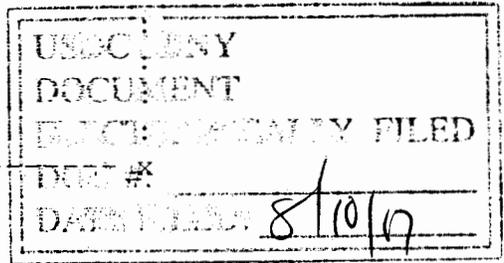


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SARAH PALIN, :
 :
 :
 Plaintiff, : 17-cv-4853 (JSR)
 :
 :
 -v- : ORDER

THE NEW YORK TIMES COMPANY,
 :
 Defendant. :



JED S. RAKOFF, U.S.D.J.

Pending before the Court is the motion of defendant The New York Times Company (the "Times") to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., the claim of plaintiff Sarah Palin that she was defamed by a Times editorial that appeared on or about June 14, 2017. One close question presented by that motion is whether the Complaint contains sufficient allegations of actual malice, an essential element of the claim. To a large extent, determination of that issue may turn on what inferences favorable to the plaintiff are reasonable given the circumstances alleged in the Complaint. For example, the Complaint alleges that the allegedly false statements of fact that are the subject of the Complaint were contradicted by information already set forth in prior news stories published by the Times. However, these prior stories arguably would only evidence actual malice if the person(s) who wrote the editorial were aware of them. This is information peculiarly within the knowledge of defendant; but on it arguably depends the reasonableness vel non of inferring actual malice.

Accordingly, to help inform the Court of what inferences are reasonable or unreasonable in this context, the Court, pursuant to Rule 43(c), will convene an evidentiary hearing on Wednesday, August 16 at 2:00 PM EST. At the hearing, defense counsel must produce the author(s) of the editorial, who (or each of whom, if there is more than one author) will be examined under oath by defense counsel for no more than thirty (30) minutes, to be followed by cross-examination of plaintiff's counsel of no more than forty-five (45) minutes, to be followed by no more than fifteen (15) minutes of redirect by defense counsel. The Court also may question each such witness.

SO ORDERED.

Dated: New York, NY
August 10, 2017



JED S. RAKOFF, U.S.D.J.