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March 24, 2017

Hon. Vernon S. Broderick
Courtroom 518
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, N.Y. 10007

Hollander v. Bolger *et al.*, 1:16-cv-09800

Dear Hon. Judge Broderick:

I am the attorney and plaintiff in the above captioned action.

On March 24, 2017, I filed an amended complaint (First Amended Complaint) pursuant to Fed. R. Civ. P. 15 (a)(1)(B) as a matter of course since defendants have not yet filed their motion to dismiss under Rule 12(b)(6).

The First Amended Complaint basically adds a copyright infringement action under 17 U.S.C. § 501, a replevin action under New York State law, and requests the Court refer the two attorney defendants to the Disciplinary Committee of the N.Y. Supreme Court of the Appellate Division First Judicial Department for violating N.Y. Professional Misconduct Rule 4.1.

Your Honor previously scheduled a pre-motion conference for April 7, 2017, at 3:30 pm in response to defendants' letter that they intended to file a motion to dismiss under Rule 12(b)(6).

Thank you for your time.

Respectfully,
s/ Roy Den Hollander
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Copy via ECF to Defense attorney Joseph L. Francoeur

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Roy Den Hollander,

Docket No. 16-cv-9800 (VSB) (ECF)

Plaintiff,

FIRST AMENDED COMPLAINT

-against-

Katherine M. Bolger,
Matthew L. Schafer, and
Jane Doe(s),

Jury Trial Requested

Defendants.

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1. This action alleges that the above named defendants ("Defendants") violated the following laws and rules of conduct:

    a. The Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing without Plaintiff's authorization a computer or computers used in interstate or foreign commerce, obtaining information there from, and causing loss to Plaintiff's law and consulting business.

    b. The civil Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq*., ("RICO") by engaging in wire fraud, 18 U.S.C. 1343, and robbery—theft of computer related material that violated N.Y. Penal Code § 156.30, which is a Class E felony.

    c. The Copyright Act of 1976, 17 U.S.C. § 101 *et seq*., by copying, distributing, and displaying an unpublished attorney work product fixed in tangible form by Plaintiff without his authorization.

d. Trespass to chattel under New York State law by interfering with the personal property of Plaintiff's law and consulting business, which was electronically stored information.

e. Injurious falsehood under New York State law by making available to the public a knowingly false representation about Plaintiff's business product.

f. Replevin under New York State law by Defendants continuing to wrongfully retain copies—paper or digital—of business and personal information belonging to Plaintiff, which was stolen from a computer or iCloud used by Plaintiff for business and personal reasons.

g. For attorney defendants Katherine M. Bolger and Matthew L. Schafer, violation of the New York Rule of Professional Misconduct 4.1 by (1) knowingly making a false statement—perjury—to the New York State Supreme Court in the case *Hollander v. Shepherd, et al.*, 152656/2014 (N.Y. Sup. Ct. 2014) that an attorney work product document of Plaintiff's business was a press release, and (2) violating N.Y. Penal Code 156.30 when they duplicated computer related material of Plaintiff's business without having any right to do so.

Facts

2. From 2014 to 2016, Plaintiff, a semi-retired attorney and business consultant residing in Manhattan (Ex. A, Plaintiff's Business Certificate), was suing on his own behalf the Rupert Murdoch newspaper company Advertiser Newspapers Pty. Ltd., which does business as The Advertiser-Messenger Sunday Mail newspaper in Australia. The Rupert Murdoch company was accused of injurious falsehood and interference with a prospective economic advantage

of Plaintiff's business and was one of four defendants in *Hollander v. Shepherd, et al.* 152656/2014 (N.Y. Sup. Ct. 2014).

3. The two attorneys for Murdoch's company and the other defendants were Defendants Katherine M. Bolger ("Bolger") and Matthew L. Schafer ("Schafer") who practice law in Manhattan for the firm of Levine Sullivan Koch & Schulz, LLP.
4. On or after December 30, 2014, Bolger and Schafer stole an attorney work product document from Plaintiff's home computer, which is connected to the Internet. Or they hacked into Plaintiff's remote computer-server on the Internet, which also contained the document and required authorization codes for access, and stole the attorney work product document from there. Plaintiff uses the computer remote-server as an "iCloud" for business and personal purposes as well as his home computer for the same purposes.
5. Bolger admitted "accessing" Plaintiff's iCloud on December 30, 2014, and on at least two other times until January 13, 2015. (Ex. B, Bolger affidavit in opposition to Plaintiff's motion to withdraw the document at ¶¶ 2-4, February 3, 2015).
6. Schafer admitted "accessing" the iCloud on December 30, 2014, and January 7, 2015. (Ex. C, Schafer affidavit in opposition to Plaintiff's motion to withdraw the document at ¶¶ 2-4, February 3, 2015).
7. Since both admitted accessing the iCloud on a number of occasions, they most likely stole the attorney work product document from the iCloud, but that does not rule out that they stole it from Plaintiff's home computer also without authorization.
8. On information and belief, once Bolger and Schafer hacked into the iCloud, they stripped the access codes thereby making it viewable to them and the public at any time. This enabled them to scour the site at their convenience for Plaintiff's privileged statements, memoranda,

correspondence, drafts, mental impressions and personal views concerning the litigation in the N.Y. Supreme Court case against their clients and any other information on the iCloud.

9. Bolger and Schafer either engaged in the hacking and theft on their own or had assistance from an unknown person or persons connected with them or the Murdoch organization ("Jane Doe(s)").

10. When Bolger, Schafer and Jane Doe(s) broke into the iCloud or Plaintiff's home computer without authorization they copied or downloaded the attorney work product that Bolger, aided and abetted by Schafer, submitted by wire to the electronic filing system of the N. Y. Supreme Court as Exhibit 1 in Bolger's sworn affirmation of January 12, 2015. [1] (Ex. D, Bolger affirmation in opposition to Plaintiff's motion for trial on personal jurisdiction at ¶ 2, Jan. 12, 2015).

11. By communicating the attorney work product over the wire on three separate occasions to the N.Y. Supreme Court, they intentionally made the document public. (*Hollander v. Shepherd, et al.* 152656/2014, Dkt. No. 71 on January 12, 2015, Dkt. No. 106 on February 3, 2015, and Dkt. No. 114 on May 27, 2015).

12. All electronic submissions to the N.Y. Supreme Court are available to the public at large without cost on the N.Y. Unified Court System *WebCivil Supreme* website. (https://iapps.courts.state.ny.us/webcivil/FCASMain).

13. In her January 12, 2015, affirmation, Bolger admitted taking the document from Plaintiff's iCloud but intentionally lied that it was a "Media Release." (Ex. D, Bolger affirmation in opposition to Plaintiff's motion for trial on personal jurisdiction at ¶ 2). In her memorandum of law, she lied eight (8) times by referring to the document as a Media Release. (Ex. E,

[1] Plaintiff discovered the invasion of his iCloud or his home computer when he saw the privileged attorney work product on January 12, 2015, included in the Bolger Affirmation exhibits.

memorandum of law in opposition to Plaintiff's motion for trial on personal jurisdiction at pp. 9, 17, 18 (five times), 19, Jan. 12, 2015).

14. By doing so, she intentionally made it appear to anyone viewing the court's *WebCivil Supreme* website that Plaintiff's business and the criteria for its products and services do not consider that such private and privileged information should be protected, but rather, inconsistent with law practice standards, be turned into a press release for dissemination to the public.

15. By defrauding the public into believing that Plaintiff's business volitionally made public to the media such a detailed, confidential document during litigation that comprised an attorney's mental impressions, views and contingency tactics; Bolger disparaged the ability of Plaintiff's business to keep privileged information private and protect confidences while creating the false impression that Plaintiff's business services are inept and downright harmful to its clients.

16. On information and belief, Defendant Bolger, aided and abetted by Schafer, also communicated the attorney work product and her strategy of misrepresenting it as a "Media Release" over the wires to her clients in the N.Y. Supreme Court case.

17. So how did Bolger, Schafer and Jane Doe(s) find Plaintiff's iCloud on the Internet?

18. Bolger and Schafer admit finding a reference to the URL (Internet address) for Plaintiff's iCloud on the Columbia Business School Alumni Club of New York website. (Ex. F, Bolger memorandum of law in opposition to Plaintiff's motion to withdraw the document at 5, Feb. 3, 2015). Plaintiff is a graduate of Columbia's Business School, which is publicly available information.

19. The Columbia Business School Alumni Club of New York website listed Plaintiff's

connection with the iCloud's URL that stored the attorney work product. But that connection did not make Plaintiff's iCloud public because when the link was clicked, the notice came up "page not found," since the iCloud was not available to the public.

20. What it did, however, was tell Bolger, Schafer and Jane Doe(s) that there was a URL, which they most assuredly Googled but found that the iCloud was code protected. They then knew of an iCloud that Plaintiff intentionally kept private; therefore, it must contain confidential and privileged information that may be useful in employing their litigation tactic of personal destruction—demonizing the opposition.

21. On information and belief, Defendants targeted this URL and broke into the iCloud by using "brute force cracking" [2]. Once inside, they most likely stripped the site of its access codes and eventually copied or downloaded everything from the iCloud such as attorney work product documents, attorney client privileged communications, financial information, security codes, writings, ideas, contacts, photos, music, videos, emails—all the business and personal information that Plaintiff kept protected in his iCloud.

22. Defendants may have also illegally accessed Plaintiff's home computer that is connected to the Internet and also contained the attorney work product document along with other business and personal information.

23. Bolger and Schafer refused to say what exactly was copied or downloaded from Plaintiff's iCloud or his home computer, other than the attorney work product document. On information and belief, Defendants also copied or download all or much of the information that was on Plaintiff's iCloud or his home computer.

[2] "Brute force cracking" is a trial and error method used by application programs to decode encrypted data such as passwords or Data Encryption Standard keys through an exhaustive repetitive effort rather than employing intellectual strategies that trick a person into revealing his access codes, which is what was used against Clinton's Campaign Chairman John Podesta.

24. On information and belief, Defendants will eventually do a WikiLeaks type release of all the material they hacked so as to allow the Murdoch newspaper to spin the data into further harming Plaintiff's law and consulting business and disparaging its products and services.

25. Defendants hacking and theft violated the following New York State criminal statutes in addition to the civil causes of action on which this case is based:

    a. Unauthorized use of a computer, N.Y. Penal Code § 156.05, knowingly accessing a computer without authorization, class A misdemeanor;

    b. Computer trespass, N.Y. Penal Code § 156.10, knowingly accessing a computer without authorization and knowingly gaining access to computer material, class E felony;

    c. Unlawful duplication of computer related material in the first degree 156.30 when having no right to do so, a person copies, reproduces or duplicates in any manner any computer data and thereby intentionally and wrongfully deprives an owner thereof an economic value or benefit in excess of two thousand five hundred dollars; and

    d. Coercion in the second degree under N.Y. Penal Law § 135.60(5), since Defendants possession of Plaintiff's personal and business data from his iCloud or home computer amounts to a continuing threat to expose secrets or publicize asserted facts, whether true or false, tending to subject Plaintiff's business to hatred, contempt or ridicule. Class A misdemeanor.

Causes of Action

I. The Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030(a)(2)(C)

26. Bolger, Schafer and, on information and belief Jane Doe(s), violated 18 U.S.C. §1030(a)(2)(C), by intentionally accessing Plaintiff's protected iCloud or his home computer

without authorization and stealing the attorney work product and, on information and belief, other data from either of those protected computers.

27. Both computers were used in or affected interstate commerce. Plaintiff used the iCloud and his home computer for his law and consulting business, which crossed state lines.

28. When Plaintiff saw on January 12, 2015, that his attorney work product had been made public by Bolger on the *WebCivil Supreme* website, he immediately set out to determine how she obtained the document.

29. After extensive searching of the N.Y. Supreme Court case history and the Internet, Plaintiff concluded the attorney work product came from either his iCloud or home computer.

30. Plaintiff then determined whether any data had been deleted or modified on his home computer or iCloud, which involved numerous hours of investigation and analysis.

31. After concluding that data had not been deleted or modified, Plaintiff spent additional time determining how Bolger could have accessed either computer by researching hacking and contacting the host of his iCloud.

32. After concluding that Bolger likely used "brute force cracking" on his iCloud, Plaintiff researched methods to prevent such in the future and instituted more costly security precautions.

33. In all, Plaintiff's investigating, analyzing, assessing security of the computers, modifying the computers and responding to the intrusion cost him over $5,000.

II. Civil RICO

34. RICO "protects the public from those who would unlawfully use an enterprise (whether legitimate or illegitimate) as a vehicle through which 'unlawful . . . activity is committed.'" *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001).

35. Civil RICO has a number of requirements that are listed below along with how they apply to this case against Defendants.

The Enterprise

36. An Enterprise can be a legal entity, such as a corporation, or a group of persons who associate together for a common purpose of engaging in a course of conduct and as an ongoing organization with various associates functioning as a continuing unity that affect interstate or foreign commerce.

37. Bolger and Schafer work as attorneys for the law firm of Levine Sullivan Koch & Schulz, LLP, and, on information and belief, Jane Doe(s) are associated with the firm or the Murdoch organization.

38. Levine Sullivan Koch & Schulz, LLP is the medium through which the Defendants' RICO activities are conducted—it is the Enterprise.

39. The Enterprise affects interstate commerce because it is a national law firm with offices in New York City, Washington, D.C., Philadelphia, PA. and Denver, CO. that often handles cases with effects that cross state lines, or, as in the N.Y. Supreme Court case, that crossed foreign boundaries.

40. Bolger, Schafer and, on information and belief, Jane Doe(s) carry out their racketeering activities as part of the Enterprise's function in representing its clients in the N.Y. Supreme Court case.

Pattern of Racketeering Activity and Predicate Acts

41. A Pattern of Racketeering Activity requires that a defendant commit two or more "predicate acts" (also called racketeering activities) that are related and connected in time.

42. Here the "predicate acts" by the Defendants are wire fraud and robbery.

Wire fraud predicate act

43. Wire fraud under 18 U.S.C. § 1343 requires:

    a. a scheme or artifice to defraud by means of false pretenses, representations or promises (scheme includes half-truths, concealment of material facts, and deceit);

    b. causing such misrepresentations to be transmitted or making a communication in furtherance of the scheme by wire, radio or television communication in interstate or foreign commerce; and

    c. intentionally devising, participating in, or abetting such a scheme, which is inferred by a person's pattern of conduct and the nature of the scheme.

44. The purpose of the wire fraud statute is to protect businesses and property.

45. Plaintiff had a property interest in the attorney work product document, which was a product of his business as an attorney. He also had property and privacy interests in his iCloud and home computer.

46. Bolger, aided and abetted by Schafer, falsely and intentionally depicted the attorney work product as a "Media Release," which inferred it was not an attorney work product and had been submitted to news organizations; therefore, Plaintiff had volitionally made it a public document. (Ex. D, Bolger affirmation in opposition to Plaintiff's motion for trial on personal jurisdiction at ¶ 2; Ex. E, memorandum of law in opposition to Plaintiff's motion for trial on personal jurisdiction at pp. 9, 17, 18 (five times), 19, Jan. 12, 2015).

47. Bolger's falsehood amounted to perjury in her January 12, 2015, affirmation, Ex. D, ¶ 2.

48. Bolger, aided and abetted by Schafer, communicated her misrepresentation over the wire to the *WebCivil Supreme* website a total of three times. (*Hollander v. Shepherd, et al.*

152656/2014, Dkt. No. 71 on January 12, 2015, Dkt. No. 106 on February 3, 2015, and Dkt. No. 114 on May 27, 2015).

49. On information and belief, Bolger, aided and abetted by Schafer, also communicated her strategy of falsely representing the attorney work product as a "Media Release" and the attorney work product over the wire to her clients in the N.Y. Supreme Court case.

50. On information and belief, Bolger, aided and abetted by Schafer, also made other communications by email or telephone to her clients in furtherance of the fraudulent scheme.

51. As the lead attorney on the case, Bolger devised the scheme while Schafer intentionally participated and aided and abetted the scheme.

52. Bolger's scheme included deceiving viewers of the publicly available *WebCivil Supreme* website into believing that Plaintiff's business and the services it provided, both legal and consulting, were inept because they not only made confidential and privilege information public but actually released such to the press.

53. Bolger's scheme was an extensive one with the objectives to not only harm Plaintiff's business but also use her perjury as a step in the plot to save her clients money by deceiving the N.Y. Supreme Court into ruling in their favor and to avoid continuing costly litigation by intimidating Plaintiff into giving up his action.

54. In making the attorney work product public via the *WebCivil Supreme* website, Bolger was also telling Plaintiff that she or her misandry client-reporter Tory Shepherd will publicize the stolen materials from Plaintiff's iCloud or home computer and continue to deceive the public concerning those materials so as to completely destroy Plaintiff's business.

55. This case is not a malicious prosecution or abuse of process case because the parties are

different than those in the N.Y. Supreme Court case, not to mention that Plaintiff did not prevail in that case. So any exception to wire fraud as a predicate act does not apply.

56. If such criminal conduct as that of Bolger's and Schafer's cannot be reached by wire fraud, then in this Internet age, any attorney can make up any outrageous lie, communicate it to his clients over the wires for their approval, and not only win an action, hammer an opponent into submission but also destroy an opponent's business by broadcasting such a lie over a publicly available court website.

Robbery predicate act

57. On information and belief, Bolger, Schafer and Jane Doe(s) used the hacking technique referred to as "brute force cracking" to gain access to Plaintiff's iCloud and steal a copy of the attorney work product by copying or downloading it.

58. In the alternative and on information and belief, Bolger, Schafer and Jane Doe(s) used a hacking technique to gain access to Plaintiff's home computer and steal a copy of the attorney work product by copying or downloading it.

59. The predicate act of robbery under RICO, 18 U.S.C. § 1961(A), is "included by generic description," David Smith, *Civil RICO*, ¶ 2.02(1), p. 2-4 to 6, which means a court can rely on other state offenses that are not specifically labeled robbery. *Id.*

60. The appeals court in *U.S. v. Forsythe*, 560 F.2d 1127, 1137 (3rd Cir. 1977), which incorporated the Supreme Court's holding in *U.S. v. Nardello*, 393 U.S. 286, 295 (1969), determined that RICO's legislative history, H.R. Rep. No. 1549, 91st Cong., 2d sess. 56 (1970), showed that the predicate act "inquiry is not the manner in which States classify their criminal prohibitions but whether the particular state involved prohibits the . . . activity."

61. N.Y. Penal Code § 156.30 prohibits theft of computer related material, which fits the generic

description of robbery. It is a Class E felony—punishable by more than one year; therefore, it satisfies 18 U.S.C. § 1961(A).

62. In this modern, electronic world, guns and baseball bats are archaic when it comes to stealing valuable information through the Internet. Today, the surrogate for the old use of physical force is the hacking technique of using a computer to hit a protected website with an electronically rapid succession of different codes until the right one is found—"brute force cracking."

63. Bolger admits accessing Plaintiff's iCloud once on December 30, 2014, and on at least two occasions thereafter. (Ex. B, Bolger Aff. at ¶¶ 2-4).

64. Schafer admits accessing Plaintiff's iCloud once on December 30, 2014, and again on January 7, 2015. (Ex. C, Schafer Aff. at ¶¶ 2-4).

65. Bolger, Schafer and, on information and belief, Jane Doe(s) most likely forced their way into the iCloud at some point in time and left the front door open for future theft by stripping it of its access codes; or they forced their way into Plaintiff's home computer with some hacking technique.

Two or more predicate acts of wire fraud and robbery

66. The RICO pattern of racketeering activity requires the commission of at least two predicate acts.

67. As alleged above, Bolger, aided and abetted by Schafer, committed three predicate acts of wire fraud by communicating their false representation of the attorney work product over the Internet to the *WebCivil Supreme* website.

68. As alleged above on information and belief, Bolger, aided and abetted by Schafer, committed predicate acts of wire fraud by communicating to their clients over the wires the strategy of

misrepresenting the attorney work product as a "Media Release" coupled with the attorney work product itself and making other communications with their clients in furtherance of Bolger's scheme.

69. As alleged above, Bolger, Schafer and, on information and belief, Jane Doe(s) have committed at least two predicate acts of robbery.

Predicate acts are related and "open" in time.

70. "Predicate acts" are considered related under RICO when they have the same purpose, participants, targets and method of commission.

71. The predicate acts of robbery had the purpose of obtaining privileged and confidential information that could be used to disparage Plaintiff's business, its products and services, and help win the N.Y. Supreme Court case. The participants were the Defendants; the target was the Plaintiff. Further, Bolger, Schafer and, on information and belief, Jane Doe(s) used hacking and copying or downloading as the method of theft in obtaining the information.

72. The predicate acts of wire fraud had the purpose that by falsely depicting the attorney work product as a public press release, such would disparage Plaintiff's business and the products and services it provides, and aid in winning the N.Y. Supreme Court case. The participants were Bolger, aided and abetted by Schafer; the target was the Plaintiff. Further, Bolger, aided and abetted by Schafer, used the wires for communicating the misrepresentation of the attorney work product to *WebCivil Supreme* and their clients as well as other communications with their clients in furtherance of the scheme.

73. The predicate acts by Defendants are of an "open" nature.

74. It became evident from Bolger's first motion to dismiss the N.Y. Supreme Court case on August 29, 2014, that her team was trolling the Internet for information on Plaintiff's

business.

75. On information and belief, Bolger's team continues trolling the Internet for information on Plaintiff's business and continues to try to hack into Plaintiff's iCloud or his home computer to obtain any new information stored there so as to further harm Plaintiff's business and its services and products.

76. As a result, the iCloud and home computer security have been increased through costly measures.

The Prohibited RICO 18 U.S.C. § 1962(c) Activity

77. 18 U.S.C. § 1962(c) declares and identifies the conduct under RICO that is illegal in which Bolger, Schafer and, on information and belief, Jane Doe(s) have been and are engaging:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

78. To violate RICO, the Defendants are required to play some part in conducting, participating or directing the affairs of the Enterprise in which they function.

79. The function of the Enterprise (Levine Sullivan Koch & Schulz, LLP) is to engage in litigation in state and federal courts on behalf of its clients.

80. Bolger is a partner in the Enterprise who makes litigation decisions in the cases on which she is working and directs associates, paralegals and others employed or retained by the Enterprise to carry out the affairs of the Enterprise.

81. Schafer is an associate of the Enterprise who contributes to litigation decisions and carries out the directives of Bolger. Schafer also directs other associates, paralegals and others employed or retained by the Enterprise to carry out the affairs of the Enterprise.

82. On information and belief, Jane Doe(s) are retained by the Enterprise or provided by the Murdoch organization to contribute to the means for carrying out litigation decisions and to participate in effecting those decisions whether on cases in general or just the N.Y. Supreme Court case.

83. Bolger, Schafer and, on information and belief, Jane Doe(s) take part in the conduct of the Enterprise by knowingly implementing decisions as well as making them.

84. Bolger, Schafer and, on information and belief, Jane Doe(s) used their positions of authority and influence in the Enterprise to steal the attorney work product from Plaintiff's iCloud or his home computer.

85. Bolger and Schafer used their positions of authority and influence in the Enterprise to carry out Bolger's scheme by falsely depicting the privileged attorney work product as a press release—a public document.

86. Bolger and Schafer used their positions of authority and influence in the Enterprise to transmit Bolger's misrepresentations and the document to the court's website where it would be viewed by the public-at-large; thereby, harming Plaintiff's business by falsely depicting his business as incompetent, its services as inept, its products deficient and assist in winning the N.Y. Supreme Court case.

87. On information and belief, Bolger and Schafer used their positions of authority and influence in the Enterprise to transmit Bolger's misrepresentation strategy along with the document to their clients as well as engaging in other communications by wire with their clients in furtherance of Bolger's scheme.

88. The Defendants were motivated to maintain their income and positions in or with the Enterprise.

III. Copyright infringement

89. Plaintiff's home computer was not publicly available, so it did not explicitly give permission to Defendants to reproduce, distribute or display materials from it.

90. Whether Plaintiff's iCloud was or was not publicly available, it did not explicitly give permission to Defendants to reproduce, distribute or display materials from the iCloud.

91. The attorney work product was an unpublished work created by Plaintiff and fixed in a tangible form.

92. The Copyright Act of 1976, 17 U.S.C. § 101 *et seq*., gives copyright owners of unpublished works protection from unauthorized reproduction, distribution and displaying of their works. U.S. Copyright Office, Circular 1, p.1.

93. Protection under the Act begins from the time the work is created and fixed in a tangible form. *Id*. at 2.

94. Information stored on a computer or the Internet for longer than a transitory period is in a fixed tangible form. *Cartoon Network LP, LLP v. CSC Holdings, Inc.*, 536 F.3d 121, 129-130 (2d Cir. 2008) ("the definition of 'fixed' imposes both an embodiment requirement and a duration requirement").

95. The data on Plaintiff's home computer and iCloud existed for more than a transitory period of time.

96. Defendants in obtaining the attorney work product that Bolger, aided and abetted by Schafer, used in preparing and filing the papers in the N.Y. Supreme Court case did so without authorization from Plaintiff to (1) reproduce the document; (2) distribute the document by uploading it to the *WebCivil Supreme* website and, on information and belief, providing a

copy to their clients; and (3) display the document by making it viewable to the public on the *WebCivil Supreme* website.

97. All of those acts constitute infringement under 17 U.S.C. § 501.

IV. Trespass to chattel under New York State law

98. Bolger, Schafer and, on information and belief, Jane Doe(s) knew about Plaintiff's iCloud and that the iCloud was protected by security codes; therefore, on information and belief, they concluded that it contained privileged and confidential digital information which could be used to assist in the N.Y. Supreme Court case as well as injure Plaintiff's business and disparage the services and products it offers.

99. The information on Plaintiff's home computer and iCloud is his business or his personal property—some of which is even copyrighted.

100. Plaintiff protected this property by using a firewall on his home computer and the modern-day version of locks—access codes—on his iCloud.

101. Defendants either breached the home computer firewall or picked the iCloud access codes as though they were picking the locks on the filing cabinets of Plaintiff's business.

102. In effect, Defendants electronically bulldozed through the borders of Plaintiff's iCloud or home computer for the purpose of accessing the stored information.

103. Electronic signals generated and sent by computers have been held to be sufficiently physically tangible to support a trespass cause of action.

104. Bolger, Schafer and, on information and belief, Jane Doe(s) breached the electronic fencing around Plaintiff's iCloud or home computer in order to make electronic contact with the digital information of Plaintiff's business.

105. On information and belief, Defendants knew that such contact was substantially certain to result when they illegally accessed Plaintiff's iCloud or his home computer.

106. Bolger, Schafer and, on information and belief, Jane Doe(s) interfered with the exclusive right of possession of the attorney work product of Plaintiff's business by copying or downloading it from Plaintiff's iCloud or home computer. Mere possessory interference is sufficient to demonstrate the quantum of harm necessary to establish a claim for trespass to chattels.

107. Bolger, Schafer and, on information and belief, Jane Doe(s)' interference is actionable even though the physical condition of the chattel was not impaired because the interference hindered Plaintiff's use of the attorney work product for its own purposes because accessing it and making it public destroyed its value of confidentiality.

108. The law recognizes no such right to use another's personal property.

109. Bolger and Schafer decided to use the digital information obtained to not only gain an unfair advantage in the N.Y. Supreme Court case but also to cause consequential damage to Plaintiff's business and disparage its services and products as well as to intimidate Plaintiff into withdrawing his action and refrain from bringing future civil rights lawsuits on behalf of men.

110. Bolger and Schafer sent Plaintiff the message that if he persisted in fighting for the rights of men in the courts, they would thwart his efforts by destroying his business. They would publish out of context and falsely depict more of the stolen information and engage in more hacking of his iCloud or home computer. In effect, they were telling him—"resistance is futile, you will be assimilated" to our misandry beliefs or your business will be destroyed.

111. Such is Coercion in the second degree under N.Y. Penal Law § 135.60(5), since, on information and belief, their possession of much, if not all, of Plaintiff's personal and business data from his iCloud or home computer amounts to a continuing threat to expose secrets or publicize asserted facts, whether true or false, tending to subject Plaintiff and his business to hatred, contempt or ridicule.

V. Injurious Falsehood

112. Injurious falsehood requires (1) intentional publication, (2) of false information about a person's property, (3) done maliciously (common-law malice) or in reckless disregard for the truth or falsity, (4) a reasonably prudent person would or should anticipate that damage to another will naturally flow therefrom, and (5) results in loss measured by special damages.

113. Bolger, aided and abetted by Schafer, intentionally published the attorney work product of Plaintiff's legal business by placing it on the *WebCivil Supreme* website, which is available to anyone with access to an Internet connection at no cost.

114. Bolger, aided and abetted by Schafer, falsely depicted—repeatedly—that the attorney work product was a "Media Release," when actually it was titled "Responses to Media." (Ex. D, Bolger affirmation in opposition to Plaintiff's motion for trial on personal jurisdiction at ¶ 2, Jan. 12, 2015; Ex. E, Bolger memorandum of law in opposition to Plaintiff's motion for trial on personal jurisdiction at pp. 9, 17, 18 (five times), 19, Jan. 12, 2015).

115. Bolger, aided and abetted by Schafer, made their known to be false statements with the intention of impairing Plaintiff's business and business services and products.

116. Bolger and Schafer as lawyers experienced in representing media news organizations had to know that the document was not as they called it a "Media Release" but rather an attorney

work product given its title, length—17 pages, contingent questions and possible answers to news media inquiries concerning the litigation of the N.Y. Supreme Court case.

117. Malice or at the very least reckless disregard is evinced by Bolger, aided and abetted by Schafer, changing the title of the attorney work product from "Responses to Media" to "Media Release." (Ex. D, Bolger affirmation at ¶ 2, Jan. 12, 2015; Ex. E, Bolger memorandum of law at pp. 9, 17, 18 (five times), 19, Jan. 12, 2015).

118. Further, it is enough for the injurious falsehood cause of action if the falsehood charged was intentionally uttered and did in fact cause Plaintiff to suffer actual damage in his economic or legal relationships.

119. As a result of Bolger, aided and abetted by Schafer, falsely depicting the attorney work product as a "Media Release" and making such a misrepresentation public, Plaintiff's legal and business clients have significantly diminished.

120. It is up to the trier of the facts to determine whether Plaintiff's loss of sales is to be attributed to that false attribution by Bolger, aided and abetted by Schafer.

121. One long term client who paid an annual retainer of $1,000 a year has canceled his legal and business relationship with Plaintiff as a result of Bolger and Schafer's actions.

122. Plaintiff has incurred expenses (such as the $400 filing fee for this case) in bringing this action as a reasonable effort to minimize damages to Plaintiff's business by showing that Bolger, aided and abetted by Schafer, intentionally and falsely depicted the attorney work product as a publicly available press release so as to disparage Plaintiff's business product and services thereby economically harming his business.

VI. Replevin

123. Defendants stole from Plaintiff's iCloud or his home computer the attorney work product

document and, on information and belief, other data from Plaintiff's iCloud or home computer.

124. Defendants continue to possess or control without Plaintiff's authorization the attorney work product and, on information and belief, other data from Plaintiff's iCloud or home computer in the form of copies—paper or digital or both.

125. The data Defendants possess or control is the personal property of Plaintiff's business, which makes the embodiment of that data in paper or digital form the personal property of Plaintiff's business.

126. Plaintiff has the superior right to those copies over which Defendants are currently exercising control or possession and wrongly detaining.

127. Plaintiff demands return of all such copies.

VII. Violation of attorney work product privilege

128. The U.S. Supreme Court has held that the phrase "work product" "is reflected . . . in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways" conducted, prepared or held by an attorney. *Hickman v. Taylor*, 329 U.S. 495, 511 (1947).

129. New York has accepted the definition of work product set forth in *Hickman* in determining the scope of subsection CPLR 3101(c) (*see, e.g.*, 3A Weinstein-Korn-Miller, *N.Y. Civil Prac.* at ¶¶ 3101.44, .47; *Warren v. New York City Trans. Auth.*, 34 A.D.2d 749 (1st Dept. 1970); *Babcock v. Jackson*, 40 Misc.2d 757 (N.Y. Sup. 1963)).

130. Documents within CPLR 3101(c) include mental impressions and personal beliefs held by an attorney relating to litigation. *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159 (N.Y. Sup. 2002).

131. CPLR 3101(c) recognizes the sanctity of the lawyer's mental impressions and strategic analyses. 3A Weinstein, *N.Y. Civil Prac.* ¶ 3101.42.

132. Bolger and Schafer, however, do not.

133. The attorney work product document was drafted during litigation in the N.Y. Supreme Court case and includes mental impressions of the attorney-plaintiff concerning the litigation.

134. Just because the words in the stolen attorney work product were memorialized in a draft instead of memorized, does not mean they were or would have been communicated to the press or that the work product privilege was waived. In fact, the document was not presented to the press and not seen by anyone other than Plaintiff until Bolger, Schafer and, on information and belief, Jane Doe(s) reproduced and used it without Plaintiff's permission.

135. "Here [was] simply an attempt, without purported necessity or justification, to [exploit] written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties. . . . Not even the most liberal of . . . theories can justify unwarranted inquiries into the files and the mental impressions of an attorney." *Hickman v. Taylor*, 329 U.S. 495, 510.

136. Defendant attorney Bolger, aided and abetted by attorney Schafer, violated the New York Rule of Professional Misconduct 4.1 by knowingly making a false statement of fact under penalty of perjury to the N.Y. Supreme Court that the attorney work product document was a "Media Release."

137. Plaintiff requests that this Court refer attorneys Bolger and Schafer to the Departmental Disciplinary Committee of the N.Y. Supreme Court of the Appellate Division First Judicial Department for violating Professional Misconduct Rule 4.1.

138. Additionally, even if Bolger and Schafer did not hack into Plaintiff's iCloud or his personal computer, they still violate N.Y. Penal Code 156.30:

> A person is guilty of unlawful duplication of computer related material in the first degree when having no right to do so, he or she copies, reproduces or duplicates in any manner any computer data . . . and thereby intentionally and wrongfully deprives or appropriates from an owner thereof an economic value or benefit in excess of two thousand five hundred dollars . . . .

139. Such is a violation of N.Y. Judiciary Law § 90(4)(e) and Plaintiff requests that this Court refer Bolger and Schafer to the New York County District Attorney for prosecution.

Injury and Damages

140. Plaintiff's business is that of providing legal and business consulting products and services.

141. Bolger, Schafer and, on information and belief, Jane Doe(s)' hacking of Plaintiff's iCloud or his home computer has required Plaintiff to expend significant time and expense in analyzing and investigating Defendants' breach of Plaintiff's computer and iCloud, assessing and modifying the security of both to prevent further unauthorized access, and otherwise responding to the intrusion by these Russian-like criminals of the Internet.

142. Bolger, aided and abetted by Schafer, in making available to the public the attorney work product stolen from Plaintiff's business and misrepresenting it as a "Media Release" has, as Bolger and Schafer intended, harmed Plaintiff's business because whenever a client hires him for litigation services, the opposing counsel will enlist the now publicly available work product against Plaintiff's business in representing a client.

143. Further, Bolger and Schafer are now sitting on a mass of private and confidential personal and business information that they can use at will to engage in disparaging attacks against Plaintiff's practice in other cases in which they are involved, or provide the data to

attorneys in cases they are not involved with, or provide the data to the many news media clients that they represent, especially Murdoch newspapers. Such amounts to a clear intimidation that Plaintiff dare not exercise his First Amendment rights under the U.S. Constitution unless it conforms to their misandry beliefs.

144. Plaintiff, therefore, seeks economic damages for the harm to his business in the amount of $500,000.

145. Under civil RICO, Plaintiff requests a trebling of those damages to $1.5 million.

146. Plaintiff also seeks punitive damages under the trespass to chattel and injurious falsehood actions in the amount of $2 million.

Other Relief Sought

147. In addition to the above cited monetary damages, Plaintiff requests that this Court order (1) Bolger, Schafer and, on information and belief, Jane Doe(s) to turn over to Plaintiff all paper and digital copies of the attorney work product and any other material obtained from the Plaintiff's iCloud or home computer that they are in possession or control of; (2) Bolger, Schafer and, on information and belief, Jane Doe(s) to identify all the persons, including legal entities, involved in obtaining the attorney work product; (3) Bolger, Schafer and, on information and belief, Jane Doe(s) be prohibited from publicizing the attorney work product and any other materials they obtained from Plaintiff's iCloud or home computer; (4) Bolger, Schafer and, on information and belief, Jane Doe(s) inform Plaintiff of all other persons whom to their knowledge have copies of any data they obtained from Plaintiff's iCloud or home computer; and such other and further relief as this Court deems just and proper.

Subject Matter Jurisdiction

148. This Court has subject matter jurisdiction because this action rests on federal questions

under the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030 *et seq.*; the civil enforcement provisions of the Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. §§1961-68; and The Copyright Act of 1976, 17 U.S.C. § 101 *et seq*.

149. This Court has subject matter jurisdiction over the New York State actions for trespass to chattel, injurious falsehood and replevin under its pendent jurisdiction.

Personal Jurisdiction

150. This Court has personal jurisdiction over each defendant under Fed. R. Civ. P. 4(k)(1)(A) because each defendant is subject to personal jurisdiction in the New York State courts and has minimum contacts with the State; or under Fed. R. Civ. P. 4(k)(2), because each defendant has minimum contacts with the United States; or under 18 U.S.C. § 1965(b) or (d) of the RICO statute.

Venue

151. Venue is proper in this Court under 18 U.S.C. 1965(a) for each defendant because each defendant resides, is found, has an agent, or transacts affairs in this district.

152. In the alternative, venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events that gave rise to the claims against each defendant occurred and are occurring in this forum.

153. In the alternative, venue is proper in this Court under 18 U.S.C. 1965(b) in order to serve the ends of justice because at least one of the defendants satisfies at least one of the above venue requirements.

Dated: March 24, 2017
New York, N.Y.

Respectfully,
s/ Roy Den Hollander
Roy Den Hollander, Esq.
Plaintiff and Attorney
545 East 14th Street, 10D
New York, N.Y. 10009

(917) 687-0652
rdenhollander97@gsb.columbia.edu

Exhibit A

Business Certificate

I HEREBY CERTIFY *that I am conducting or transacting business under the name or designation*

of Roy Den Hollander Financial, Business and Law Consultant

at 545 East 14 Street, 10D

City or Town of New York *County of* New York *State of New York.*

My full name is Roy Den Hollander

Print or type name. If under 21 years of age, state "I am ____ years of age".

and I reside at 545 East 14 Street, 10D, NY, NY 10009

I FURTHER CERTIFY *that I am the successor in interest to* ____

the person or persons heretofore using such name or names to carry on or conduct or transact business.

Type of business Financial, business and legal *(see next page)*

IN WITNESS WHEREOF, *I have signed this certificate on* April 25 2012

Roy Den Hollander

STATE OF NEW YORK, COUNTY OF New York ss.:

On 4/25/2012 before me, the undersigned, personally appeared Roy Den Hollander personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

STATE OF NEW YORK, COUNTY OF NEW YORK
SS: I, NORMAN GOODMAN, COUNTY CLERK AND CLERK OF THE SUPREME COURT,

(Signature and office of person taking acknowledgment)

2012 MAY -8 A 9:

THAT I HAVE COMPARED THE ANNEXED COPY WITH THE ORIGINAL FILED IN MY OFFICE

MAY 08 2012

AND THAT THE SAME IS A CORRECT TRANSCRIPT THEREOF

Notary Stamp

SANDRA L NEWSOM
Notary Public - State of New York
NO. 01NE6226214
Qualified in Queens County
My Commission Expires 8/12/14

Blumberg Law Products®

X 201—Certificate of Conducting Business under an Assumed Name for Individual. 4-10

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	Index No. 152656/2014

AFFIDAVIT OF KATHERINE M. BOLGER

City of New York)
) ss.:
State of New York)

KATHERINE M. BOLGER, being duly sworn, deposes and says:

1. I am a member of Levine Sullivan Koch & Schulz, LLP, counsel to Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage, and Fairfax Media Publications Pty Limited, defendants in the above-captioned action. I submit this affidavit in response to Plaintiff Roy Den Hollander's ("Plaintiff") Motion Requiring Defendants to Withdraw Allegedly "Illegally Obtained Document." I make this statement upon my personal knowledge, and I would be competent to testify at trial to the facts set forth herein.

2. On December 30, 2014, my colleague, Matthew Schafer, sent me a link to Plaintiff's website, http://www.mensrightslaw.net/main/index.html.

3. I clicked on the link and immediately accessed the website, which I was able to navigate freely. On no occasion was I ever asked to enter a username or password to access the Plaintiff's website. I simply visited the link like I visit other websites.

4. I believe that I accessed Plaintiff's website on at least two other occasions in the same manner, before January 13,2015 and did not encounter a password of any kind.

5. I also accessed the document that is the subject of this Motion and attached as Exhibit 1 to my affidavit in opposition to Plaintiff's Motion for a Trial on at least one occasion and was not asked to enter a username or password in order to access it. A true and correct copy of the document is attached hereto as **Exhibit 1**.

6. On January 13, 2015, after Plaintiff filed his Order to Show Cause, I again visited Plaintiff's website. When I visited the website on January 13, 2015, I was prompted, for the first time, to enter a username and password.

7. I did not "hack" the website, nor did anyone else to my knowledge. Indeed, I have no training or skills on how to "hack" or gain unauthorized access to Plaintiff's website, and I do not know how to do so. Moreover, I did not direct anyone to "hack" Plaintiff's website.

8. On January 13, 2015, I sent an email to Plaintiff explaining that his website was open to the public and, as a result, requested that he withdraw the frivolous order to show cause. Plaintiff refused to do so.

9. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff's Memorandum of Law filed in *Hollander v. Swindells-Donovan*, No. 08-cv-04045 (E.D.N.Y. Dec. 21, 2009).

10. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiff's Memorandum of Law filed in *Hollander v. Copacabana Nightclub*, No. 07-cv-05873 (S.D.N.Y. Oct. 9, 2007).

Katherine M. Bolger

Sworn to and subscribed before me
this 3rd day of February, 2015.

Notary Public

LISAMARIE APPEL
Notary Public, State of New York
No. 01AP4869703
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires Sept. 2, 2018

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	Index No. 152656/2014

AFFIDAVIT OF MATTHEW L. SCHAFER

City of Washington, D.C.)
) ss.:
District of Columbia)

MATTHEW L. SCHAFER, being duly sworn, deposes and says:

1. I am associated with Levine Sullivan Koch & Schulz, LLP, counsel to Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage, and Fairfax Media Publications Pty Limited, defendants in the above-captioned action. I submit this affidavit in response to Plaintiff Roy Den Hollander's ("Plaintiff") Motion requiring Defendants to Withdraw Allegedly "Illegally Obtained Document." I make this statement upon my personal knowledge, and I would be competent to testify at trial to the facts set forth herein.

2. I first located the website http://www.mensrightslaw.net on December 30, 2014 when I conducted several Google searches related to this lawsuit. I clicked on the link and immediately accessed the website, which I was able to navigate freely. On no occasion was I ever asked to enter a username or password to access the Plaintiff's website. I simply visited the

link like I visit other websites. Attached hereto as **Exhibit 1** is a true and correct copy of a screenshot of part of the webpage as it appeared on December 30, 2014.

3. I accessed the document attached to the Affirmation of Katherine M. Bolger, sworn to on January 12, 2015 as Exhibit 1, by visiting the website http://www.mensrightslaw.net on or about January 7, 2015. The website and the .pdf document were publicly available, and I accessed them as I would have any other webpage and document on the Internet.

4. At no time between December 30 and January 12 was I required to enter a username or password, and I did not encounter any other requirement in accessing the website.

5. I did not "hack" the website, nor did anyone else to my knowledge. Indeed, I have no training or skills on how to "hack" or gain unauthorized access to Plaintiff's website, and I do not know how to do so. Moreover, I did not direct anyone to "hack" Plaintiff's website.

6. On January 13, 2015, after Plaintiff filed his Order to Show Cause, I again visited Plaintiff's website. When I visited the website on January 13, 2015, I was prompted, for the first time, to enter a username and password.

7. On January 13, 2015, I also conducted a Google search for Plaintiff's website. Plaintiff's website continued to be displayed in Google search results and a Google cache from January 3, 2015 was still publicly accessible when I clicked "Cached" on the Google search engine.

8. A true and correct copy of the "Cached" version of Plaintiff's website available on January 13, 2015 as depicted in screenshots is attached hereto as **Exhibit 2**.

Matthew L. Schafer

Sworn to and subscribed before me
this 3rd day of February, 2015.

Notary Public

BRIDGETTE B. SIMMONS NOTARY PUBLIC DISTRICT OF COLUMBIA MY COMMISSION EXPIRES 11/14/2016

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	:	Index No. 152656/2014 **AFFIRMATION OF KATHERINE M. BOLGER** Hon. Milton A. Tingling

KATHERINE M. BOLGER, a duly admitted attorney at law, does hereby affirm that the following is true under penalty of perjury pursuant to CPLR 2106:

1. I am a member of Levine Sullivan Koch & Schulz, LLP, counsel to Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage, and Fairfax Media Publications Pty Limited, defendants in the above-captioned action. I submit this affirmation in support of Defendants' opposition to Plaintiff Roy Den Hollander's ("Plaintiff") oral motion for an immediate trial pursuant to Rule 3211(c) of the New York Civil Practice Law and Rules. I make this statement upon my personal knowledge, and I would be competent to testify at trial to the facts set forth herein.

2. A true and correct copy of the "Media Release" available at Plaintiff's MR Legal Fund website, http://www.mensrightslaw.net/main/Down_Under/Press_Responses.pdf, is attached hereto as **Exhibit 1**.

3. A true and correct copy of the first affidavit of Michael Cameron originally filed in this Court on August 29, 2014 in support of Defendants' original motion to dismiss is attached hereto as **Exhibit 2**.

4. A true and correct copy of the first affidavit of Tory Shepherd originally filed in this Court on August 29, 2014 in support of Defendants' original motion to dismiss is attached hereto as **Exhibit 3**.

5. A true and correct copy of the first affidavit of Richard Coleman originally filed in this Court on August 29, 2014 in support of Defendants' original motion to dismiss is attached hereto as **Exhibit 4**.

6. A true and correct copy of the first affidavit of Amy McNeilage originally filed in this Court on August 29, 2014 in support of Defendants' original motion to dismiss is attached hereto as **Exhibit 5**.

7. A true and correct copy of the second affidavit of Michael Cameron originally filed in this Court on October 27, 2014 in support of Defendants' operative Motion to Dismiss is attached hereto as **Exhibit 6**.

8. A true and correct copy of the second affidavit of Tory Shepherd originally filed in this Court on October 27, 2014 in support of Defendants' operative Motion to Dismiss is attached hereto as **Exhibit 7**.

9. A true and correct copy of the second affidavit of Richard Coleman originally filed in this Court on October 27, 2014 in support of Defendants' operative Motion to Dismiss is attached hereto as **Exhibit 8**.

10. A true and correct copy of the second affidavit of Amy McNeilage originally filed in this Court on October 27, 2014 in support of Defendants' operative Motion to Dismiss is attached hereto as **Exhibit 9**.

11. For the convenience of the Court and counsel for the parties, attached hereto as **Exhibit 10** is a true and correct copy of a decision in *Salfinger v. Fairfax Media Limited, et al.*, No. 13-cv-0100081 (Wis. Cir. Ct. Dec. 8, 2014).

Dated: New York, New York
January 12, 2015

KATHERINE M. BOLGER

EXHIBIT 1

Responses to Media

Do you have a copy of the Complaint? You can take anything you want from the complaint and attributed it to me as a quote.

Why bring the suit?

To have fun fighting these bimbo book burners who think they are the chosen ones. [I like the alliteration. Of course given Tory's apparent age, she's really a bimbat and Amy a bimbette].

There were Feminists to the right of me, Feminists to the left of me, Feminists in front of me volley'd and thunder'd from down under, so I decided to sue.

Tory the Torch and Amy McNeuter are just like Joseph McCarthy and Roy Cohn from the 1950s. They targeted the guys involved in the course for our political beliefs.

It's another witch hunt; only today the witches are doing the hunting.

If these two Feminist book-burners had not jumped on their broomsticks and scared the bejesus out of the University of South Australia, students would have had an opportunity to acquire information and consider views not available anywhere else in higher education.

Reporters like Tory and Amy have taken the place of the 1950s "loyalty review boards" that carried out investigations for universities, governments and businesses to certify that their employees were not Communists or lefties. Only today, those who are not politically-correct are excluded.

If this case is successful, the private pinklisters, similar to the blacklisters of the 1950s, and those who use them will be put on notice that they are legally liable for the professional and financial damage they cause with their falsehoods and interference in business relations.

Bimbo?

The term bimbo refers to Tory the Torch and Amy "McNeuter." McNeuter because she wants to neuter men, unless she's in bed with them, assuming she's heterosexual.

In 1920, composer Frank Crumit recorded "My Little Bimbo Down on the Bamboo Isle", in which the term "bimbo" was used to describe an island girl of questionable virtue. Australia's an island, isn't it? Considering how Tory and Amy operate as reporters—they're of questionable virtue.

How do you view what happened or what's the big deal?

Under the Nazis, it was the German Student Union's Office for Press and Propaganda that started the book burning of those writers who opposed Nazi ideology.

At the Nazi book burning in 1933, Joseph Goebbels said, "The era of extreme Jewish intellectualism is now at an end." Tory and Amy can't wait to say the same about any intellectualism that isn't pro-Feminist.

So what's the difference here with Tory and Amy stopping the teaching of a course on men and the law by claiming it expressed "radical" and "extreme" male views?

So they didn't go into the University and take knowledge, ideas and facts in the form of books and throw them on a bonfire. Instead they used the modern-day torch of the electronic media to incinerate opposing views.

The end result is the same—censorship of ideas, or verbal mutilation.

Why should anyone who does not believe in this Feminist mumbo-jumbo be punished for their beliefs, speech or actions, unless they commit a crime or are running for office. As to beliefs, there are no crimes and as to speech very few, such as yelling "bomb" in Times Square.

As President Truman wrote, "In a free country, we punish men for the crimes they commit, but never for the opinions they have." Not so in Australia.

Are you comparing them to the Nazis?

Yes. I guess that makes them Feminazis.

I'm also comparing them to the Commies. The Soviet Union ostracized anti-commies into Gulags. The Feminist just keep anti-Feminists out of the universities. What are they afraid of? I thought they were strong and independent females.

Tory and Amy wrapped themselves in the rag of Feminism to justify the imposition of a unitary belief-system of Feminist orthodoxy for dictating the thought, speech, and conduct of members of the educational community and society-at-large.

Were you surprised?

Yes, but I should have expected such from yellow, female-dog-in-heat journalists and the press in a penal colony.

Wasn't Noonien Singh Khan born there?

Did the articles anger you?

Of course they did, but at least I'm in touch with my feelings.

Although, one thing Tory does not realize is that insults from an opponent is the highest form of compliment for an attorney.

In these causes of action, it's not what I think that matters, but what Tory caused others to think.

Are you out for vengeance?

Hey, what's wrong with a little quid pro quo—one bad turn deserves another.
I'd call it justice.

Sounds like vengeance.

So what's the difference.

Do you feel persecuted?

Not if the Feminist is hot, she can walk all over me in her stiletto heels. Hmm, maybe I'll contact the dominatrix trio I ran into the other night?

Anyway, Feminists, assuming they are human beings, which has yet to be proven, can do whatever they want so long as they stay off of my rights. If they don't, which they don't, then it's a fight.

And I'm going to fight them to my last dollar and last breath, and, if there is anything after death for eternity.

Sounds like hate?

I don't hate the Feminists—I despise them. It's a great motivator.

Do you think the people who rose up in the Ukraine loved their President? No, they despised and hated him.

What did the Feminists do to you?

Just because they are unable to accept that Mother Nature condemned them to mood swings, do they have to make life trying for the rest of us.

VAWA

At least in the Inquisition you got to appear before your judges, although you were probably tied to the rack, with VAWA you never know who your judges are, and they skip the rack and go right to finding you did what the alien says you did.

The Edgar Allen Poe tale of horror divorce I went through before a Lesbian judge (Joan Lobis) who was probably jealous that my face had been where she wanted to put hers.

All cost me a lot of money, time, and possibly a job with the CIA. Such would not have happened but for the Feminists.

Do you consider Feminists witches?

I thought NOW stood for the National Organization of Witches?

Most of them are. The witchcraft label has been applied to practices people believe influence the mind, body, or property of others against their will.

Did you ever censor your speech because it wasn't politically correct? Isn't that constraining your will to be free?

Feminist linguistics is an obvious effort to control thought, speech, and action. As George Orwell wrote, "if thought corrupts language, language can also corrupt thought," *Politics and the English Language,* 1946, and once thought is corrupted, so is a person's beliefs, and corrupted beliefs are the real power for controlling people against what otherwise would be their free will.

What are the falsehoods?

It can be false or misleading.

Tory: "member of extreme right-wing groups," from an email; "linked to extreme views on men's rights," second headline 1/12/14 article

Amy: "hardline anti-feminist advocate[]," "hardline" may have been a Freudian slip when she becomes emotional over men; "published on radical men's rights websites," 1/14/14 article.

Tory's disparaging and libelous publications

1/9/14, on information and belief - "[RDH] identified as belonging to extreme right wing groups in the USA." 1/9/14 Gouws wrt Tory questioning Gary Misan.

1/12/14 article: ***Lecturers in world-first male studies course at University of South Australia under scrutiny***

"LECTURERS in a 'world-first' male studies course at the University of South Australia have been linked to extreme views on men's rights and websites that rail against feminism." Second headline 1/12/14 article.

"The lecturers' backgrounds are likely to spark controversy." 1/12/14 article.

"Two lecturers have been published by prominent US anti-feminist siteA Voice for Men, a site which regularly refers to women as 'bitches' and 'whores' and has been described as a hate site by the civil rights organisation Southern Poverty Law Centre." 1/12/14 article.

"One American US lecturer - US attorney and self-professed 'anti-feminist lawyer' Roy Den Hollander - has written that the men's movement might struggle to exercise influence but that

'there is one remaining source of power in which men still have a near monopoly – firearms'." 1/12/14 article.

"He also argues that feminists oppress men in today's world and refers to women's studies as 'witches' studies'." 1/12/14 article.

"He has likened the position of men today to black people in America's south in the 1950s 'sitting in the back of the bus', and blames feminists for oppressing men." 1/12/14 article.

"The course, which has no prerequisites . . . ." 1/12/14 article.

"Dr Michael Flood, from the University of Wollongong's Centre for Research on Men and Masculinity, said these types of male studies 'really represents the margins'." 1/12/14 article.

" 'It comes out of a backlash to feminism and feminist scholarship. The new male studies is an effort to legitimise, to give academic authority, to anti-feminist perspectives,' he said." 1/12/14 article.

"Flinders University School of Education senior lecturer Ben Wadham, who has a specific interest in men's rights, said there was a big difference between formal masculinity studies and 'populist'male studies." 1/12/14 article.

"He said there were groups that legitimately help men, and then the more extreme activists." 1/12/14 article.

"'That tends to manifest in a more hostile movement which is about 'women have had their turn, feminism's gone too far, men are now the victims, white men are now disempowered',' he said." 1/12/14 article.

" 'I would argue that the kinds of masculinities which these populist movements represent are anathema to the vision of an equal and fair gendered world.'" 1/12/14 article.

"Dr Wadham said that universities needed to uphold research based traditions instead of the populist, partisan approach driven by some." 1/12/14 article.

1/14/14 *University of South Australia gives controversial Male Studies course the snip* Headline

"CONTROVERSIAL aspects of a Male Studies course will not go ahead" Second headline 1/14/14 article.

"The Advertiser revealed yesterday that some of the lecturers listed for the professional certificates <u>had links to extreme men's rights organisations</u> that believe men are oppressed, particularly by feminists." Emphasis in 1/14/14 article.

"US 'anti-feminist' lawyer Roy Den Hollander . . . ." 1/14/14 article.

"National Union of Students president Deana Taylor said a course like that proposed for the university provided 'a dangerous platform for anti-women views'." 1/14/14 article.

1/14/14 ***Pathetic bid for victimhood by portraying women as villains***

a. "Pathetic bid for victimhood by portraying women as villains"

b. "Big ups to UniSA for having the sense to reject anything linked to those at the very fringe of the men's rights spectrum . . . overseas ring ins. ("Ring in" is a gang term meaning persons that are called to help in gang wars/fights—sounds a little like Tory).

c. "They are - misogynists, I mean. And we're talking old-school misogyny - the hatred of women - as well as the new-school misogyny - entrenched prejudice against women."

d. "Not just harmless condescension or unthinking stereotypes, but some serious anger."

e. "The problem is, the circle (Tory is referring to "circle-jerk misogynists") is no longer closed, no longer just a bunch of angry guys in a basement. They're trying to get up the stairs and into the light.

f. "They want to play outside with legitimate experts in men's issues . . . ."

g. "It's a classic tactic, used by pseudoscientific fraudsters . . . [to create] a Hannibal Lecter-style creation that mimics valid inquiry."

h. "Try to sound like the real deal, and look enough like them to fool some people, some of the time."

i. "[T]rying to make women into villains . . . ."

j. "It could be dismissed if they weren't trying to creep in where they are not needed, or wanted."

k. "But these guys drown out any real discussion with their endless angry spittle. And that's the real bitch.

6/18/14 ***Men's rights campaigner Roy Den Hollander attacks The Advertiser's Tory Shepherd in bizarre legal writ filed in New York County***

a. "[B]izarre legal writ . . . ."

b. "UniSA was planning a course in men's studies that included men with links to US men's rights extremists . . . ."

c. "Mr Den Hollander thinks he was in line to be paid $1250 to lecture."

d. "Mr Den Hollander is a proudly "anti-feminist" lawyer with a fairly unsuccessful track record."

e. "WATCH: THE COLBERT REPORT ON ROY DEN HOLLANDER"

f. Roy believes in "censor[ship of] a journalist . . . ."

g. Roy is "an extremist by sounding like an extremist."

h. Tory sarcastically demeans Roy's legal complaint against her as "Brilliant, no?"

i. "He [Roy] also talks of his concern that 'alien wives and girlfriends' are making up phony abuse cases against men, and that men are being targeted by feminists because they were trying to escape said feminists by going overseas for girlfriends."

j. Tory communicated that Roy does not believe in equality for women because he demeans males who do by calling them "girlie-guys." Tory wrote "In the men's rights vernacular, 'girlie-guys' are usually known as 'manginas'. The terms refer to males who believe in equality for women . . . ."

k. "Why on Earth give such a man more publicity? But it's important, I think, to remain aware and wary of people like Mr Den Hollander."

l. "I suspect the people at UniSA who flirted with the idea of bringing him over to teach may not have really understood his philosophy."

Tenor and innuendos of the two articles are false, and use the same tactic as Joseph McCarthy and Roy Cohn did in the 1950s. Back then, certain words were used to label persons as sub-human, anathemas, and not deserving of rights—"communist sympathizer," "fellow traveler," and "red," while today Tory and the Feminists use the opprobrium associated with words such as "antifeminist," "right winger," "hardliner," and "masculine."

Both used the description "anti-feminist" the way a reporter for *Pravda* in the old Soviet Union would have used the term "anti-communist." At least the Russian commie reporters could point to intellectuals such as Marx and Lenin to define "Communism," who can Tory and Amy point to for a definition of Feminism—their fellow groupies at consciousness lowering sessions?

Amy uses "radical" the way Tory uses "extreme," to depict Plaintiff as a dangerous loony because she knows her readers will never realize that the following were also called "radicals": America's founding fathers, abolitionists, the South Australian Fabian Society, Australian Lucy Morice, Radical Women of Australia, the Paris Commune, anti-Vietnam War demonstrators, Environmentalists.

Where's the malice?

These two don't hate all men, just the ones who stand up for their rights and don't bow down to the pedestal on which they delusionally believe they recline.

They hate, loathe and fear men's rights advocates, so when they learn that a bunch will be teaching a course, they jump on their electronic broomsticks railing demon men are invading the college and will convince all the pretty young co-eds to drop their pants.

With Amy, look at the cartoon in the beginning of her article that mocks men. Why include it? It's an expression of an unreasonable desire to see someone else suffer denigration = malice.

With Tory, she headlined her second and last article dated January 14, 2014 with "University of South Australia gives controversial Male Studies course the snip." Why did she use the word "snip"? Snip means to make a quick cut. Were her hate-filled fantasies of male emasculation or circumcision at work? At the very least, it connotes feelings of malice toward men and the guys involved in the course.

Reckless disregard with both is that neither interviewed me before their initial articles and, to my knowledge, never reviewed the content of the proposed course.

They saw the term "men's studies" and jumped on their broomsticks to attack.

There are militantly anti-male groups out there that are led by man-hating females. Tory and Amy most likely belong to such.

With injurious falsehood, malice is presumed if the statement was published, was false and injuries resulted.

You use the reporters' first names, why?

An expression of my disrespect for such rag journalists.

Also an expression of my opinion that they are stupid little girls wagging their tongues to harm people they don't like. It's how girls in high school fight, only these two have the power of the press which they use for their personal vendettas.

Are you anti-feminist?

Of course, I'm anti-Feminist; I'm too intelligent not to be.

So what's wrong with that? I speak out against a snake-oil ideology and that's my right.

Feminist have come to believe in their exceptionalism and their sense of being the chosen ones. That they can decide the destinies of men; that it is only them who can be right—just like a bossy wife.

Opposition to the ideology Feminism is not a crime—not yet anyway. My freedom of speech is not limited to parroting pro-Feminist propaganda as desired by self-appointed members of the PC Ministry of Truth.

I'm also anti anything that infringes my Constitutional rights.

I'm an anti-feminist, and proud of it, while they are man-haters or misandrists, and I'm sure they are proud of it.

I define Feminist as a person who believes that all men are guilty and all females innocent until they are proven guilty—but even then a man is at fault.

A collection of people many of whom could hardly bake a cake, fix a car, sustain a friendship or a marriage, or even solve a quadratic equation, yet they believe they know how to rule the world. They justify any reprehensible act so long that it's committed by a Feminist.

Are you a right winger?

No, unless you consider Students for a Democratic Society and the New Democratic Coalition as right wing organizations.

In the 1960s, I was accused of being a communist because of my SDS membership. Today, I'm accused of being a right wing extremist. So have my political views changed or just the epithets that conformists use to make others agree with their weak minded beliefs?

I know what I like and what my rights are. I'm not about to sacrifice either just to satisfy some special interest group that only has my harm at heart.

A number of experts also criticized the course.

You call those girlie-guys Tory enlisted experts or are they sexperts? Those androgynies are simply scared of being hexed by the Feminists.

Dr. Flood obviously sides with Tory, and if he lived in America in 1776 would have also sided with the Tories, since the founding fathers were responding to injustices and clearly on the "margins" of the British Empire.

Dr. Ben Wadham surely would have opposed the progressive programs of Teddy Roosevelt because they were "populist," and would have gleefully "crucif[ied] mankind upon a cross of gold" because William Jennings Bryan was a "populist."

Amy used an alleged female, Eva Cox, who said, "men who want to complain that they haven't had enough attention as victims, and that does worry me." What, Cox worry? Absurd, no man would want attention from her, now Amy is a different story.

I don't consider myself a victim but a target. Hopefully a moving one.

Weren't you published on the Voice of Men website that calls girls "bitches"?

Yes, but I don't use that term. I think it gives girls too much credit.

So what? You're published in _____, and I am sure it has used some language you may disagree with.

Your comment on guns?

A girl's tongue is her gun, so why should men disarm unless females are muzzled.

My comment is true—isn't it?

Mostly men exercise their right to bear arms, so how can the exercise of a right be extreme or even subject to criticism. When the media starts criticizing the exercise of rights, it deters people from exercising them, which is the same as not having them.

The power of the Second Amendment is to give people a fighting chance against unjust state violence, such as the revolution that occurred in Kiev.

Tory and Amy?

They're like the pigs in *Animal Farm*, squealing about equality when they really mean they're more equal than others, and the others are men.

I'm sure they bring a lot of joy whenever they leave the room.

They're ideologically corrupt, and not unlike a *de facto* cult preventing the spread of what they deem are heretical ideas.

They're prime candidates for natural de-selection.

Misogynist?

When I go out to nightclubs or my hip hop class, believe me, what's in my heart is not malice.

I like music, I like dancing, I like drinking, and I like pretty young ladies. But as with drinking, a guy has to be careful with the young ladies.

Look, would you rather drive a new car or a used one? And if you are the car, would you rather be driven by a student driver or one with a license.

Girls aren't rated Double X for nothing, which is why I chase them.

Why bother bringing these cases?

There are some people who will do anything for money, but there are others who will do anything for justice. I like to think I'm the later, but that just might be my ego talking.

What's at stake?

Universities were supposed to be open to differing views, but today under Feminism the winds of a cult-like conformity blow through the halls of academia when centers of learning and the press believe they have discovered the one and only truth.

The message is clear. On college campuses, everybody's freedom of speech is limited to parroting pro-Feminist propaganda as determined by the self-appointed members of the PC Ministry of Truth.

Freedom of speech. It is key to the flow of ideas and forbids treating differently those with unpopular viewpoints by suppressing their speech in favor of popular speech. Tory, Amy and the Feminists are out to eradicate discussion of the currently unpopular masculine perspective beneficial to males.

"To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." *Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 603 (1967)(Brennan, J.).

Are you advocating revolution?

I've been advocating that in one form or another since I was a member of SDS—Students for a Democratic Society.

I almost joined the Weathermen, but couldn't see the relevance in blowing up bathrooms.

As Abraham Lincoln said, "The people of the United States are the rightful masters of both Congress and the Courts, not to overthrow the Constitution, but to overthrow the men [and now females] who pervert the Constitution."

For me, it is just about time for civil disobedience.

Sure that can include violence, but I have not decided to start up the Eliot Ness truck yet. It's a figure of speech.

The only way to stop the discrimination against men is for 100,000 armed guys to show up in Washington, DC demanding their rights. The problem is there are perhaps only 200 men left in America.

What are they going to do to me—send me to Guantanamo? I like warm climates, besides if I escape, I get to drive around in 56 Chevys with hot Latinas and smoke Cuban cigars.

Or, they take away my license to practice law. So what? The only reason I got it was to defend my rights, but that's impossible in a judicial system prejudiced against men. So my law license is pretty much as useless as basing arguments on the Torah in a court of the Third Reich.

My allegiance is to the Constitution and Declaration of Independence—not to a government that's been corrupted by ideological Feminists, nor a government that sacrifices men's rights to give girls preferential treatment.

Feminism has created a de facto tyranny over men by government. As James Madison said, a tyranny exists when one group controls the executive, legislative, and judicial branches. The belief system of Feminism now has an overriding influence in all three. America is now a Feminarchy that tramples the rights of men.

Insurrection seems better than living as slaves to the Feminists and a government that enforces their male-hating policies. If we fail, we'll be gone, and then the ladies can fight among themselves and with the androgynies who are left.

Throughout history the failure of governments to uphold individual rights have caused violence—not prevented it. Today, the preferential treatment of girls violates the rights of guys, there's no justice within the system because the Feminist Establishment prevents the institutions in this country from upholding the Constitution as it applies to men seeking equal treatment.

"[W]here there is only a choice between cowardice and violence, I would advise violence." Gandhi.

Sometimes a social evil is so egregious, so entrenched, that violence is the only answer. Violence is often necessary in the name of a principle, and is admirable when waged in the name of democratic principles.

Never underestimate the influence of violence.

How do the laws discriminate?

Currently, just look at the three anti-feminist cases I brought:

Ladies Nights: The suit would have ended guys having to subsidize girls to party. I think that's called prostitution.

The owner of the China Club told me that he held Ladies Nights to get a lot of guys to come to the club thinking there would be plenty of girls. To which I added that when there wasn't, they'd console themselves by drinking.

Religion and Women's Studies case: Religion requires irrationality and acting against one's self-interest. So think irrationally and do something stupid and you've got a trait of femininity.

"'[I]ntensely personal' convictions which some might find 'incomprehensible' or 'incorrect' come within the meaning of 'religious belief'...." *Welsh*, 398 U.S. at 339 (internal quotes *Seeger*, 380 U.S. at 184-185):

Amy harps on the innuendo that allegations of Feminism as a religion are absurd. To Feminists and those scared of them, yes, but the U.S. Supreme Court and Court of Appeals cases on religion indicate otherwise.

Academic freedom does not give any University the right to provide a wide range of benefits to one group based on sex but not the other as a result of stereotyping. "Fairness in individual competition for opportunities ... is a widely cherished American ethic. Indeed, in a broader sense, an underlying assumption of the rule of law is the worthiness of a system of justice based on fairness to the individual," which still includes males. *Regents of University of California v. Bakke*, 438 U.S. 265, 319 n. 53 (1978).

By 2016 in the U.S., females will receive 64% of the Associate's Degrees, over 60% of the Bachelor's Degrees, 53% of the Professional Degrees, and 66% of the Doctor's Degrees. National Center for Educational Statistics, *Digest of Educational Statistics*, Table 258.

VAWA: The reputation and careers of Americans, usually men, are destroyed by secret, Star Chamber like hearings in which aliens testify but not the accused.

Why did the Feminist get VAWA passed?

Why do females squeeze their feet into tiny shoes with stilts on one end, constrict the lower part of their bodies in panty hose, interfere with their respiration with tight push-up bras, paint their faces with cancer causing dyes, pluck their eyebrows, glue fake eyelashes to their eye lids, conduct chemical reactions on their heads to change hair color? To catch a guy.

If they are willing to do all that to land a guy, they are sure willing to use the government to violate a guy's rights if it increases their chances.

You lost that case?

And every case I brought where the rights of men conflicted with the preferential treatment of females.

The chances of the courts upholding the rights of men are about equal to some pretty young lady paying my way on a date.

One of these days the courts may do what they are supposed to—then again, maybe they never will.

Give me some examples of how the laws discriminated in the past?

1. The British Factory Acts in the 19th century limited the hours beyond which no woman was to work during any one day, the time which was to be allotted to meals, the sanitation of the workrooms, and other matters of a similar nature. Cleveland at 250-51.
2. In America in the 19th and early 20th centuries, statutes existed in all the States with a view to regulate and prescribe for the employment of women in hazardous occupations. Such laws forbid the employment of women in excess of a specified number of hours per day and per week. A few of the States had also established a minimum wage to be paid to women engaged in stated occupations.
3. In England females could not vote for members of Parliament but could vote on county and local matters. Cleveland at 254.

Flogging

4. An 1820 English Act forbade the flogging of women either in public or private, but not men. It was also okay to flog school boys with a cane but not a school girl.

Paternity Fraud

5. Under the 19th century common law when a mother had a child while married, the husband was presumed to be the father. Of course that was not always the case, but only lately has DNA testing been able to disprove such, but in around 30 states, it does not matter.

Liable for wife's acts

6. In England, marriages before 1870, the husband was liable for his wife's contracts, torts or civil wrongs before they were even married.
7. In America in the 1800s, if a wife rented and occupied premises, her husband would be liable for the rent.
8. A suit could be brought by or against a married woman only for contracts made by her previous to her marriage. And even in such cases she had to be joined by her husband as co-plaintiff or defendant.
9. A wife could not be sued for receiving stolen goods, if she received them from her husband.
10. In America in 19th and early 20th centuries, if a husband abandoned his wife, even with justification, he was nevertheless liable for her support.
11. In America in 19th and early 20th centuries, when a husband refused to supply his wife with necessaries suitable to her rank and condition, the wife could obtain them from any tradesman or tradesmen, and the husband had to pay the bills.

Liable for support of wife

12. Tradesman could supply a wife with goods which she had been in the habit of purchasing, whether the same be necessaries or not, and the husband had to pay.
13. In America in 19th and early 20th centuries, a woman could complain of her husband's laziness, and compel him at court to give bonds for the support and also for the maintenance of his children.

Liable for wife who left

14. If a wife, who had left her husband, offered to return and the husband refused to receive her, the wife could, then purchase necessaries in his name without his consent, and the husband was liable for all necessaries so supplied.
15. Any man who shall unlawfully neglect or refuse to support his wife or children, unless owing to physical incapacity or other good cause, might be convicted of a felony in some States, but liable to punishment in every State.
16. In America in 19th and early 20th centuries, an unmarried adult woman who becomes poor and unable to support herself, might, by legal process in some of the States, compel her father, mother, grandfather, grandmother, or any one or more of them, to furnish such support or to contribute towards it. If these relatives are not able to do so, the State, town or municipality would support the woman as a pauper.

Restriction on husband's property but not wife's

17. In America in the 1800s, during the life of a wife, a husband could not sell nor make a conveyance of his real estate either in whole or in part without her knowledge and consent. She had a one-third interest in his real estate and in NY one-half his personal property.
18. In America in the 1800s, except for five states, every woman possessed at marriage of property or acquired property during marriage by any means held it and all rents, profits and income from, to her separate use, free from the control of her husband and from attachment by creditors for his debts. A married woman could without her husband's consent sell, convey, and devise her separate estate, or any interest or interests in any and every part thereof, the same as if she were single.
19. In England, The Married Woman's Property Act of 1882 allowed married women to acquire, hold, and dispose of property in the same way as could a single woman, which except for primogeniture, was the same as a male. All property belonging to a woman at the time of her marriage, or which came to her after marriage, including earnings and property acquired by the exercise of any skill or labour, was absolutely her own, and the husband had no rights whatever over the property of his wife.
20. In England in 1870, under the Married Woman's Property Act:
    a. All the earnings of a married woman were her own property, as also were her deposits in any Savings Bank.
    b. Every married woman was allowed to insure her own or her husband's life for her separate use. This opened the way for wives taking out insurance on their husbands and then killing them.
    c. Where husband and wife are both liable, the property of the husband must first be taken to satisfy the liability.

Debtors' prison

21. In England, under the Married Woman's Property Act of 1882, a married woman trading on her own account could be made a bankrupt, but she could not be committed to prison for non-fulfillment of an order under the Debtor's Act of 1869. Arthur Rackham Cleveland, *Woman under the English Law the Landing of the Saxons to the Present Time*, at 282, London: Hurst and Blackett, 1896. For 1837-1895. Husbands, however, could be committed to prison for failing to pay certain debts.

a. Under the 1882 Act, every married woman had the same remedies, civil and criminal, against all persons, including her husband, for the protection of her separate property, as if she were a single woman. *Id.* at 283.

22. In 19th century England, judicial separation or divorce courts could grant alimony only to the wife and direct that the custody of the children of the marriage be given either to the innocent party.
23. In 19th century America, a wife was legally entitled to alimony, except for adultery, but not the husband, and the husband had to pay for the wife to bring a divorce action against him. Today in America with no-fault divorce, the entire structure of American marriage and divorce is geared to financially supporting faithless females. Men are 4 times more likely to lose their homes. One million American men are preemptively ordered out of their homes each year, even when no physical abuse is even alleged.

Heart balm

24. In the 19th and early 20th centuries in America, where a woman, who was of age, is seduced under a promise of marriage, she could personally sue the seducer. When the seducer was a single man, the latter would be compelled to make reparation by marriage. Where this could not be affected, exemplary damages would generally be obtained. If the seducer was a married man and the girl did not know it, she could obtain aggravating damages.
25. By 1929, with very few exceptions, women could hold any office in any of the States. They may have been members of a State legislature and they may have been members of Congress.

Sentencing

26. For the 41 classes of crimes to which the Federal Sentencing Guidelines apply, the average sentence for males is 278.4 percent greater than that of females (51.5 versus 18.5 months). David Mustard, *Disparities in Sentencing: Evidence from U.S. Federal Courts*, Journal of Law and Economics, vol. XLIV (April 2001).
27. Males not only receive longer sentences but also are less likely to receive no prison term when that option is available; more likely to receive upward departures, and less likely to receive downward departures. When downward departures are given, males receive smaller adjustments than females. *Id.*

Female value greater

28. A drunk driver will receive an average of a 3-year higher sentence for killing a female than for killing a male. *Unconventional Wisdom*, Washington Post, Sept. 7, 2000.
29. Black widows: Chicago female homicide cases resulting in non-convictions by 1914 had become a national scandal. Illinois State's Attorney Maclay Hoyne, declared that: "The manner in which women who have committed murder in this county have escaped punishment has become a scandal. The blame in the first instance must fall upon the jurors who seem willing to bring in a verdict of acquittal whenever a woman charged with murder is fairly good looking and is able to turn on the flood gates of her tears, or exhibit a capacity for fainting."

30. Female Defenses unavailable to males:

Menstruation and PMS, or I kill whomever I want and blame it on my biology:

At four o'clock in the afternoon on January 30, 1865, Mary Harris fired two shots at her former fiancé, as he walked down the hallway of the U.S. Treasury Building leaving work for the day. Burroughs fell dead and Harris was tried for murder.

Mary's prior fiancé had broken off their engagement and married another girl, so Mary followed him to D.C. and shot him dead. Mary tearfully testified that Burroughs had promised to marry her but married someone else. After a 12-day trial in which she pleaded "not guilty by reason of being 'crossed in love and suffering from painful dysmenorrheal at the time of the shooting' or what is now called premenstrual syndrome, Mary was acquitted.

N.Y. Times, July 20, 1865 printed: The verdict only furnishes a new illustration of what must be regarded as a settled principle in American law—that any woman, who considers herself aggrieved in any way by a member of the other sex, may kill him with impunity, and with an assured immunity from the prescribed penalties of law.

Battered Female Syndrome or he's dead so I can say whatever I want about him and the courts will believe me.

Svengali Defense or the devil, a man, made me do it.

Contract killing or get a guy to do it and then blame him.

Injurious Falsehood (form of interference with economic concerns) [Defamation protects a person's reputation while Injurious Falsehood protects economic concerns; it is an economic tort].

Intentional publication
Of false and misleading information
Malice = done with intent to interfere with another's interests or done without regard to consequences. A reasonably prudent person would anticipate economic damages [if show statement made and false then there exists presumption of malice]
That results in special damages, including loss of prospective economic advantage

Tortious interference with prospective contractual relations [Protects person in acquiring property. Where a contract would have been entered into but for malicious conduct of 3P].

Relationship with 3P that creates expectancy of future contractual relations
Defendant interferes with that relationship
Malice = Defendant's sole purpose is to harm plaintiff or defendant engaged in fraud
Economic injury, which includes loss of opportunities for profit

Exhibit E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	:	Index No. 152656/2014 Hon. Milton A. Tingling

MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR AN IMMEDIATE TRIAL

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Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd. ("Advertiser Newspapers" or "*The Advertiser*"), Amy McNeilage, and Fairfax Media Publications Pty Limited ("Fairfax Media" or "*The Herald*"), by and through their undersigned attorneys, submit this memorandum of law in opposition to Plaintiff Roy Den Hollander's ("Plaintiff" or "Hollander") oral motion for an immediate trial pursuant to Rule 3211(c) of the New York Civil Practice Law and Rules ("CPLR").

PRELIMINARY STATEMENT

This motion arises from Defendants' motion to dismiss Plaintiff's amended complaint for lack of personal jurisdiction. Defendants – two Australian news organizations and two Australian reporters based in Australia who wrote articles about a controversy at a local Australian university – argue that this Court does not have personal jurisdiction over any Defendant because the articles were not researched, written, edited, or published in New York; they were researched, written, edited, and published in Australia. In fact, just last month, a state court in Wisconsin dismissed a lawsuit against *The Herald* for just this reason. *See Salfinger v. Fairfax Media Ltd.*, No. 13-cv-0100081, slip op. at 8-10 (Wis. Cir. Ct. Dec. 8, 2014). Instead of bringing forward facts contradicting any of this as the law requires him to do, Plaintiff Roy Den Hollander – a self-proclaimed "anti-feminist" who makes no attempt to hide his contempt for Defendants, at a point even analogizing one to a "female dog in heat" – now asserts that this Court should hold an immediate trial on whether jurisdiction is proper because he *thinks* Defendants are "liars" and their affidavits cannot be trusted. Hollander asks this Court to validate this belief by ordering Defendants to expend time and money to travel ten thousand miles around the world based on his unsubstantiated allegation that they are liars. This Court should not do so.

Immediate trials should be held only when a plaintiff creates a genuine issue of fact in opposition to a motion to dismiss that has the potential to lead to an early resolution of the case. Here, Defendants' motion to dismiss argues that Defendants undertook no action in New York that was "directly related" to the creation of the articles Plaintiff challenges, such that exercising jurisdiction over them would be appropriate. Defendants affirmed by way of affidavits that they took no such action. Plaintiff, in opposition, offered no evidence at all contradicting these affidavits. That ends the inquiry.

Undeterred, Hollander alleges there are "inconsistencies" between Defendants' first set of affidavits responding to allegations in his original complaint and their second set responding to different allegations in his amended complaint. These "inconsistencies," he argues, are evidence of perjury, and, he claims, if Defendants "lied" about one thing, they are clearly "lying" about all things. He further catalogues a series of alleged contacts Defendants have with New York, which he argues support jurisdiction. Neither of Plaintiff's arguments, however, create a genuine issue of fact. First, his allegations of perjury are absurd; affidavits responding to different complaints with different allegations will of course be different. Second, Defendants' alleged contacts with New York, even if credited as true, cannot create a genuine issue of fact because they are unrelated to the creation of the articles Hollander challenges. In short, Plaintiff has not and cannot create a genuine issue of fact.

Moreover, forcing the Defendants to travel ten thousand miles to defend personal jurisdiction undercuts the policy decision made by the drafters of CPLR, who chose to treat defamation claims different than other claims, and the Court of Appeals, which chose to construe CPLR § 302(a)(1) narrowly in defamation actions. *SPCA v. Am. Working Collie Ass'n*, 18 N.Y.3d 400, 405 (2012). In fact, for this reason, Plaintiff cites no case finding an immediate trial

appropriate on a motion to dismiss for lack of personal jurisdiction in the defamation context. For these reasons, Plaintiff's motion should be denied.

BACKGROUND[1]

A. The Defendants

Advertiser Newspapers is an Australian-based corporation and publishes *The Advertiser*, a newspaper based out of Adelaide, Australia and focused on Australian-related news. *See* Affirmation of Katherine M. Bolger ("Third Bolger Aff."), Ex. 6 ("Cameron Aff.") ¶¶ 3-7.[2] Tory Shepherd, at all times relevant to this suit, was the Political Editor for *The Advertiser* and is a citizen of Australia who has never been to the State of New York. *Id.*, Ex. 7 ("Shepherd Aff.") ¶¶ 1, 2, 16. Shepherd, in researching and writing the challenged articles, placed a single phone call to Plaintiff in New York and also contacted Plaintiff and a New York professor, Miles Groth, via email. *Id.* ¶¶ 14-15.

Defendant Fairfax Media also is an Australian-based corporation and publishes *The Sydney Morning Herald* ("*The Herald*") based out of Sydney, Australia and focused on Australian-related news. *Id.*, Ex. 8 ("Coleman Aff.") ¶¶ 3-8. At all times relevant to this suit, Amy McNeilage was a reporter for *The Herald* and a citizen of Australia who, like Shepherd, has never been to the State of New York. *Id.*, Ex. 9 ("McNeilage Aff.") ¶¶ 1-3, 9. McNeilage had no contact with anyone in New York in the process of writing the single *Herald* article challenged by Hollander and also never attempted to contact Hollander. *Id.* ¶¶ 7-8.

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[1] Defendants include in this Background only those facts that are necessary to the disposition of Plaintiff's Motion for an Immediate Trial. A complete background of this case can be found in Defendants' Opening Memorandum in support of their Motion to Dismiss [Dkt. 44] at 2-8.

[2] For the Court's convenience, Defendants submit herewith the Third Bolger Affidavit, which contains, as exhibits appended thereto, the Defendants' first and second set of affidavits filed in support of the first and second motions to dismiss, respectively.

B. Plaintiff Roy Den Hollander

Plaintiff is a self-professed "anti-feminist" who believes that the "feminist" movement is a plot to "eliminate[] the rights that the members of a distinct group, such as men, are entitled to." FAC ¶¶ 67, 79. To prevent that from happening, Hollander has filed multiple civil suits alleging that various programs he believes favor women are unconstitutional or illegal.[3]

Plaintiff's complaints along these lines have been unsuccessful. *See, e.g.*, *Hollander v. Inst. for Research on Women & Gender at Columbia Univ.*, 372 F. App'x 140, 141-42 (2d Cir. 2010) (noting the court's "grave doubts" about Plaintiff's legal arguments). This is so despite Plaintiff's efforts to paint his opponents as liars, *Hollander v. The City of New York Commission on Human Rights*, No. 12635, 2013 WL 9679520, at *3-4 (1st Dep't Mar. 3, 2013) (Reply Brief for Petitioner-Appellant Hollander) (accusing the Commission on Human Rights of "falsely recount[ing]" its own order), and the judges he appears before as biased, Second Affirmation of Katherine M. Bolger [Dkt. 45], Ex. 6 [Dkt. 46] at 2 (arguing that a judge's opinion was "factually wrong, but try telling that to a lady judge if you're a man"). And, in fact, the U.S. Court of Appeals for the Second Circuit has admonished Hollander for his conduct in these matters. *See Hollander v. Members of Bd. of Regents of Univ. of N.Y.*, 524 F. App'x 727, 730 (2d Cir. 2013) ("Before again invoking his feminism-as-religion thesis in support of an Establishment Clause claim, we expect [Plaintiff] to consider carefully whether his conduct passes muster under Rule 11."). Plaintiff chronicles his legal exploits on a website titled, "MR Legal Fund" (the "MR" standing for "Men's Rights"), urging that "[n]ow is the time for all good men to fight for their rights before they have no rights left." MR Legal Fund,

[3] The Court is entitled to take judicial notice of certain materials, such as court records and newspaper articles, without converting the motion to one for summary judgment. *See, e.g.*, *Saleh v. N.Y. Post*, 78 A.D.3d 1149, 1151-53 (2d Dep't 2010); *see also Gomez-Jimenez v. N.Y. Law Sch.*, 36 Misc. 3d 230, 258 n. 13 (Sup. Ct. N.Y. Cnty.) (judicial notice of newspaper article reporting a 25% decline in law school admissions), *aff'd*, 103 A.D.3d 13 (1st Dep't 2012); Opening Mem. at 4 n.2 (discussing judicial notice).

http://www.mensrightslaw.net/main/index.html (last visited on Jan. 12, 2015).

Hollander discusses this lawsuit on his website under the headline "Bimbo Book Burners from Down Under." *Id.* He describes the articles subject to his original complaint as "Yellow, female-dog-in-heat Articles," while styling Defendants' filings as, for example, "Book Burner's Motion to Dismiss." *Id.* In a document titled "Responses to Media," also published on Hollander's website and relating to this suit, Hollander asks himself, "Why bring the suit?" and goes on to answer, "To have fun fighting these bimbo book burners who think they are the chosen ones." *See* Third Bolger Aff., Ex. 1 at 1 ("Release"). He then says "[t]he term bimbo refers to Tory the Torch and Amy 'McNeuter.' McNeuter because she wants to neuter men, unless she's in bed with them, assuming she's heterosexual." *Id.* When asked, "Weren't you published on the Voice of Men website that calls girls 'bitches,'" an allegedly libelous statement at issue in this complaint, Hollander responds, "Yes, but I don't use that term. I think it gives girls too much credit." *Id.* at 10. When he asked, "Are you advocating a revolution," he states, in part, "The only way to stop the discrimination against men is for 100,000 armed guys to show up in Washington, D.C. demanding their rights." *Id.* at 11.

C. Procedural History

1. The Original Complaint

Hollander filed his original complaint against Defendants on March 24, 2014 and served it on the Defendants in Australia through the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents. The original complaint purported to assert two causes of action against all Defendants for "injurious falsehoods" and tortious interference with prospective economic advantage. Original Compl. [Dkt. 1] ¶ 77. Plaintiff based his claims on three articles, two of which were published by Advertiser Newspapers and written by Shepherd. *Id.* ¶¶ 16, 65. Fairfax Media published the third in *The Sydney Morning Herald*, which

McNeilage authored. *Id.* ¶ 44.

2. The Motion to Dismiss and Supporting Affidavits

On August 29, 2014, Defendants filed a motion to dismiss that complaint, arguing that this Court lacked personal jurisdiction and Plaintiff failed to state a claim. Original Motion [Dkt. 7]. Defendants attached affidavits responding to the jurisdictional allegations in the original complaint from Shepherd and McNeilage, as well as from Michael Cameron, the National Editorial Counsel at News Limited, the parent of Advertiser Newspapers, and Richard Coleman, the Solicitor at Fairfax Media. Third Bolger Aff., Exs. 2-5.

3. The Amended Complaint

On October 7, 2014, Plaintiff filed an affidavit in opposition to Defendants' motion to dismiss, ("Original Opp.") [Dkt. 26], and an amended complaint ("FAC" or "Amended Complaint") [Dkt. 11]. In his opposition, Hollander noted an inconsistency in Shepherd's original affidavit, accusing her of "perjury on the material issue of personal jurisdiction" because her affidavit stated that she only had contact with Hollander in New York, even though she also exchanged emails with Miles Groth, a New York professor. Original Opp. ¶ 24. Hollander's Amended Complaint asserted claims styled as injurious falsehood and tortious interference. FAC ¶¶ 156-58, 159-69. Hollander also added claims for *prima facie* tort against McNeilage and Shepherd and defamation against Shepherd, *id.* ¶¶ 170-77; 178-214. He also alleged that two additional articles written by Shepherd and published by *The Advertiser* were actionable. *Id.* ¶¶ 181-82. Additionally, Plaintiff added a number of new jurisdictional allegations. *Compare* Original Compl. ¶¶ 78-82 *with* FAC ¶¶ 26-34 *and* Original Opp. ¶¶ 17-48.

On October 26, 2014, Defendants withdrew their motion to dismiss, because it was mooted by Hollander's filing of the Amended Complaint. Letter of Withdrawal [Dkt. 41]. On October 27, 2014, Defendants again moved to dismiss Hollander's action. Notice of Motion to

Dismiss [Dkt. 43]. In their Memorandum in support of their Motion to Dismiss ("Opening Mem." or "Motion to Dismiss") [Dkt. 44], Defendants argued that this Court lacked jurisdiction over them and, in any event, that Plaintiff's claims failed on the merits as they sought to impose liability for either true statements, statements of opinion, or for statements Defendants never made. Opening Mem. at 9-16, 18-27. In support of their Motion to Dismiss, Defendants attached new affidavits from Shepherd, McNeilage, Cameron, and Coleman, each responding to the new jurisdictional allegations in Plaintiff's Amended Complaint or in his original opposition. *See* Third Bolger Aff., Exs. 6-9. In addition, the Shepherd affidavit corrected the earlier error, and Shepherd swore, "In my original affidavit in support of the Defendants' motion to dismiss the complaint, I erroneously stated that I had no other contact with anyone in New York besides the telephone call with Mr. Den Hollander. I regret this inadvertent error." Shepherd Aff. ¶ 13.

Hollander filed an Affidavit in Opposition to Defendants' Motion to Dismiss ("Opposition" or "Opp.") [Dkt. 48] on November 7, 2014. In his Opposition, Plaintiff accused Defendants of perjury and argued that the undersigned suborned perjury. Opp. ¶¶ 6-10, 22-56. In support, Plaintiff points to several alleged "inconsistencies" between the first and second sets of affidavits. For example, Hollander argued that Shepherd "committed perjury in her [first affidavit]" because she failed to disclose that she emailed a professor in New York City in the process of writing some of the challenged articles. *Id.* ¶ 31(a). This additional information, Hollander alleges, "raises doubts as to" Defendants' "truthfulness." *Id.* ¶ 34 (as to Coleman); *see also, e.g.*, *id.* ¶ 31(b) (arguing that "discovery is needed to determine whether Shepherd is still lying or concealing facts"). As to personal jurisdiction, Plaintiff pointed to other alleged different occasions where he claims Defendants allegedly "lied" either outright or by omission. *Id.* ¶¶ 26-28, 30, 31(a)-(e), 32, 34, 36-39, 41, 42, 52.

On November 13, 2014, Defendants replied to Hollander's Opposition, pointing out that Hollander's claims of "perjury" were unfounded. Reply [Dkt. 67] at 3-4. The only real inconsistency identified in the Opposition was in Shepherd's affidavit and she had corrected and apologized for the error. *Id.* The other alleged "inconsistencies" were just differences created because of Hollander's Amended Complaint and original affidavit in opposition "contain[ing] significantly more allegations regarding personal jurisdiction than did the original complaint." *Id.* In other words, Defendants' two sets of affidavits were different because Plaintiff's jurisdictional allegations were different – *not* because Defendants were trying to "cover-up" contacts with New York as Hollander argued. *Id.* at 4.

This Court held a hearing on Defendants' Motion to Dismiss on November 24, 2014. There, Hollander again accused Defendants of perjuring themselves. In the process, Plaintiff made an oral motion pursuant to CPLR Rule 3211(c) for an immediate trial on the question of whether this Court had personal jurisdiction over the Defendants, arguing that their affidavits could not be trusted based on the alleged inconsistencies pointed to by Hollander. Defendants requested an opportunity to oppose the motion on submission which the Court granted, giving Defendants up-to and including January 12, 2015 to respond.

ARGUMENT

This Court should deny Plaintiff's motion. As an initial matter, no Defendants perjured themselves. Instead, Plaintiff is attempting to manipulate Shepherd's error – that she both corrected and apologized for *before* Plaintiff made his application – and the fact that the other Defendants submitted different affidavits in response to the Amended Complaint than they did to the original complaint, to force Defendants to travel ten thousand miles to appear before this Court. And we know why Plaintiff is doing so – on his website, he tells he is bringing this lawsuit to "[t]o have fun fighting these bimbo[s]" and admits he "despise[s]" feminists, which he

believes Shepherd and McNeilage to be. Release at 1. This Court should not allow Plaintiff to succeed and should deny this Motion because Plaintiff has cited no genuine issue of fact that would compel a trial here.

Moreover, even if all of the facts that Plaintiff claims are true were actually true – and they are not – this Court must still deny Plaintiff's Motion for an Immediate Trial and dismiss this case. At best, Plaintiff's claim is that because Defendants' newspapers have websites that are accessible in New York and, he claims, have some ancillary operations here (they do not), there is jurisdiction. As a matter of law, however, even if Plaintiff's jurisdictional claims were true, they are insufficient and this Court must dismiss this case for lack of jurisdiction.

POINT I

PLAINTIFF'S MOTION SHOULD BE DENIED

"[C]ourts must of course be circumspect in using [their] power" to order an immediate trial under CPLR Rule 3211(c). David D. Siegel, *Practice Commentaries*, CPLR Rule C3211:47. Such motions should be granted only "when appropriate for the expeditious disposition of the controversy," CPLR Rule 3211(c), and "only when there is a genuine dispute" as to a case-ending fact, David D. Siegel, *N.Y. Practice* § 271 (5th ed. 2011); *see also Howard v. Spitalnik*, 68 A.D.2d 803, 803 (1st Dep't 1979). In other words, an immediate trial is *only* appropriate where (1) a plaintiff has produced evidence that "raised a genuine issue of fact," *Howard*, 68 A.D.2d at 803, and (2) that fact has the prospect of ending the litigation, CPLR Rule 3211(c).

A "genuine issue of fact" is not created by ambiguous, speculative rebuttals to evidence offered by the party moving to dismiss the action. *LeFevre v. Cole*, 83 A.D.2d 992, 992 (4th Dep't 1981). Instead, the party opposing dismissal generally must offer evidence that actually contradicts the evidence offered by the moving party. *Id.* (trial appropriate where there was

unequivocal evidence contradicting opposing party's affidavit); *see also Howard*, 68 A.D.2d at 803 (immediate trial appropriate where competing affidavits "clearly raised a genuine issue of fact"). Accordingly, to prevail on this Motion, Plaintiff would need to show by *admissible evidence* that there is a genuine issue of material fact as to the Motion to Dismiss. He has not and cannot do so.

Defendants' Motion to Dismiss is predicated in part on this Court's lack of personal jurisdiction over the Australia-based Defendants. In actions like this one that sound in defamation, long-arm jurisdiction over a foreign defendant can only be found, if at all, pursuant to CPLR § 302(a)(1). Opening Mem. at 9-11 (citing, *e.g.*, *Pontarelli v. Shapero*, 231 A.D.2d 407, 410 (1st Dep't 1996) (jurisdiction over non-domiciliary defendants barred by the "specific language" of CPLR §§ 302(a)(2)-(3)). This section of New York's long-arm statute authorizes jurisdiction only when a plaintiff's claims "aris[e] from" a defendant's "transact[ion of] business within the state." CPLR § 302(a)(1). And even then, the normal reach of CPLR § 302(a)(1) is "narrowly" circumscribed where the plaintiff seeks to impose liability based on a defendant's speech. *SPCA*, 18 N.Y.3d at 405 ("'New York courts construe 'transacts any business within the state' more narrowly in defamation cases . . . .'" (quoting *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 248 (2d Cir. 2007)). Thus, mere maintenance of a website accessible in New York or merely sending defamatory statements into New York, even if it causes injury in New York, does not constitute transactions of business where the claims are speech-based. Opening Mem. at 10-12; Reply at 7-8.

Instead, a defendant can be said to have transacted business only when she "[1] engaged in some purposeful activity *within New York* [2] that was *directly related to the creation* of the allegedly defamatory work." *Biro v. Condé Nast*, No. 11 Civ. 4442 (JPO), 2012 WL 3262770, at

*10 (S.D.N.Y. Aug. 10, 2012) (emphases added); *see also Am. Radio Ass'n v. A.S. Abell Co.*, 58 Misc. 2d 483, 484-85 (Sup. Ct. N.Y. Cnty. 1968). Email and telephone contacts from outside of New York sent into New York do not, on their own, constitute a transaction of business. *SPCA*, 18 N.Y.3d at 405; *see also Penachio v. Benedict*, 461 F. App'x 4, 5 (2d Cir. 2012) (noting that "contact[ing] New York residents by email and telephone," among other acts, did not constitute transacting business); *Trachtenberg v. Failedmessiah.com*, No. 14 Civ. 1945 (BMC), --- F. Supp. 2d ----, 2014 WL 4286154, at *4 (E.D.N.Y. Aug. 29, 2014) ("Basing an article on information received out-of-state from a New York source is simply not the same as coming to New York to conduct research.").

For this reason, the relevant question in determining whether Plaintiff is entitled to an immediate trial is whether Hollander put forward evidence showing that Defendants took action *in New York* that *directly related* to the reporting of the challenged articles and thereby raised a genuine issue of fact relating to jurisdiction. Plaintiff has not done so.

First, Plaintiff produced no evidence of Defendants' contacts with New York sufficient to confer jurisdiction. In support of their Motion to Dismiss, Defendants submitted affidavits affirming that Advertiser Newspapers and Fairfax Media are Australian corporations that do not publish in New York and are not targeted at New York. Cameron Aff. ¶¶ 3, 6, 7, 8; Coleman Aff. ¶¶ 2, 4, 6. McNeilage submitted an affidavit stating that she is an Australian citizen who has never visited New York. McNeilage Aff. ¶¶ 1, 9, 10. As to the single article written by her and challenged by Hollander, McNeilage further affirmed that she did not intend to target New York and had no contact with anyone in New York in reporting and writing that article. *Id.* ¶¶ 6-7. Shepherd also submitted an affidavit wherein she too states she is a citizen of Australia who has never visited New York. Shepherd Aff. ¶¶ 1, 16. She also affirmed that she did not intend to

target New York with any of the articles written by her and challenged by Hollander and had only limited contact with Plaintiff and another New York professor in the process of researching two of the articles challenged by Hollander, including a single phone call and email exchanges. *Id.* ¶¶ 11-12, 14.

Based on these facts, Defendants argued that this Court did not have jurisdiction over any one of them under well-settled New York law. Opening Mem. at 9-16. More specifically, Defendants asserted that jurisdiction could not be based on the maintenance of websites or the distribution of the allegedly injurious statements in New York. *Id.* at 11-12 (citing, *e.g.*, *Gary Null & Assocs., Inc. v. Phillips*, 29 Misc. 3d 245, 250 (Sup. Ct. N.Y. Cnty. 2010)). Defendants further argued that Plaintiff had the burden, therefore, of demonstrating "*additional*, purposeful activity in New York . . . that is substantially related to 'the transaction out of which the cause of action arose.'" *Id.* (quoting *SPCA*, 18 N.Y.3d at 404 (quotation marks and citations omitted)). All Plaintiff pled in his Amended Complaint, however, was that Defendants had coincidental contacts with New York unrelated to the articles at issue here and that Shepherd had limited contact with New York by way of a phone call and emails. Opening Mem. at 15-16. Because neither set of contacts would support jurisdiction over any defendant, Defendants argued that Plaintiff could not meet his burden.

In his Opposition, Plaintiff failed to put forward evidence contradicting any of this. *See generally* Opp. ¶¶ 22-56. Instead, he offered a smattering of irrelevant contacts Defendants allegedly have with New York. *See, e.g.*, *id.* at ¶¶ 26 (relationship between Advertiser Newspapers and News Corp), 29 (alleged presence of an Advertiser Newspapers officer in New York), 32 (alleged presence of an advertising representative for Fairfax Media in New York); 34 (presence of a *The Herald* correspondent in New York until 2012). In their Reply, Defendants

pointed out that even if these contacts were credited, they still would not support jurisdiction because none of his claims arose from these contacts. *See, e.g.*, Reply at 10 (noting that even if true, the presence of an advertising representative in New York is "not relevant to the Court's inquiry, because Hollander's claims do not result from any advertisements in *The Herald*"). An immediate trial would, therefore, be improper here because Hollander clearly failed to create a genuine issue of fact related to the exercise of jurisdiction under CPLR § 302(a)(1).

Plaintiff's purported authority to the contrary, *Vandermark v. Jotomo Corp.*, 42 A.D.3d 931 (4th Dep't 2007), changes none of this. There, a plaintiff's son had ingested a toxic chemical, causing him injuries. *Id.* at 931. The Texas defendants argued that they were not subject to personal jurisdiction, because the only connection they had to New York was a franchisee agreement with a New York co-defendant. *Id.* at 932. In ordering an immediate trial, the Fourth Department explained that the plaintiff had also "submitted evidence establishing that [the Texas Defendants] maintained a Web site to conduct business transactions on behalf of itself and [the New York co-defendant]." *Id.* This contact, the court, noted could be enough to maintain jurisdiction under CPLR § 302(a)(1), because it is "well settled that 'long-arm jurisdiction [lies] over commercial actors and investors using electronic and telephonic means to project themselves into New York to conduct business transactions.'" *Id.* (citation omitted). But *Vandermark* was not a defamation claim and defamation claims are treated differently. *SPCA*, 18 N.Y.3d at 405. The Court of Appeals made clear in *SPCA* that the maintenance of a website alone in defamation cases does not constitute a transaction of business under CPLR § 302(a)(1). *Id.* ("While [the allegedly defamatory statements] were posted on a medium that was accessible in this state, the statements were equally accessible in any other jurisdiction."). Thus, the mere existence or nature of the Defendants' websites do not create a genuine issue of material fact as

to whether jurisdiction would be proper in this case.

Second, Hollander in his Opposition and at the November 24 hearing resorted *ad hominem* attacks, as he has done in the past with other defendants in other cases, declaring based on purported inconsistencies between Defendants' first and second sets of affidavits that Defendants "lie, dissemble, prevaricate and cover-up." Opp. at 14. In essence, Plaintiff argues that an immediate trial is required because Defendants are "liars." But, there is no there there. Any material inconsistencies between the affidavits – to the extent there are any – result *solely* from the fact that the affidavits responded to different allegations in different complaints. In any event, no matter how many allegations of bad faith Plaintiff lobs at Defendants, such baseless allegations do not create a genuine issue of fact meriting resolution at a trial.

As an initial matter, alleged "inconsistencies" do not create a genuine issue of fact when left unsupported by facts showing the same. *Cf. Thomas v. Abate*, 213 A.D.2d 251, 252 (1st Dep't 1995) ("[P]etitioner's mere belief of bad faith, unsupported by proof in support thereof . . . does not warrant an evidentiary hearing . . . ."); *see also DMP Contracting Corp. v. Essex Ins. Co.*, 76 A.D.3d 844, 847 (1st Dep't 2010) ("allegations of bad faith . . . unsupported by evidence" did not create a genuine issue of material fact).

And it is clear from Plaintiff's Opposition that even he is unable to point to actual evidence that Defendants have made any misrepresentations at all. As discussed above, Shepherd made an inadvertent error, admitted it, corrected it, and apologized for it. Shepherd Aff. ¶ 13.[4] The other differences, as made clear by Defendants in their Reply, are a result of new allegations

[4] Hollander's allegations that Defendants' are lying and perjuring themselves are irresponsible. Perjury is a serious crime, N.Y. Penal Law §§ 210.00, *et seq.*; it is not, however, committed whenever parties disagree or when parties *unintentionally* make a false statement, *id.* § 210.00 (defining "swear falsely" as occurring where one "intentionally makes a false statement"). Like his jurisdictional arguments, Plaintiff's accusations are unfounded.

in Plaintiff's Amended Complaint and his original affidavit in opposition or Plaintiff merely inventing them out of whole cloth. Reply at 3-4; *compare* Original Compl. ¶¶ 78-82 *with* FAC ¶¶ 26-34 and Original Opp. ¶¶ 17-48. Hollander's original complaint set forth little more than boilerplate allegations regarding jurisdiction. Original Compl. ¶¶ 80-81. In his Amended Complaint, Hollander takes a different approach. There, he adds a whole litany of new allegations regarding, for example, News Corp and its relationship to *The Advertiser*, FAC ¶ 31, the alleged distribution of *The Herald* and *The Advertiser* in the United States, *id.* ¶¶ 27, 32, and that every defendant was "persistently conducting business in New York," *id.* ¶ 33. As a result, Defendants submitted new affidavits from the same individuals responding to the different jurisdictional allegations in the Amended Complaint (and in his first opposition affidavit).[5] *Compare* Original Compl. ¶¶ 78-82 *with* FAC ¶¶ 26-34.

Nevertheless, Plaintiff states in a wishy-washy sort of way that the alleged inconsistencies "appear[] to" show that Defendants are lying, Opp. ¶ 30, or that from them one can "infer[] more contacts may exist," *id.* ¶ 34, or that the affidavits, in general, "appear[] to be disingenuous," *id.* ¶ 51. For example, Plaintiff claims that Shepherd "lied" in her first affidavit because "[f]or the first time in her Second Affidavit Shepherd admits all her articles were published on the World Wide Web." *Id.* ¶ 31(c). As an initial matter, this is not a lie – the first affidavit does not say something contrary to the second affidavit. Moreover, the very copies of the articles attached to the Shepherd affidavit were copies of the articles *from The Advertiser website*. Third Bolger Aff., Ex. 3 (First Shepherd Aff., Ex. A). Plaintiff has just concocted a "lie" out of whole cloth. As another example in the original complaint, Plaintiff made no

[5] Plaintiff also alleges that counsel here lied, asserting, for example, she falsely claimed that "Plaintiff used the term 'harpy' to disparage Defendant McNeilage." Opp. ¶ 12(e). This is a "lie," Hollander argues, because he only "used [the term] to refer only to Defendant Shepherd." *Id.*

allegations as to whether *The Herald* maintained an office in New York. As a result, Fairfax Media, which has no current business operations in New York, submitted the Coleman affidavit in which Coleman swore "Fairfax Media and *The Sydney Morning Herald* do not have any office[s] . . . in New York." Third Bolger Aff., Ex. 4 (First Coleman Aff. ¶ 10). In his subsequent filings, Plaintiff stated that *The Herald* appeared to have had an office in New York at some point in the past. *See, e.g.*, Original Opp. ¶ 26. In response, Coleman stated that "Fairfax did have a correspondent in New York until 2012," but it no longer does. Coleman Aff. ¶ 8. Hollander calls this a lie – it is not. It is completely consistent testimony in response to differing allegations. In short, there are no "lies" or "inconsistencies." And, Plaintiff's own subjective doubt as to the veracity of Defendants' affidavits – particularly in light of Plaintiff's clear dislike of Shepherd and McNeilage, who he calls "harp[ies]," Original Opp. at ¶ 8(k), and compares to the infamous Nazi propagandist Joseph Goebbels, *id.* at ¶ 8(j), does not create a genuine issue of fact.

Third, even if the Court were to assume the truth of all of the purported contacts Plaintiff asserts that Defendants have with New York, this Court still would not have jurisdiction over any defendant. In casting a broad net, offering a collage of Defendants' alleged New York contacts, Hollander forgets that the inquiry here is a narrow one. *SPCA*, 18 N.Y.3d at 405 ("New York courts construe 'transacts any business within the state' more narrowly in defamation cases . . . ." (citations omitted)). Indeed, as set forth *supra* at 12-13 and in the Motion to Dismiss at 12-16 and the Reply at 9-12, none of Hollander's allegations regarding random or fortuitous contacts with New York – unrelated to the underlying cause of action – would support a finding of jurisdiction under CPLR § 302(a)(1).[6]

[6] As explained in Defendants' Opening Memorandum, none of these contacts would support jurisdiction under CPLR § 301 either. Opening Mem. at 13-16. Moreover, even if jurisdiction was found

In short, Plaintiff has failed to raise a genuine issue of fact relating to the exercise of personal jurisdiction and his Motion must be denied.

POINT II

IN ANY EVENT, PLAINTIFF'S CLAIMS ARE MERITLESS

The First Department has made clear that a court may properly consider the equities of forcing a party to appear for an immediate trial. *Rubin v. Rubin*, 73 A.D.2d 148 (1st Dep't 1980). In *Rubin v. Rubin*, for example, the First Department, in rejecting the need to hold a pre-trial hearing on the issue of a party's residence, stated that "the interests of economy of effort and sound judicial management . . . militate against bifurcated proceedings." *Id.* at 151. This is especially true where such proceedings would "necessit[ate] . . . twice calling witnesses who may come from as far away as Europe," and where such a "piecemeal approached" might be "used for harassment purposes." *Id.*

It is clear that Plaintiff's singular goal here, as evidenced by Plaintiff's vitriolic, hate-filled Amended Complaint, describing Defendants as, among other things, "Japanese 'comfort girls,'" FAC ¶ 80, and "Nazi[s]," *id.* ¶ 105, is to exact litigation costs and punish Defendants, who Hollander believes are the latest iteration of the "Feminazi infested media," Opening Mem. at 5. Elsewhere, Plaintiff has made clear that he brings this suit against "stupid little girls," Release at 8, out of vengeance because "what's wrong with a little quid pro quo." *Id.* at 3. This is made all the worse by the fact that Defendants are located in Australia and would be required

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under New York's long-arm statute, jurisdiction would be improper under the Due Process Clause. A Wisconsin court, in fact, just found that *The Herald* was not subject to jurisdiction in a defamation suit brought by a resident of Wisconsin based on its website because, "Fairfax defendants ha[d] not purposefully reach[ed] out and into Wisconsin, for example, by circulating newspapers or magazines [t]here (as was the case in *Keeton* [*v. Hustler Magazine, Inc*., 465 U.S. 770 (1984)]) or by placing advertising [t]here to draw Wisconsinites to their websites in Australia and New Zealand." *Salfinger*, slip op. at 8 (quotation marks omitted). Indeed, the mere fact that Wisconsin residents could visit the website and would see display advertising like everyone else who visited the site was found to be "insufficient to satisfy due process." *Id.* at 8-9.

to expend substantial costs if this Court were to credit Hollander's baseless allegations of bad faith and Defendants were made to travel to New York for an immediate trial.

As such, in the alternative, this Court should decide Defendant's Motion to Dismiss on the merits, mooting Plaintiff's Motion here. Defendants explained in their Opening Memorandum and Reply that Hollander impermissibly seeks to impose liability based on truthful statements – freely admitted by Plaintiff himself, *compare, e.g.*, FAC ¶ 11 (asserting that Shepherd and McNeilage "intentionally misled their readers" by describing Plaintiff has an "anti-feminist") *with id.* ¶ 67 ("Roy does describe himself as an anti-feminist"), statements of opinion, *see, e.g.*, Opening Mem. at 24 (arguing that statements that Plaintiff was "radical," "hardline," or on "the margins" are protected opinion and citing, *e.g.*, *Pitcock v. Kasowitz, Benson, Torres, & Friedman LLP*, 74 A.D.3d 613, 614 (1st Dep't 2010) (use of the word "extreme[]" is a statement of opinion)), and statements that Defendants never actually made, Opening Memo at 18 (noting that "[t]here is no question that a defendant only can be held liable for statements she actually makes" (citation omitted)). The U.S. Constitution precludes liability under these circumstances.

Plaintiff's recent "Media Release" only reinforces these arguments. Indeed, in the Release, he again admits the truth of things he claims are defamatory. He admits, for example, that "I'm an anti-feminist, and proud of it," *compare* FAC ¶ 11 *with* Release at 9; that he published articles on a "Voice for Men, a site which regularly refers to women as 'bitches,'" FAC ¶ 55 *with* Release at 4; and that he advocates gun ownership as a way to combat feminism, *compare* FAC ¶ 163 *with* Release at 11 (urging "100,000 armed guys to show up in Washington, DC").

The point is that Plaintiff's own filings in this case and his writings elsewhere, demonstrate that this case is a meritless suit aimed only at exacting burdensome litigation cost on

Defendants of whom Plaintiff has said, "I don't hate the feminists – I despise them." Release at 3. His Amended Complaint is utterly without merit and must be dismissed.

CONCLUSION

This Motion is meritless. Plaintiff has produced no evidence creating a genuine issue of fact requiring resolution at an immediate trial. For each of the foregoing, reasons, Defendants respectfully request that the Court deny Plaintiff's Motion for an Immediate Trial and dismiss the Amended Complaint with prejudice.

Respectfully submitted,

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Exhibit F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROY DEN HOLLANDER, Plaintiff, -against- TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, FAIRFAX MEDIA PUBLICATIONS PTY LIMITED, Defendants.	:	Index No. 152656/2014 Hon. Peter H. Moulton

MEMORANDUM OF LAW OF IN OPPOSITION TO PLAINTIFF'S MOTION REQUIRING DEFENDANTS TO WITHDRAW ALLEGEDLY "ILLEGALLY OBTAINED DOCUMENT"

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Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd. ("Advertiser Newspapers" or "*The Advertiser*"), Amy McNeilage, and Fairfax Media Publications Pty Limited ("Fairfax Media" or "*The Herald*"), by and through their undersigned attorneys, submit this memorandum of law in opposition to Plaintiff Roy Den Hollander's ("Plaintiff" or "Hollander") Motion Requiring Defendants to Withdraw Allegedly "Illegally Obtained Document."

PRELIMINARY STATEMENT

In this application, Plaintiff, an attorney appearing *pro se*, falsely claims that Defendants' counsel or some unknown party acting at her behest hacked into Plaintiff's personal computer or website, stole a document, attached that document to Defendants' opposition to Plaintiff's oral motion for an immediate trial, and then tried to cover it up by "falsely" characterizing it as a media release as opposed to "Responses to Media." These statements are categorically false and irresponsible. As accurately described in the affidavit submitting the document to the Court, it was freely available on Plaintiff's website. Plaintiff's Motion should be denied.

The real reason Plaintiff wants this Court to order Defendants to withdraw the document is clear: it is both embarrassing and fatal to his lawsuit. The allegedly stolen document discloses, among other things, that Plaintiff brought this suit "[t]o have fun fighting these bimbo book burners," compares Defendants to Joseph McCarthy and Nazis, questions Defendants' sexuality and mocks the sexuality of Justice Joan Lobis, before whom Plaintiff appeared, describes Defendants as "female-dog-in-heat journalists," discloses that Plaintiff is out for "vengeance," and argues that Defendants are "stupid little girls wagging their tongues." Plaintiff also admits the truth of several statements he claims are false in the articles he challenges here as injurious falsehoods, conceding for example that he was, in fact, published on the website *A Voice for Men*. It is, therefore, hardly surprising that Plaintiff does not want the Court to see it. Plaintiff's allegations of hacking, however, are meritless, and the Motion should be denied.

BACKGROUND

A. Procedural Posture

Plaintiff commenced this action for injurious falsehood and tortious interference with prospective economic advantage arising out of the publication of articles written by two Australia-based reporters and published in two separate Australia-based papers in January 2014. Dkt. 1. After Defendants moved to dismiss the complaint, Plaintiff filed an Amended Complaint ("FAC"), adding claims for defamation against Defendant Shepherd and *prima facie* tort against Defendants Shepherd and McNeilage. Dkt. 11.

On October 27, 2014, Defendants filed a motion to dismiss Plaintiff's lawsuit because this Court lacks personal jurisdiction over all four of the Australia-based Defendants. Dkt. 43. In the alternative, Defendants moved to dismiss this action for failure to state a claim because the statements complained of were either substantially true or statements of opinion (the "Motion to Dismiss"). Dkt. 44. The Motion to Dismiss is currently pending.

At a hearing before Justice Milton A. Tingling on November 24, 2014, Plaintiff made a motion for an immediate trial, arguing (falsely) that Defendants had committed "perjury" in their affidavits, and, therefore, they should be brought to the Court and cross-examined (the "Motion for a Trial"). Defendants opposed that Motion on January 12, 2015, and Plaintiff submitted a reply on January 20, 2015. Dkt. 69; Dkt. 75. The Motion for a Trial is currently pending.

B. Plaintiff's Publicly Available Website and the Media Release

In drafting the opposition to the Motion for a Trial, an associate at the law firm that represents the Defendants conducted factual research online. Affidavit of Matthew L. Schafer ("Schafer Aff.") ¶ 2. In the process, a Google search directed him to Plaintiff's website, http://www.mensrightslaw.net. *Id.* He clicked that link and was redirected to the website, which

he was able to navigate freely. *Id.* At no time was he prompted to enter a password. *Id.*; *see also id.*, Ex. 1 (a screenshot of part of the website as of December 30, 2014). He then sent a link to the website to the undersigned, Affidavit of Katherine M. Bolger ("Bolger Aff.") ¶ 2, who clicked the link and immediately accessed the website, *id.* ¶ 3. The undersigned was never asked for a password either and was able to navigate freely. *Id.* ¶ 3.

About a week later, the associate visited Plaintiff's website again. Schafer Aff. ¶ 3. At that point, he clicked on a link on Plaintiff's website that directed him to a document entitled "Responses To Media." *Id.* Plaintiff's website did not require a password to access that document. *Id.* ¶¶ 3, 4. Instead, the associate accessed the website and the document as he would have any other webpage and document on the Internet. *Id.* ¶ 3.

On January 12, 2015, Defendants filed the opposition to Plaintiff's Motion for a Trial. Dkt. 69 ("Opp."). Defendants explained that Plaintiff chronicled his legal battles with feminists on his website and noted that the website had been "last visited on Jan. 12, 2015," the day of the filing. *Id.* at 4-5. Defendants also attached a copy of the allegedly illegally obtained document, which Plaintiff titled "Responses to Media" and which featured a question-and-answer between Plaintiff and the media about this lawsuit. *Id.*; Bolger Aff., Ex.1 (copy of document). Relying in part on that document, Defendants argued that an immediate trial would be inequitable because it was clear, based on the vitriolic document, that Plaintiff merely wanted to exact litigation costs on Defendants. Opp. at 17.

C. <u>Plaintiff Files an Order to Show Cause</u>

The very next day, Plaintiff filed an order to show cause why Defendants should not be required to withdraw the document and why Defendants' attorney should not be referred to "the proper authorities," Dkt. 72, and an affidavit in support, Dkt. 73 ("OSC Aff."). Plaintiff alleged that Defendants or their counsel violated "Federal and New York" law "[b]y hacking into a

website not viewable to the public." OSC Aff. ¶ 3. Plaintiff also asserted that Defendants' counsel perjured herself by characterizing the "Responses to Media" document as a "Media Release," because doing so was intended to "cover up" the fact that the document was not publicly available. *Id.* ¶¶ 3-6.

Upon receipt of the order to show cause, both the undersigned and her colleague visited Plaintiff's website. Schafer Aff. ¶ 6; Bolger Aff. ¶ 6. For the first time, the website was no longer publicly accessible, and they were asked to enter a username and password.[1] Schafer Aff. ¶ 6; Bolger Aff. ¶ 6. A "cached" copy of Plaintiff's publicly available website, captured by Google on January 3, 2015, however, still remained accessible on Google. The Google cache copy showed the full text of the homepage for Plaintiff's website. Schafer Aff. ¶¶ 7, 8 & Ex. 2 (the "cached" version of the website).

The undersigned emailed Plaintiff informing him that the website had been publicly available and asked him to withdraw the order to show cause. Plaintiff refused to do so. Bolger Aff. ¶ 8. This Court then denied Plaintiff's request, allowing Plaintiff to refile the order as a motion "if appropriate." Dkt. 99.

D. <u>This Motion</u>

Just hours after this Court declined to issue Plaintiff's order to show cause, Plaintiff refiled it as a motion and filed an accompanying affidavit in support. Dkt. 100; Dkt. 101. In the affidavit, he now argues that Defendants or Defendants' counsel "hack[ed]" his computer or server, "eliminate[ed] the authorization codes" on his server, and violated his right to privacy

[1] Previously, Plaintiff brought a lawsuit for copyright infringement against counsel in another case after counsel submitted articles that Plaintiff wrote that "convey[ed] his aggressively anti-'Feminazi' worldview," as exhibits. *Hollander v. Swindells-Donovan*, No. 08-CV-4045 (FB) (LB), 2010 WL 844588, at *1 (E.D.N.Y. Mar. 11, 2010), *aff'd sub nom. Hollander v. Steinberg*, 419 F. App'x 44 (2d Cir. 2011). In an eerily similar turn of events, after defendants submitted those articles to the Court, Plaintiff removed them from his website. *Id.* at *1 n.1.

"under the U.S. Constitution" and rights under federal and state law. Dkt. 101 ¶ 3 ("Mot. Aff."). He also swears under oath that the undersigned knows the document is not a media release and that Defendants characterized the document as a media release "in order to trick this Court into believing the hacked document had actually been presented to the media." *Id.* ¶¶ 7-8. Plaintiff now asks this Court to order Defendants to withdraw the exhibit and turn over all copies of the release and order counsel to identify anyone involved in obtaining the release and refrain from "publicizing" the media release. *Id.* (wherefore clause).

ARGUMENT

Instead of litigating the merits of this case, Plaintiff yet again accuses the Defendants and counsel of breaking the law – this time for allegedly hacking his computer and perjuring themselves. Plaintiff's Motion is frivolous and should be denied.

As set forth in the affidavits submitted herewith, neither Bolger nor anyone acting at her direction "hacked" Plaintiff's website. Schafer Aff. ¶ 5; Bolger Aff. ¶ 7. In fact, they merely browsed Plaintiff's publicly available website exactly as they would have browsed any website. Schafer Aff. ¶ 3; Bolger Aff. ¶ 3. Browsing the Internet is not "hacking" or "eliminate[ing] authorization codes" to Plaintiff's website. That is the end of the analysis.

Moreover, Plaintiff's allegations also are refuted by independent documentary evidence. First, the Google "cache" of Plaintiff's website states that it captured a "snapshot of the page as it appeared on Jan. 3, 2015." Schafer Aff. ¶¶ 7-8 & Ex. 2. The homepage is visible in its entirety. Additionally, the Columbia Business School alumni club lists Plaintiff's website under the "Alumni Businesses" section of their "Useful Links" webpage, describing it as a "nonprofit fighting for the rights of men in America." *Useful Links*, Columbia Business School Alumni Club of New York, http://www.cbsacny.org/links.html (last visited Feb. 3, 2015). This too refutes Plaintiff's statement that his website was not publicly available. Mot. Aff. ¶ 3.

Plaintiff's allegation that counsel committed perjury by characterizing his "Responses to Media" document as a "Media Release" does nothing to change this analysis. *Id.* ¶ 5. Plaintiff appears to argue that describing it as a release suggests that the "document was made public to the press" and this is somehow false. *Id.* ¶ 6. This is nonsensical. Defendants' counsel was explicit in her affidavit that the document was available on Plaintiff's website. Dkt. 70 ¶ 2. There is no mischaracterization. Plaintiff's Motion should be denied.

Indeed, Plaintiff's application is frivolous on its face. Conduct is frivolous when it "is completely without merit in law and cannot be supported by a reasonable argument for an extension," when it is "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another," or where "it asserts material factual statements that are false." 22 NYCRR § 130-1.1(c). Here, Plaintiff, an attorney, has made baseless, false allegations that Defendants and their counsel are criminals based on no evidence and *after* receiving an email from Defendants' counsel stating that the allegations are false. Throughout this litigation, Plaintiff has filed no fewer than six filings accusing Defendants' counsel of perjury, forgery, and hacking, and he has called Defendants "harp[ies]," "bacchanalian," "Japanese comfort girls," Nazis, and "dogs-in-heat." FAC ¶¶ 80, 105, 123. More remarkably, this is Plaintiff's established *modus operandi* in many litigations in which he appears, accusing other opposing counsel of misrepresenting facts and "prevaricat[ing]," and judges who rule against him as being biased in favor of women and "antagonis[tic]" toward men. *Hollander v. United States*, No. 08-6183-cv, 2009 WL 8248275, at *6-11 (2d Cir. Sep. 10, 2009) (Plaintiff's Reply Brief); *Hollander v. Swindells-Donovan*, No. 08-cv-04045 (E.D.N.Y. Dec. 21, 2009) (Plaintiff's Memorandum of Law, Dkt. 44 at 17 n.4, annexed as Ex. 2 to Bolger Aff.); *Hollander v. Copacabana Nightclub*, No. 07-cv-05873 (S.D.N.Y. Oct. 9, 2007) (Plaintiff's Memorandum of

Law, Dkt. 21 at 1, 3, 4, 10, annexed as Ex. 3 to Bolger Aff.). This Court should not allow Plaintiff to continue with these irresponsible allegations; it is time to apply the "doctrine of 'enough is enough.'" *Shangold v. Walt Disney Co.*, No. 03 CIV 9522 WHP, 2006 WL 2884925, at *1 (S.D.N.Y. Oct. 11, 2006) (quotation marks and citation omitted), *aff'd*, 275 F. App'x 72 (2d Cir. 2008). Plaintiff's Motion is frivolous, and should be denied.[2]

CONCLUSION

Therefore, Defendants respectfully request that the Court deny Plaintiff's Motion, together with costs, attorneys' fees, and such other relief as the Court deems appropriate.

Respectfully submitted,

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[2] Indeed, the First Department has found sanctions appropriate in this context. In *Weisburst v. Dreifus*, the trial judge awarded fees in the amount of $35,500 where one party filed "an emergency stay contain[ing] 'false charges [against the opposing party] that were expressed by means of a tortured and very partial rendering of the facts.'" 89 A.D.3d 536, 536 (1st Dep't 2011) (citation omitted); *see also Capetola v. Capetola*, 96 A.D.3d 612, 613 (1st Dep't 2012) (awarding fees where one party "submitted an affidavit to the court that was intentionally misleading" and his attorney accused the opposing party of violating criminal law without basis). The court further noted – based on the false charges and lack of facts – that the motion could "'only have been deliberately crafted to mislead.'" *Dreifus*, 89 A.D.3d at 536 (citation omitted).