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April 13, 2018

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Mr. Jeff S. Jordan, Assistant General Counsel
 Attn: Kathryn Ross, Paralegal
 Office of Complaints Examination and Legal Administration
 Federal Election Commission
 1050 First Street, NE
 Washington, D.C. 20463

Re: Matters Under Review 7324 and 7332 (American Media, Inc. *et al.*)

Dear Mr. Jordan:

On February 20, 2018, Common Cause (“CC”) and Paul S. Ryan filed a complaint with the Federal Election Commission (“FEC” or “Commission”) against our client, American Media, Inc. (“AMI”), alleging a violation of the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”).¹ On February 27, 2018, Free Speech for People (“FSFP”) and Shanna M. Cleveland filed a separate – but factually related – complaint against AMI.² The Commission extended the deadline for responding to these complaints until today.

The complaints’ central allegation is that AMI, a leading publisher of health, and fitness magazines, investigative journalism, and celebrity news, made an unlawful corporate contribution to the Trump campaign by paying a prospective news source—Karen McDougal—and holding a news story involving Ms. McDougal for the purpose of influencing the presidential election. Such allegations are wholly without merit. The FECA contains a broad Press Exemption

¹ The complaint also names President Donald J. Trump and Donald J. Trump for President, Inc. as respondents. The complaint does not name David Pecker, AMI’s President and CEO, as a respondent, although the Commission separately notified Mr. Pecker of the complaint. Since Mr. Pecker was not identified as a respondent, there is no need for him to separately respond to the complaint. *See* 11 C.F.R. §§ 111.4, 111.7 (permitting the Commission to find “reason to believe” only against a party that the complaint “clearly identif[ied] as a respondent”). To the extent that Mr. Pecker’s actions as an officer of AMI are at issue, they are addressed in this response on behalf of the corporation.

² The complaint also names Donald J. Trump for President, Inc. as a respondent. The complaint does not name David Pecker or Dylan Howard, AMI’s Chief Content Officer, as respondents, although both individuals were notified of the complaint. Since neither individual was identified as a respondent, there is no need for either to separately respond to the complaint. *See id.* To the extent that Mr. Pecker or Mr. Howard’s actions as officers of AMI are at issue, they are addressed in this response.

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that excludes from regulation the costs incurred by news media to gather, cover, and publish news, as well as the underlying editorial decisions concerning if and when a story should be published.

On many previous occasions, including in recent enforcement matters involving National Public Radio, CNN, CBS and the *New York Times*, the Commission has recognized the vital role the press plays in our democratic system and observed the limits on its jurisdiction to investigate and second-guess the decision-making process of those involved in the news business. As one Commissioner flatly observed in a similar case involving CBS and *60 Minutes*, under the Press Exemption “no inquiry may be addressed to sources of information, research, motivation, [or] connection with the campaign,” and even “investigating such allegations would intrude upon Constitutional guarantees of freedom of the press.”³ The Commission must respect those same boundaries here. To do otherwise would threaten grave damage to the First Amendment rights of newsrooms and journalists everywhere.

Even absent application of the Press Exemption, AMI’s payment to Ms. McDougal was compensation for *bona fide* content for AMI’s publications, to license her name and image, and for a limited life story right, not “for the purpose of influencing an election” as required by the FECA. Thus, the payment does not constitute a regulable “contribution” or “expenditure” under the Act. Moreover, the complaints’ allegations are based almost entirely upon second-hand press accounts and speculation – not personal knowledge – and fail to provide a sufficient factual or evidentiary basis upon which the Commission can make a “reason to believe” finding.

For these and other reasons detailed in this submission, the Commission should find no reason to believe that AMI violated the FECA and close the file in these matters.

³ Statement of Comm’r Ellen L. Weintraub, Matter Under Review 5540 (CBS Broadcasting, Inc.) at 2 (July 12, 2005) (“Weintraub-CBS Statement”).

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FACTUAL BACKGROUND

A. General Background on AMI and the News Industry

AMI is a national media company that has been in the publishing business since 1999.⁴ AMI is not now, and never has been, owned or controlled by any political party, political committee, or political candidate.⁵

AMI owns and publishes the leading celebrity and health and fitness magazines in the country, including *Men's Journal*, *Muscle & Fitness*, *Muscle & Fitness Hers*, *Soap Opera Digest*, and *US Weekly*.⁶ The company's magazines' overall readership – among print and digital publications – is estimated at 49.3 million readers.⁷

One of AMI's most well-known publications is the *National Enquirer* (“*Enquirer*”), which was founded in 1929 and has been published weekly by AMI since 1999.⁸ In industry parlance, the *Enquirer* is a “tabloid” genre publication focusing on current events, crime, scandals and the personal lives of celebrities, the rich and famous, and political figures.⁹ The circulation of the *Enquirer* print edition is approximately 250,000 per week with a readership of approximately 5.5 million.¹⁰ The online edition has approximately 725,000 unique visitors each month.¹¹

The *Enquirer* is also known for investigative journalism, including its reporting “on the O.J. Simpson case in the 1990s, [the] 2001 disclosure that Jesse Jackson had fathered an out-of-wedlock child, [and] its 2003 report that Florida

⁴ Affidavit of Dylan Howard (“Howard Aff.”) ¶ 3.

⁵ *Id.*

⁶ *Id.* ¶ 4.

⁷ *Id.* ¶ 5.

⁸ *Id.* ¶¶ 4, 11.

⁹ *Id.* ¶ 11.

¹⁰ *Id.*

¹¹ *Id.*

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authorities were looking into prescription drug abuse by Rush Limbaugh.”¹² In fact, the *Enquirer* has earned national recognition for its journalistic endeavors in this regard, including for its coverage of Senator John Edwards’ affair with campaign staffer Rielle Hunter.¹³

Like many other outlets, an integral part of the *Enquirer*’s editorial and marketing strategy is to acquire and report exclusive stories.¹⁴ Exclusive stories give the *Enquirer* an advantage over competitors – both tabloids and mainstream news publications – in reporting new and interesting news and information.¹⁵ That in turn increases newsstand sales.¹⁶ In recent years, however, with television news divisions joining in the bidding wars, industry competition has “spur[red] an arms race to buy big stories.”¹⁷ A “big story, with several bidders seeking exclusives, will inevitably drive up the cost.”¹⁸ News organizations that purchase exclusive rights to stories sometimes publish them and sometimes sell them to other news outlets, book publishers or filmmakers.¹⁹

¹² Howard Kurtz, *John Edwards’s Paternity Admission Vindicates National Enquirer, its Editor Says*, Wash. Post (Jan. 22, 2010); Howard Aff. ¶ 12. See also Dan Weil, *From Gossip to Gospel: National Enquirer Turns Respectable*; *POLITICAL SCOOPS: Tabloid That Once Dug for Dirt Now Uncovers Legitimate Stories*, Cox News Service (Mar. 11, 2001).

¹³ See, e.g., Emily Miller, *National Enquirer Officially in Running for Pulitzer Prize*, HuffingtonPost.com (May 25, 2011); Press Release, AMI, *The National Enquirer Dominates with Six Nominations for Magazine Media Awards* (May 10, 2016), available at <https://www.americanmediainc.com/press-release/national-enquirer-dominates-six-nominations-magazine-media-awards>.

¹⁴ See, e.g., Howard Aff. ¶ 12; Jeremy Peters, *Paying for News? It’s Nothing New*, N.Y. Times (Aug. 6, 2011) (noting that the paper paid a Titanic survivor “multiple times his annual salary” for his account of the disaster); Richard Harwood, *What Is This Thing Called ‘News’?*, Washington Post (Mar. 12, 1994) (reporting that Tonya Harding was paid \$600,000 to appear on Inside Edition).

¹⁵ Howard Aff. ¶ 12.

¹⁶ *Id.*

¹⁷ Paul Farhi, *Up for Audit: ‘Checkbook Journalism’ and the News Groups That Buy Big Stories*, Wash. Post (Nov. 17, 2010).

¹⁸ *Id.*

¹⁹ See *id.* It is widely acknowledged in the media industry that “bidding wars can pay off for the buyer. The British celebrity magazine Hello! often made a profit on its checkbook journalism by reselling material it had bought to other news organizations.” *Id.*

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Like all media enterprises, AMI's publications, including the *Enquirer*, routinely make editorial judgments about which stories to publish, when to publish, when to delay publishing to a later date, and in some cases not to publish stories. The *Enquirer*'s editorial criteria are based upon a range of factors, including, but not limited to, reader interest and reader bias, editorial stance of the publication, truth and accuracy, as well as legal considerations.²⁰

As one prominent attorney has explained: "The *Enquirer* really tries to get it right. . . . It's subject to the same libel laws everybody else is."²¹ To take an example, "[f]ive *Enquirer* reporters . . . spent more than a month in 2007 chasing down [rumors of a John McCain affair] but failed to uncover any documentary evidence."²² Despite the *Enquirer*'s significant investment of staff time and financial resources, the publication's then-editor-in-chief explained: "I wouldn't have run that piece, there was nothing in it. . . . It was filled with innuendo. . . . When you're done reading it, you're like, there's no there there."²³

For its part, Donald Trump has been the subject of *Enquirer* attention – both positive and negative – long before he became the 2016 Republican presidential nominee. For example, the *Washington Post* reported in 2010 that the *Enquirer* paid sources for "sensational . . . 'revelations' about Donald Trump by his ex-housekeeper."²⁴ In 2016, the *Enquirer* also published an editorial expressly supporting the election of Donald Trump.

In addition to the *Enquirer*, AMI also publishes a number of other titles, with a particular focus on health and fitness publications. AMI routinely pays

²⁰ For example, the *Enquirer* and other publications are often targets of exorbitant lawsuits for their news coverage. See, e.g., Brian Freeman, *Dr. Phil Sues National Enquirer for \$250 Million*, Newsmax.com (July 10, 2016); Hulk Hogan's Legal Leg Drop Sets Precedent for Celebrity Journalism, JD Supra Blog (June 1, 2016).

²¹ Gabriel Sherman, *Open Tab*, The New Republic (Sept. 10, 2008). See also Mary Feeney, *Tabloids Turning Mainstream*, Hartford Courant (Mar. 2, 2001) (explaining that the "*Enquirer* is often the publication that gets it right[, as] the paper has 25 people 'who fact-check stuff up the wazoo'").

²² Gabriel Sherman, *Open Tab*.

²³ *Id.*

²⁴ Paul Farhi, *Up for Audit: 'Checkbook Journalism' and the News Groups That Buy Big Stories*, Wash. Post (Nov. 17, 2010).

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editors, journalists, columnists, writers, models, photographers, printers, sources and other professionals to produce, present and/or publish content for its publications.²⁵

B. The Factual Allegations Behind the Two FEC Complaints

In the summer of 2016, an experienced attorney representing Karen McDougal, a well-known celebrity and model, as well as health and fitness personality, contacted AMI about whether it was interested in purchasing the story rights of Ms. McDougal, who claimed to have had a consensual affair with Donald Trump.²⁶ AMI had previously dealt with this attorney on other issues, including story ideas.²⁷ AMI was familiar with Ms. McDougal as she had been featured previously on the cover of *Men's Fitness*.²⁸

The Common Cause complaint goes on to explain that on June 20, 2016 – i.e., after all the presidential primaries were complete but while Donald Trump was attempting to fend off challenges to his delegates in advance of the Convention – Ms. McDougal and her lawyer met with AMI's Chief Content Officer.²⁹ At that time, the AMI editor expressed “little interest in the story.”³⁰ In July 2016, Ms. McDougal apparently entered into “talks with producers at ABC News” to tell her story.³¹ Around this time, according to an article cited in the FSFP complaint, Ms. McDougal was “launching her own beauty-and-fragrance line,” which elevated her profile.³² *People* was also providing some news coverage in July 2016 for

²⁵ Howard Aff. ¶ 14.

²⁶ *Id.* ¶ 15.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See CC Compl. ¶ 17; FEC, 24 and 48-Hour Reports of Independent Expenditures for 2016, available at https://classic.fec.gov/info/charts_ie_dates_2016.shtml; Philip Bump, *Donald Trump Has Officially Clinched the Republican Nomination, per AP. Here's How*, Wash. Post (May 26, 2016); Ed O'Keefe, *Dozens of GOP Delegates Launch New Push to Halt Donald Trump*, Wash. Post (June 17, 2016).

³⁰ CC Compl. ¶ 17.

³¹ *Id.* ¶ 14.

³² Jeffrey Toobin, *The National Enquirer's Fervor for Trump*, New Yorker (July 3, 2017), available at <https://www.newyorker.com/magazine/2017/07/03/the-national-enquirers-fervor-for-trump>.

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Ms. McDougal's health-related issues, a topic upon which she increasingly has been speaking out.³³

After further consideration of her story and internal discussions about how Ms. McDougal's capabilities could be integrated across AMI's various publications, AMI entered into an agreement with Karen McDougal in August 2016 to: (1) work with AMI writers to create and byline columns about health, fitness and aging for *Star*, *OK*, and *Radar Online*; (2) license use of her name and likeness in connection with the columns and magazine covers carrying the columns; (3) pose for and appear on two magazine covers, *Muscle & Fitness Hers* and *Men's Fitness*; (4) grant interviews for articles to accompany her magazine covers; and (5) license exclusive story rights regarding aspects of her personal life (i.e., the "Life Story Right").³⁴ AMI negotiated with her lawyer and paid Ms. McDougal \$150,000 for these services for two years and for her Life Story Right.³⁵ A copy of the contract between AMI and Ms. McDougal is incorporated into this submission as an Exhibit to the Affidavit of Dylan Howard.

The Common Cause complaint alleges that Ms. McDougal left the negotiations with AMI "expecting her story about Mr. Trump to be published" although the contract "didn't obligate the company to publish it and allowed the company to transfer [its] rights."³⁶ Around this time, a number of news outlets

³³ See Grace Gavilanes, *Off Their Chests: 11 Stars Who Regretted Getting Breast Implants*, People.com (July 20, 2016), available at <http://people.com/bodies/crystal-hefner-kourtney-kardashian-celebs-who-regret-getting-breast-implants/karen-mcdougal>. Ms. McDougal has continued to maintain her public profile on these issues. See, e.g., Posting on YouTube.com by AZ Family, *Segment on 'The Doctors' and Karen McDougal's Response* (May 26, 2017), available at <https://www.youtube.com/watch?v=LdF-qN2rHNs>.

³⁴ Howard Aff. ¶ 16.

³⁵ *Id.*

³⁶ CC Compl. ¶¶ 12, 13. In other accounts, Ms. McDougal has since equivocated, telling CNN that she understood AMI had the right to exercise its editorial discretion not to publish the story. Anderson Cooper, *Playboy Model Speaks Out on Time with Trump* 38:50-39:15, CNN (Mar. 23, 2018), available at <https://www.cnn.com/videos/us/2018/03/23/karen-mcdougal-full-interview-ac.cnn>.

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from across the political spectrum declined to run stories about Mr. Trump on a variety of issues.³⁷

In November 2016, at Ms. McDougal's request, AMI and McDougal modified the agreement to allow her to respond to press inquiries by other publications about her personal life.³⁸ The agreement called for AMI to retain the services of Matthew Hiltzik at Hiltzik Strategies and Jon Hammond at Galvanized to provide, *inter alia*, "PR and reputation management services" through the end of May 2017.³⁹

To date, AMI's publications have published approximately twenty-five (25) columns and articles either bylined or featuring Ms. McDougal across its publications, and AMI has requested additional columns from her.⁴⁰ Ms. McDougal appeared on the cover of the Spring 2017 issue of *Muscle and Fitness Hers* magazine.⁴¹ It was the highest selling edition of the magazine in 2017.⁴² AMI has also received and published online video content featuring Ms. McDougal and Ms. McDougal was featured in a workout-related article in *Muscle & Fitness*.⁴³

AMI maintains that in the winter of 2018, AMI was in the planning stages to feature Ms. McDougal on the cover of *Men's Journal* (instead of *Men's Fitness*, which had stopped print publication) in the spring or summer of 2018, and editors were in discussions with Ms. McDougal about those plans. However, Ms.

³⁷ See, e.g., *Fox News Chose Not to Publish Story about Trump, Adult Film Star Before Election*, TheWeek.com (Jan. 16, 2018), available at <http://theweek.com/speedreads/749114/fox-news-chose-not-publish-story-about-trump-adult-film-star-before-election>. See also Jake Pearson, *Tabloid Held Porn Star's 2011 Interview after Trump Threat*, Associated Press (Jan. 21, 2018), available at <https://apnews.com/6bb9533272744928b5d2d6050c72be09>; Kevin Drum, *Why Did Slate Protect Trump's Hush Money Secret?*, Mother Jones (Jan. 13, 2018), available at <https://www.motherjones.com/kevin-drum/2018/01/why-did-slate-protect-trumps-hush-money-secret/>; Liz Spayd, *Trump, Russia, and the News Story That Wasn't*, NY Times (Jan. 20, 2017).

³⁸ Howard Aff. ¶ 17.

³⁹ *Id.*, Exhibit B.

⁴⁰ *Id.* ¶ 18.

⁴¹ *Id.* ¶ 19.

⁴² *Id.*

⁴³ *Id.* ¶ 22.

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McDougal claimed to be experiencing health problems, and AMI's attempts to communicate with her and to schedule this photo shoot were unsuccessful. Then, Ms. McDougal's attorney sought additional compensation in connection with re-negotiating Ms. McDougal's contract. One of Ms. McDougal's contentions was that \$150,000 was too little for the amount of work she was being asked to perform.

On March 21, 2018, AMI learned that Ms. McDougal had filed a civil lawsuit in California seeking to rescind her contract and take back her Life Story Right.⁴⁴ On March 22, 2018, she appeared on CNN and told a limited version of her personal story in response to questions by Anderson Cooper.⁴⁵

AMI is defending the lawsuit. AMI's position is that its contract is valid, Ms. McDougal must provide AMI a cover photo shoot for *Men's Journal* as well as additional fitness columns, and AMI purchased the Life Story Right fairly, granting it the right to publish or transfer based upon its sole journalistic and business discretion.⁴⁶

To date, AMI publications have published stories discussing Ms. McDougal and her allegations,⁴⁷ although the *Enquirer* has exercised its editorial discretion not to publish Ms. McDougal's detailed personal story.⁴⁸ Obviously, Ms. McDougal's appearance on CNN combined with her lawsuit have complicated AMI's exercise of its rights in the story at this time.

⁴⁴ *Id.* ¶ 25.

⁴⁵ See Jim Rutenberg, *Ex-Playboy Model Karen McDougal Details 10-Month Affair with Donald Trump*, NY Times (Mar. 22, 2018).

⁴⁶ See generally Howard Aff., Attach. E.

⁴⁷ See, e.g., Rosa Sanchez, *He 'Told Me He Loved Me!' Playboy Model Makes Shocking Claims About Alleged Affair with Donald Trump*, Radar Online (Mar. 23, 2018), available at <https://radaronline.com/exclusives/2018/03/playboy-model-donald-trump-affair/>; Karen McDougal 'Free To Speak' About Affair With Prez, Star (Mar. 21, 2018), available at <https://starmagazine.com/2018/03/21/american-media-inc-statement-comments-made-karen-mcdougal-attorney-peter-stris/>.

⁴⁸ See generally Howard Aff. ¶ 13, Attach. E at 8.

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THE LAW

The FECA prohibits corporations from making a “contribution” to a federal candidate.⁴⁹ The term “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office,”⁵⁰ and also “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election to [federal office].”⁵¹ A payment made for a different purpose that incidentally benefits a candidate is not a “contribution.”⁵²

The FECA also regulates “expenditures.” The term expenditure includes “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”⁵³ Expenditures that are made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, of their agents, shall be considered to be a contribution to such candidate.”⁵⁴

However, all costs incurred by press organizations in covering or carrying news and editorials are exempt from the definition of contribution and expenditure:

Any cost incurred in covering or carrying a news story, commentary, or editorial by any . . . newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate.⁵⁵

⁴⁹ See 52 U.S.C. § 30118(a).

⁵⁰ *Id.* § 30101(8)(A).

⁵¹ 11 C.F.R. § 114.1(a)(1).

⁵² *Orloski v. FEC*, 795 F.2d 156 (D.C. Cir. 1986).

⁵³ 52 U.S.C. § 30101(9)(A)(i).

⁵⁴ *Id.* § 30116(a)(7)(B)(i).

⁵⁵ 11 C.F.R. § 100.73; *see also* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.132.

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This provision, called the Press Exemption, was meant to ensure that the FECA did not “limit or burden in any way the first amendment freedoms of the press and of association.”⁵⁶

Following the decisions in *Reader’s Digest Ass’n, Inc. v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981), and *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308 (D.D.C. 1981), the Commission has used “a two-step analysis to determine whether the media exemption applies.”⁵⁷ The Commission first considers whether the entity in question is a media entity.⁵⁸ Second, in a two-factor analysis, the Commission considers “(1) whether the press entity is owned or controlled by a political party, political committee, or candidate, and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its ‘legitimate press function.’”).⁵⁹ This “two-stage process was mandated because the media exemption represents a fundamental limitation on the jurisdiction of this agency, and even an investigation of publishers can trespass on the First Amendment.”⁶⁰

The Press Exemption is a subject matter jurisdictional limit upon the Commission’s authority to regulate and to investigate.⁶¹ The only inquiry the Commission may lawfully undertake at this stage of the proceedings is whether it is

⁵⁶ H.R. Rep. No. 93-1239, at 4 (1974) (discussing the statutory provision upon which the regulatory exemption is based).

⁵⁷ MUR 7230, Factual & Legal Analysis at 2 (NPR). *See also* MUR 7231, Factual & Legal Analysis at 3 (CNN); MUR 7218, Factual & Legal Analysis at 3-4 (N.Y. Times).

⁵⁸ Statement of Reasons of Comm’rs Darryl R. Wold, Danny L. McDonald, David M. Mason, Karl J. Sandstrom, and Scott E. Thomas, Matters Under Review 4929, 5006, 5090, and 5117 (*In re* ABC, CBS, NBC, *New York Times*, *Los Angeles Times*, and *Washington Post et al.*) (Dec. 20, 2000) (“*Commission Statement on Investigatory Boundaries for Media Cases*”).

⁵⁹ *Id.* at 2-3.

⁶⁰ *Id.* The FSFP complaint also alleges that AMI made a monetarily “excessive” contribution to Donald Trump’s presidential campaign. *See* Compl. at 8 (citing 52 U.S.C. § 30116(a)(1)(A)). This allegation fails for the same reasons discussed in the remainder of this submission: *i.e.*, that AMI did not make any contribution – corporate, excessive, or otherwise – to the Trump campaign.

⁶¹ *See Phillips Publ’g, Inc.*, 517 F. Supp. at 1313.

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a legitimate press function for AMI, as a media entity, to make an editorial decision whether to run a story about Ms. McDougal.⁶²

DISCUSSION

The complaints concede that AMI, as a well-established publisher of magazines of long-standing, is a media entity, and they do not contend that AMI is “owned or controlled by a political party, political committee, or candidate.” Instead, the complaints make two arguments: (1) that as a threshold matter, the payment to Ms. McDougal is not exempt because the *Enquirer* did not publish the story; and (2) that AMI was not acting in its “legitimate press function” when it paid Ms. McDougal for services and a story right. The errors in these contentions are explained below, followed by the First Amendment issues at stake and other flaws in the legal theories advanced by the complaints.

I. AMI’S PUBLISHING ACTIVITIES ARE EXEMPT FROM REGULATION UNDER THE PRESS EXEMPTION.

A. The Press Exemption Protects a News Organization’s Decision Not to Publish a Story.

The complaints first argue that the Press Exemption does not apply because the *Enquirer* did not “distribute” the story, and the exemption protects only the distribution of stories, not editorial decisions to hold stories. While the point is not seriously developed, the complainants seem to argue that, because Ms. McDougal’s full and detailed story has yet to be published by AMI, resources expended by a media company prior to “distribution” cannot qualify as “covering or carrying a news story.”⁶³ This is an absurd interpretation of the Press Exemption.

The Press Exemption covers “any cost incurred in covering or carrying” news stories.⁶⁴ Covering a news story includes the newsgathering process. Press

⁶² See *Reader’s Digest*, 509 F. Supp. at 1215 (“[n]o inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc.”). Note that this is not the same as the Commission second-guessing the result of the editorial decision-making process.

⁶³ 11 C.F.R. § 100.73.

⁶⁴ *Id.*

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organizations frequently decide not to distribute, or carry, a story after incurring costs to gather news (*i.e.*, the coverage function).

“The press exemption applies broadly – not only to the pages of a publication or to the content of a newscast, but also to activities undertaken by a press entity ‘that fall broadly within the press entity’s legitimate press function.’”⁶⁵ The Commission has – in no uncertain terms – made clear that reviewing the “competing claims of parties” and “choos[ing] which to feature, investigate or address in news, editorial and opinion coverage” is part of the “normal press function” exempted from regulation under 11 C.F.R. § 100.73.⁶⁶

As discussed above, media outlets like the *Enquirer* discuss and debate whether to publish stories every day. *See supra* at 5 & n.20. While some stories get published, media outlets hold or decline to publish stories for a variety of reasons. In 1998, for example, *Newsweek* decided not to publish Michael Isikoff’s scoop that President Clinton had an affair with Monica Lewinsky after spending significant resources for Isikoff to develop the story.⁶⁷ Many national networks have been criticized for editorial decisions not to cover allegations of serious misconduct by Bill Clinton before and during his presidency.⁶⁸ And of course there

⁶⁵ Statement of Vice Chairman David M. Mason and Comm’r Hans A. von Spakovsky, MUR 5679 (Scranton Times-Tribune) (Apr. 12, 2007).

⁶⁶ *Commission Statement on Investigatory Boundaries for Media Cases* at 6.

⁶⁷ Noel Sheppard, *Former Newsweek Editor on Why He Didn't Run Lewinsky Story: 'We Didn't Feel We Were on Firm Enough Ground'*, NewsBusters (Nov. 6, 2011), available at <https://www.newsbusters.org/blogs/nb/noel-sheppard/2011/11/06/former-newsweek-editor-why-he-didnt-run-lewinsky-story-we-didnt>. Reports noted *Newsweek*’s impatience with the amount of time and resources Isikoff was devoting to the President’s personal life. *See, e.g.*, David Shaw, *Monica’s Story: A Lesson in Restraint*, Los Angeles Times (Aug. 5, 1998), available at <http://articles.latimes.com/1998/aug/05/news/mn-10403> (noting that Isikoff “spent so much time on the story in 1997 – without producing anything solid enough to be published – that his editors reprimanded him and urged him to work on other stories”).

⁶⁸ *Sean Hannity Cites MRC Data on Stormy-Selling Networks Omitting Clinton Accusers*, NewsBusters (Mar. 23, 2018), available at <https://www.newsbusters.org/blogs/nb/tim-graham/2018/03/23/hannity-cites-mrc-data-networks-omitting-clinton-accusers>.

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are thousands of editorial decisions not to publish political stories on a wide variety of other topics every day.⁶⁹

AMI is no exception to these practices. It regularly exercises its editorial judgment to publish some stories and not others based upon criteria it is not required to justify to the federal government. It suffices that AMI's regular practice for decades has been to exercise its editorial discretion to decide which stories its readers want to read and which stories it desires to publish, or not to publish, as well as when and how it desires to report such stories.⁷⁰ Such decisions are a *sine qua non* of the journalistic process. The Commission cannot single out the *Enquirer* for engaging in the kind of decision-making that takes place in every newsroom in America.⁷¹

In fact, the Commission found no reason to believe that Sinclair Broadcasting violated the FECA in any way when it chose *not* to air a documentary film critical of presidential candidate John Kerry in the fall of 2004. The Democratic National Committee, anticipating that Sinclair was about to direct its television stations to carry the documentary, filed a complaint to enjoin the broadcasts. (Sinclair apparently had paid for license rights to the documentary, but ultimately decided not to carry the film.) Commissioners reasoned that the decision not to air was exempt from regulation both under the Press Exemption⁷² and

⁶⁹ See, e.g., Michael Sainato, *Mainstream Media Recap: Who Colluded With the Clinton Campaign?*, Observer (Nov. 21, 2016), available at <http://observer.com/2016/11/mainstream-media-recap-who-colluded-with-the-clinton-campaign/> (“MSNBC halted negative coverage of former DNC chair Debbie Wasserman Schulz after she called the network’s president, Phil Griffin, to complain.”); Rich Noyes and Geoffrey Dickens, *The Censorship Election: How the Broadcast Networks Buried the Bad News That Threatened Barack Obama’s Quest for a Second Term*, Media Research Center, available at <http://www.mrc.org/sites/default/files/documents/CensorshipElection.pdf>.

⁷⁰ Howard Aff. ¶ 13.

⁷¹ The complaints pejoratively make reference to a practice called “catch and kill.” While use of the term is disputed, the terminology effectively means that the newsroom has made an editorial decision not to cover a particular story.

⁷² See Statement of Comm’r Weintraub, MURs 5562 and 5570 (Sinclair Broadcast Group, Inc.).

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because there was no expenditure or contribution to regulate because Sinclair did not air the film.⁷³

To suggest that the regulation does not exempt the time and financial resources a press entity expends to run down leads and research stories that ultimately are not published would be inconsistent with the First Amendment, congressional intent, and Commission precedent. For example, adopting the complainants' position would mean that, if a campaign provides an ultimately unpublished news tip to the *New York Times*, every penny in salary and expense spent by the *Times* to research and confirm the facts would be a corporate contribution to the campaign. And even if the story is ultimately published but takes months to investigate, it might mean that the media organization had made a contribution to the campaign until the story had run. That simply cannot be – and is in fact not – the law. Moreover, it cannot be the law that the *Times*' decision to publish the campaign's news tip is exempt, while its decision not to publish the tip is an unlawful corporate campaign contribution.

Finally, even the complaints acknowledge that AMI followed its regular newsgathering and editorial practices.⁷⁴ The contract shows that AMI bargained for valuable journalistic services as well as a news story, all common in the media business. And while the point seems self-evident, AMI's employment of those services and incorporation of content created by Ms. McDougal are legitimate press functions.⁷⁵

In sum, the Press Exemption applies regardless of whether AMI published the story and AMI's press activities are outside the Commission's subject matter jurisdiction.

⁷³ See Statement of Comm'rs David M. Mason and Bradley A. Smith, MUR 5562 and 5570 (Sinclair Broadcast Group, Inc.) at 3 (July 12, 2005).

⁷⁴ See CC Compl. ¶ 16; FSFP Compl. ¶ 14.

⁷⁵ See Howard Aff., Exhibits C & D; CC Compl. ¶ 12.

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B. The Press Exemption Protects AMI's Costs of Content Creation, Newsgathering, and Securing Exclusive Rights to a Story.

The complaints also attack AMI's payment to Ms. McDougal as being outside the boundaries of "legitimate press functions." But such claims are factually and legally baseless.

AMI paid Ms. McDougal \$150,000 for several journalistic services and licenses. First, Ms. McDougal agreed to participate in creating and writing health, fitness and ageing columns for AMI's publications. Second, Ms. McDougal agreed to appear as a model on AMI magazine covers. Third, Ms. McDougal licensed use of her name and image inside AMI magazines in connection with her columns and magazine covers. The complaints themselves acknowledge that the contract permitted AMI to feature Ms. McDougal on magazine covers and gave "her monthly columns to write."⁷⁶ Paying compensation to someone for use of their image and for the production of written content – as a guest columnist for a fitness magazine or as a *NY Times* beat reporter – happens countless times every day and is unquestionably a "cost incurred" by AMI in publishing its magazine content.

Ms. McDougal also granted AMI exclusive story rights on a particular aspect of her life. The purchase of story rights is a common cost of "covering" news. So-called "checkbook journalism" – i.e., paying sources for stories – "has been a persistent . . . feature of news coverage at even the most powerful and reputable news organizations, long predating the hyper-competitive 24-hour cable news cycle and the celebrity gossip boom."⁷⁷ Far "from existing at the periphery of journalism and society, the payments have reached the highest levels of politics."⁷⁸

The *Enquirer* is no different, having "unapologetically paid for interviews and photographs since the days of its founder."⁷⁹ In fact, "the tabloid has paid

⁷⁶ FSFP Compl. ¶ 8; CC Compl. ¶ 12.

⁷⁷ Jeremy W. Peters, *Paying for News? It's Nothing New*, N.Y. Times (Aug. 6, 2011), available at <https://www.nytimes.com/2011/08/07/sunday-review/paying-for-news-its-nothing-new.html>.

⁷⁸ *Id.*

⁷⁹ Jeffrey Toobin, *The National Enquirer's Fervor for Trump*, New Yorker (Jul. 3, 2017), available at <https://www.newyorker.com/magazine/2017/07/03/the-national-enquirers-fervor-for-trump>.

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anywhere from a few hundred dollars to six figures for scoops.”⁸⁰ Indeed, the complaints acknowledge that AMI routinely pays for story rights, even outside the campaign context.⁸¹ Thus, AMI’s payment to Ms. McDougal for story rights is consistent with established journalistic practices in the media industry as well as AMI’s own practices over many years.

Second-guessing AMI’s practice of buying story rights would break with Commission precedent to the contrary. AMI’s purchase of Ms. McDougal’s story rights is, for all practical purposes, no different than the funds *Reader’s Digest* paid to sources to conduct a tidal analysis and computer study of Senator Kennedy’s vehicle in connection with the Chappaquiddick incident, items which the court there declared were “on their face exempt functions.”⁸² Similarly, the Commission exempted KFI-AM radio station’s expenses to stage “Fire Dreier” rallies outside the Congressman’s office and broadcast interviews with his opponent.⁸³

Regardless of one’s views on the practice, it is not the Commission’s business to adjudicate the ethics of news-gathering methods or declare who is a “responsible journalist.”⁸⁴ Indeed the complaint against CBS specifically alleged that Dan Rather and his producer breached journalistic ethics by coordinating a false story about President Bush’s national guard service between a source and Joe Lockhardt of the Kerry campaign. But the Commission concluded such conduct, even if ethically improper, did not vitiate the Press Exemption.⁸⁵

⁸⁰ *Id.*; Howard Aff. ¶¶ 12, 14.

⁸¹ FSFP Compl. ¶ 14; CC Compl. ¶ 16.

⁸² *See Reader’s Digest*, 509 F. Supp. at 1215–16. Prior to 2002, the FEC’s regulatory exemption for media studies was located at 11 C.F.R. § 100.7(b)(2) and § 100.8(b)(2).

⁸³ First General Counsel’s Report, MUR 5569 (KFI-AM 640) at 7 (Jan. 6, 2010).

⁸⁴ Statement of Reasons of Commissioners Michael E. Toner, David M. Mason, and Bradley A. Smith, MURs 5540 & 5545 (CBS Broadcasting, Inc.) (July 11, 2005).

⁸⁵ *See Weintraub-CBS Statement* at 1 (explaining that the FEC “cannot and should not attempt to arbitrate claims of media bias or breaches of journalistic ethics”).

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C. The Press Exemption Protects AMI's Editorial Stance and Its Contacts with Any Campaign Representatives.

The complaints implicitly raise two additional issues, neither of which is relevant. First, the complaints challenge the *Enquirer's* editorial decisions here because the complainants find objectionable the *Enquirer's* favoritism toward Donald Trump, both during the 2016 election and in years before the election.⁸⁶ To be sure, AMI's publisher David Pecker is a personal friend of Donald Trump and the *Enquirer* editorialized in favor of his election.⁸⁷ Mr. Pecker was quoted in *The New Yorker* acknowledging that the *Enquirer's* editorial stance was decidedly favorable to Trump.⁸⁸ But these facts are irrelevant, because the Press Exemption protects editorial bias.⁸⁹

Furthermore, the Press Exemption protects media organizations from investigation or inquiry into their editorial motives or purposes.⁹⁰ Commissioners know from personal experience that certain journalists have friends in public office aligned with their editorial positions and choose to feature these favorites above others to suit their editorial objectives. Surely it would have been as unfathomable for Rachel Maddow to feature negative information about Hillary Clinton in the run up to the 2016 presidential election as it would have been for Sean Hannity to feature negative information about Donald Trump – even if negative information was placed directly before them.

⁸⁶ See, e.g., CC Compl. ¶ 15.

⁸⁷ Jeffrey Toobin, *The National Enquirer's Fervor for Trump*; see also, Michael Sainato, *Mainstream Media Recap: Who Colluded With the Clinton Campaign?* (“Meet the Press host Chuck Todd held a private party for Jennifer Palmieri while she was working as the Clinton campaign communications director.”).

⁸⁸ *Id.* For an excellent examination of press activities in coordination with the Clinton campaign in 2016, see Michael Sainato, *Mainstream Media Recap: Who Colluded With the Clinton Campaign?*. Among other joint activities, the article reports that “[i]n the Wikileaks release of DNC emails, *The Washington Post* was exposed to have hosted a joint fundraiser with the Clinton campaign.”

⁸⁹ See, e.g., *Commission Statement on Investigatory Boundaries for Media Cases* at 3; Weintraub-CBS Statement.

⁹⁰ See, e.g., Weintraub-CBS Statement.

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Second, the complaints challenge the right of AMI to discuss Ms. McDougal’s story with an “agent” of Donald Trump or the Trump campaign. The complaints do not present any personal knowledge that AMI discussed the story with any third person, or with a person who qualified as an “agent” of the candidate or campaign committee. *See infra* at 31-32. But regardless of whether or when AMI discussed its story with any representative of the candidate or campaign – this issue is *per se* irrelevant.

“Political parties and campaigns employ platoons of advisors, handlers and spokesmen charged with attempting to shape or influence media coverage of campaigns.”⁹¹ It “is clearly a part of the normal press function to attend to the competing claims of parties, campaigns and interest groups and to choose which to feature, investigate or address in news, editorial and opinion coverage of political campaigns.”⁹² That is why, over a decade ago, commissioners “concluded that the presence or absence of alleged coordination between a press entity and a candidate or political party is **irrelevant** to determining whether the Act’s press exemption applies.”⁹³

Put even more straightforwardly by a current commissioner, “it is important to emphasize that the press exemption shields press entities from investigations into alleged coordination.”⁹⁴ “Whether the media entities communicated with political parties or candidates before [a story runs is] irrelevant.”⁹⁵ Indeed, “it is difficult to fathom how journalists could cover campaigns if they have to worry that communicating with campaign workers could trigger a government investigation into supposed improper coordination.”⁹⁶ As a result, no “inquiry may be addressed to sources of information, research, motivation, [or] connection with the campaign.”⁹⁷ As Commissioner Weintraub’s colleagues likewise elaborated, this is

⁹¹ *Commission Statement on Investigatory Boundaries for Media Cases* at 6.

⁹² *Id.*

⁹³ *Internet Communications*, 71 Fed. Reg. 18,589, 18,609 (Apr. 12, 2006) (emphasis added) (collecting authority).

⁹⁴ *Id.* at 18,610 (quoting Weintraub-CBS Statement).

⁹⁵ Weintraub-CBS Statement at 2.

⁹⁶ *Id.*

⁹⁷ *Id.*

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true even where a media entity is communicating with a source and a candidate shortly before an election.⁹⁸

Thus, even if the *Enquirer* discussed a story with anyone speaking on behalf of Donald Trump in his capacity as a candidate or the campaign, before, during, or after making its editorial decisions, such a contact would be commonplace in journalism and of no legal significance.

II. AMI'S PUBLISHING ACTIVITIES ARE PROTECTED BY THE FREE PRESS CLAUSE OF THE FIRST AMENDMENT.

As demonstrated above, AMI's free press right to purchase an exclusive story right from a source and make an editorial decision whether, when, and how to publish that story is exempt from regulation under the statutory Press Exemption. Were the Commission to ignore the clear statutory limit upon its regulatory authority, however, the Commission would unquestionably violate AMI's First Amendment rights.

A. The FEC Must Respect Basic First Amendment Principles From The Outset Of This Matter.

The freedom of the press is among this Nation's "most cherished liberties"⁹⁹ and fulfills an "essential role in our democracy."¹⁰⁰ Such freedom is "broad"¹⁰¹ and has "contributed greatly to the development and well-being of our free society and [is] indispensable to its continued growth."¹⁰² Indeed, the "durability of our system of self-government hinges upon the preservation of [this] freedom[]."¹⁰³

⁹⁸ Statement of Reasons of Commissioners Michael E. Toner, David M. Mason, and Bradley A. Smith, MURs 5540 & 5545 (CBS Broadcasting, Inc.) (July 11, 2005).

⁹⁹ *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 381 (1973).

¹⁰⁰ *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971)

¹⁰¹ *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943).

¹⁰² *Roth v. United States*, 354 U.S. 476, 488 (1957).

¹⁰³ *Pittsburgh Press Co.*, 413 U.S. at 382.

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When operating in this “highly sensitive” area, the power to conduct investigations is “narrow[]”¹⁰⁴ and “carefully circumscribed.”¹⁰⁵ This is because the activities like those the FEC seeks to investigate in this case “differ profoundly in terms of constitutional significance from the activities that are generally the subject of investigation by other federal administrative agencies.”¹⁰⁶ These limiting constraints apply with even greater force here given that neither the FEC nor any court has ever (so far as counsel is aware) investigated a media company’s decision *not* to publish a story as an in-kind campaign contribution. The FEC must satisfy exacting First Amendment standards *before* any investigation or intrusion into AMI’s newsgathering or publishing functions may proceed.¹⁰⁷

B. The First Amendment Protects AMI’s Editorial Decisions About Whether To Publish A Story.

The Commission is certainly familiar with the First Amendment’s protections for media entities that choose to publish stories. Less commonly encountered, however – but still equally protected – are situations where editors exercise their First Amendment right not to publish a particular story.

The key case is *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), where the Court struck down a “right of reply” statute that required newspapers to provide a political candidate equal space to answer criticism in the newspaper.¹⁰⁸ The Court held that the “statute exacts a penalty on the basis of the

¹⁰⁴ *Id.*

¹⁰⁵ *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957).

¹⁰⁶ *FEC v. Florida for Kennedy Comm.*, 681 F.2d 1281, 1284 (11th Cir. 1982) (“*Florida for Kennedy*”). See also *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981) (“*MNPL*”).

¹⁰⁷ See *Florida for Kennedy*, 681 F.2d at 1284 (investigations by the FEC receive a “higher degree of scrutiny”); see also *MNPL*, 655 F.2d at 389 (“[c]urrent first amendment jurisprudence makes clear that before a state or federal body can compel disclosure of information which would trespass upon first amendment freedoms, a ‘subordinating interest of the State’ must be proffered, and it must be ‘compelling’”) (citation omitted); *Phillips Publ’g*, 517 F. Supp. at 1312 (the “most important reason for heightened scrutiny” of the FEC’s desire to investigate a publisher is “the ‘potential for chilling the free exercise of political speech and association guarded by the first amendment’”).

¹⁰⁸ 418 U.S. at 244.

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content” as it “operates as a command in the same sense as a statute [*sic*] or regulation forbidding [the newspaper] to publish specified matter.”¹⁰⁹ Observing the well-established First Amendment-based right of editorial discretion,¹¹⁰ *Miami Herald* recognized that the “clear implication has been that any such compulsion to publish that which ‘reason’ tells [the newspapers] should not be published is unconstitutional.”¹¹¹ The Supreme Court then concluded by reaffirming the well-established constitutional principle that editorial judgment for the content of newspapers should be left to editors and not the courts:

A newspaper [or magazine] is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.¹¹²

Miami Herald’s logic applies with equal force to Commission enforcement actions. For example, relying on *Miami Herald*, the court in *Clifton v. FEC*, 114 F.3d 1309 (1st Cir. 1997), held that it was “obnoxious,” “abhorrent,” and

¹⁰⁹ *Id.* at 256.

¹¹⁰ *See id.* at 254-255 (citing *Associated Press v. United States*, 326 U.S. 1, 20 n. 18 (1945) (district court did “not compel AP or its members to permit publication of anything which their ‘reason’ tells them should not be published”), *Branzburg v. Hayes*, 408 U.S. 668, 681 (1972) (emphasizing that the cases then before the court “involve[d] . . . no express or implied command that the press publish what it prefers to withhold”), *Pittsburgh Press Co.*, 413 U.S. at 391 (“we reaffirm unequivocally the protection afforded to editorial judgment”), *Columbia Broad. Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 117, 124 (1973) (Stewart, J., concurring) (explaining that the First Amendment “gives every newspaper the liberty to print what it chooses and reject what it chooses, free from the intrusive editorial thumb of Government”); *accord Passaic Daily News v. N.L.R.B.*, 736 F.2d 1543, 1557 (D.C. Cir. 1984) (“newspapers have *absolute* discretion to determine the contents of their newspapers”) (emphasis added)).

¹¹¹ 418 U.S. at 256. *See also* John H. Garvey, *Freedom and Choice in Constitutional Law*, 94 Harv. L. Rev. 1756, 1794 (1981) (observing that “Freedom of the press similarly protects the freedom not to publish as well as the freedom to publish”).

¹¹² *Id.* at 258.

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“unquestionably” a First Amendment violation to require voter guides to give “equal space” to differing views even if the publisher of the guide had contact with a candidate.¹¹³ The *Clifton* court also concluded that a private entity could not be compelled to “express particular views” or to “provide ‘balance’ or equal space or an opportunity to appear.”¹¹⁴ Likewise, there was no suggestion in MUR 5562 that Sinclair was under any kind of legal compulsion to air the Kerry documentary.

In short, AMI has been well within its rights not to publish Ms. McDougal’s telling of her personal story, and its decision to withhold publication cannot give rise to any investigation or liability under the First Amendment.

C. The First Amendment Also Protects All Of AMI’s Alleged Newsgathering Activities.

Just as the decision *not* to publish Ms. McDougal’s story is squarely protected by the First Amendment, the two alleged predicate newsgathering acts (i.e., making an inquiry to Mr. Trump’s attorney and purchasing Ms. McDougal’s exclusive story rights along with other services from Ms. McDougal) also enjoy protection under the First Amendment and cannot support the claim that anything AMI did was improper under federal election law.¹¹⁵

First, in *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978), the court held that there is an “*undoubted* right to gather news ‘from any source by means within the law[.]’” Decisions in numerous other cases agree.¹¹⁶ All of AMI’s alleged conduct is newsgathering “within the law,” and therefore constitutionally protected.

¹¹³ 114 F.3d at 1311-15.

¹¹⁴ *Id.* at 1313-14.

¹¹⁵ *See, e.g., Branzburg*, 408 U.S. at 681. *See also Houchins v. KQED, Inc.*, 438 U.S. 1 (1978).

¹¹⁶ *Id.* at 11 (emphasis added; quoting *Branzburg*, 408 U.S. at 681-82); accord *ACLU of Illinois v. Alvarez*, 679 F.3d 583, 597-603 (7th Cir. 2012); *Glik v. Cunniffe*, 655 F.3d 78, 79-84 (1st Cir. 2011) (holding that the First Amendment right to gather information extends broadly, and citing *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995)); *Channel 10, Inc. v. Gunnarson*, 337 F. Supp. 634, 638 (D.Minn. 1972); *Connell v. Town of Hudson*, 733 F. Supp. 465, 471-72 (D.N.H. 1990); *Davis v. E. Baton Rouge Parish Sch. Bd.*, 78 F.3d 920, 926 (5th Cir. 1996); *Seminole Tribe v. Times Publ’g Co.*, 780 So.2d 310, 316-317 (Fla. Dist. Ct. App. 2001); *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 520-521 (1986).

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Second, press entities routinely solicit comment from the subjects of stories.¹¹⁷ Thus, even if AMI had reached out to a representative of Mr. Trump, as alleged, there would have been nothing untoward or unusual about seeking comment concerning Ms. McDougal's story – a story that the White House denies is true.¹¹⁸ As the First Circuit explained in *Clifton*, the Commission “cannot rewrite the dictionary and classify a simple inquiry as a contribution.”¹¹⁹

Third, media entities routinely decide not to run stories for all sorts of reasons – e.g., the story is not sufficiently well-founded or documented, not yet finished, not “on the record,” not newsworthy, or out of step with the publication's editorial stance.¹²⁰ The First Amendment squarely bars any intrusion into those decisions.¹²¹ For example, if a publisher paid for a story about a candidate but ultimately had serious doubts about the story's veracity, the rule advanced by the complainants here would put the publisher in an intractable dilemma: publish the story and expose the publisher to a defamation claim brought by the candidate, or decide not to publish and stand accused of making an illegal in-kind contribution.¹²² Also, under the complainants' theory, once a media entity “coordinates” with a candidate by making a routine inquiry about the veracity of a story, the publisher faces a Hobson's choice: either publish, or stand accused of making an illegal in-kind contribution.

Fourth, even assuming AMI's editorial decision not to run the McDougal story was animated by a desire to support the candidacy of Donald Trump, and did benefit him – which AMI does not concede – it is routine and constitutionally

¹¹⁷ See, e.g., *Gonzalez v. Morse*, No. 17-510, 2017 WL 4539262, at *2 (E.D. Cal. Oct. 11, 2017) (reporter's questions to politician protected under the First Amendment).

¹¹⁸ Although seeking comment is not required of journalists, *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968) (“[f]ailure to investigate does not in itself establish bad faith”), doing so is generally practiced and endorsed as a way to avoid, for example, defamation liability. See, e.g., *Newton v. NBC*, 930 F.2d 662, 686 (9th Cir. 1990) (attempts to interview plaintiff dispel accusation of actual malice and purposeful avoidance of the truth).

¹¹⁹ 114 F.3d at 1312.

¹²⁰ See Howard Kurtz, *Newsweek's Melted Scoop*, Wash. Post, Jan. 22, 1998 at C1 (explaining *Newsweek's* decision not to run Lewinsky story concerning President Clinton).

¹²¹ *Miami Herald*, 418 U.S. at 256-58.

¹²² See *St. Amant*, 390 U.S. at 731 (actual malice can be shown with “sufficient evidence” that a publisher “entertained serious doubts as to the truth of his publication”).

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protected for the media to express a political view.¹²³ In *Pacific Gas & Electric, Co. v. Public Utilities Commission*, 475 U.S. 1, 12-13 (1986), the Court struck down an order requiring a utility company to send customers third party materials critical of the utility's views. Relying extensively on *Miami Herald*, the plurality explained that, "[w]ere the government freely able to compel corporate speakers to propound political messages with which they disagree, this protection [for speech] would be empty, for the government could require speakers to affirm in one breath that which they deny in the next."¹²⁴ News publishers have helped and hurt politicians from time immemorial. Leading periodicals often endorse and excoriate individual candidates. For example, in 2016, among the 100 largest U.S. newspapers, 57 newspapers endorsed Hillary Clinton, while only two endorsed Donald Trump.¹²⁵

Every alleged action by AMI – from “coordinating” a story, to paying a source, to not running a story for purportedly political-motivated reasons – was protected under well-established First Amendment authority. For this additional reason, there is no basis, consistent with the First Amendment, for further investigation by the Commission or a finding that AMI violated the FECA.

D. The FECA Is Unconstitutionally Vague And Overbroad As Applied To AMI's Alleged Conduct.

Any investigation or further action by the Commission on these matters would violate the First Amendment for yet another reason: the FECA, if applied in the current context, is unconstitutionally vague and overbroad.

Laws are unconstitutionally vague if they fail to provide fair notice of what the law forbids.¹²⁶ AMI did not have sufficient notice that its newsgathering and decision not to publish before the 2016 presidential election could lead to liability

¹²³ *Miami Herald*, 418 U.S. at 255-56 (the press has a right to advance their political views).

¹²⁴ 475 U.S. at 16.

¹²⁵ Reid Wilson, *Final Newspaper Endorsement Count: Clinton 57, Trump 2*, The Hill (Nov. 6, 2016).

¹²⁶ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (a law is unconstitutionally vague if “it ‘fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute’”) (citation omitted).

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for making an illegal in-kind contribution under the FECA, as the FECA has never before been interpreted in that way by a court or the Commission.¹²⁷

Vague laws that do not make clear what conduct is prohibited or allowed are particularly suspect where they target First Amendment activities.¹²⁸ And where, as here, Common Cause demands criminal enforcement of the FECA, the need for clarity is heightened even further: “the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”¹²⁹ There is no ascertainable standard for proscribed behavior here, and there is a serious risk that certain media companies holding particular views or engaging in otherwise lawful journalistic practices will be targeted for investigation and punishment. For instance, the Common Cause complaint suggests that liability should be imposed in part because of the friendship between AMI’s Mr. Pecker and Mr. Trump.¹³⁰ But the First Amendment protects even partisan political reporting.¹³¹ The FECA cannot, consistent with the First Amendment, be enforced against AMI premised on the subjective degree of longstanding friendship between Mr. Pecker and President Trump, Mr. Pecker’s political leanings, or AMI’s newsgathering techniques and editorial choices. None of those points support a viable, sufficiently-definite, and neutral standard for enforcement of the law.

Were the FECA applied here, that would also mean the law is unconstitutionally overbroad by restricting more First Amendment activity than the

¹²⁷ See *Clifton v. FEC*, 927 F. Supp. 493, 499 (D. Me. 1996) (FECA, “itself (section 441b) [now at 52 U.S.C. § 30118] does not make corporate expenditures, occurring after contact with a candidate, into contributions”).

¹²⁸ *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964) (vague laws with “uncertain” boundaries for proscribable conduct are especially dangerous in the First Amendment arena); see also *Cramp v. Board of Pub. Instruction*, 368 U.S. 278, 287 (1961) (“The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution”).

¹²⁹ *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (striking down vague law).

¹³⁰ CC Compl. ¶ 15.

¹³¹ *Miami Herald*, 418 U.S. at 255; *Pittsburgh Press*, 413 U.S. at 391; accord *Readers Digest*, 509 F. Supp. 1214-15; *Phillips Publishing*, 517 F. Supp. at 1311-12.

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law allows to be regulated.¹³² Complainants' interpretation of election law is not narrowly tailored nor is it consistent with the terms "contribution" and "expenditure" as they have come to be understood over decades of jurisprudence.¹³³ Complainants' interpretation could be applied to punish any media organization that: paid a source for her exclusive story (even as part of payment for other services); sought comment from a political candidate about the story; and then decided for any reason (or no particular reason at all) not to publish the story.¹³⁴ The prospect of enforcement in such a context – where every predicate act enjoys full constitutional protection – reveals the FECA's unconstitutional overbreadth if and as applied.

The First Amendment prohibits invoking any laws or regulations to stifle, affect or investigate AMI's newsgathering or editorial decisions in this context.

E. Any Inquiry Or Investigation By The Commission Would Call For An Unconstitutional Invasion Of AMI's Reporter's Privilege.

Any investigation by the Commission into AMI's newsgathering methods or editorial decisions raises profound constitutional and common law concerns. This holds true for an investigation into AMI's alleged conduct, but also for any request for evidence or testimony from AMI concerning its newsgathering and editorial decisions that implicate the First Amendment protections afforded by the reporter's privilege. In *Branzburg*, the Court recognized that newsgathering activities qualify for First Amendment protection: "[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated."¹³⁵ Consistent with *Branzburg*, most federal circuit courts recognize the existence of a constitutionally-based

¹³² *Broadrick v. Oklahoma*, 413 U.S. 601, 611 (1973) ("statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn").

¹³³ *See Buckley v. Valeo*, 424 U.S. 1, 80 (1976) (holding the definition of "contribution" must be interpreted in a way that is "not impermissibly broad" to capture only payments "unambiguously related to the campaign" and, to further avoid overbreadth problems, holding that the term "expenditure" encompassed "only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate").

¹³⁴ AMI has standing to challenge the law even as it would be applied to third parties. *Broadrick*, 413 U.S. at 612.

¹³⁵ 408 U.S. at 681.

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reporter's privilege outside the grand jury context that applies, by its nature, to *unpublished* information.¹³⁶

Such a privilege can also be found in the federal common law and the principles adhered to by other agencies. For example, the Department of Justice (DOJ) has guidelines recognizing that “freedom of the press can be no broader than the freedom of the [reporters] to investigate and report the news.”¹³⁷ These guidelines provide powerful evidence of a federal policy at the highest level that favors protection of journalists’ unpublished information and a balancing of competing interests to ensure a vigorous and independent press.¹³⁸

The reporter’s privilege affords a significant shield against any investigation or inquiry into AMI’s newsgathering or editorial decisions. These principles apply with equal force to any inquiry by this Commission. In *Reader’s Digest*, for example, the court rejected an effort to inquire into the news entity’s sources, summaries, payments, and the uses, purpose and content of newsgathering materials.¹³⁹ In *Phillip’s Publishing*, the court found a “danger further FEC inquiry

¹³⁶ See, e.g., *United States v. La Rouche Campaign*, 841 F.2d 1176, 1182 (1st Cir. 1988); *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 715 (1st Cir. 1998); *Gonzales v. NBC*, 194 F.3d 29, 35 (2d Cir. 1999); *United States v. Burke*, 700 F.2d 70, 76-77 (2d Cir. 1983); *United States v. Criden*, 633 F.2d 346, 355-56 (3d Cir. 1980); *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980); *Riley v. City of Chester*, 612 F.2d 708, 716 (3d Cir. 1979); *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 726 (5th Cir.), *as modified*, 628 F.2d 932 (5th Cir. 1980); *In re Selcraig*, 705 F.2d 789, 792, 799 (5th Cir. 1983); *Shoen v. Shoen*, 48 F.3d 412, 414 (9th Cir. 1995) (“*Shoen II*”); *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (“*Shoen I*”); *United States v. Pretzinger*, 542 F.2d 517, 520-521 (9th Cir. 1976); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977); *United States v. Capers*, 708 F.3d 1286, 1303 (11th Cir. 2013); *United States v. Caporale*, 806 F.2d 1487, 1504 (11th Cir. 1986); *United States v. Ahn*, 231 F.3d 26, 37 (D.C. Cir. 2000); *Zerilli v. Smith*, 656 F.2d 705, 712 (D.C. Cir. 1981).

¹³⁷ See 28 CFR § 50.10.

¹³⁸ These public policy concerns apply with equal force to the compelled disclosure of underlying resource materials. *Cuthbertson*, 630 F.2d at 147 (“the compelled production of a reporter’s resource materials can constitute a significant intrusion into the newsgathering and editorial processes”); see also *La Rouche*, 841 F.2d at 1182 (“We discern a lurking and subtle threat to journalists and their employers if disclosure of outtakes, notes, and other unused information, even if nonconfidential, becomes routine and casually, if not cavalierly, compelled”).

¹³⁹ 509 F. Supp. at 1215-16; see also Weintraub-CBS Statement (citing *Reader’s Digest* for this point and further stating “I believe it important to emphasize that the press exemption shields press entities from investigations into alleged coordination ... Merely investigating such allegations would intrude upon Constitutional guarantees of freedom of the press”).

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would impinge upon First Amendment freedoms” where the Commission had “made no threshold showing that a violation may have occurred and it is extremely unlikely that a violation will be found.”¹⁴⁰

For these additional reasons, any further investigation or action by the Commission would be an affront to AMI’s rights under the First Amendment and the common law.

III. IN ANY EVENT, AMI’S PUBLISHING ACTIVITIES DO NOT CONSTITUTE “EXPENDITURES” OR “CONTRIBUTIONS.”

The Press Exemption and First Amendment principles set forth above require dismissal of the allegations. But even were AMI’s payment to Ms. McDougal not an exercise of journalistic discretion, there still would be no “expenditure” or “contribution” to investigate under the FECA.

A. AMI’s Payment Was For The Purpose of Procuring Legitimate And Valuable Journalistic and Business Services And Assets.

For AMI’s payment to Ms. McDougal to constitute an “expenditure” or “contribution” regulated by the Commission, it must have been made “for the purpose of influencing [an] election.” 52 U.S.C. § 30101(8)(A), (9)(A). Where the purpose of a payment is demonstrably for commercial value, rather than to offset a financial obligation of a campaign, there is no “contribution.”¹⁴¹

Here, the purpose of AMI’s payment to Ms. McDougal can be drawn directly from the face of the contract. In exchange for the payment to Ms. McDougal, AMI was to receive written and photographic content for five AMI publications (*Muscle & Fitness Hers, Men’s Fitness, Star, OK, and Radar Online*).

¹⁴⁰ 517 F. Supp. at 1314; *cf. AFL-CIO*, 333 F.3d at 177-78 (FEC inquiry into, and release of, information about a labor union’s internal planning materials would violate the First Amendment).

¹⁴¹ The Commission concluded that even a personal *gift* by a candidate’s family to the candidate’s former mistress lacked the requisite purpose and was not a “contribution” but later concluded, based upon additional evidence, the payment was a *severance* payment that relieved the campaign of a financial obligation thus constituting a “contribution.” *Compare* Statement of Reasons of Comm’rs Matthew S. Petersen, Cynthia L. Bauerly, Caroline C. Hunter, Donald F. McGahn, II, Ellen L. Weintraub, MUR 6200 (Ensign) (Nov. 17, 2010) *with* Factual and Legal Analysis, MUR 6718 (Ensign) (Feb. 6, 2013).



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Additionally, AMI obtained a valuable story right. To date, AMI has received approximately 25 health and fitness articles or columns, one magazine cover for *Muscle & Fitness Hers*, which was the highest selling edition of 2017, video and photographic content for *Muscle & Fitness Hers*, a right to an additional magazine cover for *Men's Journal*, and a story right it could hold, publish, or sell in its discretion.¹⁴² The economic value that AMI bargained for and exchanged with Ms. McDougal has been put to AMI's business use. Accordingly, AMI's payment to Ms. McDougal cannot be a "contribution" or "expenditure."¹⁴³

B. AMI's Payment to McDougal Was Made "Irrespective" of the Candidacy.

The Act prohibits the use of campaign funds for any person's "personal use." 52 U.S.C. § 30114(b). Somewhat illogically, however, Commission regulations provide that a third-party's payment of a candidate's personal expenses is nonetheless a contribution to the campaign and (unlawful) "expenditure" by the campaign, "unless the payment would have been made irrespective of the candidacy." 11 C.F.R. § 113.1(g)(6).

The services and story right that AMI purchased from Ms. McDougal clearly were not financial obligations of the Trump campaign.¹⁴⁴ But just as dubious would be any suggestion that the services AMI acquired and used from Ms. McDougal were "personal use" expenses by Donald Trump.¹⁴⁵

¹⁴² Ironically, the FEC complaints placed an unfair cloud over AMI's contract which Ms. McDougal seized upon, opportunistically, in an effort to take back the right to sell her story, presumably to a higher bidder. How much the story could be sold for remains speculative. The California state court is not an appropriate interpreter of the FECA. Therefore, the sooner the Commission finds no reason to believe that AMI's contract violates the FECA, the sooner AMI can remove the cloud and make an editorial and business decision about how best to exercise its rights with respect to the story.

¹⁴³ Where non-election purposes to an expense are plain, the fact that the expense also incidentally benefits a candidate or campaign does not make the purpose of the expense "for the purpose of influencing [an] election." *Orloski*, 795 F.2d at 160.

¹⁴⁴ See Bradley A. Smith, *Stormy Weather for Campaign-Finance Laws*, Wall St. J. (Apr. 10, 2018).

¹⁴⁵ Commission regulations describe "personal use" expenses as household food items and supplies, funeral expenses, clothing, tuition, personal mortgages, tickets to sporting events, club



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In any event, AMI has been in the business of paying for writers, celebrities, and models, as well as news tips, interviews and story rights for decades. AMI also has been covering stories about Donald Trump for decades. He has been a prominent businessman for a long time. AMI's interest in Donald Trump stories – those it published and those it did not – long pre-dated his presidential candidacy. Likewise, Ms. McDougal was a celebrity in her own right who had appeared on the cover of AMI's *Men's Fitness* magazine years before her attorney approached AMI in the summer of 2016.

The point is that AMI's payment to Ms. McDougal purchased legitimate journalistic services and content from Ms. McDougal irrespective of any candidacy. Therefore, AMI's payment is not a "contribution."

C. The Complaints Do Not Present Any Evidence Establishing That AMI Coordinated Its Editorial Decision to Purchase Ms. McDougal's Story Right with an Agent of the Trump Campaign.

The complainants have no personal knowledge of actual coordination and present no evidence of coordination. The complaints rely solely upon the unsworn and undocumented reporting of Jeffrey Toobin and Ronan Farrow, who themselves have no personal knowledge and who otherwise placed their own second-hand gloss on the circumstances. This is an inadequate basis for a Commission "reason to believe" finding.¹⁴⁶

In order to substantiate an allegation that AMI made an in-kind contribution to the Trump campaign, the complaints would have to present sound evidence that AMI coordinated its payment to Ms. McDougal with an "agent" of the Trump campaign. The definition of "agent" is set forth in 11 C.F.R. § 109.3(b). It requires

dues, and salary payments to family members. 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). Ms. McDougal's authorship of columns, modeling, and story are not like any of these categories.

¹⁴⁶ See Statement of Reasons of Comm'rs David M. Mason, Karl J. Sandstrom, Bradley A. Smith, Scott E. Thomas at 1-2, MUR 4960 (Hillary Rodham Clinton for U.S. Exploratory Committee, Inc.) (Dec. 21, 2000) (dismissing complaint because "[a]bsent personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation . . ."); Factual & Legal Analysis at 4, MUR 5866 (Conrad Burns) (June 27, 2007) (dismissing complaint because "[i]t does not provide any support for corporate facilitation through coercion other than the aforementioned [press] article, which does not identify the source or any other sources . . . In short, the corporate facilitation theory rests wholly on speculation.").



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that the alleged “agent” have specific “actual authority” over campaign communications strategy.

Yet, wholly absent from the complaints is any sworn, reliable evidence that AMI coordinated its payment with an “agent” of the Trump campaign or of Donald Trump in his capacity as “candidate.” The CC complaint does not even allege that Michael D. Cohen was an “agent” of the Trump campaign or Donald Trump as a candidate, much less that he had any campaign authority over communications strategy as required under § 109.3(b).¹⁴⁷ All the complaint alleges is that he was an attorney for the “Trump Organization” and Donald Trump’s “personal attorney.”¹⁴⁸

Thus, as a matter of law, the complaints are woefully inadequate to substantiate a finding of actual coordination that could give rise to an in-kind “contribution” by AMI. And any speculation beyond the evidence asserted in the sworn complaint would be improper.¹⁴⁹

CONCLUSION

Newsrooms and television producers invest resources in news coverage, choose their sources, and make decisions about which news to publish, and which news not to publish, every day. Fundamentally, when one looks past the high-profile names and salacious topics sensationalized in the complaints, the editorial decisions made by AMI were representative of the editorial decisions made by all newsrooms, editorial boards and television producers. Rather than undermine and intrude upon some of the most basic tenets of journalism, which have been repeatedly affirmed by the courts and a bipartisan array of commissioners, the

¹⁴⁷ CC Compl. ¶ 19.

¹⁴⁸ *Id.*

¹⁴⁹ Statement of Reasons of Chairman David M. Mason, Vice Chairman Karl J. Sandstrom, Commissioners Danny L. McDonald, Bradley A. Smith, Scott E. Thomas and Darryl R. Wold, at 2, MUR 5141 (Moran for Congress) (Mar. 11, 2002) (“Unwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.”); Factual & Legal Analysis at 7, MUR 6077 (Norm Coleman) (May 19, 2009) (dismissing coordination allegation because “[t]here is no other support for the Complaint’s allegation as to the coordinating conduct”); Factual & Legal Analysis at 8, MUR 6679 (Jim Renacci for Congress) (July 10, 2013) (dismissing coordination allegation because “inference . . . is not supported by any available evidence”).



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Commission should find "no reason to believe" that AMI violated the law here and dismiss these matters.

Sincerely,

A handwritten signature in blue ink that reads "Andrew Woodson". The signature is written in a cursive style.

Andrew G. Woodson

Enclosure

OFFICE OF
GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

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The State of New York)

County of New York)

Response of American Media, Inc. in
Matters Under Review 7324 and 7332

AFFIDAVIT OF DYLAN HOWARD

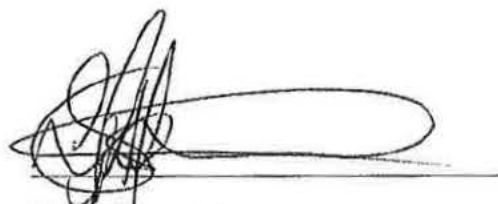
I, Dylan Howard, being first duly sworn, hereby state the following:

1. I have personal knowledge of all information contained in this Affidavit.
2. I am the Chief Content Officer of American Media, Inc. ("AMI"), a publisher of celebrity news and health & fitness magazines. I have been Chief Content Officer & Vice-President since October 2017, and from 2013 to 2017 I was the Editor in Chief of the *National Enquirer* as well as the website RadarOnline, LLC, in addition to Vice-President of News of AMI.
3. AMI has been a national media company in the publishing business since 1999. AMI is not now, and never has been, owned or controlled by any political party, political committee, or political candidate.
4. AMI currently owns and publishes thirteen (13) print and online magazines. The publications are: *Men's Journal*, *Men's Fitness*, *Muscle & Fitness*, *Muscle & Fitness Hers*, *Flex*, *Star*, *US Weekly*, *Radar Online*, *OK! USA*, *Soap Opera Digest*, *Globe*, *National Examiner*, and *National Enquirer*. AMI has never owned or published *In Touch* magazine.
5. I am advised that AMI's combined overall readership – among print and digital publications – is estimated at 49.3 million readers.
6. *Muscle & Fitness Hers* is a print and online publication with an editorial focus on women's health and fitness. AMI has published *Muscle & Fitness Hers* since 2003. I am advised that the print circulation is approximately 60,000 per bi-annual issue with a readership of approximately 525,000.
7. *Star* is a print and online publication with an editorial focus on news and gossip about celebrities. AMI has published *Star* since 1999. I am advised that the print circulation is approximately 750,000 per weekly issue with a readership of approximately 5,461,000.

8. *OK* is a print and online publication with an editorial focus on news and gossip about celebrities. AMI has published *OK* since June, 2011. I am advised that the print circulation is approximately 475,000 per weekly issue with a readership of approximately 4,087,000.
9. *Radar Online* is an online publication with an editorial focus on news about celebrities, politicians and other famous people, reality television, crime and scandals. AMI has published *Radar Online* since 2008. I am advised that the online publication has approximately 13 million unique visitors each month.
10. *Men's Journal* is a print and online publication with an editorial focus on men's health and fitness, men's fashion, and men's lifestyle and culture. AMI has published *Men's Journal* since September 2017. I am advised that the print circulation is approximately 1,250,000 per monthly issue with a readership of approximately 6,500,000.
11. The *National Enquirer* is a print and online "tabloid" genre publication focusing on investigative journalism, scandals, crime, and the lives of celebrities, the rich and famous, political figures, and current events. The *Enquirer* was founded in 1929. AMI has published the *National Enquirer* weekly since 1999. I am advised that the current circulation of the *Enquirer* print edition is approximately 250,000 per weekly issue with a readership of approximately 5.5 million, the online edition has approximately 725,000 unique visitors each month and the *Enquirer's* social media following is about 66,000 regular followers.
12. The *Enquirer* is known for investigative journalism, and an integral part of the *Enquirer's* editorial and sales strategy is to report exclusive stories. Exclusive stories give the *Enquirer* an advantage over competitors, both tabloids and mainstream news publications, in reporting new and interesting news and information. That in turn increases newsstand sales. Consistent with that newsgathering and reporting function, the *Enquirer*, or AMI on its behalf, often purchases from sources exclusive rights to their stories.
13. AMI's publications, including the *Enquirer*, routinely make editorial judgments about which stories to publish, when to publish, when to delay publishing to a later date, and in some cases not to publish stories. The *Enquirer's* editorial criteria are based upon a range of factors, including, but not limited to, reader interest and reader bias, the editorial stance of the publication, truth and accuracy, as well as legal considerations.
14. AMI routinely pays editors, journalists, columnists, writers, models, photographers, printers, sources and other professionals to produce, present and/or publish content for its publications.

15. In the summer of 2016, an attorney representing Karen McDougal, a model and a health and fitness personality, contacted AMI about whether it was interested in purchasing the story rights of Ms. McDougal, who claimed to have had a consensual affair with Donald Trump. AMI had previously dealt with the attorney on other issues, including story ideas. *Men's Fitness* previously had featured Ms. McDougal on its cover.
16. In August 2016, AMI entered into an agreement with Karen McDougal to (1) work with AMI writers to create and byline columns about health, fitness and aging for *Star*, *OK*, and *Radar Online*; (2) license use of her name and likeness in connection with the columns; (3) pose for and appear on at least two magazine covers, *Muscle & Fitness Hers* and *Men's Fitness*; (4) grant interviews for articles to accompany her magazine covers; and (5) license exclusive story rights regarding aspects of her personal life. AMI negotiated with her lawyer and paid Ms. McDougal \$150,000 for these services over a period of two years and for her lifetime story right. A true and accurate copy of AMI's contract with Ms. McDougal is attached as EXHIBIT A.
17. In November 2016, at Ms. McDougal's request, AMI modified the agreement to allow Ms. McDougal to respond to press inquiries by other publications about her personal life. A true and accurate copy of AMI's contract amendment with Ms. McDougal is attached as EXHIBIT B.
18. To date, AMI's publications have published approximately twenty-five (25) columns and articles featuring, headlined, created by or bylined by Ms. McDougal. Copies of the columns are attached as EXHIBIT C. AMI has requested additional columns from Ms. McDougal.
19. Ms. McDougal appeared on the cover of the Spring 2017 issue of *Muscle and Fitness Hers* magazine. I am advised that it was the highest selling edition of the magazine in 2017. A copy of the magazine cover is attached as EXHIBIT D.
20. *Star* has published columns with Ms. McDougal and made use of Karen McDougal's name and image in connection with content promoting certain beauty products. Examples can be viewed at <https://starmagazine.com/photos/karen-mcdougal-beauty-products-procedures/> and at <https://starmagazine.com/2017/02/22/model-karen-mcdougal-reveals-tips-make-anyone-photogenic/>. *Star*'s feature of Ms. McDougal's surgery to remove breast implants, with photos and content, can be viewed at <https://starmagazine.com/photos/karen-mcdougal-breast-implant-surgery/>.
21. *Radar Online* has published columns created by Ms. McDougal. *Radar Online* also has published a non-exclusive article about Ms. McDougal's alleged affair with Donald Trump, which can be read at <https://radaronline.com/exclusives/2018/03/playboy-model-donald-trump-affair/>.


22. A video of Ms. McDougal's photo shoot, which is posted on the online edition of *Muscle and Fitness Hers*, can be viewed at <https://www.muscleandfitness.com/muscle-fitness-hers/hers-athletes-celebrities/videos/muscle-fitness-hers-spring-issue-features-karen>. Articles featuring Ms. McDougal and her workout regimen can be viewed online at <https://www.muscleandfitness.com/muscle-fitness-hers/hers-athletes-celebrities/what-you-need-know-train-karen-mcdougal> and <https://www.muscleandfitness.com/muscle-fitness-hers/hers-workouts/karen-mcdougals-ultimate-home-workout>.
23. Ms. McDougal committed to modeling for a second photo shoot and to appear on the cover of *Men's Journal* magazine. Ms. McDougal's contract called for her to appear on the cover of *Men's Fitness*, but AMI stopped publishing a print edition of *Men's Fitness* in 2017. Ms. McDougal requested that *Men's Journal* be substituted, and AMI agreed. In the winter of 2018, AMI was in the planning stages to feature Ms. McDougal on the cover of *Men's Journal* in the spring or summer of 2018, and editors were in discussions with Ms. McDougal about those plans.
24. In the winter of 2018, Ms. McDougal stopped performing her contractual duties. AMI's attempts to schedule Ms. McDougal for a photo shoot to appear on the cover of *Men's Journal* were unsuccessful. Ms. McDougal's attorney indicated that Ms. McDougal was interested in a re-negotiation of her contract. One of her contentions was that \$150,000 was too little for the amount of work Ms. McDougal was being asked to perform.
25. On March 21, 2018, AMI learned that Ms. McDougal had filed a civil lawsuit in California seeking to rescind her contract and recover her Life Story Right. AMI is in the process of defending that lawsuit. AMI's motion to dismiss the lawsuit is attached as EXHIBIT E.
26. As of this date, AMI has exercised its editorial discretion not to publish Ms. McDougal's detailed personal story.



Dylan Howard

New York, NY 10005

Subscribed to and sworn before me this 12 day of April, 2018


Notary Public

My Commission Expires: August 6, 2021

SARIT LEVY
Notary Public, State of New York
No. 01LE6062439
Qualified in New York County
Commission Expires August 6, 2021

OFFICE OF
GENERAL COUNSEL

2018 APR 16 AM 10: 52

Exhibit A



NAME AND RIGHTS LICENSE AGREEMENT

This agreement (the "Agreement") is entered into as of August 5, 2016 (the "Effective Date") by and between American Media, Inc. ("AMI") and Karen McDougal ("McDougal"). For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. McDougal grants to AMI, for two years from the Effective Date, the right to identify McDougal as the author of, and use McDougal's name, likeness, and image in connection with, the following: (i) a monthly column on aging and fitness for *Star* magazine; (ii) a monthly column on aging and fitness for *Ok* magazine; (iii) four posts each month on aging and fitness for *Radar Online* (collectively, the "Columns"). AMI shall provide to McDougal a so-called *ghost-writer* or *ghost-writers* who will work with McDougal in the creation of her Columns. Notwithstanding anything else in this agreement, McDougal shall have the absolute right to approve any image of her which may appear on any AMI publication or property.

2. Magazine Covers.

2.1 McDougal further agrees to pose for and appear on the cover of *Men's Fitness* and *Muscle & Fitness Hers*, and to be interviewed for articles to appear in those magazines, at a time, date, and place to be determined by AMI in consultation with McDougal. AMI agrees to prominently feature McDougal on the covers discussed in this Paragraph within two years of the Effective Date.

2.2 McDougal further agrees that, in connection with the publication of her Columns, AMI may use her name and/or image on the covers of *Star Magazine* and/or *OK Magazines*, at AMI's discretion.

3. In addition, McDougal grants, assigns, and transfers to AMI, and AMI hereby acquires, McDougal's Limited Life Story Rights (as defined herein). The "Limited Life Story Rights" granted by McDougal are limited to any romantic, personal and/or physical relationship McDougal has ever had with any then-married man. The "Limited Life Story Rights" means all rights in and to the life story of McDougal regarding, (in the broadest possible way), any relationship she has ever had with a then-married man, and all themes, characters, events and incidents relating thereto, and all other material (whether written or oral) created, owned or controlled by McDougal in connection therewith. The grant of Limited Life Story Rights made hereby shall include all rights, title, interest and permission to use such rights in any and all media now known or hereafter known throughout the universe in perpetuity (the "Productions"). The grant of Limited Life Story Rights shall be complete, exclusive and without exception and McDougal reserves none of the Limited Life Story Rights hereby granted.

4. In connection with all the rights granted herein to AMI by McDougal, AMI shall pay McDougal the sum of \$150,000 (One Hundred and Fifty thousand dollars), payable within two business days following the execution of this Agreement.

5. Nothing herein shall obligate AMI to use the Life Rights in connection with any media. AMI's obligations to McDougal shall be the payment to McDougal of the sum set forth in paragraph 4 and the obligations set forth in paragraphs 1; 2.1; and 2.2.



NAME AND RIGHTS LICENSE AGREEMENT

This agreement (the "Agreement") is entered into as of August 5, 2016 (the "Effective Date") by and between American Media, Inc. ("AMI") and Karen McDougall ("McDougal"). For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. McDougal grants to AMI, for two years from the Effective Date, the right to identify McDougal as the author of, and use McDougal's name, likeness, and image in connection with, the following: (i) a monthly column on aging and fitness for *Star* magazine; (ii) a monthly column on aging and fitness for *Ok* magazine; (iii) four posts each month on aging and fitness for *Radar Online* (collectively, the "Columns"). AMI shall provide to McDougal a so-called *ghost-writer* or *ghost-writers* who will work with McDougal in the creation of her Columns. Notwithstanding anything else in this agreement, McDougal shall have the absolute right to approve any image of her which may appear on any AMI publication or property.

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5. Nothing herein shall obligate AMI to use the Life Rights in connection with any media. AMI's obligations to McDougal shall be the payment to McDougal of the sum set forth in paragraph 4 and the obligations set forth in paragraphs 1; 2.1; and 2.2.

6. All decisions whatsoever, whether of a creative or business nature, regarding any of the rights granted by McDougal to AMI herein, or any rights derived or ancillary thereto, shall be made by AMI in its sole discretion.

7. McDougal agrees that McDougal shall not grant the same or similar rights to any other party that McDougal has granted to AMI pursuant to this Agreement. In addition, McDougal shall not disclose, write about, nor cause to be disclosed or written about (including any posts on social media such as Facebook, Twitter, etc.), nor give interviews relating to, McDougal's Limited Life Story Rights granted herein at any time without the prior written consent of AMI, except as required by law. McDougal acknowledges and agrees that in the event McDougal violates the terms of this paragraph, AMI will suffer damages and other harm that will be significant but difficult to measure. Therefore, in addition to its other remedies in law or equity, AMI shall be entitled to liquidated damages in the amount of \$150,000 for any such breach.

8. Each party hereto represents and warrants that it has the full right and authority to enter into this Agreement and to perform the services and obligations set forth hereunder and that it/she has not made or assumed and will not hereafter make or assume any commitment, agreement, grant or obligation that will or might conflict with its obligations hereunder.

9. McDougal acknowledges that all of the results and proceeds of the services provided by McDougal in connection with this Agreement will be deemed a work-for-hire and that AMI shall own all right, title and interest therein of every kind or nature, whether now known or hereafter devised, including without limitation, the entire copyright (including all extensions and renewals) therein throughout the universe in perpetuity. McDougal shall have the right to re-post or link any AMI story about or concerning her on her personal and varying social media accounts and/or her web-site, KarenMcDougal.com.

10. McDougal's services are personal and unique in nature and McDougal may not assign this Agreement or any of McDougal's obligations. AMI may freely assign any and all rights and obligations under this Agreement in whole or in part to any other party.

11. It is expressly understood, agreed and covenanted that the parties do not by this Agreement intend to form an employment relationship or a partnership or joint venture between them and in no event shall this Agreement be construed to constitute such an employment relationship, partnership or joint venture.

12. Each party hereby agrees to defend, indemnify and otherwise hold harmless the other party, its employees, successors and assigns, from and against any and all liabilities, claims, demands, charges, expenses and costs (including, without limitation, reasonable outside attorney's fees) arising out of or resulting from any breach by the indemnifying party of any of the representations, warranties or agreements contained in this Agreement.

13. In recognition of the mutual benefits to each party of a voluntary system of alternative dispute resolution which involves binding confidential arbitration of all disputes of any kind which may arise between them, the exclusive manner of resolution of any and all disputes, claims or controversies arising between them of any kind or nature whatsoever, including without limitation claims arising from or pertaining in any manner to breach of this Agreement, shall be resolved by mandatory BINDING confidential Arbitration. Arbitration shall take place before JAMS under the JAMS Comprehensive Arbitration Rules and Procedures (including Interim Measures) ("JAMS Rules") in New York, New York, and will be heard and decided by a sole, neutral arbitrator ("Arbitrator") selected either by mutual agreement of the Parties or selected under JAMS Rules. Whether a dispute is arbitrable, the arbitrator's

jurisdiction, and issues regarding enforceability of this Agreement shall be determined by the Arbitrator and not by any court. The Arbitrator shall have the right to impose any and all legal and equitable remedies that would be available to any Party before any governmental dispute resolution forum or court of competent jurisdiction. If a request for immediate provisional relief is filed by a Party and if no Arbitrator has been appointed, JAMS shall appoint an Arbitrator who shall determine the request as soon as possible. The Arbitrator so appointed shall be determined by JAMS in its discretion not to have any material disclosure as to any Party or counsel, and the Parties shall waive the right to formal disclosure and the right to disqualify the Arbitrator so appointed as otherwise permitted by New York law. The Parties understand that these waivers are intended to effectuate their agreed process of immediate determination of a request for provisional relief. The Arbitrator shall render a written opinion which contains his/her factual and legal reasoning. The Party who prevails in any Arbitration may seek to have the Arbitrator's award entered as a judgment in any court of competent jurisdiction. If the prevailing Party files a petition to confirm the Arbitrator's Award and/or if any Party seeks to vacate an Award, any documents containing Confidential Information filed with any court in connection with such court proceedings shall be filed under seal to the greatest extent permissible by law, and any party filing such documents containing Confidential Information shall seek to obtain a Court Order sealing such documents contained in the Court file in order to maintain confidentiality of Confidential Information, to the greatest extent permissible by law, with all Parties having stipulated to the factual and legal grounds for such sealing. BY AGREEING TO ARBITRATION, THE PARTIES ARE GIVING UP ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JUDGE OR JURY WITH REGARD TO THE MATIERS WHICH ARE REQUIRED TO BE SUBMITTED TO MANDATORY BINDING ARBITRATION. THE PARTIES UNDERSTAND, ACKNOWLEDGE AND AGREE THAT THERE IS NO RIGHT TO AN APPEAL OR A REVIEW OF AN ARBITRATOR'S AWARD AS THERE WOULD BE OF A JUDGE OR JURY'S DECISION.

14. Without limiting any other provision in this Agreement, McDougal's remedy for any breach of this Agreement by AMI shall be limited to monetary damages, and in no event shall McDougal be entitled to rescind this Agreement or to seek injunctive or any other equitable relief.

15. This Agreement sets forth the entire understanding of the parties regarding its subject matter and may not be amended except by a written instrument signed by both parties. This Agreement shall be construed in accordance with, and shall in all respects be governed by, the laws of the State of New York. This Agreement may be executed in counterparts and signatures exchanged electronically or by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, AMI and McDougal have executed this Agreement as of the Effective Date indicated above.

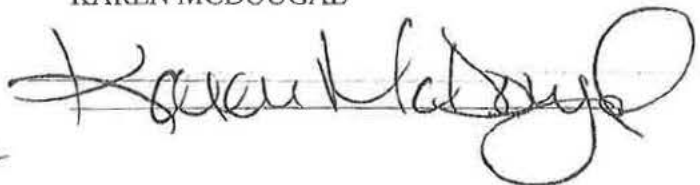
AMERICAN MEDIA, INC.

KAREN MCDUGAL

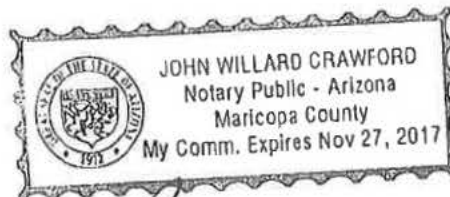
By: _____

Its: _____

Chief Content Officer



John Crawford a notary public, do
Certify that, on the 6 day of Aug, 2016
I personally made the above/attached copy of _____
From the original, and it is a true, exact, complete, and
Unaltered copy.





AMENDMENT TO NAME AND RIGHTS LICENSE AGREEMENT

Reference is made to the Name and Rights License Agreement (the "Agreement"), entered into as of August 5, 2016, by and between American Media, Inc. ("AMI") and Karen McDougall ("McDougal"). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree that Paragraph 7 of the Agreement shall be replaced and amended as follows:


7. McDougal agrees that McDougal shall not grant the same or similar rights to any other party that McDougal has granted to AMI pursuant to this Agreement with prior written approval of AMI. In addition, McDougal shall not disclose, write about, nor cause to be disclosed or written about (including any posts on social media such as Facebook, Twitter, etc.), nor give interviews relating to, McDougal's Limited Life Story Rights granted herein at any time without the prior written consent of AMI, except as required by law. McDougal acknowledges and agrees that in the event McDougal violates the terms of this paragraph, AMI will suffer damages and other harm that will be significant but difficult to measure. Therefore, in addition to its other remedies in law or equity, AMI shall be entitled to liquidated damages in the amount of \$150,000 for any such breach. Notwithstanding the above, McDougal may respond to legitimate press inquiries regarding the facts of her alleged relationship with Donald Trump. In connection therewith, AMI shall retain the services of Matthew Hiltzik at Hiltzik Strategies for a period of one month commencing on December 1, 2016, and Jon Hammond at Galvanized for a period of five months commencing on January 1, 2016, to provide PR and reputation management services and to coordinate any such response(s) in consultation with AMI.

Except as otherwise specifically set forth herein, all of the other terms and conditions of the Agreement are hereby ratified and confirmed.

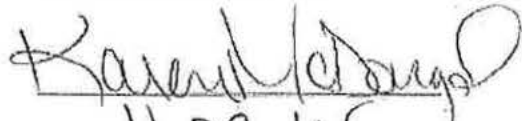
[Signature page follows.]

Please sign below to indicate your acceptance of the foregoing.

AMERICAN MEDIA, INC.

By: 
Dated: 12/7/16.

KAREN MCDUGAL

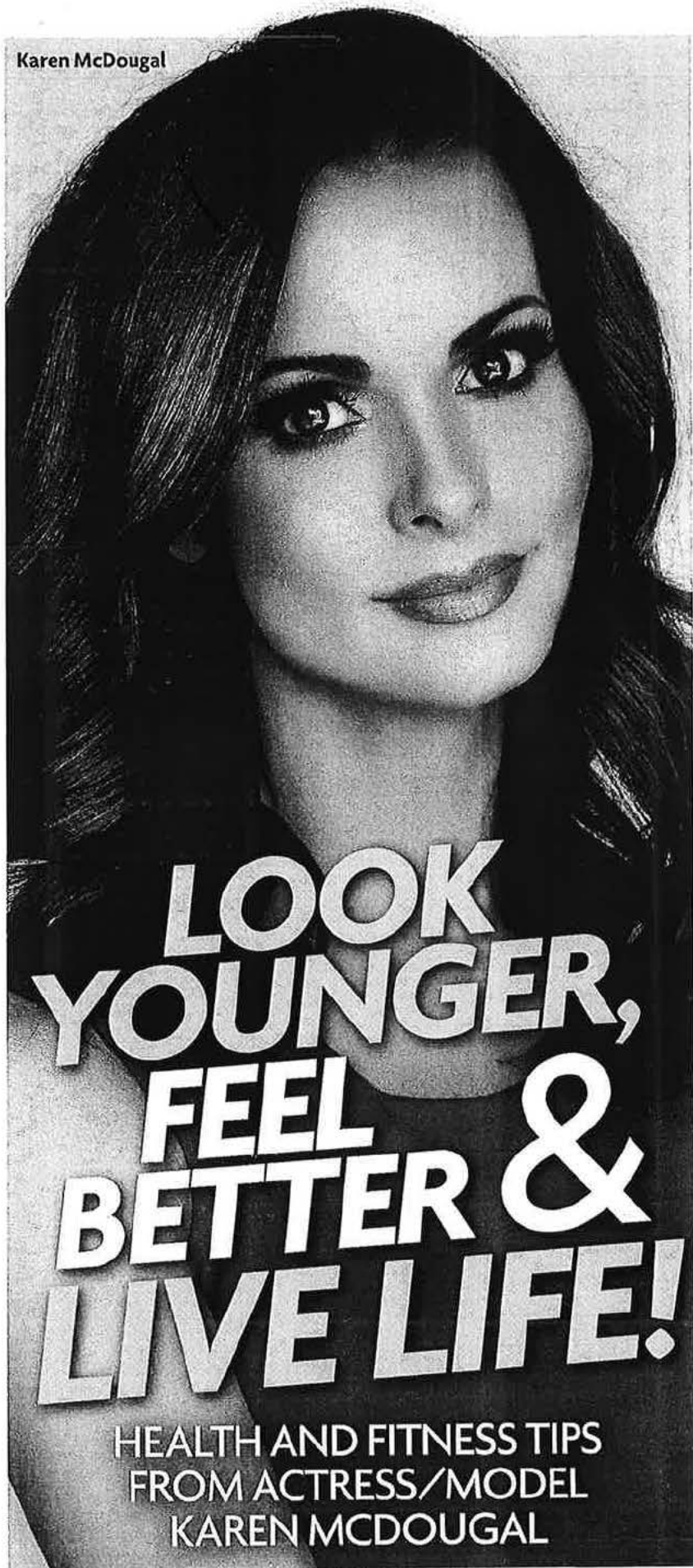

Dated: 11-29-16

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Karen McDougal



LOOK YOUNGER, FEEL BETTER & LIVE LIFE!

HEALTH AND FITNESS TIPS
FROM ACTRESS/MODEL
KAREN MCDUGAL

FITNESS is a passion and a way of life for model, actress and sports-radio personality **Karen McDougal**. The first-ever female cover model for *Men's Fitness* credits a healthy lifestyle for a fulfilling life and successful career. "Fitness has kept me healthy, happy and youthful!" she says. "But everybody has the ability to achieve the same results. It just takes knowledge and discipline." The good news is that Karen is happy to share her health and wellness secrets with you. "I want everyone to have the tools to reach their goals to experience the best life possible!"

How important is what you eat when it comes to how you feel?

Diet is critical to feeling good and being healthy. Eating well maximizes your potential to perform at a peak level physically, mentally *and* emotionally. My four meals a day are sensible and fairly clean. I always start with a good breakfast—a bowl of oatmeal with brown sugar, protein powder and almond milk. My other meals center on lean chicken, salmon and a daily shake with protein powder, spinach, blueberries, a veggie powder and coconut water. I allow myself one coffee a day and three to five green teas! When I'm weak, I allow myself a snack. But it's important that you have a high protein and nutrient-filled diet to fuel your body and give you the energy to take on your daily tasks. Keep alcohol and soda to a minimum... and you'll lose weight *and* feel better. Tip? Give yourself one cheat meal a week to keep your body from craving and *you* from binging.

What is your workout routine?

I hit the gym five times a week and rotate body parts to focus on. On Mondays and Thursdays I do 10 minutes of cardio and move on to working my lower body with squats, lunges, hamstring curls and other leg exercises. Tuesdays and Fridays I do 30 minutes of cardio and then work my triceps and biceps with free weights and cables. On Wednesdays I make sure to do 30 minutes of cardio and then work my shoulders, back and chest. The results are amazing. My doctor marvels at my heart health. It helps me keep a positive attitude and overcome depression. It helps me feel healthy from the inside out.

How do you combat the aging process?

I'm a big believer in moisturizing and protecting your skin. During the day I use a high SPF sunscreen to protect my skin and make sure to take Vitamin D whenever possible. It helps reduce wrinkles and makes your skin soft, strong and smooth! Also make sure to use a moisturizer to keep the skin fresh, reduce blemishes and prevent dryness and flaking. At night I make sure to wash off my makeup and use a face and eye cream to allow the skin to breathe and rejuvenate while I sleep. Adequate rest is critical for your body and brain to achieve peak performance... and for you to be at your best to take on the day! ★

OK! HEALTH

FIT & FAB POST-40

OUR NEW WELLNESS COLUMNIST,
KAREN MCDOUGAL, HAS THE
SECRETS TO A LONG, HAPPY LIFE

For model, actress and radio personality **Karen McDougal**, fitness is a way of life. The first-ever female cover model for *Men's Fitness*, she credits her fulfilling life and career to her healthy lifestyle. "Fitness has kept me healthy, happy and youthful," Karen says. "But everybody has the ability to achieve the same results. It just takes knowledge and discipline." The good news is that Karen is ready to share her expertise.

How important is diet to how you feel?

It's critical. Eating well maximizes your potential to perform at a peak level physically, mentally and emotionally. I recommend a high-protein, nutrient-filled diet to fuel you for daily tasks. My four meals a day are sensible and fairly clean. I always start with a good breakfast: a bowl of oatmeal with brown sugar, protein powder and almond milk. My other meals center around lean chicken, salmon and a daily shake with protein powder, spinach, blueberries, a veggie powder and coconut water. I allow myself one coffee a day plus three to five green teas — and I keep alcohol and soda to a minimum. Finally, to keep cravings and binging at bay, give yourself one cheat meal a week.

How regularly do you work out?

I hit the gym five times a week and rotate body parts to focus on. [See chart.] The results are amazing. My doctor marvels at my heart health. It also helps keep a positive attitude and fight depression.

You're 45 and easily look 10 years younger. How do you combat the effects of the aging process?

I'm a big believer in moisturizing and protecting your skin. During the day I use a high-SPF sunscreen. At night, I make sure to wash off my makeup to allow my skin to breathe, then I apply a face moisturizer and eye cream that help to rejuvenate my skin while I sleep. Adequate rest is critical for your body and brain to achieve peak performance, and for you to be at your best to take on each day!



KAREN'S WEEKLY WORKOUT

MON.	10 mins. cardio. Lower body work including squats, lunges and hamstring curls
TUES.	30 mins. cardio. Triceps and biceps using free weights and cables
WED.	30 mins. cardio. Shoulders, back and chest using free weights and cables
THURS.	10 mins. cardio. Repeat Monday's lower body routine
FRI.	30 mins. cardio. Repeat Tuesday's upper body routine

OK! BUZZ

OK! WELLNESS
EXPERT KAREN
MCDUGAL'S TOP FIVE
TIPS FOR MAKING IT
THROUGH THE FESTIVE
SEASON WITH YOUR
WAISTLINE INTACT

Jennifer Aniston and
hubby Justin Theroux
know how to celebrate
without gaining weight!

SURVIVAL GUIDE

The holidays are the toughest time of the year for anyone to eat well and stay fit. Holiday parties! Family dinners! Office toasts! But you don't need to limit yourself to eating coal from your Christmas stocking. Just follow these simple strategies and you can stay on track until you get back to your regular routine in the New Year.



1 DON'T GORGE
It's tempting to "save" your calories for a big holiday party at night, but the better move is to eat three to five small meals throughout the day. This will help you make healthier food choices, limit your cravings and boost your body's fat-burning potential. Starving yourself will only prompt your body to conserve calories by storing fat and burning muscle.

2 EAT LEAN PROTEIN
If you're at the buffet table, make sensible choices to limit the damage and even maximize your benefit. Lean proteins (fish, chicken, eggs) and high-fiber foods (avocados, pears, berries) are delicious and lower in bad fats than casseroles and cakes.

3 SNACK SMART
You'll have plenty of big meals throughout the holiday season, so keep snacking to a minimum. If you do find yourself nibbling, avoid carb-heavy breads or sugary cookies. Instead, fuel up on fresh options like figs, dates or nuts—tasty and healthy!

4 DON'T DRINK YOUR CALORIES
Sodas are packed with sugar or unhealthy sweeteners—and so are cocktails. If you want to celebrate the season with an alcoholic beverage, limit your intake to one glass of wine, or choose a clear alcohol like vodka, which is low in sugar and has fewer calories than that creamy cup of eggnog.

5 HYDRATE, HYDRATE, HYDRATE
Having one glass of water in between each cup of holiday cheer will help you keep your wits while everyone else is donning lampshades, and will help flush out excess calories. Down one more glass of water before bed to wake up fresh and well-rested.

See more from Karen on social media!
Twitter: @karenmcdougal98
Instagram: KarenMcDougal
Facebook: Karen McDougal



HEALTH *Holiday Edition*

Laverne Cox, Jenna Dewan Tatum and Dania Ramirez (from left) celebrated the 2016 Young Women's Honors with Moët & Chandon.

MODEL, ACTRESS AND SPORTS-RADIO PERSONALITY **KAREN MCDUGAL** SHARES HER TOP FIVE TIPS FOR MAKING IT THROUGH THE HOLIDAY SEASON WITHOUT PACKING ON THE POUNDS

Cheers To Your Health!

The holidays are the toughest time of the year for anyone to eat well and stay fit. Holiday parties! Family dinners! Office toasts! But you don't need to limit yourself to eating coal from your Christmas stocking. Just follow these simple strategies and you can stay on track until you get back to your regular routine in the New Year.

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OK! BODY & SOUL

PICTURE PERFECT

MODEL AND FITNESS PERSONALITY **KAREN MCGRUGA** ON HOW TO LOOK YOUR BEST IN PHOTOS — WHETHER YOU'RE POSING LIKE PRO AT A BIG SOIREE OR JUST TAKING A SELFIE

WHY SO SERIOUS?

When it comes to your smile, less is more. A too-wide grin will accentuate wrinkles and make you look crazed. To look perfectly happy, try this celeb trick: Put your tongue against the back of your teeth, as it prevents an overzealous grin.

LIGHT IT UP

Stars swear by backlighting — especially at dusk — since it illuminates you without being too harsh. If you're a selfie star, invest in a light-up cellphone case like the LuMee (\$60), a celeb favorite.

MIND YOUR MAKEUP

When it comes to foundation, stick to HD; the silica in mineral makeup creates a dull look in photos. I love Revlon Photoready Airbrush Effect (\$14), Marc Jacobs Beauty Re(marc)able Full Cover Foundation Concentrate (\$55) and Kat Von D Lock-It Foundation (\$35). Choose the proper shade, as too-pale makeup will look more pronounced under a flash.

Steer clear of dark matte lip color, which will minimize your mouth; opt for a bright or shiny shade instead. And make sure your eyes and brows are on point: Filled-in brows and curled, mascara-coated lashes will help frame your face and create a youthful look.

Finally, to stave off shine, pat forehead, nose and chin with a blotting paper like Palladio's Rice Paper (\$4) or, in a pinch, a toilet seat cover will do!

FIND A POWER POSE

Celebs spend a ton of time taking practice snapshots to determine their ideal angles.

Using a webcam or a pal, snap a ton of trial photos with your head at different angles and get (honest!) feedback on which ones look best. Usually, a quarter turn with your chin tilted slightly down is the most flattering. And posture is key: Always stand up straight!

C'MON, GET APPY!

Think Kim Kardashian + Co. really are that flawless? Ha! There's nothing wrong with giving your pics a little 21st-century help — for \$3, the Facetune app lets you smooth out skin to create a line-free look.



★
Star

Picture Perfect!

As a model and fitness personality, **Karen McDougal** knows a thing or two about looking your best in photos. And with awards season in full swing, who better to dish out advice on how to emulate your favorite red carpet stars? Read on for some can't-miss tips on how to pose like a pro either at a big soiree or for a simple selfie!



C'mon, Get Appy!

Think **Kim Kardashian + Co.** really are that flawless? Ha! There's nothing wrong with giving your pics a little 21st-century help — for \$3, the Facetune app lets you smooth out skin to create a line-free look.

Smile Small

When it comes to smiling, less is more. A too-wide, ultra-LOL smile will accentuate wrinkles and make you look crazed. To look happy and not nutty, celebs put their tongue against the back of their teeth as it prevents an overzealous grin.

Light It Up!

Stars swear by backlighting — especially at dusk — since it illuminates you without being too harsh. If you're a selfie star, invest in a light-up cellphone case like the LuMee (\$60), a celeb favorite.

Shoulder The Burden

Your mama was right: posture, posture, posture! No matter how much you suck in or how expensive that blouse was, you'll never get a good pic if you don't stand up straight!

Know Your Angles!

Celebs spend a ton of time taking practice snapshots to find their ideal angles. Using a webcam or a pal, snap a ton of trial photos with your head at different angles and get (honest!) feedback on which ones look best. Usually, a quarter turn with your chin tilted slightly down is the most flattering.

Make Makeup Your Ally

While mineral makeup is great for your skin, the silica in it creates a dull look in photos, so stick to HD foundations — I love Revlon Photoready Airbrush Effect (\$14), Marc Jacobs Beauty Re(marc)able Full Cover Foundation Concentrate (\$55, sephora.com) and Kat Von D Lock-It Foundation (\$35, sephora.com).

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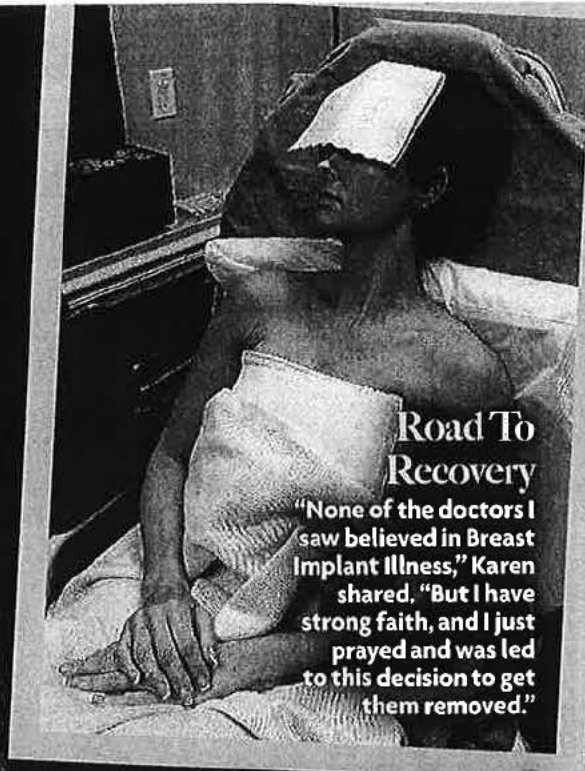
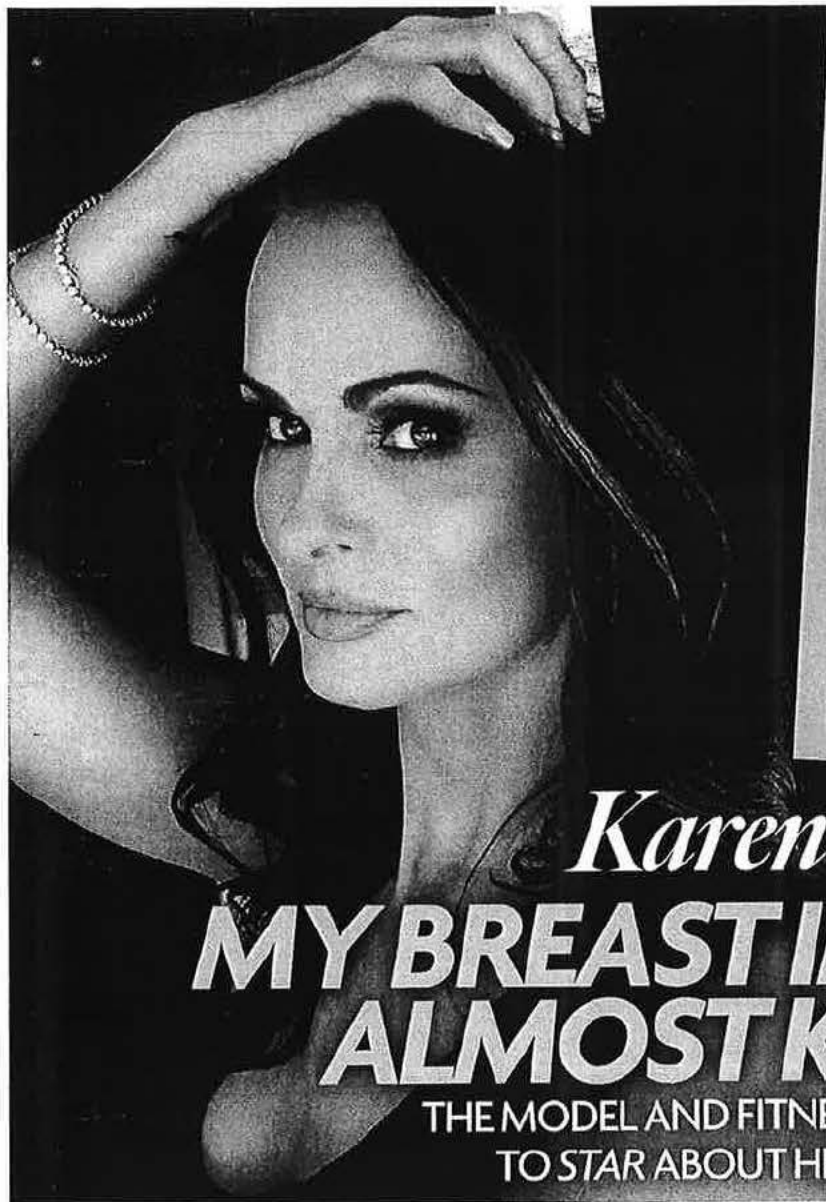
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MARC JACOBS

MINI

BAC



Road To Recovery

"None of the doctors I saw believed in Breast Implant Illness," Karen shared. "But I have strong faith, and I just prayed and was led to this decision to get them removed."

Karen McDougal: MY BREAST IMPLANTS ALMOST KILLED ME!

THE MODEL AND FITNESS PERSONALITY OPENS UP TO STAR ABOUT HER SCARY MYSTERY ILLNESS.

AS a fitness expert and professional model, **Karen McDougal** has built a career on her good looks and flawless figure. But after her health began to fail, Karen set off on a 10-year odyssey that ended up saving her life.

"In 1996, I thought, foolishly, that bigger boobs would make me more of a woman," she tells *Star* in an exclusive interview. "Now I want to kick myself!"

For the first eight years, her new additions were problem-free, but then she experienced a range of puzzling — and frightening — ailments.

"I had thyroid issues, fatigue, severe allergies and would get sick for eight weeks at a time," explains the 45-year-old. "I thought, 'OK, maybe I'm getting older and this is what happens?'"

But in January 2016, she started having migraines, blurred vision and noise sensitivity, and was blacking out multiple times

a day. By October, she was bedridden, but doctors couldn't identify the problem.

"A top neurosurgeon told me I just needed antidepressants," she says with a snort, revealing that it was a friend who finally suggested that her implants could be the culprit. "At first I blew him off," she says. "It seemed so crazy."

But after many hours on the Internet, she learned that Breast Implant Illness (BII) was all too real; one online support group swelled to 20,000 members. Indeed, **Yolanda Foster** and **Hugh Hefner's** wife, **Crystal**, have both had their implants removed after years of confounding health issues. Unfortunately, little is known about BII. On its website, the FDA lists numerous potential complications from implants but doesn't disclose that implants contain some 40 different neurotoxins.

"Will every woman get sick? Probably not. But there are too many who are, and it's not being addressed," Karen says.

"With prescription drugs, they tell you what the side effects are, and they need to do that with implants."

Karen was determined to find a physician who believed in BII and finally did in Dr. David Rankin of Aqua Plastic Surgery in Jupiter, Fla.

"At this time, there's no empirical evidence that implants are causing these symptoms," explains Dr. Rankin, "but I'm seeing a lot of immediate improvement in the women who choose to remove them."

The day after the surgery, Karen said her health had already done a 180.

"I wasn't dizzy, no migraines, no noise sensitivity — it felt like a miracle," she gushes. Admittedly, dropping three cup sizes has been an adjustment, but Karen reminds herself every day that looking good starts with feeling good.

"Hey, small boobs and bralettes are having a moment," she says with a smile. "I'm totally in fashion!" ★

OK! BUZZ

SPRING TUNE-UP

NIP WINTER IN THE BUD WITH MODEL AND LIFESTYLE EXPERT KAREN MCDUGAL'S TIPS FOR LOOKING BLOOMIN' LOVELY

REFRESH

Doing some spring-cleaning? After you're done tossing those pilled sweaters, don't forget to ditch dry, dull winter skin too. Round up some galpals and head to a Korean spa for a no-nonsense body scrub, or turn your shower into an oasis with Skinn's zingy Pink Grapefruit Exfoliating Body Wash (skinn.com, \$18.50), which will leave your body smooth and soft. Then put your cells to work while you try to recoup that lost daylight savings hour with Derma E's Overnight Peel (ulta.com, \$18.99). And feed your face from the inside out with Oralcell Complex, my go-to antiaging vitamins that help with hair, skin, fatigue and even libido!



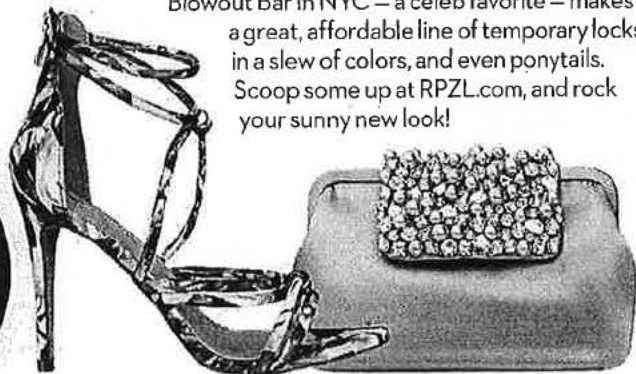
HOP TO IT!

Need to get spring break-ready? Fitness model Karen swears by a favorite childhood activity: "I like to jump rope when I need to get lean," she says. "It's quicker than a full workout but burns double the calories!"

REVAMP

The final touch? Put a spring in your step by incorporating "happy colors" like pink, coral and yellow into your wardrobe. Since springtime temps can be fickle, keep sweaters and jeans ready, but add bright statement accessories to your ensemble, like these strappy heels from AMI Clubwear (\$44.99) and a pastel clutch from Nina (\$84). Spring is also the time to let your hair down — literally! If you've spent winter with hat-head, give your coif an update with some damage-free clip-in extensions. RPZL Hair Extension &

Blowout Bar in NYC — a celeb favorite — makes a great, affordable line of temporary locks in a slew of colors, and even ponytails. Scoop some up at RPZL.com, and rock your sunny new look!



RECHARGE

Now that you've sloughed off the rough stuff, give your pores the hydration they've been craving. Between winter air and parching heaters, you may feel freeze-dried, so reconstitute skin with Beautigenix's life-changing sheet masks (\$280, beautigenix.com) or scoop up some from Sephora for just \$6 — Kylie Jenner is a fan! And if all that fireside red wine did a number on your teeth, hit the dentist for a professional cleaning followed by a round of Zoom Whitening.

SEE MORE FROM KAREN ON SOCIAL MEDIA!

Twitter:
@KarenMcDougal98,
Instagram & Facebook:
@KarenMcDougal

SPRING TUNE UP

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REFRESH

Doing some spring-cleaning? After you've tossed out that eggnog-stained ugly holiday sweater, ditch dry dull winter skin too!

Round up your galpals for a trip to a Korean spa for a no-nonsense body scrub, or turn your shower into an oasis with Skinn's zingy Pink Grapefruit Exfoliating Body Wash (skinn.com, \$18.50), which will leave your skin smooth and soft. Then put your cells to work while you try to recoup that lost daylight savings hour with Derma E's Overnight Peel (Ulta.com, \$18.99). And feed your face from the inside out with Oralcell Complex, my go-to antiaging vitamins that help boost skin, energy and even libido!



Hop To It!

Need to get spring-break ready? Fitness model Karen swears by your favorite childhood activity. "I like to jump rope when I need to lean out," she says. "It's quicker than a full workout but burns double the calories!"



RECHARGE

Now that you've sloughed off the rough stuff, give your pores the hydration they've been craving. Between winter air and parching heaters, you may feel freeze-dried, so reconstitute yourself with Beautigenix's life-changing sheet masks (\$280, beautigenix.com) or scoop up some from Sephora for just \$6 — **Kylie Jenner** is a fan!

And, cruel mistress that she is, winter probably did a number on your teeth too. Dr. Timothy Chase of SmilesNY recommends hitting the dentist for a professional cleaning then a round of Zoom Whitening to undo all that red wine you sipped by the fireside.

SEE MORE FROM KAREN ON SOCIAL MEDIA!

Twitter: @KarenMcDougal98, Instagram & Facebook: @KarenMcDougal

REVAMP

The final touch? Put a spring in your step by incorporating what I call "happy colors" like pink, coral and yellow. Since springtime temps can be fickle, keep your sweater and jeans ready, but add in bold bright statement accessories like these strappy heels from AMI Clubwear (\$44.99) and this Easter-ready clutch from Nina (\$84) to freshen up your wardrobe without blowing your budget.

Spring is also the time to let your hair down — literally! If you've spent winter with hat hair, give your coif an update with some damage-free clip-in extensions. RPZL Hair Extension & Blowout Bar in NYC — a celeb favorite — makes a great affordable line of temporary locks in a slew of colors, and even ponytails! Scoop some up at RPZL.com and go bask in your sunny new look!



OK! BUZZ

HOW TO SHINE ALL SUMMER

Model and fitness personality **Karen McDougal** teamed up with cutting-edge experts to get the scoop on the latest products and procedures



BEST FACE FORWARD
Karen keeps a youthful glow with **Dermaplaning**, where a special blade (painless!) scrapes off dead skin and unwanted hair to reveal a smooth, radiant surface.

SPIFF UP YOUR SMILE

Adios, trout pout! While fillers of yesterday often appeared fake, new kid on the block Volbella creates lush and natural-looking lips with less swelling, says New York-based plastic surgeon Dr. David Shafer. But don't stop there: Light

up your grin with Zoom, an in-office laser teeth-whitening procedure, recently improved to suit even those with sensitive chompers.

"Switching from halogen to LED lights generates less heat and less potential pain,"

explains NYC dentist Dr. Timothy Chase. "And there's now a relief gel to keep the 'zings' away."



SOOTHE SKIN AFTER LASERS

I love a good chemical peel or laser treatment, but hiding indoors for days after isn't realistic. Oxygenetix makeup uses aloe and minerals not only to cover redness but to relieve raw skin as well. A good hydrator is Glenn Avenue Soap Company's Healing Blend Body Butter (\$14, GlennAveSoap.com), made with all organic ingredients. And remember, the sun isn't your friend! EltaMD's new UV Clear Broad-Spectrum SPF 46 sunscreen (visit EltaMD.com for purchase info) not only fights rays, it combats acne and discoloration.



FREEZE THE FROWN

Botox is great, but many people become "immune" to it after years of treatment. Fortunately, you may not have that problem with Xeomin, the newest injectible that's great for getting rid of fine lines and wrinkles à la Botox — and it will run you about \$100 less!

SEE MORE FROM KAREN ON SOCIAL MEDIA!
TWITTER: @KARENMCDOUGAL98
INSTAGRAM & FACEBOOK: @KARENMCDOUGAL

RESURFACE YOUR FACE

Dr. Kenneth Mark is my go-to when I need a refresh, and his Exfoliating & Hydrating Mask (\$85, KennethMarkMD.com) helps lighten, firm and reduce wrinkles, as well as promote cell turnover. Amore Pacific's Enzyme Peel (\$60, AmorePacific.com) is another must-have and gentle enough to use every day.



LIFT SAGGY JOWLS



I swear by Ultherapy, the only FDA-approved nonsurgical procedure for lifting the lower face and ditching the dreaded "jowls" that can make you look so much older. "There's no downtime and minimal discomfort," says plastic surgeon Dr. Shafer. "It's far less invasive than a face-lift."

New Season NEW YOU!

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Star FITNESS

Beach Body HACKS!

Bugging out over bikini season? *Star's* experts teamed up with fitness model **Karen McDougal** to get you summer ready ASAP!



Lean, Green & Mean!
To maintain her fab figure, Karen swears by algae-based Fucoxanthin supplement. "It specifically attacks fat," raves the fit 46-year-old.

IF YOU HAVE WEEKS

Shed pounds fast with Karen's easy workout routine — no gym membership required! "Interval training is amazing for fat burning," says Karen, who recently graced the cover of *Muscle & Fitness Hers*. She advises alternating 30 seconds of sprints with 30 seconds of jogging to burn the most calories, plus weighted lunges and planks to lean out your legs and core. To flatten that tummy, Karen cuts out processed carbs and sticks to leafy veggies, salmon and eggs. "To boost metabolism, I love apple cider vinegar and green tea!" she says. "And I drink several liters of water a day."

A juice cleanse can also help kickstart weight loss before you hit the sand, but if sweating or sipping just isn't your style, New York plastic surgeon Dr. Jennifer Levine says non-invasive SculpSure promises a 25 percent reduction of belly fat and love handles after each session. "Patients can get back into their normal routine as soon as they leave my office," explains Dr. Levine. "There's no downtime."

LASER IT AWAY!



Safer than lipo, SculpSure is touted as the newest — and quickest — way to whittle your middle.

JUICE IT UP!

Pressed Vibrances' five-day juice regime will melt pounds and clear up your skin.



TANNERS



VersaSpa's Soufflé Bronzer hydrates and rejuvenates skin.

IF YOU HAVE DAYS

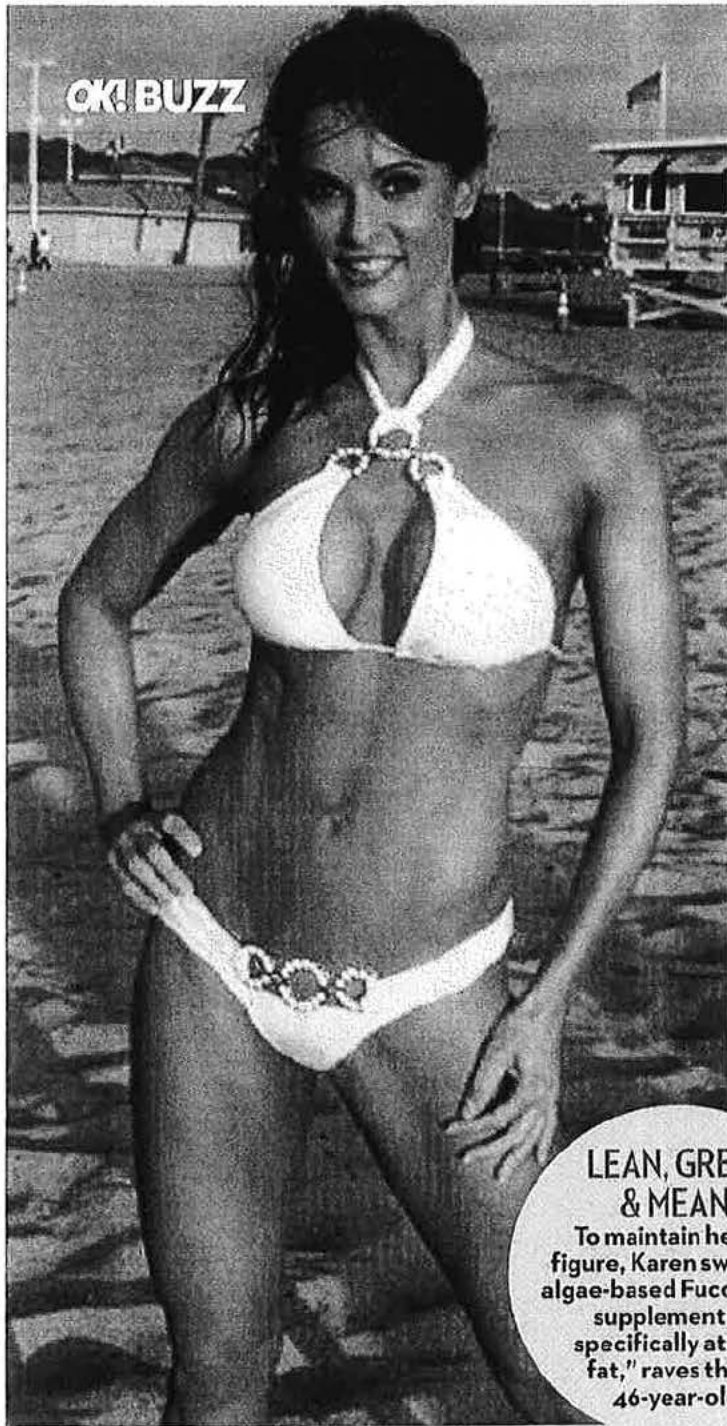
No time to work out? Reach for the self tanner! A faux glow will help camouflage cellulite and varicose veins. Then, choose strategic swimwear: Ruffled shoulders balance out hips, while printed one-pieces draw the eye in and minimize a waistline. Top your look with a beach-to-bar cover-up, and soak up that sun!

SWIMSUITS & COVER-UPS

- Kenneth Cole, \$99**
- Trina Turk, \$160**
- Bishop + Young \$85**
- Ashley Graham x Swimsuits for All, \$84**
- Salty Mermaid, \$120**
- Yandy Swim, \$44**

SEE MORE FROM KAREN ON SOCIAL MEDIA!
Twitter: @KarenMcDougal98, Instagram & Facebook: @KarenMcDougal

OK! BUZZ



BEACH BODY HACKS!

BUGGING OUT OVER BIKINI SEASON?
FITNESS MODEL KAREN MCDUGAL CAN
GET YOU READY IN A HURRY

**LEAN, GREEN
& MEAN!**
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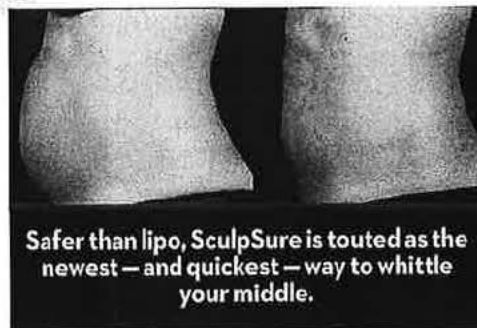
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GOT DAYS, NOT WEEKS?

If you have no time for a workout regimen or juice cleanse to take effect, reach for the self-tanner. A faux glow will help camouflage cellulite and varicose veins. Also, choose strategic swimwear: Ruffled shoulders balance out hips, while printed one-pieces draw the eye in and minimize a waistline. Top your look with a beach-to-bar cover-up, and soak up that sun!

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SEE MORE FROM KAREN ON SOCIAL MEDIA Twitter: @KarenMcDougal98, Instagram & Facebook: @KarenMcDougal

Star SUMMER FUN

SEE MORE FROM KAREN ON SOCIAL MEDIA!
Twitter: @KarenMcDougal98, Instagram & Facebook: @karenMcDougal

Party PERFECTION

Star's lifestyle expert Karen McDougal offers her top tips for crafting a sizzling summer soiree!

PICK A THEME

"I send out invites that incorporate the theme so guests can get an idea of what the party will be like beforehand," shares Karen, who loves to mix this season's palm leaf trend with fun flamingo details: "It's a classy yet unfussy vibe."

And ditch the "Kiss The Cook" apron! "Be sure to take a moment to get yourself together," she advises. "I love a nice flowy dress in a solid color so it won't compete with the decor."



Sunday Forever
Tribe Candle, \$48,
sundayforever.com

Arlington Designs,
Sago Palm Round
Plates, \$20,
tjmaxx.com

Enjoy

Arlington Designs,
Enjoy Palm Leaf Platter,
\$10, tjmaxx.com

Sounds like summer!

"I ask guests to write their favorite summertime song on the RSVP, then add that to the playlist on my phone," notes Karen. "I go for Top 40 with some country music mixed in."



KEEP THE KIDDOS HAPPY

"Children are always welcome at my parties," says Karen, who occupies little ones with a dessert they can build AND eat!

"It's called 'dirt bucket pudding' the model tells Star.

"I layer a kid's sand pail with vanilla pudding and crushed Oreos, then top it with a few gummy worms and an edible flower."

Sticky hands? Lure little ones into the pool with fun floats!

Skinnydip
Flamingo Print
Liquid Case, \$30,
skinnydiplondon.com

Funboy
Flamingo Festival Float,
\$99, funboy.com

MIX UP THE MENU

"I like to serve a blend of healthy and classic foods. My summer salad — lettuce mixed with mandarin oranges, berries, walnuts, avocado and a poppyseed dressing — is always a hit," adds Karen. "But I also make crockpot BBQ meatballs with Sweet Baby Ray's sauces, and of course something from the grill!"

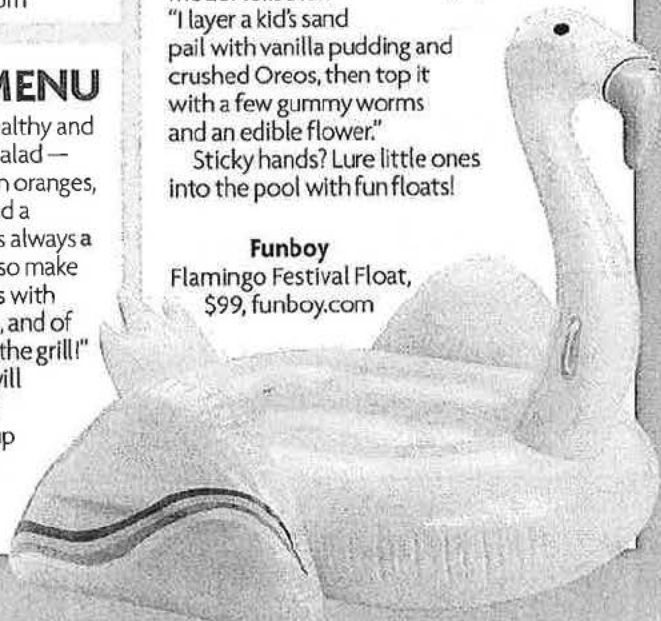
A signature cocktail will take your cookout from casual to chic, so whip up a pitcher ahead of time so you can "flamingle," not play mixologist!

CORONA SLIM ORGANIC MARGARITA

12 oz. Corona Light
2 oz. Casa Noble Crystal Tequila
1 oz. lime juice
3/4 oz. agave nectar
Garnish with lime wedge

THE NEW OLD FASHIONED

3 oz. pre-made Old Fashioned mix, watersheddistillery.com
Add a splash of club soda, and garnish with orange and cherry



OK! BUZZ

PARTY PERFECTION

LIFESTYLE EXPERT KAREN MCDUGAL OFFERS HER TOP TIPS FOR HOSTING A REFINED YET FESTIVE LABOR DAY SOIREE



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Sunday Forever
Tribe Candle, \$48,
sundayforever.com

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Arlington Designs
Enjoy Palm Leaf Platter

Arlington
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Round
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Skinnydip Flamingo Print
Liquid Case, \$30, us.skinnydip.london.com

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AGELESS Beauty!

OVER 40? WE'RE SHARING THE BEST MAKEUP AND TECHNIQUES TO KEEP YOU FOREVER YOUNG!

Think the hottest new makeup is only for millennials? Wrong! *Star* teamed up with model **Karen McDougal** and her makeup artist, Kimberly Carlson, to reveal the best products to help you look as vivacious as you feel. Prepare to get carded, ladies...

1. HYDRATE

KIM SAYS: Hydrated skin is the key to beautiful makeup. Charlotte Tilbury's Magic Cream (\$100, charlottetilbury.com) is a must and Glycelene Eye Repair Oil (\$68, glycelene.com) reduces puffiness.

STAR LOVES: Tatcha Ageless Revitalizing Eye Cream (\$135, tatcha.com) helps keep crow's feet at bay.

2. LIGHTEN UP

KIM SAYS: Heavy makeup will settle into wrinkles, but for full coverage without caking, try tarte's Amazonian Clay Foundation (\$39, sephora.com).

STAR LOVES: IT Cosmetics' Bye Bye Lines Foundation (\$38, itcosmetics.com) uses patented blurring technology, while Luminess' goof-proof Epic 2 Airbrush Machine (\$299, luminessair.com) delivers smooth, buildable pigment.

3. POWDER LIKE A PRO

KIM SAYS: Sweep Vita Liberata Trystal Pressed Minerals Bronzer (\$35, sephora.com) along hairline and temples, and Artist Couture Diamond Glow Powder (\$27, artistcouture.com) on cheekbones to mimic the glow of your girlhood!

STAR LOVES: Top your foundation with Perricone MD's No Makeup Instant Blur Powder (\$55, sephora.com) to create a soft focus that erases lines.

4. LASH OUT

KIM SAYS: Full lashes create that fresh-faced look and I love House of Lashes' Le Petit Double (\$7, houseoflashes.com). They blend

naturally and are easy to apply!

STAR LOVES: Leave the smokey eye to millennials but borrow their bushy brow trend — a key marker of youth — with Laura Mercier's Brow Dimension Fiber Infused Colour Gel (\$24, lauramercier.com).

5. KISS UP TO GLOSSES

KIM SAYS: Matte lipsticks can minimize mature lips, but Buxom's Wildly Whipped Lipstick (\$21, sephora.com) provides moisture and color, all while plumping up your pout.

STAR LOVES: MAC's Pro Longwear Lip Liner (\$21, maccosmetics.com) — topped with the brand's coordinating Lipglass (\$17) — will keep color from creeping into fine lines around the mouth.

6. THINK OUTSIDE THE FACE

KIM SAYS: Get a full-body sheen courtesy of Vita Liberata's cult favorite Body Blur beloved by Victoria's Secret models! It reflects light for a photo-ready finish.

STAR LOVES: Boost thinning hair with RPZL.com's clip-in extensions (\$250) that come in 16 shades.

SEE MORE FROM KAREN ON SOCIAL MEDIA!
Twitter: @KarenMcDougal98,
Instagram & Facebook: @KarenMcDougal

Timeless Tips

At 46 (!) Karen looks half her age thanks to regular facials, lots of SPF and these beauty hacks she and her makeup artist share exclusively with *Star*!



OK! BUZZ

Ageless Beauty

OVER 40? CHECK OUT PRO-GRADE MAKEUP AND TECHNIQUES THAT'LL KEEP YOU LOOKING FOREVER YOUNG

The hottest new makeup isn't just for millennials. Here, model and OK! lifestyle contributor **Karen McDougal** teams with her makeup artist, **Kimberly Carlson**, to reveal the best products to help you look as vivacious as you feel.

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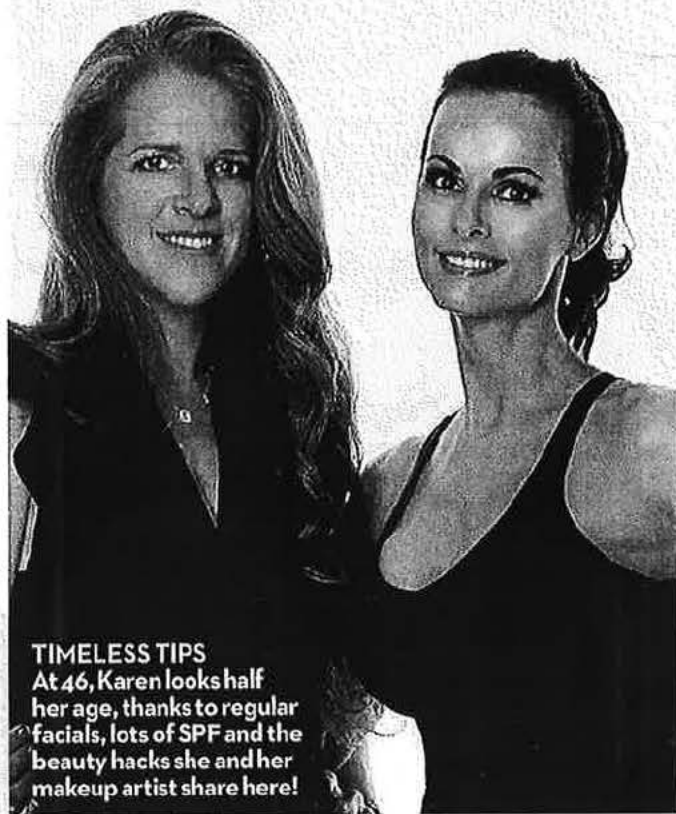
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TIMELESS TIPS
At 46, Karen looks half her age, thanks to regular facials, lots of SPF and the beauty hacks she and her makeup artist share here!



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GUEST OF HONOR

Party-going, Perfected

From what to wear to what to bring, Karen has the answers!

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STAR TEAMS UP WITH MODEL AND LIFESTYLE EXPERT KAREN MCDUGAL FOR TIPS ON HOW TO BE THE PARTY GUEST HOSTS WILL LOVE THE MOST!



NIFTY GIFTING

ETIQUETTE IS EVERYTHING

"No matter how casual a get-together, a host has worked hard to prepare, so always RSVP and arrive on time for a sit-down dinner, 15 to 20 minutes later for all other soirees," advises Karen, adding that you don't need to bring a casserole to show your appreciation. "Avoid things that need to be heated up or put in a vase — the host has enough to do," she says. "Opt for a nice wine, candle, or quality chocolates. I also love fancy olive oil — just toss it in a cute gift bag and go!"



Tobin
Grande Box of Chocolates, \$138

Gaea Fresh
Extra Virgin Olive Oil, \$18.99



Voluspa
Classic Mason Candle Crisp Champagne, \$27



Sterling Vineyards
Napa Valley Cabernet Sauvignon 2014, \$25

Kim Crawford
Sauvignon Blanc Holiday Bottle, \$17.99

Moët Impérial
Golden Sparkle Bottle, \$39.99



Best Home Fashion
Luxe Faux Mink Fur Throw, \$47.99

DRESS CODE

FRIENDSGIVING



Coldwater Creek
Go With The Flow Tunic, \$79.95

COUP

Day & Night earrings, \$350

Birdies

The Wren slippers, \$140

Spanx

Faux Leather Moto Leggings, \$110

HOLI-DATE



Dress dilemma? "An LBD with heels is always right!" says Karen.

Grana
Silk Tee Dress, \$85
LC Lauren Conrad for Kohl's
Starburst necklace, \$18
JustFab
Adina Heeled Boot, \$42.95

COCKTAIL PARTY



Selfie Leslie
Ivy Lace Up Bodycon Dress, \$64.99
Iris Apfel for HSN
Rara Avis Mongolian Fur Reader's Wrap, 299.95
Steve Madden
Carabu heels, \$99.95

OK! BUZZ



PARTYGOING, PERFECTED

From what to wear to what to bring, Karen has the answers.

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GUEST of HONOR

MODEL AND
LIFESTYLE EXPERT
KAREN McDOUGAL
ON HOW TO BE
THE PARTYGOER
HOSTS WILL LOVE
THE MOST



Tobi Tobin
Grande
Box of
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Gaea Fresh
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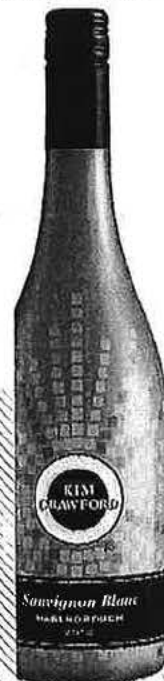
Moët
Impérial
Golden
Sparkle
Bottle, \$40



Kim Crawford
Sauvignon Blanc
Holiday Bottle, \$18



Sterling Vineyards
Napa Valley
Cabernet
Sauvignon
2014, \$32



Best Home
Fashion
Luxe Faux Fur Pom
Pom Throw, \$80



Voluspa
Classic
Maison
Candle Crisp
Champagne,
\$27

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FEEL GOOD!

Karen McDougal's Map To Living Well And Feeling Better!



By Radar Staff

Posted on Nov 14, 2016 @ 14:44PM



Fitness is a passion and a way of life for model, actress and sports radio personality **Karen McDougal**. The first-ever female cover model for *Men's Fitness* credits a healthy lifestyle for a fulfilling life and successful career. "Fitness has made kept me healthy, happy and youthful!" she says. "But everybody has the ability to achieve the same results. It just takes knowledge and discipline." The good news is that Karen is happy to share her health and wellness secrets with you. "I want everyone to have the tools to reach their goals to experience the best life possible!"

FASENRA® (benralizumab) - Now Approved Treatment Option

Physicians - Visit The Official Website To Learn About Now Approved FASENRA. www.fasenrahcp.com

How important is what you eat to how you feel?



Sponsored by Peloton

Experience The Energy Of Live Studio Cycling Taught By Elite Instructors, On Your Time.

This new year, experience the rush of studio cy...

[SEE MORE](#)

"Diet is critical to feeling good and being healthy. Eating well maximizes your potential to perform at a peak level physically, mentally AND emotionally. My four meals a day are sensible and fairly clean. I always start with a good breakfast — a bowl of oatmeal with brown sugar, protein powder and almond milk. My other meals center around lean chicken, salmon and a daily shake with protein powder, spinach, blueberries, a veggie powder and coconut water. I allow myself one coffee a day and three-to-five green teas! When I'm weak, I allow myself a snack. But it's important that you have a high protein and nutrient-filled diet to fuel your body and give you the energy to take on your daily tasks. Keep alcohol and soda to a minimum...and you'll lose weight AND feel better. Tip? Give yourself one cheat meal a week to keep your body from craving and YOU from binging."

Trending Articles



'BACHELOR' STAR SHAYNE LAMAS POSTS
HEARTBREAKING MESSAGE...

Powered By ***How do you work in working out?***

"I hit the gym five times a week and rotate body parts to focus on. On Monday and Thursday's I do 10 minutes of cardio and move onto working my lower body with squats, lunges, hamstring curls, and other leg exercises. Tuesdays and Fridays I do 30 minutes of cardio and then work my triceps and biceps with free weights and cables. On Wednesdays I make sure to do 30 minutes of cardio and then work my shoulders, back and chest. The results are amazing. My doctor marvels at my heart health. It helps keep a positive attitude and overcome depression. It helps me feel healthy from the inside out."

How do you combat the aging process?

"I'm a big believer in moisturizing and protecting your skin. During the day I use a high sunscreen to protect my skin. It helps reduce wrinkles and makes your skin soft, strong and smooth! Also make sure to use a moisturizer to keep the skin fresh, and prevent dryness and flaking. At night I make sure to wash off my makeup and use a face and eye cream to allow the skin to breath and rejuvenate while I sleep. Adequate rest is critical for you body and brain to achieve peak performance ... and for you to be at your best to take on the day!"

EXCLUSIVE INTERVIEW

Top Five Secrets For Staying Slim During The Holiday Season!

Model-actress Karen McDougal shares her favorite diet tips.



By Radar Staff

Posted on Dec 19, 2016 @ 14:51PM



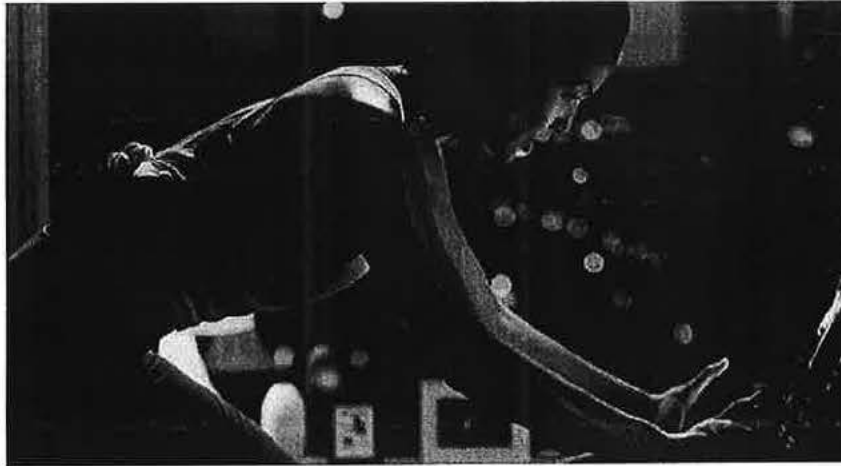
The holidays are the toughest time of the year to eat well and stay fit. But model, actress and sports-radio personality **Karen McDougal** tells RadarOnline.com **that you don't need to limit yourself to eating coal** from your Christmas stocking! Just follow her five simple strategies to stay on track well into the New Year.

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The **first rule of thumb is to never gorge** in an attempt to save calories for a big holiday party at night.



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"The better move is to eat three to five small meals throughout the day," said McDougal. "This will help you make healthier food choices, limit your cravings and boost your body's fat-burning potential."

Trending Articles



IS VENUS WILLIAMS ENGAGED?

Check out Venus Williams' bling! (OK! Magazine) Five

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And when at the holiday buffet table, **make sensible choices to limit the damage and maximize the benefit.** "Lean proteins (fish, chicken, eggs) and high-fiber foods (avocados, pears, berries) are delicious and lower in bad fats than casseroles and cakes," McDougal noted.

Another good idea is to snack smart.

"You'll have plenty of big meals throughout the holiday season, so keep snacking to a minimum," said McDougal.

But if you do find yourself nibbling?

"Avoid carb-heavy breads or sugary cookies," she said, recommending to load up instead on fresher options, like figs, dates or nuts.

Unfortunately, **one of the trickiest holiday dangers** to try to avoid are calorie-filled drinks.

"Sodas are packed with sugar or unhealthy sweeteners — and so are cocktails," said McDougal. "If you want to celebrate the season with an alcoholic beverage, limit your intake to one glass of wine, or choose a clear alcohol like vodka, which is low in sugar and has fewer calories than that creamy cup of eggnog."

And **the last important rule for slimming down while surviving the holidays** is to always be sure to hydrate, hydrate, hydrate," McDougal told Radar.

"Having a one glass of water in between each cup of holiday cheer will help you keep your wits while everyone is donning lampshades, and will help flush out excess calories," she explained. "Down one more glass of water before bed to wake up fresh and well-rested."

For more on McDougal's advice, follow her on social media:

Twitter: **@karenmcdougal98**

Instagram: **KarenMcDougal**

Facebook: **Karen McDougal**

PICTURE PERFECT!

Model Karen McDougal Reveals Tips To Make ANYONE Photogenic

Want to follow all the celebrity drama? Download the RadarOnline App to get it directly on your phone! [Get App Now](#)

From makeup products to posing advice and more!



By Radar Staff

Posted on Feb 22, 2017 @ 14:43PM



As a model and fitness personality, **Karen MacDougalk** knows a thing or two about looking your best in photos. And with awards season in full swing, who better to dish out tips on how to emulate your favorite red carpet stars? Read on for some can't-miss tips on how to pose like pro either at a big soiree or for a simple selfie!

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Celebs spend a ton of time taking practice snapshots to find their ideal angles. Using a webcam or a pal, snap a ton of trial photos with your head at different angles and get (honest!) feedback on which ones look best. Usually, a quarter turn with your chin tilted slightly down is the most flattering.

Trending Articles



'BACHELOR' STAR SHAYNE LAMAS POSTS HEARTBREAKING MESSAGE...

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Stand Out In The Squad

When posing with a large group, it can be tempting to sacrifice yourself and squat in the front row, but don't—the closer you are to the camera the bigger you'll look! End spots will offer the most slimming angles, and always pose with your hand on your hip, shoulders down, elbows pointing behind you, to look the leanest. Pressing your arm against your body makes it look as wide as your head.

If you can't snag the end spot, opt for the middle: put your arms around your pals' waists, and stand with your legs crossed to elongate them.

Smile Small

When it comes to smiling, less is more. A too-wide, ultra-LOL smile will accentuate wrinkles and make you look crazed. To look happy and not nutty, celebs put their tongue against the back of their teeth as it prevents an overzealous grin.

Light It Up!

Stars swear by backlighting—especially at dusk—since it illuminates you without being too harsh. If you're a selfie star, invest in a light-up cell phone case like the LuMee (\$60), a celeb favorite.

Ditch Double Chins

A sharp jawline is a hallmark of hotness so to prevent the dreaded double chin, press your tongue against the roof of your mouth while focusing on elongating your neck and pushing your face slightly forward.

Make Makeup Your Ally

While mineral makeup is great for your skin, the silica in them creates a dull look in photos, so stick to HD foundations—I love Revlon Photoready Airbrush Effect (\$14), Marc Jacobs Beauty Re(marc)able Full Cover Foundation Concentrate (\$55, Sephora.com) and Kat Von D Lock-It Foundation (\$35, Sephora.com)).

Make sure you choose the proper shade: too-pale makeup will look even more pronounced under a camera flash.

To stave off shine, pat forehead, nose and chin with a blotting paper like Palladio's Rice Paper (\$4) or in a pinch, a toilet seat cover will do!

Steer clear of dark matte lip looks—they'll minimize your mouth, so opt for a bright or shiny shade instead.

And make sure your lashes and brows are on point: filled-in brows and curled, mascara-coated lashes will help frame your face and create a youthful look.

The Eyes Have It

Always blinking in pics? Close eyes and open slowly as the photographer counts to three. And if you're always the victim of red-eye, glance at a light before the photo is taken—it will shrink your pupil and keep you from looking like a possum.

C'mon Get Appy!

Think Kim + co really are that flawless? Ha! There's nothing wrong with giving your pics a little 21st century help—for \$3, the Facetune app lets you smooth out skin to create a line-free look.

Find Your Prints Charming

I love a good fun print, but if you're going to be at an event with busy setting (like a kids party or holiday bash), stick to solids so the photo doesn't look too busy. Don't always believe the hype that black is better: it tends to stand out against any backdrop, so if you're trying to look slimmer (and who isn't) navy or brown are minimizing without being as stark.

Shoulder The Burden

You mama was right: posture, posture, posture! No matter how much you suck in are or how expensive that blouse was, you'll never get a good pic if you don't stand up straight!

See more from Karen on social media!

Twitter: @KarenMcDougal98

Instagram & Facebook: @KarenMcDougal

TERRIFYING!

First Ever Men's Fitness Cover-Girl Reveals She Had To Get Breast Implants Removed

Want to follow all the celebrity drama? Download the RadarOnline App to get it directly on your phone! [Get App Now](#)

'I truly thought I was dying,' revealed Karen McDougal.



By Radar Staff
Posted on Mar 7, 2017 @ 17:52PM




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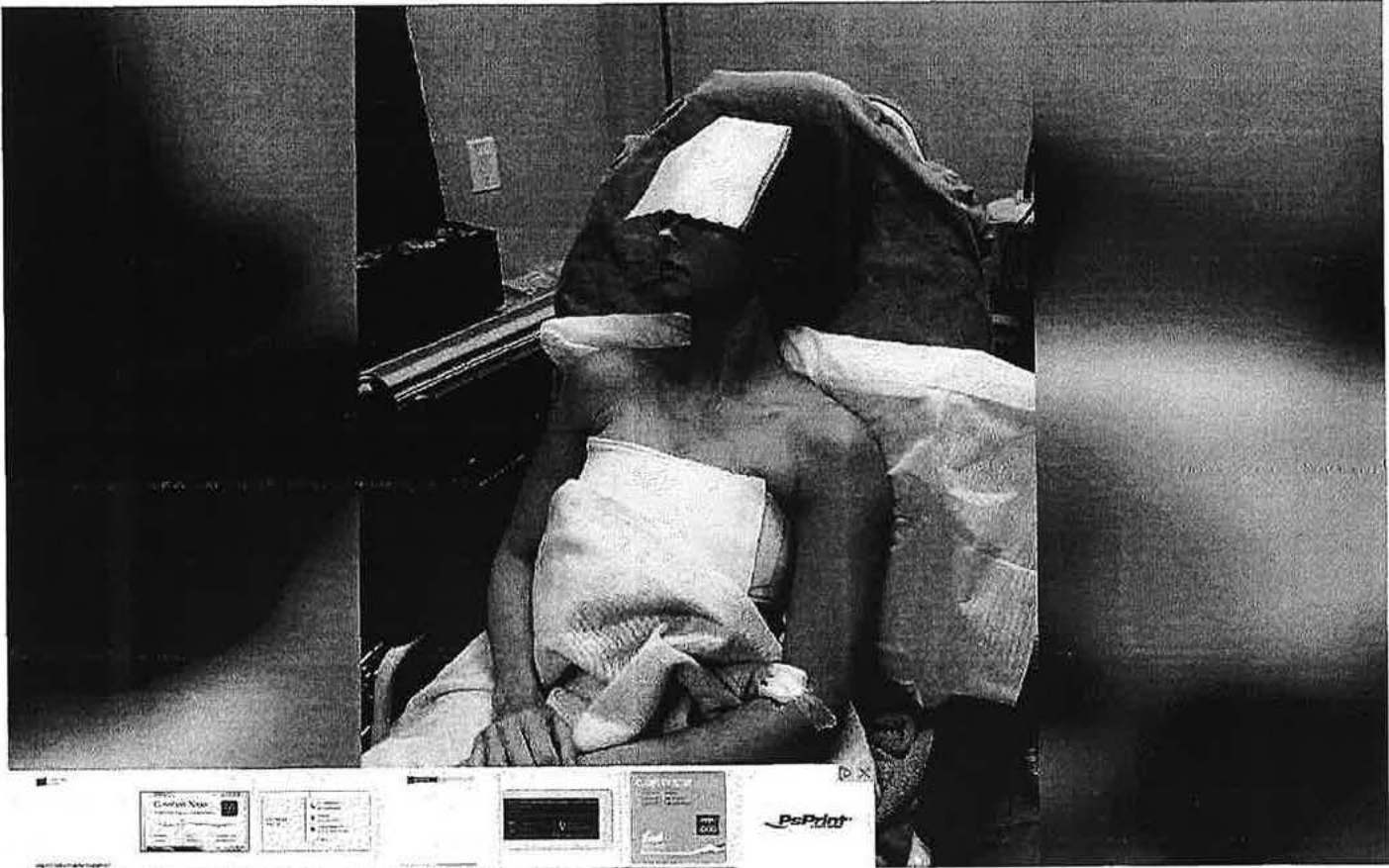


ALLMODERN

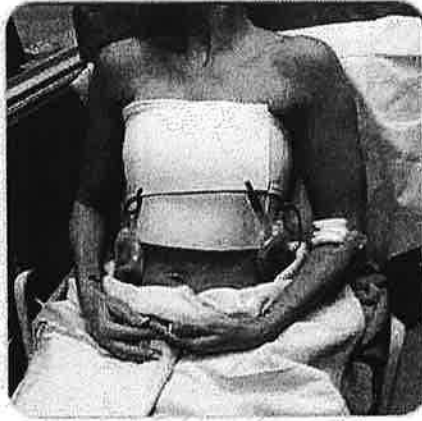


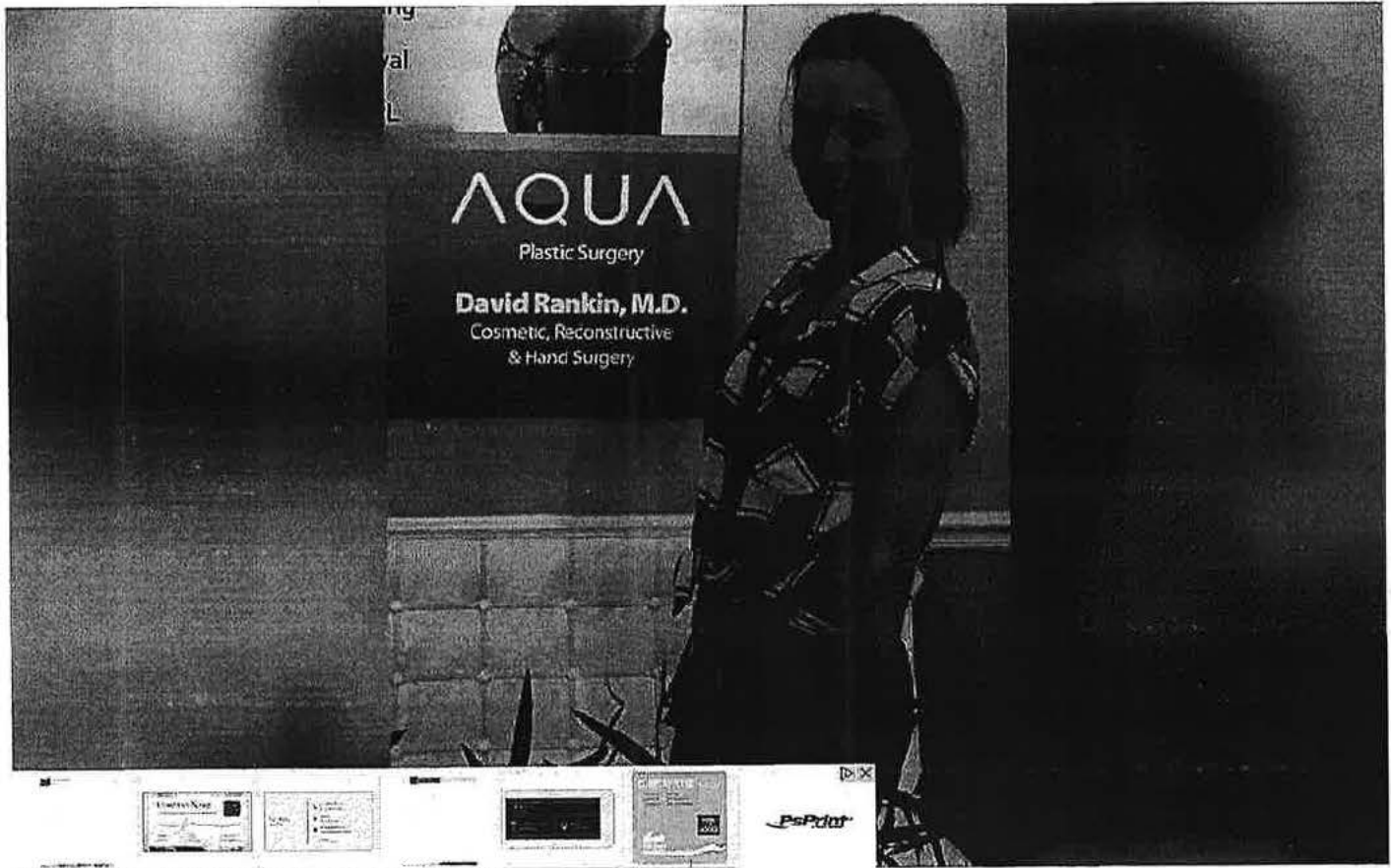






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BEAUTY TIPS

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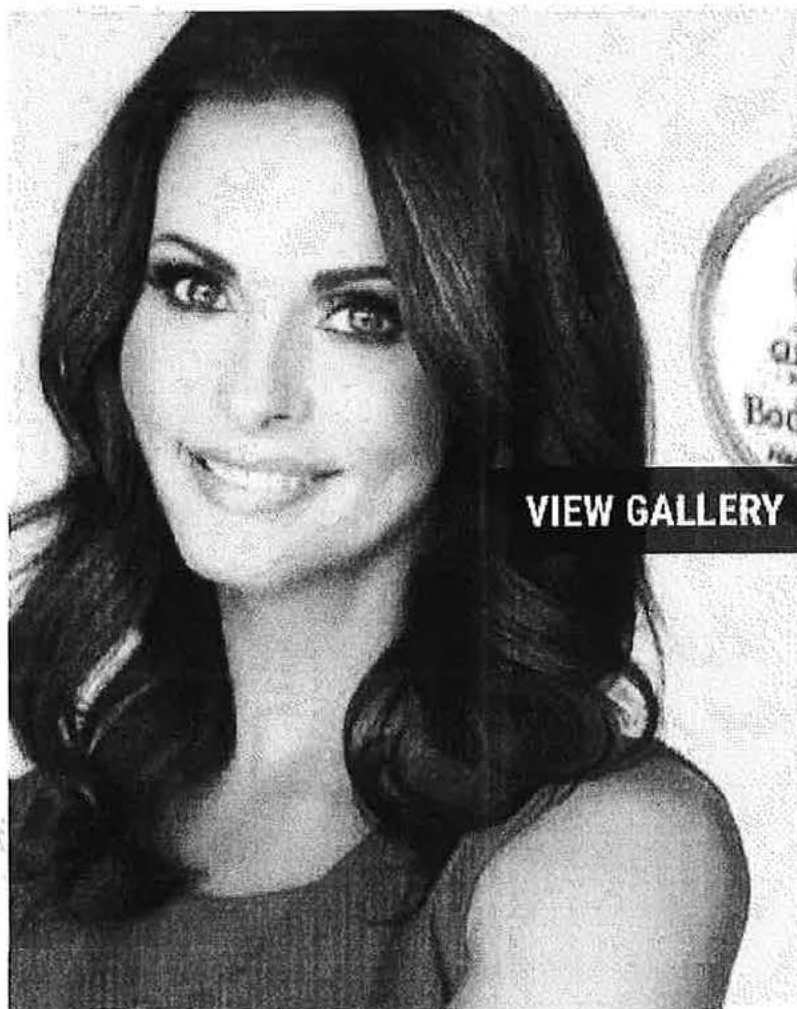
Want to follow all the celebrity drama? Download the RadarOnline App to get it directly on your phone! [Get App Now](#)

Get all of the fitness guru and model's summer secrets.



By Radar Staff

Posted on May 8, 2017 @ 14:04PM

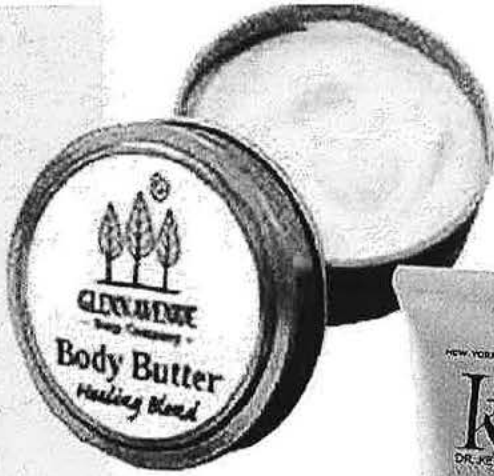
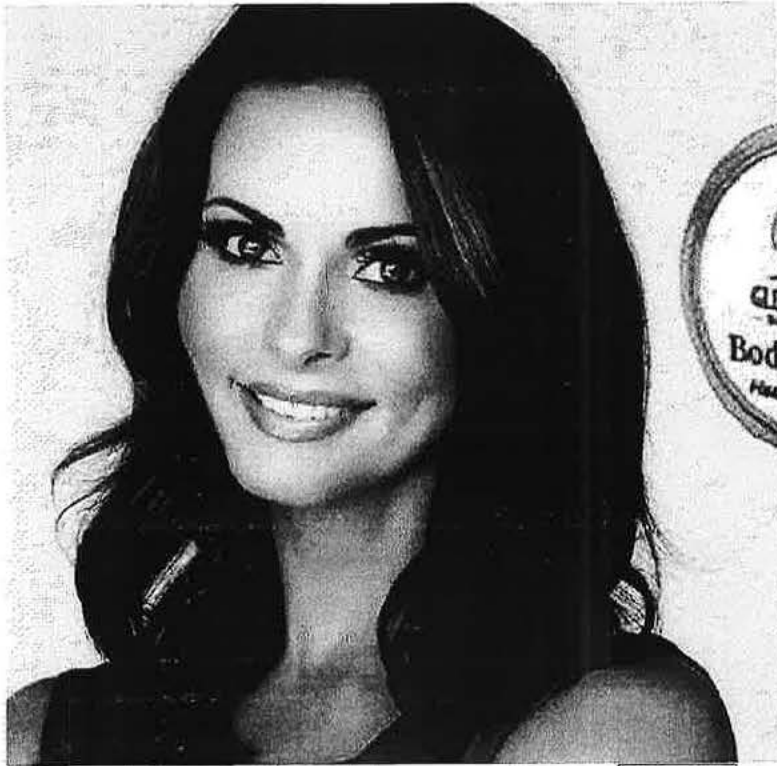


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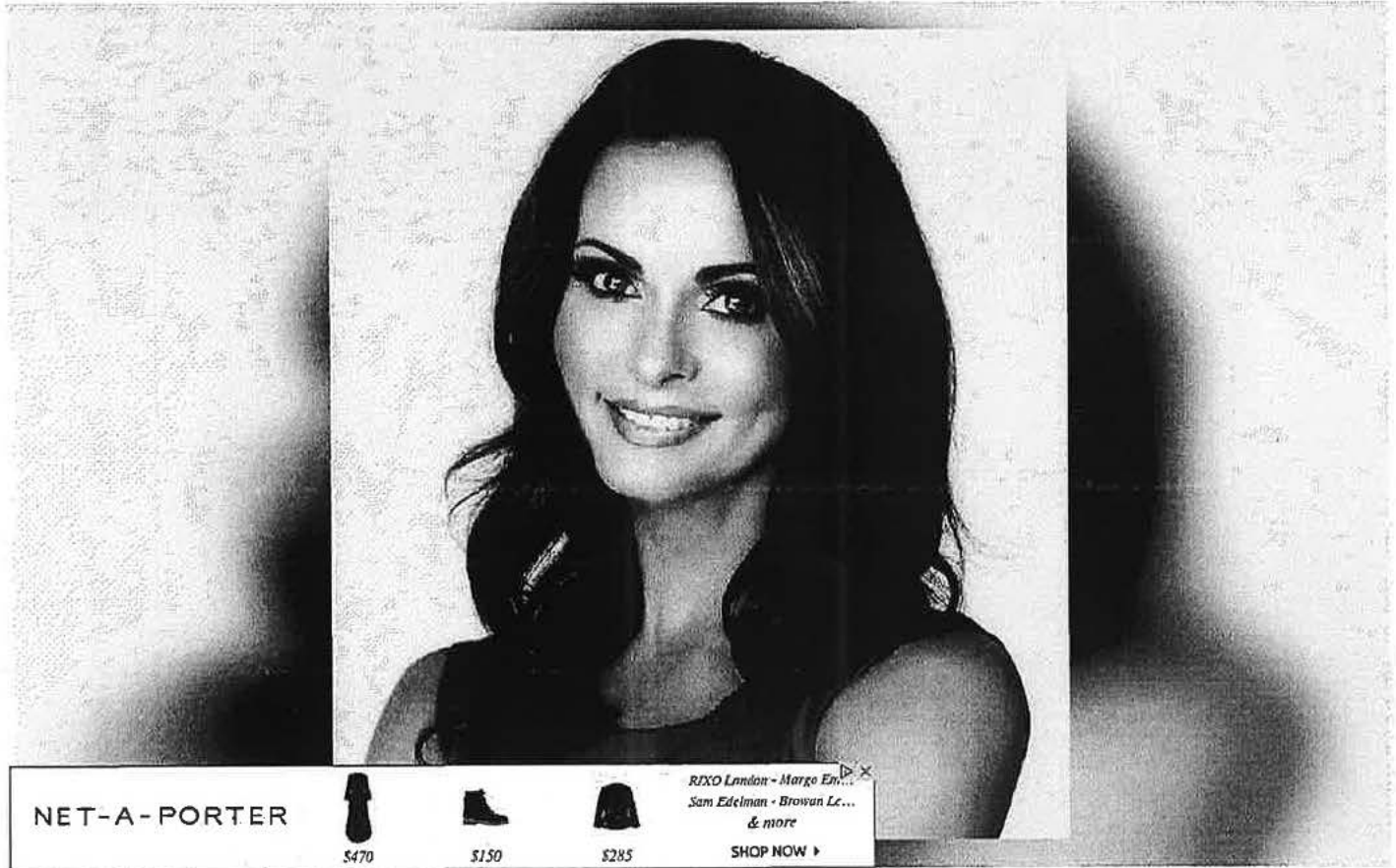



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STAR MAGAZINE GETS HOLIDAY PARTY ADVICE FROM KAREN MCDUGAL

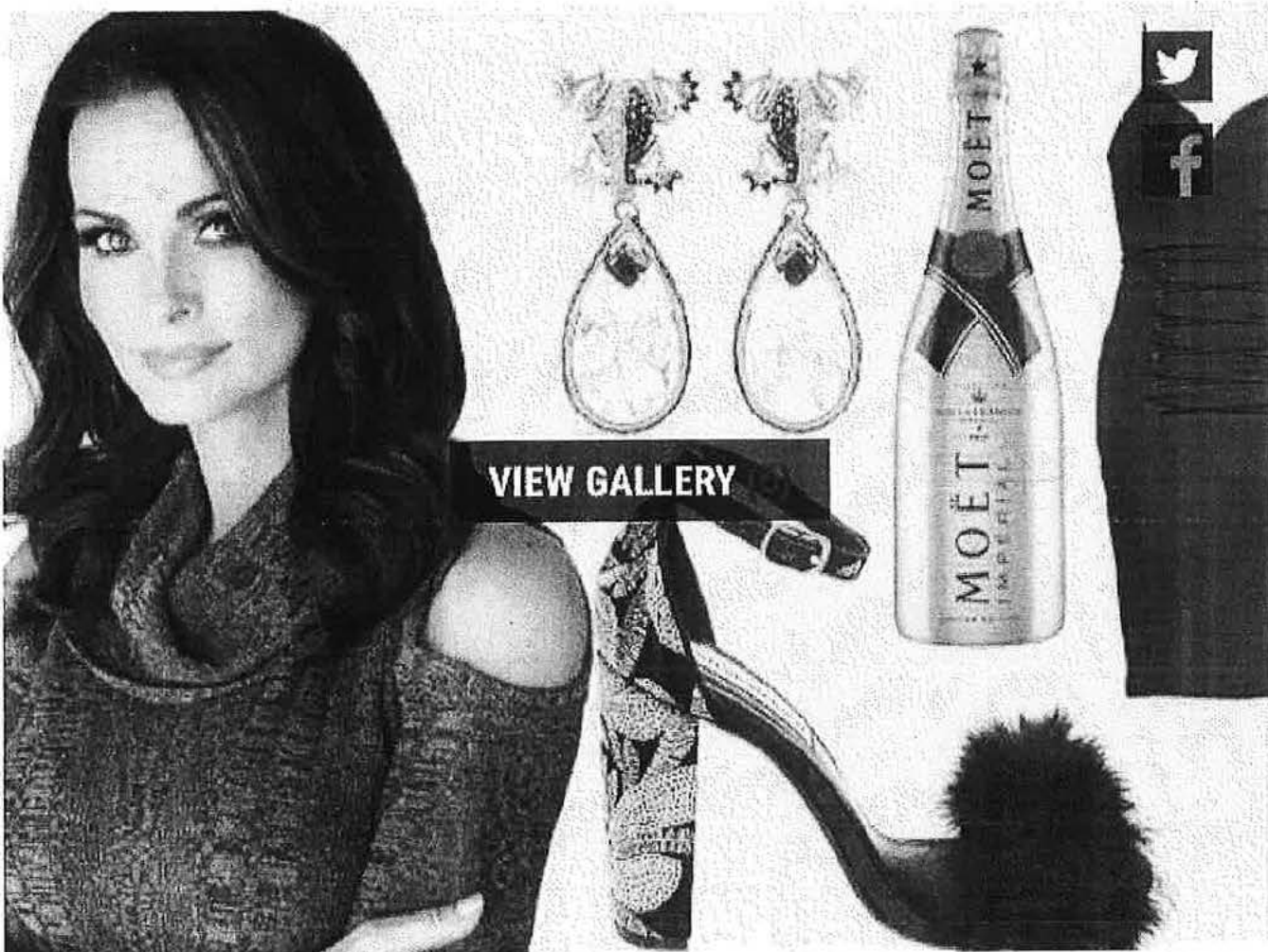
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MODEL & LIFESTYLE EXPERT TELLS US HOW TO BE THE PARTY GUEST HOSTS WILL LOVE THE MOST



By Radar Staff

Posted on Dec 18, 2017 @ 14:01PM



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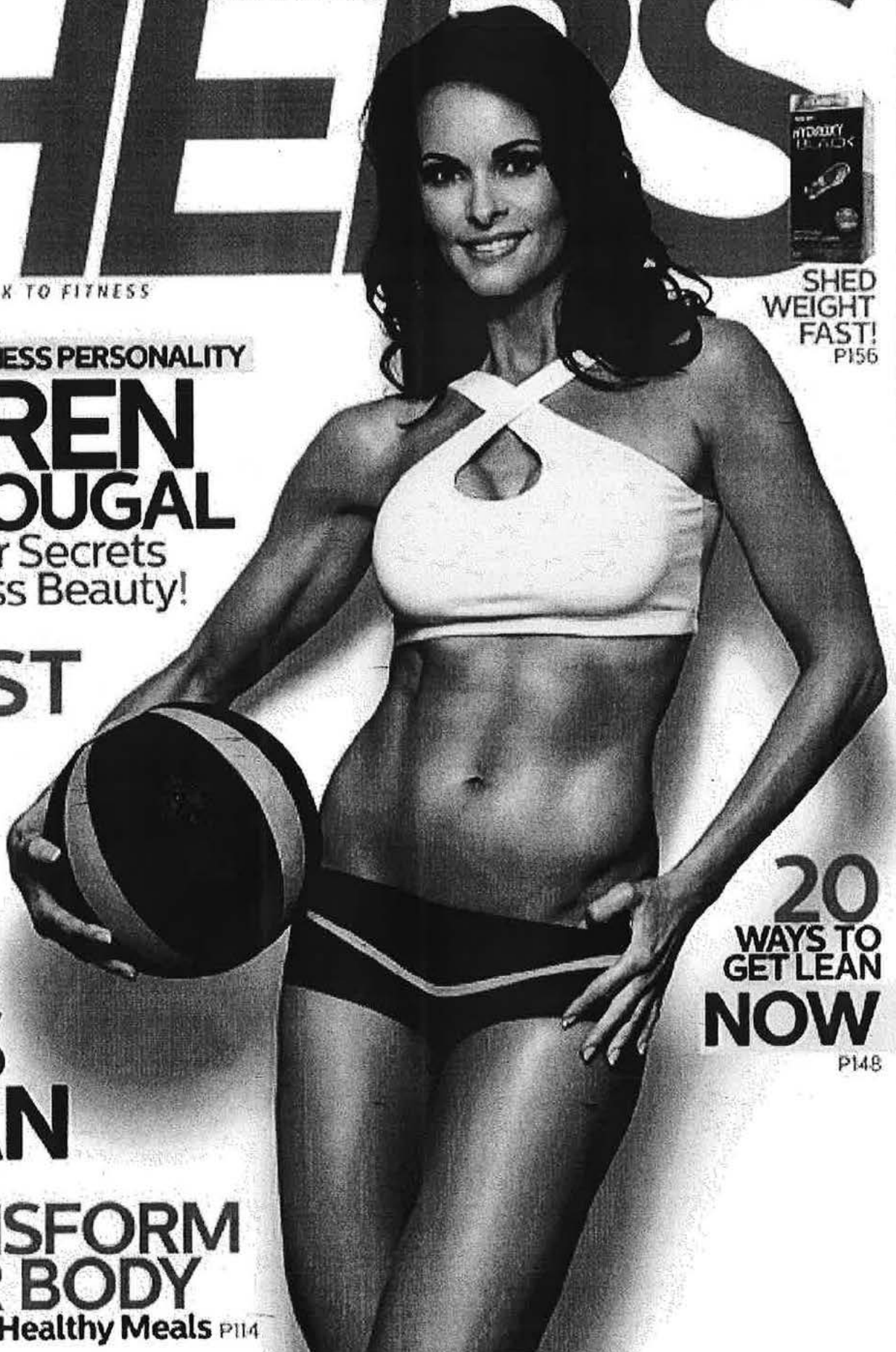


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MODEL & FITNESS PERSONALITY

KAREN MCDUGAL

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8 Week
ABS PLAN

20
WAYS TO GET LEAN
NOW
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TRANSFORM YOUR BODY
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Exhibit E

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Clifford M. Gomez, Executive Officer/Clerk

By: Marlon Gomez, Deputy

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF LOS ANGELES

19 KAREN MCDUGAL, an individual,

20 Plaintiff,

21 vs.

22 AMERICAN MEDIA, INC., a Delaware
corporation; and DOES 1 through 25,
23 inclusive,

24 Defendants.

Case No. BC 698956
Assigned to the Hon. Michael L. Stern

**DEFENDANT AMERICAN MEDIA, INC.'S
NOTICE OF MOTION AND SPECIAL
MOTION TO STRIKE COMPLAINT
PURSUANT TO C.C.P. § 425.16;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF KEVIN
L. VICK WITH EXHIBITS 1-8;
DECLARATION OF DYLAN HOWARD
WITH EXHIBITS 9-11; DECLARATION OF
LEE E. GOODMAN WITH EXHIBITS 12-18**

Date: April 30, 2018
Time: 8:30 a.m.
Dep't: 62
Res. # 180402302463

1 TO THE HONORABLE COURT, PLAINTIFF AND COUNSEL:

2 PLEASE TAKE NOTICE that on April 30, 2018, at 8:30 a.m. or as soon thereafter as
 3 counsel may be heard in Department 62 of the Los Angeles County Superior Court, the Hon.
 4 Michael L. Stern, presiding, located at 111 North Hill Street, Los Angeles, California 90012,
 5 defendant American Media, Inc. (“AMI”) will and hereby does move this Court for an order,
 6 pursuant to California Code of Civil Procedure § 425.16 (“Section 425.16” or the “anti-SLAPP¹
 7 statute”), striking and dismissing, in whole or, alternatively, in part, the Complaint and its sole
 8 cause of action for declaratory relief filed by plaintiff Karen McDougal (“McDougal”) with
 9 prejudice and without leave to amend.² McDougal’s cause of action for declaratory relief under
 10 Code of Civil Procedure § 1060 falls within the scope of Section 425.16(e), and, as such, the burden
 11 shifts to McDougal to establish, with admissible evidence, a probability that she will prevail on her
 12 cause of action, and all parts thereof. C.C.P. § 425.16(b)(1).³ McDougal cannot satisfy her burden.
 13 AMI therefore requests that the Court strike and dismiss, with prejudice and without leave to
 14 amend, McDougal’s cause of action for declaratory relief, or, alternatively, portions thereof, for the
 15 following separate and independent reasons:

- 16 • There was no “fraud in the execution” of the agreement between McDougal and AMI;
- 17 • McDougal ratified the agreement between herself and AMI;
- 18 • McDougal waived any claim of fraud associated with the agreement between herself and
 19 AMI;
- 20 • The agreement between McDougal and AMI is not illegal for the following separate and
 21 independent reasons:
 - 22 ○ The First Amendment protects AMI’s editorial discretion;
 - 23 ○ The First Amendment protects AMI’s newsgathering conduct;

24 ¹ SLAPP is an acronym for “strategic lawsuit against public participation.” *Equilon Enters. v.*
 25 *Consumer Cause, Inc.*, 29 Cal. 4th 53, 57 (2002).

26 ² McDougal may not amend her complaint in the face of this anti-SLAPP motion. *See, e.g., Hansen*
 27 *v. Calif. Dep’t of Corrections and Rehab.*, 171 Cal. App. 4th 1537, 1547 (2008).

28 ³ The Court may strike parts of a complaint pursuant to the anti-SLAPP statute. *Baral v. Schnitt*, 1
 Cal. 5th 376, 385-392 (2016)

- 1 o The agreement between McDougal and AMI does not violate the Federal
2 Election Campaign Act (“FECA”);
- 3 o Alternatively, 52 U.S.C. § 30118(a), and other relevant FECA provisions and
4 related regulations, are unconstitutionally vague and overbroad facially and as
5 applied to the press activities at issue here; and
- 6 • The agreement between McDougal and AMI is not against public policy.

7 This Motion is based on: this Notice; the attached Memorandum of Points and Authorities; the
8 attached Declaration of Kevin L. Vick with Exhibits 1 - 8; the attached Declaration of Dylan
9 Howard with Exhibits 9 - 11; the attached Declaration of Lee E. Goodman with Exhibits 12 - 18;
10 the concurrently-lodged Exhibit 1; the concurrently-filed Notice of Lodging of Exhibit 1; all related
11 pleadings and documents on file; and such further evidence or argument as may be presented at the
12 hearing on this Motion.


13 AMI also reserves the right to request that the Court enter an award of attorneys’ fees and
14 costs pursuant to Code of Civil Procedure § 425.16(c).⁴

15 DATED: April 2, 2018

JASSY VICK CAROLAN LLP
JEAN-PAUL JASSY
KEVIN L. VICK

WILEY REIN LLP
LEE E. GOODMAN
ANDREW WOODSON

AMERICAN MEDIA, INC.
CAMERON STRACHER



JEAN-PAUL JASSY
Counsel for Defendant American Media, Inc.

26 _____
27 ⁴ If this Motion, or any part thereof, is granted, AMI intends to file a noticed motion to recover
28 attorneys’ fees and costs and/or a costs memorandum. C.C.P. § 425.16(c); *American Humane Ass’n*
v. Los Angeles Times Communications LLC, 92 Cal. App. 4th 1095, 1103 (2001).

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27	California Code of Civil Procedure	
28	§ 425.16.....	1, 4
	§ 425.16(a).....	3
	§ 425.16(b)(1).....	3, 5
	§ 425.16(e).....	3, 4
	§ 425.16(e)(2).....	5
	§ 425.16(e)(4).....	3, 4, 5

1	Civil Code	
	§ 47(b)	15
2	§ 1589	7
3	Penal Code § 632.....	4
4	Federal Election Commission Documents	
5	MUR 5562/5570 (Sinclair).....	12
6	MUR 5569 (KFI-AM 640) First Gen. Counsel's Report	12
7	MURs 5540/5545 Statement of Reasons of Comm'rs Toner, Mason, Smith	12
8	MURs 4929/5006/5090/5117 (Los Angeles Times), Statement of Reasons by Comm'rs Wold, McDonald, Mason, Sandstrom, Thomas	12
9		
10	Miscellaneous	
11	H.R. Rep. No. 93-1239, 93d Congress, 2d Sess. (1974)	12
12	Howard Kurtz, "Newsweek's Melted Scoop," <i>Washington Post</i> , Jan. 22, 1998	10
13	Jack Shafer, "Why Did NBC News Sit On The Trump Tape For So Long?," <i>Politico</i> , Oct. 10, 2016	10
14	Jack Shafer, "Why Not Pay Sources?," <i>Slate</i> , April 29, 2010	10
15	Jeremy W. Peters, "Paying for News? It's Nothing New," <i>New York Times</i> , Aug. 6, 2011	9
16	John Cook, "Pay Up: Sources have their agendas. Why can't money be one?," <i>Columbia</i> <i>Journalism Review</i> , May/June 2011	10
17	Kelly Heyboer, "Paying For It," <i>American Journalism Review</i> , April 1999	10
18	Kelly McBride, <i>New York Times</i> opn., "When It's O.K. to Pay for a Story," June 9, 2015	10
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1 **I. INTRODUCTION**

2 It was “the best of all worlds.” It was a “win-win for me.” Those are Karen McDougal’s
3 words. That is how she felt when she accepted AMI’s offer to pay her a substantial amount of
4 money to write articles, boost her image as a health and fitness personality, and sell an exclusive
5 “story right” with the understanding that AMI had the right to exercise its editorial discretion *not* to
6 publish the story. Later, Ms. McDougal sought clarification of the exclusive story right. AMI and
7 Ms. McDougal amended their agreement to make it clear she could answer press inquiries, and Ms.
8 McDougal “ratified and confirmed” her original agreement with the aid of her new counsel at
9 Gibson Dunn. AMI proceeded to publish 25 of Ms. McDougal’s articles, placed her on the cover of
10 “Muscle & Fitness Hers,” and featured her across its publications.

11 Over a year later, represented by her third lawyer, Ms. McDougal sued AMI, claiming that
12 her contract was void in part because it prohibits her from talking to the press. It does not. Two
13 days after filing this lawsuit, she did a one-hour interview with CNN where she vividly detailed her
14 alleged affair with President Trump and bashed AMI before millions of viewers. Near the
15 interview’s end, Ms. McDougal voiced satisfaction that, “now, people know my truth.”

16 Despite the Gibson Dunn-negotiated contract amendment, the CNN interview, and
17 comments in a *New Yorker* article, Ms. McDougal now claims that the prior sale of her story right
18 “censors” her. In reality, it is Ms. McDougal’s lawsuit that targets *AMI’s* First Amendment rights
19 by advancing the novel and radical proposition that once a media company has a story about a
20 candidate, it *must* publish that story or else be in violation of election law. She also contends that
21 AMI was legally obligated to publish more articles than the 25 published so far. The contract she
22 signed on the advice of two sets of lawyers, however, is to the contrary, while the First Amendment
23 protects a publisher’s editorial right to decide when, where, how, and whether to publish. Finally,
24 Ms. McDougal claims that the “win-win” agreement she signed and profited from is now against
25 public policy. It is not.

26 Because Ms. McDougal’s suit targets AMI’s conduct in furtherance of speech rights in
27 connection with issues of public interest, it is subject to this motion under C.C.P. § 425.16 (“Section
28

1 425.16” or the “anti-SLAPP statute”). McDougal cannot satisfy her burden of establishing a
 2 probability of success, and this motion should be granted in full.

3 **II. SUMMARY OF PERTINENT FACTS**

4 In August 2016, Ms. McDougal, a former *Playboy* Playmate of the Year and model, was
 5 excited to sign what she describes as a “win-win” agreement with news publisher AMI (the
 6 “Agreement”). Ex. 1 at 38:50. McDougal alleges she was told by her lawyer, Keith Davidson,
 7 before signing the Agreement, that AMI “would buy the story *not* to publish it,” which would, as
 8 McDougal puts it, “give her the best of all worlds—her private story [about her alleged affair with
 9 President Trump] could stay private, she could make some money, *and* she could revitalize her
 10 career.” Compl., ¶ 47 (emphasis in original).⁵ The Agreement, among other provisions, gives AMI
 11 the right and discretion, but not the obligation, to publish articles by McDougal, and also gives AMI
 12 exclusive story rights to “any relationship she has ever had with a then-married man.” Compl., Ex.
 13 A at §§ 1, 3, 5-7, 9, 15. McDougal signed the Agreement, accepted \$150,000 from AMI, and then
 14 wrote 19 bylined articles, was featured in another 6 articles, and was on the cover of a magazine –
 15 across four separate AMI publications. Compl., Ex. A; Howard Decl., ¶¶ 2-4; Exs. 9 - 11.

16 A few months later, McDougal fired Davidson, and, with the help of new lawyers at Gibson
 17 Dunn, she negotiated an amendment to the Agreement (the “Amendment”). Complaint, ¶¶ 18-19,
 18 62-64. The Amendment stated that McDougal could freely respond to “legitimate press inquiries”
 19 regarding her alleged affair with President Trump, and it expressly “ratified and confirmed” “all of
 20 the other terms and conditions of the Agreement.” *Id.*, Ex. B at 1. Shortly thereafter, McDougal
 21 provided extensive comments to the *New Yorker* about her agreement with AMI and her
 22 relationship with President Trump. *See* <https://goo.gl/cDZ1C3>.

23 On March 20, 2018, McDougal sued AMI seeking a declaratory judgment that the
 24 Agreement was void *ab initio*. Two days later, she appeared in a lengthy interview with CNN’s
 25 Anderson Cooper discussing, in detail, her alleged affair with President Trump, AMI and the
 26

27 ⁵ AMI accepts McDougal’s allegations of her subjective perception of AMI’s editorial objectives
 28 for purposes of this motion, but does not necessarily concede the accuracy of her allegations.

1 Agreement. Exs. 1, 2. She explained her hope that AMI would exercise its editorial right to
 2 “squash” the story of her alleged affair, and called that possibility a “win-win for me,” as she would
 3 be “happy” to see the story “killed.” Ex. 1 at 38:50-39:15. Near the end of the interview,
 4 McDougal said: “now, people know my truth.” *Id.* at 51:55.

5 **III. THE ANTI-SLAPP STATUTE APPLIES TO McDOUGAL’S SOLE CLAIM**

6 **A. The Anti-SLAPP Statute Is Construed Broadly**

7 The anti-SLAPP statute was enacted to check “a disturbing increase in lawsuits brought
 8 primarily to chill the valid exercise of the constitutional right of freedom of speech and petition,”
 9 and it “shall be construed broadly.” C.C.P. § 425.16(a). Declaratory relief suits are subject to anti-
 10 SLAPP motions. *South Sutter LLC v. LJ Sutter Partners, L.P.*, 193 Cal. App. 4th 634, 665 (2011).
 11 “Resolution of an anti-SLAPP motion involves two steps.” *Baral v. Schnitt*, 1 Cal. 5th 376, 384
 12 (2016); C.C.P. § 425.16(b)(1). First, “the defendant must establish that the challenged claim arises
 13 from activity protected by” Section 425.16(e). *Id.*⁶ Second, “[i]f the defendant makes the required
 14 showing, the burden shifts” in the second step “to the plaintiff to demonstrate the merit of the claim
 15 by establishing a probability of success,” *id.*, and, if this burden is not satisfied, then the claim must
 16 be stricken in whole or in part, *id.* at 385-392.

17 **B. AMI Satisfies The First Step In The Anti-SLAPP Analysis**

18 A defendant need only show that its alleged conduct “underlying the plaintiff’s cause of
 19 action fits *one* of the four categories spelled out in section 425.16, subdivision (e).” *Navellier v.*
 20 *Sletten*, 29 Cal. 4th 82, 88 (2002) (emphasis added). McDougal’s claim falls within two categories.

21 **1. McDougal’s Claim Falls Within Section 425.16(e)(4)**

22 Section 425.16(e)(4) “provides a catch-all for ‘any other *conduct* in furtherance of” speech
 23 or petition rights in connection with issues of public interest. *Lieberman v. KCOP Television, Inc.*,
 24 110 Cal. App. 4th 156, 164 (2003) (emphasis in original). The *Lieberman* court concluded that
 25

26 ⁶ Section 425.16(e) protects: “(2) any ... writing made in connection with an issue under
 27 consideration or review by a ... judicial body... or (4) any other conduct in furtherance of the
 28 exercise of the constitutional right of petition or the constitutional right of free speech in connection
 with a public issue or an issue of public interest.” C.C.P. § 425.16(e).

1 newsgathering qualifies for protection under Section 425.16(e)(4) even where the plaintiff alleges
2 that the newsgathering technique was unlawful. *Id.* at 165-166 (applying Section 425.16(e)(4) to
3 claim for alleged violation of Penal Code § 632 for undercover recordings by a news reporter).

4 McDougal's sole cause of action for declaratory relief arises from: AMI's acquisition of
5 exclusive story rights about an alleged affair with President Trump; AMI's purported editorial
6 decision not to publish more of McDougal's articles; AMI's editorial decision not to report on her
7 alleged affair with Trump; and AMI's alleged legal threats to McDougal to comply with the
8 contract she signed and later "ratified and confirmed" with the assistance of her new counsel.
9 Compl., ¶¶ 97-110. All of the foregoing targets AMI's purported "conduct in furtherance of"
10 constitutional free speech and free press rights. C.C.P. § 425.16(e)(4). First, AMI's acquisition of
11 McDougal's agreement to write and appear in articles and provide exclusive story rights is
12 newsgathering, which squarely satisfies the first step in the Section 425.16(e)(4) analysis under
13 *Lieberman*, 110 Cal. App. 4th at 164-166. Second, AMI has a constitutional and contractual right to
14 exercise its editorial discretion *not* to publish McDougal's articles or her personal story. *Miami*
15 *Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256-258 (1974) (holding that newspapers have a First
16 Amendment right *not* to publish); Compl., Ex. A at §§ 1, 5, 6, 9 (affording AMI the discretionary
17 right to publish McDougal's articles and story). Third, AMI's purported "threats of legal action" to
18 enforce the Agreement, Compl., ¶ 101, arise from AMI's alleged speech. *Briggs v. Eden Council*,
19 19 Cal. 4th 1106, 1115 (1999) ("communications preparatory to or in anticipation of the bringing
20 of an action or other official proceeding are ... entitled to the benefits of section 425.16").

21 McDougal cannot dispute that all of the foregoing involved matters of public interest.
22 "[A]n issue of public interest" within the meaning of Section 425.16(e) "is any issue in which the
23 public is interested." *Nygård, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042 (2008).
24 McDougal insists throughout her Complaint that her story about Trump, her articles and AMI's
25 conduct are all matters of public interest. Compl., ¶¶ 21, 33, 37, 42-45, 47, 49, 53, 61, 63, 81, 88-
26 95, 99-106, 109. Additionally, there is a public interest in persons, such as McDougal and President
27 Trump, who are "in the public eye." *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1252-55
28 (2017). President Trump has been in the public eye for decades. *Makaeff v. Trump Univ., LLC*, 715

1 F.3d 254, 258 (9th Cir. 2013). The same holds true for McDougal, who was *Playboy* Playmate of
 2 the Year in 1998, and a successful fitness model, appearing in “numerous magazines.” Compl., ¶¶
 3 6-7, 28-29; *see also Nadel v. Regents of the Univ. of Calif.*, 28 Cal. App. 4th 1251, 1270 (1994)
 4 (plaintiff can reveal herself to be “a person ... in the public eye” by virtue of allegations in her
 5 complaint). The declaratory relief claim falls within the ambit of Section 425.16(e)(4).

6 **2. McDougal’s Claim Also Falls Within Section 425.16(e)(2)**

7 The declaratory relief claim also falls within the ambit of Section 425.16(e)(2) to the extent
 8 it is based on AMI’s alleged threats of legal action, which she asserts underpin, at least in part, the
 9 controversy requiring judicial resolution. Compl., ¶¶ 88, 101, 109; *Briggs*, 19 Cal. 4th at 1115.

10 **IV. McDOUGAL CANNOT ESTABLISH A PROBABILITY OF PREVAILING**

11 Because AMI satisfies the first step of the anti-SLAPP analysis, the burden shifts to
 12 McDougal to establish a probability of prevailing on her claim. *Baral*, 1 Cal. 5th at 384; C.C.P. §
 13 425.16(b)(1). For McDougal, “the mere existence of a controversy is insufficient to overcome an
 14 anti-SLAPP motion against a claim for declaratory relief;” rather, she “must introduce substantial
 15 evidence that would support a judgment of relief made in [her] favor.” *South Sutter*, 193 Cal. App.
 16 4th at 670. “[T]he court must consider ... whether there are any constitutional or non-constitutional
 17 defenses to the pleaded claims and, if so, whether there is evidence to negate those defenses.”
 18 *Ramona Unif. Sch. Dist. v. Tsiknas*, 135 Cal. App. 4th 510, 519 (2005). McDougal alleges that the
 19 Agreement was void *ab initio* for three reasons. Compl., ¶¶ 99-106. She is wrong on all fronts, and
 20 cannot satisfy her burden in the second step of the anti-SLAPP analysis.

21 **A. There Was No Fraud In The Execution, And McDougal Ratified The Contract**

22 McDougal alleges “fraud in the execution” of the Agreement only because she now claims
 23 she thought – contrary to the language of the contract – that AMI “would be obligated to run more
 24 than a hundred columns in her name” within a two-year period. Compl., ¶ 99. Nothing in the
 25 Agreement “obligates” AMI to run *any*, let alone over 100, of McDougal’s articles. Ex. A.⁷

26 _____
 27 ⁷ Under the express terms of the Agreement, which included an integration clause and a waiver of
 28 the ability to rescind, AMI had the “right” (not the obligation) to run McDougal’s articles, her
 articles are AMI’s “work[s]-for-hire,” and “[a]ll decisions whatsoever, whether of a creative or

1. McDougal Had Two Opportunities To Review And Ratify The Agreement

A “necessary element” of “fraud in the execution is *reasonable reliance*,” and “[g]enerally, it is *not reasonable* to fail to read a contract.” *Desert Outdoor Advertising v. Super. Ct.*, 196 Cal. App. 4th 866, 873 (2011) (emphasis in original; internal quotation marks omitted).⁸ A contract will not be considered void due to “fraud in the execution” “if the plaintiff had a reasonable opportunity to discover the true terms of the contract,” and the “contract is only considered void when the plaintiff’s failure to discover the true nature of the document executed was without negligence on the plaintiff’s part.” *Rosencrans v. Dover Images, Ltd.*, 192 Cal. App. 4th 1072, 1080 (2011) (internal quotation marks removed). In *Rosencrans*, the plaintiff sought to void a release after suffering severe injuries at a motocross track. *Id.* at 1077. The court found no fraud in the execution even though the plaintiff presented evidence that: the defendant told him to “sign this” and said the release was just a “sign-in sheet”; plaintiff “did not know he was signing a release”; and plaintiff “was not given adequate time to read or understand” the release which he signed within “10 seconds” as he sat in his truck with around “10 cars in line behind” him. *Id.* at 1077-80.

Here, McDougal had “a reasonable opportunity” to “discover the true terms of the contract” *twice*. *Id.* First, she alleges that she took at least a day and a night to review the three page Agreement, she communicated with her lawyer, Keith Davidson, who told her “WE CAN DISCUSS ANYTIME,” and she read it sufficiently carefully to “raise[] several concerns” about specific terms. Compl., ¶¶ 48-55 (capitalization in original). McDougal’s Complaint alleges a greater opportunity to understand the Agreement than the plaintiff had in *Rosencrans* where the court found no fraud in the execution. McDougal blames alleged pressure from Davidson and AMI for her purported lack of understanding; but claims that, not long after signing the Agreement, she realized the Agreement did not *obligate* AMI to run her articles, whereupon she fired Davidson.⁹

business nature,” regarding the rights granted by McDougal were to be made in AMI’s “sole discretion.” Compl., Ex. A at §§ 1, 5, 6, 9, 14, 15.

⁸ *Accord Vulcan Power Co. v. Munson*, 932 N.Y.S.2d 68, 69-70 (N.Y. Sup. Ct. App. Div. 2011).

⁹ The *Washington Post* reports that, after McDougal’s Complaint was filed, Davidson asserted that he “‘fulfilled his obligations and zealously advocated for Ms. McDougal to accomplish her stated goals at that time.’” See goo.gl/cEHxB7.

1 *Id.*, ¶¶ 16-18, 55-62.¹⁰

2 McDougal's second opportunity to discover the true terms of the contract came when she
3 hired "renowned" attorney Ted Boutrous of Gibson Dunn to negotiate an amendment to the
4 Agreement. *Id.*, ¶¶ 18-19, 62-64. In addition to stating that McDougal could freely respond to
5 "legitimate press inquiries" regarding President Trump, the Amendment that Boutrous helped
6 McDougal obtain *expressly* "ratified and confirmed" "all of the other terms and conditions of the
7 Agreement," Compl., Ex. B at 1, which includes *all* of the provisions that give AMI the "right" to
8 decide, in its "sole discretion," whether to publish McDougal's articles, as well as the contract's
9 integration clause, *id.*, Ex. A at §§ 1, 5, 6, 9, 14, 15.

10 **2. McDougal Waived Any Fraud By Accepting The Agreement's Benefits**

11 The Agreement also was ratified for the independent reason that McDougal kept the
12 \$150,000 and continued to prepare articles for AMI even after she had knowledge of what she now
13 calls "fraud in the execution." Howard Decl., ¶¶ 2-4; Exs. 9-11. Civ. C. § 1589 ("acceptance of the
14 benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the
15 facts are known, or ought to be known, to the person accepting"); *LeClerq v. Michael*, 88 Cal. App.
16 2d 700, 702 (1948) ("[i]f a person retains the benefits of a contract and continues to treat it as
17 binding he will be deemed to have waived any fraud and to have elected to affirm the contract").¹¹

18 **B. The Agreement Is Not Illegal**

19 **1. The First Amendment Protects AMI's Discretion *Not* To Publish**

20 If AMI had exercised its editorial discretion to publish McDougal's story, she would have
21 no argument that such publication was an illegal in-kind campaign contribution. But editors also
22 have a First Amendment right *not* to publish, and cannot be punished for exercising that right.

24 ¹⁰ At that point, McDougal was at least on inquiry notice of the purported fraud. *Kline v. Turner*, 87
25 Cal. App. 4th 1369, 1374 (2001) (inquiry notice of alleged fraud begins when there is "notice or
26 information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain
knowledge from sources open to [her] investigation"). McDougal or her new attorneys simply had
to re-read the Agreement, the terms of which are clear.

27 ¹¹ *Accord Banque Arabe Et Int'l v. Maryland Nat. Bank*, 850 F. Supp. 1199, 1212-1213 (S.D.N.Y.
28 1994) (acceptance of contract after inquiry notice of alleged fraud is ratification).

1 The key case is *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974). In *Miami Herald*,
 2 the U.S. Supreme Court struck down a “right of reply” statute, with first-degree misdemeanor
 3 penalties for its violation, that required newspapers to provide a political candidate with equal space
 4 to answer criticism in the newspaper. *Id.* at 244. The Court held that the “statute exacts a penalty
 5 on the basis of content” as it “operates as a command in the same sense as a statute or regulation
 6 forbidding [the newspaper] to publish specified matter.” *Id.* at 256. It dismissed potential skeptics
 7 of its holding, noting that “Governmental restraint on publishing need not fall into familiar or
 8 traditional patterns to be subject to constitutional limitations on governmental powers.” *Id.*

9 The First Amendment-based right of editorial discretion was already well-established by the
 10 time the *Miami Herald* case reached the Supreme Court.¹² Against this backdrop, the *Miami Herald*
 11 court held the “clear implication has been that any such compulsion to publish that which ‘reason’
 12 tells [the newspapers] should not be published is unconstitutional.” 418 U.S. at 256. The high court
 13 concluded by reaffirming the well-established constitutional principle that editorial judgment for the
 14 content of newspapers should be left to editors and not the courts:

15 A newspaper [or magazine] is more than a passive receptacle or conduit for news,
 16 comment, and advertising. The choice of material to go into a newspaper, and the
 17 decisions made as to limitations on the size and content of the paper, and
 18 treatment of public issues and public officials—whether fair or unfair—constitute
 the exercise of editorial control and judgment. It has yet to be demonstrated how
 governmental regulation of this crucial process can be exercised consistent with
 First Amendment guarantees of a free press as they have evolved to this time.

19 418 U.S. at 258.¹³ AMI has been well within its rights *not* to publish the McDougal-Trump story
 20 yet, and its decision to withhold publication cannot give rise to liability under the First
 21 Amendment.¹⁴

22 _____
 23 ¹² See *id.* at 254-255 (citing *Associated Press v. United States*, 326 U.S. 1, 20 n. 18 (1945) (district
 24 court did “not compel AP or its members to permit publication of anything which their ‘reason’ tells
 25 them should not be published”), *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) (emphasizing that
 cases before the court “involve[d] ... no express or implied command that the press publish what it
 prefers to withhold”), *Pittsburgh Press Co. v. Human Relations Comm’n*, 413 U.S. 376, 391 (1973)
 (“we affirm unequivocally the protection afforded to editorial judgment”).

26 ¹³ Our Supreme Court also recognizes that a “publisher enjoys” a “total control over the content of
 27 the newspaper as a private publisher.” *Bailey v. Loggins*, 32 Cal. 3d 907, 918-919 (1982) (emphasis
 28 added); see also *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1042-1049 (1986) (decision not to
 include book on a best-seller list was protected by the First Amendment); *Eisenberg v. Alameda
 Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1391 (1999) (“the courts have long held that the right to

2. The First Amendment Also Protects AMI's Newsgathering

Just as the decision *not* to publish McDougal's story is squarely protected by the First Amendment and cannot serve as the basis for liability, the two alleged predicate newsgathering acts (making an inquiry to President Trump's representative and purchasing McDougal's exclusive story rights along with other services from McDougal) also enjoy protection under the First Amendment, and cannot support McDougal's claim that anything AMI did was illegal under federal election law.

Newsgathering enjoys protection under the First Amendment. In *Branzburg*, 408 U.S. at 681, the court held that "without some protection for seeking out the news, freedom of the press could be eviscerated." In *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978), the court held that there is an "undoubted right to gather news 'from any source by means within the law[.]'" *Id.* at 11 (emphasis added; quoting *Branzburg*, 408 U.S. at 681). All of AMI's alleged conduct is newsgathering "within the law," and therefore constitutionally protected.

First, press entities routinely solicit comment from the subjects of stories. *Gonzalez v. Morse*, 2017 WL 4539262 (E.D. Cal. Oct. 11, 2017), at *2 (reporter's questions to politician protected under the First Amendment). Thus, even if AMI had reached out to President Trump's representatives, there would have been nothing sinister about seeking comment concerning McDougal's story – a story that the White House denies is true.¹⁵

Second, paying sources and buying exclusive story rights is routine and has been for a long time. In 1912, the *New York Times* paid \$1,000 to a survivor of the Titanic for his exclusive account. Ex. 3.¹⁶ The *New York Times* also allegedly paid Charles Lindbergh \$5,000 for the story

control the content of a privately published newspaper rests entirely with the newspaper's publisher. The First Amendment protects the newspaper itself, and grants it a virtually unfettered right to choose what to print and what not to" (emphasis removed); accord *Passaic Daily News v. N.L.R.B.*, 736 F.2d 1543, 1557 (D.C. Cir. 1984) ("newspapers have *absolute* discretion to determine the contents of their newspapers") (emphasis added).

¹⁴ Similarly, the First Circuit ruled that forcing a group to publish information it disagrees with as a mechanism for defining "contribution" is "obnoxious" and "abhorrent" to the First Amendment and "unquestionably" unconstitutional. *Clifton v. FEC*, 114 F.3d 1309, 1313-1314 (1st Cir. 1997).

¹⁵ Seeking comment can help avoid defamation liability. *Newton v. NBC*, 930 F.2d 662, 686 (9th Cir. 1990) (attempts to interview plaintiff dispel accusation of actual malice).

¹⁶ Jeremy W. Peters, "Paying for News? It's Nothing New," *New York Times*, Aug. 6, 2011.

1 of his famous trans-Atlantic flight. Ex. 4.¹⁷ In 1970, *Esquire* magazine paid Lt. William L. Calley
 2 of My Lai massacre infamy for a confessional interview. Ex. 3. Journalist David Frost paid former
 3 President Nixon \$600,000 in 1976 for the right to exclusive interviews, which shed new light on
 4 Watergate. Ex. 5.¹⁸ In 1998, publisher Larry Flynt offered \$1 million for information regarding
 5 politicians who had engaged in extramarital affairs, which eventually led to the resignation of then
 6 House Speaker-Designate Bob Livingston. *Id.*, Ex. 6.¹⁹ Some commentators, including ones
 7 writing in the *Columbia Journalism Review* and the *New York Times*, defend the practice of paying
 8 sources and highlight its ubiquity. *See, e.g.*, Exs. 5, 7.²⁰

9 Third, media entities routinely decide not to run stories for all sorts of reasons – *e.g.*, the
 10 story is not sufficiently well-founded, not yet finished, not “on the record,” not newsworthy, or out
 11 of step with the publication’s editorial stance.²¹ The First Amendment squarely bars any intrusion
 12 into those decisions. *Miami Herald*, 418 U.S. at 256-58. If McDougal’s position were the law,
 13 First Amendment jurisprudence would get turned on its head. For example, if a publisher paid for a
 14 story about a candidate but ultimately had serious doubts about the story’s veracity, then
 15 McDougal’s rule would put the publisher in an intractable dilemma: publish the story and expose
 16 the publisher to a defamation claim brought by the candidate, or decide not to publish and stand
 17 accused of making an illegal in-kind contribution.²² Also, under McDougal’s rule, once a media

18 ¹⁷ Jack Shafer, “Why Not Pay Sources?,” *Slate*, April 29, 2010.

19 ¹⁸ Kelly McBride, *New York Times* opn., “When It’s O.K. to Pay for a Story,” June 9, 2015. Former
 Presidents Eisenhower and Johnson also received payments for interviews. *Id.*

20 ¹⁹ Kelly Heyboer, “Paying For It,” *American Journalism Review*, April 1999. *See also* John Cook,
 21 “Pay Up: Sources have their agendas. Why can’t money be one?,” *Columbia Journalism Review*,
 May/June 2011.

22 ²⁰ Although some may frown on the practice of paying sources, such ethical questions are not the
 23 province of the courts: a “responsible press is an undoubtedly desirable goal, but press
 responsibility is not mandated by the Constitution and like many other virtues it cannot be
 24 legislated.” *Miami Herald*, 418 U.S. at 256; *McCoy v. Hearst Corp.*, 42 Cal. 3d 835, 858 (1986)
 (same); *see also Savage v. Pacific Gas & Elec. Co.*, 21 Cal. App. 4th 434, 445 (1993) (declining to
 wade into differing opinions about journalistic ethics).

25 ²¹ *See* Jack Shafer, “Why Did NBC News Sit On The Trump Tape For So Long?,” *Politico*, Oct.
 26 10, 2016; Howard Kurtz, “Newsweek’s Melted Scoop,” *Washington Post*, Jan. 22, 1998 at C1
 (explaining *Newsweek*’s decision not to run Lewinsky story concerning President Clinton).

27 ²² *See St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) (actual malice can be shown with
 28 “sufficient evidence” that a publisher “entertained serious doubts as to the truth of his publication”).

1 entity “coordinates” with a candidate by making a routine inquiry about the veracity of a story, the
 2 publisher faces a Hobson’s choice: either publish, or stand accused of making an illegal in-kind
 3 contribution.

4 Fourth, even assuming AMI’s editorial decision not to run the McDougal story was
 5 animated by a desire to support the candidacy of Donald Trump, and did benefit him – which AMI
 6 does not concede – it is routine and constitutionally protected for the media to express a political
 7 view. *Miami Herald*, 418 U.S. at 255 (newspapers have a right to advance their political views). In
 8 *Pacific Gas & Elec. Co. v. Public Util. Comm’n*, 475 U.S. 1, 12-13 (1986), the high court struck
 9 down an order requiring a utility company to send customers third party materials critical of the
 10 utility’s views. Relying extensively on *Miami Herald*, the plurality explained that, “[w]ere the
 11 government freely able to compel corporate speakers to propound political messages with which
 12 they disagree, this protection [for speech] would be empty, for the government could require
 13 speakers to affirm in one breath that which they deny in the next.” *Id.* at 16. News publishers have
 14 helped and hurt politicians from time immemorial. Leading periodicals often endorse and excoriate
 15 individual candidates. For example, in 2016, among the 100 largest U.S. newspapers, 57
 16 newspapers endorsed Hillary Clinton, while only two endorsed Donald Trump. Ex. 8.

17 **3. The Agreement Does Not Violate The Federal Election Campaign Act**

18 McDougal’s allegation that the Agreement is illegal under the Federal Election Campaign
 19 Act (“FECA”) is wrong as a matter of law because the FECA does not regulate the press. The
 20 FECA prohibits corporations from making a “contribution” to a federal candidate, 52 U.S.C. §
 21 30118(a), but a “Press Exemption” exempts from the definition of “expenditure” and “contribution”
 22 all costs incurred by the press in covering or publishing news and editorials:

23 Any cost incurred in covering or carrying a news story, commentary, or editorial
 24 by any . . . newspaper, magazine, or other periodical publication, including any
 25 Internet or electronic publication, is not a contribution unless the facility is owned
 or controlled by any political party, political committee, or candidate.²³

26 ²³ 11 C.F.R. § 100.73; *see also* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.132. Congress
 27 emphasized when it passed the Press Exemption in 1974 that “it is not the intent of the Congress in
 28 the present legislation to limit or burden *in any way* the First Amendment freedoms of the press and
 of association. Thus the exclusion assures the unfettered right of the newspapers, TV networks, and

1 The Press Exemption is broad and protects all costs incurred by a press publication to gather
 2 and cover news, pay journalists and researchers, publish and distribute news, as well as its editorial
 3 decisions to publish (or not publish)²⁴ information about campaigns and candidates.²⁵ In
 4 accordance with the seminal decision in *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308
 5 (D.D.C. 1981), the FEC has routinely dismissed allegations of FECA violations against press
 6 entities under the Press Exemption so long as the press entity is not owned or controlled by a
 7 political committee, party or candidate and conducts legitimate press functions. Under the
 8 exemption, “[n]o inquiry may be addressed to sources of information, research, motivation,
 9 connection with the campaign, etc.,”²⁶ including coordination with campaigns.²⁷ It also exempts
 10 “claims of media bias or breaches of journalistic ethics.”²⁸

11 Here, the articles and story right that McDougal contracted to provide AMI are routine
 12 services and content acquired to produce news and information. AMI’s exercise of editorial
 13 discretion to decide whether, when, and how to publish McDougal’s story is also a legitimate press
 14 function exempt from regulation. Therefore, AMI’s costs to acquire this news content are not an
 15 illegal corporate political “expenditure” or “contribution” to a federal candidate as a matter of law.

16 other media to cover and comment on political campaigns.” H.R. Rep. No. 93-1239, 93d Congress,
 17 2d Sess. at 4 (1974) (emphasis added).

18 ²⁴ FEC Matter Under Review (“MUR”) 5562/5570 (Sinclair) (finding no contribution or
 19 expenditure where Sinclair decided not to air a documentary film critical of John Kerry). Pertinent
 20 MUR documents are attached as exhibits to the Goodman Declaration.

21 ²⁵ *Reader’s Digest Ass’n, Inc. v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981) (exempting
 22 costs of consultant to prepare special engineering report); MUR 5569 (KFI-AM 640), First Gen.
 23 Counsel’s Report at 9 (exempting Burbank radio station’s costs of staging “Fire [David] Dreier”
 24 rallies outside candidate’s office).

25 ²⁶ *Reader’s Digest*, 509 F. Supp. at 1215.

26 ²⁷ MUR 5569 (KFI-AM 640), First Gen. Counsel’s Report at 7 (exempting radio show’s on-air
 27 interviews with David Dreier’s opponent Cynthia Matthews); MURs 5540/5545, Statement of
 28 Reasons of Comm’rs Toner, Mason, Smith at 3 (finding no in-kind contribution from decision, in
 alleged coordination with John Kerry campaign, to air a *false* story about President Bush’s national
 guard service, in part, because “[a]llegations of coordination are of no import when applying the
 press exemption”).

²⁸ MURs 5540/5545 (CBS), Statement of Comm’r Weintraub at 2; *accord* MUR 5569 (KFI-AM
 640), First Gen. Counsel’s Report at 7 (exempting biased on-site “rally” to “fire [David] Dreier”);
 MURs 4929/5006/5090/5117 (Los Angeles Times), Statement of Reasons by Comm’rs Wold,
 McDonald, Mason, Sandstrom, Thomas (“Unbalanced news reporting and commentary are included
 in the activities protected by the media exemption.”).

1 In addition to the Press Exemption, AMI's payment to McDougal is not a "contribution"
 2 because the purpose of the payment manifestly appears on the face of the Agreement to have been
 3 for the purchase of journalistic services, content, and a valuable story right.²⁹ Moreover, the
 4 expansive interpretation of "contribution" advanced by McDougal would render the FECA
 5 unconstitutionally vague and overbroad. There is no precedent or guidance treating newsgathering
 6 or an editorial decision not to publish as an illegal in-kind contribution.³⁰ Thus, AMI had no notice
 7 that its conduct might violate McDougal's read of the FECA. McDougal's proposed rule also is
 8 unconstitutionally overbroad because it could be applied to punish any media entity that incurs costs
 9 to secure a source or story, seeks reaction from a candidate, and then decides not to publish the
 10 story.³¹ Even were the Court to entertain such a specious statutory interpretation, the Court would
 11 be required to interpret the FECA to avoid constitutional infirmity under the First Amendment.³²

12 **C. The Agreement Is Not Against Public Policy**

13 "[U]nless it is *entirely plain* that a contract is violative of sound public policy, a court will
 14 *never* so declare. The power of the courts to declare a contract void for being in contravention of
 15 sound public policy is a very delicate and undefined power, and ... should be exercised only in cases
 16 *free from doubt.*" *City of Santa Barbara v. Superior Ct.*, 41 Cal. 4th 747, 777 n. 53 (2007)

17 _____
 18 ²⁹ See 52 U.S.C. § 30101(8)(a) (definition of "contribution" requires payment be made "for the
 19 purpose of influencing an election," rather than other, non-election purposes); 11 C.F.R. §
 20 113.1(g)(6) (a payment made "irrespective of candidacy" is not a "contribution"). The fact that
 21 AMI received, in exchange for \$150,000, services and assets, which it has used for journalistic
 22 purposes, confirms that it did not donate the value to a federal campaign. The fact that a business
 23 expense by AMI may have incidentally benefited a campaign does not transform the expense into a
 24 "contribution." See *Orloski v. FEC*, 795 F.2d 156, 167 (D.C. Cir. 1986).

25 ³⁰ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (a law is unconstitutionally vague
 26 if "it 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is
 27 forbidden by the statute'"); *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964) (vague laws with
 28 "uncertain" boundaries are especially dangerous in the First Amendment arena); cf. *Clifton v. FEC*,
 927 F. Supp. 493, 499 (D. Me. 1996) (observing that the FECA "does not make corporate
 expenditures, occurring after contact with a candidate, into contributions").

³¹ *Buckley v. Valeo*, 424 U.S. 1, 80 (1976) (holding the definition of "contribution" must be
 interpreted narrowly to capture only payments "unambiguously related to the campaign"). AMI
 may challenge the law as overbroad even as applied to third parties. *Broadrick v. Oklahoma*, 413
 U.S. 601, 612 (1973).

³² *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568,
 575 (1988) (courts must interpret statutes to avoid constitutional doubt).

1 (emphasis added; internal quotation marks omitted; ellipses in original). There are ample reasons to
2 doubt McDougal’s contention that the Agreement violates public policy.

3 **1. The Agreement Allows McDougal To Speak, And She Already Has**

4 The basis of McDougal’s “public policy” claim is that the Agreement allegedly “represents
5 an impermissible effort to censor and distort” McDougal’s speech. Compl., ¶ 105. That claim rings
6 hollow. McDougal alleges that she hoped AMI would exercise its editorial discretion not to
7 publish, or in her words “squash,” her story about Trump. She called it the “best of all worlds” and
8 a “win-win for me” if AMI would *not* publish the story. *Id.*, ¶ 47; Ex. 1 at 38:50. In any event, the
9 Amendment expressly allows McDougal to speak to the press about her alleged affair with Trump,
10 and, she did so in her comments to the *New Yorker* and in her one-hour interview on CNN watched
11 by millions. Compl., Ex. B; Exs. 1, 2.³³

12 **2. Public Policy Supports Enforcing Contracts, Including This Agreement**

13 Public policy generally favors enforcing contracts: “Freedom of contract is an important
14 principle, and courts should not blithely apply public policy reasons to void contract provisions.”
15 *Kaufman v. Goldman*, 195 Cal. App. 4th 734, 745 (2011) (internal quotations omitted). Last week,
16 the Court of Appeal observed that film and television producers routinely pay for “access” to a
17 ““story”” the “producers would not otherwise have[.]” *De Havilland v. FX Networks, LLC*, -- Cal.
18 App. 5th --, 2018 WL 1465802 (Mar. 26, 2018), at *8; *see also Navellier*, 29 Cal. 4th at 94.

19 **3. Public Policy Supports The Freedom Of Prelitigation Communications**

20 McDougal’s “public policy” argument also is premised on receiving AMI’s alleged “threats
21 of legal action” to enforce its rights under the Agreement. Compl., ¶¶ 101, 109. Even if they
22 occurred, such “prelitigation communications” – far from violating general assertions of public
23 policy urged by McDougal – would be *speech absolutely protected from liability* under the
24

25 ³³ McDougal alleges that AMI “used” a “PR Firm” to “silence” her. Compl., ¶¶ 66-73. The
26 Amendment states only that AMI would “retain the services of” PR professionals for a total of six
27 months beginning December 1, 2016. *Id.*, Ex. B. *Nothing* in the Amendment required McDougal
28 to follow their advice. She was always free under the Amendment to “respond to legitimate press
inquiries,” which she has done. *Id.* Moreover, the six-month period for which the PR professionals
were retained under the Amendment expired at the end of May 2017 – over 10 months ago. *Id.*

1 litigation privilege, Civil Code § 47(b), which supports the “broadly applicable policy of assuring
 2 litigants ‘the utmost freedom of access to the courts to secure and defend their rights.’” *Rubin v.*
 3 *Green*, 4 Cal. 4th 1187, 1193-95, 1203 (1993) (“policies underlying section 47(b)” barred claim for
 4 injunctive relief).³⁴ Public policy supports *AMI’s* right to engage in prelawsuit communications, not
 5 McDougal’s request to void contracts because of *AMI’s* exercise of such rights.

6 **4. Public Policy Favors *AMI’s* Exercise Of Its First Amendment Rights**

7 In *Miami Herald*, the Supreme Court rejected some of the same purported “public policy”
 8 arguments advanced by McDougal here. Compl., ¶¶ 101-103. The court favored the First
 9 Amendment-based “exercise of editorial control and judgment,” which includes “[t]he choice of
 10 material to go into a newspaper” and its “treatment of public issues and public officials—whether
 11 fair or unfair,” and disapproved a lower court’s opinion that the right of reply statute “enhanced”
 12 free speech and “furthered the ‘broad societal interest in the free flow of information to the public.’”
 13 418 U.S. at 245, 258. The Court came to this conclusion over vigorous argument that the “First
 14 Amendment interest of the public in being informed is said to be in peril because the ‘marketplace
 15 of ideas’ is today a monopoly controlled by the owners of the market,” and that the “‘uninhibited,
 16 robust’ debate is not ‘wide-open’ but open only to a monopoly in control of the press.” *Id.* at 251-
 17 252. Public policy favors *AMI’s* First Amendment right to make editorial judgments over
 18 McDougal’s private effort to take back the right to re-sell her story.

19 **V. CONCLUSION**

20 *AMI* respectfully requests that the Court grant its anti-SLAPP motion in full.

21
 22 DATE: April 2, 2018



23 JEAN-PAUL JASSY
 24 Counsel for Defendant American Media, Inc.

25
 26 ³⁴ The “litigation privilege is absolute” – *i.e.*, if it applies, it does not matter “whether the
 27 communication was made with malice or the intent to harm.” *Kashian v. Harriman*, 98 Cal. App.
 28 4th 892, 913 (2002). New York offers the same broad protections for prelitigation communications.
Front, Inc. v. Khalil, 24 N.Y.3d 713, 719-720 (2015).