

## **APPENDIX**

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**APPENDIX A**

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19-851-cv  
Leidig v. BuzzFeed, Inc.

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**No. 19-851**

**[Filed December 19, 2019]**

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MICHAEL LEIDIG, CENTRAL	)
EUROPEAN NEWS LTD.,	)
	)
<i>Plaintiffs-Appellants,</i>	)
	)
v.	)
	)
BUZZFEED, INC.,	)
	)
<i>Defendant-Appellee.</i>	)

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**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE  
PRECEDENTIAL EFFECT. CITATION TO A  
SUMMARY ORDER FILED ON OR AFTER  
JANUARY 1, 2007 IS PERMITTED AND IS  
GOVERNED BY FEDERAL RULE OF  
APPELLATE PROCEDURE 32.1 AND THIS  
COURT'S LOCAL RULE 32.1.1. WHEN CITING A  
SUMMARY ORDER IN A DOCUMENT FILED**

**WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19<sup>th</sup> day of December, two thousand nineteen.

PRESENT:

DENNIS JACOBS,  
SUSAN L. CARNEY,  
MICHAEL H. PARK,  
*Circuit Judges.*

FOR PLAINTIFFS-APPELLANTS:

HARRY H. WISE, III, Law Office of Harry H.  
Wise, III, New York, N.Y.

FOR DEFENDANT-APPELLEE:

KATHERINE BOLGER, (John Browning, Rachel  
F. Strom, *on the brief*), Davis Wright  
Tremaine LLP, New York, N.Y.

Appeal from a judgment of the United States  
District Court for the Southern District of New York  
(Marrero, *J.*).

**UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment entered on March 27, 2019, is **AFFIRMED**.

Plaintiffs-Appellants Michael Leidig (“Leidig”) and Central European News Ltd., (“CEN”) (collectively, “Plaintiffs”) appeal from a judgment of the United States District Court for the Southern District of New York (Marrero, *J.*) entered for Defendant-Appellee BuzzFeed, Inc. (“Defendant” or “BuzzFeed”) following BuzzFeed’s motion for summary judgment on Plaintiffs’ libel claims. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm the District Court’s ruling.

The following statement of facts is taken from the undisputed portions of the parties’ filings. On April 24, 2015, BuzzFeed, an internet media company, published an article entitled “The King of Bullsh\*t News” (the “Article”) on its website. The Article primarily addressed a selection of news stories sold by CEN, an international news agency founded by Leidig in 1995, to third-party English-language media services around the globe. The Article described stories from non-English language countries that were disseminated and sold by CEN on a range of topics. The stories reported, for example, that teenagers in China were walking cabbages on leashes because of the teens’ loneliness; that a Russian woman killed her kitten by dyeing it pink; and that a two-headed goat was born on a farm in China. The Article was based on many months of

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investigation conducted by BuzzFeed journalists. It followed reports by other news organizations that alleged inaccuracies in CEN's stories. The Article stated that "the evidence assembled by BuzzFeed News suggests that an alarming proportion of CEN's 'weird news' stories are based on exaggeration, embellishment, and outright fabrication[.]" J.A. at 36.

On January 25, 2016, Plaintiffs brought this action against BuzzFeed, alleging that the Article falsely suggested that they are in the business of publishing "fake news" and thereby defamed them. *Leidig v. BuzzFeed, Inc.*, 371 F. Supp. 3d 134, 138 (S.D.N.Y. 2019). The complaint focuses on eight specific statements made in the Article. It alleges that they are defamatory and were published by Buzzfeed with reckless disregard as to their truth or falsity.<sup>1</sup> On

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<sup>1</sup> Plaintiffs focused on the following eight statements published in the Article: (1) CEN's story about people in China walking cabbages out of loneliness "was quickly debunked" by various news outlets, including BuzzFeed; (2) CEN's story about a Chinese man who had developed a tapeworm by eating too much sashimi was also "debunked"; (3) CEN sold a "false" story about a Russian woman who dyed her kitten pink, supposedly causing its death; (4) CEN fabricated quotes in connection with a story about Russian women stripping in public and losing their jobs as a result; (5) CEN fabricated a story about the birth of a two-headed goat on a farm in China; (6) CEN's business suffered 'after 9/11,' driving Leidig 'to play the online game as he saw it [,] . . . scouring for images and posts on social networks that he could weave a story around in order to hit up old clients with a new kind of content'; (7) "CEN's stories frequently contain lines from someone that no one else could persuade to talk, including the local media. And many of these quotes... include phrases that one would expect to hear from someone who grew up in the UK"; and, finally, (8) the headline, "The King of Bullsh\*t News," which Plaintiffs allege is

March 27, 2019, the District Court granted BuzzFeed's motion for summary judgment.

We review *de novo* a district court's determination on summary judgment. *See, e.g., Chau v. Lewis*, 771 F.3d 118, 126 n.4 (2d Cir. 2014). In doing so, we use the same standard as does the district court, affirming a grant of summary judgment only where "there are no genuine disputes concerning any material facts, and where the moving party is entitled to judgment as a matter of law." *Jones v. Cty. of Suffolk*, 936 F.3d 108, 114 (2d Cir. 2019) (citation omitted). To prevail on a libel claim under New York law (which no one disputes applies here), the plaintiff must show that the defendant published a false and defamatory statement that is about the plaintiff, without privilege or authorization, to a third party, with the requisite degree of fault, and that the statement caused damage or was per se libelous. *See Meloff v. N.Y. Life Ins. Co.*, 240 F.3d 138, 145 (2d Cir. 2001).

The District Court's decision on summary judgment focused on falsity. The District Court observed that, apart from the conclusory affidavits of Leidig and CEN employees, Plaintiffs "provide no evidence that BuzzFeed's eight statements about the CEN stories are false." *Leidig*, 371 F. Supp. at 144. It further determined that "BuzzFeed has shown that no reasonable juror could find the statement[s] or [their] reasonable implications false." *Id.* at 150. For example,

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an assertion that Plaintiffs "were in the business of publishing news articles presented as true that are false." *Leidig*, 371 F. Supp. 3d at 138-41.

the District Court found that “[o]ther than Leidig’s self-serving and discredited testimony,” Plaintiffs offered no evidence regarding the accuracy of the story about young people walking cabbages in China out of loneliness. *Id.* at 145. Similarly, the District Court noted that, in Leidig’s deposition, he admitted that “he does not know where the quotes in the Two-Headed Goat Story came from.” *Id.* at 148.

For substantially the same reasons as those set forth by the District Court in its thorough opinion, we conclude that Plaintiffs’ claims of accuracy could not be accepted by any reasonable juror. Plaintiffs simply fail to present any competent evidence suggesting that BuzzFeed’s reporting was false.

Plaintiffs primarily contend that the District Court incorrectly applied this Court’s decision in *Celle v. Filipino Reporter Enterprises Inc.*, 209 F.3d 163, 188 (2d Cir. 2000), using it (erroneously, they argue) to eliminate from the court’s consideration “nearly all of [their] evidence, including declarations of Mr. Leidig and deposition testimony by him and by four of his journalists.” Appellant’s Br. at 44. This contention is unavailing. As we held in *Celle*, “While a bland cryptic claim of falsity supported by the credibility of a witness might be sufficient to establish a proposition in other civil cases, the First Amendment demands more.” 209 F.3d at 188. The District Court reasonably determined that Plaintiffs’ conclusory assertions alone are insufficient to establish a genuine issue of material fact with respect to the falsity of the contested statements made by Buzzfeed. We explained in *Celle* that, “[t]o accept such a colorless denial as sufficient proof would



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effectively shift plaintiffs' burden of establishing falsity onto media defendants to establish truth." *Id.* Our reasoning applies just as strongly here, where Plaintiffs published the stories that BuzzFeed described as fabricated. Plaintiffs "can be expected to have easy access to additional proof of falsity." *Id.* That is, Plaintiffs are better positioned than Defendants to show whether their reports of two-headed goats, people walking cabbages out of loneliness, and so on, were accurate and substantially true. *See id.* At a minimum, Plaintiffs "should have laid a foundation for [their] bald assertion of falsity." *Id.* Without more, their argument fails.

Because we conclude that the District Court correctly determined that Plaintiffs failed to establish any genuine issue of material fact with respect to the falsity of BuzzFeed's contested statements, we need not determine whether Plaintiffs should be considered public figures for purposes of this suit. BuzzFeed was entitled to summary judgment.

\* \* \*

We have considered Plaintiffs' remaining arguments and conclude that they are without merit. Accordingly, the judgment of the District Court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A circular court seal for the United States Second Circuit Court of Appeals is positioned over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

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**APPENDIX B**

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

**16 Civ. 0542 (VM)**

**[Filed March 27, 2019]**

MICHAEL LEIDIG, CENTRAL	)
EUROPEAN NEWS LTD.,	)
	)
Plaintiffs,	)
	)
- against -	)
	)
BUZZFEED, INC.,	)
	)
Defendant.	)

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**DECISION AND ORDER**

**VICTOR MARRERO, United States District  
Judge.**

Plaintiffs Michael Leidig (“Leidig”) and Central European News Ltd (“CEN”) (collectively, “Plaintiffs”) commenced this litigation against defendant BuzzFeed, Inc. (“BuzzFeed”) alleging libel and seeking \$5,000,000 in damages in connection with an article published by BuzzFeed regarding Plaintiffs. (See “Complaint,” Dkt. No. 1.)

BuzzFeed moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (“Rule 56”), on the grounds that Plaintiffs cannot satisfy two of the elements required for a libel claim: (1) falsity of the defamatory statement; and (2) the requisite degree of fault. (See “Motion,” Dkt. No. 102.) For the reasons discussed below, the Court finds that there are no genuine issues of material fact regarding the falsity of BuzzFeed’s statements and thus summary judgment is warranted. BuzzFeed’s Motion is therefore GRANTED.

## **I. BACKGROUND**

### **A. FACTUAL BACKGROUND**

On April 24, 2015, BuzzFeed, an internet media company that operates the popular eponymous website, published an article titled “The King of Bullsh\*t News” (the “Article”) on its website. (See Dkt. No. 1-1.) The Article’s primary subject is a selection of stories sold by CEN, a British news agency founded by Leidig in 1995 which “provid[es] news from non-English-language countries” to third-party media services in Britain and elsewhere. (Complaint, ¶¶ 14-15, 22-23; see also “April 2018 Leidig Dep. Tr.,” Dkt. Nos. 104-10, 104-11 at 17:9-17.)

The Article specifically focuses on stories disseminated and sold by CEN on topics such as teens in China walking cabbages on leashes due to loneliness; a Justin Bieber ringtone saving a Russian fisherman from a bear attack; and numerous stories involving male castration. (See Dkt. No. 1-1 at 3, 6, 13-17.) The Article developed after many months of

investigation, and in the footsteps of prior reporting by other news organizations pointing to alleged inaccuracies in CEN's stories. Three veteran journalists worked for over five months researching the facts contained in these and other CEN stories. (See "White Decl.," Dkt. No. 109 ¶¶ 6-14.) From the beginning, the question among the BuzzFeed team members was whether they could "reach the point where [they] can go '[t]his [CEN story] is definitely fake.'" (*Id.* Ex. 2 at 2.) At the conclusion of the investigation, the BuzzFeed team members summarized that "the evidence assembled by BuzzFeed News suggests that an alarming proportion of CEN's 'weird news' stories are based on exaggeration, embellishment, and outright fabrication[.]" (Dkt. No. 1-1 at 4.)

On January 25, 2016, Plaintiffs commenced this litigation alleging that BuzzFeed's Article falsely suggests that Plaintiffs are "in the business of publishing news articles presented as true that are false" -- or so-called "fake news" -- and "that [P]laintiffs are the largest purveyors of such articles in the world." (Complaint ¶ 3.) Plaintiffs specifically excerpt eight statements from the Article which they allege are defamatory and published with "reckless disregard" as to their truth or falsity. (*Id.* ¶¶ 3, 6, 7, 27, 33, 38, 46, 55, 62.) These eight statements form the basis of Plaintiffs' libel claims and are set forth below.

1 Statement One -- Cabbage Story

The Article details a story CEN sold "concerning people in China walking cabbages, rather than pets, out of loneliness" (the "Cabbage Story"). (*Id.* ¶ 27.)

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Plaintiffs cite the following statement in the Article about the Cabbage Story as defamatory:

The story included quotes from “Chinese psychiatrist Wen Chao”, explaining how walking a cabbage on a lead can help reduce feelings of isolation, and a 17-year-old called Lui Ja Chen, who supposedly said:

I feel I can transfer my negative thoughts about myself to the cabbage, go for a walk with it and come home feeling better about myself.

The pictures were credited to CEN, and the same quotes appeared on the Austrian Times site.

Unsurprisingly, the story was quickly debunked [] by *Kotaku*, BuzzFeed, and the *Wall Street Journal*. The teens were not walking cabbages because they were lonely: they were walking cabbages as part of an art event at a music festival by Chinese artist Han Bing (who has been walking cabbages as part of his art for over a decade).

(“Statement One”). (*Id.* ¶ 27.) Plaintiffs allege that this statement implies “that [P]laintiffs’ story was untrue, and that it was made up by [P]laintiffs, and that [P]laintiffs had made up quotes from non-existent persons,” and that these implications are defamatory to Plaintiffs. (*Id.* ¶¶ 29-30.)

### 2. Statement Two -- Sashimi Tapeworm Story

The Article also covers a story by Plaintiffs about “a Chinese man who had reportedly gotten tapeworm from eating too much sashimi, [and the] story was

accompanied by a photo purporting to be a photo of the man's x-ray showing the spots of disseminated cysticercosis" (the "Sashimi Tapeworm Story"). (*Id.* ¶ 38.) Plaintiffs allege that the following statement in the Article is defamatory:

Soon after the story made the rounds, it was investigated by the debunking site *Snopes*, which found that the x-ray photos of the alleged victim were "similar to those included in a 2014 case report published by the *British Medical Journal* that dealt with a man who contracted a rare case of disseminated cysticercosis through the consumption of uncooked pork (with no mention of raw fish)". It does not appear that CEN ever alerted its customers to the fact that the images had been debunked; the original story remains online at the *Daily Mail* and elsewhere.

("Statement Two"). (*Id.* ¶ 38.) Plaintiffs allege that, through this statement, BuzzFeed "intended to and did assert that [P]laintiffs had used an x-ray of some other person and passed it off as an x-ray of the Chinese man they were writing about, and failed to make a correction when this was revealed," and the statement is false and defamatory to Plaintiffs. (*Id.* ¶¶ 39, 42-43.)

### 3. Statement Three -- Pink Kitten Story

The next allegedly defamatory statement in the Article involves a story about a Russian woman named Elena Lenina ("Lenina") who had dyed her kitten pink, supposedly causing its death (the "Pink Kitten Story"):

As *Gawker's Antiviral* site pointed out, the story was false. The kitten was not dead. Lenina was in

fact simply posting pictures of her -- very much alive -- kitten on social media.

[T]his appears to be a situation where CEN sold a false (and potentially defamatory) story about a real person with little regard for the consequences that person would face when the story went viral. Nor has there been any apparent attempt to correct the story since it was proved to be false.

(“Statement Three”). (Id. ¶ 46.) Plaintiffs allege that, through this statement, BuzzFeed intended to and did assert that “[Plaintiffs] are intentional purveyors of false stories, and do not care whether they injure any persons by their publications, and persist in such conduct even after a story is proven to be false.” (Id. ¶ 47.) Furthermore, Plaintiffs allege that the statement is false and defamatory. (Id. ¶¶ 47-48.)

#### 4. Statement Four -- Nude Women Story

The Article also describes a story by Plaintiffs “concerning some Russian women who stripped in public and lost their jobs as a result” (the “Nude Women Story”). (Id. ¶ 55.) Plaintiffs excerpt the following statement in the Article about the Nude Women Story:

[I]t appears that CEN took the photos, invented a newsworthy narrative, inserted false names for the women, credited a nonexistent photographer, and fabricated four sets of quotes to fill out the text.

(“Statement Four”). (Id.) Plaintiffs allege that this statement “meant to and did accuse [Plaintiffs] of creating a false news story and fraudulently selling it

as true,” and the assertions in the story are false and defamatory. (Id. ¶¶ 56-58.)

5. Statement Five -- Two-Headed Goat Story

The Article also covers Plaintiffs’ story concerning “the birth of a two headed goat on a farm in China” (the “Two-Headed Goat Story”). (Id. ¶ 62.) For the Two-Headed Goat Story, BuzzFeed also quoted an expert who explained that the story’s accompanying photograph was “digitally enhanced.” (Id. Plaintiffs claim the following statement in the Article is defamatory:

A Xinhua journalist who claims to have seen the goat in person didn’t get the farmer to talk, but a news agency based in Vienna somehow did, despite the story taking place in a remote rural community a six-hour train ride from Beijing.

(“Statement Five”). (Id.) Plaintiffs allege that BuzzFeed meant to and did imply that “[P]laintiffs had published a fake photograph and had invented quotes to make a story more interesting,” and that implication is false and defamatory. (Id. ¶¶ 63-65.)

6. Statement Six

Apart from its coverage about specific stories Plaintiffs sold, the Article also describes CEN and Leidig more broadly:

But then the bottom fell out of the business . . . after 9/11, and it seemingly never recovered.

. . .



So it appears that Leidig decided to play the online game, as he saw it. He launched websites such as the *Austrian Times* and *Croatian Times*. He cast his net far afield to China, India, and Latin America, scouring for images and posts on social networks that he could weave a story around in order to hit up old clients with a new kind of content.

(“Statement Six”). (*Id.* ¶ 7.) Plaintiffs allege that, through Statement Six, Buzz Feed “intended to and did assert that, suffering from financial difficulties, [Plaintiffs] decided to go into the business of fabricating and selling fake news stories.” (*Id.* ¶ 8.) Plaintiffs further assert that BuzzFeed “had seen no documents” and “had spoken with no persons who had said that, suffering from financial difficulties, [Plaintiffs] had decided to go into the business of fabricating and selling fake news stories.” (*Id.* ¶¶ 9-10.) Thus, Plaintiffs claim this statement is false and defamatory. (*Id.* ¶¶ 11-12.)

#### 7. Statement Seven

Plaintiffs also highlight a similarly broad statement about CEN in the Article as allegedly defamatory:

CEN’s stories frequently contain lines from someone that no one else could persuade to talk, including the local media. And many of those quotes, especially those from anonymous “officials”, include phrases that one would expect to hear from someone who grew up in the UK.

(“Statement Seven”). (*Id.* ¶ 33.) Plaintiffs allege that, through Statement Seven, BuzzFeed “meant to and did imply that Mr. Leidig or others at CEN frequently

make up quotes included in CEN's stories," which is false and defamatory to Plaintiffs. (Id. ¶¶ 34-35.)

#### 8. Statement Eight

Finally, Plaintiffs allege that the headline of the Article -- "The King of Bullsh\*t News" ("Statement Eight") -- is an assertion that Plaintiffs "were in the business of publishing news articles presented as true that are false, and known to be false by [Plaintiffs], and that [Plaintiffs] are the largest purveyors of such articles in the world." (Id. ¶¶ 2-3.) Plaintiffs assert that Statement Eight is false and defamatory. (Id. ¶¶ 4-5.)

#### B. PROCEDURAL BACKGROUND

Plaintiffs sued BuzzFeed on January 25, 2016. Shortly thereafter and prior to discovery, Plaintiffs moved for partial summary judgment, arguing that the Article's statements were defamatory and false as a matter of law and that neither CEN nor Leidig could be a public figure for the purposes of this action. (See Dkt. No. 16.) On May 9, 2017, the Court denied the motion, finding that "there remain numerous genuine issues of material fact such that filing a motion for summary judgment would be premature and granting it would be improper." Leidig v. BuzzFeed, Inc., No. 16 Civ. 542, 2017 WL 2303670, at \*5 (S.D.N.Y. May 9, 2017) (hereafter, "May 2017 Order," Dkt. No. 47). The parties spent the next year engaged in discovery.

On August 22, 2018, BuzzFeed filed a motion for summary judgment pursuant to Rule 56. (See Motion; see also "Notice of Motion," Dkt. No. 101.) In conjunction with the Motion, BuzzFeed submitted a statement of 216 numbered undisputed material facts,

as required by the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. (See “BuzzFeed’s Rule 56.1 Statement,” Dkt. No. 103.) In sum, BuzzFeed argues that Plaintiffs cannot establish a genuine dispute of material fact regarding the falsity of the eight statements and the requisite degree of fault with which BuzzFeed made the statements, regardless of whether Plaintiffs are public figures.

On September 12, 2018, Plaintiffs responded to the Motion. (See “Opposition,” Dkt. No. 115.) Plaintiffs also submitted their own statement of 79 numbered undisputed material facts, but contested only one undisputed material fact contained in BuzzFeed’s Rule 56.1 Statement. (See “Plaintiffs’ Rule 56.1 Counter Statement,” Dkt. No. 112.) Plaintiffs argue that they have sufficient evidence to show that the publication is false, that Plaintiffs are not public figures, and, even if they are public figures, enough evidence of actual malice exists to nevertheless fulfil the fault requirement for libel claims. (See Opposition at 13-24.)

On September 27, 2018, BuzzFeed filed a reply in support of its Motion, as well as a reply to Plaintiffs’ Rule 56.1 Counter Statement. (See Dkt. Nos. 116, 117.)

## **II. LEGAL STANDARDS**

### **A. RULE 56(A)**

Summary judgment is appropriate if the evidence shows that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The role of a court in

ruling on such a motion “is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried[.]” Knight v. United States Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issues of material fact. See Celotex Corp., 477 U.S. at 323; Gallo v. Prudential Residential Servs., L.P., 22 F.3d 1219, 1223 (2d Cir. 1994). If the moving party satisfies its burden, the nonmoving party must provide specific facts showing that there is a genuine issue for trial in order to survive the motion for summary judgment. See Shannon v. New York City Transit Auth., 332 F.3d 95, 98-99 (2d Cir. 2003).

In determining whether the moving party is entitled to judgment as a matter of law, the court must “resolve all ambiguities and draw all justifiable factual inferences in favor of the party against whom summary judgment is sought.” Major League Baseball Props., Inc. v. Salvino, Inc., 542 F.3d 290, 309 (2d Cir. 2008); see also Samuels v. Mockry, 77 F.3d 34, 35 (2d Cir. 1996) (“Summary judgment is proper if, viewing all facts of record in a light most favorable to the non-moving party, no genuine issue of material fact remains for adjudication.”) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-50 (1986)). Although the party opposing summary judgment may not “rely on mere conclusory allegations nor speculation,” D’Amico v. City of New York, 132 F.3d 145, 149 (2d Cir. 1998), if there is any evidence in the record from which a reasonable inference could be drawn in favor of the opposing party, summary judgment is improper. See

Gummo v. Village of Depew, 75 F.3d 98, 107 (2d Cir. 1996).

#### B. LOCAL RULE 56.1 STATEMENTS

Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (“Local Rule 56.1”) requires the party moving for summary judgment to file “a separate, short and concise statement . . . of the material facts as to which the moving party contends there is no genuine issue to be tried.” Local Rule 56.1(a). The non-moving party opposing the motion for summary judgment “shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party.” Local Rule 56.1(b). In addition, the facts set forth in a moving party’s statement “will be deemed to be admitted” by the opposing party’s statement “unless specifically controverted.” Local Rule 56.1(c). “The purpose of Local Rule 56.1 is to streamline the consideration of summary judgment motions by freeing district courts from the need to hunt through voluminous records without guidance from the parties.” See Holtz v. Rockefeller & Co., Inc., 258 F.3d 62, 73 (2d Cir. 2001).

#### C. LIBEL

To make a case of libel under New York law, a plaintiff must establish the following five elements:

- 1) a written defamatory statement of fact concerning the plaintiff;
- 2) publication to a third party;
- 3) fault (either negligence or actual malice depending on the status of the libeled party);

- 4) falsity of the defamatory statement; and
- 5) special damages or per se actionability (defamatory on its face).

Celle v. Filipino Reporter Enters. Inc., 209 F.3d 163, 176 (2d Cir. 2000); see also Church of Scientology Int'l v. Eli Lilly & Co., 778 F. Supp. 661, 666 (S.D.N.Y. 1991). Based on the parties' arguments, this Order largely focuses on the fourth element, the falsity of the defamatory statements.

A defamatory statement of fact is one "which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society." Balestriere PLLC v. CMA Trading, Inc., No. 11 Civ. 9459, 2014 WL 929813, at \*16 (S.D.N.Y. Mar. 7, 2014) (internal quotation marks and citations omitted); See also Karedes v. Ackerley Group, Inc., 423 F.3d 107, 113 (2d Cir. 2005); Foster v. Churchill, 642 N.Y.S.2d 583, 587 (1996). "[O]nly factual statements are actionable as defamation or libel[.]" because "New York law protects derogatory statements which may be categorized as 'opinion' as opposed to 'fact.'" Chau v. Lewis, 771 F.3d 118, 128 (2d Cir. 2014).

Upon reviewing the statement in question, a court "must give the disputed language a fair reading in the context of the publication as a whole" and construe it as the intended readership would. Celle, 209 F.3d at 177 (quoting Armstrong v. Simon & Schuster, Inc., 625 N.Y.S.2d 477, 481 (1995)). When a statement's defamatory implication is at issue, a plaintiff must make "an especially rigorous showing" that "the

language may be reasonably read to impart a false innuendo,” and “that the author intends or endorses the defamatory inference.” Biro v. Conde Nast, 883 F. Supp. 2d 441, 465-66 (S.D.N.Y. 2012) (internal quotation marks omitted).

Despite truth often being framed as a defense to libel, the burden of proving the falsity of a statement rests with the plaintiff. “The standard for assessing falsity is informed by the ‘common law of libel [,] . . . [which] overlooks minor inaccuracies and concentrates upon substantial truth.’” Blair v. Inside Edition Prods., 7 F. Supp. 3d 348, 357 (S.D.N.Y. 2014) (quoting Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 516 (1991)). “[W]here ‘the substance, the gist, [or] the sting’ of a statement is true, it cannot be libelous.” Stern v. Cosby, 645 F. Supp. 2d 258, 276 (S.D.N.Y. 2009) (quoting Masson, 501 U.S. at 517).

However, truth does not necessarily entail pinpoint accuracy about the statements either. “New York law recognizes that an alleged libel is not actionable if the published statement could have produced no worse an effect on the mind of a reader than the truth pertinent to the allegation.” Tannerite Sports, LLC v. NBCUniversal News Grp., 864 F.3d 236, 242-43 (2d Cir. 2017). Where “the truth is so near to the facts as published that fine and shaded distinctions must be drawn and words pressed out of their ordinary usage to sustain a charge of libel, no legal harm has been done.” Guccione v. Hustler Magazine, Inc., 800 F.2d 298, 303 (2d Cir. 1986) (quoting Cafferty v. Southern Tier Publ’g Co., 226 N.Y. 871 93 (1919)).

“The ‘substantial truth’ standard finds basis in the realities and purposes of defamation law.” Tannerite Sports, 864 F.3d at 243. To require absolute accuracy of allegedly libelous statements would damage a system of “reasonable regulation . . . by an overly technical or exacting conception of truth in publication.” Id. (quoting Cafferty, 226 N.Y. at 93).

Necessarily, in order to assess a statement for falsity or substantial truth, the statement must be specifically identified by the plaintiff. See id. at 251. Such “specificity is necessary so defendants and courts may address themselves to the parts of a communication alleged to be false and defamatory instead of those not objected to.” Id. Even a short publication “often includes thousands of direct statements and implied messages whose veracity could be questioned by a defamation plaintiff.” Id.

A defendant can prevail on a motion for summary judgment if it can show that “no rational jury could find. . .that the statements at issue are false.” Blair, 7 F. Supp. 3d. at 358.<sup>1</sup> Put another way, if a defendant can conclusively establish the statements’ truth or

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<sup>1</sup> “The Supreme Court has not yet expressed a view on ‘whether the element of falsity must be established by clear and convincing evidence or by a preponderance of the evidence.’” Blair, 7 F. Supp. 3d. at 357 (quoting Harte-Hanks Commc’ns, Inc. v. Connaughton, 491 U.S. 657, 661 n.2 (1989)). While BuzzFeed does not address this point, Plaintiffs assert that the burden of proof for falsity turns on whether Plaintiffs are public or private figures. (See Opposition at 11-12.) Because Plaintiffs fail to carry their burden under either standard, the Court need not determine whether Plaintiffs are public or private figures or the proper burden of proof under New York law in these circumstances.



substantial truth, the libel claim must fail, resulting in summary judgment in favor of the defendant. See id. at 359 (granting summary judgment for defendant media company after finding that a statement calling plaintiff a “squatter [, ]” even if “literally false[,]” sufficiently captured the “‘substance’ or ‘gist’” of the truth); see also Chau, 771 F. 3d at 130 (affirming district court’s dismissal of libel claims and finding statements that plaintiffs, financial traders, made “bets” and “fear[ed] . . . that the U.S. economy would strengthen” as “substantially true” because “bets are the nature of much of the financial market”).

### **III. APPLICATION**

BuzzFeed argues that Plaintiffs cannot show the falsity of the allegedly defamatory statements, and thus Plaintiffs’ claims must fail. The Court agrees. In the face of repeated instances where BuzzFeed points to specific evidence supporting the truth of the Article, Plaintiffs’ sole rejoinder is that neither Leidig nor any CEN employee admitted to knowingly publishing “a fake news story” or to “add[ing] phony quotations to a story.” (Opposition at 15-16.) Although such “bland cryptic claim[s] of falsity supported by the credibility of a witness might be sufficient to establish a proposition in other civil cases, the First Amendment demands more.” Celle, 209 F. 3d at 188 (reversing jury verdict in plaintiffs’ favor where the only evidence of falsity was one plaintiff’s testimony that the allegedly defamatory statement was not true); see also D’Amico, 132 F.3d at 149. Apart from these statements, Plaintiffs provide no evidence that BuzzFeed’s eight statements about the CEN stories are false. As such, no jury could find

BuzzFeed's statements to be false. See Blair, 7 F. Supp. 3d. at 358.

Plaintiffs' inability to identify a genuine dispute of material fact is best exemplified by their decision to contest only one of the over two hundred numbered paragraphs in Buzz Feed's Rule 56. 1 Statement. For the remainder of the statements, Plaintiffs rely the blanket denial that "[i]n not challenging [BuzzFeed's] other 215 assertions of fact, [P]laintiffs do not mean to concede that any particular ones are relevant and material to the issues raised on this motion[.]" (Plaintiffs' Rule 56.1 Counter Statement at 2.) Plaintiffs' "blanket denial" does not even "purport to dispute the facts that are material" to the disposition of BuzzFeed's Motion. Chimarev v. TD Waterhouse Inv'rs Services, Inc., 280 F. Supp. 2d 208, 223 (S.D.N.Y. 2003) (accepting as true facts set forth in a Rule 56.1 statement because the counter-statement consisted solely of "blanket denials" and was "not supported by citation to any evidence"), aff'd, 99 Fed. App'x. 259 (2d Cir. 2004). Moreover, Plaintiffs' Rule 56.1 Counter Statement presents no other facts that dispute the key facts regarding falsity contained in BuzzFeed's Rule 56.1 Statement. These concessions doom Plaintiffs' Opposition. Absent any facts validating CEN's stories and supported by evidence, no jury could find for Plaintiffs on falsity.

Plaintiffs' strategy of painting with broad brush strokes is not limited to blanket denials. Plaintiffs also attempt to expand the scope of their claims in the Opposition. That is, because "Plaintiffs' pleading is a complaint, not a bill of particulars [,]" Plaintiffs assert

that the Court should analyze “the libelous ‘sting’ of the article as a whole, not the effect of the” eight statements at issue. (Opposition at 24.) Plaintiffs now “challenge any assertion in the [A]rticle that [P]laintiffs make up stories or fabricate quotes.” (*Id.*) The Court rejects Plaintiffs’ maneuver - - which would force Buzz Feed to defend a moving target -- because Plaintiffs must specifically identify the defamatory statements relevant to their claims. See Tannerite Sports, 864 F. 3d at 251. The only relevant statements for Plaintiffs’ claims are the eight excerpted in the Complaint.

Thus, whereas in the May 2017 Order the Court was wary of making determinations regarding the falsity of the eight statements on the basis of allegations in a complaint, now, with discovery concluded, it is clear that Plaintiffs cannot meet their burden. Because the Court finds that Plaintiffs cannot satisfy the falsity element for any of the eight statements, the Court does not address BuzzFeed’s alternative argument that Plaintiffs are public figures and would need to show that BuzzFeed made the statements with actual malice as to their falsity.

A. STATEMENT ONE

In Statement One, the Article describes the Cabbage Story as “debunked,” implying that Plaintiffs manufactured false quotes of individuals walking cabbages on leashes to combat depression. Plaintiffs claim that the quotes contained in the Cabbage Story are true, and that the persons quoted are real. (Complaint ¶ 31.) However, deposition testimony from Leidig and CEN’s employees belie these claims. Leidig

could not verify the quotes, but claimed that John Feng (“Feng”), a journalist employed by CEN, was responsible for writing and researching the Cabbage Story. (See “August 2017 Leidig Dep. Tr.,” Dkt. No. 104-6 at 48:5-16, 58:21-24, 164:7-23; April 2018 Leidig Dep. Tr. 330:20 332:25.)

Yet Feng admitted that he did not work on the Cabbage Story because he started work at CEN only two months after CEN distributed the story to clients. (See “Feng Dep. Tr.,” Dkt. No. 104-12 at 29:4-24, 47:4-13, 164:6-15.) Further, when Feng researched the Cabbage Story in connection with the Article, he was unable to verify the quotes CEN included in their story. (See *id.* 38:13 44:2.) In fact, Feng ultimately verified BuzzFeed’s findings that the Cabbage Story originated from an artist who started placing cabbages on leashes as part of his artistic work. (See *id.* 40:21-41:9.)

Other than Leidig’s self-serving and discredited testimony, which is plainly insufficient to support a motion for summary judgment, *see Celle*, 209 F.3d at 188, Plaintiffs offer no evidence regarding the Cabbage Story’s veracity. Even CEN’s employees could not trace or verify any relevant quotes or sources. Thus, the Court finds that Statement One regarding the Cabbage Story is at least substantially true and there are no genuine issues of material fact regarding its falsity.

## B. STATEMENT TWO

The Article covers CEN’s Sashimi Tapeworm Story and claims that CEN failed to alert its customers that the website *Snopes* debunked the story. (Complaint ¶¶ 38-44.) According to BuzzFeed, *Snopes* reported that

certain x-ray photographs accompanying the Sashimi Tapeworm Story were “similar to those included in a 2014 case report published by the British Medical Journal that dealt with a man who contracted a rare case of disseminated cysticercosis through the consumption of uncooked pork (with no mention of raw fish).” (*Id.* ¶ 38.)

To start, Plaintiffs never argue that BuzzFeed’s reporting on *Snopes’* findings was inaccurate, regardless of the findings’ underlying truth. Necessarily then, their claims regarding Statement Two must fail. But even when assessing the Sashimi Tapeworm Story itself, as with the Cabbage Story, Plaintiffs do not offer evidence supporting the veracity of their version. Although Plaintiffs’ reporting database listed Leidig as the story’s writer, he explained that Feng would have been the one to speak to the doctors mentioned in the story. (*See* April 2018 Leidig Dep. Tr. 418:2-425:16.) However, Feng stated that he did not contact any doctors in China for this story and, once again, could not corroborate Leidig’s testimony. (*See* Feng Dep. Tr. 92:20-94:21.) Plaintiffs never claim to have sent a correction to their subscribers.

Plaintiffs fail to provide any support for their position that BuzzFeed’s reporting on the Sashimi Tapeworm Story was false. Thus, the Court finds that Statement Two regarding the Sashimi Tapeworm Story is at least substantially true and there are no genuine issues of material fact regarding its falsity.

C. STATEMENT THREE

Next, the Article describes the Pink Kitten Story, in which Plaintiffs wrote that Lenina’s pet kitten died as a result of being dyed pink. (Complaint ¶¶ 46-48.) BuzzFeed’s Tom Phillips (“Phillips”) authored this part of the Article relying on the reporting of an online authentication website, *Gawker’s Antiviral*. According to Phillips, *Gawker’s Antiviral* reported that Lenina “had posted pictures of her kitten on social media (very much alive).” (“Phillips Decl.,” Dkt. No. 105 ¶¶ 24-29; *id.* Ex. 10.) Phillips relied on *Gawker’s Antiviral* because he found the website “to be particularly good at verifying viral news and [it] had a great reputation for this kind of work.” (*Id.* ¶¶ 26.) He also independently reviewed the photographic evidence upon which *Gawker’s Antiviral* relied. (*Id.*)

The most straightforward reading of Statement Three is simply as a summary of *Gawker’s Antiviral* findings regarding the Pink Kitten Story. Much like the situation regarding Buzz Feed’s summary on *Snopes’* findings about the Sashimi Tapeworm Story, because Plaintiffs do not contest the Article’s summary of *Gawker’s Antiviral* findings (regardless of their underlying truth), they fail to show the statements are false for the purposes of their libel claims.

However, another, more strained, reading of the Article is that BuzzFeed’s repetition of *Gawker’s Antiviral* findings is an independent assertions by BuzzFeed. Even when evaluating the Article in this light, which is the most favorable to Plaintiffs, Plaintiffs still cannot show falsity. In Statement Three, BuzzFeed summarizes *Gawker’s Antiviral’s* findings

that “[t]he kitten was not dead. Lenina was in fact simply posting pictures of her -- very much alive -- kitten on social media. . . . [T]his appears to be a situation where CEN sold a false (and potentially defamatory) story . . . Nor has there been any apparent attempt to correct the story since it was proved false.” (Complaint ¶ 46.) The relevant factual assertions from Statement Three are that: (1) the kitten was alive, and this fact is evident from the photos posted by Lenina; (2) CEN sold a false story that the kitten was dead; and (3) there has been no apparent attempt to correct the story despite its being false. Plaintiffs must show that there is a material issue of fact regarding the falsity of all three of these statements.

Regarding the first two assertions, Plaintiffs present no evidence to show that Lenina’s kitten was dead at the time they reported the Pink Kitten Story. Plaintiffs cannot even demonstrate that they investigated the kitten’s status before writing the Pink Kitten Story. That is, Plaintiffs (once again) could not depend on their own reporting database to determine who wrote the story and who could verify its contents. (See April 2018 Leidig Dep. Tr. 370:13-373:13, 381:23-382:15; *id.* Ex. 76.)

Plaintiffs also do not contest the third assertion. In a book entitled Buzz Bottom Feeders, which was written by Leidig and intended to refute the Article (see *id.* 299:18-301:7), Plaintiffs acknowledge that to “issue a correction is to admit a mistake was made, and that makes clients nervous[,]” and which is why their related story, *Pretty in Pink Kitten is Still Alive Claims Star*, was simply a “follow-up,” and not a correction.

(See id. Ex. 64 at 13, 22.) Thus, the part of Statement Three in which BuzzFeed claims that CEN never corrected the Pink Kitten Story is substantially true.

In sum, Plaintiffs provide no evidence to refute *Gawker's Antiviral's* or BuzzFeed's reporting that the kitten was alive when the Pink Kitten Story was first published. Plaintiffs also acknowledge that the second story by CEN is simply a "follow-up" as opposed to a correction. Thus, Plaintiffs fail to point to a genuine issue of material fact in relation to the falsity of Statement Three.

#### D. STATEMENT FOUR

In Statement Four, BuzzFeed asserts that CEN "appears" to have copied "photos, invented a newsworthy narrative, inserted false names for the women, credited a nonexistent photographer, and fabricated four sets of quotes to fill out the text." (Complaint ¶ 55.) BuzzFeed supports those assertions through the declaration of Craig Silverman ("Silverman"), a journalist who contacted Gene Oryx ("Oryx"), the photographer who took the photos of the nude women that CEN used in the story. (See "Silverman Decl.," Dkt. No. 108 ¶¶ 42-43.) Oryx told Silverman that CEN published incorrect names for both the women and himself in the Nude Women Story. (See id.)

Plaintiffs do not refute those facts. During his deposition, Leidig could not provide any details regarding the Nude Women Story, including the source of the quotes that were used in CEN's reporting of the story. (See April 2018 Leidig Dep. Tr. 343:12-348:16.)



Leidig assumed that such details, including the names of the women as reported by CEN, arose from other Russian media outlets. (Id. 348:11-16.)

Plaintiffs rely exclusively on the conclusory declaration of Fleming Emil Hansen (“Hansen”), which was originally filed in connection with Plaintiffs’ motion for summary judgment. (See “Hansen Decl. ¶,” Dkt. No. 19.) Citing the declaration, Plaintiffs claim that they were merely parroting Russian media reports, and did not falsify names or quotes. (See Opposition at 4.) Plaintiffs further assert that “the professional photographer contacted by BuzzFeed wasn’t the only one taking pictures that day” and CEN did not use Oryx’s photographs. (Id.)

Upon examination, Hansen’s three-page declaration proves to be unreliable and, of greater concern for Plaintiffs, unhelpful to them. Hansen asserts that CEN picked up the story from Russian media outlets and that there were other photographers who effectively seeded the story for local media. (Hansen Decl. ¶¶ 4-6.) But Hansen never refutes that CEN used Oryx’s photograph. Further, despite describing widespread coverage of the Nude Women Story in Russian media, Hansen attaches only a single example from a Russian website allegedly covering the episode. (See id. Ex. 2.) That example is accompanied by an unauthenticated machine translation, which does not include any of the critical details the Article claims CEN made up. (Compare id. Ex. 2, with Complaint ¶ 55 and April 2018 Leidig Dep. Tr. Ex. 71.)

Thus, even if there were other photographers covering the story, Plaintiffs do not present any

evidence to substantiate the origin of the names or quotes CEN reported in the Nude Women Story -- let alone that they are accurate. The photograph used in the CEN story is clearly attributable to Oryx (see Silverman Decl. ¶¶ 43-46; id. Ex. 15), and it is irrelevant that there were other photographers present if CEN did not speak with them or use their photographs. Hence, the Court finds that Statement Four is substantially true, and there is no genuine issue of material fact in relation to its falsity.

E. STATEMENT FIVE

In Statement Five, BuzzFeed questions how Plaintiffs managed to get a quote for CEN's Two-Headed Goat Story from the farmer when local news agencies were unable to do so, implying that the quotes are fabricated. (See Complaint ¶ 62.) Silverman, who wrote this portion of the Article, traced the photograph of the goat published in the CEN story to Xinhua News Agency, which had first reported the same story, but without some of the quotes that appeared in the CEN version. (See Silverman Decl. ¶¶ 33-35.) Silverman also consulted with "an expert in digital photo forensics," who concluded that the photograph was "either a digital composite or a series of selective enhancements." (Id. ¶¶ 36-40.)

Unsurprisingly, Leidig stated in his depositions that he does not know where the quotes in the Two-Headed Goat Story came from. (See April 2018 Leidig Dep. Tr. 444:17-445:22.) Further, CEN's attempt to verify the story failed. After the Article was published, Feng was unable to verify CEN's reporting or find any of the disputed quotes in the Article, even though he allegedly

managed to find other local-media interviews with the farmer that he translated which did not contain the details CEN reported. (See Feng Dep. Tr. 142:17-144:7.) Under these circumstances, it does not appear that anyone at CEN ever spoke directly with the farmer.

Plaintiffs fail to provide any support for their position that BuzzFeed’s reporting on the Two-Headed Goat Story was false. Thus, the Court finds that Statement Five is substantially true and there are no genuine issues of material fact regarding its falsity.

**F. STATEMENT SIX**

The remaining statements, including Statement Six, do not address specific stories or reports by Plaintiffs. Instead, they are broader statements about the operations of Plaintiffs, and, in some sense, suggest reasonable inferences of conclusions that follow from BuzzFeed’s reporting on the veracity of the individual CEN stories highlighted in the Article. (See Complaint ¶¶ 1, 7, 33.)

Statement Six allegedly implies that, because Plaintiffs suffered financial losses “after 9/11” and “seemingly never recovered, . . . it appear[ed]” Leidig launched these various news websites through which Plaintiffs “[scoured] for images and posts on social networks that [Plaintiffs] could weave a story around in order to hit up old clients with a new kind of

content.” (See Complaint ¶ 7; see also Dkt. No. 1-1 at 8.)<sup>2</sup>

Plaintiffs fail to produce any evidence supporting their allegations that the facts or implied facts in Statement Six are false. On the other hand, BuzzFeed supports Statement Six with Leidig’s own words. Leidig wrote about CEN’s origins in an article dated March 14, 2013. (See “Press Gazette Article,” April 2018 Leidig Dep. Tr. Ex. 19.) In the Press Gazette Article, Leidig confirmed that he founded CEN, in part, because of the financial difficulties arising from reliance on original content. Thus, he changed his business model as “there was no longer value in original content, and that was because of the

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<sup>2</sup> The use of speculative language such as “seemingly” and “appears” indicates that Statement Six could be construed as one of opinion rather than fact. See, e.g., Bellavia Blatt & Crossett, P.C. v. Kel & Partners LLC, 151 F. Supp. 3d 287, 293-94 (E.D.N.Y. 2015) (rhetorical indicators such as the use of “appeared to be,” “might well be,” “could well happen,” and “should be” “signal presumptions and predictions rather than facts” (internal quotation marks omitted)); Biro, 883 F. Supp. 2d at 460 (“Often, statements of ‘rhetorical hyperbole’ or ‘imaginative expression’ are held not actionable, because they ‘cannot reasonably be interpreted as stating actual facts’ that could be proved false.” (quoting Milkovich v. Lorain Journal Co., 497 U.S. 1, 20, 25 (1990))). Although BuzzFeed never raised this argument, determining a statement’s falsity necessarily requires that the Court first determine whether the statement conveys fact (and is verifiable) or opinion (and is non-verifiable). Nevertheless, even though the facts are fully developed and Plaintiffs thus would not suffer any prejudice from a ruling regarding whether Statement Six constitutes an opinion, the Court declines to rule against Plaintiffs on grounds not explicitly raised by BuzzFeed. See, e.g., In re 650 Fifth Ave. & Related Props., 830 F.3d 66, 96-97 (2d Cir. 2016).

competition from the internet.” (Id. at 7.) These statements support the part of Statement Six which claims that Plaintiffs altered their business model in the face of financial difficulties.

As for the remainder of Statement Six, Plaintiffs claim that it implies that Plaintiffs are in the “business of fabricating and selling fake news stories” (see Complaint ¶ 8), but do not even attempt to make the “especially rigorous showing” that BuzzFeed “intend[ed]” or “endorse[d]” that implication beyond the specific stories covered in the Article. Biro, 883 F. Supp. 2d at 465-66. Because Plaintiffs are unable to refute BuzzFeed’s specific factual claims in the Article, they also cannot refute the more general claim in Statement Six. Consequently, the Court finds that Plaintiffs are unable to meet their burden of demonstrating a genuine issue of fact regarding the falsity of Statement Six.

#### G. STATEMENT SEVEN

Statement Seven implies that CEN falsifies quotes in part because “CEN’s stories frequently contain lines from someone that no one else could persuade to talk.” (See Complaint ¶ 33-34.) Of course, as is apparent from the discussion of Statements One through Five above, Plaintiffs have presented no evidence to refute a single specific instance in the Article where BuzzFeed alleges CEN falsified a quote. Thus, Plaintiffs must rely on self-serving blanket denials that they do not falsify quotes. (See, e.g., “Leidig Decl.,” Dkt. No. 18 ¶ 2; “Martinez Dep.,” Dkt. No. 104-17 at 58:25-59:9; see also Opposition at 3-4.) However, as the Court has explained, such blanket denials are inadequate. See

Celle, 209 F.3d at 188. Plaintiffs fail to provide any support that Statement Seven was false. Thus, the Court finds that Statement Seven is substantially true and there are no genuine issues of material fact regarding its falsity.

#### H. STATEMENT EIGHT

Plaintiffs allege that the headline of the Article -- “The King of Bullsh\*t News,” intends and asserts that Plaintiffs are, in fact, “The King of Bullshit News” and that Plaintiffs are “in the business of publishing news articles presented as true that are false, and known to be false by [Plaintiffs], and that [Plaintiffs] are largest purveyors of such articles in the world.” (Complaint ¶¶ 1-3.)

At best, any defamatory fact gleaned from this headline manifests an implication supported by the substantial truth of the Article itself. Much as is the case regarding with Statements Six and Seven, however, Plaintiffs fail to specify how the headline implies any defamatory fact the statement embodies that is not contained in the rest of the Article. The only possible additional defamatory fact is that Plaintiffs read, without any support, the reference to “king” in the headline to mean “largest.” In context, such an interpretation derives not from the actual text of the headline, but from the hyperbolic spin Plaintiffs put on it, especially in their reference to “largest purveyors in the world.” (Id.) But, even if this construction reflected a fair reading, the difference between being the “largest” or a “large” purveyor of such news stories is immaterial in the context of this Article. See Tannerite, 864 F.3d at 242-43. Such fine distinctions between

“largest” and “large” are likely to be lost on the reader considering the “substantial truth” of the facts and reporting in the Article. See id. at 243.

Because Plaintiffs are unable to demonstrate that Statement Eight is false, the Court finds that there are no genuine issues of material fact regarding its falsity.

\* \* \*

For each of the eight statements that comprise Plaintiffs’ libel claims, BuzzFeed has shown that no reasonable juror could find the statement or its reasonable implications false. Because falsity is a required element of Plaintiffs’ libel claims, the Court must enter judgment in favor of BuzzFeed.

#### **IV. ORDER**

Accordingly, it is hereby

**ORDERED** that the motion of defendant BuzzFeed Inc. for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Dkt. Nos. 101, 102) dismissing the action herein brought by plaintiffs Michael Leidig and Central European News Ltd is **GRANTED**.

The Clerk of the Court is directed to terminate any pending motions and to close this case.

**SO ORDERED.**

App. 38

Dated: New York, New York  
27 March 2019

/s/Victor Marrero  
VICTOR MARRERO  
U.S.D.J.



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

**16 CIVIL 542 (VM)**

**[Filed March 27, 2019]**

MICHAEL LEIDIG, and CENTRAL	)
EUROPEAN NEWS LTD,	)
	)
Plaintiffs,	)
	)
- against -	)
	)
BUZZFEED, INC.,	)
	)
Defendant.	)
	)

**JUDGMENT**

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Decision and Order dated March 27, 2019, defendant BuzzFeed Inc.'s motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the action herein brought by plaintiffs Michael Leidig and Central European News Ltd is GRANTED; accordingly, the case is closed.

**Dated:** New York, New York  
March 27, 2019

App. 40

**RUBY J. KRAJICK**  
Clerk of Court

**BY:**

/s/  
Deputy Clerk

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**APPENDIX C**

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

**16 Civ. 0542 (VM)**

**[Filed May 9, 2017]**

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MICHAEL LEIDIG and CENTRAL	)
EUROPEAN NEWS LTD.,	)
	)
Plaintiffs,	)
	)
- against -	)
	)
BUZZFEED, INC.,	)
	)
Defendant.	)

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**DECISION AND ORDER**

**VICTOR MARRERO, United States District  
Judge.**

Plaintiffs Michael Leidig (“Leidig”) and Central European News Ltd. (“CEN”) (collectively, “Plaintiffs”), commenced this litigation against defendant BuzzFeed, Inc. (“BuzzFeed”) alleging libel and seeking \$5,000,000 in damages in connection with an article published by BuzzFeed regarding Plaintiffs. (See “Complaint,” Dkt. No. 1.)

Plaintiffs subsequently moved for Partial Summary Judgment pursuant to Federal Rule of Civil Procedure 56(a) (“Rule 56 (a)”), seeking an order declaring “(1) that the article . . . was defamatory of plaintiffs as a matter of law; (2) that the defamatory assertions contained in the article were false, as a matter of law; and (3) that neither plaintiff is a ‘public figure’ as that term is used in the law of libel [.]” (“Motion,” Dkt. No. 16, at 1.) For the reasons discussed below, the Court finds that there are genuine issues of material fact such that summary judgment is not warranted. Plaintiffs’ Motion is therefore DENIED.

## **I. BACKGROUND**

On April 24, 2015, BuzzFeed, an internet media company that operates the popular eponymous website, published an article titled “The King of Bullsh\*t News” (hereinafter, the “Article” or “Publication”), on its website. (See Dkt. No. 1-1.) The Article’s primary subject is a selection of articles sold by CEN, a British news agency founded by Leidig which “provid[es] news from non-English-language countries” to third party media services in Britain and elsewhere. (See *id.*; Dkt. No. 1 ¶¶ 14-15, 22-23.) The Article focuses on stories disseminated and sold by CEN on topics such as teens in China walking cabbages on leashes due to loneliness; a Justin Bieber ringtone saving a Russian fisherman from a bear attack; and numerous stories involving male castration. (See *id.* at 3, 6, 13-17.) The Article’s primary thesis is that, after purportedly investigating the facts contained in these and other CEN stories, “the evidence assembled by BuzzFeed News suggests that an alarming proportion of CEN’s

‘weird news’ stories are based on exaggeration, embellishment, and outright fabrication[.]” (*Id.*, at 4.)

On January 25, 2016, Plaintiffs commenced this litigation alleging that BuzzFeed’s Article falsely suggests that Plaintiffs are “in the business of publishing news articles presented as true that are false” – or so-called “fake news” – and “that plaintiffs are the largest purveyors of such articles in the world.” (Complaint ¶ 3.) Plaintiffs further allege that BuzzFeed published the Article “with reckless disregard for whether [the statements were] true or false . . . .” (Complaint ¶ 6; see also *id.* ¶¶ 8-10, 35-37, 42-44, 56-59, 63-66.)

On January 13, 2017, Plaintiffs filed the instant Motion, seeking an Order finding the Article defamatory as a matter of law and false as a matter of law, as well as finding that neither CEN nor Leidig are public figures for the purposes of this litigation. Plaintiffs argue that the Article’s statements are false because, among other reasons: “Leidig has never created or knowingly published a fake news story, nor added phony quotations to a story”; Leidig “has no knowledge of anyone else at CEN doing either of these things; Leidig has explained his sources for the CEN stories attacked by the Article, thereby “demonstrating the falsity of BuzzFeed’s accusations of fraud”; and BuzzFeed has presented no evidence that its libelous assertions are true. (See “Memorandum,” Dkt. No. 20, at 14; “Reply Memorandum,” Dkt. No. 38, at 5-8.)

Plaintiffs further argue that the Article is defamatory as a matter of law, because “it charges [Leidig] with criminal conduct – preparing fake news

stories and selling them as real, [or] defrauding his customers” and “was intended to, and did injure him in his profession,” and that it is defamatory of CEN “because it was a direct attack on the company’s integrity and competence.” (Memorandum at 13.)

Finally, Plaintiffs argue that “Defendants [sic] cannot possibly ascribe [public figure] status to Mr. Leidig or his company” for all purposes, and that Plaintiffs are not limited purpose public figures because neither Plaintiff has “voluntarily inject[ed] himself . . . into a public controversy” related to the litigation, invited public attention to either’s views, assumed a position of prominence with respect to the controversy, or maintained regular and continuing access to the media. (*Id.*, at 16-17.)

On February 16, 2017, Defendant filed a memorandum of law in opposition to Plaintiffs’ Motion arguing that any findings regarding whether the Article is false or defamatory as a matter of law before discovery has begun in earnest is premature. (*See* “Opposition,” Dkt. No. 27, at 6-10.)<sup>1</sup> In support, Defendant cites to numerous outstanding discovery issues and requests and identifies numerous questions of fact bearing on the falsity or defamatory nature of the Article, as well as Plaintiffs’ status as public or private figures. (*See* “Bolger Decl.,” Dkt. No. 28, ¶ 20-

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<sup>1</sup> In Defendant filed its Opposition as an omnibus memorandum relating to both this Motion and as a separate Motion to Compel, which was referred to Magistrate Judge Gorenstein, along with all other pretrial and discovery disputes, on April 4, 2017. (Dkt. No. 40.) Accordingly, the Court does not address those portions of the Opposition which relate to Defendant’s Motion to Compel.

21, 24-27, 29-30.)<sup>2</sup> Defendant argues that, at this stage, Plaintiffs have failed to establish that the Article is materially false and that the Court should grant summary judgment to BuzzFeed instead. (*Id.*, at 7-9, 11-14.)

Defendant further argues that Plaintiffs cannot be granted private figure status at this stage; rather, “Plaintiffs must be considered a [sic] limited purpose public figures.” (Opposition at 15-19.) Defendant cites to the Complaint in support: Leidig alleged that “he was a ‘successful’ journalist”; that he sells CEN stories “to some of the most well-known and successful media entities in the world”; and that Leidig “started the nonprofit ‘Journalism without Borders,’ serves as vice-Chair of the National Association of Press Agencies, authored six books, and won prestigious awards for his journalism.” (*Id.*, at 16 (quoting Complaint ¶¶ 22-23 and “Leidig Decl.,” Dkt. No. 18, at ¶¶ 4-7).) Defendants argue that, despite Plaintiffs’ statements to the contrary, “Plaintiffs have invited comment about their role in th[is] controversy” and, in fact, “Plaintiffs[] plead[ings acknowledge] they wrote a book about BuzzFeed about this dispute.” (Opposition at 17 (quoting Leidig Decl. ¶ 7) .) Defendants argue that this Court must therefore find Plaintiffs to be public figures or, at a minimum, permit discovery “to determine

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<sup>2</sup> The Declaration of Katherine M. Bolger, like the Opposition, was filed in support of both the instant Motion and Defendant’s separate Motion to Compel. The Court addresses only those portions of the declaration which may bear on the Motion now before it.

whether plaintiffs are public figures.” (Opposition at 18.)

## **II. DISCUSSION**

### **A. LEGAL STANDARD**

#### **1. Rule 56(a)**

Summary judgment is appropriate if the evidence shows that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The role of a court in ruling on such a motion “is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried[.]” Knight v. United States Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issues of material fact. See Celotex Corp., 477 U.S. at 323; Gallo v. Prudential Residential Servs., L.P., 22 F.3d 1219, 1223 (2d Cir. 1994). If the moving party satisfies its burden, the nonmoving party must provide specific facts showing that there is a genuine issue for trial in order to survive the motion for summary judgment. See Shannon v. New York City Transit Auth., 332 F.3d 95, 98-99 (2d Cir. 2003).

In determining whether the moving party is entitled to judgment as a matter of law, the court must “resolve all ambiguities and draw all justifiable factual inferences in favor of the party against whom summary judgment is sought.” Major League Baseball Properties, Inc. v. Salvino, Inc., 542 F.3d 290, 309 (2d Cir. 2008);



see also Samuels v. Mockry, 77 F.3d 34, 35 (2d Cir. 1996) (“Summary judgment is proper if, viewing all facts of record in a light most favorable to the non-moving party, no genuine issue of material fact remains for adjudication.”) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-50 (1986)). Although the party opposing summary judgment may not “rely on mere conclusory allegations nor speculation,” D’Amico v. City of New York, 132 F.3d 145, 149 (2d Cir. 1998), if there is any evidence in the record from which a reasonable inference could be drawn in favor of the opposing party, summary judgment is improper. See Gummo v. Village of Depew, N.Y., 75 F.3d 98, 107 (2d Cir. 1996).

## 2. Libel

To make a prima facie case of libel under New York law, a plaintiff must establish the following five elements:

- 1) a written defamatory statement of fact concerning the plaintiff;
- 2) publication to a third party;
- 3) fault (either negligence or actual malice depending on the status of the libeled party);
- 4) falsity of the defamatory statement; and
- 5) special damages or per se actionability (defamatory on its face).

Celle v. Filipino Reporter Enterprises Inc., 209 F.3d 163, 176 (2d Cir. 2000); see also Church of Scientology Int’l v. Eli Lilly & Co., 778 F.Supp. 661, 666 (S.D.N.Y. 1991).

A defamatory statement of fact is one “which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society.” Balestriere PLLC v. CMA Trading, Inc., No. 11 CIV. 9459, 2014 WL 929813, at \*16 (S.D.N.Y. Mar. 7, 2014) (internal quotations and citations omitted); see also Karedes v. Ackerley Group, Inc., 423 F.3d 107, 113 (2d Cir. 2005); Foster v. Churchill, 87 N.Y.2d 744, 751, 642 N.Y.S.2d 587 (1996). “[O]nly factual statements are actionable as defamation or libel[,]” because “New York law protects derogatory statements which may be categorized as ‘opinion’ as opposed to 1fact.” Chau v. Lewis, 771 F.3d 118, 128 (2d Cir. 2014).

Upon reviewing the statement in question, a Court “‘must give the disputed language a fair reading in the context of the publication as a whole’” and construe it as the intended readership would. Celle, 209 F.3d at 177 (emphasis in original) (quoting Armstrong v. Simon & Schuster, Inc., 649 N.E.2d 825, 829 (N.Y. 1995)).

“The standard for assessing falsity is informed by the ‘common law of libel[,] . . . [which] overlooks minor inaccuracies and concentrates upon substantial truth.’” Blair v. Inside Ed. Prods., 7 F. Supp. 3d 348, 357 (S.D.N.Y. 2014) (quoting Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 516 (1991)). “[W]here the ‘the substance, the gist, [or] the sting’ of a statement is true, it cannot be libelous.” Stern v. Cosby, 645 F. Supp. 2d 258, 276 (S.D.N.Y. 2009) (quoting Masson, 501 U.S. at 517 (1991)). Indeed, under New York law, it is well-established “that truth is an absolute,

unqualified defense to a civil defamation action” and that “substantial truth suffices to defeat a charge of libel.” Stern, 645 F. Supp. 2d at 276 (quoting Weber v. Multimedia Entm’t, Inc., No. 97 Civ. 0682, 2000 WL 526726, at \*10 (S.D.N.Y. May 2, 2000)); see also Guccione v. Hustler Magazine, Inc., 800 F.2d 298, 301 (2d Cir. 1986), cert. denied, 479 U.S. 1091 (1987); Jewell v. NYP Holdings, Inc., 23 F. Supp. 2d 348, 366 (S.D.N.Y. 1998) (“[I]t is not necessary to demonstrate complete accuracy to defeat a charge of libel.”).

“[S]ummary judgment cannot be granted on [Plaintiff’s] defamation claim” where the “plaintiff has not foreclosed the possibility that [the defendant’s] statements were more or less truthful.” Balestriere PLLC, 2014 WL 929813, at \*18.

### 3. Fault: Public vs. Private Figures

Defamation law makes a distinction between public and private figures with respect to the element of fault. See, e.g., N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964) (establishing more stringent standard for public officials than for private figures for purposes of fault). The rationale underlying this distinction is “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,” on the one hand, and a recognition that “private figures are more vulnerable to injury from defamation,” on the other. Contemporary Mission, Inc. v. N.Y. Times Co., 842 F.2d 612, 619-20 (2d Cir. 1988).

Public figures for all purposes are those “who have voluntarily sought and attained influence or prominence in matters of social concern.” Celle, 209 F.

3d at 176. Defamation law recognizes “limited purpose public figures” as plaintiffs who “have voluntarily exposed themselves to increased risk of injury” through participation in public affairs. Contemporary Mission, 842 F.2d at 619-20. Limited purpose public figures typically “have greater access to the media and thus are in a better position to contradict a lie or correct an error” than a private person. Id.

A public figure bringing a claim of libel is required to establish that the defendant made the disputed statements with “actual malice.” See Curtis Pub. Co. v. Butts, 388 U.S. 130, 155 (1967) (establishing “actual malice” standard for public figures); N.Y. Times Co. v. Sullivan, 376 U.S. at 279-80 (establishing standard for first time for public officials). In other words, the plaintiff must show that the defendant published the statement “with knowledge that it was false or with reckless disregard of its truth or falsity.” Celle, 209 F.3d at 174. If the plaintiff is a private figure, then they need only show that the defendant acted with negligence. Id. at 176.

#### B. APPLICATION

Upon reviewing the parties’ briefs, and for the reasons discussed below, the court finds that there remain numerous genuine issues of material fact such that filing a motion for summary judgment would be premature and granting it would be improper.

At the outset, Plaintiffs have not met their burden to show the absence of any genuine dispute as to material facts. See Celotex Corp., 477 U.S. at 323; Gallo v. Prudential Residential Servs., L.P., 22 F.3d

1219, 1223 (2d Cir. 1994). Indeed, Plaintiffs’ Local Rule 56.1 Statement confirms that several facts central to this dispute remain contested by the parties. (Rule 56.1 Statement,” Dkt. No. 17 ¶¶ 4-26.) Although Plaintiffs state in their Rule 56.1 Statement that the “material facts [contained therein] are not disputable,” the paragraphs that follow belie that claim. (See, e.g., *id.* ¶ 9 (“Plaintiffs allege that the words quoted in paragraph 7 were defamatory of them and false; BuzzFeed denies both these assertions.”); *id.* ¶¶ 17, 20, 23, 26 (same, but making reference to different paragraphs and statements in the Article).) At this juncture, it appears that there are few material facts about which the parties agree.

Furthermore, and as Plaintiffs recognize, “discovery is still in its earliest states [.]” (Memorandum at 18.) As a result, there is little to no relevant evidence upon which Plaintiffs have relied in support of their Motion.<sup>3</sup>

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<sup>3</sup> Without an evidentiary record – such as deposition testimony, affidavits, or any factual findings regarding the falsity of the Article or truth of the underlying CEN Articles – the Court finds it difficult to assess the reliability or accuracy of the statements contained in the Motion and supporting papers. By way of example, Plaintiffs state that the x-ray images discussed in the Article were “in fact the images . . . of a man who contracted the disease [disseminated cysticercosis] from eating sashimi” because a neurosurgeon said so. (Leidig Decl. ¶ 17.) The statement raises a question as to why a neurosurgeon would be evaluating x-ray images for their accuracy, rather than a radiologist, a type of doctor whose specialty includes and therefore is more suited to the interpretation of radiological and medical images, such as x-ray images. See American College of Radiology, What is a Radiologist?, <https://www.acr.org/Quality-Safety/Radiology-Safety/Patient-Resources/About-Radiology> (last visited May 8, 2017.) Perhaps

With respect to falsity, the Motion and supporting papers consist mainly of Plaintiffs insisting upon a tautology that, to paraphrase Lucetta, conveys no other than Plaintiffs' reason: The Article is false because it is false.<sup>4</sup> (See, e.g., Memorandum at 14; Leidig Decl. ¶ 16.) If the Court were to grant Plaintiffs' Motion at this stage, it would be doing so based on little more than the parties' "conclusory allegations [] or speculation." D'Amico, 132 F.3d at 149. Because "the evidence proffered by plaintiff on this issue could allow a reasonable fact-finder to resolve the issue in favor of either party, summary judgment is unwarranted." Balestriere PLLC, 2014 WL 929813, at \*17.

Similarly, with respect to the defamatory nature of the Article, the Court cannot find the Article or the statements contained in it defamatory as a matter of law at this juncture. Although the question of whether a statement is defamatory is one of law, questions of law are informed by questions of fact. This is particularly true in libel cases where the line between truth and falsity or between protected speech and defamation is often a fine one. To the extent that material issues of fact remain and the question of the Article's defamatory meaning is inextricably linked with the question of the Article's falsity, the Court

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affidavits, deposition testimony, or other evidence would be illuminating on this and other points.

<sup>4</sup> Then thus: of many good I think him best.

I have no other, but a woman's reason;  
I think him so because, I think him so.

William Shakespeare, *Two Gentlemen of Verona* 1.2:171-174.

finds that it is premature to make a finding with respect to the defamatory nature of the Publication as well.

Finally, regarding whether Plaintiffs are public or private figures for the purposes of establishing fault, the Court finds the question to be far from settled, as Plaintiffs would have it. On the one hand, Plaintiffs argue that Leidig “is nowhere close to [being in the] league” of a public figure, and on the other, Plaintiffs cite to Leidig’s numerous journalistic accomplishments and prizes and to CEN’s far-reach. (Compare Memorandum at 16-17 and Reply Memorandum at 9, with Complaint ¶¶ 22-23 and Leidig Decl. ¶¶ 5, 7.) Here, as with falsity and defamation, many factual questions remain, including regarding Plaintiffs’ influence and reach, Leidig’s book “Buzz Bottom Feeders” potentially written about this controversy, and Plaintiffs’ other potential responses to this litigation. The Court finds that additional discovery on this point, too, is appropriate.

### **III. ORDER**

Accordingly, it is hereby

**ORDERED** that Michael Leidig’s and Central European News’ motion for partial summary judgement (Dkt. No. 16) is **DENIED**.

**SO ORDERED.**

App. 54

Dated: New York, New York  
9 May 2017

/s/Victor Marrero  
VICTOR MARRERO  
U.S.D.J.



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**APPENDIX D**

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**Docket No: 19-851**

**[Filed January 31, 2020]**

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Michael Leidig, Central	)
European News Ltd,	)
	)
Plaintiffs - Appellants,	)
	)
v.	)
	)
Buzzfeed, Inc.,	)
	)
Defendant - Appellee.	)

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**ORDER**

Appellants, Michael Leidig and Central European News Ltd., filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

App. 56

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". Overlaid on the signature is a circular official seal of the United States Court of Appeals for the Second Circuit. The seal is red and white with a blue center. The text "UNITED STATES" is at the top, "SECOND CIRCUIT" is in the middle, and "COURT OF APPEALS" is at the bottom, separated by small stars.

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**APPENDIX E**

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

**16CV-**

**[Filed January 25, 2016]**

MICHAEL LEIDIG, and CENTRAL	)
EUROPEAN NEWS LTD,	)
	)
Plaintiffs,	)
	)
- against -	)
	)
BUZZFEED, INC.,	)
	)
Defendant.	)
	)

**COMPLAINT**

Plaintiffs, Michael Leidig and Central European News Ltd, by their attorney, Harry H. Wise, III, as their complaint against defendant, allege and show:

1. On April 24, 2015, defendant published, of and concerning the plaintiffs, an article with the headline “The King of Bullsh\*t News” (hereinafter “the publication” or “defendant’s publication”). A true copy of the publication is annexed hereto as Exhibit A. The publication was made by posting the story on defendant’s web site.

2. By its headline, defendant intended to and did assert that plaintiffs were “The King of Bullshit News.”

3. By “The King of Bullshit News,” defendant intended to and did assert that plaintiffs were in the business of publishing news articles presented as true that are false, and known to be false by plaintiffs, and that plaintiffs are the largest purveyors of such articles in the world.

4. The headline set forth in paragraph 1 was, and is, false.

5. The headline set forth in paragraph 1 was, and is, defamatory of plaintiffs.

6. The headline forth in paragraph 1 was published with reckless disregard for whether it was true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

7. In the publication, defendant said, of and concerning the plaintiffs:

“But then the bottom fell out of the business ... after 9/11, and it seemingly never recovered.

\* \* \*

So it appears that Leidig decided to play the online game, as he saw it. He launched websites such as the *Austrian Times* and *Croatian Times*. He cast his net far afield to China, India, and Latin America, scouring for images and posts on

social networks that he could weave a story around in order to hit up old clients with a new kind of content.”

8. By the part of the publication set forth in paragraph 7, defendant intended to and did assert that, suffering from financial difficulties, plaintiffs decided to go into the business of fabricating and selling fake news stories.

9. At the time it published the words set forth in paragraph 7, defendant had spoken with no persons who had said that, suffering from financial difficulties, plaintiffs had decided to go into the business of fabricating and selling fake news stories.

10. At the time it published the words set forth in paragraph 7, defendant had seen no documents suggesting that, suffering from financial difficulties, plaintiffs had decided to go into the business of fabricating and selling fake news stories.

11. The words set forth in paragraph 7 were and are false.

12. The words set forth in paragraph 7 were and are defamatory of plaintiffs.

13. The words set forth in paragraph 7 were published with reckless disregard for whether they were true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

The Parties

14. Plaintiff Michael Leidig is a citizen of Great Britain who lives and works in Vienna, Austria.

15. Plaintiff Central European News Ltd (“CEN”) is a corporation organized under the laws of Great Britain with its principal place of business in England.

16. Upon information and belief, defendant, BuzzFeed, Inc. (hereinafter “BuzzFeed” or “defendant”), is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of New York, County of New York.

Jurisdiction and Venue

17. This Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332(a)(2), in that the matter in controversy exceeds the sum of \$75,000.00 and is between a citizen of this State and citizens of a foreign state.

18. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b)(1), in that defendant resides in this district.

Facts

19. BuzzFeed is a news and entertainment website that mixes original reporting, user-generated work, and aggregations from other websites.

20. BuzzFeed is one of the ten most-visited news and information websites in the United States.

21. People around the world pay more than 5 billion visits to BuzzFeed’s web site each month.

22. Plaintiff Michael Leidig is a journalist who has had a successful and, until the publication in issue here, unblemished career. He has worked in broadcasting, print, magazine, and online journalism, and has done investigative stories. He has also been a sub-editor responsible for editing news copy, and has written and had published several books. In 2006, a three-part series he did for the Sunday Telegraph on the trafficking of women was nominated for an Amnesty award and also won the Paul Foot award, a British award for exceptional journalism. He is currently the vice-chairman of the National Association of Press Agencies, a British press organization, responsible for its special projects, including setting up its legal-aid program and a national media project to support freelance journalistic work.

23. Plaintiff Central European News Ltd is a news agency founded by Mr. Leidig in 1995. Its main business is providing news from non-English-language countries to clients in the British press and elsewhere. Some other aspects of its business have included creating the English-language news for the respected Austrian daily newspaper *Die Presse*, and also producing the English-language pages of the world's oldest newspaper in continuous operation, *The Wiener Zeitung*.

#### Defendant's Publication

24. One of three bylined authors of defendant's defamatory publication was BuzzFeed reporter Alan White.

25. When he approached Mr. Leidig about the possible story, Mr. White said, in an email:

“As I mentioned previously, I understand that you are producing this viral content for sale in order to fund your laudable investigative journalism, such as your report into the issue of child trafficking in Europe, and I am keen to reflect this fact in the article.”

26. Upon information and belief, based on the publication as posted on defendant’s web site, the statement set forth in the preceding paragraph was a lie, in that Mr. White had no intention of discussing any of plaintiffs’ laudable work, but only wished to smear and defame plaintiffs as journalistic frauds.

27. In the publication, defendant also said, with respect to a story plaintiffs had published concerning people in China walking cabbages, rather than pets, out of loneliness:

The story included quotes from “Chinese psychiatrist Wen Chao”, explaining how walking a cabbage on a lead can help reduce feelings of isolation, and a 17-year-old called Lui Ja Chen, who supposedly said:

I feel I can transfer my negative thoughts about myself to the cabbage, go for a walk with it and come home feeling better about myself.

The pictures were credited to CEN, and the same quotes appeared on the *Austrian Times* site.



Unsurprisingly, the story was quickly debunked, by *Kotaku*, *BuzzFeed*, and the *Wall Street Journal*. The teens were not walking cabbages because they were lonely: they were walking cabbages as part of an art event at a music festival by Chinese artist Han Bing (who has been walking cabbages as part of his art for over a decade).

28. By the passage quoted in the preceding paragraph, defendant intended to and did imply that plaintiffs' story was untrue, and that it was made up by plaintiffs, and that plaintiffs had made up quotes from non-existent persons.

29. The implication of the words quoted in paragraph 27 was and is defamatory of plaintiffs.

30. The implication of the words quoted in paragraph 27 was and is false.

31. Young people in China had walked cabbages out of loneliness; the persons quoted in the CEN story were real and the quotes correct; and the story was widely re-published in China, leading to some public-opinion surveys conducted about the phenomenon, which led to further news stories there.

32. The words set forth in paragraph 27 were published with reckless disregard for whether their implication was true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

33. In the publication, defendant also said of plaintiffs' stories:

CEN's stories frequently contain lines from someone that no one else could persuade to talk, including the local media. And many of those quotes, especially those from anonymous "officials", include phrases that one would expect to hear from someone who grew up in the UK.

34. By the words quoted in the preceding paragraph, defendant meant to and did imply that Mr. Leidig or others at CEN frequently make up quotes included in CEN's stories.

35. The implication set forth in the preceding paragraph was and is defamatory of plaintiffs.

36. The implication set forth in paragraph 34 was and is false.

37. The words set forth in paragraph 33 were published with reckless disregard for whether their implication was true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

38. Defendant's publication also said, of and concerning plaintiffs, concerning a story that plaintiffs had published about a Chinese man who had reportedly gotten tapeworm from eating too much sashimi, which story was accompanied by a photo purporting to be a photo of the man's x-ray showing the spots of disseminated cysticercosis:

Soon after the story made the rounds, it was investigated by the debunking site Snopes, which found that the x-ray photos of the alleged victim were “similar to those included in a 2014 case report published by the *British Medical Journal* that dealt with a man who contracted a rare case of disseminated cysticercosis through the consumption of uncooked pork (with no mention of raw fish)”. It does not appear that CEN ever alerted its customers to the fact that the images had been debunked; the original story remains online at the *Daily Mail* and elsewhere.

39. By the words quoted in the preceding paragraph, defendant intended to and did assert that plaintiffs had used an x-ray of some other person and passed it off as an x-ray of the Chinese man they were writing about, and failed to make a correction when this was revealed.

40. Before publishing the words set forth in paragraph 38, defendant did nothing to determine whether the photo of the x-ray included by plaintiffs in their story was genuine or not.

41. Any investigation by defendant would have revealed that the story had been published by numerous news agencies in China with the same photograph, and that a broadcast report had included an explanation of a Chinese doctor, Dr. Huang Huicong of Wenzhou Medical University, that, among other things, attested to the authenticity of the x-ray.

42. The words set forth in paragraph 38 were and are false.

43. The words set forth in paragraph 38 were and are defamatory of plaintiffs.

44. In publishing the words set forth in paragraphs 38, without doing anything to verify whether they were true or false, defendant acted with reckless disregard for whether they were true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

45. In the publication, defendant also included an assertion, of and concerning the plaintiffs, with respect to a story plaintiffs had published, which was described in defendant's publication as a "CEN story about a [Russian] woman named Elena Lenina, who dyed her kitten pink, which supposedly caused the animal's death from blood poisoning."

46. With respect to that story, defendant said:

"As *Gawker's* Antiviral site pointed out, the story was false. The kitten was not dead. Lenina was in fact simply posting pictures of her—very much alive—kitten on social media.

As with the Sandoval case, this appears to be a situation where CEN sold a false (and potentially defamatory) story about a about a real person with little regard for the consequences that person would face when the story went viral. Nor has there been any

apparent attempt to correct the story since it was proved to be false.”

47. By the words quoted in the preceding paragraph, defendant intended to and did assert that plaintiffs are intentional purveyors of false stories, and do not care whether they injure any persons by their publications, and persist in such conduct even after a story is proven to be false.

48. Defendant’s assertion set forth in paragraph 47 was and is false.

49. Defendant’s assertion set forth in paragraph 47 was and is defamatory of plaintiffs.

50. Before publishing the words quoted in paragraph 46, defendant made no investigation to determine whether their assertion was true or false.

51. If defendant had made any investigation of the story, it would have found the following facts, set forth in paragraphs 52 and 53 below:

52. Ms. Lenina is a well-known public figure in Russia, with a public persona based on outrageous conduct. She has posed nude in magazines, refused to wear a seatbelt because, she said, her breasts were too big, and once claimed to be keeping a man as a pet slave on a leash.

53. The lead on CEN’s story was as follows: “Russian author Lena Lenina is under fire from animal rights activists after having her cat dyed pink shortly before it died of toxic poisoning.” That Ms. Lenina was under fire for the alleged poisoning was quite true.

Under fire (thousands of people signed a petition calling for her to be jailed), she claimed to have tracked down the cat, which she had given away, and posted pictures on Twitter claiming it was alive and well. So, quite properly, CEN then published a story headlined “Pretty in Pink Kitten is Still Alive Claims Star.” That story, again, was quite true, and accurately reported the newsworthy events. Ms. Lenina’s posts failed to end the controversy, as there were many posts by others suggesting that the new pictures did not resemble the original cat.

54. In publishing the false and defamatory words set forth in paragraph 46, without doing anything to investigate whether their charges against plaintiffs were true or false, defendant acted with reckless disregard for whether they were true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

55. In the publication, defendant also said, of and concerning plaintiffs, with respect to a story plaintiffs had published concerning some Russian women who stripped in public and lost their jobs as a result:

“[I]t appears that CEN took the photos, invented a newsworthy narrative, inserted false names for the women, credited a nonexistent photographer, and fabricated four sets of quotes to fill out the text.”

56. By this part of the publication, defendant meant to and did accuse plaintiffs of creating a false news story and fraudulently selling it as true.

57. Defendant's assertions set forth in paragraph 55 are false.

58. Defendant's assertions set forth in paragraph 55 are defamatory of plaintiffs.

59. In publishing the words set out in paragraph 55, defendant made no investigation as to whether the charges it made against plaintiffs were true or false.

60. Any investigation would have revealed that, prior to plaintiffs publishing it, the story had appeared in Russian media, and thus was not created by plaintiffs.

61. In publishing the words set forth in paragraph 55 without investigating whether they were true or false, defendant acted with reckless disregard for whether they were true or false, and in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

62. As an additional part of its publication, defendant said, concerning a story that plaintiffs had published about the birth of a two-headed goat on a farm in China, that an "expert" had said of a photograph accompanying the story that it appeared to be a "digitally enhanced." Defendant also said:

"A Xinhua journalist who claims to have seen the goat in person didn't get the farmer to talk, but a news

agency based in Vienna somehow did, despite the story taking place in a remote rural community a six-hour train ride from Beijing.”

63. By the words quoted in the preceding paragraph, defendant meant to and did imply that plaintiffs had published a faked photograph and had invented quotes to make a story more interesting.

64. The implication set forth in paragraph 63 was and is false.

65. The implication set forth in paragraph 63 was and is defamatory of plaintiffs.

66. Before publishing the words set forth in paragraph 62, defendant conducted no investigation in China concerning the story.

67. Any investigation in China would have revealed that the story, originally published by the Xinhua News Agency, China’s official state press agency, had been accompanied by a video showing the goat, and that other press agencies in China had published the story, with photographs, and with interviews of the farmer, prior to the publication by plaintiffs.

68. In publishing the words set forth in paragraph 62 of and concerning the plaintiffs, while making no investigation in China as to whether their implications were true or false, defendant acted with reckless disregard for whether its implications were true or false, and in a grossly irresponsible manner without due consideration for the standards of



information gathering and dissemination ordinarily followed by responsible parties.

Facts with Respect to Damages

69. Defendant's publication has damaged the reputation of plaintiff Michael Leidig.

70. Defendant's publication has damaged the reputation of plaintiff Central European News, Ltd.

71. Since the day defendant published the article concerning plaintiffs, anyone searching on a major search engine for either Michael Leidig or Central European News will see, on the first page of the list of responses, a link to defendant's publication, "The King of Bullsh\*t News."

72. Defendant's publication was republished by it in different languages, and was also republished by others in multiple languages, a fact reasonably foreseeable by, and intended by, defendant.

73. Many clients of plaintiff CEN simply stopped using its news service with no inquiry about whether the charges in defendant's publication were true or false.

74. In Sweden, faced with questions from local news media about defendant's publication, *All Over Press*, a picture-syndication agency and partner of CEN, responded that they had stopped using CEN, and they have done so.

75. In Switzerland, *20 Mins*, a news web site and partner of CEN, confirmed that they would no longer work with CEN.

76. In England, CEN's second biggest client, the *Daily Mirror* announced that it would only use CEN stories if it was absolutely necessary. That client is now using CEN again, but at a much-reduced level from the period before defendant's publication.

77. CEN's sales in early 2015 were, by month, January 830, February 948, March 1070, April 935, May 682, June 626, and July 727. Thus, defendant's publication in April produced a reduction in defendant CEN's sales of about 30%.

78. In addition, CEN clients are now making more queries, increasing CEN's overhead for each story, and some clients are demanding lower rates per story.

79. As a direct result of defendant's publication, plaintiff CEN lost a potential high-six-figure investment that had been in the works for many months. The investment was to fund the development of new software allowing journalists to deal directly with customers for their work. As of the beginning of April 2015, the investment bank involved was representing that it had an investor who was keen on the proposed product; after defendant's publication, the potential investor disappeared.

80. Shortly after defendant's publication, Mr. Leidig traveled to England to visit his father, a meeting arranged so that Mr. Leidig could celebrate his 50<sup>th</sup> birthday with his family.

81. Instead of a joyful family reunion, the event was dominated by a discussion of defendant's publication, and the possible consequences for Mr.

Leidig, including the possible closure of CEN and the ending of his career in disgrace.

82. The day after Mr. Leidig and his father had spent the evening discussing these matters, his father had a massive stroke that left him unable to communicate with others, a condition not expected to change for the rest of his life.

83. Thus the last memories Mr. Leidig's father had of him were of disgrace and possible ruin as "The King of Bullshit News."

Facts with Respect to Punitive Damages

84. "Viral News" refers to stories that, because they are quirky or funny or otherwise unusual, are likely to be spread around the internet as readers decide to share them with others on social media, such as Facebook.

85. One of defendant's business objectives is to obtain a greater share of the market for viral news in Great Britain and elsewhere around the world.

86. The part of plaintiff CEN's business attacked by defendant in its publication was the dissemination of viral news in Great Britain and elsewhere.

87. Defendant knew that, if its publication injured plaintiff CEN's business in Great Britain and elsewhere, defendant's own business would increase.

88. Defendant maliciously intended that its publication injure the viral-news business of plaintiff CEN, and thereby benefit the business of defendant.

89. Defendant had been, prior to its publication of its story about plaintiffs, publicly criticized for publishing stories without verifying whether they were true or false.

90. Prior to publication, defendant was put on notice by lawyers for plaintiffs that the story it was about to publish was “highly defamatory” of plaintiffs and “likely to cause serious reputational harm.”

91. Despite this notification, defendant chose to publish the story anyway.

92. Since the publication by defendant, defendant has been informed of the falsehoods in its publication set forth in this complaint, and of other false and defamatory statements in the publication.

93. Despite being so informed, defendant has refused to take the defamatory and false publication down from its web site or otherwise retract it.

AS A FIRST CLAIM FOR RELIEF, BY PLAINTIFF  
MICHAEL LEIDIG, FOR LIBEL

94. Plaintiff Michael Leidig hereby realleges the allegations of paragraphs 1 through 93.

95. As a result of defendant’s publication, plaintiff Michael Leidig has been seriously damaged in his reputation, in the amount of five million dollars (\$5,000,000.00).

96. Defendant is liable to plaintiff Michael Leidig in the amount of five million dollars (\$5,000,000.00).

97. Because defendant's publication was the result of malice toward plaintiff Michael Leidig and his company, Mr. Leidig is entitled to punitive damages in an amount to be determined by the jury at trial.

AS A SECOND CLAIM FOR RELIEF, BY  
PLAINTIFF CENTRAL EUROPEAN  
NEWS LTD, FOR LIBEL.

98. Plaintiff Central European News Ltd, hereby realleges the allegations of paragraphs 1 through 93.

99. As a result of defendant's publication, plaintiff Central European News Ltd has been seriously damaged in its reputation, in the amount of five million dollars (\$5,000,000.00).

100. Defendant is liable to plaintiff Central European News Ltd in the amount of five million dollars. (\$5,000,000.00).

101. As a result of defendant's publication, plaintiff Central European News, Ltd has suffered special damages in an amount to be determined by the jury at trial, as follows:

--a substantial reduction in its monthly sales of stories;

--the loss of long-time clients and partners, including *All Over Press, and 20 mins*, and the reduction in usage by partners such as the *Daily Mirror*;

--the loss of a high-six-figure investment that had been under discussion for many months;

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--increased expenses occasioned by clients requesting more verification;

--the shutdown of CEN's investigations unit;

--the shutdown of CEN's online publishing products;

amounting in all to approximately \$1,040,000.00;

102. Defendant is therefore liable to plaintiff Central European News, Ltd for special damages to be determined at trial but approximately \$1,040,000.00;

103. Because plaintiff CEN's injury was the result of malice on the part of defendant, CEN is entitled to punitive damages in an amount to be determined at trial.

WHEREFORE, plaintiffs demand judgment as follows:

ON THE FIRST CLAIM FOR RELIEF, on behalf of plaintiff Michael Leidig, general damages in the amount of \$5,000,000.00 and punitive damages as determined by the jury at trial;

ON THE SECOND CLAIM FOR RELIEF, on behalf of plaintiff Central European News, Ltd, general damages in the amount of \$5,000,000.00, special damages as determined at trial in an approximate amount of \$1,040,000.00; and punitive damages in an amount to be determined at trial;

together with the costs and disbursements of this action.

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Jury Demand

Plaintiffs demand trial by jury.

s/Harry H. Wise, III  
HARRY H. WISE, III (HW6841)  
*Attorney for Plaintiffs*  
43 West 43<sup>rd</sup> Street, suite 109  
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(212) 709-8034  
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**EXHIBIT A**

**The King of Bullsh\*t News**

**How a small British news agency and its founder fill your Facebook feed with stories that are wonderful, wacky - and often wrong.**

**Alan White**  
BuzzFeed News  
Reporter

**Craig Silverman**  
BuzzFeed Founding Editor,  
Canada

**Tom Phillips**  
BuzzFeed Staff

posted on Apr. 24, 2015, at 2:08 p.m.

<http://www.buzzfeed.com/alanwhite/central-european-news>

Last November, within a few hours of each other, some of the planet's biggest news websites published an irresistible story. An attractive Argentinian teacher called Lucita Sandoval, from Santiago del Estero, had been having sex with her 16-year-old student, and the video of their tryst had made its way to a porn website. With its heady blend of titillation and depravity, it was the perfect tabloid scandal.

Websites including the *Daily Mirror* and *Metro* in the UK and the *New York Daily News* in the US duly published the story, alongside an image showing the teacher posing poolside in her bikini. "Teacher suspended after sex session with teen pupil ends up on hardcore porn website," read the *Mirror's* headline. The



*Daily Mail* – the most successful English-language newspaper website in the world – even went so far as to claim that there would be a criminal investigation, and that this wasn't the first time that the teacher in question had sexual relations with a student.

There was just one problem: It wasn't true.

As BuzzFeed News has previously reported, the story had already been debunked by a local paper in Argentina a full two weeks before the English-language press picked it up. The video didn't show an underage boy. Although the woman in the video was a teacher, she was from Corrientes, rather than Santiago del Estero, as had been claimed in the incorrect articles. She probably wasn't even called Lucita Sandoval. Some of the sites have updated their articles, but others remain unchanged (at the time of this story's publication).

So how did this fake story make the leap from South America to the English-language press? The answer is tucked away in the bottom right-hand corner of the photo of the woman in her bikini: a credit labelled "CEN".

Central European News (CEN) and its sister outfit EuroPics are small news agencies, largely unknown outside certain sections of the media, whose headquarters are in Canterbury in



the UK (although they claim to have 35 staff based in offices across central and eastern Europe). In recent years, CEN has become one of the Western media's primary sources of tantalising and attention-grabbing stories. They're often bizarre, salacious, gruesome, or ideally all three: If you've read a story about someone in a strange country cutting off their own penis, the chances are it came from CEN.

The firm's business model, like that of many other news agencies, is to sell a regular stream of stories and pictures to other media companies, which publish them under the bylines of their own reporters. In CEN's case, these include a string of stories from relatively remote parts of China, India, Russia, and other non-Western countries. They tend to depict the inhabitants of those countries as barbaric, sex-crazed, or just plain weird. And often they are inaccurate or downright false.



The Chinese woman offering to sleep with men to fund her cross-country road trip? That was CEN. The Russian fisherman who was saved from a bear attack by a Justin Bieber ringtone? CEN. The

Macedonian man who chopped his own penis off after his girlfriend told him it wasn't big enough? Also CEN.

CEN's "weird news" stories and images appeal to news organisations precisely because they fall into the

category of “too good to check”. They also appeal because they are perfectly tailored to the current media ecosystem, in which the holy grail is to have content go viral on Facebook and other social media platforms, delivering a surge of traffic.

One tried and tested method for gaining those viral clicks is running precisely the kind of oddball human interest pieces in which CEN specialises: stories that are so intriguing or horrifying or just plain weird that you can’t help but share them with your friends.

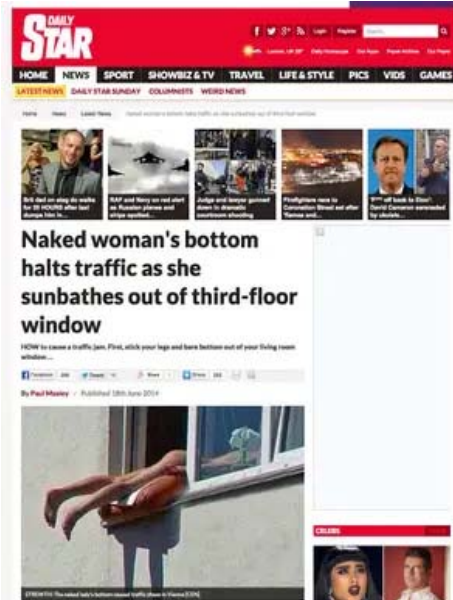
CEN also publishes many unremarkable, genuine news stories – in a statement to BuzzFeed News, the company estimated its total output at 8,000 stories since January 2014. But after growing suspicious of the weird, wonderful, and exotic stories CEN has made a name for itself with – including a few picked up by BuzzFeed News – we decided to investigate, with the help of Craig Silverman, whose website Emergent tracks and evaluates online rumours (since writing this article, Silverman has been appointed as the founding editor of BuzzFeed Canada).

In all, we evaluated 41 CEN pieces that struck us as particularly attention-grabbing. Of those, 11 proved to be completely false or to be based on images that did not match the stories; eight more contained suspicious details such as perfect quotes that appeared in no other coverage; 13 we were unable to verify either way; and nine appeared to be real or mostly real.

In other words, whether it was the story of Bieber and the bear, the Chinese backpacker offering sex in return for help funding her vacation, a man who got a tapeworm after eating sashimi, or the teacher accused of sleeping with her student, the evidence assembled by BuzzFeed News suggests that an alarming proportion of CEN’s “weird news” stories are based on exaggeration, embellishment, and outright fabrication – and that the company has scant regard either for the accuracy of its content or for what happens to the people, such as the woman in the bikini, whose names and images are spread across the world.

In a letter to BuzzFeed News, CEN’s legal representatives said the firm “denies absolutely that it makes up false stories or fabricates quotes”. They claimed that the firm “relies on trusted contributors to source content”, that there is “no evidence of a ‘pattern’ of behavior of fabricating stories”, and that the fact that “a tiny minority” of its stories “might raise questions is not indicative” of such.

They insisted that since CEN “is BuzzFeed’s main competitor for viral news content in the UK market” –



something BuzzFeed would dispute given our completely different business models – they would not be answering questions about its journalistic methods because it would “involve giving information about its sources and practices to a competitor”. We have made the full letter available online, but have redacted one section dealing with matters outside the scope of the current story.

Because BuzzFeed News – contrary to the claim made in the legal letter – is no longer one of CEN’s clients, it has sometimes proved impossible for us to verify absolutely that a particular story has been circulated by CEN, as opposed to just the pictures on which its credit sits, although we believe that selling both picture and story together is the firm’s invariable practice. Instead, we have relied on similarities between the copy on the company’s sites and other published versions of the story, or on the fact that competing news organisations have produced near-identical stories, featuring matching quotes and details, accompanied by pictures credited to CEN. We have also asked CEN to verify whether it was responsible for the details and quotes we have concerns over. It has, as mentioned above, refused to do so.

### **Going Viral**

To illustrate why we became concerned in the first place, let’s take the example of a CEN story that swept across the internet last August. The premise was simple, dramatic, and delightful: A Russian man on a fishing trip was attacked by a bear. As it mauled him, the man’s phone played a ringtone that startled the

animal so badly it ran off, saving the fisherman's life. The ringtone was the song "Baby" by Justin Bieber.

As with the Lucita Sandoval story, it resulted in articles on some of the world's biggest newspaper websites – including the *Daily Mail*, the *New York Post*, the *Sydney Morning Herald*, the *New York Daily News*, the *Daily Express*, the *Daily Mirror*, and indeed BuzzFeed News. (We estimate that BuzzFeed News has run approximately a dozen stories based on CEN's content, which have now been updated to alert our readers to our doubts over their credibility. A full list is at the bottom of this article.)

"Even bears can't stand Justin Bieber's music," reported the *New York Post*. "Finally proof that Justin Bieber IS unbearable," chortled the *Daily Mail*. The story was shared more than 20,000 times on social media (counting only the articles mentioned above).

The Bear vs Bieber tale even made it into a Seth Myers monologue for his late-night show on NBC.



Yet the original story about the bear attack, which was published in Russia's *Komsomolskaya Pravda*, said nothing about a Bieber ringtone. Instead, it reported that the man's phone had a setting that caused it to speak the current time. That's what actually scared off the bear.

*Komsomolskaya Pravda* published its story about Igor Vorozhbityn, the Russian man who survived the bear attack, on 31 July. Five days later, the story appeared on the *Austrian Times*, a website run by CEN's owner and co-founder, Michael Leidig, with a photo of the fisherman (properly credited to *KP*) and the new detail about Justin Bieber.

That same day, CEN sold the story and images to the *Daily Mail*, whose story credits the images taken from *Pravda* to CEN instead. The agency never takes a byline on its stories: They are always credited to in-house reporters. But the emails the firm sends to its clients every day with a lengthy list of stories to pick from offer packages of pictures and text that are often published virtually unchanged. The copy also often appears on sites owned by Leidig, making it clear where the stories have originated. In this instance, the *Mail's* story included the same key quotes and details, and many similar phrases, as the one published on Leidig's *Austrian Times* site. (All told, more than half of the suspect GEN stories cited in this article had identical or nearly identical versions published on a site owned by Leidig.)

With the story taking off online, one of the authors of this article, Craig Silverman, attempted to verify its veracity by speaking to Leidig. A woman who answered

the phone at the *Austrian Times* said he was on vacation in Romania. When asked how the agency would find and cover such a story, she said: “A lot of stories are found on the wire or in local media but also from local interviews on the ground, or we speak to the reporters who wrote them; we speak to police to get things confirmed.”

She promised to check with the company’s freelance agent in Russia and follow up. From that point, *Austrian Times*/CEN/EuroPics stopped providing information or responding to emails.

More recently, CEN sold another Russian story. The agency’s copy, purchased and published by the *Daily Mirror*, claimed that two Russian women from Khabarovsk, near Vladivostok, had been fired from their jobs at a department store after they spent an afternoon participating in a nude photo shoot.

BuzzFeed News tracked down the images and found they originated with a Russian news outlet from the area. That piece identified the photographer as Gene Oryx, whose online portfolio includes nudes. The *Mirror* story credited the images to a “Dimitry Kulishenko, 30” – but online searches for that name return no mentions apart from those linking back to the *Mirror* piece.

In an email, Oryx confirmed to BuzzFeed News that he was the original photographer and attached an high-resolution, uncensored copy of one of the photos to prove his claim. He also said that the women in the picture do not work in a department store, and that the names listed for them in the CEN/*Mirror* story are



false. By implication, that also means the quotes attributed to four different people in the story – one of the women, a “shocked” onlooker, a police spokesperson, and a spokesperson from the department store – are fabricated.

In other words, it appears that CEN took the photos, invented a newsworthy narrative, inserted false names for the women, credited a nonexistent photographer, and fabricated four sets of quotes to fill out the text. Then it sold the story and images. (Oryx said no one from CEN contacted him to license his images for resale.) BuzzFeed News asked CEN to explain how this happened but received no specific response beyond the more general denial.

### **The Man From CEN**

In a 2013 op-ed for the British trade magazine *Press Gazette*, Michael Leidig proudly described the kind of traffic CEN could drive to large websites:

“Most of our regular content is also for the tabloid market. Not the celebrity stuff, but the quirky bizarre news designed to get people talking – today they call it viral news.

“Our content is often frequently in the Most Read section on the *Mail Online*.”

Leidig is the owner and co-founder of CEN. He is also runs a charity called Journalists Without Borders, which claims to provide money to the needy sources featured in CEN’s stories. It solicits donations on CEN’s site via PayPal that it says it redirects to people

featured in the articles who may be in need of medical care or financial support.



Leidig’s lengthy and frequently updated Wikipedia page describes someone who cares about accountability and the importance of crediting original sources:

“Leidig is also a campaigner for greater support for journalism which he describes as the ‘coalface of democracy’. He has campaigned in favour of more responsibility from search engines like Google to give credit to original source material and also for payment for originators of news, arguing that if the journalists all go out of business nobody will provide the content worth having.”

The sole link in the above passage goes to a story on the *Austrian Times* – a website owned by Leidig.

Many of the key edits and contributions to Leidig’s Wikipedia page are by a user called Bylinebandit, who is also a major contributor to the page for the *Austrian Times*. Bylinebandit also worked on a “sandbox” page for Allan Hall, a journalist with whom Leidig co-authored a book. The subject of that book is an

Austrian woman who was kidnapped at a young age. Bylinebandit has made repeated edits to her page. Bylinebandit also happens to be the username for a Twitter account that appears to belong to Leidig. (CEN's lawyers claimed: "Our client's Wikipedia page is entirely uncontroversial and has nothing at all to do with your story.")

Leidig started his career in the British regional press, before moving to Austria in 1993. It was there that he and two colleagues founded CEN, which began with a focus on sourcing newsworthy items from eastern Europe and rewriting them for the London market.

In that *Press Gazette* op-ed, Leidig painted a picture of a young agency that was earning good revenue and employing "full-time paid correspondents across Europe". "Having English-speaking staff on the ground in Europe was almost a licence to print money," he wrote. His clients apparently included the BBC, Deutsche Welle, and Radio Netherlands, as well as major British newspapers. CEN also produced TV footage for clients. A single story such as that of Heinrich Gross, an Austrian doctor who conducted experiments on children for the Nazis, could, wrote Leidig, "be sold a dozen times in various media formats".

But then the bottom fell out of the business. Leidig wrote that CEN's income "fell by 80 per cent" after 9/11, and it seemingly never recovered. A steady gig he had with the Telegraph Media Group that paid him £500 a month plus fees for the articles he produced was ended by the organisation. According to Leidig, it told

him “there was no longer value in original content, and that was because of the competition from the internet”.

So it appears that Leidig decided to play the online game, as he saw it. He launched websites such as the *Austrian Times* and *Croatian Times*. He cast his net far afield to China, India, and Latin America, scouring for images and posts on social networks that he could weave a story around in order to hit up old clients with a new kind of content.

It’s paid off; many major news websites are regular clients. One major British publisher buys multiple CEN stories every day, sometimes more than 100 a month. At £50 per story – which is what BuzzFeed News was charged before it severed its relationship with CEN – that amounts to a sizable income stream. CEN itself claims to have offered its clients more than 8,000 stories since January 2014.

But for CEN’s clients, the relationship more than pays off. According to social media tracking service BuzzSumo, the second most-shared *Daily Mail* story of the last 12 months – about a Chinese man who got a tapeworm from eating too much sashimi, complete with explicit X-rays – was one that was bought from CEN. But not everything was quite as it seemed.

### **Tapping the Chinese Market**

The tapeworm story originated on the Chinese news site [hk.on.cc](http://hk.on.cc). CEN/Europics spotted the story, and it was soon distributed far and wide. Again, BuzzFeed News was one of many sites that covered it.



Soon after the story made the rounds, it was investigated by the debunking site Snopes, which found that the x-ray photos of the alleged victim were “similar to those included in a 2014 case report published by the *British Medical Journal* that dealt with a man who contracted a rare case of disseminated cysticercosis through the consumption of uncooked pork (with no mention of raw fish)”. It does not appear that CEN ever alerted its customers to the fact that the

images had been debunked; the original story remains online at the *Daily Mail* and elsewhere.

Then there was the story claiming that an attractive Chinese woman was offering to spend a night with men in exchange for them helping her travel around the country. The *New York Daily News* and the *Daily Telegraph* credited their images of the woman to Europics, CEN's sister agency. The reality, as reported by *Shanghai Daily*, was that it was a hoax to promote a dating app called Youjia, which the paper said had been banned as a result.

After the story was proven to be a hoax, Leidig's *Austrian Times* published a story about the debunking. It reported that Chinese officials were "particularly angry about the viral story widely spread on Chinese social media sites and also reported extensively in Chinese media and international media".

Other stories published by CEN investigated by BuzzFeed News were equally problematic. One, published in Leidig's *Croatian Times* on 17 November, was called "No Kidding – Baby Goat Has Two Heads".

The goat story featured this image, credited to Europics, of a baby goat supposedly born with two heads.

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The photo originated with the Xinhua News Agency in China five days earlier. At the request of BuzzFeed News, Dr Neal Krawetz, the creator of the FotoForensics photo analysis platform, which is used by law enforcement and others to examine digital images, analysed the image.

Krawetz found that the two men, the hand in the bottom left, and the two goat heads each show up as “distinct regions under a variety of analysis methods”. He said the evidence was “conclusive” that it had been digitally enhanced.

### The Perfect Quote

Along with the questionable nature of the image, there is an even bigger problem with the goat story. The original Xinhua story about the goat contains very little text or information. A follow-up article from the next day credited to the same agency and reporter offers more detail, but is still very thin on quotes. Yet the *Croatian Times* story quotes farmer and goat owner Xu

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**World's oldest AGA discovered**  
Lead researcher Marcel Bulic - from the Department of Prehistoric Archaeology at Zagreb's Faculty of Philosophy - said the find was significant because the kiln was covered to protect the rest of the

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**© europas.at** 17.11.14. - 15:00

**Chinese farmer Xu Jinkui, 43, was not kidding when he said his goat had given birth to a kid with two heads.**

**Incredulous neighbours who turned up to see the spectacular mutant discovered that the baby goat did indeed have two heads, albeit with just two ears and three eyes, and predicted that the hideous looking creature would not live long.**

**Xu said: "They told me to leave it to die, but I couldn't just do that. I asked the vet and he said it wouldn't live long either, but the mother didn't reject it and I gave it a bit of extra milk occasionally and instead of dying, it seemed to do pretty well."**

**In fact the kid is now well on the way to becoming a fully grown goat living on the farm in Sanhe village in Changde county in Eastern China's Shandong province.**

**He said: "It is currently 30cm tall and 40cm long and doesn't seem to show anything obvious in terms of behaviour problems as a result of its disability, although anyone that comes here can see straight away that it's a mutant. I have had a lot of visitors, and some pretty big cash offers as people realise it's probably going to live longer, but I'm not interested in selling it. Maybe later, but for now it's fun to have around."**

**Cosmo**

Jinkui at length. It also lists his age as 43; Xinhua says he is closer to 60.

Here's a quote attributed to Jinkui:

"It is currently 30cm tall and 40cm long and doesn't seem to show anything obvious in terms of behaviour problems as a result of its disability, although anyone that comes here can see straight away that it's a mutant. I have had a lot of visitors, and some pretty big cash offers as people realise it's probably going to live longer, but I'm not interested in selling it. Maybe later, but for now it's fun to have around."

A Xinhua journalist who claims to have seen the goat in person didn't get the farmer to talk. But a news agency based in Vienna somehow did, despite the story taking place in a remote rural community a six-hour train ride from Beijing.

The nature of the quote fits a pattern. CEN's stories frequently contain lines from sources that no one else could track down or persuade to talk, including the local media. And many of those quotes, especially those from anonymous "officials", include phrases that one would expect to hear from someone who grew up in the UK.

For example, the Bieber/bear story included this quote from an anonymous "wildlife expert" who was presented without any affiliation or location:

"Sometimes a sharp shock can stop an angry bear in its tracks and that ringtone would be a very unexpected sound for a bear."



As with the goat farmer, CEN often quotes named people who speak in perfect paragraphs and use anglicised phrases. For instance, in January this year a number of news websites – including Leidig’s *Austrian Times* – ran a story about an underwear thief who, according to the *Mirror*, “was forced to walk around a block of flats in Singapore with bras and undies hanging from his neck after residents laid a trap following a spate of kinky thefts”.

Our investigations led us to this Chinese-language news post with watermarks from this Weibo account. The post is from a girl named “Yeeyee” (from Singapore). In her brief account she writes that on 1 November, at around 2am, she found a man in her house stealing her undergarments. She then “caught him” and wanted to “shame him”. There also appears to be a video of the incident.

“We realised he was targeting windows where he knew women lived. He came at around midnight and as soon

as he was in the room we grabbed him, forced him to wear the girl's lingerie and then frog-marched him from door to door making him confess what he had done and to promise he would never do it again."

Or take this quote from a CEN story that claimed a wife discovered her husband cheating with her twin sister and then left them both naked in a parking lot before driving off in their car. It comes from a witness identified as You Meng, but reads like it's being spoken by someone interviewed on a London street:

"It was so funny. Loads of people were grabbing their phones and I did as well. He was banging his fist on the window and shouting at her, and she just wasn't playing ball."

When this story was covered earlier by the Chinese-language media, none of the online posts included the names of the man and his wife or their ages, or any quotes from a witness. Somehow CEN managed to get names, ages, and a quote from the scene, in spite of the distance and language barriers.

It is possible that such quotes are genuine, and have been cleaned up and anglicised by CEN's editors or someone else involved in the stories' production. It is also possible that they have been introduced somewhere else in the media food chain, or inserted by junior staff without the knowledge or approval of the editors concerned. CEN, as mentioned above, has insisted that it does not fabricate quotes. But it has also refused to answer BuzzFeed News' questions about where these quotes originated on the grounds that

doing so would lend a commercial rival undue insight into its business practices.

### **The Sausage Machine**

Nowhere are CEN's quotes more perfect or its details sharper than when it comes to one of its signature issues: castration. Since October, CEN has sold and/or published five stories that involve a man or child either being forcibly castrated or chopping off their own penis.

Take, for example, the story of an aunt who castrated her young nephew when he interrupted her. That story was reported in Chinese media and came with detailed photos of the boy and his parents.

The CEN version, however, includes two quotes that we couldn't find elsewhere. There was this, from a "hospital spokesman":

"Unfortunately, the knife was quite blunt and the cut wasn't clean so although we reattached the boy's penis, it wasn't ideal and he had to have further treatment."

And this, from a "police spokesman":

"The aunt was arrested and admitted attacking the boy because she was angry that he had interrupted her on the toilet."

All these quotes also appeared in the version of the story published on the *Austrian Times* site.

Another unnamed police spokesman appeared in a CEN story about an Indian man who allegedly had his penis chopped off by a crowd after he was caught trying to rape a girl. That story came with many related

photos that we were able to find online (including one of the man's severed penis). But BuzzFeed News could find this quote only on sites that bought the images from CEN:

“People cannot take the law into your own hands.

“As deplorable as these crimes are, law and order has to be maintained, and not lynch justice.

“We ask those men who carried out this attack to hand themselves in before we find them.”

The same was true for this quote from local man Aamir Dhawan:

“No one went to help the man because they could see his penis on the ground and knew this was punishment for a sex crime.

“We have had a lot of intolerable offences against women in this country recently, with girls being raped, hung, and molested, and it's time it stopped.

“This sends out a very strong message to anyone like that – if you do it you will be punished.”

In January CEN hit the mother lode of foreign castration stories. Pictures surfaced on a since-deleted Chinese Weibo account – and then spread to other



Chinese sites – that described a man whose penis was chopped off twice in the span of a few hours. The CEN version that appears on the *Daily Mail* site has, at the time of writing, been shared more than 40,000 times. (It also appears on the *Austrian Times*.) The versions on the *Mail*, *Austrian Times*, and *Mirror* sites all feature virtually identical pixelation that happens to cover up the original Weibo watermark.



First, the story claimed, the man's wife discovered him cheating and she castrated him. Then she found him at the hospital and undid the work doctors had done to reattach his penis.

The earliest version we could find of the story in Chinese included a quote from the mistress saying that it didn't matter if he was now infertile as he already had five children. But once again, the version that ended up on western media sites went further. In addition to that quote, it also offered a veritable monologue from an anonymous hospital spokesman:

“The first we were aware of what happened was when someone came into the reception area to say a naked man was beating up a woman outside the hospital.

“Staff rushed out to see what was happening and found the patient with blood streaming down his legs hitting the woman.

“He was stopped and the woman was taken in for treatment, and then we discovered she had chopped his penis off again.

“The man had lost a lot of blood and was taken in for emergency surgery.

“He is now in a stable condition but is extremely emotionally distraught.”

Another cautionary castration tale came in an October report from CEN that a Macedonian man had chopped off his penis and threw it in the trash after his girlfriend told him it was inadequate.

The story was published on the *Austrian Times* and apparently sold to the *Daily Mirror* that same day, October 23. The *Austrian Times* and *Mirror* stories both used a photo of a man lying on a gurney with a bloody crotch, with the *Mirror* specifically saying it showed the victim.

Almost exactly a year earlier the *Mirror* had run another CEN story about a castration – and used the very same image of the man with the bloody crotch.

In that story, which also credited the image to CEN, the man being shown was described as a 26-year-old Chinese man named Yang Hu who had allegedly

chopped off his own penis due to frustration with his nonexistent love life. That story also included the remarkable claim that Hu biked to the local hospital to try to get treatment, only to be told to go back home and get his penis so they could try to reattach it.

The presentation of the old castration photo as new was revealed in 2014 by *Metro Sweden's* Viral Examiner column, which looks into suspect online stories. (*Metro Sweden* is not connected to the UK *Metro*, which regularly runs CEN images.) It found that the Macedonian castration story probably originated with a local TV report that consisted of re-enactments and stock footage and also used the old image. Either CEN didn't recognise that it was a photo it had previously distributed, or it knowingly sold and published an old image as new.

Again, BuzzFeed News has asked CEN and the sites that published the story to verify the details in the stories concerned but has had no specific response.

### **Who's It Hurting?**

One of CEN's specialities – as with the naked Russians – is to offer its clients a story to accompany a particularly compelling image. Earlier in 2014, *Metro Sweden's* Viral Examiner column found another fake story, which had appeared in the *Metro*, the *Mirror*, the *Huffington Post*, the *Daily Star*, *Jezebel*, and more. A woman had apparently caused a car crash in Vienna by sunbathing with her bottom half hanging out of her window. But the photo in question dated back to at least 2011, and no such incident had been recorded by the city's police. In fact, the picture was used in 2014



by a reader in an attempt to fool an Austrian newspaper.

In the version of the story that went around the world, the picture of the woman is accompanied by the story about a car crash in Vienna. There is also a quote from a bystander, identified as “motorist Michael Kineast”, who says:

“I was behind two guys who had a fender bender because the motorists in front took their eyes off the road to glance up at the view. The young woman was obviously keen on getting some sun in a place where it doesn’t usually shine.

“I heard the guy who was rear-ended shout to the motorist who had hit him: ‘Didn’t you look where you were supposed to be going?’

“The driver who hit him said: ‘Sorry, I was distracted,’ and pointed up to the window where the woman was lying. The guy who was hit then said: ‘Oh, right, I see what you mean’.”



Again, the text and years-old image used by (for example) the *Daily Mail* is an almost word-for-word copy of what was on Leidig’s *Austrian Times* site.

In May 2014, similarly, a story appeared on sites including *Metro* and the *Huffington Post* (the latter

has since corrected the piece) that claimed Chinese teenagers were attempting to alleviate their feelings of loneliness by taking cabbages for walks.

The story included quotes from “Chinese psychiatrist Wen Chao”, explaining how walking a cabbage on a lead can help reduce feelings of isolation, and a 17-year-old called Lui Ja Chen, who supposedly said:

“I feel I can transfer my negative thoughts about myself to the cabbage, go for a walk with it and come home feeling better about myself.”

The pictures were credited to CEN, and the same quotes appeared on the *Austrian Times* site.

Unsurprisingly, the story was quickly debunked, by *Kolaku*, BuzzFeed, and the *Wall Street Journal*. The teens were not walking cabbages because they were lonely: They were walking cabbages as part of an art event at a music festival by Chinese artist Han Bing (who has been walking cabbages as part of his art for over a decade).

Misleading stories built around a compelling image can have real-world consequences. An example of this is the CEN story about a woman named Elena Lenina, who dyed her kitten pink, which supposedly caused the animal’s death from blood poisoning. This was covered by outlets such as the *Daily Mail* and *Metro*.

As *Gawker’s* Antiviral site pointed out, the story was false. The kitten was not dead. Lenina was in fact simply posting pictures of her – very much alive – kitten on social media.

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As with the Sandoval case, this appears to be a situation where CEN sold a false (and potentially defamatory) story about a real person with little regard for the consequences that person would face when the story went viral. Nor has there been any apparent attempt to correct the story since it was proved to be false.

### An open secret?

The questionable nature of CEN's content has become something of an open secret among online news and picture desk editors. (When one of the authors of this article, Tom Phillips, was a news editor at *Metro* in the UK in the mid- to late 2000s, he regularly used CEN stories, before stopping when he eventually became suspicious of their too-good-to-be-true nature.)

BuzzFeed News spoke to staffers from multiple British news organisations, all of whom expressed scepticism about the agency's output, although none were willing to be quoted on the record. One person, who works on the picture desk of a major British publisher and requested anonymity on the grounds that their "bosses would kill them", described CEN as "utter fucking shit".



This editor described two red flags that make them question CEN content: “They don’t have a single staff photographer. All of their pictures are ‘collects’ – and I use the term loosely, because every time I have enquired with them where the pictures are from, I’ve got quite vague answers. Secondly, all of their collects are of really bad quality ... It makes me think their stuff is just grabbed from other websites or taken a really long time ago. I do not trust a single bit of what they send us.”

They added that they have “raised the issue several times” with their news desk, but that CEN’s stories “bring in clicks, so no one seems to care that much”.

*New York Times* technology columnist Farhad Manjoo also took note of a CEN story that made its way into the *New York Post*:

Majoo said in an email that the attribution of such an outrageous story to a small, unknown agency struck him as questionable behavior.

“I see this happen often in tabloids like the *Post* or *Daily Mail*, or *Yahoo* or other news sites – references to foreign news services (often in the developing world) whose credibility we have no way of assessing,” he said. “It’s just sort of an obvious signifier of the publication thinking that the story is too good to check, that it doesn’t really matter if it’s true because it’s so strange.”

This might be a comforting argument. But the consequence is that real people – an Argentinian teacher, a Russian photo model – are having their lives distorted and paraded before the world. And it also blurs the line between truth and fiction in a way that undermines the integrity of the news media as a whole.

Indeed, the blame for the fact that CEN has been able to circulate such dubious stories does not rest with Michael Leidig alone: He was able to build his business because larger news organisations were so eager to buy what CEN had to sell, knowing that their readers would lap up these lurid tales of faraway people and places.

In that *Press Gazette* article, Leidig lamented what the internet had done to the economics of newsgathering. “There has never been a better time to be a journalist, if it’s your hobby,” he wrote. “If you hope to make a living out of it, then I can’t remember it being worse.”

He added: “With hundreds of thousands of new items a day, who can tell what is new anymore?”

Or, for that matter, what is real.

*Additional reporting by Tanya Chen*

A few hours prior to the publication of this story, *Press Gazette* ran a story claiming that BuzzFeed News' investigation into CEN was an attempt to damage a business rival.

In a statement to *Press Gazette*, Michael Leidig said of the questions we put to CEN: "An internal review here quickly revealed little substance to [BuzzFeed's] claims. When properly analysed, all they had found was that on two occasions we had re-used archive pictures.

"Their repeated assertion that, simply because one of our quotes did not appear in local media, it must have been made up, suggests they don't have any idea of the real potential to generate good news in the modern landscape. We regard it as an obligation to check where possible local media stories, and we do make calls to police, hospitals, and have alternative sources. We are not paid by our clients just to translate. We are paid to do journalism."

Before publishing this piece, BuzzFeed News approached the sites it believes to be CEN's biggest customers, the *Mirror*, the *Mail*, and *Metro*, to share its concerns over CEN's content and to investigate whether the dubious quotes and details had come from the news agency or from their own reporters.

A spokesperson for the *Mail*, whose parent company also owns *Metro*, said: "CEN is one of the multiple news agencies that *MailOnline* and *Metro* work with to

provide stories that we haven't commissioned ourselves. News organisations around the world all work with numerous reputable news agencies to supply stories that can be taken on trust because the agency has researched, sourced and edited the story.

"Our agreement with each of these agencies requires the stories they provide to be accurate.

"If we independently discover this not to be the case we will adjust the story accordingly and advise the agency who is responsible for the story.

"We have not so far had any complaints about any of the stories provided, however we are reviewing their content with the agency concerned."

The *Mirror* said:

"As BuzzFeed itself knows from personal experience, it is hard to verify every fact and detail in stories from other parts of the world, so we do rely on established news agencies, especially for offbeat stories like these. We do basic fact checking, with more detailed examination if the stories contain serious allegations.

"We are proud of being the intelligent tabloid so the last thing we want to do is publish content that is untrue. We take our relationship of trust with our readers extremely seriously and set ourselves high standards of accuracy. If it transpires that any content we have published is significantly accurate or misleading, our policy is to correct or remove it as soon as possible.

“We have asked CEN to investigate BuzzFeed’s allegations and we will be reviewing our processes in light of that information.”

BuzzFeed News has, as mentioned in this piece, previously used images from CEN, or followed up reports that originated with the agency. It is now our policy not to do so.

The following is a list of all our pieces that have used CEN/Europics content as far as we are able to determine:

This Is What Happens When You Leave The Hot Tap Running All Winter

A Dog Gave Birth To Green Puppies In Spain

“Black Death” Plague Surfaces In China And Forces Government To Seal Off A Whole City

A Russian Guy Says His Justin Bieber Ringtone Saved Him From A Bear Attack

German Builders Say This Pavement Swastika Was An “Innocent Mistake”

A Man In China Apparently Ended Up Riddled With Tapeworm Parasites After Eating Too Much Sashimi

The Unluckiest Man In The World Set His College On Fire With A Fireworks Marriage Proposal

A University Student Died At A Sperm Bank After Donating For A Fourth Time In 10 Days

Boy Shocked By Electricity Says He Has Superpowers Like Magneto



## Russian Footballer Hires Muzzled, Tie-Wearing Bear For Son's Birthday Party

A list of those stories we have been unable to verify has been added to Emergent and we will update them if fresh information comes in. For more information on BuzzFeed News' sourcing policy, see our Editorial Standards and Ethics Guide.

### **CORRECTION**

The Wikipedia page on Allan Hall created by the user Bylinebandit was a "sandbox" page (an early form of draft page). An earlier version of this article implied that it was a live encyclopaedia entry.

Read our follow up to this article [here](#).

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**APPENDIX F**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**19-851**

**[Filed January 2, 2020]**

Michael Leidig, Central	)
European News Ltd,	)
<i>Plaintiffs-Appellants,</i>	)
	)
v.	)
	)
BuzzFeed, Inc.,	)
<i>Defendant-Appellee.</i>	)
	)

**On Appeal from the United States District  
Court for the Southern District of New York  
No. 16-cv-542**

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**PETITION FOR PANEL REHEARING OR  
REHEARING EN BANC**

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THE QUESTIONS RAISED AND THEIR  
EXCEPTIONAL IMPORTANCE

This is a libel case in which plaintiffs, a British journalist who lives and works in Vienna, Austria, and his company, a wire service, allege they were libeled by a lengthy article published by BuzzFeed, Inc., on its news and entertainment website, that proclaimed them “The King of Bullsh\*t News.” On appeal, the grant of summary judgment to BuzzFeed was affirmed by Summary Order, a copy of which is annexed. Plaintiffs hereby petition for a panel rehearing or a rehearing *en banc*, raising two questions:

1. First, did the panel’s Summary Order correctly interpret this passage in this Court’s decision in *Celle v. Filipino Reporter Enterprises Inc.*, 209 F.3d 163, 188 (2d Cir. 2000):

While a bland, cryptic claim of falsity supported by the credibility of a witness might be sufficient to establish falsity in other civil cases, the First Amendment demands more.

as providing a new, unprecedented, defense to a libel claim—that a libel plaintiff’s declaration on penalty of

perjury or testimony that he has not done the bad thing the libel accuses him of doing is rendered by the First Amendment insufficient to create an issue of fact as to whether the libel is true or false?

2. And, second, in evaluating the evidence as to the truth or falsity of a defamatory publication without ruling on what the gist of the libel is, did the panel fail to follow well-established precedent in this Court and elsewhere, such as, *e.g.*, *Celle, supra*, 209 F.3d at 178, and *Kelly v. Schmidberger*, 806 F.2d 44, 46 (2d Cir. 1986)?

This petition is appropriate because the panel decision conflicts with decisions of this Court and other courts, FRAP 35(b)(1)(A), FRAP 40(2), and because recognizing a new First-Amendment rule is a matter of extraordinary importance. FRAP 35(b)(1)(B).

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SUMMARY OF ARGUMENT

The cited passage from *Celle* cannot be read as providing a special First Amendment privilege to devalue a libel plaintiff's declaration or testimony, because elsewhere in the same opinion Judge Weinstein holds that such evidence can be sufficient to create a question of fact as to the truth or falsity of a libel. 209 F.3d at 189. Plaintiff Michael Leidig's declaration that he has never created a fake story or added a fake quote to a story, and that financial difficulties did not cause him or his company to turn to fraud, is sufficient to create a question as to whether BuzzFeed's allegation of those things is false. (Point I, *infra*).

The panel's failure to address plaintiffs' contention as to what the gist of the libel is, prior to evaluating the evidence as to the libel's truth or falsity, is in conflict with multiple decisions of this and other courts. BuzzFeed, through the same counsel, correctly set forth, in a brief in another case, the rule that this failure violates. (Point II, *infra*).

ARGUMENT

Point I

CELLE DID NOT CREATE A NEW FIRST-  
AMENDMENT PROTECTION FOR LIBEL  
DEFENDANTS

Plaintiffs, Michael Leidig and his company, Central European News Ltd. ("CEN"), a news wire, brought this lawsuit alleging they had been libeled by a lengthy story published by defendant, BuzzFeed, Inc., an



Internet site for entertainment and news, under the headline “The King of Bullsh\*t News.” They alleged that the “gist” or “sting” of the libel was that they knowingly produce and offer to their customers made-up, fake, stories, or add phony quotes to stories to make them more salable, and, as regards Mr. Leidig, that the language in the BuzzFeed piece:

“But then the bottom fell out of the business ... after 9/11, and it seemingly never recovered.

\*\*\*

So it appears that Leidig decided to play the online game, as he saw it. He launched websites such as the *Austrian Times* and *Croatian Times*. He cast his net far afield to China, India, and Latin America, scouring for images and posts on social networks that he could weave a story around in order to hit up old clients with a new kind of content.”

(Complaint, Ex. A, p. 8; JA-40)<sup>1</sup>

was a charge that: “suffering from financial difficulties, plaintiffs decided to go into the business of fabricating and selling fake news stories.” (Complaint, ¶ 8)(JA-18).

In support of a motion for partial summary judgment that was denied, Mr. Leidig submitted a declaration in which he said, upon penalty of perjury, with respect to falsity:

2. As will be detailed below, defendant’s story charged that my company and I have created

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<sup>1</sup> “JA” is Joint Appendix

and sold fake news stories, falsely portraying them as real, and have added fake quotations to other stories to make them more attractive to the news media who are our clients. Both these charges are false. I have never created nor knowingly reported a fake news story and sold it as real, nor has, to my knowledge, anyone else connected with CEN done so. Also I have never created a phony quotation to make a story more salable, and I know of no one else at CEN who has done so.

(JA-77-78) In the same declaration he also said:

15. The statement that after “the bottom fell out of the business” I “cast [my] net far and wide ... scouring for images and posts on social networks that [I] could weave a story around in order to hit up old clients with a new kind of content” is completely false. I and my company do not “weave stories around” images and posts; we report on newsworthy events and verify all stories independently.

(JA-81) and

23. The suggestion that CEN decided to “hit up old clients with a new kind of content” after 9/11 because business fell off is false. We have always done tabloid-type stories alongside serious, in depth news investigations.

(JA-83).

Mr. Leidig and four of his CEN journalists, John Feng, a reporter based in Taiwan, Ana Martinez, based

in Spain, Shantana Guha Ray, based in India, and Kathryn Michner, who works in the Vienna, Austria head office, were deposed for hundreds of pages of testimony, revealing no evidence of faking stories or quotes, and some explicit denials. For example, asked (on cross-examination) if she had ever made up a story or quotes, or knew of anyone at CEN who had, Ms. Martinez testified she had not, and did not. (Dep. pp. 58:25-59:9; JA-2097).

Mr. Ray, whose reporting for Agence France-Press, Time Magazine, and others has won prizes from international organizations such as the Overseas Press Club and Columbia School of Journalism-BBC (*See* Brief of Appellants and Special Appendix at page 22), testified “I have never been called a fiction writer. I deal with news, I live and die with it.” (Dep. p. 76:20-21; JA-2767). In addition, he testified about reporting a story out of India, concerning the castration of a would-be rapist by a vigilante mob, in which he did additional reporting and translated witnesses’ quotes from Hindi to English, (Dep. pp. 38:2-57:18; JA-2758-62), quotes that the BuzzFeed story had implied were fake because they appeared only in CEN’s version of the story. (Complaint, Ex. A, pp. 13-14; JA-45-46).

In addition, plaintiffs included in their briefs to the district judge and in this Court hyperlinks to some local news stories in China and Russia as evidence disproving the defamatory inferences that the stories had been made up by CEN. *See, e.g.,* [https://hk.on.cc/cn/bkn/cnt/news/20140922/bkncn-20140922035209453-0922\\_05011\\_001.html](https://hk.on.cc/cn/bkn/cnt/news/20140922/bkncn-20140922035209453-0922_05011_001.html) (a TV story in China about a man who became ill from parasites after eating

sashimi, a story the BuzzFeed article implies plaintiffs faked.)

On the other hand, discovery from BuzzFeed revealed that it had no evidence that Mr. Leidig had ever made up a story or made up a quote. Asked about this at his deposition, the lead author of the BuzzFeed piece, Craig Silverman, testified as follows: Asked if he believed that Michael Leidig is a person who makes up fake stories, he answered, “I don’t know his exact, personal involvement.” Asked if he believed that Mr. Leidig is a person who adds fake quotes to stories to make them more salable, he answered: “I don’t know his personal involvement.” (Dep. p. 121:7-17; JA-2630).

And, although BuzzFeed compiled 216 facts for its Rule 56.1 Statement, 215 of which were not challenged by plaintiffs, the statement does not contain

(1) any assertion that Michael Leidig has ever made up a fake story, or made up a fake quote to add to a story, or any direct evidence of such facts; (2) any assertion that any specific fake story or fake quote was created by any person employed by defendant CEN, or any direct evidence of such a fact; or (3) any assertion that Michael Leidig was led by difficult financial circumstances to resort to fraud, or any direct or indirect evidence of such a fact.

(Reply Brief of Appellants, p. 9).

Moreover, with respect to the latter issue, (3) *supra*, BuzzFeed has taken the position in this lawsuit that the passage about Mr. Leidig’s scouring the internet for images and posts he could “weave a story around” was

never meant to accuse him of making up stories, but only of looking for stories on the Internet. As plaintiffs discussed in their Reply Brief, at pages 3-7, BuzzFeed documents show that this is demonstrably an attempt to disingenuously walk back what it clearly intended to say about Mr. Leidig.

Nevertheless, the panel held, as had the district judge, “Plaintiffs simply fail to present any competent evidence suggesting that BuzzFeed’s reporting was false.” (Slip Op., p. 4).

The panel decision thus erases the above-described evidence for the same reason the district court did, interpreting language in the *Celle* decision as calling for a different standard to be applied in analyzing a plaintiff’s evidence in a libel case—different from the normal evidentiary rules applicable in every other sort of case. This reading of *Celle* cannot withstand analysis.

The language from *Celle* that resulted in this wholesale elimination of plaintiffs’ evidence relates to testimony, at a trial, of a libel plaintiff who alleged that an assertion that his business, a radio station, had been losing listeners and advertisers, was libelous and false. At the trial, he was asked only two questions about this. Asked if the statement was true, he answered “no;” asked whether it was true or false, he answered, “false.” This Court, through Judge Jack B. Weinstein, held that that evidence was insufficient to raise a question as to the truth of the publication, stating:

While a bland, cryptic claim of falsity supported by the credibility of a witness might be sufficient to establish falsity in other civil cases, the First Amendment demands more.

209 F.3d at 188. That Judge Weinstein did not mean to create a new First-Amendment hurdle for all libel plaintiffs to surmount is demonstrated later in the *Celle* opinion, however, where, ruling that plaintiffs had created an issue of fact as to a different libelous charge, he stated:

With respect to the accusation that “AT & T is reportedly withdrawing its sponsorship of Radyo Pinoy” after having been “shortchanged of its allotted time slot,” a reasonable juror evaluating the evidence could find—by both a preponderance of the evidence and by clear and convincing proof—that those statements were false. Celle swore that AT & T was not withdrawing its sponsorship of Radyo Pinoy and that AT & T was not being shortchanged on advertising time. He also testified that AT & T had never complained to Radyo Pinoy that it was being shortchanged. Finally, he testified that AT & T continued advertising with Radyo Pinoy, a matter which was not contested.

209 F.3d at 189.

What accounts for the distinction with which Judge Weinstein treated two aspects of Mr. Celle’s testimony? It is that he found the former testimony, the mere answers “no” and “false,” lacked an adequate foundation. He stated:

Celle's benign denials, in the absence of at least foundation testimony or extrinsic evidence, are not sufficient to satisfy the constitutional requirement that a public figure establish falsity.

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At a minimum, Celle should have laid a foundation for his bald assertion of falsity. For example, he could have discussed the advertising trends at Radyo Pinoi. He also could have introduced evidence detailing advertising volume or gross advertising sales for the period leading up to the second article without revealing proprietary information in a damaging way.

(*Id.*, 209 F.3d at 188, 189). Thus, Judge Weinstein's labeling a denial "bland" or "cryptic," or "colorless," should be seen as an application of standard evidence rules, *see* Fed. Rules Evid. Rule 602, 28 U.S.C.A.<sup>2</sup>, not a matter of First-Amendment law, and in any case limited to a suit brought by a public figure, which plaintiffs argue they are not.

In this case, Mr. Leidig's denial of the charge that he ever fabricated a story or made up a phony quote is

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<sup>2</sup> That Rule reads:

A witness may testify in a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

made on his personal knowledge, and the testimony of his journalists to similar effect is as well.

The Supreme Court has said that extensions of First Amendment defenses are not lightly to be made, *see Herbert v. Lando*, 441 U.S. 153, 169-70, 99 S. Ct. 1635, 60 L.Ed. 2d 115 (1979):

We are thus being asked to modify firmly established constitutional doctrine by placing beyond the plaintiff's reach a range of direct evidence relevant to proving knowing or reckless falsehood by the publisher of an alleged libel. ... The case for making this modification is by no means clear and convincing, and we decline to accept it.

Plaintiffs in libel cases, who already must surmount higher obstacles to recover, such as, in this case, proving a "grossly irresponsible" deviation from good journalism, *Chapadeau v. Utica Observer-Dispatch*, 38 N.Y.2d 196, 199, 379 N.Y.S.2d 61, 341 N.E.2d 569 (1975), should not have their evidence evaluated under any standard except the rules of evidence applicable in all other cases. "A party's own affidavit, containing relevant information of which he has first-hand knowledge, may be self-serving, but it is nonetheless competent to support or defeat summary judgment." *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 53 (1<sup>st</sup> Cir. 2000), quoting *Cadle Co. v. Hayes*, 116 F.3d 957, 961 n. 5 (1<sup>st</sup> Cir. 1997); *see also C.R. Pittman Const. Co., Inc. v. Nat'l Fire Ins. Co. of Hartford*, 453 Fed. Appx. 439, 443 (5<sup>th</sup> Cir. 2011)(collecting cases).



Under such standards, plaintiffs' evidence in this case creates a question of fact for the jury as to the truth or falsity of the defamatory statements.

Point II

THE PANEL FAILED TO PERFORM A BASIC  
REQUIREMENT IN A LIBEL SUIT, TO  
DETERMINE WHAT THE LIBEL IS

A. The need to establish the gist of the libel is clear.

Libel suits are about words—about what they denote and connote, whether they are clear or ambiguous, and how they are affected by their context. In this case, both Judge Marrero and the panel discussed the issue of whether plaintiffs' evidence could prove the falsity of the defamation without first determining what the defamation is—a logical impossibility, and contrary to all other libel cases.

As Judge Weinstein wrote in *Celle*:

A plaintiff in a libel action must identify a plausible defamatory meaning of the challenged statement or publication. If the statement is susceptible of only one meaning the court “must determine, as a matter of law, whether that one meaning is defamatory.” ... If the words are reasonably susceptible of multiple meanings, some of which are not defamatory, “it is then for the trier of fact, not for the court acting on the issue solely as a matter of law to determine in what sense the words were used and understood.”

209 F.3d at 178 (citations omitted). Other decisions of this Court and other courts are in accord. *See, e.g., Kelly, supra*, 806 F.2d at 46; *Purgess v. Sharrock*, 33 F.3d 134, 140 (2d Cir. 1994); *James v. Gannett Co.*, 40 N.Y.2d 415, 419, 386 N.Y.S.2d 871, 874, 353 N.E.2d 834 (1976); *see also* R.D. Sack, *Sack on Defamation* (5<sup>th</sup> Ed.) § 2:4.16 at 2-75-76.

B. The question is not a close one.

The question whether plaintiffs' allegation of what the gist of the libel is is reasonable is not a close one—defendant's own witnesses testified that defaming Mr. Leidig and his company as fraudsters who make up stories and quotes was the intent and effect of the story. As Heidi Blake, a BuzzFeed journalist, testified about one particular passage in the story:

I mean, I think that I, as an individual reader—I think what this piece does is it sets out the grounds for suspicion that CEN is repeatedly falsifying or publishing stories which are false, all or in part. And I think that as a reader reads these paragraphs and forms the conclusion that they took photos and invented a story around those photos and sold it. Yes, that's my personal opinion.

(Dep. p. 85:17-25; JA-2040). This defamation was the purpose of the story. A story reporting only that Mr. Leidig and his company are journalists who occasionally fall victim to a hoax, as BuzzFeed's editor-in-chief Benjamin Smith testified is universal in the profession (Dep. p. 63:7-23; JA-2742), would not have been newsworthy enough for BuzzFeed to publish.

C. BuzzFeed should not be able to deny that the rule applies.

Plaintiffs asked Judge Marrero and the panel to determine whether their allegation of the gist of the libel—that it charges plaintiffs with producing fake stories and stories with fake quotes, and, as to Mr. Leidig, accuses him of responding to financial difficulties by resorting to fraud—is reasonable. These three accusations, recognized by Judge Marrero as “broader statements about the operation of plaintiffs” (SPA-44; 371 F. Supp.3d at 148), are specified in the Complaint (¶¶ 3, 8, 34; JA-17, 18, 22), although this is not a requirement under liberal federal pleading rules. *Kelly, supra*, 806 F.2d at 46.

Plaintiffs requested this in a motion for partial summary judgment, and again on defendant’s motion for summary judgment, and again as Point I of their brief on this appeal. BuzzFeed argued vigorously to keep Judge Marrero and the panel from complying with this requirement of libel law, and succeeded. It opposed a decision on the issue when plaintiffs first moved, on the specious grounds that a decision was “premature.” (*Compare* Defendant’s Memorandum in Opposition, D.E. #27, p. 12, *with* Plaintiffs’ Reply Memorandum of Law, D.E. #38 at pp. 3-5)<sup>3</sup>.

Judge Marrero declined to rule on the issue in his decision on the first motion on the erroneous ground that the gist of the libel was somehow linked to its

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<sup>3</sup> “D.E.” is docket entry in the District Court.

truth or falsity (SPA-13-14)<sup>4</sup>. On BuzzFeed’s motion, BuzzFeed argued that to grant plaintiffs’ application would be “expanding the scope of the claims,” (Defendant’s Reply Brief in support of summary judgment, D.E. # 116, p. 4), and Judge Marrero agreed, stating: “Plaintiffs now ‘challenge any assertion in the [A]rticle that [P]laintiffs make up stories or fabricate quotes.’ The Court rejects Plaintiffs’ maneuver...” (SPA-34-35; 371 F. Supp.3d at 144-45).

In this Court, BuzzFeed argued, in opposition to Plaintiffs’ Point I, the request to determine the gist of the libel, that it was a “distraction,” because “not only was the question of defamatory meaning not an issue at summary judgment but also Plaintiffs are not entitled to a decision on every element of a meritless claim.” (BuzzFeed brief, p. 39, n. 9). Although plaintiffs pointed out the falsity of this statement (Reply Brief of Appellants at p. 1, n. 1), the panel apparently accepted it, because it did not discuss the issue and failed to rule on the request.

BuzzFeed did not make these specious arguments because it is ignorant of the applicable law—its lawyers, libel specialists, are quite capable of stating the rule accurately when it suits their purpose to do so. In a recent brief filed in a libel case against BuzzFeed in Supreme Court, New York County, BuzzFeed, represented by the same counsel, argued:

In every defamation case, a threshold “question of law for the court to decide” is whether the

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<sup>4</sup> “SPA” is the Special Appendix annexed to Mr. Leidig and CEN’s brief.

words at issue are capable of bearing a defamatory meaning. *Jacobus v. Trump*, 156 A.D.3d 452, 453 (1<sup>st</sup> Dep’t 2017). ... Importantly, the court must consider the statements at issue in the context of the publication as a whole. *Dillon v. City of New York*, 261 A.D.2d 34, 38 (1st Dep’t 1999).

(Defendants’ Memorandum of Law in Support of a Motion for Summary Judgment, p. 23, *Fridman v. BuzzFeed, Inc.*, Index No. 154895/2017, Doc. No. 140, filed June 18, 2019.)

Had either Judge Marrero or the panel applied this standard rule of law, it would have been clear that plaintiffs’ assertion of the gist of the article is entirely reasonable, and includes challenging any implication in the article that they “make up stories or fabricate quotes.”

D. The failure to apply the rule was fatal to plaintiffs’ case.

Without the gist of the libel established, BuzzFeed could argue that plaintiffs’ failure to contest 215 out of 216 asserted facts in its Rule 56.1 Statement represented a fatal concession, and that plaintiffs’ failure to specify every offending passage in the BuzzFeed article was an admission of their truth, and that plaintiffs’ inability to find the source for certain quotes disables them from proving the falsity of the libel. If it had been established that the libel is the intentional production of fake stories or stories with fake quotes, and that, as to Mr. Leidig, the libel is that financial pressures caused him to begin creating fake

stories around images found on the Internet, plaintiffs' evidence to the contrary, and the fact that BuzzFeed does not have, anywhere in its Rule 56.1 Statement, direct evidence of any wrongdoing by Mr. Leidig or anyone else at CEN (*supra*, p. 5), should have prevented the grant of summary judgment to BuzzFeed on this issue.

### CONCLUSION

Because the panel's decision misinterprets *Celle* as inventing a rule that would make it impossible for many libel plaintiffs to prove their cases, and because it fails to follow established precedent in this Court mandating a ruling on the gist of the libel, the panel should grant reconsideration and either set the matter for further argument, ideally with sufficient time to discuss the evidence in detail, or find that plaintiffs' assertion of the gist of the libel is reasonable, and that the evidence presents a jury question as to its truth or falsity. It should then rule on the other issues posed by BuzzFeed's summary-judgment motion.

Alternatively, this Court, *en banc*, should consider the question of whether *Celle* provides a new First Amendment protection for libel defendants, rendering all libel plaintiffs unable to raise an issue of fact by their sworn assertions, upon their personal knowledge, that the libel is false, and should consider also the question of whether the panel's decision to evaluate the evidence as to truth or falsity without ruling on the gist of the libel is contrary to multiple decisions of this and other courts.

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Respectfully submitted,

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