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Punishing Bad Actors: The Expansion of Morals Clauses in Hollywood Entertainment Contracts in the Wake of the #MeToo Movement

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PUNISHING BAD ACTORS: THE EXPANSION OF MORALS CLAUSES IN HOLLYWOOD ENTERTAINMENT CONTRACTS IN THE WAKE OF THE #METOO MOVEMENT

JIHAD SHEIKHA *

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I. INTRODUCTION

Nothing seems to sell a story more than a good scandal.¹ The siren call of celebrity gossip manages to lure the everyday Joe Shmoe and Jane Doe into clicking the latest *TMZ* article or video on their social media feed, picking up a crumpled *US Weekly* at the doctor's office, or for the more open-minded, flipping through the *National Enquirer* to investigate the latest appearance of Big Foot.² "Our appetite for celebrity gossip is . . . insatiable" and we particularly crave two things: *Fame and bad news*.³ That is why it is no surprise that the bombshell of #MeToo took the world by storm in late 2017.⁴ The #MeToo movement generated story after story of the career-ending malfeasance committed by our most beloved celebrities and public figures, in addition to reports of the steep financial consequences endured by Hollywood's studios, production companies, and distributors.⁵ Soon, a mere social media hashtag instilled fear into the hearts of prominent male celebrities once thought to be untouchable.⁶ The upper echelon of Hollywood took notice and scrambled for a means to distance themselves from toxic talent and terminate their existing contracts.⁷ However, absent breaching a contract illegally, many Hollywood companies did not have the legal means to end these agreements and, subsequently, lost millions of dollars.⁸ As a solution to their woes, Hollywood is now considering the morals clause, a heavily-negotiated provision in a talent agreement that allows for the termination of said agreement under certain circumstances.⁹

The consideration of morals clauses in the wake of the #MeToo movement is not a surprise.¹⁰ These contractual provisions have become

1. Dana Dovey, *Rumor Has It: The Science Behind Why We Love Celebrity Gossip and Tabloid Magazines*, MED. DAILY (Nov. 24, 2015, 9:00 AM), <http://www.medicaldaily.com/rumor-has-it-science-behind-why-we-love-celebrity-gossip-and-tabloid-magazines-362710>.

2. *See id.*

3. *Id.*

4. *See id.*; Regan Morris, *Is #MeToo Changing Hollywood?*, BBC: NEWS (Mar. 3, 2018), <http://www.bbc.com/news/world-us-canada-43219531>.

5. *See* Tatiana Siegel, *#MeToo Hits Movie Deals: Studios Race to Add Morality Clauses to Contracts*, HOLLYWOOD REP. (Feb. 7, 2018, 6:50 AM), <http://www.hollywoodreporter.com/node/1082563>.

6. *See* Morris, *supra* note 4; Kyle Smith, *A Male Backlash Against #MeToo Is Brewing*, N.Y. POST (Feb. 3, 2018, 2:43 PM), <http://www.nypost.com/2018/02/03/a-male-backlash-against-metoo-is-brewing/>.

7. *See* Siegel, *supra* note 5.

8. *See id.*

9. *Id.*

10. *See* Stephen M. Gallagher, Note, *Who's Really Winning?: The Tension of Morals Clauses in Film and Television*, 16 VA. SPORTS & ENT. L.J. 88, 88 (2016) (discussing the standard nature of morals clauses in the entertainment industry).

standard practice in advertising, motion pictures, and television agreements and are generally upheld by the courts.¹¹ “Morals clauses give [an] employer . . . the right to terminate a talent [contract]” if the talent fails to conduct himself according to the moral standards of society, thereby tarnishing his own reputation and the reputation of his employer.¹² For example, a contract could have a morals clause allowing for the termination of the agreement in the event that the hired talent is convicted of a drug offense.¹³ Upon the talent’s conviction, the morals clause is triggered and the talent’s employer has the right to terminate the contract.¹⁴

In the midst of countless celebrity accusations of sexual impropriety, morals clauses seem to be an effective tool Hollywood can use to combat negative publicity generated by toxic talent who have lost their status and, most importantly, their value.¹⁵ In light of the recent wave of sexual assault allegations that rocked Hollywood, studios and production companies plan to use morals clauses more often and broaden their language to account for possible accusations of sexual assault and violence committed by their talent.¹⁶ By including language that allows for the termination of a talent agreement if allegations of sexual misconduct come to light, Hollywood studios can effectively mitigate potential financial losses associated with these accusations.¹⁷ However, some fear that broader morals clauses that are triggered upon mere accusations set a bad precedent for the industry because they could be used unfairly or even be abused by studios and production companies.¹⁸

This Comment will address these concerns and others that arise out of the use of broader and more expansive morals clauses.¹⁹ In addition to defining the morals clauses and identifying its components, this Comment will explore the historical evolution of morals clauses from the 1920s up to the modern era.²⁰ This Comment will also provide useful background

11. *Id.*; Noah B. Kressler, Note, *Using the Morals Clause in Talent Agreements: A Historical, Legal and Practical Guide*, 29 COLUM. J.L. & ARTS 235, 235 (2005).

12. Gallagher, *supra* note 10, at 88.

13. Kressler, *supra* note 11, at 245–46.

14. *Id.*

15. *See id.* at 244 (discussing the value of morals clauses in the television and motion picture industry); Gallagher, *supra* note 10, at 90.

16. *See* Natalie Robehmed, *The Morality Clause: How #MeToo Is Changing Hollywood Dealmaking*, FORBES (Mar. 29, 2018, 11:22 AM), <http://www.forbes.com/sites/natalierobehmed/2018/03/29/the-morality-clause-how-metoo-is-changing-hollywood-dealmaking>.

17. *Id.*

18. *Id.*

19. *See* discussion *infra* Part II–IV.

20. *See* discussion *infra* Part II.

information of the #MeToo movement and its effects on Hollywood by providing in-depth case studies on the Harvey Weinstein, Kevin Spacey, and Louis C.K. allegations that led to their pariah status in the entertainment industry and cost their employers millions of dollars.²¹ Ultimately, this Comment's proposition is that we should have little concern over broader morals clauses because they are in essence very similar to past morals clauses that were upheld by the courts, will likely not be abused, and will facilitate the necessary shift in cultural norms in Hollywood by shedding light on the epidemic of workplace sexual harassment and assault.²²

II. A BRIEF OVERVIEW OF MORALS CLAUSES

A. *Morals Clauses Defined*

In contract law, morals clauses are contractual provisions that give the employer the right to terminate the agreement in the event that the employee behaves in a way that negatively impacts his or her own public image and thereby damages the reputation of the employer by association.²³ Morals clauses are sought after by many contracting companies in an effort to protect themselves from the immoral and reckless conduct of the employee—commonly called the talent—and to ensure that the value of the film or television program is not compromised.²⁴ Additionally, morals clauses are used “to quickly disconnect the celebrity/product association in the consumer’s mind.”²⁵ There are two elements of a morals clause: The immoral behavior deemed to trigger the morals clause and the employer’s options after the clause has been triggered.²⁶ The subjective nature of morals is a point of frequent contention in entertainment contract negotiations and consequently leads talent to seek legal recourse to deny being bound to its language.²⁷

1. Negotiating Morality

Morals clauses in contracts cover conduct that disregards public morals and decency, shocks or insults the community, or casts a negative

21. See discussion *infra* Part III–V.

22. See discussion *infra* Part VI.

23. Gallagher, *supra* note 10, at 90.

24. *Id.*; see also Kressler, *supra* note 11, at 244.

25. Kressler, *supra* note 11, at 241.

26. 14 MICHAEL P. ZWEIG, BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS 768 (4th ed. 2016).

27. Gallagher, *supra* note 10, at 90–91 (discussing how the subjective nature of morals clauses leads to litigation).

light on the talent themselves, “the financier, the producer, the employer, or the distributor.”²⁸ However, due to the inherent subjectivity of the term morality, it can be quite difficult to pinpoint what *public morals or decency* actually refers to.²⁹ This ambiguity lies in the fact that the nature of morality is rooted in community customs that vary from community to community and from generation to generation.³⁰ In fact, yesterday’s societal taboos may be socially accepted today.³¹ For example, in the past, an employee’s homosexuality might have been the triggering offense that terminated a contract, while, in the present, an employee making homophobic statements might be the trigger.³² Thus, there is no uniformly accepted legal definition of a moral standard nor can there truly be one single accepted definition due to the constant evolution of moral standards in society.³³ Naturally, Hollywood studios typically adopt an “I know it when I see it” approach when evaluating their employees conduct.³⁴ In an attempt to deal with this

28. 2 THOMAS D. SELZ ET AL., ENTERTAINMENT LAW 3D: LEGAL CONCEPTS AND BUSINESS PRACTICES § 9:107, Westlaw (database updated Dec. 2018).

29. See Schuyler Moore, *Morality Clauses in Hollywood: What You Need to Know*, FORBES (Mar. 12, 2018, 5:27 PM), <http://www.forbes.com/sites/schuylermoore/2018/03/12/morality-clauses-in-hollywood/>.

[I]t is rather difficult to discern a definition for *morality* or *moral behavior* applicable in all circumstances. This is especially true when one considers the . . . sensitivity of making such an evaluation. At the very least, moral behavior refers to behavior that comports to an existing code of conduct put forward by a society.

Fernando M. Pinguelo & Timothy D. Cedrone, *Morals? Who Cares About Morals? An Examination of Morals Clauses in Talent Contracts and What Talent Needs to Know!*, 19 SETON HALL J. SPORTS & ENT. L. 347, 352 (2009) (emphasis added).

30. Pinguelo & Cedrone, *supra* note 29, at 352 (discussing how moral standards change over time); see also Michael Moore, *Moral Reality*, 1982 WIS. L. REV. 1061, 1096 (1982) (discussing how societal values change and will continue to change). “History teaches us that systems of values evolve, and there is no reason to think that the process is at an end.” Moore, *supra*.

31. Gallagher, *supra* note 10, at 91. “As everyone knows, moral standards seem to ebb and flow with the times. In many cases what was thought to be improper in 1951 is deemed perfectly acceptable in 2016.” *Id.*

32. Moore, *supra* note 29.

33. Gallagher, *supra* note 10, at 91; see also Moore, *supra* note 30, at 1096; Pinguelo & Cedrone, *supra* note 29, at 352 (discussing the inherent subjectivity of morality). “The skeptical conclusion is that our present system of values cannot be regarded as *right* or *objective* because we know it will change in the future.” Moore, *supra* note 30, at 1096.

34. See *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

I have reached the conclusion, which I think is confirmed at least by negative implication in the Court’s decisions since *Roth* and *Alberts*, that under the First and Fourteenth Amendments criminal laws in this area are constitutionally limited to hard-core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.

Id.

moral conundrum, a test has been established to evaluate whether an employee's conduct meets the requirement of being immoral.³⁵ "The test is 'not morality in the abstract, but whether taking the nature of the plaintiff's employment into account the acts complained of rendered the plaintiff unfit to perform the duties which he had undertaken.'"³⁶ Thus, an employee's actions *showing dishonesty and untrustworthiness* justifies the employee's dismissal because the employer "can no longer place faith and trust in the employee . . . or, as a result of the employee's behavior, the public would be disposed to curtail business relations with the employer."³⁷ Therefore, the triggering offense that gives the employer the right to terminate the contract is usually conduct that is likely to damage the employer's reputation and potentially hurt the company financially.³⁸

During the negotiation process, talent typically seek to have morals clauses narrowly tailored to be triggered only in the event of specific reprehensible conduct, such as conviction of a felony, making it more difficult to trigger the morals clause.³⁹ On the other hand, the employer seeks to draft broader clauses that allows for the termination of the contract for various offenses such as accusations, arrests, and public indecency.⁴⁰ Broader language gives the employer greater discretion over when the morals clause is invoked and thus when the contract is terminated.⁴¹

2. Termination and Defenses

Invoking a morals clause in an entertainment contract is a *complex business decision* that must consider whether the employee's actions are sufficiently likely to damage the employer-employee relationship so that a continued relationship would cause harm to the employer or their investment.⁴² Employers typically consider the severity of the employee's conduct and the overall investment in the project.⁴³ However, "[a] morals clause [can] also be [triggered by] the perception of wrongdoing, rather than

35. 19 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS 632–33, (4th ed. 2016) (quoting *Child v. Boyd & Corey Boot & Shoe Mfg. Co.*, 56 N.E. 608, 609 (Mass. 1900)).

36. *Id.*

37. *Id.* at 633.

38. See Gallagher, *supra* note 10, at 90, 104.

39. ZWEIG, *supra* note 26, at 768.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

actual” evidence of wrongdoing.⁴⁴ Past misconduct that becomes public can also trigger a clause.⁴⁵ While it can be argued that morals clauses give the contracting company immense power over the agreement, the talent is not without legal recourse.⁴⁶ “[L]itigation often comes in the form of a suit for wrongful termination or in a breach of an employment contract claim because the talent believes that his or her behavior did not trigger the clause due to either ambiguity in the clause itself or a lack of required notice.”⁴⁷

B. *A Brief History of the Morals Clause*

“[M]orals clauses have [appeared] in . . . contracts for nearly a century.”⁴⁸ Introduced in the early 1920s, morals clauses have been prevalent in entertainment contracts and have been “generally upheld by the courts.”⁴⁹ However, the type of immoral conduct these clauses targeted have changed over the years.⁵⁰ Initially, morals clauses were used to aid in the *pre-World War II era* crusade against celebrity sin.⁵¹ Then, studios attempted to stamp out the alleged Communist invasion in Hollywood during the McCarthy era by invoking morals clauses.⁵² Finally, today, morals clauses are primarily used to uphold the ethical standards that contracting companies are expected to live up to by the public.⁵³ Today, there is a shift in application of morals clauses where studios and production companies now seek to target Hollywood’s prevalent problem of rampant sexual assault accusations against prominent male celebrities.⁵⁴ Nevertheless, throughout the course of history, there has been a consistent theme regarding the addition of morals clauses: Protecting the company’s image in the public eye.⁵⁵

44. Lauren Rosenbaum, Comment, *140 Characters or Less: A Look at Morals Clauses in Athlete Endorsement Agreements*, 11 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 129, 133 (2015).

45. *Id.*

46. Gallagher, *supra* note 10, at 90–91.

47. *Id.*

48. Robehmed, *supra* note 16.

49. Gallagher, *supra* note 10, at 88; Robehmed, *supra* note 16.

50. Caroline Epstein, Note, *Morals Clauses: Past, Present, and Future*, 5 N.Y.U. J. INTELL. PROP. & ENT. L. 72, 78 (2015) (discussing the evolution of morals clauses).

51. Gallagher, *supra* note 10, at 92.

52. Epstein, *supra* note 50, at 76.

53. Gallagher, *supra* note 10, at 92.

54. *See* Robehmed, *supra* note 16.

55. Epstein, *supra* note 50, at 75. “Businesses spend considerable sums of money to cultivate the ideal image, and negative associations can wreak havoc upon their efforts.” *Id.*

1. The Origin of the Morals Clause

In the early 1920s, Hollywood was frequently at odds with the religious sentiment of the rest of the United States, which viewed Hollywood as a cesspool of celebrity sin.⁵⁶ Many theorized that this perception led to a dip in movie ticket sales which stagnated the motion picture industry.⁵⁷ This slump in sales was further exacerbated by the “Fatty” Arbuckle incident—Hollywood’s first celebrity scandal.⁵⁸ In 1921, beloved comedian Roscoe “Fatty” Arbuckle signed a multi-year, “[\$3,000,000] contract with Paramount Pictures.”⁵⁹ That year, the popular comedian hosted a Labor Day party in his San Francisco hotel suite where actress Virginia Rappe was later found to be severely injured and subsequently died of her injuries.⁶⁰ After Rappe’s death, Arbuckle was charged with her murder and accused of rape.⁶¹ Arbuckle was ultimately acquitted of this charge but could not free himself from the shackles of the negative public perception that lingered.⁶² Learning at the expense of Paramount Pictures, Universal Film Company executives enacted a new company policy stating “that morals clauses would be added to all existing and new actor agreements.”⁶³ These new clauses permitted the contracting company to discontinue talents’ salaries if they “forfeit[ed] the respect of the public.”⁶⁴ The provision stated:

The actor—actress—agrees to conduct himself—herself—with due regard to public conventions and morals and agrees that he—she—will not do or commit anything tending to degrade him—her—in society or bring him—her—into public hatred, contempt, scorn, or ridicule, or tending to shock, insult or

56. 2 THOMAS D. SELZ ET AL., ENTERTAINMENT LAW 3D: LEGAL CONCEPTS AND BUSINESS PRACTICES § 9:106, Westlaw (database updated Dec. 2018).

57. *Id.*

58. See Jude Sheerin, *Fatty Arbuckle and Hollywood’s First Scandal*, BBC: NEWS (Sept. 4, 2011), <http://www.bbc.com/news/magazine-14640719>. “Los Angeles-based film historian Cari Beauchamp says: ‘This was the first scandal in Hollywood with box office implications.’” *Id.*

59. Epstein, *supra* note 50, at 76.

60. Sheerin, *supra* note 58. “The star, thought to have weighed about [two hundred and sixty pounds] . . . was portrayed as a fat brute who had pinned down his prey, rupturing her bladder.” *Id.*

61. *Id.*

62. Tom Moran, *Review — Books: Sorting Through a Sordid Tale*, WALL STREET J. (Oct. 5, 2013), at C14. Two trials ended with hung juries, and the third jury not only acquitted Arbuckle, but went out of its way to issue a statement declaring him “entirely innocent and free from all blame.” *Id.*; Sheerin, *supra* note 58.

63. Gallagher, *supra* note 10, at 93.

64. *Morality Clause for Films: Universal Will Cancel Engagements of Actors Who Forfeit Respect.*, N.Y. TIMES, Sept. 22, 1921, at 8.

offend the community or outrage public morals or decency, or tending to the prejudice of the Universal Film and Manufacturing Company or the motion picture industry.⁶⁵

Universal Studios sought to use morals clauses to achieve three specific goals to mitigate the public admonishment of Hollywood.⁶⁶ First, the new provisions were thought to remedy the perceived morally decrepit celebrity lifestyle by acting as a *restraining influence* on actors and actresses.⁶⁷ Second, the clauses were intended to reassure the public that their screen idols were exemplary moral figures.⁶⁸ Third, the morals clauses were drafted to protect Universal Studios' investment worth hundreds of thousands of dollars at the time.⁶⁹ The morals clauses of today still mirror the language used by Universal Studios in 1921 and are used in essentially the same manner.⁷⁰

2. The Clauses Confront Communism

Beginning in late 1947 to the 1950s, morals clauses expanded to brand new territory—the political arena.⁷¹ This era marked the evolution of the morals clause where they were employed as tools to stifle political ideology and affiliation, rather than to target actual immoral conduct.⁷² During this era of United States history, Americans were deeply concerned with the spread of Communist ideas to the United States.⁷³ In response to this Red Scare, the House Committee on Un-American Activities (“HUAC”) was created and tasked with investigating private citizens, employees, and organizations for potential ties to Communism.⁷⁴ In addition to targeting government officials and labor unions, HUAC eventually turned its suspicion to Hollywood.⁷⁵ HUAC served forty-three subpoenas upon studio directors,

65. *Id.*

66. *See id.*

67. *Id.*

68. *See id.* The exact quote reads: “[I]t will reassure the public, who for the moment may be inclined to fear . . . their screen idols have feet of clay” *Morality Clause for Films: Universal Will Cancel Engagements of Actors Who Forfeit Respect.*, *supra* note 64.

69. *Id.*

70. Gallagher, *supra* note 10, at 97.

71. SELZ ET AL., *supra* note 56, at § 9:106.

72. Pinguelo & Cedrone, *supra* note 29, at 355.

73. *See House Un-American Activities Committee*, ELEANOR ROOSEVELT PAPERS PROJECT, <http://www2.gwu.edu/~erpapers/teaching/glossary/huac.cfm> (last visited May 1, 2019).

74. Kressler, *supra* note 11, at 238; *House Un-American Activities Committee*, *supra* note 73.

75. Kressler, *supra* note 11, at 238.

writers, and actors seeking to uncover an alleged Communist infiltration of Hollywood.⁷⁶ Ten of these individuals were deemed *unfriendly* by the HUAC for their failure to testify about their political affiliation.⁷⁷ These ten later came to be known as the *Hollywood Ten*.⁷⁸ This notoriety caused three of the ten writers, Lester Cole, Ring Lardner, and Robert Scott, to be terminated from employment by their respective studios due to their morals clauses being triggered.⁷⁹

The McCarthy era marked the first time morals clauses had been litigated in court which ultimately ensured that morals clauses would gain enough judicial acceptance to endure into the modern age.⁸⁰ In *Loew's, Inc. v. Cole*,⁸¹ Lester Cole brought suit against his former employer, Loew's (under the trade-name MGM), for the termination of his contract after he refused to testify in front of the HUAC.⁸² Cole brought an action against MGM seeking a declaratory judgement that MGM did not have the right to terminate the contract.⁸³ MGM contends that Cole's failure to testify to the HUAC brought him under public disrepute and invoked his morals clause.⁸⁴

76. Pinguelo & Cedrone, *supra* note 29, at 355.

77. *Id.*; Kressler, *supra* note 11, at 238.

78. Kressler, *supra* note 11, at 238.

79. *Id.*

80. Gallagher, *supra* note 10, at 94–96; *see also* Pinguelo & Cedrone, *supra* note 29, at 356.

81. 185 F.2d 641 (9th Cir. 1950).

82. *Id.* at 645.

There is no room for doubt as to just what Cole did before the Committee. A transcript of his testimony is a part of the pre-trial order. This discloses that the Committee sought to elicit from him answers to two questions: "Are you a member of the Screen Writers' Guild?" and "Are you now or have you ever been a member of the Communist Party?" All that need be said is that although Cole stated he would be very happy to answer these questions, the Committee did not succeed in getting an answer from him to either one.

Id. at 647.

83. *Id.* at 645.

Cole's employment contract contained a [morals clause in] paragraph 5 which read: "The employee agrees to conduct himself with due regard to public conventions and morals, and agrees that he will not do or commit any act or thing that will tend to degrade him in society or bring him into public hatred, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community or ridicule public morals or decency, or prejudice the producer or the motion picture, theatrical or radio industry in general."

Id. at 645.

84. *See Cole*, 185 F.2d at 645.

On December 2, . . . [Cole] was sent a notice of suspension reading as follows: "Dear Mr. Cole: At a recent hearing of a committee of the House of Representatives, you refused to answer certain questions put to you by such committee. By your failure to answer these questions, and by your statements and conduct before the committee and otherwise in connection with the hearings, you have shocked and offended the community, brought yourself into public scorn and contempt, substantially lessened your value to us as an employee, and prejudiced us

Cole argued that his conduct did not invoke the morals clause because his failure to testify was *political* conduct rather than immoral conduct.⁸⁵ Nonetheless, the court found that failure to testify to a congressional committee was sufficiently immoral to invoke the morals clause since Cole did not conduct himself with *due regard [for] public conventions*.⁸⁶ Thus, in upholding the clause within the contract, the court legitimized the existence of morals clauses and acknowledged their value in curbing immoral conduct.⁸⁷

Similarly, in *RKO Radio Pictures, Inc. v. Jarrico*,⁸⁸ motion picture screen writer Paul Jarrico, refused to testify before the HUAC about his alleged Communist ties.⁸⁹ RKO brought a declaratory judgement action, seeking a determination that the company had no obligation to give Jarrico screen credit based on the invocation of the morals clause in their contract.⁹⁰ RKO alleged that the morals clause was triggered because Jarrico had “brought himself into public disrepute” by invoking the Fifth Amendment during the HUAC proceedings.⁹¹ The court held that Jarrico violated the morals clause and thus he was not entitled to screen credit because his refusal to testify in front of the HUAC qualified as immoral conduct.⁹² Thus, the California Second District Court of Appeal upheld the clause in the contract and further legitimized morals clauses in the Hollywood entertainment industry.⁹³

as your employer and the motion picture industry in general. By so doing you have violated your obligations under your contract of employment with us and your legal obligations to us as our employee.”

Id.

85. *Id.* at 647.

86. *Id.* at 648–49.

87. *See id.*

88. 274 P.2d 928 (Cal. 2d Dist. Ct. App. 1954).

89. *Id.* at 929.

90. *See id.*

The written contract between appellant and respondent recited in part that an essential consideration of the contract was the popularity and good reputation of appellant with the public. Further, appellant agreed that during the production and distribution of the motion picture he would conduct himself with due regard to public conventions and morals and would not do anything which would tend to degrade him or bring him into public disgrace, obloquy, ill will or ridicule.

Id. at 928–29.

91. SELZ ET AL., *supra* note 56, at § 9:106; *see also RKO Radio Pictures, Inc.*, 274 P.2d at 929.

92. *See RKO Radio Pictures, Inc.*, 274 P.2d at 929–30.

93. *See id.*

Consistent with the holdings of *Loew's* and *RKO*, the Ninth Circuit also upheld morals clauses in similar entertainment contracts.⁹⁴ Even after Americans' fear of a looming communist invasion dwindled, these clauses continued to be used against ostracized celebrities due to increased judicial acceptance.⁹⁵

3. The Modern Morals Clause

Morals clauses, once created to improve the low public perception of Hollywood and out concealed communists, are now standard provisions in motion picture and television talent agreements thanks to the judicial legitimacy afforded to them in the 1950s.⁹⁶ This newfound judicial acceptance helped fashion morals clauses to be efficient tools in the modern age; tools used to terminate an agreement after public perception of talent took a turn for the worst.⁹⁷ However, the changing moral landscape has not only changed the way morals clauses are used but also how frequently they are used.⁹⁸ Today, these types of clauses are widely upheld but now focus on battling deviations from modern ethical standards.⁹⁹ By examining this morphology, this Comment will discuss how the modern use of morals clauses will be used to fight an emerging ethical dilemma—rampant sexual misconduct in Hollywood.¹⁰⁰ In order to understand how morals clauses will be used in the future, it is prudent to have background information on the catalyst for this change, the #MeToo movement—its inception, its influence, and its impending change to Hollywood entertainment contracts.¹⁰¹

III. THE #METOO MOVEMENT

Hollywood has had its fair share of celebrity scandals,¹⁰² but it has never experienced anything like the #MeToo movement.¹⁰³ “The phrase and hashtag [#MeToo] has been one of the most viral and powerful [trends] in

94. See *id.* at 930; *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 847–48 (9th Cir. 1954); *Loew's, Inc. v. Cole*, 185 F.2d 641, 658 (9th Cir. 1950).

95. See Gallagher, *supra* note 10, at 94, 96.

96. See *id.* at 94–96; Kressler, *supra* note 11, at 250.

97. Gallagher, *supra* note 10, at 98–99.

98. See Robehmed, *supra* note 16.

99. Gallagher, *supra* note 10, at 96.

100. See Robehmed, *supra* note 16.

101. See Gallagher, *supra* note 10, at 98; Robehmed, *supra* note 16.

102. Laura Martisiute, *5 Vintage Hollywood Scandals That First Showed Tinseltown's Ugly Side*, ALL THAT'S INTERESTING (Aug. 8, 2018), <http://www.allthatsinteresting.com/vintage-hollywood-scandals>.

103. See Morris, *supra* note 4.

social media history.”¹⁰⁴ The movement, started by activist Tarana Burke nearly a decade ago, was *catapulted* from a small grassroots organization into an international powerhouse in a matter of months.¹⁰⁵ Since its inception, the movement has sought to advocate for the survivors of sexual violence in low income communities and promote a more substantive discussion on sexual violence in the workplace.¹⁰⁶ In less than six months, Hollywood’s rampant sexual harassment epidemic was thrust into the national and international discourse by victims, their allies, and supporters.¹⁰⁷

The unprecedented maelstrom that is the #MeToo movement began when actress Ashley Judd came forward about her experience with Hollywood producer and film mogul Harvey Weinstein in which she divulged that Weinstein made sexual advances towards her in exchange for a boost in her career.¹⁰⁸ Since Judd’s revelation, eighty-seven women have come forward accusing Weinstein of sexual impropriety, including rape, over a span of two decades.¹⁰⁹ These allegations led to Weinstein’s termination as chief executive officer (“CEO”) of the Weinstein Company,¹¹⁰ the Weinstein

104. JR Thorpe, *This Is How Many People Have Posted Me Too Since October, According to New Data*, BUSTLE (Dec. 1, 2017), <http://www.bustle.com/p/this-is-how-many-people-have-posted-me-too-since-october-according-to-new-data-6753697>.

105. Jocelyn Frye, *From Politics to Policy: Turning the Corner on Sexual Harassment*, CTR. AM. PROGRESS (Jan. 31, 2018, 2:59 PM), <http://www.americanprogress.org/issues/women/news/2018/01/31/445669/politics-policy-turning-corner-sexual-harassment/>; Alix Langone, *#MeToo and Time’s Up Founders Explain the Difference Between the 2 Movements — and How They’re Alike*, TIME: LIVING (Mar. 22, 2018, 5:21 PM), <http://www.time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements/>; *Vision*, ME TOO, <http://www.metoomvmt.org/about/#history> (last visited May 1, 2019).

#MeToo was started by activist Tarana Burke after she had a conversation with a [thirteen]-year-old girl who opened up to her about the sexual abuse she was experiencing at the hands of her mother’s boyfriend, according to the New York Times. A decade later, in 2006, Burke founded the non-profit Just Be, Inc., an organization that supports victims of sexual misconduct, with a focus on young girls of color.

Langone, *supra*.

106. See *Vision*, *supra* note 105.

107. See *id.*

108. See Stephanie Zacharek et al., *The Silence Breakers*, TIME, Dec. 18, 2017, at 34, 36.

109. Sara M. Moniuszko & Cara Kelly, *Harvey Weinstein Scandal: A Complete List of the 87 Accusers*, USA TODAY: LIFE (June 1, 2018, 4:51 PM), <http://www.usatoday.com/story/life/people/2017/10/27/weinstein-scandal-complete-list-accusers/804663001/>.

110. Thuy Ong, *The Weinstein Company Files for Bankruptcy and Ends Prohibitive NDAs*, VERGE (Mar. 20, 2018, 10:50 AM), <http://www.theverge.com/2018/3/20/17142570/weinstein-company-bankruptcy-protection-nda>.

Company's subsequent bankruptcy,¹¹¹ and the filing of formal charges against Weinstein.¹¹² In June 2018, Weinstein pleaded not guilty to two counts of rape and one count of first degree criminal sex act in the Supreme Court of New York.¹¹³

The #MeToo movement truly became an international phenomenon when, in the aftermath of the Weinstein scandal, actress Alyssa Milano encouraged her Facebook and Twitter followers to share their experiences by replying *me too* to her post.¹¹⁴ "The hashtag was [retweeted] nearly a million times in [forty-eight] hours . . ." ¹¹⁵ On Facebook, there were approximately twelve million posts and comments about #MeToo in less than twenty-four hours.¹¹⁶ Internationally, more than eighty-five countries registered tweets exceeding one thousand, with the hashtag totaling approximately 1.7 million tweets world-wide.¹¹⁷ But the movement did not stop with Harvey Weinstein.¹¹⁸ Since the hashtag went viral, more than eighty celebrities and other public figures have been accused of sexual misconduct, harassment, or assault,¹¹⁹ including Kevin Spacey,¹²⁰ Louis C.K.,¹²¹ Bill O'Reilly,¹²² Bill

111. Jonathan Randles, *Weinstein Co. Files for Bankruptcy as Part of Deal with Lantern Capital*, WALL ST. J. (Mar. 20, 2018, 12:35 AM), <http://www.wsj.com/articles/weinstein-co-to-file-for-bankruptcy-as-part-of-deal-with-lantern-capital-1521513365>.

112. Emanuella Grinberg & Elizabeth Joseph, *Harvey Weinstein Pleads Not Guilty to Rape Charges in Court*, CNN (June 5, 2018, 10:55 AM), <http://www.cnn.com/2018/06/05/us/harvey-weinstein-arraignment/index.html>.

113. *Id.*

114. Sintia Radu, *How #MeToo Has Awoken Women Around the World*, U.S. NEWS & WORLD REP. (Oct. 25, 2017, 3:39 PM), <http://www.usnews.com/news/best-countries/articles/2017-10-25/how-metoo-has-awoken-women-around-the-world>; Alyssa Milano (@Alyssa_Milano), TWITTER (Oct. 15, 2017, 1:21 PM), http://www.twitter.com/alyssa_milano/status/919659438700670976. "If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet." @Alyssa_Milano, *supra*.

115. *More Than 12M Me Too Facebook Posts, Comments, Reactions in 24 Hours*, CBS NEWS (Oct. 17, 2017, 6:26 PM), <http://www.cbsnews.com/news/metoo-more-than-12-million-facebook-posts-comments-reactions-24-hours/>.

116. *Id.*

117. Radu, *supra* note 114.

118. Samantha Cooney et al., *Here Are All the Public Figures Who've Been Accused of Sexual Misconduct After Harvey Weinstein*, TIME (Oct. 4, 2018, 12:01 PM), <http://www.time.com/5015204/harvey-weinstein-scandal/>.

119. *Id.*

120. Adam B. Vary, *Actor Anthony Rapp: Kevin Spacey Made a Sexual Advance Toward Me When I Was 14*, BUZZFEED NEWS (Oct. 30, 2017, 12:37 AM), <http://www.buzzfeednews.com/article/adambvary/anthony-rapp-kevin-spacey-made-sexual-advance-when-i-was-14>. TMZ was the first to break the story of this accusation. Alanna Vagianos, *Kevin Spacey Accused of Sexual Assault By 3 More Men*, HUFFPOST: ENT. (July 3, 2018, 5:21 PM), http://www.huffingtonpost.com/entry/kevin-spacey-accused-sexual-assault-3-more-men_us_5b3bd9fae4b07b827cbbb2c8.

Cosby,¹²³ and Morgan Freeman.¹²⁴ The movement, in fact, gained so much attention that it even expanded out of Hollywood and into politics,¹²⁵ academia,¹²⁶ and other industries.¹²⁷ Due to the all-encompassing scope of the movement, it is not surprising that #MeToo has had an effect on

121. Melena Ryzik et al., *Detailing Lewd Acts, 5 Women Accuse a Comic of Misconduct*, N.Y. TIMES, Nov. 10, 2017, at A1.

122. William Cummings, *Bill O'Reilly Is Mad at God for Sexual Harassment Scandal*, USA TODAY (Oct. 24, 2017, 5:39 PM), <http://www.usatoday.com/story/money/business/2017/10/24/bill-oreilly-mad-god-sexual-harassment-report/795331001/>.

123. Carly Mallenbaum et al., *A Complete List of the 60 Bill Cosby Accusers and Their Reactions to the Guilty Verdict*, USA TODAY: LIFE (Apr. 27, 2018, 4:32 PM), <http://www.usatoday.com/story/life/people/2018/04/27/bill-cosby-full-list-accusers/555144002/>.

124. An Phung & Chloe Melas, *Women Accuse Morgan Freeman of Inappropriate Behavior, Harassment*, CNN: ENT. (May 28, 2018, 11:56 PM), <http://www.cnn.com/2018/05/24/entertainment/morgan-freeman-accusations/index.html>.

125. Dan Corey, *Here's a List of Political Figures Accused of Sexual Misconduct*, NBC NEWS (Dec. 16, 2017, 5:08 PM), <http://www.nbcnews.com/storyline/sexual-misconduct/here-s-list-political-figures-accused-sexual-misconduct-n827821>.

In recent months alone, at least [twenty-nine] powerful men in entertainment, business, and the news media have been publicly condemned for their alleged sexual misconduct and many have lost their jobs as a result. The backlash and national conversation have spurred a chorus of voices joining the #MeToo movement. That focus has lately turned to national politics. The allegations, reactions, and consequences span a wide range. Al Franken resigned as a U.S. senator for Minnesota, while Alabama Senate candidate Roy Moore continued to campaign, even garnering the support from President Donald Trump, himself the target of at least [sixteen] sexual misconduct allegations.

Id.

126. See Peter Aldhous et al., *He Became a Celebrity for Putting Science Before God. Now Lawrence Krauss Faces Allegations of Sexual Misconduct*, BUZZFEED NEWS (Feb. 22, 2018, 11:33 AM), <http://www.buzzfeednews.com/peteraldhous/lawrence-krauss-sexual-harassment-allegations> (discussing accusations against Lawrence Krauss, theoretical physicist and cosmologist).

127. See Tom Gjelten, *Amid #MeToo, Evangelicals Grapple with Misconduct in Their Own Churches*, NPR: NATIONAL (Jan. 24, 2018, 11:42 AM), <http://www.npr.org/2018/01/24/580193284/amid-metoo-evangelicals-grapple-with-misconduct-in-churchtoo> (discussing #MeToo's effect on the church); Tara Murtha, *Farmhands, Maids and Domestic Workers Say #MeToo*, WASH. POST, June 10, 2018, at B6 (discussing #MeToo's effect on domestic workers); Davia Temin, *How the Reputation Risk of #MeToo Is Forcing Businesses to Reevaluate Their Corporate Culture*, FORBES (May 14, 2018, 12:56 PM), <http://www.forbes.com/sites/daviatemin/2018/05/14/how-the-reputation-risk-of-metoo-is-forcing-businesses-to-re-evaluate-their-corporate-culture/> (discussing #MeToo's effect on the corporate realm); Samantha Wood, *8 Days Later, #MeToo Movement Expands Well Beyond Entertainment Industry*, PR NEWS (Oct. 23, 2017), <http://www.prnewsonline.com/8-days-later-metoo-movement-expands-well-beyond-entertainment-industry/> (discussing #MeToo's effect on other industries).

Hollywood's talent and finances.¹²⁸ Since the inception of morals clauses, Hollywood studios and production companies have always paid close attention to how the public perceives the celebrities they contract with and, in turn, their own reputation.¹²⁹ The shift in norms pertaining to reporting sexual harassment and assault have put Hollywood film and television companies in a difficult situation as many of the celebrities they contracted with have become toxic.¹³⁰ This Comment will address this issue and explain how the #MeToo movement has affected Hollywood film and television companies and the ramification it has had for the celebrities accused of sexual impropriety.¹³¹

IV. #METOO'S EFFECT ON HOLLYWOOD'S TALENT AND FINANCES

The accusations of sexual assault against popular celebrities have hit Hollywood studios right where it hurts—their pockets.¹³² In the wake of the #MeToo movement, several celebrities have had their careers ended or have had their future projects terminated.¹³³ This section will address the effect of the #MeToo movement on Hollywood and talent to better understand why Hollywood studios are looking to expand the use of morals clauses, and draft them in a way that allows for termination of the contract in light of serious accusations of sexual misconduct or assault, instead of just charges or convictions of these offenses.¹³⁴ Case studies on the Harvey Weinstein, Kevin Spacey, and Louis C.K. accusations will be used to illustrate this expansion of the morals clause.¹³⁵ As this Comment addresses, some of these celebrities did not have a morals clause inserted into their talent agreements—an issue Hollywood now plans to remedy.¹³⁶

A. *Weinstein's Termination*

In the incident that catapulted the #MeToo movement, the Weinstein case shows just how much a Hollywood company can lose in the face of

128. Siegel, *supra* note 5; Wood, *supra* note 127.

129. See Epstein, *supra* note 50, at 75–76.

130. See Siegel, *supra* note 5.

131. See *id.*

132. See *id.*

133. *Id.*

134. Robehmed, *supra* note 16.

135. See Ryzik et al., *supra* note 121; Siegel, *supra* note 5.

136. Siegel, *supra* note 5; see also Bryan Sullivan, *Kevin Spacey and Harvey Weinstein Employment Agreements Say a Lot About Hollywood*, FORBES (Nov. 15, 2017, 2:39 PM), <http://www.forbes.com/sites/legalentertainment/2017/11/15/kevin-spacey-and-harvey-weinstein-employment-agreements-say-a-lot-about-hollywood/>.

sexual harassment allegations made against an employee.¹³⁷ Weinstein was terminated as chairman of the Weinstein Company after more than eight women accused him of sexual misconduct, including rape.¹³⁸ The film producer had a *loose* morals clause in his contract with the Weinstein Company that could only have been triggered if he failed to pay fines and any costs incurred by the company *due to his behavior*.¹³⁹ This behavior allegedly included sexual harassment and other misconduct, giving the film producer a contractual loophole to avoid termination of the contract if he was accused.¹⁴⁰ However, Weinstein was still able to be terminated by the company who forced him out in late 2017.¹⁴¹ Following Weinstein's termination, the company planned to undergo an internal investigation of the allegations which could cost the company approximately twenty million to forty million dollars.¹⁴² Additionally, New York Attorney General Eric Schneiderman filed charges against Harvey Weinstein and Bob Weinstein, his brother and co-chairman of the company, alleging that "the company failed to respond" to sexual harassment allegations in the past and even contractually shielded Harvey from termination.¹⁴³ As the allegations

137. See Mia Galuppo & Pamela McClintock, *Harvey Weinstein Terminated from Weinstein Company*, HOLLYWOOD REP. (Oct. 8, 2017, 4:15 PM), <http://www.hollywoodreporter.com/news/harvey-weinstein-at-weinstein-1046874>.

138. *Id.*; Jessica DiNapoli, *The Weinstein Company Files for Bankruptcy*, BUS. INSIDER (Mar. 19, 2018, 10:33 PM), <http://www.businessinsider.com/the-weinstein-company-files-for-bankruptcy-2018-3>.

"In light of new information about misconduct by Harvey Weinstein that has emerged in the past few days, the directors of The Weinstein Company—Robert Weinstein, Lance Maerov, Richard Koenigsberg and Tarak Ben Ammar—have determined, and have informed Harvey Weinstein, that his employment with The Weinstein Company is terminated, effective immediately," read a statement from the TWC board.

Galuppo & McClintock, *supra* note 137.

139. Sullivan, *supra* note 136.

140. Richard Morgan, *Board Approval Harvey's Contract Suggests TWC Complicity*, N.Y. POST, June 7, 2018, at 29. "According to the contract, which Weinstein signed in 2015, a first offense would cost him \$250,000, a second \$500,000 and a third \$750,000. For each additional instance, the contract continued, the cost to Weinstein would level out at [one] million [dollars]." *Id.*

141. Galuppo & McClintock, *supra* note 137.

142. Natalie Robehmed & Madeline Berg, *With Harvey Weinstein Out, the Weinstein Company Faces Serious Challenges*, FORBES: CONSUMER (Oct. 8, 2017, 3:01 PM), <http://www.forbes.com/sites/natalierobehmed/2017/10/08/sexual-harassment-scandal-poses-serious-business-challenges-for-the-weinstein-company/>.

"These investigations, if done thoroughly, can be extremely expensive, in the range of [twenty] million to [forty] million [dollars], given that the allegations span three decades, two continents, and involve potentially dozens of individuals," said Debra Katz, a partner with Katz, Marshall & Banks, who has worked on similar cases.

Id.

143. DiNapoli, *supra* note 138.

against Weinstein increased, the reputation and value of his former company decreased.¹⁴⁴ After months of legal and financial troubles, the Weinstein Company filed for bankruptcy in March 2018.¹⁴⁵

B. *Spacey's Termination*

In the case of Kevin Spacey, the Oscar winning actor and *House of Cards* star was accused by over thirty men of sexual assault.¹⁴⁶ On October 30, 2017, actor Anthony Rapp was the first to make an accusation against Spacey, claiming that he was fourteen and Spacey was twenty-six when Spacey made a sexual advance towards him in 1986.¹⁴⁷ Rapp alleged that “Spacey laid on top of him” and tried to seduce him at Spacey’s apartment.¹⁴⁸ The next day, “Netflix, the network behind Spacey’s *House of Cards* drama, [stated that it was] *deeply troubled* by the [allegations].”¹⁴⁹ On November 3, 2017, Netflix severed ties with Spacey while *House of Cards* was in production in its sixth season.¹⁵⁰ The streaming service publicly announced that it will “not be involved with any further production of *House of Cards* that includes Kevin Spacey.”¹⁵¹ This severance of the Netflix/Spacey relationship included the decision to not release the film *Gore*, the Gore Vidal biopic, which was in postproduction at the time.¹⁵² Spacey contested his termination and claimed that “Netflix [could not] legally fire him because his contract did not contain a moral[s] clause.”¹⁵³ According to Spacey’s contract, he can only be suspended or terminated “if he becomes *unavailable* or *incapacitated*.”¹⁵⁴ However, Spacey was neither

144. *See id.*

145. *Id.*

146. *Kevin Spacey Timeline: How the Story Unfolded*, BBC: ENT. & ARTS, <http://www.bbc.co.uk/news/entertainment-arts-41884878> (last updated Jan. 7, 2019); *see also House of Cards* (Media Rights Capital 2013).

147. *Kevin Spacey Timeline: How the Story Unfolded*, *supra* note 146.

148. *Id.*

149. *Id.*; *see also House of Cards*, *supra* note 146.

150. *Kevin Spacey Timeline: How the Story Unfolded*, *supra* note 146; Kristine Phillips, *Netflix Drops House of Cards Star Kevin Spacey After New Allegations Arise*, WASH. POST: ARTS & ENT. (Nov. 4, 2017), <http://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/11/04/netflix-is-dropping-kevin-spacey-from-house-of-cards/>; *see also House of Cards*, *supra* note 146.

151. *Kevin Spacey Timeline: How the Story Unfolded*, *supra* note 146; Phillips, *supra* note 150; *see also House of Cards*, *supra* note 146.

152. *See Kevin Spacey Timeline: How the Story Unfolded*, *supra* note 146; Phillips, *supra* note 150.

153. Sullivan, *supra* note 136.

154. The Blast Staff, *Kevin Spacey Can't Be Ousted from House of Cards Over Allegations; No Morals Clause in Contract*, BLAST (Nov. 11, 2017, 12:10 AM), <http://www.theblast.com/kevin-spacey-morals-clause-contract-house-of-cards/>.

unavailable or incapacitated since “he voluntarily checked himself into treatment in Arizona” after the accusations against him surfaced.¹⁵⁵ Netflix and the production company, Media Rights Capital, were able to circumvent this issue by suspending the actor based on a *sexual harassment policy*.¹⁵⁶ Nonetheless, the decision to remove Spacey from *Cards* and not release the feature film *Gore* reportedly cost Netflix \$39,000,000.¹⁵⁷ Additionally, Spacey was also set to star in the Ridley Scott-directed film *All the Money in the World*, but was ultimately cut due to the allegations and the role was recast to another actor, Christopher Plummer.¹⁵⁸ The decision to cut Spacey out of a film that had already wrapped and replace him with another actor was unprecedented, since the film was due to be released just six weeks after the decision.¹⁵⁹ Imperative Entertainment, which produced the film, reportedly spent \$10,000,000—a quarter of the movie’s original budget—to reshoot Spacey’s scenes.¹⁶⁰

C. *Louis C.K.’s Termination*

On November 9, 2017, approximately a month after the Weinstein accusations and a week after Spacey’s, the New York Times published a story regarding sexual misconduct accusations made by five women against famed comedian and actor, Louis C.K.¹⁶¹ Dana Min Goodman and Julia Wolov, a Chicago comedy duo, alleged that during a 2002 visit to C.K.’s hotel room, he got completely undressed and masturbated in front of them.¹⁶² Similarly, comedian Rebecca Corey was asked by C.K. if he could masturbate in front of her.¹⁶³ A day after these accusations surfaced, the

155. *Id.*

156. *Id.*

157. Seth Fiegerman, *Kevin Spacey Cost Netflix \$39 Million*, CNN: MEDIA (Jan. 22, 2018, 8:45 PM), <http://www.money.cnn.com/2018/01/22/media/netflix-kevin-spacey-cost/>.

158. Brent Lang & Justin Kroll, *Replacing Kevin Spacey on All the Money in the World Will Cost Millions*, VARIETY: FILM: NEWS (Nov. 10, 2017, 1:34 PM), <http://www.variety.com/2017/film/news/kevin-spacey-christopher-plummer-all-the-money-in-the-world-1202611975/>; ALL THE MONEY IN THE WORLD (Imperative Entertainment 2017).

159. Lang & Kroll, *supra* note 158.

160. *Id.*; Rachel Withers, *Replacing Spacey: Ridley Scott Speaks Out on the All the Money in the World Reshoot*, SLATE’S CULTURE BLOG (Nov. 29, 2017, 4:19 PM), <http://slate.com/culture/2017/11/ridley-scott-on-the-urgent-reshoot-to-replace-kevin-spacey.html>.

161. Ryzik et al., *supra* note 121; *see also* Jodi Kantor & Megan Twohey, *Sexual Misconduct Claims Trail a Hollywood Mogul*, N.Y. TIMES, Oct. 6, 2017, at A1; *Kevin Spacey Timeline: How the Story Unfolded*, *supra* note 146.

162. Ryzik et al., *supra* note 121.

163. *Id.*

comedian came forward and admitted to his sexual misconduct.¹⁶⁴ FX Productions subsequently cut ties with Louis C.K. and will no longer credit him as executive producer; he will also no longer receive compensation for the four shows the comedian was producing for the FX network, including the critically acclaimed series *Louie*.¹⁶⁵ HBO cancelled C.K.'s appearance on *Night of Too Many Stars: America Unites for Autism Program* and refused to show his past projects on its on-demand services.¹⁶⁶ Additionally, C.K.'s film *I Love You, Daddy*, initially slated for release the week the allegations surfaced, had its premiere cancelled and was not released domestically¹⁶⁷ or internationally.¹⁶⁸ Following a setback, the Orchard, who initially bought the right to the film for \$5,000,000, pressed Louis C.K.'s attorneys for a return deal.¹⁶⁹ Netflix also cancelled a standup special deal with the comic, estimated to have been worth nearly \$30,000,000.¹⁷⁰ However, because the agreement contained a morals clause, the service provider only paid the comic for the special that was filmed, saving the company millions.¹⁷¹

D. *Analysis*

The Weinstein, Spacey, and C.K. incidents shed light on the motivations of Hollywood studios and executives in their push to include broader morals clauses in future entertainment contracts.¹⁷² In Weinstein's

164. Elahe Izadi, *Louis C.K. Responds to Sexual Misconduct Allegations: These Stories Are True*, WASH. POST: LIFESTYLE (Nov. 10, 2017), <http://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/11/10/louis-c-k-these-stories-are-true/>.

165. *Id.*; Madeline Berg, *Louis C.K.'s Losses: How Much the Sexual Misconduct Scandal May Cost the Comedian*, FORBES: MEDIA & ENT. (Nov. 10, 2017, 1:21 PM), <http://www.forbes.com/sites/maddieberg/2017/11/10/louis-c-k-s-losses-how-much-the-sexual-misconduct-scandal-may-cost-the-comedian/>; *see also Louie* (3 Arts Entertainment 2015).

166. Berg, *supra* note 165; *see also Night of Too Many Stars: America Comes Together for Autism Programs* (Comedy Central broadcast Mar. 8, 2015).

167. Izadi, *supra* note 164; *I LOVE YOU, DADDY* (Circus King Productions).

168. Elsa Keslassy & Nick Vivarelli, *Louis C.K.'s I Love You, Daddy Dropped by International Distributors*, VARIETY: FILM (Nov. 14, 2017, 4:32 AM), <http://www.variety.com/2017/film/news/louis-ck-i-love-you-daddy-dropped-by-international-distributors-1202614383/>.

169. Anthony D'Alessandro, *Louis C.K. Buying Back I Love You, Daddy Following Scandal*, DEADLINE (Dec. 8, 2017, 12:27 PM), <http://www.deadline.com/2017/12/louis-c-k-buying-i-love-you-daddy-back-from-the-orchard-sexual-misconduct-scandal-1202222771/>.

170. Berg, *supra* note 165.

171. *Id.*

172. Robehmed, *supra* note 16.

case, the accusations leveled against him led to his fall from grace in Hollywood and the filing of criminal charges against him.¹⁷³ Additionally, the accusations led to a well-established and profitable company like the Weinstein Company to fall in a matter of mere months.¹⁷⁴ Just a few weeks later, Kevin Spacey, a critically acclaimed and Oscar award winning actor, went from one of the most highly paid celebrities in 2016 to a social pariah in a matter of days.¹⁷⁵ Additionally, Spacey was paid for the entire final season of *House of Cards*, even though he does not appear in a single episode.¹⁷⁶ Similarly, Louis C.K., beloved comic and powerhouse of the comedy industry, lost nearly every means of his former income in the span of days, however, he was still paid for the first Netflix stand up special which has never been released.¹⁷⁷ Although the indie film company, The Orchard, managed to recoup the cost of the film by buying and reselling *I Love You, Daddy* back to C.K., the company could not recoup the revenue the film would have generated if the film had been released.¹⁷⁸ Thus, in light of these financial pitfalls, Hollywood is ready to turn to morals clauses once more.¹⁷⁹

V. #METOO MAKES A CHANGE: HOW THE MOVEMENT IS CHANGING HOLLYWOOD DEAL-MAKING BY BROADENING THE LANGUAGE OF MORALS CLAUSES

From high-ranking movie executives to movie stars, rampant sexual harassment and rape are now altering how business in Hollywood is conducted.¹⁸⁰ The fear of financial loss and declining public perception has led some Hollywood studios and executives to consider the addition of broad morals clauses in entertainment contracts as a solution to their woes.¹⁸¹ These broad morals clauses will be drafted in such a way as to account for accusations of sexual harassment or rape, not just formal charges and convictions for these offenses.¹⁸² Fox is one studios that is attempting to insert broad morals clauses into talent agreements.¹⁸³ The Fox provisions

173. See *id.*

174. See DiNapoli, *supra* note 138.

175. See Madeline Berg, *Here's How Much Money Kevin Spacey Could Lose Following His Sexual Harassment Scandal*, FORBES (Nov. 3, 2017, 2:20 PM), <http://www.forbes.com/sites/maddieberg/2017/11/03/how-much-money-kevin-spacey-could-lose-following-sexual-harassment-scandal/#2b4746efd786>.

176. Siegel, *supra* note 5.

177. See Berg, *supra* note 165.

178. See D'Alessandro, *supra* note 169.

179. Siegel, *supra* note 5.

180. Robehmed, *supra* note 16.

181. See *id.*

182. *Id.*

183. Siegel, *supra* note 5.

would allow for the termination of the talent agreement “if the talent engages in conduct that results in adverse publicity or notoriety or risks bringing the talent into public disrepute, contempt, scandal, or ridicule.”¹⁸⁴ Paramount Pictures is another studio eyeing the inclusion of broad morals clauses in entertainment contracts with talent.¹⁸⁵ Further, several smaller distributors have already started to include them in their contracts.¹⁸⁶ An example of a broad morals clause already added to a talent agreement by one film distributor is:

In the event Distributor becomes aware of a violation or alleged violation of Distributor’s policy by any key individual whether or not such violations occurred prior to, during, or after such services were provided, or Distributor becomes aware that a Key Element has committed or has been charged with an act considered under state or federal laws to be a felony or crime of moral turpitude, then Distributor shall have the right to: (i) cease distribution of the Picture; (ii) delete any credit given to such Key Element in connection with the picture; and/or (iii) modify, edit, and/or reshoot the Picture to the extent necessary to remove the Key Element from the Picture.¹⁸⁷

However, these clauses will not just affect talent.¹⁸⁸ Morals clauses will also be added to cover Hollywood executives too, since directors and talent can also be detrimentally affected by the actions of high-ranking executives, like Harvey Weinstein, especially if those figures become associated with sexual impropriety.¹⁸⁹

The inclusion of these morals clauses in Hollywood contracts is already under fire.¹⁹⁰ The Directors Guild of America and the Writers Guild of America are labor unions that have long banned morals clauses in member agreements and are especially wary of the incoming wave of broader morals clauses.¹⁹¹ Many others hypothesize that broader morals clauses in contracts

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *See Siegel, supra* note 5.

189. *Id.*

190. *See id.*

191. Robehmed, *supra* note 16.

We are also hearing reports as well of more widespread use of increasingly onerous morality clauses, and that is obviously a significant concern for us While we do not have contract language directly prohibiting these clauses, we will be taking a close look at this issue to ensure that the union is taking all appropriate measures to protect our members.

Id.

are bad precedent because they allow for an agreement's termination in the event that the talent or executive is merely accused of sexual misconduct or rape and not formally charged with any crime.¹⁹² Additionally, some argue that broad morals clauses can once again be used to target innocent individuals, like the Hollywood Ten scandal of the McCarthy era, and lead to unfair termination.¹⁹³ This Comment will address these concerns and opine that this new era of broader morals clauses are here to stay.¹⁹⁴

VI. THE NEW MORALS CLAUSES ARE HERE TO STAY

Hollywood's push for broader morals clauses in the wake of the #MeToo movement may strike some as a truly unprecedented move.¹⁹⁵ While it is true that the #MeToo movement has reverberated throughout the entertainment industry in a way no other movement has, broad morals clauses are nothing new and remain consistent with the morals clauses of the past.¹⁹⁶ The new morals clauses are here to stay for three reasons: first, they are very similar to the morals clauses of the early and mid-1900s and will be used in consistence with the morals clauses of the past.¹⁹⁷ Second, like the morals clauses of the twentieth century, the new wave of broader and more expansive morals clauses will be upheld by the courts since previous courts have upheld similar provisions.¹⁹⁸ Third, public policy calls for the inclusion of broader morals clauses to help remedy the epidemic of rampant sexual misconduct in Hollywood.¹⁹⁹

A. *Broad Morals Clauses Are Nothing New*

Since the inception of the morals clause, morals clauses have typically been drafted broadly giving the contracting employer the power to terminate the contract in the event that the talent commits an offense that

192. *See id.*

193. *Id.*; *see also* Epstein, *supra* note 50, at 76–78.

194. *See* discussion *infra* Part VI.

195. Siegel, *supra* note 5. Lawyer Linda Lichter said, “[t]his is a whole new territory.” *Id.*

196. *See* Gallagher, *supra* note 10, at 92–93.

197. *Id.*

198. *Id.* at 96; *see also* Epstein, *supra* note 50, at 77; Kressler, *supra* note 11, at 245–46.

199. *See* John Dorsey, #MeToo: Use a Morals Clause in Contracts to Deter and Quash Perpetrators of Misconduct, EXHIBIT 10 (Feb. 28, 2018), <http://www.exhibit10.com/2018/02/28/metoo-use-a-morals-clause-in-agreements-to-deter-and-quash-misconduct/>.

brings them or the company in public disrepute.²⁰⁰ The Universal Film Company's first morals clause in 1921 did not include the exact conduct that would trigger the provision, such as a conviction of a specific type of felony.²⁰¹ Instead, the clause conveyed broad sweeping language that allowed for the termination of the contract for a variety of reasons.²⁰² For example, the 1921 Universal morals clause was drafted in a manner that allowed for the termination of the contract if the talent did not "conduct himself—herself—with due regard to public conventions and morals."²⁰³ Further, the clause also gave the employer the right to terminate the contract if the talent engaged in conduct that tended to "shock, insult, or offend the community or outrage [the] public morals [and] decency."²⁰⁴ The recently proposed Fox morals clause is similarly drafted in an all-encompassing manner, allowing for the termination of the agreement if the talent's behavior results in "adverse publicity or notoriety or risks bringing the talent into public disrepute, contempt, scandal or ridicule."²⁰⁵ Thus, the new broader morals clauses are not a novel phenomenon in the entertainment industry and are consistent with the broadly tailored morals clauses of the past.²⁰⁶

B. *Broader Morals Clauses Will Be Used as Originally Intended*

The new wave of broad morals clauses will also be used as originally intended—as a tool the contracting employer equips against negative public perception of the talent or, by association, the company.²⁰⁷ Much like the aftermath of the Fatty Arbuckle scandal of 1921, contracting employers of today see morals clauses as a method to protect themselves from financial ruin.²⁰⁸ As the #MeToo movement has shown Hollywood, sexual assault and rape accusations made against talent hurt their employers financially because of the talent's negative perception in society.²⁰⁹ Thus, these broader morals

200. Gallagher, *supra* note 10, at 92–97. "[T]he language of morals clauses has only been slightly altered over time . . ." *Id.* at 92. "[M]orals clauses today are not all that different from the original one instituted by Universal Film Company in 1921." *Id.* at 97.

201. *Id.* at 93.

202. *Id.*

203. Gallagher, *supra* note 10, at 93; *Morality Clause for Films: Universal Will Cancel Engagements of Actors Who Forfeit Respect.*, *supra* note 64.

204. Gallagher, *supra* note 10, at 93; *Morality Clause for Films: Universal Will Cancel Engagements of Actors Who Forfeit Respect.*, *supra* note 64.

205. Siegel, *supra* note 5; *see also* Gallagher, *supra* note 10, at 93.

206. Gallagher, *supra* note 10, at 93–94 (discussing that the language of morals clauses has remained largely unchanged since the 1920s).

207. Pinguelo & Cedrone, *supra* note 29, at 352; Gallagher, *supra* note 10, at 88, 97.

208. Gallagher, *supra* note 10, at 88, 93.

209. Fiegerman, *supra* note 157; Robehmed, *supra* note 16.

clauses are merely tools to stymie the probability of financial loss in the event of an accusation of sexual ignominy.²¹⁰

However, there are those who fear that broader morals clauses set a bad precedent because they could be used inappropriately.²¹¹ Those who share this opinion about broad morals clauses assert that they can be used in malicious ways to target innocent people and refuse them pay.²¹² These individuals allude to the inappropriate usage of the morals clause in the late 1940s and 1950s, when morals clauses were used to target suspected communists.²¹³ However, the comparison between the #MeToo and the Red Scare is a false dichotomy because where #MeToo sought to help the victims of an industry infected by the epidemic of sexual harassment and rape, the McCarthy era was wrought with the malicious targeting of individuals merely due to political intolerance.²¹⁴ Further, it is unlikely that targeting those accused of sexual misconduct will lead to a witch hunt and the unnecessary termination of talent contracts because this would be a counterintuitive business venture of the employer.²¹⁵ An employer would likely only use the morals clause to terminate an agreement if there is a substantial reason to do so, including multiple allegations of sexual assault or rape or a single allegation with valid and unequivocal evidence.²¹⁶

C. *Broader Morals Clauses Will Be Upheld in Court*

Like the morals clauses of yesterday, it is likely that the new wave of broader morals clauses will similarly be upheld by courts.²¹⁷ In fact, litigants typically allege that morals clauses are broadly or ambiguously drafted to such a degree that they did not have knowledge of what conduct would trigger the clause.²¹⁸ These allegations are commonly dismissed as without merit.²¹⁹ For example, in *Nader v. ABC Television, Inc.*,²²⁰ a United States

210. Robehmed, *supra* note 16.

211. Siegel, *supra* note 5.

212. See Robehmed, *supra* note 16.

“[I am] all for [#MeToo]. I totally support it. But I think [broad morality clauses] create a bad precedent,” says attorney Linda Lichter. “[It is] one thing to say someone is a criminal. [It is] another thing to say someone has been accused by someone and you can fire them and not pay them.”

Siegel, *supra* note 5.

213. Kressler, *supra* note 11, at 238, 242.

214. Richard Beck, *#MeToo Is Not a Witch Hunt*, VOX (Jan. 11, 2018, 9:41 AM), <http://www.vox.com/identities/2017/12/21/16803206/metoo-not-sex-moral-panic>.

215. See *id.*; Robehmed, *supra* note 16.

216. See Gallagher, *supra* note 10, at 88; Robehmed, *supra* note 16.

217. See *Nader v. ABC Television, Inc.*, No. 04-5034, 2005 U.S. App. LEXIS 19536, at **5–7 (2d Cir. 2005); Gallagher, *supra* note 10, at 88, 96.

218. See *Nader*, 2005 U.S. App. LEXIS 19536, at **5–7.

219. See *id.* at **2, **5–7.

Court of Appeals upheld a morals clause in a talent agreement between Michael Nader, an actor on soap opera *All My Children*, and his employer, American Broadcasting Company (“ABC”).²²¹ After Nader was arrested for “one count of criminal sale of a controlled substance . . . and one count of resisting arrest,” ABC subsequently terminated him from employment and Nader was written out of the show for violation of his morals clause.²²² Nader filed a lawsuit against ABC alleging the morals clause was ambiguous, overly broad, and vague on its face.²²³ The trial court granted summary judgement for ABC holding that Nader’s arrest was a proper trigger for the clause.²²⁴ On appeal, the Second Circuit agreed with the trial court’s decision that morals clauses have long been upheld as valid and enforceable.²²⁵ Further, the court held that Nader’s actions were a proper trigger for the morals clause because his conduct generated negative media attention upon ABC.²²⁶ It is implied in the court’s reasoning that the assertion that the clause was overbroad was meritless because, although there wasn’t specific language in the contract that stated that the agreement could be terminated in the event of an arrest, the language did specifically state that any conduct that damages the reputation of the employer could trigger the clause.²²⁷ Thus, regardless of any formal charges, a morals clause will be upheld if the employee’s behavior adversely affects the employer’s reputation.²²⁸

Similarly, in *Galaviz v. Post-Newsweek Stations*,²²⁹ the Fifth Circuit upheld a morals clause in an employment contract holding that a plaintiff’s behavior that adversely affects the employer’s reputation is a sufficient trigger for a morals clause.²³⁰ In this case, Virginia Galaviz, a television

220. No. 04-5034, 2005 U.S. App. LEXIS 19536 (2d Cir. 2005).

221. *Id.* at **1.

222. *Nader v. ABC Television, Inc.*, 330 F. Supp. 2d 345, 346–47 (S.D.N.Y. 2004).

223. *Id.* at 348. Nader’s morals clause read:

If, in the opinion of ABC, Artist shall commit any act or do anything which might tend to bring Artist into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably on ABC, any sponsor of a program, any such sponsor’s advertising agency, any stations broadcasting or scheduled to broadcast a program, or any licensee of ABC, or to injure the success of any use of the Series or any program, ABC may, upon written notice to Artist, immediately terminate the Term and Artist’s employment hereunder.

Id. at 346.

224. *Id.* at 349.

225. *Nader*, 2005 U.S. App. LEXIS 19536, at **5.

226. *Id.* at **6.

227. *See id.*

228. *See id.*

229. No. 09-50730, 2010 U.S. App. LEXIS 11790, at **1 (5th Cir. 2010).

230. *Id.* at **5.

news reporter, was terminated by her employer, Post-Newsweek Stations, for triggering her morals clause after a domestic dispute led to her arrest.²³¹ The morals clause did not specifically include language that stated that an arrest would trigger the morals clause.²³² Galaviz filed a lawsuit against her former employer and the district court granted summary judgment in favor of Post-Newsweek.²³³ On appeal, Galaviz claimed that her morals clause was broad and ambiguous.²³⁴ Nonetheless, the Fifth Circuit held that her conduct was a sufficient trigger for the morals clause and that it was not broad nor ambiguous.²³⁵ The court reasoned that since her morals clause included language allowing for the termination of the agreement if the employee's behavior "adversely affects the reputation or business of [the station] or the standing of [the station]" and Galaviz's conduct did result in the negative publicity of the company, then the termination of Galaviz was wholly justified.²³⁶ Thus, regardless of an arrest, an employee's conduct that negatively impacts the reputation of the employer will be sufficient to trigger a morals clause.²³⁷

Regarding the new wave of broader morals clauses after the #MeToo movement, the clauses will allow for the termination of the agreement even if the talent is merely accused of sexual harassment or rape.²³⁸ It is the employer's discretion to determine whether the accusations warrant the termination of the agreement.²³⁹ However, unlike *Nader* and *Galaviz*, the new wave of morals clauses will include language that specifically states that accusations of sexual harassment or rape could ultimately trigger the morals clauses.²⁴⁰ It is worth noting that the contracts in both *Nader* and *Galaviz* did not include specific language that arrests would trigger their respective

231. *Id.* at **2.

232. *Id.*

If at any time Employee fails to conduct himself or herself with due regard to public morals and decency, or if Employee commits any act or becomes involved in any situation or occurrence tending to degrade Employee in the community or which brings Employee into public disrepute, contempt, or scandal, or which materially and adversely affects the reputation or business of [the station] or the standing of [the station] as a broadcast licensee, whether or not information in regard thereto becomes public, [the station] shall have the right to terminate the Agreement on twenty-four . . . hours notice to employee.

Id.

233. *Galaviz*, 2010 U.S. App. LEXIS 11790, at **4.

234. *Id.*

235. *Id.* at **5.

236. *Id.* at **2, **5 (alteration in original).

237. *See id.*

238. Siegel, *supra* note 5.

239. Gallagher, *supra* note 10, at 91.

240. Siegel, *supra* note 5; *see also Galaviz*, 2010 U.S. App. LEXIS 11790, at **2; *Nader v. ABC Television, Inc.*, No. 04-5034, 2005 U.S. App. LEXIS 19536, at **6 (2d Cir. 2005).

morals clauses and yet the courts still upheld these clauses, reasoning that any action that adversely affects the employer is sufficient to trigger the moral clauses and terminate the agreement.²⁴¹ It is likely that since modern entertainment agreements will specifically state that accusations are enough to trigger a clause, future talent cannot successfully claim that the new morals clauses in their contracts are overly broad and ambiguous since they will receive ample notice of these triggers.²⁴² Thus, it logically follows that if the broad morals clauses of the past have been upheld by the courts, then it is likely that the new wave of broader morals clauses that account for sexual misconduct and rape allegations will similarly be upheld by the courts, so long as the conduct adversely impacts the employers reputation.²⁴³

D. *Broader Morals Clauses Make Sense*

Given the significant implications sexual assault and rape have on victims, it is prudent that Hollywood, and other companies, adopt broader morals clauses in entertainment contracts that can be terminated by legitimate allegations of sexual misconduct or assault.²⁴⁴ Broader morals clauses will better serve public policy because they can help shed light on the sexual harassment and assault culture in Hollywood and serve as a restraining influence on talent to prevent future sexual misconduct.²⁴⁵ #MeToo's modus operandi is to help victims of sexual assault and violence by shedding light on workplace misconduct and broader morals clauses in Hollywood contracts can help assist in this endeavor.²⁴⁶ Hollywood has already seen an unprecedented shift in culture in the wake of #MeToo.²⁴⁷ Influential organizations have updated their codes of conduct and are implementing new rules to curb talent's misbehavior.²⁴⁸ Additionally, Hollywood's culture of silence on sexual violence has been breached and handed legal artillery in the war against sexual violence in the form of *Time's Up*.²⁴⁹ The Time's Up Legal Defense Fund offers legal and financial support

241. See *Galaviz*, 2010 U.S. App. LEXIS 11790, at **1–2; *Nader*, 2005 U.S. App. LEXIS 19536, at **5–6.

242. See Robehmed, *supra* note 16; Siegel, *supra* note 5.

243. See Gallagher, *supra* note 10, at 88; Sullivan, *supra* note 136.

244. See Dorsey, *supra* note 199.

245. See *id.*

246. See Siegel, *supra* note 5.

247. Claire Atkinson, *From Coffee Shops to Boardrooms, Talk in Hollywood Is on Change After #MeToo*, NBC NEWS (Mar. 3, 2018, 4:10 AM), <http://www.nbcnews.com/storyline/sexual-misconduct/coffee-shops-boardrooms-talk-hollywood-change-after-metoo-n852766>.

248. *Id.*

249. See Langone, *supra* note 105.

for men and women who desire to fight sexual misconduct by use of the justice system.²⁵⁰ Legal and financial support coupled with a broader morals clause can help victims of sexual misconduct find justice in the courtroom.²⁵¹

Additionally, these types of morals clauses can serve as a deterrent to misbehavior by providing an incentive for talent to conduct themselves in a manner that would not trigger the clause.²⁵² Morals clauses have always been intended to serve as a restraining influence on talent conduct and broader morals clauses are consistent with this intention.²⁵³ In the midst of the #MeToo era, the effects that sexual assault and rape allegations have on a celebrity's career are apparent.²⁵⁴ The #MeToo effect on workplace culture is, in part, due to celebrities acknowledging the career ending implications of these allegations.²⁵⁵ Specifically inserting language into a provision of a contract further provides an incentive not to engage in these frowned upon behaviors by solidifying the exact type of behaviors that would ultimately trigger a morals clause.²⁵⁶

VII. CONCLUSION

Morals clauses have been around for nearly one hundred years and have been sought out by employers as a means to protect their reputation in the public eye.²⁵⁷ For this reason, it is no surprise that in the wake of the #MeToo movement, Hollywood studios and executives turned their attention once again to morals clauses in an attempt to distance themselves away from toxic talent who were being tried in the court of public opinion.²⁵⁸ Whether these Hollywood companies are genuine in their sentiments against workplace sexual misconduct is beside the point.²⁵⁹ These companies are businesses like any other whose primary focus is to be as profitable as possible and aim to avoid financial ruin.²⁶⁰ Showing solidarity with the recent cultural trend of breaking the silence on workplace harassment is but a means of avoiding financial ruin.²⁶¹ However, some feel uneasy about the prospect of terminating an agreement solely on the basis of mere allegations

250. *Id.*

251. *Id.*; see also Robehmed, *supra* note 16.

252. Rosenbaum, *supra* note 44, at 131.

253. See *id.* at 151.

254. See Corey, *supra* note 125; Thorpe, *supra* note 104.

255. See Robehmed, *supra* note 16; Thorpe, *supra* note 104.

256. See Robehmed, *supra* note 16; Siegel, *supra* note 5.

257. Gallagher, *supra* note 10, at 88–89; Robehmed, *supra* note 16.

258. See Robehmed, *supra* note 16; Siegel, *supra* note 5.

259. See Robehmed, *supra* note 16; Siegel, *supra* note 5.

260. Siegel, *supra* note 5; see also Robehmed, *supra* note 16.

261. See Atkinson, *supra* note 247.

of misconduct.²⁶² While these arguments mean well, they fail to take into account the nature of businesses as rational entities that would not terminate an agreement solely on the basis of a single unsubstantiated allegation with little public condemnation.²⁶³ A blog post on *babe.net*²⁶⁴ accusing comedian and actor Aziz Ansari of sexual misconduct failed to lead to Ansari's termination from Netflix.²⁶⁵ It is likely that Netflix, the streamer of Ansari's show *Master of None*, acknowledged that the allegations made against him were unsupported and did not cause the public to turn against him.²⁶⁶ It is even more likely that the streaming service took note of the public conversation that followed the accusation and determined that it did not rise to level of the allegations made against Kevin Spacey and Louis C.K.²⁶⁷ As of July 2018, *Master of None* is available for streaming on Netflix.²⁶⁸

This Comment has not attempted to tout what these actors do or do not deserve in light of these allegations.²⁶⁹ Nor has this Comment opined on the fairness of punishing these stars by terminating their contracts.²⁷⁰ This Comment has simply attempted to address the way in which societal shifts in norms and values affect talent contracts and the manner in which deals are made in Hollywood.²⁷¹ The coming wave of broader morals clauses in Hollywood entertainment contracts in the wake of #MeToo is but an example of this phenomenon.²⁷² The #MeToo movement is an illustration of how societal norms and values shape the law, but also serves as an example of how the law shapes society by including morals clauses in contracts, which may deter conduct and shed light on the phenomenon of workplace sexual misconduct.²⁷³ Therefore, the arguments made herein—that broader morals

262. See Robehmed, *supra* note 16; Siegel, *supra* note 5.

263. See ZWEIG, *supra* note 26, at 768.

264. See Katie Way, *I Went on a Date with Aziz Ansari. It Turned into the Worst Night of My Life*, BABE (Jan. 13, 2018), <http://www.babe.net/2018/01/13/aziz-ansari-28355>.

265. See Lisa Bonos, *Here's How Aziz Ansari Could Use Master of None's Next Season to Rebuild His Image*, WASH. POST: SOLO-ISH (Jan. 24, 2018), http://www.washingtonpost.com/news/soloish/wp/2018/01/24/heres-how-aziz-ansari-could-use-master-of-nones-next-season-to-rebuild-his-image/?utm_term=.095d644c740f; Way, *supra* note 264.

266. See Christopher Hooton, *Master of None Season 3 Still on the Table, Aziz Ansari Is Doing Good, Says Lena Waithe*, INDEP.: NEWS (Mar. 21, 2018, 7:49 AM), <http://www.independent.co.uk/arts-entertainment/tv/news/master-of-none-season-3-aziz-ansari-babe-net-twitter-lena-waithe-a8266406.html>.

267. See *id.*

268. *Master of None* (3 Arts Entertainment 2015).

269. See discussion *supra* Part IV.

270. See discussion *supra* Part IV.

271. See discussion *supra* Part V.

272. Siegel, *supra* note 5.

273. See *id.*; Temin, *supra* note 127.

clauses are not a new phenomenon—will not be abused, will be upheld in court, are consistent with public policy, and serve to alleviate several concerns about the broadening of morals clauses to account for allegations and accusations of sexual misconduct and assault.²⁷⁴

274. See Gallagher, *supra* note 10, at 88, 104–05; Dorsey, *supra* note 199; Siegel, *supra* note 5.