student.[12] It is no surprise that this harassment continues unabated in the workplace. Anywhere from 25% to 85% of women have experienced sex harassment in the workplace, with Black women filing sex harassment charges with the Equal Employment Opportunity Commission ("EEOC") at three times the rate of white women.[13]

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[11] David Cantor *et al.*, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, at, ix, A7-5, A7-7, A7-9 (revised Jan. 17, 2020), https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf (hereinafter *AAU Survey*).

[12] *Id.* at A7-19.

[13] Amanda Rossie *et al.*, NWLC, *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women* 5, 12 (Aug. 2018), https://nwlc.org/wp-content/uploads/2018/08/SexualHarassmentReport.pdf.

Despite these extraordinarily high rates of victimization, most survivors do not come forward. The Department of Justice estimates that only one in five sexual assaults are reported to the police.[14] Among girls ages fourteen to eighteen who are kissed or touched without their consent, just 2% report it to their schools.[15] Among college survivors of sexual assault, only about one in eight women, one in five transgender and nonbinary students, and one in ten men contacted a school program or resource about it.[16] In the workplace, only an estimated 6–13% of sex harassment victims file a formal complaint with their employer.[17]

There are numerous reasons why survivors overwhelmingly do not feel safe coming forward. For example, many students do not inform

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[14] Susannah Tapp & Emilie Coen, Dep't of Just., Bureau of Just. Stats., *Criminal Victimization, 2023*, 6 (Sept. 2023), https://bjs.ojp.gov/document/cv23.pdf.

[15] *Stopping School Pushout*, *supra* note 10, at 2.

[16] *AAU Survey*, *supra* note 11, at A7-27, A7-30.

[17] *Select Task Force on the Study of Harassment in the Workplace*, EEOC, II.C (June 2016), https://www.eeoc.gov/select-task-force-study-harassment-workplace.

their schools about sexual assault or dating violence because of shame and embarrassment, fear of not being believed, and fear of retaliation.[18] Victims of workplace sex harassment under-report for many of the same reasons, including fear of retaliation.[19] Similarly, the number one reason women who experience sexual assault do not go to the police is fear of reprisal.[20]

2. Survivors Who Report Sexual Assault Routinely Face Retaliation.

Tragically, concerns about retaliation are well founded. Schools frequently suspend or even expel student survivors for physically defending themselves against an assailant, "acting out" (*i.e.*, expressing typical symptoms of trauma), telling other students about the assault,

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[18] *AAU Survey*, *supra* note 11, at A7-27–A7-33, A7-92–A7-93.

[19] Jasmine Tucker & Jennifer Mondino, NWLC, *Coming Forward: Key Trends and Data from the TIME'S UP Legal Defense Fund* 11 (2020), https://nwlc.org/wp-content/uploads/2020/10/NWLC-Intake-Report_FINAL_2020-10-13.pdf (hereinafter *Coming Forward*).

[20] *Female Victims of Sexual Violence, 1994–2010*, Dep't of Justice - Bureau of Justice Statistics, 7 (revised May 31, 2016), https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf.

or engaging in what the school determines to be "consensual" sexual activity with their assailant.[21] Assailants often target student survivors with retaliatory, frivolous cross-complaints of "harassment," which then result in disciplinary actions against the survivor.[22] In a disturbing number of cases, abusers have falsely reported their victims as actively suicidal and in need of a police "wellness check"—or worse.[23] Similarly, in the workplace, retaliation is by far the most common type of discrimination reported to the EEOC, comprising more than half of all EEOC charges in every year from 2018 to 2023.[24]

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[21] *See*, *e.g.*, Sarah Nesbitt & Sage Carson, Know Your IX, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout* 15–16, 24 (2021), https://www.advocatesforyouth.org/wp-content/uploads/2024/06/Know-Your-IX-2021-Cost-of-Reporting.pdf (hereinafter *Cost of Reporting*).

[22] *Id.* at 18–19 (describing different survivors' experiences of retaliatory cross-complaints, including an incident where a student, after being found responsible for rape and strangulation and losing his appeal, filed a cross-complaint against his victim, accusing her of raping him during the same encounter that he had previously claimed was consensual).

[23] *Id.* at 20.

[24] *Enforcement and Litigation Statistics*, *Charge Statistics*, *Charge Receipts: Retaliation-Based*, EEOC,

New York has long recognized the problem of underreporting of sexual assault and declared a strong interest in addressing it. In 1991, Governor Mario Cuomo signed into law an amendment to Civil Rights Law § 50-c, creating a private right of action for sexual assault survivors whose identities are disclosed by public employees, noting that "sexual offenses are vastly underreported."[25] In 2015, Governor Andrew Cuomo signed into law what he called "the most aggressive policy in the nation" to combat sexual assault on college campuses, including strengthened reporting procedures to make it easier for victims to report to campus or local law enforcement.[26]

Nonetheless, *not* reporting remains the safest choice for many victims. If a survivor is courageous enough to come forward, they almost

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https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0 (last visited Mar. 6, 2025).

[25] Governor's Mem. approving L. 1991, ch. 346, 1991 Legis. Ann. at 129–130; *see also Doe v New York Univ.*, 6 Misc. 3d 866, 880 (Sup. Ct., N.Y. Cnty. 2004).

[26] Office of the Governor, Press Release, *Governor Cuomo Signs "Enough Is Enough" Legislation to Combat Sexual Assault on College and University Campuses* (July 7, 2015), https://on.ny.gov/3ZZeSEh.

inevitably risk retaliation—not only from their schools, workplaces, and communities, but also from their abusers. And as discussed in greater detail in Part II.B, sexual assailants are increasingly filing or threatening to file SLAPPs, including defamation suits, as a tool for retaliation. The trial court's ruling—if not reversed—will only exacerbate underreporting by allowing sexual assailants to threaten and silence their victims with defamation lawsuits without fearing having to pay attorneys' fees or damages for filing a meritless suit. The lack of an ability to award fees, moreover, deters counsel from representing targets of abusive, meritless defamation lawsuits.

3. False Accusations are Vanishingly Rare—and the Anti-SLAPP Statute Merely Requires a Showing of Substantial Merit for Claims to Proceed in Any Event.

Ventura argues that the anti-SLAPP statute should not apply here because he was falsely accused of sexual assault. To start, extensive scholarship shows that malicious, false allegations of sexual assault are vanishingly rare. And, in any event, that is no reason to ignore the anti-SLAPP statute's protections. The anti-SLAPP statute is not a complete immunity from suit—it is merely a requirement that plaintiffs in claims affecting the public interest show that their claims

have substantial merit early on or else face the risk of attorneys' fees and costs.

Despite the myth that false accusations of sexual assault are rampant, research shows the opposite. In studies of false police reports, researchers found that police often misclassified reports of sexual assault as "false" merely because they could not substantiate the alleged assault or because they unjustifiably assumed the victim was lying due to their being intoxicated, being mentally ill, delaying reporting, or being assaulted by an acquaintance or intimate partner instead of a stranger.[27] In one of the largest and most methodologically rigorous studies on false reports, researchers found that British police relied on these types of biases to classify 8% of 2,643 reports of sexual assault as "false," whereas researchers concluded the actual rate of false reports was only 2.5%.[28] In other words, nearly 70% of those supposedly

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[27] David Lisak *et al.*, *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 Violence Against Women 1318 (2010), https://journals.sagepub.com/doi/10.1177/1077801210387747.

[28] Kimberly A. Lonsway *et al.*, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-stranger Sexual Assault* 3 (2009), https://www.semanticscholar.org/paper/False-reports%3A-

"false" reports were in fact credible, and victims are far more likely to be *falsely accused* of making a false accusation of sexual assault than to make an *actual* false accusation of sexual assault.[29] The fear of false allegations, in the context of sexual assault, is thus highly misplaced.

Concern about false accusations is further undermined by data showing that the vast majority of sexual assaults are not reported to police—or to anyone.[30] Taking the total number of sexual assaults (both reported and unreported) into account, the actual rate of false accusations becomes infinitesimal—one study estimated it to be 0.5%.[31]

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moving-beyond-the-issue-to-and-Lonsway-Archambault/13bf00955f236611987d6d345f4c227878b42ec6.

[29] Ventura repeatedly claims that the university "exonerated" him. RA14, Compl. ¶ 5. But the university only concluded it was "unable to determine what was agreed upon between both students, and … was unable to gather enough information to find [him] responsible for sexual assault. [It] did not conclude that Todaro's allegations of sexual assault were false or that she lied about her belief that Ventura had repeatedly assaulted her." RA48-49, Todaro Mem. of L. in Supp. of Mot. to Dismiss Compl. at 6–7 (citing RA76, Todaro Aff. ¶¶ 61–63)

[30] *See supra* notes 14-17 and accompanying text.

[31] Joanne Belknap, *Rape: Too Hard to Report and Too Easy to Discredit Victims*, 16 Violence Against Women 1335 (2010),

Nonetheless, the myth persists that false accusations of sexual assault are ubiquitous. One reason may be that many people genuinely do not understand what rape is. For example, a 2014 survey of college men found that 18% of survey respondents would not "rape a woman" even if "nobody would ever know and there wouldn't be any consequences" but would "force a woman to [have] sexual intercourse" (*i.e.*, rape) under the same circumstances.[32] In other words, people can rape while genuinely believing themselves incapable of rape. The reality is that people are far more likely to be victims of sexual assault than to be falsely accused of it.

In any event, the anti-SLAPP law does not shield the vanishingly small percentage of genuinely false accusations of sexual assault from liability. Defamation plaintiffs can still prevail against an anti-SLAPP motion if they can establish by clear and convincing evidence that the

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https://www.ojp.gov/ncjrs/virtual-library/abstracts/rape-too-hard-report-and-too-easy-discredit-victims.

[32] Victoria Bekiempis, *When Campus Rapists Don't Think They're Rapists*, Newsweek (Jan. 9, 2015; last updated Mar. 12, 2016), https://www.newsweek.com/campus-rapists-and-semantics-297463.

defendant made the allegedly false statement with actual malice—*i.e.*, with knowledge or reckless disregard that the statement was false. Civ. Rights Law § 76-a(2). Thus, the anti-SLAPP statute does not bar meritorious claims; it merely requires plaintiffs bringing claims affecting the public interest—including defamation claims against sexual assault survivors—to show their claims are indeed meritorious and not retaliatory.

B. Sexual Assailants Are Increasingly Using Defamation Lawsuits to SLAPP Their Victims.

Harassers and assailants are increasingly using defamation suits and other SLAPPs to coerce their victims into withdrawing their claims or to deter them from reporting in the first place. By inflicting or threatening costly, invasive, and traumatic litigation, and by raising the specter of continued abuse through the litigation process itself, harassers and assailants can effectively silence and bar their victims from public participation on the flimsiest of pretexts.

1. Retaliatory Defamation Suits and Other SLAPPs Are Increasingly Being Weaponized Against Survivors.

Dubbed the "legal backlash to the MeToo movement,"[33] retaliatory defamation lawsuits against survivors of sexual assault have increased at alarming rates in the past decade, as more survivors spoke out and as cultural pressure for abusers to face consequences grew after #MeToo went viral in fall 2017.[34] In December 2017, a lawyer for the Victim Rights Law Center remarked that threats of defamation lawsuits against sexual assault survivors had risen from 5% of her caseload a

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[33] Madison Pauly, *She Said, He Sued*, Mother Jones (Mar./Apr. 2020), https://www.motherjones.com/criminal-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/ (hereinafter *She Said, He Sued*).

[34] In response to an outpouring of requests from survivors who were targeted by retaliatory defamation suits and other SLAPPs, NWLC created a toolkit to help survivors, including students and workers, better understand these baseless lawsuits and how to defend against them. Elizabeth Tang *et al.*, NWLC, *Survivors Speaking Out: A Toolkit About Defamation Lawsuits and Other Retaliation By and For People Speaking Out About Sex-Based Harassment* (Aug. 9, 2023), https://nwlc.org/resource/survivors-speaking-out-toolkit-defamation-retaliation/.

few years prior to over half of it.[35] In 2020, another attorney reported that, prior to 2017, he had received inquiries twice a year from survivors who feared retaliatory defamation suits, but now he received such inquiries every two weeks.[36] In 2021, a study found that 23% of surveyed student survivors were threatened with a defamation suit by their assailant, and 19% were warned by their school of the possibility of a defamation suit.[37] Similarly, a 2020 NWLC report found that being sued for defamation is the third most common form of workplace retaliation reported by survivors.[38]

Defamation lawsuits have also been increasingly weaponized by a diverse range of abusers. Before the #MeToo movement went viral in

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[35] Tyler Kingkade, *As More College Students Say "Me Too," Accused Men Are Suing For Defamation*, Buzzfeed News (Dec. 5, 2017, 11:26 AM), https://www.buzzfeednews.com/article/tylerkingkade/as-more-college-students-say-me-too-accused-men-are-suing (hereinafter *Accused Men Are Suing*).

[36] *She Said, He Sued*, *supra* note 33.

[37] *Cost of Reporting*, *supra* note 21, at 21.

[38] *Coming Forward*, *supra* note 19, at 13.

fall 2017, most defamation lawsuits targeting survivors were campus based, with nearly three in four filed by male college students and faculty who had been reported for sex harassment or assault.[39] Since then, defamation suits by reported harassers have increased rapidly, with three in four now filed by non-students, such as employees, politicians, professional athletes, and celebrities.[40]

Sexual assailants are filing other types of SLAPPs against their victims as well. For instance, in a high-profile incident, a California state lawmaker sued a state lobbyist for intentional infliction of emotional distress as well as defamation after the lobbyist reported the lawmaker's sexual misconduct.[41] Sexual harassers who lose their jobs after being reported for misconduct are also suing their victims for tortious interference with contractual or business relations.[42]

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[39] *She Said, He Sued*, *supra* note 33.

[40] *Id.*

[41] *Id.*

[42] *E.g.*, *Accused Men Are Suing*, *supra* note 35.

These retaliatory lawsuits have become a core part of abusers' playbook to deny the abuse, attack their victims' credibility, and cast themselves as the real "victim"—a tactic psychologists term DARVO (Deny, Attack, Reverse Victim and Offender).[43] DARVO is a well-known arrow in the sexual assailant's quiver. One study of incarcerated rapists found that 59% of them flatly denied the rape and 31% claimed their victim had "lured" or "seduced" them.[44] Another study of sexual abuse survivors who confronted their rapists found that 44% of abusers denied the abuse altogether and smeared their victims as "crazy."[45] In a recent study of college women who had been sexually assaulted, more than

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[43] Sarah J. Harsey & Jennifer J. Freyd, *Defamation and DARVO*, 23(5) J. Trauma & Dissociation 481, 482 (2022) (hereinafter *Defamation and DARVO*).

[44] Sarah J. Harsey *et al.*, *Perpetrator Responses to Victim Confrontation: DARVO and Victim Self-Blame*, 26(6) J. Aggression, Maltreatment & Trauma 644, 646 (2017).

[45] *Id.* at 647.

half of their assailants deployed DARVO tactics in post-assault contact.[46]

Unfortunately, DARVO works. An experiment showed third-party observers exposed to DARVO are more likely to perceive the perpetrator as less abusive and less responsible and more likely to view the victim as less credible, more abusive, and more responsible for their own victimization.[47] And by reversing the traditional roles of victim-plaintiff and harmer-defendant, this is what retaliatory defamation suits do.

The epidemic of these suits against survivors in the United States has become so rampant that United Nations officials have repeatedly condemned it. In 2018, the U.N. Special Rapporteur on Violence Against Women called the act of threatening survivors with legal proceedings "a form of G[ender] B[ased] V[iolence] in and of itself."[48] In

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[46] *Defamation and DARVO*, *supra* note 43, at 482.

[47] *Id.* at 482.

[48] Jorie Dugan, *Defamation Lawsuits: Another Tactic to Silence Survivors*, Ms. Magazine (Jan. 18, 2022), https://msmagazine.com/2022/01/18/defamation-lawsuit-sexual-assault-rape-me-too.

2021, the U.N. Special Rapporteur on Freedom of Expression described the weaponization of defamation suits against women like Todaro "who publicly denounce alleged perpetrators of sexual violence online" as "a perverse twist in the #MeToo age."[49]

It bears noting that #MeToo went viral after the decades-long conspiracy of silence surrounding Harvey Weinstein's horrific sexual abuse of dozens of women finally came to light. At the core of this silence was a conspiracy of litigators. When the dam finally broke, countless articles and two book-length accounts detailed how threats of defamation suits and other SLAPPs succeeded in suppressing the truth for years.[50]

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[49] Irene Khan, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/76/258 (July 30, 2021), https://undocs.org/en/A/76/258.

[50] *See generally* Jodi Kantor & Megan Twohey, *She Said: Breaking the Sexual Harassment Story That Helped Ignite A Movement* (2019); Ronan Farrow, *Catch and Kill: Lies, Spies, and a Conspiracy to Protect Predators* (2019). *See also* Neil Fulton, Book Review, *All the News That's Fit to Hide: Sexual Assault and Silence in Hollywood and the Lawyers Who Let It Happen*, 40 Loy. L.A. Ent. L. Rev. 395 (2020) (discussing the legal ethics implications of the conduct by lawyers discussed in *Catch and Kill*).

Just as Weinstein did not necessarily expect to win his SLAPPs, harassers and assailants generally do not expect to win theirs. After all, these suits are meritless. But, as detailed further in Parts II.B.2-3, SLAPP plaintiffs harness the financial and psychological costs of defending against these suits to suppress the survivor-defendant's ability to speak out publicly about the harassment or to seek help from their school, employer, and other institutions, including the civil and criminal legal systems. Like corporations, politicians, and others who file SLAPPs against whistleblowers, harassers and assailants aim to devastate their victims financially, chill their right to public participation, and continue the cycle of abuse.[51] For serial harassers, pursuing a defamation suit or other SLAPP against one victim also sends a clear, threatening message to other victims that they will face the same retaliatory response if they come forward.

This alarming trend has captured the attention of lawmakers in states across the country, including New York, resulting in the

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[51] *See*, *e.g.*, Alyssa R. Leader, *A "SLAPP" in the Face of Free Speech: Protecting Survivors' Rights to Speak Up in the "Me Too" Era*, 17 First Am. L. Rev. 441, 447–48 (2019) (hereinafter *"SLAPP" in the Face*).

introduction and passage of several laws in the last few years to explicitly protect survivors from being targeted by defamation and other abusive lawsuits. *See* NY LEGIS 250 (2020), 2020 Sess. Law News of N.Y. Ch. 250 (A. 5991-A) (McKinney's) (extending anti-SLAPP law to protect more people, including survivors); *see also* Cal. Civ. Code § 47.1 (2023) (creating privilege for statements made without malice about "sexual assault, harassment, or discrimination"); R.I. Gen. Laws Ann. § 8-8.4-1 *et seq.* (2023) (allowing survivors to request a court order restricting abusive litigation); Vt. Stat. Ann. § 1181 *et seq.* (2023) (same); Wash. Rev. Code Ann. § 26.51.010 *et seq.* (2020) (same); Tenn. Code Ann. § 29-41-101 *et seq.* (2018) (same); HB 7134, 2025 Gen. Assemb. (Conn. 2025) (amending anti-SLAPP law to explicitly protect survivors); HD 3973, 194th Gen. Ct. (Mass. 2025) (creating privilege for statements made without malice about "sexual assault, harassment, or discrimination"); SB 549 & HB 629, 447th Gen. Assemb. (Md. 2025) (protecting allegations of "sexually assaultive behavior" made without malice, intent, or reckless disregard from civil liability).

2. Defending Against Defamation Lawsuits and Other SLAPPs Is Prohibitively Expensive, Which Effectively Silences Many Victims.

The significant financial cost of defending against a SLAPP means that the baseless nature of these suits does not detract from their power to silence survivors or coerce them into withdrawing their claims. Even if a survivor-defendant can eventually recover litigation costs at the end of a SLAPP, most do not have the resources to litigate cases to their conclusion. A typical meritless defamation lawsuit costs $21,000 to $55,000 to defeat and can easily soar into six or seven figures.[52] Low-paid workers are doubly vulnerable to abusive lawsuits because they are both more likely to be harassed and less able to afford an attorney to defend against aggressive litigation.[53]

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[52] *See*, *e.g.*, David Keating, *Estimating the Cost of Fighting a SLAPP in a State with No Anti-SLAPP Law*, Inst. For Free Speech (June 16, 2022), https://www.ifs.org/blog/estimating-the-cost-of-fighting-a-slapp-in-a-state-with-no-anti-slapp-law/.

[53] *See* Alieza Durana *et al.*, *Sexual Harassment: A Severe and Pervasive Problem - Making Ends Meet in the Margins: Female-Dominated, Low-Wage Sectors*, New America, https://www.newamerica.org/better-life-lab/reports/sexual-harassment-severe-and-pervasive-problem/making-ends-meet-in-the-margins-female-dominated-low-wage-sectors/ (last visited Mar. 6, 2025) ("[w]orkers in low-wage, female-dominated

Survivors are also less able to shoulder the costs of defending against SLAPPs because they must contend with the often-enormous economic costs of the underlying abuse. In 2017, the lifetime cost of rape—including medical care, lost work productivity, and other economic consequences—was estimated at $122,461 per survivor, resulting in a lifetime economic burden of $3.1 trillion for all rape survivors.[54] In many cases, the financial toll can be much higher. Two workplace harassment victims who were profiled in a 2021 report suffered lifetime losses of $605,995 and $1.3 million, including lost wages, job benefits, pension value, and Social Security benefits.[55] Another victim who was forced to leave her skilled trades

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industries have the highest reported incidences of sexual harassment and assault by sector[,]" including from "customers, vendors, and clients").

[54] Cora Peterson *et al.*, *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 Am. J. Preventative Med. 691, 697 (2017).

[55] Ariane Hegewisch *et al.*, *Paying Today and Tomorrow: Charting the Financial Costs of Workplace Sexual Harassment*, Inst. for Women's Policy Rsch. & TIME'S UP Found., 13–15 (2021), https://iwpr.org/wp-content/uploads/2021/07/Paying-Today-and-Tomorrow_Charting-the-Financial-Costs-of-Workplace-Sexual-Harassment_FINAL.pdf.

apprenticeship and was unemployed for over a year afterwards incurred a lifetime loss of $230,864.[56]

The prospect of defending against an expensive defamation suit or other SLAPP effectively extorts many survivors into remaining silent or retracting their claims. It can even force them into withdrawing their own separate litigation against their harasser or abuser—such as a petition for sole custody of shared children, claims to property in a divorce, or a lawsuit alleging sexual assault—simply because they cannot afford to both pursue and defend litigation in court. As a result, SLAPPs sharply undermine the effectiveness of legal protections against sexual assault and other forms of gender-based violence.

3. The Invasive and Traumatic Nature of SLAPPs Harms Survivors and Deters Them from Speaking Out.

Another reason SLAPPs like defamation lawsuits are so effective at silencing survivors is that they force survivors to disclose intensely private details and to repeatedly relive their trauma through invasive discovery and other litigation demands. In these lawsuits, the abuser-

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[56] *Id.* at 24.

plaintiff may be able to access a victim's medical records, student records, and even sexual history.[57]

In addition, repeated questioning through litigation can exacerbate trauma, inhibiting a survivor's healing process.[58] On top of physical injuries, survivors often suffer from impaired psychological well-being stemming from the abuse, including anxiety, depression, and post-traumatic stress disorder (PTSD). Among women who are raped, 94% experience PTSD symptoms in the following two weeks; 30% report PTSD symptoms nine months afterwards; 33% contemplate suicide; and 13% attempt suicide.[59] When survivors must repeatedly recount their experience of an assault in defending against a defamation suit or other SLAPP, they are forced to reopen those emotional wounds, which

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[57] Kylie Cheung, *Campus Sexual Assault Survivors Have Always Feared Defamation Lawsuits*, Jezebel (June 2, 2022, 7:55 PM), https://www.jezebel.com/campus-sexual-assault-survivors-have-always-feared-defa-1849010239.

[58] *See* Gary Fulcher, *Litigation-Induced Trauma Sensitisation (LITS)—A Potential Negative Outcome of the Process of Litigation*, 11 Psychiatry, Psych. & L. 79, 82 (2004).

[59] *See*, *e.g.*, RAINN Statistics, *supra* note 6.

compounds their underlying trauma[60] and can also make it harder to testify in an underlying suit alleging sexual assault or other gender-based violence. That the litigation's objective is to deny the survivor's very experience of abuse can only deepen that trauma.

Perhaps most troubling of all, survivors must endure continued unwanted interaction with their assailant throughout the litigation process. This can include being forced to testify at a deposition or trial within feet of the person who harmed them.[61] It is no surprise that some survivors have likened the experience of being subjected to such abusive litigation to "being tortured."[62]

Indeed, in overturning a lower court ruling similar to the one at issue here, the First Department noted:

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[60] *See*, *e.g.*, Bryce Covert, *Years after #MeToo, Defamation Cases Increasingly Target Victims Who Can't Afford to Speak Out*, Intercept (July 22, 2023, 6:00 AM), https://theintercept.com/2023/07/22/metoo-defamation-lawsuits-slapp (hereinafter *Years after #MeToo*) ("It also meant she had to keep reliving what had happened to her, recounting the story over and over again to lawyers, after she had just started to get better at not thinking about it.").

[61] *"SLAPP" in the Face*, *supra* note 51, at 448.

[62] *Years after #MeToo*, *supra* note 60.

> It does not escape us that defamation suits like the instant one may constitute a form of retaliation against those with the courage to speak out; most victims cannot afford years of litigation, nor do they wish to have their personal information disclosed through invasive discovery or to relive their personal trauma through litigation, including depositions, filings, and testimony in court. They do not wish to endure continued unwanted interaction with the person alleged to have assaulted them through the litigation process.
>
> The lower court's holding has the effect of … emboldening sexual assaulters who seek to weaponize the legal system in order to silence their victims.

Sagaille v. Carrega, 194 A.D.3d 92, 94 (1st Dep't 2021). The Legislature did not intend such a result when it enacted and then later amended the state's anti-SLAPP law.

C. The Legislature Acted to Redress Use of the Courts as Instruments of Abuse.

The Legislature made no secret of the fact that it amended the state's anti-SLAPP law in 2020 to protect survivors from assailants seeking to weaponize the courts against them. When celebrating the bill's passage, the lead senate sponsor, Senator Brad Hoylman, promised: "This bill is going to protect survivors."[63] "Survivors in New

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[63] Hoylman Tweet #1, *supra* note 2.

York," he said, "must be able to speak without threat of impoverishment and intimidation."[64] He also indicated in his sponsor's memorandum that the bill's purpose was to "better advance the purposes that the Legislature originally identified in enacting New York's anti-SLAPP law" and to remedy the fact that the prior law had been "narrowly interpreted by the courts." S.52A Sponsor Mem. of Sen. Hoylman (July 22, 2020), https://www.nysenate.gov/ legislation/bills/2019/S52 (hereinafter Hoylman Sponsor Mem.).

A joint press release by both chambers of the Legislature echoed this, calling New York's previous libel law a "broken system" that had led to "survivors of sexual abuse and others being dragged through the courts on retaliatory legal challenges solely intended to silence them." Legislature Press Release, *supra*. With the passage of the 2020 amendments, the Legislature proclaimed that it would protect all New Yorkers, including survivors, "expressing themselves on matters of

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[64] Hoylman Tweet #2, *supra* note 3.

public interest from bad actors who weaponize the civil justice system by filing baseless lawsuits intended to silence and bankrupt."[65]

This Court may—and should—take into account the Legislature's purpose here, which was to ensure that statements alleging sexual assault like Todaro's would fall within the ambit of the anti-SLAPP law's protections. N.Y. Stat. § 124 ("In ascertaining the purpose and applicability of a statute, it is proper to consider the legislative history of the act, the circumstances surrounding the statute's passage, and the history of the times."); *id.* § 95 ("The courts in construing a statute should consider the mischief sought to be remedied by the new legislation, and they should construe the act in question so as to suppress the evil and advance the remedy."); *id.* § 96 ("A basic consideration in the interpretation of a statute is the general spirit and purpose underlying its enactment, and that construction is to be preferred which furthers the object, spirit and purpose of the statute."); *id.* § 321 ("Generally, remedial statutes are liberally construed to carry out the reforms intended and to promote justice.").

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[65] *Id.*

Indeed, New York courts have repeatedly recognized the Legislature's intent to extend anti-SLAPP remedies to survivors. For example, in a 2023 anti-SLAPP decision, a trial court quoted extensively from the Legislature's joint press release on the 2020 bill, which expressly stated that the amended anti-SLAPP statute protects "survivors of sexual abuse." *Trump v. Trump*, 79 Misc. 3d 866, 874 (Sup. Ct. N.Y. Cnty. 2023) (quoting Legislature Press Release, *supra*). Similarly, in 2024, this Court noted that "[t]he 2020 amendments to the Civil Rights Law expanded the pool of parties that may raise anti-SLAPP defenses, counterclaims, and cross-claims in their actions, now including journalists, consumer advocates, *survivors of sexual abuse*, and others." *VIP Pet Grooming Studio, Inc. v. Sproule*, 224 A.D.3d 78, 83 (2d Dep't 2024) (emphasis added).

The trial court's decision here wholly misapprehends the Legislature's intent and misapplies *Nelson*. The Legislature instructed courts to stop allowing themselves to be weaponized by those accused of sexual assault and gave them a tool to do so. The Second Department reaffirmed this intent, finding narrowly that accusations of sexual assault may not fall under the anti-SLAPP statute where they are

"directed only to a limited, private audience" like a single Facebook post on the plaintiff's page and not a social media "forum of broader scope." But the trial court defied the Legislature's instruction, misconstrued the Second Department's decision, and allowed the courts to be weaponized against Todaro, simply because she spoke about her victimization on a social media platform, and irrespective of the nature and scope of the audience for her posts. The ruling below ignores both that the Legislature intended public-facing allegations of sexual violence to qualify as issues of public interest and that social media is one of the most effective ways for survivors to reach the public when "expressing themselves on matters of public interest." *See Gillespie*, 217 A.D.3d 566 at 567 (podcast); *Acosta*, 83 Misc. 3d 1217(A) (Facebook); *see also Watson*, 2023 WL 6540662 at *5 (Instagram and Facebook); *Goldman*, 2021 WL 4099462 at *4 (Facebook and LinkedIn); *see* Legislature Press Release, *supra.* If allowed to stand, the trial court's decision means that the anti-SLAPP law will continue to be "narrowly interpreted by the courts" against survivors—the very problem that the Legislature enacted the 2020 amendments to fix. Hoylman Sponsor Mem., *supra*.

CONCLUSION

For the above reasons, amici respectfully urge this Court to reverse the trial court's decision and grant Todaro's special motion to dismiss.

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Respectfully submitted,

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