IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SANDRA BOLALIN, et al., Plaintiffs, v. GUAM PUBLICATIONS, INC., d/b/a PACIFIC DAILY NEWS, MARSHALL SANTOS, and RICHARD CEYZYK, Defendants.	CIVIL ACTION NO. 92-902 OPINION AND ORDER

The Defendants, Guam Publications, Inc., and Marshall Santos, filed a motion to dismiss on the grounds that the Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

I. STATEMENT OF FACTS

This lawsuit arises out of an article written by Defendant Marshall Santos and published on July 10, 1992, in the Pacific Daily News (PDN). The article is entitled, "*Prostitution in CNMI called health threat.*" Prostitution in the CNMI called health threat, *Pac. Daily News, July 10, 1992, at 1, col. 1 [hereinafter* Prostitution in CNMI*]*.

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The article revealed the results of a study conducted by the World Health Organization (WHO) concerning the spread of sexually transmitted diseases. *Id.* The thesis of the article was that prostitution in the Northern Mariana Islands was "setting [Saipan] up for an epidemic of sexually transmitted diseases" such as Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS). *Id.* The article explained that:

> [t]he WHO report stated that when the study was conducted in December and January, there were 113 bars, massage parlors and karaoke clubs on Saipan that served as points of contact for prostitution.
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> [Defendant Richard] Ceyzyk . . . estimated that there are now about 125 of these establishments, each having at least 25 female prostitutes, which adds up to about 3,125 prostitutes on an island of fewer than 50,000 people.
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> Most of the prostitutes are Filipinos, with a sprinkling of Koreans, Chinese and Thais. They are contract workers who enter the commonwealth as waitresses, and their average length of stay is from one to two years.

Id. at 1, cols. 1-2.

II. PROCEDURAL HISTORY

On July 27, 1992, the Plaintiffs, Sandra Bolalin, et al.,[1] filed suit against the Defendants, Guam Publications, Inc., Marshall Santos, and Richard Ceyzyk for defamation based on the statements contained in the article. On September 18, 1992, the

[1] The Plaintiffs' Amended Complaint identifies all of the named Plaintiffs in this action.

Plaintiffs filed an amended complaint in which they added a cause of action sounding in false light invasion of privacy.

On October 9, 1992, Defendants Guam Publications and Santos filed the motion to dismiss currently under consideration before this Court. On November 5, 1992, this Court held a hearing on the Defendants' motion.

III. ISSUES PRESENTED

The Court will address the following procedural and substantive issues: (1) whether materials other than the complaint may be considered on a Rule 12(b)(6) motion; (2) whether the Superior Court should reject the approach used in section 564A of the *Restatement (Second) of Torts* and adopt the "Intensity of Suspicion" test in analyzing the Plaintiffs' defamation claim; (3) whether the publication of alleged defamatory matter concerning, at the very least, eighty-eight persons meets the requirement contained in the *Restatement (Second) of Torts* § 558 that the statement be "of and concerning the plaintiff;" and (4) whether the safeguards which have grown up around the tort of defamation apply to causes of action sounding in false light invasion of privacy.

IV. ANALYSIS AND DISCUSSION

A. Rule 12(b)(6) of the Commonwealth Rules of Civil Procedure

Rule 12(b)(6) establishes the means by which a court may

determine whether a complaint sets forth a claim upon which relief can be granted.[2] Com. R. Civ. Pro. 12(b)(6). A motion made pursuant to this rule presents a question of law. *In re the Adoption of Magofna*, No. 90-012, slip op. at 3 (Dec. 5, 1990).

In addressing this motion, the court must construe the complaint "in the light most favorable to the plaintiff" and must accept its allegations as true. *Cepeda v. Hefner et al. and Reyes v. Millard*, Appeal Nos. 90-057 & 90-058, slip op. at 5 (N.M.I. Apr. 24, 1992). The complaint must also be liberally construed. *5A C. Wright & A. Miller, Federal Practice and Procedure: Civil* 2d § 1357 (1990) [hereinafter *Federal Practice and Procedure*].

In determining the propriety of a Rule 12(b)(6) motion, a variety of materials may be considered. As a general rule, a grant or denial of the motion must be based on the facts stated in the complaint. *Tenorio v. Camacho*, 3 CR 195, 201 (N.M.I. Tr.

[2] Rule 12(b)(6) provides:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
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> . . .
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> (6) failure to state a claim upon which relief can be granted, . . .

Com. R. Civ. Pro. 12(b)(6).

Ct. 1987). The Court, however, may also take cognizance of any exhibits attached to the complaint, *see* Com. R. Civ. Pro. 10(c) ("any written instrument which is an exhibit to a pleading is a part thereof for all purposes"), and any pertinent legal arguments asserted by the parties, *Ghartey v. St. John's Queens Hosp.*, 869 F.2d 160, 162 (2nd Cir. 1989). Factual allegations included in a party's briefs or memoranda may not be considered on a Rule 12(b)(6) motion. *Id.* (citing *Fonte v. Board of Managers of Continental Towers Condominium*, 848 F.2d 24, 25 (2d Cir. 1988); *see also Kramer v. Scientific Control Corp.*, 365 F. Supp. 780, 787 (E.D. Pa. 1973).

In order for a party to resist a Rule 12(b)(6) motion, the factual allegations included in the complaint must constitute a "statement" within the meaning of Com. R. Civ. Pro 8(a). *Cepeda v. Hefner et al. and Reyes v. Millard, supra*, slip op. at 6 (citing 5A C. Wright & A. Miller, *Federal Practice and Procedure: Civil* § 1357 (1990)). Pursuant to Rule 8(a)(2), the pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Com. R. Civ. Pro. 8(a)(2). It is essential that the complaint include: (1) direct allegations on "every material point necessary to sustain a recovery on any legal theory;" or (2) allegations "from which an inference could fairly be drawn that the evidence of these material points will be introduced at trial." *Cepeda v. Hefner et al. and Reyes v. Millard, supra*, slip op. at 6 (citing *In re*

the Adoption of Magofna, No. 90-012, 1 N.Mar.I. 172 (Dec. 5, 1990)).

In the present case, the Court will consider the Plaintiffs' complaint, the exhibit entitled *Prostitution in the CNMI*,[3] and the Plaintiffs' and Defendants' legal arguments. The Court will evaluate these materials in determining whether the Plaintiffs have stated claims for defamation and for invasion of privacy upon which relief can be granted.

B. Defamation

The Plaintiffs argue that the Court should reject the approach expressed in the *Restatement (Second) of Torts* and adopt an alternative approach known as the Intensity of Suspicion test. The Defendants, in part, premise their 12(b)(6) motion on the grounds that *Restatement (Second) of Torts* § 564A governs the issue of defamation.

1. In analyzing the Plaintiffs' defamation claim, should the Court reject the law as expressed in the *Restatement (Second) of Torts* and apply the Intensity of Suspicion test?

Title 7 of the Commonwealth Code section 3401 states that "the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute . . . , shall be the rules of decision in Commonwealth courts in the absence of

[3] The exhibit was attached to the Plaintiffs' complaint.

written or local customary law to the contrary." The Commonwealth does not have written law which creates a cause of action for defamation. *Borja v. Goodman & Younis Arts Studio, Inc.*, Appeal No. 89-010, slip op. at 7 (N.M.I. June 26, 1990) (Dela Cruz, C.J. concurring). Further, this Court does not know of any customary law on defamation. *Id.* Thus, pursuant to this section, the *Restatement (Second) of Torts* provides the primary source of governing law in this jurisdiction on the issue of defamation. *Id.*; *see also* 7 CMC § 3401.

This Court cannot state strongly enough that it is without power to reject the common law rules as expressed in the *Restatement;* the power to amend the Commonwealth Code is reserved exclusively to the C.N.M.I. Legislature.[4] A rejection of the *Restatement's* approach would contravene not only 7 CMC § 3401 but also the Commonwealth Supreme Court's ruling in *Borja v. Goodman & Younis Arts Studio, Inc., supra,* slip op. at 7. The Plaintiffs' request that this Court reject the *Restatement's* approach is specious at best. Therefore, it is essential to

During oral argument, counsel for Plaintiffs also asserted that the *Restatement* picks up on the language used by the Intensity of Suspicion test in Comment c. Restatement (Second) of Torts *§ 564A cmt. c (1977)*. Comment c states that "a high degree of suspicion [must be]indicated by the particular statement." *Id.* It is clear, however, that the Intensity of Suspicion test does not apply to section 564(b). *See Brady v. Ottaway Newspapers, Inc.*, 445 N.Y.S.2d 786, 793 (N.Y. App. Div. 1981) (citing *National Nutritional Foods Ass'n. v. Whelan*, 492 F. Supp. 374; *Fernicola v. Farrar, Straus & Cudahy*, 27 Misc. 2d 565, 208 N.Y.S.2d 305; *see Restatement (Second) of Torts* § 564A(b) (1977)).

determine whether the Plaintiffs' complaint sufficiently alleges the prima facie case required for defamation as expressed in the *Restatement (Second) of Torts*.

2. Requirements of Defamation

The Plaintiffs allege that the statements contained in *Prostitution in the CNMI* defamed them because the article described the Plaintiffs as prostitutes and therefore imputed "serious sexual misconduct to . . . each individual Plaintiff." Plaintiffs' Amended Complaint for Defamation and Invasion of Privacy, para. 11 (Sept. 18, 1992). They contend that they meet the requirement of the *Restatement (Second) of Torts* § 564A that the alleged defamatory statements were made "of and concerning" them. *See Restatement (Second) of Torts* § 564A (1977) (defamatory matter concerning a group or class).

The Defendants assert that the purported defamatory statements were not "of and concerning" the Plaintiffs because the group to which the article referred is too large. As such, the Defendants argue that the purported defamatory statements do not give rise to liability under section 564A.

The *Restatement (Second) of Torts* § 558 sets forth the elements of defamation.[5] Section 558 requires:

[5] Section 559 states that "[a] communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Restatement (Second) of Torts* § 559 (1977).

(a) a false and defamatory statement *concerning another*;

(b) an unprivileged publication to a third party;

(c) fault amounting at least to negligence on the part of the publisher; and

d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Restatement (Second) of Torts § 558 (1977) (emphasis added). Each element must be present, otherwise liability does not arise. *Borja v. Goodman & Younis Arts Studio, Inc., supra*, slip op. at 8. The plaintiff must, therefore, prove that the purported defamatory statement is "*of and concerning*" the plaintiff. *New York Times Co. v. Sullivan*, 376 U.S. 254, 288, 84 S.Ct. 710, 730 (1964); *Hansen v. Stoll*, 636 P.2d 1236, 1240 (Ariz. Ct. App. 1981).

Section 564A establishes the rules governing group or class defamation. This section provides that:

> One who publishes defamatory matter concerning a group or class of persons is subject to liability to an individual member of it if, but only if,
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> (a) the group or class is *so small* that the matter can *reasonably be understood* to refer to the member, or
>
> (b) the circumstances of publication reasonably give rise to the conclusion that there is *particular reference to the member*.

Restatement (Second) of Torts § 564A (1977) (emphasis added). As a general rule, where defamatory statements about a large

class or group are published, no cause of action lies.[6] *Id.*, § 564A cmt. a; *Arcand v. Evening Call Publishing Co.*, 567 F.2d 1163, 1164 (1st Cir. 1977) (citing *Restatement of Torts* § 564A(c) (1977)); *Loeb v. Globe Newspaper Co.*, 489 F. Supp. 481, 483 (D. Mass. 1980); Neiman-Marcus v. Lait, 13 F.R.D. 311, 315 (S.D.N.Y. 1952) (citing *Restatement (Second) of Torts* 564A(c) (1977)); *see, e.g., Webb v. Sessions, 531 S.W.2d 211 (Tex. Ct. App. 1975).* "No individual member of the group can recover for such broad and general defamation."[7] *Restatement (Second) of Torts* § 564A cmt. a; *see also Neiman-Marcus*, 13 F.R.D. at 316 (citing *Noral v. Hearst*, 104 P.2d 860 (Cal. Dist. Ct. App. 1940) (all officials of a state-wide union); *Fowler v. Curtis Publishing Co.*, 182 F.2d 377 (D.C. Cir. 1950) (sixty taxicab drivers in the District of Columbia); *Service Parking Corp. v. Washington Times Co.*, 92 F.2d 502 (D.C. Cir. 1937) (group of ten to twelve parking lot owners in District of Columbia); *Louisville Times v. Stivers*, 68 S.W.2d 411 (Ky. 1934) (members of a clan)). The exception to this rule is that recovery may lie where the "circumstances [point] to a particular plaintiff" as the individual defamed. *Neiman-Marcus*,

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[6] This rule applies despite the use of inclusive language. *Neiman-Marcus*, 13 F.R.D. at 315.

[7] The Comments further illustrate this principle through the use of the statement that "All lawyers are shysters," or "that a great many persons engaged in a particular trade or business or those of a particular race or creed are dishonest." *Restatement (Second) of Torts* § 564A cmt. a (1977). Under these circumstances, the statement cannot be said to personally refer to any member of the class. *Id.*

13 F.R.D. at 316 (reference to "saleswomen" who numbered 382 was insufficient to support finding of particularity); *see also Restatement (Second) of Torts* § 564A(b) (1977); *Michigan United Conservation Clubs v. CBS News*, 485 F. Supp. 893, 899, 901 (W.D. Mich. 1980), *aff'd*, 665 F.2d 110 (6th Cir. 1981); *Gintert v. Howard Publications, Inc.*, 565 F. Supp. 829, 832-33 (N.D. Ind. 1983).

Where libelous statements are published about a small group or class, and the statements concern each and every member of that group, then any individual member can sue. *Neiman-Marcus, 13 F.R.D. at 316; National Nutritional Foods,* 492 F. Supp. at 380. The Comments to section 564A explain that:

> [w]hen the group or class defamed is sufficiently small, the words may reasonably be understood to have personal reference and application to any member of it, so that he is defamed as an individual. . . .[8] It is not possible to set definite limits as to the size of the group or class, but the cases in which recovery has been allowed usually have involved *numbers of 25 or fewer.*

Restatement (Second) of Torts § 564A cmt. b (1977) (emphasis added) (footnote added).

Liability for defamation has also arisen where only a portion of a small group was defamed. *Neiman-Marcus*, 13 F.R.D. at 315; *Gintert*, 565 F. Supp. at 834. This principle similarly

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[8] By way of example, the Comments use the illustration where in someone states, "[t]hat jury was bribed." *Restatement (Second) of Torts* § 564A cmt. b (1977). There, one could reasonably believe that each of the twelve jurors had been bribed. *Id.*

requires a showing of particularity. *Restatement (Second) of Torts* § 564A(b); *id.*, § 564A cmt. c; *Arcand*, 567 F.2d at 1164; *Loeb*, 489 F. Supp. at 484 (three plaintiffs representing a total of eight editors asserted but failed to support the special application of the statements to them). To that end, a "high degree of suspicion [must be] indicated by the particular statement."[9] *Restatement (Second) of Torts* § 564A cmt. c (1977).

In light of these principles, it is essential that the Plaintiffs establish the size of the group. An examination of the complaint reveals there are currently eighty-eight named Plaintiffs who are Filipinos and who work as waitresses in bars and karaoke clubs in the C.N.M.I. Plaintiffs' Amended Complaint, para. 2. According to the article, there are approximately 3,125 prostitutes on this island. Thus, the actual size of the group most likely ranges anywhere from 88 to 3,125 persons. This Court, however, is reluctant to engage in speculation as to the size of the size of the group. Given that the Plaintiffs have "failed to close the numerical size of the group," the Plaintiffs complaint is dismissed. *See Neiman-Marcus*, 13 F.R.D. at 313.

Even if the Plaintiffs had closed the numerical size of the group, the cause of action for defamation must fail. The article

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[9] The *Restatement* further illustrates this principle in the following manner: "the assertion that one man out of a group of 25 has stolen an automobile may not sufficiently defame any member of the group, while the statement that all but one of the group of 25 are thieves may cast a reflection upon each of them." *Restatement (Second) of Torts* § 564A cmt. c (1977).

does not specifically charge or identify a particular person as engaging in prostitution on the island. *See, e.g., Hansen*, 636 P.2d at 1241 (liability arose only as to the five plaintiffs who were specifically named). The article explains that there are presently approximately 125 "massage parlors and karaoke clubs on Saipan that served as points of contact for prostitution;" that each establishment has "at least 25 female prostitutes;" and that "most of the prostitutes are Filipinos, with a sprinkling of Koreans, Chinese and Thais." When read together, the statements charge misconduct of a group as a whole. *See, e.g., Michigan United Conservation Clubs*, 485 F. Supp. 898-99 (citing *Watson v. Detroit Journal Co.*, 107 N.W. 81, 85 (1906) (emphasis in original) (defamatory statement about trading stamp concerns applied to "men engaged in the business and *not to any particular person engaged therein*")).

Further, viewing the complaint in the light most favorable to the Plaintiffs, the size of the group consists of, at the very least, eighty-eight individuals. The group thus does not meet the requirement that it be "*so small* that the matter can reasonably be understood to refer" to an individual member of the group. *See Restatement (Second) of Torts* § 564A(a) (1977) (emphasis added); *id.*, § 564A cmt. b ("cases in which recovery has been allowed have usually involved numbers of *25 or fewer*") (emphasis added); *see, e.g., Fowler*, 182 F.2d 377 (article that severely disparaged District of Columbia taxicab drivers was not

actionable where plaintiff was one of sixty taxicab drivers); *Service Parking Corp.*, 92 F.2d at 503 (statement about "the chiseling of parking lot owners and garages" held not to refer to plaintiff lot owner with sufficient particularity because the class included twenty to thirty parking lots owned by ten or twelve owners). The number of Filipino waitresses who work in karaoke clubs and massage parlors would appear to be much larger than the 60 taxicab drivers in *Fowler* and the twelve parking lot owners in *Service Parking Corp.* Further, in the present case, a reasonable person who read the article simply would not deduce that it was referring to a particular waitress.

Finally, given that the group is large, the Plaintiffs' amended complaint must include averments showing that the particular circumstances point to the Plaintiffs as the persons who were libelled. *See, e.g., Noral*, 104 P.2d at 862 (statement about 162 officials was not made "of and concerning" plaintiffs). To that end, the Plaintiffs have alleged that the article "sufficiently identifies" them "as persons engaged in prostitution," and that the statements made in the article defamed the Plaintiffs and *each of them* by describing them as prostitutes. Plaintiffs' Amended Complaint, paras. 7, 11. It is not enough, however, to generally allege that the libellous statement was made "of and concerning . . . each of them." *Neiman-Marcus*, 13 F.R.D. at 317 (citing *Noral v. Hearst Publications, Inc.*, 104 P.2d 860, 862 (Cal. Ct. App. 1940)).

This Court holds that no statement "of and concerning" the Plaintiffs can be inferred from the article. The statement cannot be reasonably understood to refer to any member of the group as a matter of law. The Plaintiffs have failed to state a claim for defamation upon which relief can be granted. Therefore, the Defendants' motion to dismiss this claim is granted.

C. <u>False Light Invasion of Privacy</u>

The Plaintiffs contend that *Prostitution in the CNMI* portrayed the Plaintiffs individually and as a group in a false light by describing them as prostitutes. The Defendants argue that the tort cannot arise because the group whose privacy was invaded was too large.[10]

The threshold issue is whether the various restrictions which have developed in defamation law apply to a cause of action

[10] The Defendants also assert that "failure to dismiss the complaint would result in an unconstitutional chilling of free speech on an issue of great public concern and importance (AIDS)." *Id.* As a general rule, the Court will decline to rule on a constitutional issue where the Court can dispose of the matter on non-constitutional grounds. *Marianas Public Land Trust v. Marianas Public Land Corp.*, 1 CR 974, 978 (N.M.I. Tr. Ct. 1984). In the instant case, the Court holds that the Plaintiffs cannot make out a prima facie case for false light because the statements contained in the article were not "of and concerning" the Plaintiffs. *See Restatement (Second) of Torts* §§ 652E and 564. Therefore, the Court will not address the constitutional argument raised by the Defendants.

sounding in false light invasion of privacy.[11]

Although defamation and false light[12] are distinct torts,[13]

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[11] The Court's decision in the present case is limited to the issue stated. The Commonwealth Code, however, contains statutory provisions that apply to defamation actions. *See* 7 CMC § 2411 (Uniform Single Publication Act); 7 CMC § 2412 (judgment as bar to other actions). The Court need not address the issue of whether 7 CMC § 2411 prohibits plaintiffs from alleging two causes of action based on a single publication.

[12] Section 652E of the *Restatement (Second) of Torts* sets forth the prima facie case for false light as follows:

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if
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> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
>
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Restatement (Second) of Torts § 652E.

[13] The Comments to section 652E explain the distinction between the torts of defamation and invasion of privacy. Comment b states:

> The interest protected by this Section is the interest of the individual in not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than as he is. . . . .
>
> It is not, however, necessary to the action for invasion of privacy that the plaintiff be defamed. it is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position . . . .

Restatement (Second) of Torts § 652E cmt. b (1977).

many of the same considerations apply to both torts. *Cibenko* v. *Worth Publishers, Inc.*, 510 F. Supp. 761, 766 (D.N.J. 1981); *Restatement (Second) of Torts* § 652E cmt. e (1977). The Comments to section 652E state that:

> [w]hen the false publicity is also defamatory so that either action can be maintained by the plaintiff, it is arguable that limitations of long standing that have been found desirable for the action for defamation should not be successfully evaded by proceeding upon a different theory of later origin, in the development of which the attention of the courts has not been directed to the limitations.

Restatement (Second) of Torts § 652E cmt. e (1977).

The *Restatement* further explains that there is no universal answer to this issue. *Id.* The resolution must depend upon the "nature of the particular restrictive rule . . . and the circumstances of the case, . . ." *Id.*; *accord Michigan United Conservation Clubs* v. *CBS News*, 485 F. Supp. at 904.

Michigan United Conservation Clubs addressed the issue of whether the *Restatement's* restrictions that govern group or class defamation should be extended to claims of false light.[14] 485 F. Supp. at 904; *see Restatement (Second) of Torts* §§ 564A

Thus, while defamation protects one's reputation, false light privacy is intended to safeguard the "interest in dignity." Restatement (Second) of Torts §§ 559, 652E; Prosser & Keeton on the Law of Torts § 117 at 864 (5th ed. 1984); 1 George B. Trubow, Privacy Law and Practice, par. 1.04[1] (1991) (treatise available upon request in the Superior Court library).

[14] This Court has not found any decisions that have addressed this issue other than *Michigan United Conservation Clubs*, 485 F. Supp. 893, and counsel for the Plaintiffs have cited none.

(defamation of group or class), 652E (publicity placing a person in false light). The court reasoned:

> [i]n at least one respect, the torts of defamation and false light are similar. An element of defamation is that the publication be "a false and defamatory statement concerning *another*." *Id.*, § 558 (emphasis supplied); an element of false light requires that one give "publicity to a matter concerning *another* that places the *other* in a false light." *Id.*, § 652E (emphasis supplied). Each tort is directed toward a particular individual, and in the areas of defamation this has given rise to the rule that a publication is not actionable unless it is "of and concerning" the individual plaintiff. *Id.*, §§ 564 and 564A. This court can find no reason why a similar rule should not be extended to claims of false light.

Michigan United Conservation Clubs, 485 F. Supp. at 904. The court thus held that an individual member of a defamed group can proceed with a false light claim only if: (a) "the group or class is so small that the publicity can be reasonably understood as referring to that individual, or (b) the circumstances surrounding the publicity reasonably give rise to the conclusion that there is a particular reference to that individual." *Id.* at 904 (citing *Restatement (Second) of Torts* § 564A (1977))

This Court agrees with and adopts the interpretation of sections 564A and 652E as set forth in *Michigan United Conservation Clubs*. The Court will, therefore, analyze the Plaintiffs' complaint in light of *Michigan United Conservation Clubs'* analysis.

In the present case, the Plaintiffs contend that the Defendants published falsehoods concerning Filipino waitresses who work at karaoke clubs and massage parlors. The thrust of

their argument is that the publication of the article placed this group in a false light and in so doing injured each member of the group.

The group is comprised of, at the very least, eighty-eight persons. The group, therefore, is not so small that the publicity can be reasonably understood as referring to each individual. Also, the Plaintiffs have not shown that the circumstances surrounding the publicity reasonably give rise to the conclusion that there is a particular reference to any individual. Therefore, the statements contained in the article were not "of and concerning" the Plaintiffs.

For these reasons, the Plaintiffs' claim for false light invasion of privacy is dismissed.

V. CONCLUSION

In light of the foregoing discussion, the Defendants' motion to dismiss pursuant to Com. R. Civ. Pro. 12(b)(6) is GRANTED.

DATED this 3rd day of December, 1992.

ALEXANDRO C. CASTRO
Associate Judge