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 **NOTICE OF MOTION** **ORAL ARGUMENT REQUESTED**

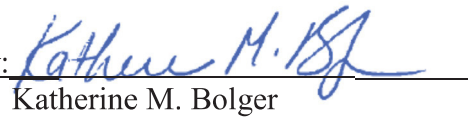
PLEASE TAKE NOTICE that, upon (i) the accompanying Memorandum of Law in Support of Defendants Tory Shepherd, Advertiser Newspapers, Amy McNeilage, and Fairfax Media's Motion to Dismiss the Complaint, (iii) the Affidavit of Tory Shepherd, (iv) the Affidavit of Amy McNeilage, (v) the Affidavit of Michael Cameron, (vi) the Affidavit of Richard Coleman, (vii) the Affirmation of Katherine Bolger, and the exhibits annexed thereto, and upon all the proceedings in this case to date, Defendants Tory Shepherd, Advertiser Newspapers, Amy McNeilage, and Fairfax Media will move this Court at the Motion Submission Part, 60 Centre Street, Courtroom 130, New York, New York 10007, on October 23, 2014 at 9:30 a.m. on, or as soon thereafter as counsel can be heard, for an order pursuant to Rules 3211(a)(1), (7) and (8) of the New York Civil Practice Law and Rules dismissing the Complaint in the above-captioned action in its entirety as against all Defendants' and granting such other and further relief (together with costs) as this Court deems appropriate, on the grounds that this Court lacks jurisdiction, the statements complained of do not appear in the article or are either true or opinion, and Defendants did not act with the sole purpose of harming Plaintiff.

The Complaint in the above-entitled action is one for injurious falsehood and tortious interference with prospective economic advantage.

Dated: New York, New York
August 29, 2014

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
Katherine M. Bolger

321 West 44th Street, Suite 1000
New York, NY 10036
(T): 212-850-6129
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Email: kbolger@lskslaw.com

Counsel for Defendants

TO:

Roy Den Hollander, Esq.
545 14th Street, 10 D
New York, NY 10009

Plaintiff *pro se*

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**

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' Motion to Dismiss the Complaint of Plaintiff Roy Den Hollander ("Den Hollander") pursuant to Rules 3211(a)(1), (7), and (8) 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 Complaint against Defendants is annexed hereto as **Exhibit 1**.

3. Annexed hereto as **Exhibit 2** is a true and correct copy of the affidavit of Michael Cameron, sworn to on August 7, 2014 in Sydney, Australia.

4. Annexed hereto as **Exhibit 3** is a true and correct copy of the affidavit of Tory Shepherd, sworn to on August 25, 2014 in Adelaide, Australia.

5. Annexed hereto as **Exhibit 4** is a true and correct copy of the affidavit of Richard Coleman, sworn to on August 28, 2014 before a solicitor in Sydney, Australia in the ordinary course of business.

6. Annexed hereto as **Exhibit 5** is a true and correct copy of the affidavit of Amy McNeilage, sworn to on August 28, 2014 before a solicitor in Sydney, Australia in the ordinary course of business.

7. Annexed hereto as **Exhibit 6** is a true and correct copy of Den Hollander's Brief for Plaintiff-Appellant filed in *Hollander v. Members of the Board of Regents of the University of the State of New York*, No. 12-2362-cv (2d Cir. July 19, 2012).

8. Annexed hereto as **Exhibit 7** is a true and correct copy of Den Hollander's Brief for Plaintiff-Appellant filed in *Hollander v. Copacabana Nightclub*, No. 08-5547-cv (2d Cir. Mar. 19, 2009).

9. Annexed hereto as **Exhibit 8** is a true and correct copy of Den Hollander's Brief for Plaintiffs-Appellants filed in *Hollander v. United States*, No. 08-6183-cv (2d Cir. Apr. 23, 2009).

10. On August 31, 2012, Den Hollander wrote an article for *A Voice for Men* article titled "Update on the Church of Feminism." A true and correct copy of the article available at http://www.avoiceformen.com/feminism/feminist-governance-feminism/update-on-the-church-of-feminism is annexed hereto as **Exhibit 9**.

11. On August 20, 2012, Den Hollander wrote an article for *A Voice for Men* titled "Hollander files human rights complaint in NYC" in which he described a complaint he had filed

before the New York Human Rights Commission. A true and correct copy of the article available at http://www.avoiceformen.com/mens-rights/hollander-files-human-rights-complaint-in-nyc is annexed hereto as **Exhibit 10**.

12. Annexed hereto as **Exhibit 11** is a true and correct copy of Den Hollander's Copyright Complaint filed in *Hollander v. Swindells Donovan*, No. 08-4045 (E.D.N.Y. Oct. 3, 2008).

13. Annexed hereto as **Exhibit 12** is a true and correct copy of Den Hollander's Memorandum of Law in Support of Named Plaintiff's Motion for Disqualification of Judge Cedarbaum filed in *Hollander v. Copacabana Nightclub*, No. 07-cv-5873(MGC) (S.D.N.Y. Oct. 9, 2007).

14. On October 24, 2010, Den Hollander wrote an article for *A Voice for Men* titled "Why Can't the Men's Movement Get its Act Together?". A true and correct copy of the article available at http://www.avoiceformen.com/mens-rights/hollander-files-human-rights-complaint-in-nyc is annexed hereto as **Exhibit 13**.

15. Annexed hereto as **Exhibit 14** is a true and correct copy of the Establishment Clause and Equal Protection Complaint filed in *Hollander v. Institute for Research on Women & Gender at Columbia University*, No. 08 Civ. 7286 (S.D.N.Y. Aug. 18, 2008).

16. Annexed hereto as **Exhibit 15** is a true and correct copy of a *Southern Poverty Law Center* article titled "Misogyny: The Sites" available at http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/misogyny-the-sites.

17. For the convenience of the Court and counsel for the parties, attached hereto as **Exhibit 16** is a true copy of a decision in *Grimaldi v. Ho*, No. 6909/2012 (Sup. Ct. Dutchess Cnty. Sept. 3, 2012) which is not readily available.

Dated: New York, New York
August 29, 2014

KATHERINE M. BOLGER

Exhibit 1

Exhibit 2

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

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

AFFIDAVIT OF MICHAEL CAMERON IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

City of Sydney)
) ss.:
State of New South Wales, Australia)

MICHAEL CAMERON, being duly sworn, deposes and says:

1. I have personal knowledge of the facts stated in this affidavit and submit this affidavit in support of Defendants' Motion to Dismiss.

2. Since 2013 I have been employed as the National Editorial Counsel at News Corp Australia (doing business as News Limited). In that capacity I am responsible for oversight of the provision of legal advice for several newspapers and news websites across Australia.

3. Advertiser Newspapers Proprietary Limited ("Advertiser Newspapers") is a wholly-owned subsidiary of News Corp Australia and publishes *The Advertiser*.

4. Advertiser Newspapers is organized under the laws of Australia.

5. Advertiser Newspapers does not have any offices in New York.

6. Advertiser Newspapers does not have any employees in New York.

7. Advertiser Newspapers does not publish in New York and does not sell any products in New York.

8. Advertiser Newspapers does not target any New York audience.

9. Advertiser Newspapers does not have any business ventures in New York.

10. Advertiser Newspapers does not have office facilities, locations, employees, telephone listings and/or bank accounts in New York..

WHEREFORE, Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage and Fairfax Media Publications Pty Ltd. respectfully request that this Court grant their motion to dismiss the Complaint with prejudice in its entirety together with costs and such other relief as is appropriate.

MICHAEL CAMERON

Sworn to and subscribed before me
this 7th day of August, 2014.

Notary Public

Sydney NSW Australia

Duncan & Associates
39/61-89 Buckingham Street
Surry Hills, NSW 2010
www.lawyersnotaries.com.au

M Duncan & Associates
39/61-89 Buckingham Street
Surry Hills, NSW 2010
www.lawyersnotaries.com.au

Exhibit 3

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

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

AFFIDAVIT OF TORY SHEPHERD IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Adelaide
South Australia
Australia) ss.:

TORY SHEPHERD, being duly sworn, deposes and says:

1. I am a citizen of Australia and a resident of Australia and a resident of Adelaide. I have personal knowledge of the facts stated in this affidavit and submit this affidavit in support of Defendants' Motion to Dismiss.

2. At all times relevant to this lawsuit, I was the Political Editor for *The Advertiser* in Adelaide, Australia.

3. As the Political Editor for *The Advertiser*, my responsibilities included researching, sourcing, and writing articles and commentary about politics in Australia, and, specifically, in South Australia.

4. In my capacity as the Political Editor, I wrote two articles dated January 12 and January 14 regarding a prospective male studies course at the University of South Australia.

M. D. LA VINCENTE
PUBLIC NOTARY
SOUTH AUSTRALIA

5. A true and correct copy of the article published on January 12, 2014 and given the headline "Lecturers in a world-first male studies course at the University of South Australia under scrutiny" is annexed hereto as Exhibit A.

6. A true and correct copy of the article published on January 14, 2014 and given the headline "University of South Australia gives controversial Male Studies court the snip" is annexed hereto as Exhibit B.

7. I wrote the articles because they related to a controversy taking place in Australia, and the articles were intended for publication in Australia and were directed at an Australian audience.

8. By writing the articles, I did not intend to target the United States or the State of New York.

9. In researching the articles I sent one email to Roy Den Hollander requesting comment on the controversy, as Mr. Den Hollander was slated as one of the professors potentially teaching the male studies course.

10. After writing the January 12 article, I spoke briefly to Mr. Den Hollander by telephone about the controversy.

11. Except for that telephone call, I had no other contact with anyone in New York regarding the articles.

12. I have never visited the State of New York or travelled through the State of New York.

13. I do not reside in New York and I do not own any property, real or personal, that is situated there.

M. D. LA VINCENTE
PUBLIC NOTARY
SOUTH AUSTRALIA

14. I do not have and have never had office facilities, locations, employees, telephone listings and/or bank accounts in New York.

15. I have never voted or been registered to vote in New York.

16. I have never undertaken any business ventures involving New York properties or entities.

WHEREFORE, Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage and Fairfax Media Publications Pty Ltd. respectfully request that this Court grant their motion to dismiss the Complaint with prejudice in its entirety together with costs and such other relief as is appropriate.

TORY SHEPHERD

Sworn to and subscribed before me
this 25 day of August 2014.

Notary Public

M. D. LA VINCENTE
PUBLIC NOTARY
SOUTH AUSTRALIA

Exhibit 4

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

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

AFFIDAVIT OF RICHARD COLEMAN IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

City of Sydney)
) ss.:
In the state of New South Wales

RICHARD COLEMAN, being duly sworn, deposes and says:

I am an employee of Fairfax Media Limited of which Fairfax Media Publications Pty Limited ("Fairfax Media") is a subsidiary. I have personal knowledge of the facts stated in this affidavit and submit this affidavit in support of Defendants' Motion to Dismiss.

1. Since 1993, I have been employed as a Solicitor by Fairfax Media Limited. In that capacity I am responsible for prepublication advice to a range of publications of Fairfax Media and other subsidiaries of Fairfax Media Limited.

2. *The Sydney Morning Herald* is published by Fairfax Media.

3. Fairfax Media is organized under the laws of Australia.

4. Fairfax Media and *The Sydney Morning Herald* do not have any offices in New York.

5. Fairfax Media and *The Sydney Morning Herald* do not have any employees in New York.

6. Fairfax Media and *The Sydney Morning Herald* do not directly publish in New York and do not directly sell any products in New York.

7. Pursuant to a contract with Fairfax Media, Press Reader, an independent company, prints copies of *The Sydney Morning Herald* to be distributed in the United States but and neither Fairfax Media nor *The Sydney Morning Herald* has any control over whether copies printed by Press Reader are distributed in New York.

8. Fairfax Media and *The Sydney Morning Herald* do not target any New York audience, although readers of *The Sydney Morning Herald* are able to subscribe to the online version of *The Sydney Morning Herald* via its website.

9. Fairfax Media and *The Sydney Morning Herald* do not have any business ventures in New York.

10. Fairfax Media and *The Sydney Morning Herald* do not have office facilities, locations, employees, telephone listings and/or bank accounts in New York.

11. **WHEREFORE**, Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage and Fairfax Media Publications Pty Ltd. respectfully request that this Court grant their motion to dismiss the Complaint with prejudice in its entirety together with costs and such other relief as is appropriate, with costs and such other relief as is appropriate.

R. Coleman

Richard Coleman

Sworn to and subscribed before me
this 28th day of August, 2014.

Gail Hartley

~~Notary Public~~
Solicitor

Exhibit 5

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

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

AFFIDAVIT OF AMY McNEILAGE IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

City of Sydney) ss.:
In the State of New South Wales)

AMY McNEILAGE, being duly sworn, deposes and says:

1. I am a defendant in this matter. I am a citizen of Australia and a resident of Newtown. I have personal knowledge of the facts stated in this affidavit and submit this affidavit in support of Defendants' Motion to Dismiss.

2. At all times relevant to this lawsuit, I was a reporter for *The Sydney Morning Herald* in Sydney, Australia.

3. As an education reporter for *The Sydney Morning Herald*, my responsibilities included research, sourcing, and writing articles about education news in Australia, and, specifically, in New South Wales.

4. In my capacity as a reporter, I wrote one article dated January 14 regarding a prospective male studies course at the University of South Australia. A true and correct copy of

that article, which was given the headline "University of South Australia distances itself from males studies proposal" (the "Article"), is annexed hereto as Exhibit A.

5. I wrote the Article because it related to a controversy taking place in Australia, and the articles were intended for publication in Australia and were directed at an Australian audience.

6. By writing the Article, I did not intend to target the United States or the State of New York.

7. I made no contact with anyone in the United States or New York in the process of reporting on the controversy.

8. I did not attempt to contact Roy Den Hollander in the process of writing the Article and did not otherwise have any contact with Mr. Den Hollander.

9. I have never visited the State of New York or travelled through the State of New York.

10. I have only visited the United States once, and my travel at that time was limited to the west coast.

11. I do not reside in New York and I do not own any property, real or personal, that is situated there.

12. I do not have and have never had office facilities, locations, employees, telephone listings and/or bank accounts in New York.

13. I have never voted or been registered to vote in New York.

14. I have never undertaken any business ventures involving New York properties or entities.

WHEREFORE, Defendants Tory Shepherd, Advertiser Newspapers Pty Ltd., Amy McNeilage and Fairfax Media Publications Pty Ltd. respectfully request that this Court grant their motion to dismiss the Complaint with prejudice in its entirety together with costs and such other relief as is appropriate, with costs and such other relief as is appropriate.

Amy McNeilage

Sworn to and subscribed before me
this Thursday 28th of August, 2014.

~~Notary Public~~
Solicitor

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

MEMORANDUM OF LAW OF DEFENDANTS TORY SHEPHERD, ADVERTISER NEWSPAPERS PTY LTD., AMY McNEILAGE, AND FAIRFAX MEDIA PUBLICATIONS PTY LIMITED IN SUPPORT OF THEIR MOTION TO DISMISS THE COMPLAINT

Katherine M. Bolger
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Fax: (212) 850-6299
Counsel for Defendants

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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 support of their motion to dismiss the Complaint of Plaintiff Roy Den Hollander ("Plaintiff" or "Den Hollander") pursuant to Rules 3211(a)(1), (7), and (8) of the New York Civil Practice Law and Rules ("CPLR").[1]

PRELIMINARY STATEMENT

Defendants, two Australian newspapers and two Australian reporters, wrote and published three articles about the controversy surrounding a proposed men's studies course that was to take place at the University of South Australia. The articles, which were targeted to the Australian readers of the newspaper, mentioned that Plaintiff, an anti-feminist men's rights advocate, was to be a lecturer in the course. Plaintiff now seeks damages in a New York court for the publication of these articles in Australia. This Court should dismiss Plaintiff's claims for injurious falsehood and tortious interference because this court lacks jurisdiction and the claims are meritless as a matter of law.

First, the only possible connection Defendants have to the State of New York is the fact that the articles at issue here were published on the newspapers' websites and those websites are accessible by anyone with a computer throughout the world – including in New York. The New York Court of Appeals, however, has held that mere Internet publication is insufficient to constitute the transaction of business within the State of New York such that personal jurisdiction is appropriate here. *SPCA of Upstate N.Y., Inc. v. Am. Working Collie Ass'n*, 18

[1] The facts necessary for a determination of this motion are set forth in the accompanying affirmation of Katherine M. Bolger, sworn to the 29 day of August 2014, and the affidavits of Michael Cameron, Richard Coleman, Tory Shepherd, and Amy McNeilage attached as exhibits thereto.

N.Y.3d 400, 405 (2012). This Court should dismiss Plaintiff's claims on this basis alone.

Second, in the alternative, the Complaint must be dismissed because the articles are substantially true and cannot, therefore, contain "injurious falsehoods." Plaintiff has achieved significant notoriety by casting himself as an anti-feminist lawyer who makes radical and disparaging remarks about feminists – or "femi-nazis" or "witches" as he prefers to call them. In this very Complaint, for example, he refers to Shepherd and McNeilage as "[h]arp[ies], Bolger Affirmation ("Bolger Aff.") Ex. 1, Compl. ¶¶ 20, 56 [hereinafter "Compl."], and "Bacchae," *id.* at ¶ 1, and suggests that they should be grateful to men or they would have ended up as sex slaves to Japanese soldiers in World War II, *id.* ¶ 30 ("Her anti-gun advocacy for men might have even resulted in her and Amy ending up as Japanese 'comfort girls.'"). Plaintiff is exactly who the articles say he is. And, to quote Plaintiff himself "'we punish men for the crimes they commit, but never for the opinions they have.'" *Id.* ¶ 9. The Complaint should be dismissed.

FACTUAL BACKGROUND

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* Bolger Aff., Ex. 2, Cameron Affidavit ¶¶ 3-10 [hereinafter "Cameron Aff."]; *see also About Us*, The Advertiser (2013) *available at* http://www.adelaidenow.com.au/help/about. 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. Bolger Aff., Ex. 3, Shepherd Affidavit ¶¶ 1, 2, 12 [hereinafter "Shepherd Aff."].

Defendant Fairfax Media also is an Australian-based corporation and publishes *The Sydney Morning Herald* based out of Sydney, Australia and focused on Australian-related news.

Bolger Aff., Ex. 4, Coleman Affidavit ¶¶ 3-10 [hereinafter "Coleman Aff."]; *History of The Sydney Morning Herald*, The Sydney Morning Herald (2005), *available at* http://www.smh.com.au/aboutsmh/index.html. 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. Bolger Aff., Ex. 5, McNeilage Affidavit ¶¶ 1-3, 9 [hereinafter "McNeilage Aff."].

B. Plaintiff Roy Den Hollander

According to the allegations in Plaintiff's Complaint, Plaintiff is a self-professed anti-feminist, *see* Compl. ¶ 23, who believes that the women's rights movement is a plot to "eliminate[] the rights that the members of a distinct group, such as men, are entitled to." *Id.* ¶ 29. Plaintiff believes this erosion of men's rights by women or, as Plaintiff would have it in his Complaint, "witches," *id.* ¶ 5, means that one of the only "remaining sources of power" for men is the right to bear arms, which gives men "a fighting chance against unjust state violence," *id.* ¶ 29; *see also id*. ¶ 28 ("As for mainly men exercising their right to bear arms – it's the truth.").

Plaintiff is no stranger to the legal process. Plaintiff has filed many civil suits alleging that various programs that he believes favor women are unconstitutional or illegal. He has claimed that feminism is a religion, and, therefore, U.S. government funding of educational institutions with women's studies courses violates the Establishment Clause. *See* Bolger Aff., Ex. 6 at 6-13.[2] He has also claimed that "ladies' nights" at New York nightclubs impermissibly

[2] On a motion to dismiss pursuant to CPLR 3211(a)(1), a court may consider all documentary evidence so long as it is "'proved or conceded to be authentic.'" *Erich Fuchs Enters. v. ACLU Found., Inc.*, 95 A.D.3d 558, 558 (1st Dep't 2012) (citation omitted). The "typical[]" example of documentary evidence is judicial records. *See, e.g.*, *Giuliano v. Gawrylewski*, 40 Misc. 3d 1210(A), 2013 WL 3497611, at *2 (Sup. Ct. N.Y. Cnty. June 27, 2013). Yet even a plaintiff's own writings are properly considered documentary evidence. *See Love v. William Morrow & Co.*, 193 A.D.2d 586, 588 (2d Dep't 1993) (affirming dismissal at the pleading stage because "[a] comparison of the disputed language employed by [defendant] with the plaintiff's own words in his term paper for the Princeton graduate

"discriminat[e] against men," *see id.*, Ex. 7 at 2, and that the Violence Against Women Act violates the Equal Protection Clause and is motivated by "animus toward American citizens, mainly men, who marry foreigners," *see id.*, Ex. 8 at 48-49. Plaintiff's complaints along these lines have been unsuccessful, *see, e.g.*, *Hollander v. Members of Bd. of Regents of Univ. of N.Y.*, 524 F. App'x 727, 730 (2d Cir.) (rejecting Establishment Clause claim and chastising Hollander for bringing multiple similar claims; "Before again invoking his feminism-as-religion thesis in support of an Establishment Clause claim, we expect him to consider carefully whether his conduct passes muster under Rule 11."), *cert. denied*, 134 S. Ct. 197 (2013); *Hollander v. Inst. For Research On Women & Gender at Columbia Univ.*, 372 F. App'x 140, 141-42 (2d Cir. 2010) (affirming dismissal of Plaintiff's claim that the existence of a women's studies program at Columbia University violated the Establishment Clause). In some instances, Plaintiff has blamed this lack of success on judges who are women. *See, e.g.*, Bolger Aff., Ex. 9 (arguing that a judge's opinion was "factually wrong, but try telling that to a lady judge if you're a man"); *see also Hollander v. Swindells-Donovan*, No. 08-CV-4045 (FB) (LB), 2010 WL 844588, at *1 (E.D.N.Y. Mar. 11, 2010) (noting that Den Hollander sought the disqualification of a federal district judge on the basis that "her conduct had 'create[d] the appearance that [she], whether true or not, is biased and prejudiced against men'") (citation omitted), *aff'd sub nom. Hollander v.*

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course demonstrates the 'substantial truth' of [defendant's] words, rather than their falsity"); *Grimaldi v. Ho*, No. 6909/2012 (Sup. Ct. Dutchess Cnty. Sept. 3, 2012) at 6 (relying on plaintiff's own "December 2011 newsletter" to support substantial truth finding) (attached as Bolger Aff., Ex. 16).

The Court is entitled in adjudicating this motion under CPLR 3211(a)(1), (7), and (8) 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.) (taking judicial notice of newspaper article reporting a 25% decline in law school admissions), *aff'd*, 103 A.D.3d 13 (1st Dep't 2012); *People v. Larsen*, 29 Misc. 3d 423, 425 (Crim. Ct. N.Y. Cnty. 2010) (taking judicial notice of certain statements on a private website); *Sprewell v. NYP Holdings, Inc.*, 1 Misc. 3d 847, 850 (Sup. Ct. N.Y. Cnty. 2003) (taking judicial notice of publication of various articles on topics related to defamation plaintiff in considering motion to dismiss).

Steinberg, 419 F. App'x 44 (2d Cir. 2011); Bolger Aff., Ex 12.

Outside of the courts, Plaintiff is a contributor to *A Voice for Men*, a controversial men's rights website, writing about the purported plight of men in American society at the hands of women, corporations who support women, and the government. *See, e.g.*, Bolger Aff., Ex. 9. In these articles, Den Hollander called for the end of women's studies or as he "affectionately call[s] them[,] 'Witches' Studies,'" *id.*, and complained he has been discriminated against because of "prejudice against Euro-Americans of protestant ancestry, divorced husbands who criticize their ex-wives, and men who choose not to meekly submit to feminist and political correctionalist totalitarianism," *id.*, Ex. 10.

Elsewhere, Plaintiff has written that "[t]he purpose of the Feminist Movement is not equality, justice or freedom, but . . . power over men." *Id.*, Ex. 11 at 6.[3] He believes that men have been victimized by women because, "Beyond [having to provide] food and housing, [a man] must satiate . . . [his wife's] relentless vanity with expensive jewelry, perfumes, clothes and cosmetics," *id.*, and rails against domestic violence hotlines because there are no "advertisements paid for by taxpayer dollars giving men a number to call to get some ragging, nagging, malicious slut to shut her yap," *id.* at 8.

C. <u>The Publications At Issue</u>

1. <u>*The Advertiser* Articles</u>

On January 12, 2014, Advertiser Newspapers published an article written by Shepherd titled "Lecturers in world-first male studies course at University of South Australia under scrutiny." Compl., Ex. A (the "First *Advertiser* Article"). In that article, Shepherd notes that

[3] When his opposing counsel attached these articles as an exhibit to an affidavit in opposition to Den Hollander's motion to disqualify a female judge based on her bias against men, Den Hollander sued opposing counsel for copyright infringement. Bolger Aff., Ex. 11.

some men's studies courses scheduled to be held at the University of South Australia would be led by lecturers "linked to extreme views on men's rights and websites that rail against feminism." *Id.* Shepherd reported that Plaintiff, a "self-professed 'anti-feminist lawyer,'" was one of the lecturers. *Id*. Shepherd cited Den Hollander as "argu[ing] that feminists oppress men in today's world and refers to women's studies as 'witches' studies.'" *Id*. Shepherd then quotes the course founder who defended the men's studies courses as well as masculinity scholars who argued that "'populist' male studies" lent themselves to the "more extreme activists." *Id*.

As a follow up on January 14, *The Advertiser* published another article by Shepherd titled "University of South Australia gives controversial Male Studies course the snip." *Id.*, Ex. C (the "Second *Advertiser* Article"). The Second *Advertiser* Article reported that the University had decided against approving the men's studies courses. *Id*. Shepherd also summarized an interview she conducted with Den Hollander, wherein, among other things, he said he was "preparing a course that looked at how the law favours females when it comes to employment, crime, domestic relations, property, divorce and illegitimate children." *Id*. She also noted that Plaintiff "stood by his claim that men's remaining source of power was 'firearms.'" *Id*.

2. *The Sydney Morning Herald* Article

Also on January 14, Fairfax Media published an article written by McNeilage. *Id.*, Ex. B ("*The Herald* Article"). That article, titled "University of South Australia distances itself from males studies proposals," noted that the University had not approved several males studies courses, "some of which were to be taught by hardline anti-feminist advocates." *Id.* After introducing Den Hollander as one of the lecturers for the courses and as a "self-described anti-feminist," McNeilage spent the remainder of her short article focusing on an academic at the University who was linked to Den Hollander and another lecturer for a men's studies course. *Id*.

3. The Complaint

Plaintiff filed his Complaint against Defendants on March 24, 2014. Plaintiff served the Complaint through the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents. Thereafter, Plaintiff and Defendants entered into a stipulation extending Defendants' time to answer to August 30, 2014 and Plaintiff's reply to October 9, 2014.

The Complaint purports to assert two causes of action against all Defendants for (1) "authoring and publication of injurious falsehoods about Plaintiff and (2) tortious interference with prospective economic advantage." *Id.* ¶ 77.

In his first cause of action, Plaintiff alleges the First *Advertiser* Article published an injurious falsehood about him because "[t]he impression Tory created" was that Plaintiff was "evil and should figuratively, if not literally, have his tongue cut out." *Id.* ¶ 19. Plaintiff claims:

> In creating her knee-jerk tapestry of an "inappropriate" male, this Harpy harped on the following descriptions of Plaintiff: an "extreme" right-winger, "anti-feminist", associated with persons who use language Tory disapproves of, believes one remaining source of power in which men still have a near monopoly is the right to bear arms, calls women's studies witches studies, wants to eliminate the rights females have as humans, and believes Feminists oppress men.

Id. ¶ 20.

Plaintiff claims that *The Herald* Article injured him because "Amy uses the false appellation 'hardline anti-feminist advocate' in her lead sentence to open her McCarthyite assault of false and malicious accusations against Plaintiff," *id.* ¶ 46, and by stating that Plaintiff had "'been published on radical men's websites,'" *id.* ¶ 51. Plaintiff also claims *The Herald* Article injured him by stating that his men's studies course was "'rejected in 2012.'" *Id.* ¶ 64. Finally, Plaintiff claims the Second *Advertiser* Article harmed him by stating that "'some of the lecturers listed for professional certificates had links to extreme men's rights organizations.'" *Id.* ¶ 66.

In the second cause of action, Plaintiff claims that Defendants' articles were published "with the intent and result of harming his economic interests and interfering with a prospective economic advantage by causing the University of South Australia to incinerate the section of a proposed male studies course that Plaintiff would have taught." *Id.* ¶ 1.

ARGUMENT

This is a case about Australian newspapers that published news stories written by Australians about an Australian controversy. The only connection any of the four Defendants have to this litigation is the publication of the articles on websites accessible in New York state. As a matter of law, mere Internet publication is insufficient to confer personal jurisdiction over these Defendants. For this reason alone, Plaintiff's Complaint must be dismissed.

In addition, Plaintiff's claims fail on their merits. The *sine qua non* of an injurious falsehood claim, like a defamation claim, is the existence of a falsehood. *Air Wisconsin Airlines Corp. v. Hoeper*, 134 S. Ct. 852, 861 (2014); *see also Penn Warranty Corp. v. DiGiovanni*, 10 Misc. 3d 998, 1003 (Sup. Ct. N.Y. Cnty. 2005). Here, Plaintiff's own Complaint establishes that the complained of statements are substantially true. Plaintiff is an unrepentant anti-feminist who believes feminists (or witches, as he prefers to call them) are seeking to subjugate the rights of men. To the extent that the articles characterize him as such, they are substantially true.

Finally, Plaintiff cannot prevail on his tortious interference claim because he will never be able to demonstrate, as he must, that the sole intention of Defendants in publishing the articles was to harm him. For these reasons, Plaintiff's Complaint should be dismissed.

POINT I

THIS COURT LACKS JURISDICTION OVER DEFENDANTS

This action should be dismissed[4] because this Court lacks jurisdiction pursuant to CPLR § 302 over the Australian Defendants.[5]

Personal long-arm jurisdiction is governed by CPLR § 302. Significantly, CPLR §§ 302(a)(2) and (3) preclude the exercise of "long-arm" jurisdiction over an out-of-state defendant in actions like the ones at issue here that sound in defamation.[6] *See, 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)); *Morrison v. NBC*, 19 N.Y.2d 453, 459 (1967) (claims of reputational damage "fall within the ambit of tortious injury which sounds in defamation"). This bar to jurisdiction over out-of-state defendants in defamation actions exists in order to prevent "disproportionate restrictions on freedom of expression." *Am. Working Collie*

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[4] This Court can rely on affidavits in determining a motion to dismiss pursuant to CPLR 3211(a)(8). *See SNS Bank, N.V. v. Citibank, N.A.*, 7 A.D.3d 352, 354 (1st Dep't 2004) (where defendants submit affidavits alleging facts showing they were not subject to jurisdiction and plaintiff failed to provide "tangible evidence which would constitute a 'sufficient start' in showing that jurisdiction could exist," dismissal was proper (internal marks and citation omitted)).

[5] Plaintiff did not appear to plead that this Court has general personal jurisdiction over Defendants pursuant to CPLR § 301. *See* Compl. ¶ 73-82. Any such pleading would have been futile. The question under CPLR § 301 is whether one's "aggregate" activities are such "that it may be said to be 'present' in the State 'not occasionally or casually, but with a fair measure of permanence.'" *Laufer v. Ostrow*, 55 N.Y.2d 305, 310 (1982) (citation omitted); *see also Brinkmann v. Adrian Carriers, Inc.*, 29 A.D.3d 615, 617 (2d Dep't 2006). None of the Defendants has these kind of contacts with New York. *See* Cameron Aff. ¶¶ 5-10, Shepherd Aff. ¶¶ 11-16, Coleman Aff. ¶¶ 4-10, McNeilage Aff. ¶¶ 6-14.

[6] CPLR § 302(a) reads in relevant part:

> (a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:
> 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
> 2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
> 3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act[.]

Ass'n, 18 N.Y.3d at 404. To ensure that the purpose behind the policy is not evaded, this bar applies to causes of action sounding in defamation even if those claims are creatively labeled as "injurious falsehood." *See, e.g.*, *Findlay v. Duthuit*, 86 A.D.2d 789, 790 (1st Dep't 1982) (in assessing personal jurisdiction bar for defamation actions, courts look to "the reality and the essence of the action[] and not its mere name"); *Deer Consumer Prods., Inc. v. Little Grp.*, 37 Misc. 3d 1224(A), 2012 WL 5898052, at *3 (Sup. Ct. N.Y. Cnty. Nov. 15, 2012) ("The alleged publication of false reports is at the core of each of these [tortious interference with business relations] claims, and therefore, is subject to the exclusion for defamation claims from long-arm jurisdiction."); *see also Cantor Fitzgerald, L.P, v. Peaslee*, 88 F.3d 152, 157 (2d Cir. 1996) (plaintiffs' "additional claims of injurious falsehood and tortious interference with prospective economic advantage likewise do not independently establish personal jurisdiction under [CPLR §§ 302(a)(2)-(3)] because the entire complaint sounds in defamation").

Here, it is beyond dispute that both Plaintiff's claims sound in defamation because he seeks damages for injury to reputation. *Compare Morrison*, 19 N.Y.2d at 459 (claim based on damage to public "perception" of plaintiff sounds in defamation) *with* Compl. ¶¶ 1, 2, 5, 18, 19, 38, 45, 48, 50, 57. And, all Defendants are non-domiciliaries residing in Australia, *see* Shepherd Aff. ¶¶ 1,13; McNeilage Aff. ¶¶ 1, 11; Cameron Aff. ¶¶ 3-10; Coleman Aff. ¶¶ 3-10. This Court, therefore, cannot exercise long-arm jurisdiction here.

This Court only has jurisdiction over this action, therefore, if Plaintiff can demonstrate, as he alleges, that Defendants "transact[] any business" within New York within the meaning of CPLR § 302(a)(1). *See* Compl. ¶¶ 78-82. In determining whether a defendant is subject to jurisdiction under this section, courts must first ask whether the defendant transacts business in the state and then whether the claim arises out of that business. *Best Van Lines, Inc. v. Walker*,

490 F.3d 239, 246 (2d Cir. 2007).

Although CPLR § 302(a)(1) does not have the same defamation carve out as do CPLR §§ 302(a)(2) and (3), the Court of Appeals has cautioned that courts should take "particular care" in determining whether claims sounding in defamation are properly subject to CPLR § 302(a)(1), because the same free speech concerns that bar claims under CPLR §§ 302(a)(2) and (3) are present under CPLR § 302(a)(1). *Am. Working Collie Ass'n*, 18 N.Y.3d at 405; *see also Best Van Lines, Inc.*, 490 F.3d at 248 ("New York courts construe 'transacts any business within the state' more narrowly in defamation cases . . . ."). Thus, in the context of suits sounding in defamation, when the "publication itself constitutes the alleged 'transact[ion of] business' for the purposes of section 302(a)(1), more than the distribution of a libelous statement must be made within the state to establish long-arm jurisdiction over the person distributing it." *Best Van Lines, Inc.*, 490 F.3d at 248.

Here, assessing the totality of Defendants' activities in the forum, no Defendant "transacts any business" in the state under CPLR § 302(a)(1). As to Advertiser Newspapers and Fairfax Media, Den Hollander makes only cursory allegations that these publications "offer/sell their newspapers through the Internet to residents of New York State, which amounts to transacting business in New York." Compl. ¶ 78; *see also id.* at ¶ 80. The New York Court of Appeals has held as a matter of law, however, that publishing a website that is accessible in New York is not, on its own, sufficient to confer jurisdiction over the publisher. *See Am. Working Collie Ass'n*, 18 N.Y.3d at 405 ("[I]t is of importance that the statements were not written in or directed to New York. While they were posted on a medium that was accessible in this state, the statements were equally accessible in any other jurisdiction."); *see also Deer Consumer Prods., Inc.*, 35 Misc. 3d at 384 ("posting of allegedly defamatory material outside New York [about a

New York resident] on a website merely accessible in New York does not, without more, provide a basis for jurisdiction over a non[-]domiciliary for the purposes of CPLR § 302(a)(1)"); *Gary Null & Assocs., Inc. v. Phillips*, 29 Misc. 3d 245, 250 (Sup. Ct. N.Y. Cnty. 2010) ("an out-of-state resident does not subject himself to jurisdiction in New York by simply maintaining a website visited by New Yorkers.").[7] Accordingly, the availability of *The Advertiser* and *The Herald* on the Internet cannot confer personal jurisdiction here.

Plaintiff next alleges that this Court has jurisdiction over this action because *The Advertiser* and *The Herald* websites are interactive. Compl. ¶ 79. But the interactivity of a website does not confer jurisdiction unless the interactive features are targeted at New York. *Deer Consumer Prods., Inc.*, 35 Misc. 3d at 386 ("Regardless of the interactivity level of

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[7] *The Herald* website does have subscribers in New York. *See* Coleman Aff. ¶ 8. But this does nothing to change the analysis. Internet subscription services simply do not confer jurisdiction over media companies without something more. *Sino Clean Energy Inc. v. Little*, 35 Misc. 3d 1226(A), 2012 WL 1849658, at *7 (Sup. Ct. N.Y. Cnty. May 21, 2012) ("Little's internet activities of maintaining a website with discussion threads and email subscription offering, posting responses and comments to the website users, who could download reports and files directly to their computers, are insufficient to support a necessary finding that Little purposefully and knowingly interacted with New York residents or otherwise targeted New York for business, 'thus invoking the benefits and protections of [New York's] laws'" (citation omitted)); *Am. Radio Ass'n v. A. S. Abell Co.*, 58 Misc. 2d 483, 484-85 (Sup. Ct. N.Y. Cnty. 1968) (where 400 copies of the Baltimore Sun were distributed in New York, jurisdiction was improper in defamation action because the facts underlying the complained of column's publication "occurred in Baltimore"). And, in any event, Plaintiff's cause of action does not arise out of *The Herald*'s offering subscriptions; it arises out of *The Herald*'s gathering news *in Australia* and publishing that news *in Australia*. *See, e.g.*, *Merritt v. Shuttle, Inc.*, 13 F. Supp. 2d 371, 378 (E.D.N.Y. 1998) (emphasizing that claim arose out of Washington, D.C. broadcast *not* mail orders for "transcripts of broadcasts"); *see also Global Gospel Music Grp. LLC v. Habukkuk Music, Inc.*, No. 10 Civ. 01818(GBD), 2010 WL 4968172, at *4 (S.D.N.Y. Dec. 6, 2010) (where cause of action arose out of out-of-state activities, defendants' in-state activities were irrelevant); *A. S. Abell Co.*, 58 Misc. 2d at 484-85.

Further, the fact that a third party called Press Reader prints and distributes copies of *The Herald* similarly does not change the analysis. Indeed, a third party's distribution of products into the state are not attributable to a defendant absent some evidence that the defendant controlled the actions of the third party. *Stephan v. Babysport, LLC*, 499 F. Supp. 2d 279, 287 (E.D.N.Y. 2007) (sales in New York by a third party defendant entered into a distribution contract with insufficient to constitute transacting business); *see also Global Gospel Music Grp. LLC*, 2010 WL 4968172, at *4 (noting that "[s]ales through a . . . nationwide distributor do not involve purposeful availment"). *The Herald* has no control whatsoever where Press Reader, an independent company, distributes copies of *The Herald* – let alone whether they are distributed in New York. Coleman Aff. ¶ 7. Therefore, *The Herald* cannot be subject to jurisdiction based on this fact.

[defendant's] Web site . . . , there is no indication that [defendant's] internet postings on these Web sites, which are merely accessible to anyone—in New York and in the entire world—were expressly targeted at anyone in New York."); *see also Realuyo v. Villa Abrille*, No. 01 CIV. 10158(JGK), 2003 WL 21537754, at *7 (S.D.N.Y. July 8, 2003) (interactive advertising hyperlinks unrelated to claims insufficient to support transacting business jurisdiction), *aff'd sub nom. Realuyo v. Abrille*, 93 F. App'x 297 (2d Cir. 2004); *accord Best Van Lines, Inc.*, 490 F.3d at 252 (a website's interactivity "'does not amount to a separate framework for analyzing internet-based jurisdiction'" (citation omitted)). Accordingly, even if these Defendants' websites could be construed as interactive, Den Hollander makes no allegation – nor can he – that the alleged interactive aspects target New York.

Finally, neither *The Advertiser* nor *The Herald* transact any other business in the United States. They are Australian publications based in Australia targeting Australian audiences. Cameron Aff. ¶¶ 3-4, 8; Coleman Aff. ¶¶ 3, 8. They do not publish anything in New York or have any other business ventures in New York. Cameron Aff. ¶¶ 7, 9; Coleman Aff. ¶¶ 6, 9.[8]

Next, Plaintiff makes only a single jurisdictional allegation as to Defendant Shepherd, *i.e.*, that she "contacted Plaintiff at his email address and subsequently telephoned him at his home number in New York County." Compl. ¶ 82. New York courts, however, have routinely rejected the argument that a single or even a couple of phone calls or even visits into New York by a journalist are sufficient to constitute the "transaction of business." *See Am. Working Collie Ass'n*, 18 N.Y.3d at 405 (describing defendant's contacts as "quite limited" where defendant placed "three phone calls and [made] two short visits [into New York]—totaling less than three

[8] Moreover, even if this Court could be said to have personal jurisdiction over *The Advertiser* and *The Herald*, those contacts would not be sufficient to confer personal jurisdiction on Shepherd and McNeilage. *See Laufer*, 55 N.Y.2d at 313 (no basis for long-arm jurisdiction over an employee where employee was acting on behalf of employer).

hours—in addition to the donation of cash and leashes [for rescue animals]"); *Copp v. Ramirez*, 62 A.D.3d 23, 29 n.3 (1st Dep't 2009) (expressing "doubts as to whether the out-of-state defendants' minimal contacts with New York," including travelling to New York in their capacities as reporters and staying in New York for no longer than 48 hours, "would be sufficient proof to establish the element of transacting business"); *Granat v. Bochner*, 268 A.D.2d 365, 365 (1st Dep't 2000) ("sending faxes and making phone calls to this State are not, without more, activities tantamount to 'transacting business'"); *cf. Findlay*, 86 A.D.2d at 790 ("it is clear that the single telephone communication made to defendant in France does not qualify as the transaction by defendant of business within this state."). Because Plaintiff has identified only these two *de minimus* contacts with the state of New York, there is, therefore, no personal jurisdiction over Shepherd for this reason.

As to McNeilage, Den Hollander makes *no allegations* as to why she is subject to personal jurisdiction in New York. *See generally* Compl. ¶¶ 78-82. But the law is clear that he has a duty to do so. *See Pramer S.C.A. v. Abaplus Int'l Corp.*, 76 A.D.3d 89, 96 (1st Dep't 2010) ("Preliminarily, there are no allegations that Vargas personally conducted any transaction in New York, notwithstanding his possible corporate affiliation, so jurisdiction cannot be obtained over him as an individual."). For this reason, Plaintiff has failed to show that McNeilage is subject to personal jurisdiction in New York.

In sum, Plaintiff asks this Court to find that "transacting business" personal jurisdiction is proper over four Australian Defendants located over ten thousand miles away from New York based almost exclusively on the fact that Defendants' articles were accessible in New York on the Internet. This argument is inconsistent with Court of Appeals precedent and would effectively nullify CPLR §§ 302(a)(2) and (3)'s free speech protections, because anytime any

out-of-state newspaper published an article to the Internet it would automatically be subject to personal jurisdiction under Plaintiff's expansive view of "transact[ing] business" under CPLR § 302(a)(1). Consistent with "the state's policy of preventing disproportionate restrictions on freedom of expression," *Am. Working Collie Ass'n*, 18 N.Y.3d at 404, this Court should dismiss Plaintiff's Complaint for lack of personal jurisdiction as to all Defendants.

POINT II

THE MERITS OF PLAINTIFF'S CLAIMS MUST BE JUDGED AGAINST THE BACKDROP OF THE FIRST AMENDMENT

In the alternative, Plaintiff's claims as alleged against Defendants cannot withstand a motion to dismiss on the merits either. When evaluating a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a claim, courts must grant the motion if the "four corners" of a plaintiff's complaint fail to evidence facts "'which taken together manifest any cause of action cognizable at law.'" *McGill v. Parker*, 179 A.D.2d 98, 105 (1st Dep't 1992) (citation omitted) (dismissing defamation claim). And, while courts must accept as true allegations in a plaintiff's complaint, courts need not accept as true "'bare legal conclusions.'" *Cangro v. Marangos*, 61 A.D.3d 430, 430 (1st Dep't 2009) (citation omitted).

Similarly, "[u]nder CPLR 3211(a)(1), a dismissal is warranted" when "documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994). "A movant is entitled to dismissal under CPLR § 3211 when his or her evidentiary submissions flatly contradict the legal conclusions and factual allegations of the complaint." *Uzamere v. Daily News, L.P.*, 34 Misc. 3d 1203(A), 2011 WL 6934526, at *2 (Sup. Ct. N.Y. Cnty. Nov. 10, 2011).

Where, as here, injurious falsehood and related tort claims are insufficient on their face, New York courts do not hesitate to dismiss them. *See, e.g.*, *Muhlhahn v. Goldman*, 93 A.D.3d

418, 419 (1st Dep't 2012) (affirming grant of CPLR 3211(a)(1) motion because "based on the documentary evidence," the challenged statements were "true or substantially true"); *Pitcock v. Kasowitz, Benson, Torres & Friedman LLP*, 74 A.D.3d 613, 615 (1st Dep't 2010) (dismissing injurious falsehood claim where, in part, plaintiff "insufficiently pleaded" falsity). This is especially so where claims unquestionably implicate defendants' First Amendment rights to report newsworthy information, requiring courts to "consider [the] case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Indeed, the Court of Appeals has recognized that "[t]he threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." *Karaduman v. Newsday, Inc.*, 51 N.Y.2d 531, 545 (1980) (internal marks and citation omitted). Because of this fear, the First Department has warned, "courts should not be oblivious to the crippling financial burden which the defense of libel claims entails, even for major news organizations, and the consequent chilling effect this burden can have on the dissemination of news." *Freeze Right Refrigeration & Air Conditioning Servs., Inc. v. City of New York*, 101 A.D.2d 175, 181 (1st Dep't 1984).

In this case, all Plaintiff's claims are inadequate as a matter of law and should promptly be dismissed because delay in their disposition serves "not only to countenance waste and inefficiency but to enhance the value of such actions as instruments of harassment and coercion inimical to the exercise of First Amendment rights." *Immuno A.G. v. Moor-Jankowski*, 145 A.D.2d 114, 128 (1st Dep't 1989), *aff'd*, 77 N.Y.2d 235 (1991) (intermediate history omitted).

POINT III

PLAINTIFF'S INJURIOUS FALSEHOOD CLAIM SHOULD BE DISMISSED

Plaintiff's claim for injurious falsehood – which must necessarily be construed in light of the principles of defamation law – should be dismissed on the merits. Den Hollander far from carrying his burden of showing that the complained of statements are false actually admits the truth of almost all of the alleged defamatory statements in his own Complaint. Even if Plaintiff did not admit the truth of the statements complained of, much of Plaintiff's claim would still fail because Defendants' statements are non-actionable opinion.

A. Labeling Claim As An Injurious Falsehood Does Not Relieve Plaintiff Of Overcoming Constitutional Burdens On Claims Arising From Speech

Despite the fact that Plaintiff seeks damages for "personal attacks" and "opprobrious accusations," Plaintiff has styled his claim as one for injurious falsehood.[9] *See* Compl. ¶¶ 2, 5, 19. Under New York law, the elements of an injurious falsehood claim are: "(i) falsity of the alleged statements; (ii) publication to a third person; (iii) malice; and (iv) special damages." *Biro v. Conde Nast*, 883 F. Supp. 2d 441, 483 (S.D.N.Y. 2012). Injurious falsehood claims are subject to the same constitutional protections as are defamation claims. *See, e.g.*, *Newport Serv. & Leasing, Inc. v. Meadowbrook Distrib. Corp.*, 18 A.D.3d 454, 455 (2d Dep't 2005) (dismissing injurious falsehood claim on summary judgment based on substantial truth defense) (citing *Carter v. Visconti*, 233 A.D.2d 473, 474 (2d Dep't 1996) (defamation case)); *see also Biro*, 883 F. Supp. 2d at 483 (rejecting attempts to circumvent defamation standards by pleading injurious falsehood); *Abernathy & Closther v. Buffalo Broad. Co.*, 176 A.D.2d 300, 302 (2d Dep't 1991) (requiring plaintiff to overcome constitutional actual malice standard in product

[9] Defamation claims seek redress for damage to reputation, while injurious falsehood claims seek redress for damages to property or economic interest as a result of speech. *Cunningham v. Hagedorn*, 72 A.D.2d 702, 704 (1st Dep't 1979).

disparagement case); *Kuan Sing Enters., Inc. v. T. W. Wang, Inc.*, 86 A.D.2d 549, 550 (1st Dep't) (claim characterized as "business libel" must be based on "*facts* [that] are false"), *aff'd and adopted by* 58 N.Y.2d 708 (1982) (emphasis added). Here, Plaintiff cannot establish the most basic elements of his claim – statements of fact and falsity.

B. Some Of The Challenged Statements Do Not Appear In The Articles

There is no question that a defendant only can be held liable for statements she actually makes. *Cummins v. Suntrust Capital Markets, Inc.*, 649 F. Supp. 2d 224, 250 (S.D.N.Y. 2009) (applying Texas law) ("The plaintiff cannot base a defamation claim on alleged false statements of fact, when the statements do not appear in the text."), *aff'd*, 416 F. App'x 101 (2d Cir. 2011). A plaintiff cannot "conjure[] up alleged statements that were simply not made." *Id.* Den Hollander attempts to do just that. First, Plaintiff alleges that "Tory and Amy have continued in the McCarthy-Cohn tradition by destroying a proposed course at a public university that they deemed 'inappropriate' in order to eliminate dissent." Compl. ¶ 7. The word "inappropriate," however, is not used in any of the challenged articles. *Id.*, Exs. A-C. Similarly, Plaintiff accuses Defendants of calling him an "'extreme' right-winger," *id.* ¶ 20, and a "right winger," *id*. ¶ 42. But, Defendants never used the words "right winger" in the articles. Thus, Plaintiff's claims based on these two allegations should be dismissed.

C. All Of The Challenged Statements Are True

Further, all of the statements actually published in the articles are true. Because a statement must be *false* to be actionable as an injurious falsehood, it is axiomatic that "[t]ruth is a complete defense." *Diaz v. Espada*, 8 A.D.3d 49, 50 (1st Dep't 2004) (construing defamation case law); *see also Pitcock*, 74 A.D.3d at 615 (injurious falsehood claim must be dismissed where plaintiff failed to allege falsity). A plaintiff bears the burden of pleading and proving falsity. *Immuno AG.*, 77 N.Y.2d at 245. Moreover, "truth need not be established to the

extreme, literal degree." *Yarmove v. Retail Credit Co.*, 18 A.D.2d 790, 790 (1st Dep't 1963); *see also Cusimano v. United Health Servs. Hosps., Inc*., 91 A.D.3d 1149, 1151 (3d Dep't 2012) ("substantial truth is all that is required"). Therefore, general "variations only involv[ing] differences in degree of the qualities attributed to plaintiff" are not false. *Yarmove*, 18 A.D.2d at 791. If the statements complained of are substantially true, a claim sounding in defamation fails as a matter of law and can be dismissed at the pleading stage. *See Muhlhahn*, 93 A.D.3d at 419 (affirming grant of CPLR 3211(a)(1) motion because "based on the documentary evidence," the challenged statements were "true or substantially true"); *see also Aguinaga v. 342 E. 72nd St. Corp.*, 14 A.D.3d 304, 305 (1st Dep't 2005) (where letter written by plaintiff admitted "the truth of an expressed opinion, the words cannot be actionable"); *Torres v. CBS News*, No. 121646/93, 1995 WL 810041, at *3 (Sup. Ct. N. Y. Cnty. Oct. 11, 1995) (where plaintiff admitted statement was true, no actionable defamation).

First, as to Plaintiff's claim in paragraphs 20 and 46 of the Complaint that the First *Advertiser* Article and *The Herald* Article injured him because they call him an "anti-feminist lawyer," the truth of these allegations are confirmed by Plaintiff himself. In paragraph 23 of the Complaint, Plaintiff concedes he "does describe himself as an anti-Feminist." Compl. ¶ 23. Indeed, Plaintiff is evidently proud of the fact, describing himself as such on the popular cable show *The Colbert Report* among other places. *See* 3/31/11 in :60 Seconds, *The Colbert Report*, Comedy Central (Mar. 31, 2011), *available at* http://thecolbertreport.cc.com/videos/ypge4c/3-31-11-in--60-seconds ("I'm an anti-feminist but not anti-female."); *see also, e.g.*, Corey Kilgannon, *Lawyer Files Antifeminist Suit Against Columbia*, N.Y. Times, Aug. 18, 2008 (describing Den Hollander as "a self-described antifeminist" and quoting him as saying he prosecutes "antifeminist cases or guys'-rights cases").

Next, Plaintiff claims in paragraph 20 of the Complaint that the First and Second *Advertiser* Articles injured him by stating that he "believes one remaining source of power in which men still have a near monopoly is the right to bear arms." Compl. ¶ 20. Just paragraphs later, however, Plaintiff says of this allegation: "it's the truth." *Id.* ¶ 28. Plaintiff has also made similar statements on *A Voice for Men*, "there is one remaining source of power in which men still have a near monopoly—firearms." Bolger Aff., Ex. 13. And, indeed, Plaintiff himself confirmed this fact to Shepherd in a statement quoted in the Second *Advertiser* Article, the accuracy of which he has never questioned. *See* Compl., Ex. C (reporting that Den Hollander "stood by his claim that men's remaining source of power was 'firearms'" and "said that it was true that it was 'really the only area that they control in society now'"); *see also id.*, Ex. A.

Plaintiff next argues that the First *Advertiser* Article injured him by stating that he "wants to eliminate the rights females have as humans" and "believes Feminists oppress men." *Id.* ¶ 20. But paragraphs 35 and 36 of the Complaint, which contain Plaintiff's spirited opinions of the Violence Against Women, confirm the truth of these statements. *See id.* ¶¶ 35-36 (calling for the repeal of the VAWA and saying it was "intended to harm men by the Feminists who wrote it"). And there's no question that Plaintiff's writings more broadly seek both to eliminate women's rights and express the belief that women oppress men. Plaintiff's beliefs in this regard are best summarized by Plaintiff himself in a lawsuit in which he claimed:

> The Feminist agenda, curriculum and practices at Columbia, IRWG and Continuing Education are motivated by prejudice toward men that leads to sex-based stereotyping of males by depicting them as the primary cause for most, if not all, the world's ills throughout history. Females, on the other hand are credited with inherent goodness who were oppressed and colonized by men.

Bolger Aff., Ex. 14 ¶ 30. "Simply put: the IRWG Women's Studies program demonizes men and exalts women in order to justify discrimination against men based on collective guilt,"

Plaintiff asserts, and, therefore, courts should "[l]evel the playing field by either instituting Men's Studies or eliminating Women's Studies." *Id.*, Ex. 14 ¶¶ 33, 138.

Similarly, Plaintiff claims that he was injured by the statement in the First *Advertiser* Article that he refers to women's studies as "witches" studies. Compl. ¶ 20. But in paragraph 5 of the Complaint he refers to feminists as "witches" and in paragraph 31 of the Complaint he likens "feminist linguistics" to witchcraft. *Id.* ¶¶ 5, 31. Plaintiff also refers to or describes Shepherd and McNeilage as "jump[ing] on their broomsticks." *Id.* ¶ 4. And, in any event, Plaintiff has also actually referred to women's studies as witches' studies. Bolger Aff., Ex. 9 ("The third in my trilogy of anti-feminist cases is against 'Women's Studies Programs,' or as I affectionately call them 'Witches' Studies.'").

Next, Plaintiff argues that Shepherd injured him by alleging that he is "'extreme'" or associated with those who are, Compl. ¶ 20, and that McNeilage did so by stating that he was "'hardline,'" *id.* ¶ 50, or "'radical,'" *id.* ¶ 52. These statements too are true, and for this reason, Plaintiff's claim based on them must be dismissed. *See Uzamere*, 2011 WL 6934526, at *4 (claim based on allegedly defamatory statement regarding plaintiff being an "anti-Semite" dismissed pursuant to CPLR 3211(a)(1) and (7) where plaintiff's website noted, among other things, that a judge was "beholden to 'powerful Jewish male bosses'" and was a "traitor to her own race"). As an initial matter, Southern Poverty Law Center has found that the men's rights website *A Voice for Men*, a website to which Den Hollander is a contributor, is a hate site. Bolger Aff., Ex. 15. Moreover, Plaintiff himself has published many claims that could fairly be described as "radical" or "extreme." He has argued for the use of firearms in the face of feminism, *Id.*, Ex. 13, argued that feminism exists to counteract women's fear that "just about any man has the physical power to do with her as he wishes. He can beat her up, rape or kill her

with his bare hands, providing no one else is present to prevent it," and claimed that "Feminazis will not stop until they reshape America and eventually the world into an intolerant hell complete with thought-control, inquisitions, intimidation, [and] enslavement." *Id.*, Ex. 11 at 6. This is to say nothing of Plaintiff's vitriol-laden Complaint here, labeling women as "witches," Compl. ¶ 5, and describing one Defendant as a "yellow, female-dog-in-heat report[er]," *id.* ¶ 18. All of these statements evidence beyond all doubt that Plaintiff has "extreme" views and is linked with similarly "extreme" or "radical" groups.

In short, "[w]hile plaintiff might not have found [Defendants'] tone of voice to his liking, he has admitted that the factual matter contained in [their] statement[s] is true. Therefore, the statement[s are] non-actionable." *Torres*, 1995 WL 810041, at *3. The Complaint must be dismissed.

D. <u>Multiple Statements Are Non-Actionable Opinion</u>

In the alternative, Plaintiff's claims still would fail because the complained of statements are statements of opinion that are non-actionable. *Vitro S.A.B. de C.V. v. Aurelius Capital Mgmt., L.P.*, 99 A.D.3d 564, 565 (1st Dep't 2012) ("expression of opinion is constitutionally protected and cannot serve as the basis for plaintiff's injurious falsehood claim.").

In *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990), the Supreme Court held that "a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection," so long as such a statement does not "reasonably impl[y] false and defamatory facts." *Id.* The New York State Constitution not only protects opinion to the same extent as the federal constitution, but goes even further. *Gross v. N.Y. Times Co.*, 82 N.Y.2d 146, 152 (1993). The New York Court of Appeals has stressed that, when determining if a statement is opinion, a court must "take into consideration the larger context in which the statements were published, including the nature of the particular

forum." *Brian v. Richardson*, 87 N.Y.2d 46, 51 (1995); *see also Chernick v. Rothstein*, 204 A.D.2d 508, 509 (2d Dep't 1994) (remarks "construed in their full context . . . constituted personal opinion" and, therefore, not actionable as injurious falsehood).

In this inquiry, a court should begin by "looking at the content of the whole communication, its tone and apparent purpose" to "determine whether a reasonable person would view them as expressing or implying *any* facts." *Immuno AG*, 77 N.Y.2d at 254. Thus, a court must not only consider the statement itself, but its "broader social setting" as well as its "immediate context." *See id.*

Here, Defendants claims that Plaintiff is "hardline," Compl. ¶ 50, "radical," *id.* ¶ 52, or associated with those with such "extreme" views, *id.* ¶ 20, are non-actionable statements of opinion for two reasons. First, they are pure opinion that do not imply any underlying facts. *Buckley v. Littell*, 539 F.2d 882, 893 (2d Cir. 1976). Indeed, Plaintiff's comparison of statements made by Defendants to "certain words," Compl. ¶ 42, from McCarthy's days actually proves the point. The Second Circuit held in *Buckley v. Littell* that the words "'fascist,' 'fellow traveler' and 'radical right' as political labels . . . cannot be regarded as having been proved to be statements of fact, among other reasons, because of the tremendous imprecision of the meaning and usage of these terms in the realm of political debate." *Id*. at 893. The First Department has similarly held that accusing a plaintiff of "Nazi-style anti-Semitism," "even if bizarre, and even if [it has] no sound basis in the facts which the writer characterizes by these opinions, [it is] still constitutionally protected." *Holy Spirit Ass'n for Unification of World Christianity v. Sequoia Elsevier Publ'g Co.*, 75 A.D.2d 523, 523-24 (1st Dep't 1980). It must, therefore, be opinion to call Plaintiff here "radical," "hardline," or "extreme."

Second, even if they did imply facts, the articles disclose facts on which the opinions are based. Shepherd, for example, lays out the following facts in the First *Advertiser* Article: (1) the lecturers were linked with "websites that rail against feminism"; (2) two lecturers had been published on *A Voice for Men*, which "regularly refers to women as 'bitches' and 'whores'"; (3) Den Hollander believes that men must defend themselves with guns from oppressive feminists; and (4) Den Hollander sued nightclubs for ladies' nights. Compl., Ex. A. In the second, Shepherd notes: (1) the lecturers were linked with men's rights organizations that "believe men are oppressed"; (2) Den Hollander "stood by his claim that men's remaining source of power was 'firearms'"; and (3) Den Hollander believes that powerful men are "enforcing the belief system of feminism." *Id*., Ex. C. McNeilage similarly discloses: (1) the lecturers had been published on men's rights websites; (2) Den Hollander believes that feminism is a religious belief; and (3) Den Hollander brought a lawsuit against Columbia University for offering a women's studies course. *Id*., Ex. B. Because the basis for the challenged opinions are supported by truthful facts disclosed in the articles, these statements are non-actionable.

Plaintiff alleges that "[c]ompulsory unification of opinion achieves only the unanimity of the graveyard." *Id.* ¶ 71. It is ironic then that Plaintiff now attempts to impose liability on Defendants for their expressions of opinion. This Court should not allow him to do so.

E. The Remaining Statement Should Be Dismissed Because Plaintiff Cannot Demonstrate <u>That It Is Disparaging of The Plaintiff</u>

The single remaining statement that Plaintiff challenges as false – the statement in *The Herald* Article that the men's rights course was cancelled in 2012 – is not actionable and should be dismissed as against the relevant defendants (McNeilage and Fairfax Media) because, even if it is false, it is not disparaging of Plaintiff. Indeed, the "gravamen of an injurious falsehood action is a false *and disparaging* statement about another's property or directly damaging to

one's pecuniary interests." *In Touch Concepts, Inc. v. Cellco P'ship*, 949 F. Supp. 2d 447, 483 (S.D.N.Y.) (emphasis added), *adhered to on denial of reconsideration*, No. 13 CIV. 1419 PKC, 2013 WL 6182949 (S.D.N.Y. Nov. 18, 2013).

According to Plaintiff, the statement in *The Herald* that Plaintiff's course was "rejected in 2012" is an injurious falsehood. Compl. ¶ 64. This claim fails out of the gate because the statement read in context suggests, at worst, that the University disagreed with the academic value of a course in which Plaintiff was due to lecture and, therefore, did not approve the course. *Id.*, Ex. B (noting that "the university emphasized it did not endorse views of the suggested lecturers"). This type of academic disagreement with the content of a course in which Plaintiff was planning to guest lecture is not disparaging of Plaintiff. *See, e.g.*, *ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 497 (2d Cir. 2013) (dismissing injurious falsehood claim based on academic article alleging plaintiff's medicine was not effective); *see also Dilworth v. Dudley*, 75 F.3d 307, 310 (7th Cir. 1996) (holding that an allegation that a person is "inexplicably obsessed by an obviously unsound idea" is not defamatory "especially" in the context of "academic controversies").[10] Thus, because the import of this statement stops and starts at the University's involvement, it is non-actionable as injurious falsehood.

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[10] Even if the mere allegation that a college lecture course was "rejected" by a college were disparaging, a "maliciously false" statement cannot sustain a libel claim if it causes no appreciable harm beyond the harm caused by "unchallenged or non-actionable parts of a publication." *Church of Scientology Int'l v. Behar*, 238 F.3d 168, 176 (2d Cir. 2001). Thus, the incremental harm doctrine, as it is known, "measures the difference between the harm caused by non-actionable statements when compared with the harm caused by purportedly actionable statements and dismisses the latter when the difference is incremental." *Jewell v. NYP Holdings, Inc.*, 23 F. Supp. 2d 348, 387-88 (S.D.N.Y. 1998). As a result, courts properly dismiss claims, even when based on a false statement, where "the portion of the article challenged by plaintiffs, could not harm their reputations in any way beyond the harm already caused by the remainder of the article." *Simmons Ford, Inc. v. Consumers Union of U.S., Inc.*, 516 F. Supp. 742, 750 (S.D.N.Y. 1981). Here, Plaintiff admits, among other things, that he is an anti-feminist, Compl. ¶ 23, who believes that men's last hope in fighting feminists is a resort to guns, *id.* ¶¶ 28-29; *see also id.*, Exs. A-C (noting same). He also admits that he describes women as "witches," *id.* ¶ 5, and believes that feminists' goal is to oppress men, *id.*¶ 35-37. In the face of those truths, the statement that the University of South Australia rejected the course in 2012, even if false can, at most, cause only incremental harm.

POINT IV

PLAINTIFF'S TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE CLAIM SHOULD BE DISMISSED

Under New York law, the elements of a claim for tortious interference with a prospective economic advantage are: "(1) business relations with a third party; (2) defendants' interference with those business relations; (3) defendants acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means; and (4) injury to the relationship." *Purgess v. Sharrock*, 33 F.3d 134, 141 (2d Cir. 1994). Here, Plaintiff's tortious interference claim fails against all Defendants because no Defendant acted with the sole purpose of harming Plaintiff, and the claim against Defendants McNeilage and Fairfax Media fails for the additional reason that they did not cause the alleged injury.

In order to constitute intentional interference, "the interference must be intentional, not merely negligent or incidental to some other, lawful, purpose." *Alvord & Swift v. Stewart M. Muller Constr. Co.*, 46 N.Y.2d 276, 281 (1978); *see also Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 190 (2004). Under this standard, "a [publisher] whose motive and conduct is intended to foster public awareness or debate cannot be found to have engaged in the wrongful or improper conduct required to sustain a claim for interference." *Huggins v. Povitch*, No. 131164/94, 1996 WL 515498, at *9 (Sup. Ct. N.Y. Cnty. Apr. 19, 1996) (interpreting claim for tortious interference with a contract); *cf. Concourse Nursing Home v. Engelstein*, 278 A.D.2d 35, 35 (1st Dep't 2000) (tortious interference claim "properly dismissed on the ground that the tortious conduct alleged . . . is immune from suit under the First Amendment of the US Constitution"). In *Huggins*, Charles Huggins, the former spouse of actress and singer Melba Moore ("Moore"), attempted to hold Maury Povich ("Povich") and the producer and distributor of the talk show "The Maury Povich Show" liable for statements that Moore made on the show in violation of a

confidentiality provision in the couple's divorce agreement. 1996 WL 515498 at *1. The court rejected the plaintiff's claim because "the broadcaster's first amendment right to broadcast an issue of public importance, its lack of any motive to harm the plaintiff, and the obvious societal interest in encouraging freedom of the press, negate essential elements of the tort." *Id.* at *9; *see also Huggins v. NBC*, No. 119272/95, 1996 WL 763337, at *4 (Sup. Ct. N.Y. Cnty. Feb. 7, 1996) ("[a]ny interference that occurred was merely incidental to defendants' exercise of their constitutional right to broadcast newsworthy information"); *Trachtman v. Empire Blue Cross & Blue Shield*, 251 A.D.2d 322, 323 (2d Dep't 1998) (plaintiff "failed to allege sufficient facts to plead that the alleged interference by [defendant] was for the *sole* purpose of harming him rather than merely incidental to the lawful purpose of obtaining the sought after information") (emphasis added; citation omitted)); *Dukas v. D.H. Sawyer & Assocs., Ltd.*, 137 Misc. 2d 218, 222 (Sup. Ct. N.Y. Cnty. 1987) (no claim where "if any interference occurred it was merely incidental to defendants' exercise of their constitutional rights.").

Here, just as in *Huggins v. NBC*, any "interference" with Den Hollander's prospective business relationship with the University of South Australia was merely incidental to Defendants' primary purpose of gathering news and reporting on a newsworthy topic – a new course at a local university based on an ideology that many find to be outside the bounds of acceptable academic standards. Thus, Plaintiff has not – and cannot – allege any facts that would demonstrate that Defendants' *sole* purpose was to harm him. For this reason, Plaintiff's tortious interference claim fails as a matter of law.[11]

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[11] Tortious interference with prospective economic advantage necessarily embodies a cause-and-effect analysis, where the cause, *i.e.*, the defendant's interference, comes prior to the effect, *i.e.*, the injury to the relationship. *See, e.g.*, *Connolly v. Wood-Smith*, No. 11 Civ. 8801 (DAB) (JCF), 2014 WL 1257909, at *2 (S.D.N.Y. Mar. 27, 2014). Here, as to McNeilage and Fairfax Media, Plaintiff complains only about *The Herald* Article dated January 14, 2014, which reported that the University of South Australia did not approve Plaintiff's prospective class. Compl. ¶ 44; *see also id.*, Ex. B. Yet, by January

CONCLUSION

For each of the foregoing, independent reasons, Defendants respectfully request that the Court grant their motion to dismiss and dismiss the Complaint with prejudice.

Respectfully submitted,

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14, 2014, the University had already made clear that Plaintiff would not be leading a course on men's studies. *Id.*, Ex. B (noting that the University did not approve "a course called 'males and sexism,' which named lecturers who have been published on radical men's rights websites"); *id*., Ex. C (reporting that "the university says the subject he is down to teach was never approved"). McNeilage and Fairfax Media could not, therefore, have committed tortuous interference.