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

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Roy Den Hollander,

Plaintiff,

-against-

Tory Shepherd, Political Editor of The Advertiser-Sunday Mail Messenger;
Advertiser Newspapers Pty Ltd., d/b/a The Advertiser-Sunday Mail Messenger;
Amy McNeilage, Education Reporter for The Sydney Morning Herald;
Fairfax Media Publications Pty Ltd., d/b/a The Sydney Morning Herald;

Defendants.

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Index No. 152656/2014

AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Oral Argument Requested

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Roy Den Hollander, being duly sworn, deposes and says:

1. I am the plaintiff in this action and an attorney admitted to practice in the State of New York.

2. Submitted with this Opposition Affidavit ("Opp.") in accordance with CPLR 3025(a), is the First Amended Complaint with exhibits.

3. A clarification of terms is initially needed. Plaintiff in his writings, speeches and interviews uses the term "feminist" to mean a person, usually female but not necessarily so, who believes that an accident of nature, being born female, made her superior to men in all matters. One who believes men are guilty until they prove themselves innocent, and that females are innocent until proven guilty, but even then a male is still blamed for what the female volitionally did. A second definition Plaintiff relies on is that used by "Women Against Feminism" that real-

life feminism has come to mean "vilification of men, support for female privilege, and a demeaning view of women as victims rather than free agents." (First Am. Cmplnt. Ex. A).

4. So when Plaintiff uses the term "anti-feminist," he's referring to the preceding definitions.

5. Attorney Bolger and her clients use the term "anti-feminist" to mean anti-female or hater of women. In effect they are equating "feminist" with woman even though all females would not classify themselves as feminists. To avoid confusion, Plaintiff will add the descriptors "hardcore, extreme, man-hating, rabid" to the term feminist in order to communicate his definition of feminist and feminism.

6. Further, Defendant Advertiser Newspapers Pty Ltd is referred to as "Advertiser" and Defendant Fairfax Media Publications Pty Ltd. Is referred to as "Fairfax."

Introduction

7. "On a motion to dismiss pursuant to CPLR 3211, we must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory." *Sokoloff v. Harriman Estates Development Corp.*, 96 N.Y.2d 409, 414 (2001).

8. Despite this rule, Defendants' attorney Katherine M. Bogler ("Bolger") attempts to substitute her own inaccurate facts by engaging in the same false, dissembling, prevaricating and all around misleading tactics as did Defendants Shepherd and McNeilage in their articles that had the Male Studies courses "canned," (First Am. Cmplnt. Ex. F, Shepherd Article, June 18, 2014). Only Bolger does so in order to win this case. For example:

a. Attorney Bolger falsely states there was already a "controversy surrounding" the Male Studies courses. (Bolger Memorandum of Law at 1 ("Mem.")). There was not. The controversy was intentionally ignited by Defendant Shepherd's false and misleading anti-men's rights article of January 12, 2014, (First Am. Cmplnt. Ex. C) and fueled by Defendant McNeilage's January 14, 2014, article (First Am. Cmplnt. Ex. D).

b. Bolger misleads by imputing the "Males and the Law" section of one of the "canned" courses was only a suggestion. (Mem. at 1). Bolger's own client, Defendant Shepherd, reported that the University of South Australia ("University") had issued an "information sheet" on the course, which meant the course section would be taught if enough students enrolled. (First Am. Cmplnt. Ex. E). In a later article by Defendant Shepherd, she wrote, "After The Advertiser

revealed UniSA [University] was planning a course in men's studies that included men with links to US men's rights extremists, the course was canned." Those statements indicate the section was not a mere suggestion as Bolger tries to mislead. (First Am. Cmplnt. Ex. F).

c. Bolger prevaricates by saying the articles only targeted the Australian readership of the respective newspapers. (Mem. at 1). The misrepresentation here is that the articles only appeared in the print editions in Australia. Not so, the articles were published online in the World Wide Web where both media outlets have the vast majority of their readers. Defendant The Advertiser-Sunday Mail Messenger has an online audience of around 1,570,000 and a print readership of around 180,000 for a total of 1,750,000. Defendant The Sydney Morning Herald has a total circulation of 5,580,000 with a print audience of 770,000.

d. Bolger misleading tries to minimize her clients' successful disparagement of Plaintiff's "Males and the Law" section and Plaintiff by writing her clients "mentioned . . . Plaintiff [was] an anti-feminist men's rights advocate . . . ." (Mem. at 1). They did more than merely "mentioned"; the tenor of their entire articles was that Plaintiff's section and Plaintiff were anti-women and out to strip the opposite sex of its rights.

e. Bolger dissembles by stating Plaintiff "cast[s] himself as an anti-feminist lawyer," but fails to cite to any of the 428 pages of exhibits that she unnecessarily burdens this Court with. (Mem. at 2). She also, as did her clients, fails to define the term.

f. So why make a statement using an undefined term? Because in this day and age it carries the imputation of an evil man out to enslave women, and Bolger is clearly trying to bias the Court against Plaintiff.

g. The term "anti-feminist" is used to detract from an argument on the merits and intimidate any man it is leveled against into surrendering his rights. Hardcore feminism is nothing more than a socio-cultural belief system. There is nothing inherently sacrosanct about it that damns anyone who criticizes it. Unfortunately, however, in the societies descendant from ancient Greece, it has taken over the power of past doctrines that the populace once accepted as true beyond doubt. Doctrines that also harmed and destroyed others for daring to criticize their sanctity.

h. Bolger falsely says Plaintiff "prefers," which means to give priority, to call feminists derogatory names: "femi-nazis" or "witches." (Memo. at 2). Unless Bolger is able to enter and rummage about Plaintiff's mind, she just made that up to do what her clients did—denigrate, demean and defame Plaintiff and bias this Court against him. Tellingly, Bolger does not provide any cites of such use in her 428 pages of exhibits.

i. The "witches" label was dealt with in the First Amended Complaint at ¶¶ 81-83.

j. As for use of the term "feminazi," Plaintiff does not "prefer" to use that to describe feminists, whether first, second or third waves. However, as for Defendants Shepherd and McNeilage's abuse of their power as reporters, there is any interesting analogy for these two hardcore, extreme feminists:

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 doctrine. At the Nazi book burning in 1933, Joseph Goebbels said, "The era of extreme Jewish intellectualism is now at an end." (Emphasis added).

So what's the difference here with Defendants Shepherd and McNeilage stopping the teaching of the course section "Males and the Law" by claiming it expressed "extreme" and "radical" male views? 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 what they and attorney Bolger classify as "extreme' and "radical" views. (Mem. at 2).

k. In her litigation by personal destruction, Bolger falsely claims Plaintiff disparaged Defendant McNeilage as a "harpy" (Memo. at 2). That term was used to refer only to Defendant Shepherd who clearly did not consider it a disparagement because she tweeted to her audience, "Nicest thing anyone's ever said about me." (First Am. Cmplnt. Ex. J).

l. Not to be undone by outright falsehoods, Bolger disparages Plaintiff in the Court's eyes by dissembling that Plaintiff "suggests that they [Defendant reporters] should be grateful to men or they would have ended up as sex slaves to Japanese soldiers in World War II." (Mem. at 2) What the First Amended and Original Complaint stated was

"Thank goodness for Australians that [Defendant Shepherd] was not around for Australia's battle against the Japanese. Her anti-gun advocacy for men might have even resulted in her and Amy ending up as Japanese 'comfort girls.'" (Orig. Cmplnt. ¶ 30; First Am. Cmplnt. ¶ 81).

Plaintiff used "might" in its auxiliary form to express possibility while Bolger uses "would" to express a false certainty that Plaintiff never said. Bolger continued with injecting her own falsehoods by claiming Plaintiff said the

Defendants "should be grateful" to men. Plaintiff never said that. Bolger also ignores the reality that Australia in the beginning of World War II was on the verge of being invaded, which would have required private gun owners to fight in order to prevent another possible situation that occurred when the Japanese conquered the Chinese Capital of Nanking.

m. Bolger, who is not a psychoanalyst, arrogantly proclaims that Plaintiff "is exactly who the articles say he is." (Mem. at 2). That's a factual conclusion but it is missing the alleged underlying facts, and then follows with a badly worded sentence that apparently argues Bolger's view and the Defendants' articles are just opinions. A statement, however, is actionable where it reasonably appears to state or imply assertions of objective fact, regardless of whether it is characterized as a fact or an opinion. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). Furthermore, all the articles where published under the heading "News."

n. Bizarrely, Bolger even attributes to Plaintiff a quote by former President Harry Truman. (Memo. at 2). Not exactly sure how she missed that.

Bolger's disguised motion for Summary Judgment

9. Attorney Bolger's inclusion of 428 pages of affidavits and exhibits makes clear that she is really moving for summary judgment before any discovery has occurred and by circumventing the summary judgment requirements that

a. issue must be joined, which Bolger admits in her RJI that it has not;

b. newspaper reports are hearsay and cannot support summary judgment;

c. facts, which are within Defendants knowledge, are necessary on the issue of personal jurisdiction, for example the full extent of Defendants' readership in

New York State, how Defendants respond to their New York readers, all of what Defendants offer and sell to their New York readers and the complete relationship between Advertiser and News Corp headquartered at 1211 Avenue of the Americas, New York, N.Y. 10036; and

d. there are factual issues concerning the falsity and misleading characteristics of Bolger's contentions that are really affirmative defenses belonging in an Answer.

10. Bolger even says "The facts necessary for a determination of this motion" are in the attached affidavits. (Mem. at 1, n.1). The problem with this admission is that on a motion to dismiss under CPLR 3211, the Court takes as true the facts as alleged in the complaint and submissions in opposition to the motion—not the affidavits of Defendants.

11. As for Bolger moving for dismissal under CPLR 3211(a), in *J.P. Morgan Securities Inc. v. Vigilant Ins. Co.*, 21 N.Y.3d 324, 334 (2013), the court of Appeals held that "to prevail on a motion to dismiss pursuant to CPLR 3211(a)(1), the moving party . . . must establish that the documentary evidence conclusively refutes plaintiff's allegations."

12. In this action there are conflicting interpretations over the essays, briefs and legal memoranda submitted as part of Bolger's affirmation; therefore, such alleged documentary evidence does not resolve all factual issues as a matter of law and conclusively dispose of the plaintiff's claims as required under 3211(a)(1). *Sbarra Real Estate, Inc. v. Lavelle-Tomko*, 84 A.D.3d 1570, 1571 (3d Dept. 2011).

13. In addition, a motion to dismiss under CPLR 3211(a)(1) is not available in this case because the paragraph "contemplates that the defense will be established by the 'documentary evidence' alone"—not on affidavits necessary to support the documentary evidence. David D. Siegel, *New York Practice*, § 259, (2014).

14. Judicial records such as judgments and orders are allowed, but Bolger instead relies on briefs and memoranda of law that are not formal judicial admissions. McKinney's Practice Commentaries C3211:10, *Defense Based on "Documentary Evidence"*. The Advisory Committee noted that paragraph (1) was added only to cover something like a defense based on the terms of a written contract. 1st Rep.Leg.Doc. (1957) No. 6(b), p. 85. Bolger presents no written contract. The practice commentaries advise that Bolger should have filed an Answer and then moved for Summary Judgment.

15. While Defendants' affidavits are allowable on motions under CPLR 3211(a)(7) & (8), they cannot be used to disprove Plaintiff's allegation of facts, which are assumed true on a motion to dismiss.

16. Attorney Bolger is simply using her motion to dismiss as a cover for a summary judgment motion because she wants to unfairly deprive a person who does ascribe to the same sociological beliefs as she does of the fair opportunity to marshal evidence through discovery and investigation.

Bolger's misleading and prevaricating alleged facts that are irrelevant on a motion to dismiss other than for personal jurisdiction under CPLR 302(a)(1) or CPLR 302(a)(3)(i) & (ii), which show a tendency to cover-up; thereby, necessitating discovery on that issue.

Defendants

17. The Advertiser-Sunday Mail Messenger is not a lone, small paper reporting only on events in Australia but a key part of Rupert Murdock's worldwide media empire.

18. According to Bloomberg Businessweek "Advertiser publishes newspapers and magazines. It offers breaking, South Australia, national, world . . . news." (Opp. Ex. 1).

19. So far this year, The Advertiser-Sunday Mail Messenger has published 12 articles concerning New York.

20. Also according to Bloomberg Businessweek, The Advertiser-Sunday Mail Messenger is no stranger to being sued for Injurious Falsehood and Defamation. The Advertiser-Sunday Mail Messenger published "numerous serious and unsubstantiated allegations" under "a sensational sub-headline" that "were republished around the world by many other publications" causing irreparable harm to a business and individuals. The Advertiser-Sunday Mail Messenger based its article on "outrageous statement[s]," and not only failed but refused to conduct "its own investigations as to the bona fides of the allegations . . . before they published any article." (Opp. Ex. 1).

21. Advertiser's Cameron states in his affidavit that Advertiser is controlled by News Corp Australia, but, most likely at Bolger's suggestion, he tellingly leaves out the exact relationship it has with Murdock's empire. (Bolger Aff., Ex. 2, Cameron Affidavit). Such is an area for discovery concerning the issue of personal jurisdiction.

22. Bloomberg lists the Chairman for Advertiser as Brian Leonard Sallis with a corporate address of 1211 Avenue of the Americas, N.Y., N.Y. (Opp. Ex. 2). If that is the Chairman's business address, perhaps Advertiser uses New York banks to conduct its worldwide business, which is also discovery question going to personal jurisdiction.

23. On January 27, 2014, News Corp Australia, owner of Advertiser, entered into a partnership agreement with Digital First Media, which is headquartered in New York City. (Opp. Ex. 3). The partnership allows News Corp Australia to "digital[ly] display advertising across its network of websites along with a full complement of digital marketing solutions including social media, email, search engine optimization and search engine marketing."

24. Defendant Shepherd, most likely following Bolger's advice, committed perjury in her affidavit on the material issue of personal jurisdiction:

a. She swore her only contact with New York regarding the articles were an email that she sent to Plaintiff and a telephone call which she initiated with Plaintiff. (Bolger Aff., Ex. 3, Shepherd Aff. ¶¶ 9-11). That is false, and that is **perjury**. Shepherd contacted Miles Groth, Ph.D., a professor at Wagner College in New York and who lives in New York City, multiple times by email regarding the articles she wrote. (Opp. Ex. 4).

b. She swore she only wrote two articles regarding the Male Studies courses. (Bolger Aff., Ex. 3, Shepherd Aff. ¶ 4). That is false, she wrote four articles. (First Am. Cmplnt. Exs. C, E, F &H).

c. She swore the articles related to an existing "controversy" at the University. (Bolger Aff., Ex. 3, Shepherd Aff. ¶ 7). That is false; there was no controversy until she published her January 12, 2014, hatchet-job article. (First Am. Cmplnt. Ex. C).

d. She swears the articles were intended only for Australians. (Bolger Aff., Ex. 3, Shepherd Aff. ¶ 7). If that is so, then why did she and The Advertiser-Sunday Mail Messenger publish the four articles on its interactive website that reaches into New York where Plaintiff conducts his business?

e. As for whether Defendant Shepherd intended to target New York State, that is an issue for discovery—not an issue on a motion to dismiss.

25. Fairfax's Coleman states in his affidavit that Fairfax and The Sydney Morning Herald do not have any offices or employees in New York. (Bolger Aff. Ex. 4 ¶¶ 4, 5). However, Fairfax has a "representative" in New York City for selling advertisements in its Sunday newspaper edition: World Media Inc., 19 West 36th Street, 7th Floor, New York 10018. (Opp. Ex. 12 at 5).

26. In addition, an article on Lillian Roxon states that "[s]he was the first full-time female employee at the Sydney Morning Herald's New York office . . . ," (Opp. Ex. 5), and an article on Caroline Overington states that her career "includes working . . . as New York correspondent for The Sydney Morning Herald." (Opp. Ex. 6).

27. Apparently Bolger overlooked those important facts concerning the material issue of personal jurisdiction, which clearly call for discovery to get at the whole truth. At the very least, they show the importance that Fairfax and the Sydney Morning Herald place on the New York market and its readers.

28. So far this year, The Sydney Morning Herald has published 13 articles concerning New York.

29. The Coleman Affidavit also states that Fairfax and The Sydney Morning Herald "do not directly sell any products in New York." (Bolger Aff. Ex. 4 ¶ 6). This statement is suspect because Fairfax and The Sydney Morning Herald admit in their answers to frequently asked questions on their website that "[o]ur digital subscription packages are GST-free for subscribers living and using our products overseas." (Opp. Ex. 7). GST means the Australian tax on goods and services, so Fairfax and The Sydney Morning Herald are clearly selling enough products overseas to make a question about sales taxes one that is frequently asked. Another question for discovery, therefore, is the extent of their sales to New Yorkers, which may show they are subject to the personal jurisdiction of this Court under CPLR 302(a)(1) for contracting to supply goods or services into New York.

30. Fairfax and The Sydney Morning Herald, as admitted by the Coleman affidavit, publishes a print edition that is circulated in the United States through its agent, Press Reader. (Bolger Aff., Ex. 4, Coleman Aff. ¶ 7). Coleman, however, leaves out where the U.S. edition is

published, sold and the number, claiming only that The Sydney Morning Herald with a print readership of 770,000 and owned by a major corporation has no "control" as to whether its U.S. edition is distributed in New York. (Bolger Aff., Ex. 4, Coleman Aff. ¶ 7). Such seems unlikely and also calls for discovery.

31. More importantly is that Coleman omitted material information that Press Reader allows its 30 million users to digitally download The Sydney Morning Herald, which was reported in an article in the Herald and by its online page advertising the "app" for doing that. (Opp. Ex. 8).

32. Coleman also left out that (1) "PressReader has developed major partnerships . . . [with] Fairfax Media [and] News Corp [owner of The Advertiser-Sunday Mail Messenger] . . . [that gives] publishers the ability to target audiences . . . [and] allow publishers to use [its] technology and adapt it to their market," and (2) Fairfax is using Press Reader to "grow global circulation and revenues, and increase brand awareness and exposure of their publications in new international markets" so as to bring The Sydney Morning Herald to 30 million users, including students, teachers, researchers and library cardholders on their mobile device, personal tablets, smartphones and eReaders. (Opp. Ex. 9).

33. More information is needed concerning the relationship between Fairfax and Press Reader to determine whether CPLR 302(a)(3)(ii) jurisdiction applies under the analysis of *Kernan v. Kurz-Hastings, Inc.*, 175 F.3d 236, 241 (2d Cir. 1999), and *Adams v. Bodum, Inc.*, 208 A.D.2d 450 (1st Dept. 1994)("Defendant-appellant manufacturer's exclusive distributorship agreement with co-defendant distributor, covering as it did the entire United States, provided ample basis for the IAS court's finding that appellant should have reasonably expected that persons in New York would be purchasing and using its" product.).

34. The Coleman Affidavit failed to mention that in 2000, Fairfax entered into a joint venture with the New York company News Alert LLC to create News Alert Asia-Pacific, a subsidiary company that would create a number of web sites aimed at providing financial and business information for the Asia-Pacific region and for investors and business people in the United States interested in researching opportunities in the Pacific. (Opp. Ex. 13 at 6).

35. The Coleman Affidavit claims Fairfax and the Sydney Morning Herald do not "directly publish" or "directly sell products" in New York, (Bolger Aff., Ex. 4, Coleman Aff. ¶ 6). However, New Yorkers are able to directly subscribe to the Sydney Morning Herald through its website. (Bolger Aff., Ex. 4, Coleman Aff. ¶ 8). So do they and it what numbers? The affidavit most likely drafted by Bolger does not say. However, the Australian Community in New York admits that some of its 20,000 members do subscribe to the newspaper. (First Am. Cmplnt. ¶ 27).

36. In addition, what about other "services" such as those directly offered on its website? The Sydney Morning Herald online provides "access to exclusive discounts, events and competitions, unlimited access to our award-winning tablet apps, interactive quizzes, crosswords, Sudoku free in the iPad app." (First Am. Cmplnt. ¶ 30).

37. The Sydney Morning Herald offers an interactive photographer section called "Clique" where readers can publish their photographs, win prizes and receive advice. (http://myclique.smh.com.au/).

38. The Sydney Morning Herald offers an online SMH Shop where readers can purchase art and other gifts. (http://www.smhshop.com.au/).

39. The Sydney Morning Herald is offering a cruise trip for two from Spain to Italy. (http://smh.fairfaxbenefits.com.au/offers/tagged/travel).

40. The Sydney Morning Herald offers accounts for readers to receive "tweets." (https://twitter.com/smh).

41. The Sydney Morning Herald offers the "goodfood" section that provides recipes. (http://www.goodfood.com.au/).

42. The Sydney Morning Herald offers investment research and advice. (http://apm.com.au/).

43. Coleman's affidavit appears to be disingenuous and raises a number of factual questions concerning personal jurisdiction that can only be resolved through discovery.

44. Defendant McNeilage, in the exact same language used by Defendant Shepherd, swears she did not intend to target New York readers. (Bolger Aff., Ex. 5, McNeilage Aff. ¶ 6).

a. If that is so, then why did she and the Sydney Morning Herald publish the article on the Sydney Morning Herald's interactive website that reaches into New York where Plaintiff conducts his business?

b. As for whether Defendant McNeilage intended to target New York State, that is an issue for summary judgment—not an issue on a motion to dismiss.

45. The Advertiser-Sunday Mail Messenger and The Sydney Morning Herald websites give them a virtual office in New York.

46. This and there other activities indicated above and the activities they are hiding also raises the discovery question of whether they pay New York State or New York City taxes.

47. The Defendants, sophisticated news organizations and persons, have actively projected themselves into New York and taken advantage of the benefits and privileges in the news and readership market here.

48. This Court may order discovery upon a showing that facts favoring jurisdiction may exist but cannot then be stated by the plaintiff. *Peterson v. Spartan Industries, Inc.*, 33 N.Y.2d 463, 467 (1974)(CPLR 3211(d) may be invoked when the plaintiff, in opposition to a motion to dismiss, has made a "sufficient start," showing that his assertion of jurisdiction is "not frivolous."). The *Peterson* Court explicitly rejected any requirement that the plaintiff make a "prima facie showing of jurisdiction" as a prerequisite to discovery. The Court stated that such a requirement

> may impose undue obstacles for a plaintiff, particularly one seeking to confer jurisdiction under the 'long-arm' statute . . . . In these cases especially, the jurisdictional issue is likely to be complex. Discovery is, therefore, desirable, indeed may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits.

33 N.Y.2d at 467.

Plaintiff

49. Attorney Bolger relies on out-of-context quotes and falsehoods (Mem. at 3-5) to argue that Plaintiff is an "anti-feminist" as that term was apparently used by her clients in articles that reached over 7,330,000 readers (First Am. Cmplnt. ¶ 3), including many in New York State of which only the Defendants know the actual number.

50. The problem with Bolger's litany of cherry picked statements coupled with her false set-ups of them is that Bolger fails to define "anti-feminist." Apparently she and her clients use the term the way extreme-hardcore feminists, and H.L. Mencken's ignorant masses do—to mean "anti-female." Plaintiff may be a lot of things, but he's definitely not anti-female. When he goes to a nightclub or Hip Hop class at Broadway Dance, what's in his heart is not malice.

51. Plaintiff defined above how he has used and uses the term "feminist" and, therefore, by logic, "anti-feminist" as being opposed to the policies of "feminists" that for communication purposes he sometimes adds the descriptors of "extreme," "hardcore, "man-hating or "rabid."

52. So all of Bolger's out-of-context quotes from Plaintiff refer to feminists as defined above. They do not refer to feminists as her clients apparently used that term in their articles as anti-female, which, of course, is an issue of fact on which discovery is needed.

53. There are so many falsehoods and misleading innuendos by Bolger about Plaintiff that if this were not a court proceeding, Plaintiff would add her as a defendant.

54. Let's look at some of them in her intentional effort to paint the Plaintiff as an ISIS convert, and, secondarily, to chill Plaintiff's First Amendment right to sue in court for a redress of grievances:

a. Plaintiff "believes that the women's rights movement is a plot . . . ." (Mem. at 3). Plaintiff never communicated that, and Bolger's cite does not apply to the "women's rights movement" nor to a plot, but to when the U.S. Government eliminates the rights of members of a distinct group, which has been known to happen.

b. Bolger falsely imputes that Plaintiff advocates the use of firearms against this same "women's rights movement" (Mem. at 3) when he clearly communicates what Noah Webster said,

> Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom of Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any bands of regular troops that can be, on any pretense, raised in the United States. *An Examination Into the Leading Principles of the Constitution*, October 17, 1787.

c. Plaintiff has filed cases against the favorable treatment of women. (Mem. at 3-4). Misleading in that the cases were aimed at securing for men the same rights that women have. One case challenged public accommodations charging men money to enter while women entered for free, but Bolger does not mention that. Another challenged the immigration secrecy provision of the Violence Against Women's Act in which mainly men are deprived of due process when the Department of Homeland Security makes findings of fact that an American man committed "battery," "extreme cruelty" or "an overall pattern of violence" against his foreign spouse of lover. (First Am. Cmplnt. ¶ 88). Bolger does not mention that either. A third challenged the existence of only Women's Studies programs in New York when if anyone needs help in entering, graduating and finding a job these days, its men. (First Am. Cmplnt. ¶¶ 145-148). Bolger falsely imputes that Plaintiff brought "multiple" claims alleging that the feminist tenets incorporated into higher education by the Board of Regents violated the Establishment Clause. There were only two claims, not multiple claims. The first was dismissed because Plaintiff did not state in the complaint that he was a taxpayer and the second dismissed because the court would not allow the adding of two plaintiffs.

d. Bolger falsely states that "in some instances," when in only two instances did Plaintiff ascribe a decision to perhaps judicial bias against men's rights advocates trying to secure their rights. (Mem. at 4). Judicial bias is not unknown in the courts, which is why there exist motions to recuse and codes of Judicial Conduct administered by the State and Federal courts.

e. Bolger falsely states that Plaintiff is a "contributor" to a "controversial men's rights website." (Mem. at 5). Two articles do not a contributor make. Besides who says it is controversial, as if that matters in a democracy that guarantees free speech. Obviously those like Bolger and her clients who believe free speech only applies to them, and not those who hold opposing socio-cultural views. Bolger in another intentional effort to mislead this Court falsely treated as an article, what was really a case that the New York Court of Appeals has agreed to hear and had nothing to do with discrimination based on sex. (Mem. at 5). As for her misleading "witches" accusation, that is dealt with in the Amended Complaint at ¶¶ 81-83.

f. Bolger wrote in a footnote that Plaintiff filed a copyright infringement case against one of the attorney's in the Ladies' Nights case for copying a number of draft articles. (Mem. at 5 n.3). Bolger, true to form, left out that the Federal Judge held that the opposing attorney's stated justification for her submission of the essays appeared somewhat disingenuous, the relevancy of the essays to Hollander's recusal motion is dubious, and she undoubtedly intended simply to prejudice the Judge against Hollander. The relevance of those essays are similarly dubious here and submitted by Bolger as intended simply to prejudice this Court.

g. Bolger violates this Court's rules that require electronically filed documents to be pdf searchable. Bolger quotes from copyrighted essays attached to her affirmation as exhibits, which were originally hacked from Plaintiff's computer, to bolster her false image of Plaintiff as anti-female, but sneakily Bolger refrained

from submitting these essays in a searchable format. (Mem. at 5). In addition, Bolger's page cites to these out-of-context quotes are wrong, which makes the task of finding them even more difficult. Even Bolger's exhibit numbers are not searchable. Therefore, for this Court to find the cited quotes to determine whether Bolger is again fabricating a false imputation requires searching through many pages and reading much unnecessary text. What is she hiding? Perhaps that is why Bolger filed 428 pages of exhibits—to dissemble and prevaricate as she wants without fear the Court will call her on it.

h. Even the affidavits submitted by Bolger are not only not searchable but not copyable. Is the major law firm for which she works engaging in underhanded and perhaps unethical tactics to make the prosecuting of a case by a sole practitioner so difficult that it can win by default?

i. Bolger closes off her efforts to mislead the Court that Plaintiff is "anti-female" by selectively editing quotes from these unsearchable essays. (Mem. at 5). Bolger falsely imputes that Plaintiff claims men have been victimized by women. While there's an argument there for married men, Plaintiff's focus has always been on feminists as he defines them, or as some communicate hardcore, extreme feminists, who have achieved significant power over men. For example, two hardcore feminist reporters in Australia single-handedly canceled Male Studies courses at a major university.

j. Bolger selectively edited two quotes from the unsearchable essays to communicate her false premise that Plaintiff hates women—not hardcore, extreme feminists but ladies in general—and rails against them in Bolger's disingenuous

attempt to argue that her and her clients' obloquies about Plaintiff are true.

(Mem. at 5).

> Everyday the husband [based on Plaintiff] leaves the house and children to trade 8, 10 or 12 hours of his life for the means to provide for his wife [refers to Plaintiff's ex-wife] and offspring. Beyond food and housing, he must satiate her voracious appetite for material goods in her Sisyphean effort to keep up with Mrs. Jones; assuage her relentless vanity with expensive jewelry, perfumes, clothes and cosmetics; appease with social status her vindictive, vitriolic ranting as age lines her face; satisfy junior's whining for a new toy, bicycle or car; and fulfill his daughter's limitless greed for MTV hyped products.
>
> Girls [refers to Plaintiff's ex-wife[1]] have the advantage in America because physical violence is easy to prove: it leaves physical marks that a camera can record. Emotional violence, however, stalks the invisible world of the mind, which makes it a near perfect weapon. Husbands [Plaintiff] and boyfriends can't take pictures of the pain girls intentionally and recklessly cause them. Big Sister America is using that fact to tie men's hands, so they can no longer defend themselves against their girlfriends or wives twisting the blade of emotional pain through their hearts.
> When will we see advertisements paid for by taxpayer dollars giving men a number to call to get some ragging, nagging, malicious slut [Plaintiff's ex-wife] to shut her yap? Not until science invents a technique for measuring emotional distress.

These quotes are based on Plaintiff's experience with his ex-wife, who, according to Russian Military Intelligence, is an associate of the Chechen Special Islamic Regiment and a "sex worker." Plaintiff's ex-wife, a hardcore, extreme man-hating feminist who mocked her Johns by warning they better call 911, secretly fed Plaintiff narcotics in an ingenious ploy in which Plaintiff unknowingly transferred the drug-high to being with her. Plaintiff married her and brought her back to America where he learned from his Russian contacts the truth about her. She subsequently acquired residency status under the immigration section of the

[1] Plaintiff's ex-wife is Russian, and Russian females prefer to be addressed with the term meaning girl, девушка, rather than woman, which they consider an insult because it communicates old.

Violence Against Women's Act that Plaintiff challenged in court and was written by NOW and the Feminist Majority, both feminist organizations as Plaintiff defines that term.

55. Bolger's railing against Plaintiff fails to address other falsehoods created by her clients, imputed by them or republished by them, not only against Plaintiff but his intellectual property the "Males and the Law" section, for example:

a. Plaintiff belongs to "extreme right wing groups in the USA,"

b. the section "really represents the margins,"

c. Plaintiff is a "men's rights extremist,"

d. Plaintiff is a "radical,"

e. Plaintiff is "hardline,"

f. the section is lacking "in research based tradition" with a "partisan approach,"

g. the section is "lacking in academic rigor"

h. the section is "controversial,"

i. Plaintiff has "links to extreme men's rights organizations,"

j. the section is a "dangerous platform for anti-women views."

56. Specifically for Defendant Shepherd, Bolger's rant against Plaintiff failed to address Shepherd's libelous statements published to 1,750,000 readers. (First Am. Cmplnt. ¶¶ 179-182).

Shepherd's Attack Articles

57. Defendant Shepherd wrote and published four attack articles on The Advertiser-Sunday Mail Messenger's interactive website that she and Advertiser knew would reach New York readers. (First Am. Cmplnt. Exs. C, E, F, H).

58. In those articles, Shepherd made intentionally or at best recklessly false factual statements and connotations and selectively republished false statements and connotations by others all in accordance with Shepherd's intense hatred of men' rights advocates, including Plaintiff.

59. Bolger claims that Defendant Shepherd republished disparaging quotes from "masculinity scholars," but neither she nor Shepherd provides any basis for considering these anti-men's rights hacks as expert. (Mem. at 6).

60. Bolger misleadingly says "The Second Advertiser Article reported that the University had decided against approving the men's studies courses." (Mem. at 6). Prior to Shepherd's January 12, 2014, article, the male studies course was open for registration, which means the University wanted to see what the enrollment numbers were in order to determine whether it would be profitable.

61. Further, Bolger's euphemistic account of the January 14, 2014, article leaves out Defendant Shepherd's communication of her ill will toward the courses' creators. The headline was "University of South Australia gives controversial Male Studies course the snip." Why did she use the word "snip"? Shepherd is a reporter and presumably chooses her words carefully for the impact she wants to have on her readers. Snip means to make a quick cut and imputes her hate-filled desires for the emasculation or circumcision of men's rights advocates was at work.

62. Bolger intentionally leaves out the sum and substance of Defendant Shepherd's only interview of Plaintiff that lasted at best ten minutes and was done after her first article had already caused the cancelation of Plaintiff's section. (Mem. at 6). Plaintiff told Shepherd his section was based on law review articles from the 19th century into the 21th about the different treatment of the sexes in various areas, and that Sir William Blackstone's statement from 1765

proved prophetic: "So great a favorite is the female sex of the laws." (Opp. Ex. 10, Outline for Males and the Law" section that Plaintiff offered to send Shepherd but she was not interested).

63. Bolger in order to intentionally paint Plaintiff as the devil incarnate imputes through an out-of-context quote that he advocates using firearms against hardcore, extreme feminists when the true import was that Plaintiff was advocating in favor of the Second Amendment to the U.S. Constitution and quoting a statistical fact that men own 75% of the guns in America. Plaintiff also told Defendant Shepherd that the percentage was declining because more women were now exercising their right to own firearms.

64. Bolger, as with Defendant McNeilage, apparently has a unique problem with the facts. Bolger says, "Plaintiff also claims The Herald Article injured him by stating that his men's studies course was 'rejected in 2012.'" (Mem. at 7). That is false. Bolger's client, McNeilage, wrote in her January 14, 2014 article that "the courses, which were criticised in the media on Monday [January 12, 2014], were rejected in 2012." The courses were not rejected in 2012 because they were not created until 2013. If Defendant McNeilage can get such an obvious fact wrong, then the factual basis for her story is clearly suspect. And, if McNeilage's attorney tries to hide such an obvious error by attributing it to Plaintiff, as Bolger does, then Bolger's credibility is also suspect.

65. Bolger repeatedly harps on the unsubstantiated accusation that Plaintiff is "anti-woman" by failing to define the term "feminist" in order to exploit her and her clients false imputation that "anti-feminist" means anti-female. Feminism is a belief system with tenets, a political-socio-cultural philosophy or ideology as was Marxism. Female refers to one of the two sexes. A female, as a male, may believe in feminism, but a person's sex does not identify one as a feminist.

66. Plaintiff's disagreement with certain tenets of that ideology does not make him, as Bolger and her clients impute, anti-female. Just as his disagreement with Marxism does not make him anti anyone who lived in the former Soviet Union.

67. In yet another Bolger false statement, she says "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.'" (Mem. at 7). What Plaintiff said is the following:

> In her second article, Tory reports that most of the male studies course, including the section that was to be taught by Roy, was canceled and clearly credits her false and obloquious first article with the "snip": "The Advertiser revealed yesterday that some of the lecturers listed for the professional certificates had links to extreme men's rights organisations that believe men are oppressed, particularly by Feminists." (First Am. Cmplnt. ¶ 111).

This is an allegation of causation for the Injurious Falsehoods, Tortious Interference, or *Prima Facie* Tort actions. The second sentence is also an allegation for libel against Shepherd.

68. Once again, it is not Bolger's self-serving allegations of fact that matter on a motion to dismiss pursuant to CPLR 3211, but the facts alleged in the complaint and in the opposition, which are considered in determining whether a cause of action exists. *Sokoloff v. Harriman Estates Development Corp.*, 96 N.Y.2d 409, 414 (2001).

Argument Summary

69. This is a case about two irresponsible reporters who use the power of their positions in the media and modern day technology to crush ideas and knowledge that conflict with their views on important social matters of the day. Thanks to the Internet, the world is a much smaller place than it once was. Untrue and harmful acts in one part instantaneously wreck havoc on persons and property in another part, especially by multi-

million dollar corporations that use interactive web sites to reach markets and customers in areas concerned with the same social issues.

70. Bolger misleads by claiming this is a case only about Australia. (Mem. at 8). If that were so, then the articles would not disparage two New Yorkers, Plaintiff and Prof. Miles Groth; they would not reference lawsuits brought by the Plaintiff in New York courts or interviews of Plaintiff conducted in New York or writings of Plaintiff created in New York; they would not reference writings or speeches of Prof. Groth made in New York; Defendant Shepherd would not have initiated contact with Plaintiff and Prof. Groth at their offices or residences in New York; and Defendants would not have published on their World Wide Websites digitally reaching over 5,000,000 readers.

71. Perhaps, more importantly, the resolution of the issues raised in this case will impact higher education and how the media covers it in America, Europe, Australia and New Zealand where the ideology of hardcore, extreme feminism is busy at work extinguishing dissenting viewpoints.

72. As the First Amended Complaint makes clear and despite Bolger's unrepentant trait to allege false facts and false imputations that are not considered on a motion to dismiss, Defendants Shepherd and McNeilage's actions as alleged in the First Amended Complaint and considering every possible favorable inference for Plaintiff, not Defendants, from such allege facts make clear that their actions fit within a number of cognizable legal theories: Injurious Falsehoods, Tortious Interference with Prospective Contractual Relations or, in the alternative, *Prima Facie* Tort, and on Defendant Shepherd's part: Libel.

73. Bolger approaches her motion to dismiss as though it where a summary judgment motion claiming the Plaintiff must establish the "existence" of a falsehood and that "he will never be

able to demonstrate, as he must, that the sole intention of Defendants in publishing [their] articles was to harm him." (Mem. at 8). "Existence" and "demonstrate" mean Plaintiff must prove, but proof is left for summary judgment and trial, at least according to the CPLR. This case is not there yet because Bolger made a motion to dismiss, or perhaps she's trying to circumvent the CPLR by making an undercover motion for summary judgment without going through the necessary procedures.

Personal Jurisdiction

74. It has long been observed that technological advances affecting the nature of commerce require the doctrine of personal jurisdiction to adapt and evolve along with those advances. *See Hanson v. Denckla*, 357 U.S. 235, 250-52 (1958).

75. Plaintiff's burden at this stage of the proceedings is to establish a *prima facie* case for jurisdiction over Defendants. *See Beacon Enters., Inc. v. Menzies*, 715 F.2d 757, 768 (2d Cir.1983). Plaintiff need not prove his case on the merits in order to sustain the court's power of adjudication. Vincent C. Alexander, McKinney Commentaries, *C302:5. Proving Jurisdictional Facts*.

76. In considering a personal jurisdictional question, the courts should give added weight to the requirement that a complaint be liberally construed in a plaintiff's favor, which means to construe pleadings and affidavits in the light most favorable to a plaintiff and resolve all doubts in his favor. *See, e.g., Hoag v. Chancellor, Inc.*, 246 A.D.2d 224, 228 (1st Dept. 1998; *Armouth International, Inc. v. Haband Co.*, 277 A.D.2d 189, 190 (2d Dept. 2000).

77. The U.S. Supreme Court views more expansively long arm efforts aimed at intentional as opposed to unintentional torts. New York State Law Digest No. 297. All the actions in this case are for intentional torts.

78. New York's long arm statute provides for a number of personal jurisdictional bases over Defendants depending on the cause of action alleged in this case.

79. **CPLR 302(a)(1)** provides jurisdiction "over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state . . . ."

a. This section applies to the causes of action for (1) Injurious Falsehoods, (2) Tortious Interference with a Prospective Contract, (3) or, in the alternative, *Prima Facie* Tort, all of which are alleged against all Defendants.

b. CPLR 302(a)(1) also provides for jurisdiction over the Libel action that is alleged against Defendant Shepherd

80. **CPLR 302(a)(3)** provides jurisdiction "over a non-domiciliary . . . who in person or through an agent . . . commits a tortious act without the state causing injury to person or property within the state . . . if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce . . . ."

a. Both (i) and (ii) apply to the causes of action for (1) Injurious Falsehoods, (2) Tortious Interference with a Prospective Contract, (3) or, in the alternative, *Prima Facie* Tort, all of which are alleged against all Defendants.

b. This section does not apply to the Libel action against Defendant Shepherd.

<u>CPLR 302(a)(1) personal jurisdiction over all Defendants for Injurious Falsehoods, Tortious Interference with a Prospective Contract, or, in the alternative, *Prima Facie* Tort</u>

81. CPLR 302(a)'s "transaction of business" is not limited to contract or other commercial actions but can apply to torts as well if they arise from defendant transacting business in New York State.

82. The long-arm category for "transaction of business" is applicable when the defendant has engaged in one purposeful business transaction in New York and the plaintiff's claim arises out of the particular transaction. The transaction, at minimum, must be a purposeful act by which the defendant avails itself of the benefits and protections of New York's laws*, Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007), which also satisfies due process, *George Reiner and Co. v. Schwartz*, 41 N.Y.2d 648, 653 (1977).

83. Plaintiff's only burden is to prove that the defendant performed an act—he did something—in New York or directed toward New York that gave rise to a claim of liability through tort or agency. *Lamarr v. Klein*, 35 A.D.2d 248, 251 (1st Dept. 1970), *affirmed*, 30 N.Y.2d 757 (1972).

84. . Defendants' New York activities, and their nature and quality, are to be considered in their totality. *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 457 n.5 (1965).

85. The Appeals Court has eschewed the need for actual physical presence at the time of a transaction, noting that "in this day of instant long-range communications, one can engage in extensive purposeful activity here without ever actually setting foot in the State." *Parke-Bernet Galleries, Inc. v. Franklyn*, 26 N.Y.2d 13, 17 (1970).

86. The Court of Appeals has had little opportunity thus far to explore the circumstances in which an out-of-state defendant's use of its website may constitute transacting business in New

York within the meaning of CPLR 302(a)(1). Vincent C. Alexander, McKinney Commentaries, *C302:7. Transacting Business by Phone, Mail and Electronic Means*.

87. In a footnote in *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 510 n.7 (2007) the Court indicated that a non-domiciliary's mere internet posting of information about a New York resident on a passive website does not, standing alone, constitute a transaction of business in New York. Such is not the situation here, since Defendants' websites are highly interactive.

88. Lower courts, however, have dealt with situations similar to this case.

89. In *Citigroup Inc. v. City Holding Co.*, 97 F.Supp.2d 549, 565 (S.D.N.Y. 2000), the Court applying New York's longarm CPLR 302(a)(1) stated that

> [T]he courts have identified a spectrum of cases involving a defendant's use of the internet. At one end are cases where the defendant makes information available on what is essentially a "passive" web site. This use of the internet has been analogized to an advertisement in a nationally-available magazine or newspaper, and does not without more justify the exercise of jurisdiction over the defendant. *See K.C.P.L., Inc. v. Nash*, No. 98 Civ. 3773, 1998 WL 823657, at *4,*5 (S.D.N.Y.1998); *Hearst Corp. v. Goldberger*, No. 96 Civ. 3620, 1997 WL 97097, at *10 (S.D.N.Y. Feb. 26, 1997); see also *Zippo Mfg. Co. v. Zippo Dot Com*, 952 F.Supp. 1119, 1123 (W.D.Pa.1997). At the other end of the spectrum are cases in which the defendant clearly does business over the internet, such as where it knowingly and repeatedly transmits computer files to customers in other states. *See CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir.1996).

90. Sales activity conducted by means of the Internet served as transacting business for long-arm jurisdiction in *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158 (2d Cir. 2010). The defendant Queen Bee operated a website which offered handbags for sale to New York consumers, permitted New York consumers to purchase such bags, and facilitated the shipment of those bags into New York. *Id.* at 166. Queen Bee engaged in fifty-two separate transactions in which merchandise was shipped into New York. *Id.* at 166.

91. The Second Circuit held that under CPLR 302(a)(1), Queen Bee had extensive business contacts with New York customers, and those contacts indicated Queen Bee's purposeful availment of the New York forum for business activity to which the cause of action related.

92. Both Advertiser and Fairfax solicit business in New York via the Internet, sell their online newspapers along with the various other services they offer into New York and allow the transmittal of information through their websites between Defendants and their readers, between their readers and between other companies and their readers. The number of transactions involving New Yorkers are within Defendants' possession, so discovery is required.

93. Advertiser online "provides its audience with the opportunity to become involved and be engaged on issues and stories, through debate and social media." (http://www.adelaidenow.com.au/).

94. Fairfax online provides "access to exclusive discounts, events and competitions, unlimited access to our award-winning tablet apps, interactive quizzes, crosswords, Sudoku free in the iPad app." (http://www.smh.com.au/).

95. Fairfax sells the printed edition of The Sydney Morning Herald through its agent Press Reader into the United States. (Bolger Aff., Ex. 4, Coleman Aff. ¶ 7). Since Coleman, a former Herald section editor and columnist and now in-house counsel, has "general knowledge" that distribution of The Sydney Morning Herald is being made by Press Reader throughout the United States, there is a reasonable expectation that it also enters New York. *See Kernan v. Kurz-Hastings, Inc.*, 175 F.3d 236, 241 (2d Cir 1999).

96. Whether Press Reader qualifies as an agent for jurisdictional purposes does not turn on legalistic distinctions between being an agent or independent contractor. It is sufficient that the representative acted "for the benefit of and with the knowledge and consent of [the] defendant

and that [Fairfax] exercised some control over [the agent] in the matter." *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988).

97. Fairfax admits that it has a contract with Press Reader to distribute copies of The Sydney Morning Herald in the United States, and, according to the media "PressReader has developed major partnerships . . . [with] Fairfax Media [and] News Corp [owner of The Advertiser] . . . [that gives] publishers the ability to target audiences . . . [and] allow publishers to use [its] technology and adapt it to their market." (Opp. Ex. 9). Partnership and contract infer "some control," but without more information from Fairfax, the degree of control is unknown.

98. News Corp Australia owns all of Advertiser (Bolger Aff., Ex. 2, Cameron Aff. ¶ 3), and News Corp, which is headquartered in New York City, considers News Corp Australia as part of its identity under its website title "Who We Are." (First Am. Cmplnt. Ex. M). Therefore, Advertiser is part of the identity of News Corp headquartered in New York City.

99. Bloomberg lists the Chairman for Advertiser Newspapers Pty Ltd. as Brian Leonard Sallis with a corporate address of 1211 Avenue of the Americas, N.Y., N.Y, which is News Corp's headquarters. (Opp. Ex. 2). If that is the Chairman's business address, perhaps Advertiser uses New York banks to conduct its worldwide business, which is a discovery question.

100. In *Chestnut Ridge Air, Ltd. v. 1260269 Ontario Inc.*, 13 Misc.3d 807, 810 (N.Y. Sup. Ct. 2006), the Court found that a non-domiciliary using its website forums to (1) enable prospective customers to post questions directly to the non-domiciliary, (2) to allow viewers to offer services to other viewers of the website and (3) to monitor events relevant to a customer "created a virtual community in New York that meets all its clients' needs," *id.*, which substantially supported personal jurisdiction.

101. Advertiser allows its readers to personalize and advertise on Mosthtix, an entertainment forum, to access a wide range of electronic entertainment that provides for a community of users, to communicate via email directly with its staff, and to access investment advice and research. (http://www.adelaidenow.com.au/).

102. Fairfax provides a forum and community for online dating. It also creates a community through its "Member Center" where readers can "sign up for newsletters on a range of topics that interest you, [r]eceive customised alerts by email or SMS . . . , [g]et access to exclusive offers and competitions, [s]et up an investment portfolio," and allows readers to communicate via email directly with its staff. (http://www.smh.com.au/).

103. Advertiser and Farifax's website activities as cited in the First Amended Complaint and this Opposition make those sites highly interactive, which amounts to transacting business in New York. Where a corporation maintains a "highly interactive" website in an effort to facilitate its commerce, personal jurisdiction has readily been found to exist. *Uebler v. Boss Media, AB*, 363 F. Supp. 2d 499, 505 (E.D.N.Y. 2005).

104. In *Thomas Pub. Co. v. Industrial Quick Search, Inc.*, 237 F.Supp.2d 489, 491-492 (S.D.N.Y. 2002), the defendant operated an interactive website that reached into New York. Defendant argued that personal jurisdiction based on its website would unfairly subject it to jurisdiction in all the states that the website reached. The Court stated:

> This argument is unavailing, for technological advances enable [defendant] to transact business in every state via an interactive website, where those in the state can communicate directly via its internet route back to [defendant]. With that ability, however, comes the responsibility for actionable conduct. [Defendant's] presence in New York, by way of an interactive website, is more closely akin to actual physical presence in New York than it is to running an advertisement in a national magazine. If [defendant] wishes to operate an interactive website accessible in New York, there is no inequity in subjecting [defendant] to personal jurisdiction here. If [defendant] does not want its website to subject it to personal jurisdiction here, it is free to set up a "passive" website that does not enable

> [defendant] to transact business in New York. Having decided to create an interactive website that enables it to transact business in New York, [defendant] is subject to personal jurisdiction here under CPLR 302(a)(1) because the cause of action for infringement arises directly out of the transaction of business, to wit, the use of an allegedly infringing website.

Id. at 492

105. Advertiser publishes news articles concerning New York.

106. Defendant Shepherd contacted Plaintiff by email (Opp. Ex. 11) and telephone and also contacted another New York resident, Professor Miles Groth, repeatedly by email in her search for a story.

107. An article on Lillian Roxon states that "[s]he was the first full-time female employee at Fairfax's Sydney Morning Herald New York office . . . ." (Opp. Ex. 5). In addition, an article on Caroline Overington states that her career "includes working . . . as New York correspondent for The Sydney Morning Herald." (Opp. Ex. 6). Fairfax apparently places some importance on the New York market.

108. Fairfax admits on The Sydney Morning Herald website in its "answers to frequently asked questions" that its "digital subscription packages are GST-free for subscribers living and using our products overseas," which means overseas subscribers do not pay Australian sales tax. (Opp. Ex. 7).

109. Advertiser and Fairfax through their respective highly interactive websites knowingly seek out New York readers as potential viewers in the forum state.

110. Advertiser and Fairfax's posting of the Shepherd and McNeilage's articles that specificity by name targeted two New York residents indicate these postings especially were purposefully directed at New York.

111. Advertiser and Fairfax through their activities have in effect projected themselves into New York where they actively compete for readers.

112. Where a defendant actively does business over the Internet directed at the forum state, the forum state can exercise jurisdiction over the defendant. American Bar Association, Section of Business Law, Cyberspace Law Committee, *Coping with Personal Jurisdiction in Cyberspace*, *ABA Subcommittee on Internet Law Liability Report #3*, Warren E. Agin, Esq., Swiggart & Agin, LLC.

113. Persons committing a tortious act using the Internet should expect to be subject to jurisdiction in the state at which the tortious act is directed. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

114. Advertiser and Fairfax's contacts with the State's citizens are not fortuitous since they consciously decide to process applications from New York subscribers for their online goods and service. *Zippo Manuf. Co. v Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1126 (W.D. Pa. 1997)(personal jurisdiction is likely proper where a provider openly carries out business over the Internet while knowingly and repeatedly transferring files).

CPLR 302(a)(1) personal jurisdiction over Defendant Shepherd for Libel

115. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), and *Calder v. Jones*, 465 U.S. 783 (1984), both involved libel where the defendants knew their publications would be circulated in the forum states. The individuals writing the articles were found to be within the jurisdiction of the forum states, which in each case was one of many states in which the publications were sold and circulated but not one in which any of the writing or editing was done.

116. In *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984), jurisdiction was appropriate because of the state's interest in discouraging libel by the defendant against its citizens.

117. In *Calder v. Jones*, 465 U.S. 783, 789-790 (1984), the court determined that the defendants had purposefully targeted their libelous activity at the forum state by publishing their article containing libelous material about a forum resident in a magazine, which they knew was sold and circulated in the forum state and "must reasonably anticipate being haled into court" in that state.

118. In *SPCA of Upstate New York, Inc. v. American Working Collie Ass'n*, 18 N.Y.3d 400, 404 (2012), the Court of Appeals stated that "When determining whether the necessary substantial relationship exists between a defendant's purposeful activities and the transaction giving rise to the defamation cause of action . . . . Certain types of conduct will plainly satisfy the required nexus."

119. In *Legros v. Irving*, 38 A.D.2d 53, 55 (1st Dept. 1971), *lv. dismissed*, 30 N.Y.2d 653 (1972), the Court held that "There is a clear distinction between a situation where the only act which occurred in New York was the mere utterance of the libelous material and on the other hand, a situation where purposeful business transactions have taken place in New York giving rise to the cause of action." In *Legros* a book libeling the plaintiff was published in New York, as were Defendant Shepherd's four articles published in New York via the Advertiser website.

120. The book in *Legros* was in part researched in New York, *Legros* 38 A.D.2d at 56, as were Defendant Shepherd's articles by contacting on a number of occasions two New York residents, reviewing a number of cases in the U.S. District Court for the Southern District of

New York, accessing New York centered websites and other activities that are solely within her knowledge; therefore, subject to discovery.

121. While the contract for the book in *Legros* was executed in New York, Advertiser has numerous other contacts with New York as list above, all of which are geared toward publishing its reporters' stories, such as those by Defendant Shepherd.

122. In *Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 341 (2012), the Court of Appeals held that "CPLR 302(a)(1) does not require that every element of the cause of action pleaded must be related to the New York contacts; rather, where at least one element arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under the statute." Defendant Shepherd's numerous libelous statements were published to third parties in New York, including the members of the New York Australian Community who subscribe to the online newspaper and were about a New York resident who suffered damages.

123. Defendant Shepherd cannot avoid long arm jurisdiction under the "fiduciary shield" doctrine by claiming she was acting only on the behalf of Defendant Advertiser because the Court of Appeals has rejected that doctrine for CPLR 302 when torts are involved. *Kreutter v. McFadden Oil Corp.*, 527 N.Y.S.2d 195, 201 (1988).

<u>All the causes of action arose from Defendants publishing their articles online and additionally for Fairfax in print.</u>

124. For a cause of action to arise from transacting business, the Court of Appeals requires that "in light of all the circumstances, there must be an 'articulable nexus', or 'substantial relationship', between the business transaction and the claim asserted." *Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 339 (2012)(citations omitted). Causation is not required, and the inquiry under the statute is relatively permissive. *Id.* (citations omitted). "But

these standards connote, at a minimum, a relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former, regardless of the ultimate merits of the claim." *Id.*

125. The knowing publication in New York via The Advertiser-Sunday Mail Messenger's website of Shepherd's articles is related to all the causes of action against Advertiser and Shepherd, since it is her statements in those articles that form the bases for the causes of action.

126. The knowing publication in New York via The Sydney Morning Herald's website and the apparent distribution of printed copies of The Sydney Morning Herald in New York of McNeilage's article is related to the causes of action against Fairfax and McNeilage, since it is her statements in those articles that form the bases for the causes of action.

127. Defendants purposefully availed themselves of the privilege and benefits of the New York market for news; therefore, they could reasonably anticipate being haled into court here.

CPLR 302(a)(3) personal jurisdiction over all Defendants for Injurious Falsehoods, Tortious Interference with a Prospective Contract, or, in the alternative, *Prima Facie* Tort,

128. The "establishment of long-arm jurisdiction in connection with a New York injury under [CPLR 302(a)(3)(i) or (ii)] does not implicate constitutional due process concerns. *Ingraham v. Carroll*, 665 N.Y.S.2d 10, 12 (1997). "[T]he subdivision was not designed to go to the full limits of permissible jurisdiction. The limitations contained in subparagraphs (i) and (ii) were deliberately inserted to keep the provision 'well within constitutional bounds'." Weinstein-Korn-Miller, *N.Y. Civ. Prac.* at 302.14, quoting 12th Ann. Report of N.Y. Jud. Conf., at 341; *see also, McGowan v. Smith*, 52 N.Y.2d 268, 274 (1981). The Court is "bound by a limitation more

stringent than any constitutional requirement—the specific requirements of CPLR 302(a)(3)." *Ingraham* 665 N.Y.S.2d at 12.

129. "The threshold questions in applying CPLR 302(a)(3) are whether the allegations of the complaint concern (1) a tortious act, (2) whether the act caused injury within the state of New York and (3) the causes of action arose from the act. All types of tortious acts (other than defamation) fall within the scope of coverage." Vincent C. Alexander, McKinney Commentaries, *C302:11. Tortious Injury in New York, In General*.

130. Allegation of the actions constituting tortious conduct is sufficient; the plaintiff need not prove the tort in order to withstand a motion to dismiss for lack of jurisdiction. *See Sybron Corporation v. Wetzel*, 413 N.Y.S.2d 127, 130 (1978).

131. The injury from the Injurious Falsehoods cause of action was to Plaintiff's intangible rights in his copyrighted "Males and the Law" section because a person who makes a statement about another person's intangible things, which is reasonably understood to cast doubt upon the quality of the intangible things by those who see the statement, is liable for the pecuniary loss which results directly and naturally from the statement. Committee on Pattern Jury Instructions Association of Supreme Court Justices, PJI 3:55 *Intentional Torts—Business Torts—Injurious Falsehood*.

132. By analogy with *Penguin Group (USA), Inc. v. American Buddah*, 16 N.Y. 3d 295, 301 (2011), the situs of the Injurious Falsehood injury is the site of the copyright owner. In this case that is Plaintiff who resides in New York County.

133. *Penguin* concerned infringement, an injury to the copyright holder's intangible rights in literary works that defendants uploaded to the Internet without permission. The Court

of Appeals held that the site of injury was in New York where the copyright owner was headquartered, not where the material was uploaded. *Id.*

134. Here Defendants uploaded in Australia their disparaging statements about the copyrighted literary compilation "Males and the Law," which diminished the value of Plaintiff's intangible rights in the work. Therefore, the injury occurred in New York where Plaintiff resides.

135. In addition, while the Injurious Falsehood tort occurred in Australia, the first effect of that tort damaged Plaintiff's intangible rights in "Males and the Law" and the situs of those rights is New York. *See DiStefano v. Carozzi North America, Inc*., 286 F.3d 81, 84-85 (2d Cir. 2001).

136. As for Defendants' tortious interference with Plaintiff's prospective contract to teach from New York via the Internet the "Males and the Law" section "the principal underlying the rule is that he who has a reasonable expectancy of contract has a property right . . . ." *Hardy v. Erickson*, 36 N.Y.S.2d 823, 825 (N.Y. Sup. 1942).

137. Since plaintiff's expectancy of contract was a property right of his that would have required his performance from New York, and the place where a cause of action for breach of contract arises is almost universally the place of performance, *Richard v. Am. Union Bank*, 241 N.Y. 163, 166-167 (1925), that property right's situs was New York and damage to that right was the first effect of Defendants' tortious interference.

138. "[T]he 'arising from' requirement of the statute is satisfied if the cause of action arises from defendant's out-of-state tortious act." Vincent C. Alexander, McKinney Commentaries, *C302:12. Subset (i): Ongoing Activity in the State*.

139. The Injurious Falsehoods were the false factual statements and false factual connotations about the "Males and the Law" section written by Defendants, and such statements interfered with Plaintiff's prospective contract to teach that section. Therefore, these two causes of action arose from Defendants' acts of writing and uploading their articles in Australia.

CPLR 302(a)(3)(i)

140. Since the three threshold questions for CPLR 302(a)(3) are satisfied, the next inquiry is whether under subset (i) anyone of four alternative forms of ongoing New York activity is engaged in by Defendants:

a. Regularly does business within New York has to be more than a one shot business transaction but less than "doing business" of CPLR 301, N.Y. Jud. Conf., Twelfth Ann. Rep. 339, 343 (1967);

b. Regularly soliciting business in New York ;

c. Any other persistent conduct within New York may not need to be business related, *See Porcello v. Brackett*, 446 N.Y.S.2d 780, 781 (4th Dept. 1981).; or

d. Defendants derive substantial revenue from goods used or consumed or services rendered within New York. Substantial revenue can be satisfied on the basis of a sizable percentage of New York revenue in comparison to Defendant's overall revenue, or alternatively, a large dollar amount of revenue generated in New York. *See, e.g.*, *Tonns v. Spiegel's*, 90 A.D.2d 548 (2d Dept. 1982)(4-7% sales in New York, generating between $40,000-$113,000); *Evans v. Planned Parenthood of Broome County, Inc.*, 43 A.D.2d 996 (3d Dept. 1994) (pharmaceutical sales in New York over $4 million was substantial); *Allen v. Canadian General Electric*

Co., 65 A.D.2d 39 (3d Dept. 1978), a*ffirmed*, 50 N.Y.2d 935 (1980)(1% sales in New York, generating nine million dollars).

141. For all of the alternative forms of ongoing activities, the causes of action sued upon need not relate to those New York activities. Report of the Judicial Conference on the CPLR to the 1966 Legislature, Leg. Doc. (1967) No. 90, pp. 340-344. They only need arise from Defendants' out-of-state tortious acts.

142. As argued above under CPLR 302(a) "transaction of business," Defendants "regularly do business" in New York as that phrase is used in CPLR 302(a)(3)(i).

143. Advertiser and Fairfax "regularly solicit business" in New York by maintaining their newspapers' websites from which they solicit, advertise and sell their print and online newspapers along with various other products and services. Where a defendant regularly solicited business through a trade magazine, the Court held that "alone would warrant jurisdiction under CPLR 302(a)(3)(i)." *Newman v. Charles S. Nathan, Inc.*, 55 Misc.2d 368, 370 (Sup.Ct. Kings County 1967). Advertiser's website has been in existence for at least 6 years, and Fairfax's for 8 years according to Whois.domaintools.com.

144. Whether Advertiser and Fairfax engaged in other persistent conduct within New York, as noted above in the Defendants section of this Opposition, requires discovery.

145. CPLR 302(a)(3)(i) may also be satisfied if Advertiser and Fairfax derive substantial revenue from goods used or consumed or services performed within the state. Gross and net income are looked at under CPLR 302(a)(i) & (ii), *Allen v. Auto Specialties Mfg. Co.*, 45 A.D.2d 331, 333 (3d Dept. 1974), but whether the sums involved are "substantial" requires a factual inquiry in each case, David D. Siegel, *New York Practice*, § 88 (2014), which means discovery.

CPLR 302(a)(3)(ii)

146. Since the three threshold questions for CPLR 302(a)(3) are satisfied, an alternative inquiry to subsection (i) is whether subsection (ii) applies.

147. CPLR 302(a)(3)(ii) requires (1) forseeability or a reasonable expectation by Defendants that their tortious acts could have consequences in New York, and (2) they are earning substantial revenue from interstate or international commerce. David D. Siegel, *New York Practice*, § 88 (2014).

148. The forseeability requirement is a general one, since a defendant does not have to foresee the specific injury-producing event in New York caused by its product. *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214-215 (2000). It is sufficient that a defendant knew its product was likely to end up in New York. *Id.* (In *LaMarca*, the invoice for the product in question noted that it was destined for use in New York.).

149. New York courts have found a reasonable expectation of direct New York consequences in the following fact situations:

a. defendant ran a website specifically soliciting New York audience, *Boris v. Bock Water Heaters, Inc.*, 3 Misc.3d 835, 839 (Sup. Ct. Suffolk County 2004);

b. defendant intentionally shipped goods into the State, Tonns v. Spiegel's, 455 N.Y.S.2d 125, 126 (2d Dept. 1982);

c. parts manufacturer with worldwide business sought New York market with direct and indirect sales, *Reynolds v. Aircraft Leasing, Inc.*, 194 Misc.2d 550, 555 (Sup. Ct. Queens County 2002); and

d. coffee maker's use of exclusive distributor covering all of United States including substantial sales in New York, *Adams v. Bodum Inc.*, 208 A.D.2d 450 (1st Dept. 1994).

150. When Defendants Shepherd and McNeilage submitted their articles for publication on Advertiser and Fairfax newspapers' websites, they knew their articles, which specifically referred to the work product of two New Yorkers, would be viewable in New York, and they had reason to expect that any defects in their statements and connotations concerning the work product of these New Yorkers would have direct consequences on their intangible rights in New York.

151. In addition, Fairfax's partnership with Press Reader, which distributes printed versions of the Sydney Morning Herald in the United States, gave Fairfax a reasonable expectation of consequences in New York from McNeilage's article because one of its officers admitted to having knowledge that distribution of its printed newspaper was being made in the United States. (Bolger Aff., Ex. 4, Coleman Aff. ¶ 7).

152. Whether that distribution included New York is known only to Defendant Fairfax and Press Reader, and is therefore subject to discovery

153. CPLR 302(a)(3)(ii) also requires a showing that Defendants derive substantial revenue from interstate or international commerce, even though that commerce may not include New York. David D. Siegel, *New York Practice*, § 88 (2014). The substantial revenue requirement was intended to cover only defendants with "extensive business activities on an interstate or international level" not "business operations [that] are of a local character," in order to assure that the defendant is economically big enough to be able to defend a New York law suit without undue hardship. *Ingraham v. Carroll*, 90 N.Y.2d 592, 599 (1997); David D. Siegel,

New York Practice, § 88 (2014). Both Advertiser, as part of the Rupert Murdock Empire, and Fairfax conduct extensive business activities internationally and are able to defend this suit without undue hardship.

154. Determining whether the revenue from interstate or international commerce is "substantial," as in the case of subsection (i), can be based on either a comparison of percentages, on raw dollar amounts, *Allen v. Canadian General Electric Co.*, 1978, 65 A.D.2d 39, (1978) (3d Dept. 1978), *affirmed*, 50 N.Y.2d 935 (1980), or other extrinsic evidence, *Torrioni v. Unisul*, Inc., 176 A.D.2d 623, 624 (1st Dept. 1991)(sales via 800 telephone number). Making that determination, however, requires a factual inquiry, David D. Siegel, *New York Practice*, § 88 (2014), which means discovery in this case.

155. Further, there need not be any relation between the revenue derived from international commerce and the causes of action. *Gonzales v. Harris Calorific Co.*, 64 Misc.2d 287, 291 (Sup.Ct. Queens County), *aff'd*, 35 A.D.2d 720 (2d Dep't 1970).

Injurious Falsehoods

156. "'That an action will lie for written or oral falsehoods, not actionable *per se* nor even defamatory, where they are maliciously published, where they are calculated in the ordinary course of things to produce, and where they do produce, actual damage, is established law.'" *Al Raschid v. News Syndicate Co.*, 265 N.Y. 1, 4 (1934)(quoting Ratcliffe v. Evans 2 Q.B. 524, 527 (1892)).

157. Statements about a person's intangible things that cast doubt upon the quality of the intangible things gives rise to a cause of action for the pecuniary loss that results directly and naturally from the statements, provided first, that the statements are false, and second, that they

were made maliciously. Committee on Pattern Jury Instructions Association of Supreme Court Justices, *PJI 3:55 Intentional Torts—Business Torts—Injurious Falsehood*.

158. Injurious falsehood also includes non-property injuries resulting from intentional falsehood. *Raschid v. News Syndicate Co.*, 265 N.Y. 1, 4 (1934). The cause of action is not limited to property. It is equally applicable to other publications of false statements that do harm to interests of another having pecuniary value and so result in pecuniary loss. Restatement, Second, *Torts* § 623A.

159. Injurious Falsehood applies when the statements are made with the intention that they be understood in a disparaging sense, or, if not so intended, that a reasonable person would so understand them. Restatement Second *Torts* § 629, Comment f.

160. The statements need to be facially false or any attempt is indulged in to create a false impression. *See Cornwell v. Parke*, 5 N.Y.S. 905, 907 (Sup. Ct., General Term, 1st Dept. 1889).

161. The test for falsity is whether the statement published would have a different effect on the mind of the reader from that which the whole truth would have produced. Lee S. Kreindler, *N.Y. Law of Torts*, § 1.43.

Disparagement of Plaintiff's property and non-property interests by Defendants' false statements and imputations.

162. Plaintiff created a copyrighted compilation of the law regarding the desperate treatment of the sexes in the U.S. and England from the industrial revolution to the present. (Copyright registration is currently pending with the U.S. Copyright Office).

163. "Any type of legally protected property interest that is capable of being sold may be the subject of disparagement." *Lampert v. Edelman*, 24 A.D.2d 562 (1st Dept. 1965)(quoting Prosser, Torts, p. 941, 3d ed.).

164. Copyrights are considered property in New York, N.Y. Jur. 2d, *Property*, § 3, and compilations are protected by U.S. Copyright Law, 17 U.S.C. § 103, which are also vendible under 17 U.S.C. § 204.

165. Defendant Shepherd and McNeilage's false statements and false factual connotations volitionally published in their articles directly disparaged Plaintiff's copyrighted "Males and the Law" section and indirectly disparaged the section by disparaging its creator and harming his pecuniary interest in teaching the section.

Shepherd's disparagement of the compilation "Males and the Law."

166. Defendant Shepherd said in an email to Plaintiff dated January 9, 2014 that, I'm trying to get in touch for a story I'm doing on the UniSA course you're involved with, but can't find a phone number for you – could you please get in touch?" (Opp. Ex. 11). Her own words show that her "story" was about the Male Studies courses to be offered at the University, which included a section in one course on "Males and the Law" created by Plaintiff and to be taught by Plaintiff.

167. Defendant Shepherd's January 12, 2014, mews article (First Am. Cmplnt. Ex. C) disparaged all the proposed courses, including the "Males and the Law" section by publishing:

a. "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'. '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."

b. "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. He said there were groups that legitimately help men, and then the more extreme activists. '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. '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.' Dr Wadham said that universities needed to uphold research based traditions instead of the populist, partisan approach driven by some.

168. The false imputations in both statements were that the content of the "Males and the Law" section was anti-women, opposed to equal rights for females, hostile toward women, a threat to equality and based on flawed research. The truth, however, was that the "Males and the Law" section was based on law review articles from the mid-1800s to the early 2000s, one of which had been commissioned by the U.S. Congress; recent civil rights cases; U.S. criminal sentencing guidelines; various newspaper articles; recent changes in self defenses laws; and the writings of Prof. Howard Zinn. The section simply presented a summary history of the law over the past 250 years on how the sexes were treated differently concerning various issues. (Opp. Ex. 10).

169. Defendant Shepherd's January 14, 2014, news article titled *"University of South Australia gives controversial Male Studies course the snip"* disparaged all the proposed courses, including the "Males and the Law" section by publishing:

a. In a secondary headline: "CONTROVERSIAL aspects of a Male Studies course will not go ahead."

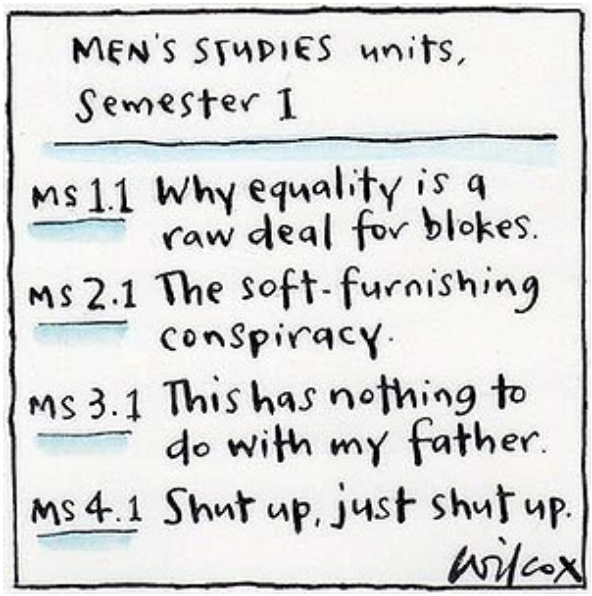
b. "National Union of Students president Deana Taylor said a course like that proposed for the university provided 'a dangerous platform for anti-women views'."

170. The false imputations in these statements were that the content of the "Males and the Law" section posed a danger to females, was anti-women and upsettingly contentious. There was no contention or controversy until Defendant Shepherd created one with her articles disparaging the Male Studies courses directly and indirectly by disparaging the courses' creators. The "danger" from the "Males and the Law" section comes not from teaching legal history, but, as Edmund Burke said from "[t]hose who don't know history are destined to repeat it."

McNeilage's disparagement of the compilation "Males and the Law."

171. Defendant McNeilage's January 14, 2014, news article disparaged all the proposed courses, including the "Males and the Law" section by publishing:

At the very head of her article,



a. The false imputations of this disparaging part of her article were that the "Males and the Law" section advocated against equality of opportunity for females, was the result of some psychological problems with father figures and the section would be taught as a dialectic in which females were muzzled. Once again, the section simply presented a summary of the history of the law concerning the discrimination of both sexes. It did not advocate against the rights of either sex. The section was the result of an offer from an official at the University, and what dialectic discussions ensued would be open as in Plato's *Republic*.

172. Also McNeilage published:

a. "National Union of Students president Deanna Taylor said . . . . 'It's a slippery slope once you open the door to people with these views and give them a platform

… it's not long before proposals like the ones that were rejected actually get approved,' she said."

b. The false imputation here was that the content of the "Males and the Law" course was so horrendous that college students should be prevented from hearing about how the law has treated the sexes over the past 250 years. Sounds just like the re-writing of history by Oceania's Ministry of Truth in George Orwell's *1984*, anything that came out of that Ministry was as false as McNeilage's publication.

Defendants Shepherd and McNeilage's disparagement of Plaintiff had the effect of harming his pecuniary interest in teaching the "Males and the Law" section of a Male Studies course and indirectly disparaged that section of the course as well.

173. Shepherd and McNeilage's strategy was simple: If you don't like the message, verbally kill the messenger before he has a chance to deliver the message. Their false statements and false factual connotations about Plaintiff and the other creators of the courses were meant to disparage the courses that the creators had prepared and were going to teach in order to stop the courses from being taught.

174. By its nature a false statement maliciously, intentionally or recklessly made is wrongful. *Penn-Ohio Steel Corp. v. Allis-Chalmers Mfg. Co.*, 7 A.D.2d 441, 444 (1st Dept. 1959), *modified*, 8 A.D.2d 808, 187 N.Y.S.2d 476.

175. When it inflicts material harm upon another, which was or should have been in the contemplation of the actor, and it results in actual damage to a person's economic or legal relationships, whether property or non-property, the actor is liable to the other for such resulting harm. *Penn-Ohio Steel Corp. v. Allis-Chalmers Mfg. Co.*, 7 A.D.2d 441, 444 (1st Dept. 1959), *modified*, 8 A.D.2d 808, 187 N.Y.S.2d 476.

176. "[T]o sustain a complaint, it is not necessary that the pleading must allege that the defendant was solely motivated to injure the plaintiff. It is enough if the falsehoods charged

were intentionally uttered and did in fact cause the plaintiff to suffer actual damage in his economic or legal relationships." *Id.*

177. Defendant Shepherd volitionally wrote and published the following falsehoods and false connotations concerning Plaintiff in her January 12, 2014, news article (First Am. Cmplnt. Ex. C): "extreme" right-winger, "anti-feminist," associates 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 females oppress men.

178. Defendant McNeilage volitionally wrote and published the following falsehoods and false connotations concerning Plaintiff in her January 14, 2014, news article (First Am. Cmplnt. Ex. D): "hardline anti-feminist advocate[]," "radical," controversial American who wants to censor females' free speech and the Male Studies courses were "rejected in 2012".

179. As a result of the first article by Defendant Shepherd and the one article by Defendant McNeilage, six of the eight Male Studies courses were canceled, including the one in which Plaintiff's section on "Males and the Law" would have been taught.

180. Defendant Shepherd's subsequent articles admit and even brag that her first article was instrumental in canceling six of the eight courses. (First Am. Cmplnt. ¶ 209). For example in her article of January 14, 2014, two days after her first article, she headlined and wrote in the first two paragraphs:

> University of South Australia gives controversial Male Studies course the snip.
>
> CONTROVERSIAL aspects of a Male Studies course will not go ahead.
>
> The Advertiser revealed yesterday that some of the lecturers listed for the professional certificates had links to extreme men's rights organisations that believe men are oppressed, particularly by feminists.

> The university yesterday said two short courses that would cover male health and health promotion programs targeting males had been approved, that "no other courses have been approved" and that only university staff would teach the courses.

(First Am. Cmplnt. Ex. E).

Shepherd and McNeilage's malice in writing and publishing their Injurious Falsehoods

181. Malice exists under an Injurious Falsehood action when a statement is made with knowledge that it is false even though there is no motive to harm. Prosser, *Injurious Falsehood: The Basis of Liability*, 59 Col. L. Rev. 425, 437–38 (1959).

182. A false statement is maliciously made even though the person making it did not know that it was false if made:

a. without regard to the consequences, and under circumstances in which a reasonably prudent person should have anticipated that injury to another would follow. *Penn-Ohio Steel Corp. v Allis-Chalmers Mfg. Co.,* 7 A.D.2d 441, 444 (1st Dept. 1959), *modified*, 8 A.D.2d 808, 187 N.Y.S.2d 476; or

b. with intent to interfere with another person's interest even though defendant is not motivated by ill will and even though he honestly and reasonably believes his statement to be true. Prosser, *Injurious Falsehood: The Basis of Liability*, 59 Col. L. Rev. 425, 438 (1959).

183. Malice is presumed from proof of falsity of a published statement. *See* Restatement, Second, *Torts* § 651, Comment d.

184. Since Shepherd and McNeilage's above statements about Plaintiff are false, it is presumed they acted with malice and the burden is on them to rebut.

185. Even if they rebut the presumption, they clearly acted with reckless disregard by

a. failing to interview Plaintiff for his side of the story before they published their first articles,

b. failing to review the contents of the "Males and the Law" section before publishing their first articles, and

c. violating their respective newspapers' ethical procedures in reporting a story. (First Am. Cmplnt. Exs. K & L).

186. As alleged in the First Amended Complaint at ¶¶ 52, 62, 70, 93, 103, 110, 113, 114, 120, 122, 158, 162, 188, 212, and 215 , Shepherd and McNeilage were driven to make their false statements by ill will toward men's rights activists, but even if they were not, and even if they reasonably believed their statements accurate, they still set out to stop the courses from being taught, which meant they intended to interfere with Plaintiff's economic interest in teaching his section.

Tortious Interference with prospective contract rights

187. Interference with prospective contract rights occurs when the defendant directly interferes with a third party by the use of dishonest, unfair, or improper means, or was motivated solely by a desire to harm the plaintiff, *Posner v. Lewis*, 80 A.D.3d 308, 312 (1st Dept. 2010), and thereby induces or otherwise causes the third person not to enter into the prospective contractual relation, which results in pecuniary harm to the plaintiff from the loss of the benefits of the prospective contract, Restatement Second, *Torts* § 766B.

188. Interferences with the prospect of obtaining employment are reachable by this cause of action. Restatement Second, *Torts* § 766B, comment c.

189. "[T]he principal underlying the rule is that he who has a reasonable expectancy of contract has a property right which may not be invaded maliciously or unjustifiably." *Hardy v. Erickson*, 36 N.Y.S.2d 823, 825 (N.Y. Sup. Ct. 1942).

190. Before publishing their first articles, Defendants Shepherd and McNeilage knew that the Male Studies courses, one of which included "Males and the Law," were open for registration, which meant the University wanted to see what the enrollment numbers would be in order to determine whether the courses would have been profitable.

191. Shepherd's knowledge is reflected in her January 12, 2014, article that was headlined *"LECTURERS in a 'world-first' male studies course at the University of South Australia . . . ."* (First Am. Cmplnt. Ex. C). In that article she also specifically referred to Plaintiff, "One American US lecturer - US attorney and self-professed 'anti-feminist lawyer' Roy Den Hollander . . . ." Shepherd's January 14, 2014, article also shows her knowledge about the courses where she wrote the University had issued "[a]n information sheet on the male studies course[s] stating that it would be considered 'if there is sufficient interest'." (First Am. Cmplnt. Ex. D).

192. McNeilage wrote in her January 14, 2014, article that "The University of South Australia has distanced itself from a proposal for a series of male studies courses, some of which were to be taught by hardline anti-feminist advocates." (First Am. Cmplnt. Ex. D). This statement shows that the courses had not yet been canceled but where in a kind of limbo. McNeilage also referred to Plaintiff by named as one of the lecturers.

193. Both Shepherd and McNeilage, therefore, knew about the Males Studies courses and that Plaintiff was going to teach a section in one of them.

194. It is not required for tortious interference that Shepherd and McNeilage knew the specific terms of the prospective contractual relationship between Plaintiff and the University. *See* Committee on Pattern Jury Instructions Association of Supreme Court Justices, *PJI 3:57 Intentional Torts—Business Torts—Interference with Prospective Economic Relations* at 1.

195. The interference with another's prospective contractual relation is intentional if the actor desires to bring it about or if she knows that the interference is certain or substantially certain to occur as a result of her action. Restatement Second, *Torts* § 766B, comment d.

196. Shepherd and McNeilage's articles were not only aimed at their readership of 7,330,000, but specifically at the University because according to their articles both contacted University officials to appraise them of having "extreme" and "radical" men's rights activists as lecturers. (First Am. Cmplnt. Exs. C & D).

197. Shepherd and McNeilage's first articles depicted the Male Studies courses and their creators as extreme right wing, railing against feminism, referring to women as bitches and whores, advocating gun violence, lacking in academic rigor, on the margins of society, extreme activists, hostile toward women and non-whites, opposed to an equal and fair world, not objective and dangerous to women. (First Am. Cmplnt. Exs. C & D).

198. Given higher education's proclivity to adhere to politically correct concepts in carrying out its educational mission and the on-going culture wars fought with personal invectives that prevent objectively presenting both sides to social issues, Shepherd and McNeilage's use of *ad hominem* verbal assaults reflect an intent to deep-six the courses, including Plaintiff's section, or, at the very least, substantial certainty that such would occur as a result of their articles, which had a circulation of 7,330,000.

199. "Where the parties are not competitors, there may be a stronger case that the defendant's interference with the plaintiff's relationships was motivated by spite." *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 191 (2004).

200. Shepherd and McNeilage are "reporters"—not lawyers trained and experienced in understanding and communicating what the law is on a particular topic. Plaintiff has been interpreting and communicating about the law for nearly 30 years. Shepherd and McNeilage are not in competition with him; therefore, their motive to interfere with his prospective contract to teach law was not legitimate economic self interest.

201. Shepherd and McNeilage's motive for knowingly interfering with Plaintiff's prospective contract rights was not to further the education of students at the University but to "purify" that education in the tradition of censoring courses that do not adhere to the hardcore feminist paradigm, which meant using their power of the press to stop the courses from being taught.

202. 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."

203. Shepherd and McNeilage's first articles referring to the Males Studies courses as men's rights extremism appeared to be parroting Goebbels when it comes to masculine intellectualism.

204. If this Court concludes that Shepherd and McNeilage were not motivated by spite, they still engaged in the wrongful means of fraudulent misrepresentation and violation of news media customs and ethics in publishing their first articles.

205. "Wrongful means include . . . misrepresentation . . . ." *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 191 (2004).

206. For purposes of a claim of tortious interference with business relations, misrepresentation constitutes an improper means. *UMG Recs., Inc. v Escape Media Group, Inc.*, 37 Misc.3d 208, 225 (N.Y. Sup. Ct. 2012)(citing *Carvel Corp. v Noonan*, 3 NY3d at 191; *Krinos Foods, Inc. v Vintage Food Corp.*, 30 AD3d 332, 333 (1st Dept. 2006)).

207. As stated in the First Amended Complaint at ¶¶ 49-51, 56, 60, 62, 94, 98, 128-130, Defendants made deceptive, misleading and untrue statements that disparaged plaintiff, which interfered with Plaintiff's attempts at employment by falsely reporting to his potential employer that Plaintiff was a member of extreme right wing groups, anti-women and advocate of gun violence. *See Purgess v. Sharrock*, 33 F.3d 134, 142 (2d Cir. 1994).

208. In *North State Autobahn, Inc. v Progressive Ins. Group*, 32 Misc.3d 798, 805 (Westchester Sup. Ct. 2011), defendant made deceptive, misleading and untrue statements which disparaged plaintiff, and that was sufficient to raise a question of fact for trial, so the Court denied defendant's motion to dismiss the tortious interference with prospective business relation claim.

209. Wrongful conduct also includes violation of recognized ethical codes for a particular area of business activity or of established customs or practices regarding disapproved actions or methods. Restatement Second, *Torts* § 767, comment c.

210. Neither Shepherd nor McNeilage interviewed Plaintiff and neither bothered to review the contents of the "Males and the Law" section before publishing their first articles, which is contrary to The Advertiser-Sunday Mail Messenger Code of Conduct for Shepherd where she violated ¶¶ 1.1, 1.2, 1.3, 1.4 (First Am. Cmplnt. Ex. L) and for both Shepherd and

McNeilage the Australian Press Council, *General Statement of Principles* where they violated ¶¶ 1, 3, 6, 8 (First Am. Cmplnt. Ex. K).

211. Plaintiff alleges that had it not been for Shepherd and McNeilage's first articles, the University would have gone ahead with the course in which his "Males and the Law" section was slated to be taught. (First Am. Cmplnt. ¶ 168).

212. Plaintiff and representatives for the University had already reached an agreement on compensation and content of the "Males and the Law" section in which he would be paid a maximum of $1250 depending on the hours involved. (First Am. Cmplnt. ¶ 42).

213. Plaintiff is not bound to plead in exact detail the circumstances which, on a trial, would prove that the agreement to teach would have been finalized but for the tortious acts of Defendants. "The day never existed in our jurisprudence when the courts required plaintiff not only to state a cause of action but also establish in the pleading that he could prove it. With rich development in pretrial discovery, it becomes even more important that issues not be resolved on pleadings alone, but rather by evidence adduced upon trial (or, at least, on motion which exposes the evidence)." *Williams & Co. v. Collins, Tuttle & Co.*, 6 A.D.2d 302, 307-308 (1st Dept. 1958).

214. No allegation of special damages is required to make out a claim for intentional interference with prospective economic advantage for, in such a case, the measure of damages "is the loss suffered by the plaintiff, including the opportunities for profits on business diverted from it." *Mandelblatt v Devon Stores*, 132 A.D.2d 162, 168 (1st Dept. 1987)(citing *Jur. Interference*, § 40, cited in *Sommer v. Kaufman*, 59 AD2d 843, 844 (1st Dept. 1977)).

215. Plaintiff's loss was a maximum of $1250 for teaching the section and lost opportunities for teaching the "Males and the Law" section at other colleges as a result of Shepherd and McNeilage's vehement disparagement of the section and Plaintiff.

216. New York law permits punitive damages where a wrong is aggravated by recklessness or willfulness, whether or not the wrong is directed against the public generally. *Action S.A. v. Marc Rich & Co., Inc.*, 951 F.2d 504, 509 (2d Cir 1991); *Borkowski v. Borkowski*, 39 N.Y.2d 982 (1976).

217. Knowing or reckless publication of false statements about an individual demonstrates a reckless disregard for his rights sufficient to establish common-law malice, *Purgess v. Sharrock*, 33 F.3d 134, 143 (2d Cir. 1994), just as ill will, spite, hostility, prejudice and hatred do.

218. Shepherd's common-law malice in writing her first article is shown by her

a. previously coining the term "Men's Rights Extremists" or "MREs" to describe men's rights advocates, such as Plaintiff (First Am. Cmplnt. Ex. B);
b. Shepherd was reckless in failing to interview Plaintiff before publishing her first article and in failing to even review the outline for the "Males and the Law" section;
c. Shepherd recklessly failed to conduct a reasonable search of material, or do any original research on Plaintiff and the section;
d. Shepherd relied on sketchy, one-sided and anti-men's rights material whose reliability the press community considered low and which would have raised in an objective and fair-minded reporter substantial questions as to their accuracy and the good faith of the authors of those materials;

e. Shepherd cherry-picked any research matter that depicted Plaintiff and the section in a negative, anti-women light; and

f. Shepherd violated the Australian Press Council's *General Statement of Principles* and The Advertiser-Sunday Mail Messenger's, Code of Conduct (First Am. Cmplnt. Exs. K & L).

219. McNeilage's malice is plainly demonstrated by the chart at the head of her "male-baiting" article that stereotypically makes false-disparaging statements about the courses and their creators: "Why equality is a raw deal for bokes; The soft-furnishing conspiracy; This has noting to do with my father; Shut up just shut-up."

220. McNeilage's malice is also demonstrated by

a. her reckless failure to interview Plaintiff before publishing her article of January 14, 2014, and failure to even review the "Males and the Law" section outline, and

b. her violation of the Australian Press Council, *General Statement of Principles* at 3 to which the Sydney Morning Herald subscribes. (First Am. Cmplnt. Ex. K).

221. Both Shepherd and McNeilage engaged in such a conscious and deliberate disregard and spitefulness toward Plaintiff's and the other course creators' interests that their conduct may be called wilful or wanton. *Prozeralik v. Capital Cities Com., Inc.*, 82 N.Y.2d 466, 479 (1993)(citing Prosser and Keeton, *Torts* § 2 and 9–10 (5th ed. 1984)).

***PRIMA FACIE* TORT**

222. If this Court finds Defendants' actions as cited above are lawful; they are still liable under *prima facie* tort.

223. *Prima facie* tort refers to the cause of action arising out of the intentional infliction of economic damage, without excuse or justification. *Board of Education v Farmingdale Classroom Teachers Asso.,* 38 N.Y.2d 397, 406 (1975).

224. Both Shepherd and McNeilage wrote and published their first articles as part of their never ending war against men's rights activists. They believe such advocates for the minority and their ideas are barbaric dangers to women; otherwise, why resort to so many false statements and false connotations about the courses and the creators.

225. Further evidence of Shepherd and McNeilage's invidious discrimination against men's rights activists is that they did not publish articles criticizing Women's Studies at the University even though some of its courses propagate misandry.

226. Plaintiff alleges that when these two reporters set out to write their first articles, their intent was to harm the men's rights advocates who created the Male Studies courses by using their not insubstantial power of the press to create a pseudo-controversy that the University in these times of pogroms against non-conformist men's rights advocates would quickly end by canceling the courses.

227. The wholesale discrimination against men's rights activists teaching Male Studies courses is not warranted as legitimate reporting. *See Wilson v. Hacker*, 200 Misc. 124, 127, 136-137 (N.Y. Sup. 1950).

228. Whenever an otherwise lawful act has become unlawful because the actor's motives were malevolent, the court is called upon to analyze and weigh the conflicting interests of the parties and of the public in order to determine which shall prevail. *Brandt v. Winchell*, 3 N.Y.2d 628, 634-635 (1958). There is no justification where the public's gain does not outweigh the harm to Plaintiff. Lee S. Kreindler, *N.Y. Law of Torts*, § 1.96.

229. In this case, there is no public gain. The doors to knowledge, history and ideas have been closed to the students at a public university. The two articles eliminated the opportunity for students to learn about how the laws in America and England treated the sexes

differently over the past 250 years because two self-righteous, narrow minded reporters have done what the U.S. Supreme Court once warned against:

> To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of [any] 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.).

SHEPHERD'S LIBEL

Libel allegations are viewed in light most favorable to plaintiff on a motion to dismiss.

230. On a motion to dismiss, the courts view statements at issue in a defamatory action most favorably to the plaintiff. *Armstrong v. Simon & Schuster, Inc.*, 85 N.Y.2d 373, 380 (1995).

231. Courts do not dismiss unless they consider the words at issue as incapable of a defamatory meaning. Lee S. Kreindler, *N.Y. Law of Torts*, § 1.45.

Falsity

232. "The test to establish falsity is whether the statement published would have a different effect on the mind of the reader . . . from that which the pleaded truth would have produced. Lee S. Kreindler, *N.Y. Law of Torts*, § 1.43

Libel *Per Se*

233. There is broader liability for libel because the permanence of writing and the inability to delete anything from the Internet increases the capacity for a writing to do harm.

234. "Any written or printed article is libelous or actionable without alleging special damages if it tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society." *Rinaldi v. Holt, Rinehart & Winston*, 42 N.Y.2d 369, 379 (1977)(quoting *Sydney v. Macfadden Newspaper Pub. Corp.*, 242 NY 208, 211-212 (1926)).

235. Written statements are also *per se* libel when they impute fraud, crime or reflect adversely on the integrity of a professional, *Chiavarelli v. Williams*, 256 A.D.2d 111, 113 (1st Dept. 1998) or relate to his integrity in performing his duties, *People ex rel. Spitzer v. Grasso*, 21 A.D.3d 851, 852 (1st Dept. 2005).

236. Words are *per se* actionable when they reflect adversely on the integrity of an attorney because he is "a professional whose stock in trade has to be integrity." *Armstrong v. Simon & Schuster, Inc.*, 197 A.D.2d 87, 92 (1st Dept. 1994).

237. Written statements imputing incompetence in the performance of a person's profession are *per se* libel. *Allen v. CH Energy Group, Inc.*, 58 A.D.3d 1102, 1103 (3rd Dept. 2009).

238. Defamation by implication is premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements. *Armstrong v. Simon & Schuster, Inc.*, 85 N.Y.2d 373, 380-381(1995).

239. The courts will not strain to interpret words in their mildest and most inoffensive sense in order to hold them non-libelous. *November v. Time, Inc.*, 13 N.Y.2d 175, 178 (1963)(citations omitted). The words are to be construed in the context of the articles as a whole and as they would be read and understood by the public to which they are addressed. *Id.*

240. The test is what the tenor of the article and the language used naturally import to the mind of the ordinary intelligent reader. *Macy v. New York World-Telegram Corp.*, 2 N.Y.2d 416, 420 (1957).

241. It is how the words used can reasonably be understood, not how defendant intended them, that determines whether they are defamatory. *Cheatum v. Wehle*, 5 N.Y.2d 585, 594–595 (1959). That the defamatory matter was intended to be humorous does not absolve the defendant of responsibility. *See Nacinovich v. Tullet & Tokyo Forex, Inc.*, 257 A.D.2d 523, 524 (1st Dept. 1999).

242. What is defamatory "depends . . . upon the temper of the times, the current of contemporary, public opinion, with the result that words, harmless in one age, in one community, may be highly damaging to reputation at another time or in a different place." *Mencher v Chesley*, 297 N.Y. 94, 100 (1947).

243. In 1940s, calling an attorney a Communist was highly injurious to his professional reputation and libelous *per se*. *Grant v Reader's Digest Ass'n.*, 151 F2d 733, 735 (2d Cir. 1945)(Hand L., J.), *cert. denied,* 66 S.Ct. 492 (1946).

244. The times have changed and given the state of today's culture, the following epithets leveled by Shepherd against Plaintiff are as highly injurious of his professional reputation as an attorney being labeled a Communist in the 1940s: a "more extreme [men's rights] activist[]," "anti-feminist [meaning anti-female]," "misogynist," "pseudoscientific fraudster[]," and a "Hannibal Lecter" who is filled with "hatred of women," "prejudice against women," "serious anger [toward women]."

245. Once a court determines that a reasonable basis exists for a defamatory interpretation, it is up to the jury to decide whether that was the sense in which the words "were

likely to be understood by the ordinary and average reader." *Mencher v. Chesley*, 297 N.Y. 94, 100 (1947).

Shepherd's *per se* libelous statements

246. January 12, 2014 article, *Lecturers in world-first male studies course at University of South Australia under scrutiny* (First Am. Cmplnt. Ex. C)

a. Lecturers "have been linked to extreme views on men's rights and websites that rail against feminism."

"Extreme" means a very sever, violent, drastic or desperate measure. *Webster's Third New International Dictionary* (1993). Alleging that men, who are also human-beings, have inalienable rights is not extreme. "Rail" means to revile in harsh or vituperative language. *Id.* Filing courts papers advocating for men's rights is not vituperative. "Against feminism" is used by Shepherd to mean against women. Not all women are feminist or believe in feminism, which is a belief system—not a sex; therefore, criticizing feminism does not mean being against women. This language of Shepherd's induced an evil opinion of Plaintiff in the minds of her readers and administrators at the University and resulted in the canceling of the "Males and the Law" section, which deprived Plaintiff of friendly intercourse with the University community.

b. "Two lecturers [includes Roy] have been published by prominent US anti-feminist site A 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."

The imputation is that Plaintiff regularly refers to females as "bitches" and "whores," which is false, and he was motivated in bringing lawsuits and teaching at the University by a hatred of women. Lawsuits advocating for civil rights are neither hate-crimes nor hate-actions, and teaching the history of the law on the issue of sex discrimination involves no emotion of which

"hate" is one, other than to get it right. These statements tended to expose Plaintiff to public contempt, disgrace and morally discredit him.

c. "One American US lecturer . . . 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'."

The internal quote is statistically accurate, but the imputation that men should use feminists for target practice is clearly not. Such an imputation depicts Plaintiff as soliciting criminal acts. By taking the quote out of context, Shepherd failed to report that Plaintiff was advocating the exercise of Second Amendment rights. This is an example of libel by implication because it is premised not on direct statements but on false suggestions, impressions and implications arising from an otherwise accurate quote.

d. Plaintiff, an attorney, is one of "the more extreme activists [men's rights activists]."

By identifying Plaintiff as an attorney and then calling him an extremist among extremists is not only false but as highly injurious to professional reputation as calling an attorney a communist in the 1940s. Such also reflects adversely on the integrity (adherence to moral and ethical principles) of Plaintiff as an attorney, which is his stock in trade.

e. Plaintiff "blames feminists for oppressing men."

Once again Shepherd uses "feminist" as the PCers' code word for female, which makes her statement false, but depicts him as mentally challenged with paranoia, which reflects adversely on his competence as an attorney.

f. "The course, which has no prerequisites [including Plaintiff's "Males and the Law" section] . . . ."

The statement is accurate but imputes the "Males and the Law" section lacked academic rigor, an insult in and of itself. The truth is that the section was based on numerous law review articles

from the 19th, 20th and 21st centuries, newspaper articles and Plaintiff's experience in bringing men's rights cases in the federal courts in New York.

g. "[U]niversities needed to uphold research based traditions instead of the populist, partisan approach driven by some."

The researched traditions Plaintiff used were more accurate and credible than any university and more so than the Australian media because they were the same used by the highest courts and the best law firms in America. "Populist" infers anti-intellectual and "partisan" infers bias and emotionalism. *Random House Dictionary of the English Language*, 2d ed. Both impute incompetence in the performance of Plaintiff's profession as an attorney because his section was based on research of the changing nature of the law over time concerning a specific issue.

h. Shepherd's republication of defamatory statements:

i. "'[T]hese types of male studies 'really represent the margins.'"

"Margins" means the edge, which was used to indirectly depict Plaintiff as beyond the pale, inappropriate or unacceptable and thereby expose Plaintiff to ridicule and aversion.

ii. "'It [Males Studies courses] 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.'"

Here again, the words "feminism" and "feminist" are used as code words for the rights of females and females, and to impute that Plaintiff is a hater of females striving to deny them of their rights.

iii. "'populist' male studies"

Same as "g." above.

iv. Plaintiff belongs to "'a more hostile [men's rights] movement . . . .'"

"Hostile" means the antagonism of an enemy. *Random House Dictionary of the English Language*, 2d ed. Here Shepherd imputes Plaintiff is the angry enemy of females. While some may consider the relationship of the sexes as a never ending war, Plaintiff does not. Plaintiff, however, does believe that "[f]reedom is never more than one generation away from extinction," Ronald Reagan, and today hardcore, man-hating feminists are a threat to freedom, especially the freedom of universities to teach both sides of an issue.

v. "'[T]he kinds of masculinities which these populist movements represent are anathema to the vision of an equal and fair gendered world.'"

"Anathema" means a person detested or loath; consigned to damnation. *Random House Dictionary of the English Language*, 2d ed. By republishing this statement, Shepherd makes clear her malice toward Plaintiff that he should be destroyed. The statement indirectly refers to Plaintiff as an anathema who is out to destroy the rights of females. Advocating for men's rights does not mean advocating for the destruction of women's rights. Rights do not conflict, only preferential treatment of one group conflicts with the rights of another group. The statement, however, discredits Plaintiff's integrity by accusing him of a failure to adhere to ethical principles.

247. January 14, 2014 article, *University of South Australia gives controversial Male Studies course the snip* (First Am. Cmplnt. Ex. E):

a. '[T]hat some of the lecturers listed for the professional certificates had links to extreme men's rights organizations . . . ."

This statement is libel for the same reasons argued in ¶ 246(a) above, but because it appears in a different edition of The Advertiser-Sunday Mail Messenger, it is considered a new libel.

b. "US 'anti-feminist' lawyer Roy Den Hollander . . . ."

The key to the falsity here is that Shepherd uses "feminist" to mean female or woman while Plaintiff uses "feminist" to mean vilifier of men, supporter for female privilege, and one who takes a demeaning view of women as victims rather than free agents. Given the tenor of the times and the ongoing culture wars, when a newspaper publishes "anti-feminist" without limiting its definition, the average reader goes with Shepherd's definition. As applied to Plaintiff, that definition is false, but it adversely effects Plaintiff's reputation for integrity as a lawyer, since it labels him a bigot toward 51% of the population.

c. "Mr Den Hollander also stood by his claim that men's remaining source of power was 'firearms'."

Here Tory even edited her quoted statement in her January 12th article to ratchet up her obloquy by leaving out "one" as the qualifier for "remaining source of power." Its falsity and libel *per se* qualities are the same as in ¶ 246(c) above, and it is also a new libel because it appears in a different edition.

248. January 14, 2014, *Pathetic bid for victimhood by portraying women as villains* (First Am. Cmplnt. Ex. H). This article was published under the title "News," so it is not editorial comment but rather presented as fact based news reporting. If this Court considers the libels in this article as opinions, they are not protected opinions because the sentences have a precise and readily understood meaning capable of being proven true or false, and the sentences conveyed the unmistakable impression that they were based on facts not included in the articles. *Gross v. New York Times Co.*, 82 N.Y.2d 146, 153 (1993)(citing *Steinhilber v. Alphonse*, 68 N.Y.2d 283, 290 (1986)):

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

Defendant Shepherd could not possibly know how Plaintiff depicted "women" in the "Males and the Law" section, since she never reviewed the section, which infers constitutional malice, but more on that later. The section was a summary of how the law from the Industrial Revolution discriminated against both sexes. During most of that time, the laws in England and America were made by men, so it was impossible to depict "women" as villains, since they were not making the laws. By using the term "women" instead of "feminist," Shepherd is again portraying Plaintiff as an anti-women bigot, which portrays him as lacking in moral or ethical principles as a professional who is a lawyer.

> 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).

"Fringe" is a synonym for "margin" and "extreme," *Random House Dictionary of the English Language*, 2d ed., which Shepherd uses to communicate that Plaintiff is near the outer limits of the bell curve advocating that only men have rights and not women. All of Plaintiff's cases, however, have advocated equal rights. Labeling a person on the "fringe" clearly is meant to induce an evil opinion about him in others. "Ring in" is a gang term meaning persons that are called to help in gang wars/fights. *Urban Dictionary*. Plaintiff has never participated in a gang war, unless rugby games are considered such. Shepherd's use of a criminal term to describe Plaintiff communicates that he is as morally reprehensible as members of MS 13.

> 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."

Calling Plaintiff a "misogynist" communicates a lack of adherence to moral or ethical principles; that is, a lack of integrity. Integrity is crucial in the practice of law, which is why it is so closely

regulated. The statement is also false, since were Plaintiff a hater of women, he would not spend so much time and money meeting them in nightclubs.

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

Shepherd's words "serious anger" impute that Plaintiff is on the war path against women, which is as false and disparaging as her claiming he is a hater of women.

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."

The imagery is that Plaintiff has engaged in morally indecent activities in private that are harmful to women and is trying to go public with such activities. Once again, Plaintiff's cases advocated equal rights among the sexes, and the "Males and the Law" section summarized historical discrimination of the sexes by the law. Shepherd's repetitive unsubstantiated accusations that Plaintiff is anti-women simply throws another shovel of dirt on what she hopes is Plaintiff's grave as an attorney.

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

Here Shepherd is accusing Plaintiff of engaging in fraud, which means both a criminal act and a civil wrongful act. Written statements are *per se* libel when they impute fraud, or crime. *Chiavarelli v. Williams*, 256 A.D.2d 111, 113 (1st Dept. 1998). Such accusations also reflect adversely on the integrity of an attorney. Plaintiff has never been the subject of a complaint for criminal or civil fraud. Analogizing Plaintiff to the cannibal figure Hannibal Lecter will most assuredly cause people to shun or avoid Plaintiff. Her statement is also obviously false, although Plaintiff does enjoy a good steak now and then.

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

This is just a repeat of Shepherd's false accusation that Plaintiff is a fraud in (f) above.

h. "It would be pathetic if it wasn't for the fact that they are trying to make women into villains at the same time."

This is just a repeat of Shepherd falsely depicting Plaintiff as anti-women in (a) above.

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

Use of the term "creep" imputes a sneakiness that serves nefarious ends. A connotation that is clearly harmful to anyone's reputation. The men's rights activities of Plaintiff have been anything but stealthy, and their objectives have simply been highlighting the contradictions in society with the hope of making equal opportunity a reality.

j. "It could be dismissed . . . . If they weren't trying to lobby for law changes or to brainwash people into thinking black is white.

Shepherd is so driven by hatred of Plaintiff and other men's rights activists that she actually advocates they be barred from petitioning the government for a redress of grievances. The "brainwash" part is a repeat of Shepherd's false and derogatory accusation that Plaintiff is a fraud in (f) above.

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

"Angry spittle" portrays Plaintiff as frothing in hostility toward equal opportunity for women. Once again Shepherd's repetitive accusation of Plaintiff as anti-female and anti-female rights is false. It does, however, summon the image of a deluded zealot on a rampage, and it tends to expose Plaintiff to public contempt and disgrace.

249. June 18, 2014, *Men's rights campaigner Roy Den Hollander attacks The Advertiser's Tory Shepherd in bizarre legal writ filed in New York County*, (First Am. Cmplnt. Ex. F). In this news article, Shepherd's false and libelous statements focused on the legal

product and legal performance of Plaintiff as an attorney. False written statements imputing incompetence in the performance of a person's profession are *per se* libel. *Allen v. CH Energy Group, Inc.*, 58 A.D.3d 1102, 1103 (3rd Dept. 2009). In addition, words are *per se* actionable when they reflect adversely on the integrity of an attorney because he is "a professional whose stock in trade has to be integrity." *Armstrong v. Simon & Schuster, Inc.*, 197 A.D.2d 87, 92 (1st Dept. 1994):

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

By calling Plaintiff's Complaint "bizarre," Shepherd characterized that legal work product as weird, freakish, grotesque and ludicrous, which are synonyms for bizarre. Complaints are a means of instituting court action in order to obtain compensation for the violation of a person's rights. There is nothing weird, freakish, grotesque or ludicrous about using the courts to redress grievances. Derogatory statements about a lawyer's papers impute a failure to adequately perform, and when false, are *per se* libelous.

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

Since the topic of Shepherd's article are these legal proceeding, this statement is calling the Plaintiff, as an attorney, an "extremist." Shepherd has done this repeatedly before, but since this is a different edition of The Advertiser-Sunday Mail Messenger, it is a new libel. Extremism imputes a lack of moral or ethical principles that negatively impacts an attorney's reputation for integrity. Such is *per se* libel.

c. "Mr Den Hollander is a proudly "anti-feminist" lawyer . . . ."

Once again, Shepherd uses the term "anti-feminist" to mean "anti-women," which as argued above at ¶ 50, Plaintiff clearly is not. Falsely portraying an attorney as bigoted against women is

per se libel because it is an attack on his integrity. Since the statement was repeated in a different edition of The Advertiser-Sunday Mail Messenger, it is considered a new libel.

d. Plaintiff believes in "censor[ship of] a journalist . . . ."

Shepherd's statement that Plaintiff supports censorship of the media fails to distinguish between protected and unprotected speech causing the imputation that Plaintiff, as an attorney, opposes that part of the First Amendment to the Constitution that guarantees free speech for the press. Such a position would violate Plaintiff's oath as an attorney and morally discredit him as an attorney. Shepherd also failed to inform her readers that Plaintiff had worked in the news media. Had she done so, her readers would have questioned the accuracy and motivation for such a statement.

e. Plaintiff is "an extremist by sounding like an extremist."

This is substantially the same libel as in (b) above.

f. Shepherd sarcastically demeans Plaintiff's legal complaint against her as "Brilliant, no?"

This is substantially the same libel as in (a) above.

g. Shepherd communicated that the Plaintiff attorney does not believe in equality for women because he demeans males who do by calling them "girlie-guys." Shepherd 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 . . . ."

All of Plaintiff's cases advocated against the preferential treatment of either sex and for the equal opportunity for both sexes. Falsely portraying an attorney as bigoted against women is *per se* libel because it is an attack on his integrity as an attorney. Plaintiff has no idea whose vernacular the term "mangina" comes from.

h. "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."

The imputation here is that Plaintiff is so evil, so dangerous that Shepherd must warn her many readers to be on the alert for him and anything he does—not unlike a wanted poster for a terrorist. Shepherd is basically saying that any activities Plaintiff engages in as an attorney will be highly suspect at violating the rights of others, especially women. Such a communication depicts a lawyer as lacking in moral and ethical principles and is therefore *per se* libel.

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

Shepherd imputes that she understands Plaintiff's legal philosophy, but fails to recite to the facts on which she bases that conclusion. She also imputes that Plaintiff's philosophy is so malevolent that no university would employ him to lecturer on the history of the law. Plaintiff has practice law for nearly 30 years that has included in the federal government, at Cravath, Swaine & Moore and in New York State and federal courts. Shepherd has practiced the law nowhere, so she is not exactly in a position to criticize legal philosophy or even understand it, yet she does.

Opinion

250. A statement that implies a basis in facts which are not disclosed to the reader is actionable "because a reasonable listener or reader would infer that 'the speaker [or writer] knows certain facts, unknown to [the] audience, which support [the statement] and are detrimental to the person [toward] whom [the communication is directed].'" *Gross v. New York Times Co.*, 82 N.Y.2d 146, 153-54 (1993)(quoting *Steinhilber v. Alphonse*, 68 N.Y.2d 283, 290 (1986).

251. To determine whether a statement is a protected opinion means that "In addition to considering the immediate context in which the disputed words appear, the courts are required to 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).

252. Articles that appear in the news section of newspapers where, unlike the editorial section, the reader expects to find factual accounts encourage the reasonable reader to be less skeptical and more willing to conclude that what was stated were facts or implied facts and not opinion. *Gross v. New York Times Co.*, 82 N.Y.2d 146, 156 (1993).

253. All of Defendant Shepherd's libelous articles were published in the "News" section of The Advertiser-Sun Mail Messenger newspaper in print and online.

254. Even if they were not, "[d]espite [the courts] firm commitment to encouraging the robust exchange of ideas through [the news] media, [the courts] have never suggested that an editorial page or a newspaper column confers a license to make false factual accusations and thereby unjustly destroy individuals' reputations." *Brian v. Richardson*, 87 N.Y.2d 46, 52 (1995).

Constitutional Malice

255. It is not necessary on a dismissal motion to show actual malice. *Alianza Dominicana, Inc. v. Luna*, 229 A.D.2d 328, 329 (1st Dept. 1996)("Plaintiff has met the threshold test of establishing that the remarks . . . are actionable and after discovery has been completed, it will be the burden of plaintiff . . . to prove that defendant['s] remarks were false and that they were made with actual malice [constitutional malice].").

256. Constitutional malice for defamation requires knowingly making a falsehood or making a statement with reckless disregard for the truth. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280, 285-286 (1964).

257. Reckless disregard means that when defendant made the statement, she entertained serious doubts as to the truth of the statement, or made the statement with a high

degree of awareness that it was probably false. *Thanasoulis v. National Ass'n for Specialty Foods Trade, Inc.*, 226 A.D.2d 227, 228 (A.D. 1st Dept. 1996).

258. A failure to investigate may amount to a purposeful avoidance of the truth where that inaction was a product of a deliberate decision not to acquire knowledge of facts that might confirm the probable falsity of the published statement. *Sweeney v. Prisoners' Legal Servs.*, 84 N.Y.2d 786, 793 (1995).

259. Shepherd wrote four articles libeling Plaintiff but only interviewed him once for 10 minutes after her first libelous article on January 12, 2014. In that interview, she did not inquire into the men's rights cases he has brought, his philosophy, his definition of "anti-feminist," his view of females, his view of censorship of the press, his academic credentials—two graduate degrees with honors, how government discriminates against men, did he hate women, was he perpetually angry, did he regularly engage in fraud, did he identify with Hannibal Lecter, did he think women were villains, what were his legal credentials, did he know how to write a complaint, why does he file cases in court, etc. Shepherd did not explore any of these areas with Plaintiff, but that didn't stop her from making false libelous statements concerning such, which reflected adversely on Plaintiff's reputation as a lawyer and a human being.

260. She didn't ask because she didn't want to know, since the answers might have prevented her from demonizing Plaintiff to over 1.7 million readers. "[A] plaintiff is entitled to prove the defendant's state of mind through circumstantial evidence," *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 668 (1989), which in this case will require discovery.

261. Shepherd never reviewed the contents of Plaintiff's "Males and the Law" section and never read the documents in his men's rights cases, yet she speculated and conjectured about Plaintiff because to her he was a "Men's Rights Extremist" or MRE. Such speculation and conjecture infers constitutional malice. *Prozeralik v. Capital Cities Communications, Inc.*, 82 N.Y.2d 466, 475-476 (1993). The actual evidence of such will have to be produced in discovery.

262. The libelous material in Shepherd's articles did not meet with the standards of news reporting in information gathering and dissemination because she failed to obtain objective verification, failed to search for material, failed to do original research and relied on sources, such as her experts, that raised substantial questions of accuracy and the good faith of those sources, *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968)(*"*recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports."). Such failures by Shepherd to adhere to the custom, practices and ethics of the news media indicate the need for a trial on the issue of malice. *Kerwick v. Orange County Publications Div. of Ottaway Newspapers, Inc.*, 53 N.Y.2d 625, 627 (1981).

263. Shepherd's failure to follow her newspaper's Code of Conduct and that of the Australian Press Council indicate at the very least that she was negligent and at worse intentionally avoided the truth. (First Am. Cmplnt. ¶¶ 189-191).

264. Evidence of negligence, ill will, bias, spite or prejudice are admissible on the issue of constitutional malice. *See Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 668 (1989).

265. As for ill will, bias, spite or prejudice, Shepherd regularly demonstrates such in her articles where she refers to men's rights advocates as "Men's Rights Extremists" or "MREs."

266. For example in her January 10, 2012 news article *Men's rights extremists go online*," (First Am. Cmplnt., Ex. B), she wrote:

> THERE'S a movement that sees males - generally straight, middle-aged, white males - as the new oppressed. Seriously.
>
> They [MREs] have a persecution complex, and aggressively lobby for better rights for men - usually at the expense of women.
>
> [Their] false claims are not just sinister ideas confined to the interwebs - they're calls to action. Men's Rights Extremists are actively lobbying to change Australian laws. They are spreading misinformation and trying to discredit good policies and good programs.
>
> The MREs . . . Dr Flood says . . . have already influenced family law, government policy and community attitudes, subtly shifting the balance to better protect perpetrators and discredit victims.
>
> They provide a heady, toxic mix of bitter, self-righteous fury. . . . [T]o come together and foment trouble.

267. Plaintiff requested of Defendant Shepherd a retraction of her libelous statements but so far none has been forthcoming. Defendant's refusal of Plaintiff's request for a retraction may be used by plaintiff as bearing on defendant's common law malice in the original publications. *Crane v. Bennett*, 177 N.Y. 106, 108 (1904).

Damages

Special

268. The First Amended Complaint alleges special harm from the denial of employment that Plaintiff, but for Shepherd's libel would have received. (First Am. Cmplnt. ¶ 210).

Compensatory

269. "In an action for libel, it is unnecessary for the plaintiff to prove affirmatively that he sustained damage in consequence of the libelous publication." *Sanderson v. Caldwell*, 45 N.Y. 398 (1871).

270. If a libelous statement is *per se* actionable, the law presumes damages and the plaintiff need not specifically allege or prove such. *See Jewell v. NYP Holdings, Inc.*, 23 F.Supp.2d 348, 399 (S.D.N.Y. 1998).

271. Shepherd's statements were libel *per se*; therefore, it is up to the jury to determine the amount of compensatory damages.

272. In addition to harms suffered up to the date of trial, general damages may be awarded for such future harm to reputation which the jury finds it is reasonable to assume will follow. *Faulk v. Aware, Inc.*, 35 Misc.2d 302, 306 (N.Y. Sup. Ct. 1962).

Punitive

273. To justify an award of punitive damages, plaintiff must establish common law malice, consisting of hatred, ill will, spite or wanton, reckless, or willful disregard of the rights of another or the injurious effect of defendant's conduct upon another. *Prozeralik v. Capital Cities Communications*, 82 N.Y.2d 466, 470 (1993).

274. Plaintiff has alleged common law malice on the part of Defendant Shepherd. (First Am. Cmplnt. ¶¶ 52, 62, 70, 93, 103, 110, 113, 114, 120, 122, 158, 162, 188, 212, and 215).

275. Further, where a publication is libel *per se*, as with Shepherd's libelous statements, the jury may infer from publication the malice necessary to award punitive damages. *Brant v. Morning Journal Assn.*, 80 N.Y.S. 1002, 1006 (1st A.D. 1903), *aff'd* 177 N.Y. 544.

276. The core goal of a libel cause of action in a case such as this is to protect the individual's historic right to vindicate reputation without impairing the constitutional guarantee of free speech. In this case, the reputation of a lawyer with significant professional credentials was allegedly impaired by a series of widely read newspaper articles that portrayed him as anti-

woman, lacking in integrity and worse. Plaintiff should be permitted to go forward in an effort to establish a right to a libel recovery. "[D]efendants' expressional rights as well as the cherished values embodied in the First Amendment guarantees can be adequately protected in this context by the well-established rule requiring that plaintiff prove not only that the statements he cites are false and defamatory but also that they were made with actual malice." *Gross v. New York Times Co.*, 82 N.Y.2d 146, 156 (1993).

WHEREFORE Plaintiff requests that Defendants' motion to dismiss be denied.

Roy Den Hollander
Plaintiff and attorney
545 East 14 St., 10D
New York, N.Y. 10009
(917) 687 0652
roy17den@gmail.com

Sworn to before me on
5 day of October 2014

Notary Public

ANTHONY SPOONER
Notary Public - State of New York
NO. 01SP6203301
Qualified in New York County
My Commission Expires Apr 5, 2017

EXHIBIT 1

Bloomberg Businessweek

Search

September 06, 2014 9:25 AM ET
Media
Company Overview of Advertiser Newspapers Pty. Limited

Company Overview

Advertiser Newspapers Pty. Limited publishes newspapers and magazines. It offers breaking, South Australia, national, world, education, opinion, force, and weather news; entertainment news on Adelaide confidential, festivals, music, movies, TV and radio, and arts; travel news; and footy, soccer, NRL, rugby, cricket, tennis, racing, Olympics, basketball, netball, golf, motorsport, and cycling sport news. The company also provides business breaking, business, mining and energy, and business owner news; news on banking, money matters, superannuation, investing, and interest rates; news on sci-tech, tablets, smartphones, and gaming; real estate news; and employment news, job search, salary calculator, and job advertisements. In addition, Advertiser Newspapers Pty. Limited offers news on food and wine, sex and relationships, fashion and beauty, and competitions and giveaways; cars guide, news, and reviews to buy and sell; classifieds; and photo galleries, events guides, social pictures, South Australia business journals, money guides and tools, and horoscopes. Further, it operates AdelaideNow, a Website for digital news. The company was founded in 1929 and is based in Adelaide, Australia. Advertiser Newspapers Pty. Limited operates as a subsidiary of News Corporation.
Hide Detailed Description

31 Waymouth Street
Adelaide, SA 5000

Australia

Founded in 1929

Phone: 61 8 8206 2000

Fax: 61 8 8206 3669

www.adelaidenow.com.au

Key Executives For Advertiser Newspapers Pty. Limited

Mr. Michael Miller
Managing Director
Compensation as of Fiscal Year 2014.

Advertiser Newspapers Pty. Limited Key Developments

Humprey B Bear, Imagination & Shane Yeend Sue the Advertiser Newspapers Pty. Limited in Australia for Defamation & Injurious Falsehood

Feb 26 13

Humphrey B Bear, his owners Imagination and its CEO Shane Yeend are in the Supreme Court of South Australia on February 26, 2013 as part of their ongoing claim for defamation and injurious falsehood against Advertiser Newspapers Pty. Limited over false allegations published in a story in March 2012 titled "High flyer in ugly court battle". February 26, 2013, hearing involves an attempt by the Advertiser to strike out references to website material

that was easily accessible via a simple Google search and should have set off alarm bells at the newspaper as to the credibility of the individual who was making the false allegations. The Advertiser ran the story with a sensational sub-headline of "Entrepreneur accused of threatening to kill", while it's interstate News Limited stablemates ran similar stories under headlines such as "Kill threats by Humphrey's owner claim". The allegations contained in The Advertiser's story were republished around the world by many other publications. The publications have caused irreparable damage to the company, the individuals and Humphrey B Bear himself; one of the world's oldest children's brands. A central aspect of this lawsuit is that The Advertiser received an unsolicited copy of an outrageous statement of claim that was not prepared by a lawyer but by a self-represented individual. The statement of claim contained numerous serious and unsubstantiated allegations about Mr. Yeend, and others. As the statement of claim had been lodged in the Supreme Court of Victoria, The Advertiser now claims it could publish its contents as they pleased, without any obligation whatsoever to check the bona fides of the serious allegations, including an internet search via Google or similar. Now they want to strike out all references to web material concerning the self-represented individual that was available to them, so it can't be used in this case. The Advertiser was urged to make its own investigations as to the bona fides of the allegations in the statement of claim before they published any article. The Advertiser has refused to apologise for publishing the false allegations in its article.

Similar Private Companies By Industry

Company Name	Region
Winning Post	Asia
Imparja Television Pty. Ltd.	Asia
Deluxe Australia Pty Ltd.	Asia
Crown Content Pty. Ltd.	Asia
Beyond Digital Media	

EXHIBIT 2

(/)

secure.opinionlab.com/ccc01/comment_card.asp?
%2Finvite3.bloomberg.com%2F&height=640&width=580&r=4859)

Brian Leonard Sallis

Chairman, Advertiser Newspapers Pty Ltd (/Profiles/Companies/FOXA:US)

Career History

Chairman
Advertiser Newspapers Ltd, 1990-PRESENT

Chairman
Adelaide Bank Ltd, 3/1999-2/2001

Chairman
Royal Adelaide Hospital, 1991-1996

Show More

Website: www.21cf.com (http://www.21cf.com)

Corporate Information

Address:

1211 Avenue of Americas
8th Floor
New York, NY 10036
United States

Phone: 1-212-852-7000 (tel:1-212-852-7000)
Fax: 1-212-852-7145 (tel:1-212-852-7145)
Web url: www.21cf.com (http://www.21cf.com)

Personal Information

Education

Univ of Adelaide

Memberships

Board Memberships

Envic Holdings 2 Ltd (/profiles/companies/ENC:AU)
Board Member, PRESENT

Advertiser Newspapers Ltd (/profiles/companies/FOXA:US)
Chairman, 1990-PRESENT

Show More

Other Memberships

Media Council of Australia
Chairman

Advertising Industries Council
Chairman

EXHIBIT 3

Digital First Media

Digital First Media's more than 800 multi-platform products reach 64 million Americans each month across 14 states.

Press Releases

Digital First Media Announces AdTaxi Partnership with News Corp Australia

Monday, January 27, 2014

New York, NY (January 27, 2014) – Digital First Media today announced an exclusive AdTaxi Alliance Network partnership with News Corp Australia.

The partnership includes the launch of *news Xtend* by News Corp Australia, a digital-marketing extension package for small to medium sized businesses in Australia.

"We are pleased to have News Corp Australia as a partner and to introduce AdTaxi's full-service suite of digital marketing products to the Australian market," said John Paton, Chief Executive Officer of Digital First Media. "News Corp Australia has a powerful network of newspaper brands which have deep relationships with readers and advertisers. This partnership provides solutions that allow News Corp Australia to strengthen the relationships it has with local advertisers looking at expanding brand campaigns online."

With the launch of *news Xtend*, News Corp Australia will be offering easy-to-buy packages that include digital display advertising across its network of websites, along with a full complement of digital marketing solutions including social media, email, search engine optimization and search engine marketing.

"The launch of *news Xtend* with Digital First Media means we can now provide tailored digital marketing solutions for our valued and valuable network of advertisers," said Alisa Bowen, News Corp Australia's Group Director – Digital Product and Development. "We are simplifying the process for small to medium businesses and offering access to a greater number of audiences across platforms. Our team of digital sales specialists will ensure, through this partnership, local advertisers receive the best and most creative multi-channel package possible for their brand."

News Corp Australia joins the AdTaxi Alliance Network that includes partners in Canada, Ireland, Israel and the United States.

About Digital First Media
Digital First Media, headquartered in New York City, reaches more than 67 million Americans each month through more than 800 multi-platform products across 18 states.

For more information contact:
Jonathan Cooper
Vice President Media Relations & Employee Communications
Digital First Media
jcooper@digitalfirstmedia.com
(215) 867-2022

Press Releases

Digital First Media to Explore Strategic Alternatives

Friday, September 12, 2014

Digital First Media Announces Chief Financial Officer Barbara Bennett Leaving the Company; Michael Koren Appointed CFO

Wednesday, July 23, 2014

Digital First Media Announces the Appointment Of Steven B. Rossi As President

Tuesday, July 8, 2014

What we do

Our Products
Press Releases
The Open Newsroom
CEO John Paton's Blog

Digital First Media

5 Hanover Square
25th Floor
New York, NY 10005

Digital First Media

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Rss Twitter Facebook LinkedIn

Twitter Facebook **Share**

EXHIBIT 4

Gmail
by Google

Fwd: Male studies course

Miles Groth <mgroth@wagner.edu> Mon, Sep 1, 2014 at 12:45 PM
To: Roy Den Hollander <roy17den@gmail.com>

---------- Forwarded message ----------
From: **Shepherd, Tory** <tory.shepherd@news.com.au>
Date: Thu, Jan 9, 2014 at 7:18 PM
Subject: Male studies course
To: "mgroth@wagner.edu" <mgroth@wagner.edu>

Hi there – I need to speak to you about a story I'm writing on the Male Studies course- could you please get in touch? My number here is 0011 8 8206 2270

Thank you!

Tory

Tory Shepherd
Political Editor

D: +61 8 8206 2270 **E:** tory.shepherd@news.com.au
Twitter: @ToryShepherd

adelaidenow.com.au

--

Miles Groth, PhD, Professor
Department of Psychology
Wagner College
Staten Island, NY 10301

Gmail
by Google

Fwd: Male studies course

Miles Groth <mgroth@wagner.edu> Mon, Sep 1, 2014 at 12:46 PM
To: Roy Den Hollander <roy17den@gmail.com>

---------- Forwarded message ----------
From: **Shepherd, Tory** <tory.shepherd@news.com.au>
Date: Thu, Jan 9, 2014 at 7:51 PM
Subject: RE: Male studies course
To: Miles Groth <mgroth@wagner.edu>

This one!

http://www.bswhn.org.au/attachments/article/900/malestudies_eoi.pdf

From: Miles Groth [mailto:mgroth@wagner.edu]
Sent: Friday, 10 January 2014 11:15 AM

To: Shepherd, Tory
Subject: Re: Male studies course

Hello!

You speak of "the Male Studies course." Which are you referring to? I will be happy to respond to you.

M Groth, PhD

[Quoted text hidden]
[Quoted text hidden]

Gmail by Google

Fwd: Male studies course

Miles Groth <mgroth@wagner.edu> Mon, Sep 1, 2014 at 12:46 PM
To: Roy Den Hollander <roy17den@gmail.com>

---------- Forwarded message ----------
From: **Shepherd, Tory** <tory.shepherd@news.com.au>
Date: Thu, Jan 9, 2014 at 9:05 PM
Subject: RE: Male studies course
To: Miles Groth <mgroth@wagner.edu>

Would you say that there is no hate on sites like A Voice For Men, which two of the lecturers have written for? You don't really need to respond to that, I just wanted to point out that there certainly is hate out there.

The only other question I really had for you was about date rape seminars, do you stand by argument that anti-date-rape seminars discourage men from attending university?

Let me know, thank you so much.

Tory

From: Miles Groth [mailto:mgroth@wagner.edu]
Sent: Friday, 10 January 2014 12:11 PM

To: Shepherd, Tory
Subject: Re: Male studies course

Hello again!

Email is better than phone since I am in the States.

I'm curious to know why I especially can be helpful to you on this but am glad to give you some data for working up your article. (Perhaps it belongs more appropriately in the Health and/or Education sections of the newspaper.)

I have been interested in the forming of male studies as a scholarly discipline and I am familiar with UniSA's

plans to offer the first certificate and the other three proposed certificates, which will be the first graduate certificates in male studies anywhere in the world, to be followed in due course by a master's degree and a doctorate in the field. It is a much needed area of study given the importance of emergent health and well-being issues affecting men worldwide, as well as trends in education of boys and young males at the primary (elementary school) level and university level.

Boys are now well behind girls in primary school achievement; the suicide rate for teenage males is four times that of females at the same age in the States, Canada and other great democracies such as Australia; attendance at university is under 40%, an all-time low in the States. Research on male health (prostate cancer, for example) lags behind that of all health research (hypertension, diabetes) and research on female-specific ailments (breast and uterine cancer) in funding, which is a concern for our large democracies which need healthy men and women, fathers and mothers. The suicide rate for early middle-age men (30s and 40s) has increased dramatically in the last two decades, reflecting a decrease in health and well-being of men, in part due to economic trends in the States. My understanding is the economy is stronger in Australia, which means that the reasons for this tragedy are psychological. None of is good for women and female partners of men, children, and the parents of men in their prime years.

I am certainly encouraged to see UniSA in collaboration with the Australian Institute of Men's Health and Studies (AIMHS) (see the announcement you forwarded to me) taking the initiative in addressing these issues by offering instruction and professional certification for individuals (male and female) who wish to work with men and boys in healthcare, education and policy-creation. There is a great deal of informing to do about issues that have remained in the shadows for a very long time, and individuals with such certificates will be in a position to do this as counselors, nurses, teachers and others are much needed.

I think everyone will be supportive of your bringing this male-positive, proactive work to the readership of the *Advertiser*! As for hate, I see none of it in any of this. To the contrary, this is inspired by interest in supporting men and boys, which is good for women as well as the men served.

I am happy to talk with you more about this if you have additional questions.

[Quoted text hidden]
[Quoted text hidden]

Gmail

Fwd: Male studies course

Miles Groth <mgroth@wagner.edu> Mon, Sep 1, 2014 at 12:46 PM
To: Roy Den Hollander <roy17den@gmail.com>

---------- Forwarded message ----------
From: **Shepherd, Tory** <tory.shepherd@news.com.au>
Date: Fri, Jan 10, 2014 at 12:46 AM
Subject: RE: Male studies course
To: Miles Groth <mgroth@wagner.edu>

The story I'm writing is about links between some of the lecturers in the new course and the fringe elements of the men's rights movements, so I'm trying to find out more on what people are passionate about...

From: Miles Groth [mailto:mgroth@wagner.edu]
Sent: Friday, 10 January 2014 12:44 PM

To: Shepherd, Tory
Subject: Re: Male studies course

I'm not certain what your second question has to do with the certificate course at UniSA.

[Quoted text hidden]
[Quoted text hidden]

Gmail
by Google

Fwd: Article

Miles Groth <mgroth@wagner.edu> Mon, Sep 1, 2014 at 12:47 PM
To: Roy Den Hollander <roy17den@gmail.com>

---------- Forwarded message ----------
From: **Shepherd, Tory** <tory.shepherd@news.com.au>
Date: Sun, Jan 12, 2014 at 6:37 PM
Subject: RE: Article
To: Miles Groth <mgroth@wagner.edu>

I'm sorry, that reply doesn't seem to be in the email thread, but I am writing a follow-up story for tomorrow so am happy to have another look.

Can I just clarify – you are reported in several publications as arguing that date-rape seminars contribute to male studies feeling unwelcome on campuses and you have linked this to declining male enrolment. Is that not the case?

Also is it correct that you will be giving a presentation at the A Voice For Men conference this year?

Thank you,

Tory

From: Miles Groth [mailto:mgroth@wagner.edu]
Sent: Monday, 13 January 2014 12:57 AM
To: Shepherd, Tory
Subject: Article

Your reporter evidently did not read my reply to your last question to me about date rape seminars on university campuses. My reply was, No. They do not discourage males from *going* to university. Why was I not quoted accurately? This is not responsible journalism. You are shown as Political Editor. Who wrote the article under your supervision and editorial oversight?

M Groth, PhD

Sent from my BlackBerry® PlayBook™
www.blackberry.com

--
Miles Groth, PhD, Professor
Department of Psychology
Wagner College
Staten Island, NY 10301

Gmail by Google

Fwd: A Job Well Done!

Miles Groth <mgroth@wagner.edu> Mon, Sep 1, 2014 at 12:47 PM
To: Roy Den Hollander <roy17den@gmail.com>

---------- Forwarded message ----------
From: **Shepherd, Tory** <tory.shepherd@news.com.au>
Date: Mon, Mar 3, 2014 at 7:35 PM
Subject: RE: A Job Well Done!
To: Miles Groth <mgroth@wagner.edu>

I have no idea what you're talking about.

If there is any substance to what you say, I'd be happy to write a follow up story.

From: Miles Groth [mailto:mgroth@wagner.edu]
Sent: Tuesday, 4 March 2014 11:34 AM
To: Shepherd, Tory
Subject: A Job Well Done!

Tory,

Since talking with you here some weeks ago, a great deal has happened as a result of your article in the *Advertiser*, as you know. What you may not know is that since the program of studies was cancelled by the University of South Australia, many thousands of elderly men in the Outback will now not receive care, hundreds of thousands of boys will not be served who have been diagnosed with ADHD, the children (boys and girls) of fathers who would have been supported in dealing with divorce will now be left adrift, and in general the health care needs of young and middle-age men will be under-served overall. A job well done! And, yes, the impact of this on women and girls will be just as strong. That may not have been factored in your decision to submit a piece about an educational endeavor you did not really understand. How gratifying it must be! I will sleep well tonight. All the best to you.

Dr. Groth

PS: There are a number of courses on ethics in journalism to be had online at the Uni and elsewhere.

--

Miles Groth, PhD, Professor
Department of Psychology
Wagner College
Staten Island, NY 10301

--

Miles Groth, PhD, Professor
Department of Psychology
Wagner College
Staten Island, NY 10301

EXHIBIT 5

The Women's Pages

Australian Women Journalists Since 1850

Lillian Roxon

Journalist, foreign correspondent and rock music expert Lillian Roxon enjoyed a long and varied career before her untimely death in New York at the age of 41. She was the first full-time female employee at the *Sydney Morning Herald*'s New York office, and her *Rock Encyclopedia* was published in 1969.

More information about **Lillian Roxon** can be found in the AWAP register.

Lillian Roxon was born Liliana Ropschitz in 1932, the daughter of Polish Jewish parents Izydor and Rosa. She spent her early childhood in Alassio on the Italian Riviera before emigrating with her parents and her brothers, Emanuele and Jacob, in 1940. They settled in Brisbane, where Izydor began work as a doctor. In November 1940, the family changed their name by deed poll to Roxon (though Izydor later changed again to Roxon-Ropschitz). They became known as Isadore, Rose, Milo, Lillian and Jack.

Lillian was strongly influenced by the influx of American popular culture in wartime Brisbane, particularly after troops arrived with General MacArthur in 1942. At school she demonstrated obvious intelligence and was a great story-teller, but she was rebellious and she aimed to shock. In 1944, aged twelve, she was sent to St Hilda's School at Southport, an Anglican boarding school for girls. The discipline did not find its mark with Lillian, and she completed her secondary schooling at Brisbane State High School. As a teenager, she socialized with members of the Miya Studio and the Barjai group in Brisbane, and kept up a friendship with Barbara Blackman.

Roxon matriculated in 1948, and the following year she enrolled for a Bachelor of Arts at the University of Sydney. Almost inevitably, she became

involved with the Sydney 'Push', a 'self-styled group of socially, intellectually and sexually adventurous young people' who followed the philosophies of John Anderson, and of the Freethought Society co-founded by him. Essentially this meant questioning authority, particularly the authority of church and state. Lillian spent many formative hours with artists, actors, journalists, students, musicians, poets and fellow Push members at the Push hang-out, the Lincoln Inn Coffee Lounge. As an undergraduate, she contributed to the University's student newspaper, *Honi Soit*, including a regular gossip column called 'Postman's Knock'. She took five years to complete her degree, graduating in 1955 with majors in English and Philosophy.

In 1956, Roxon's father passed away, and she spent eight months in New York. From January 1957, to the chagrin of her mother, she was writing for *Weekend*, Frank Packer's weekly tabloid magazine in Sydney. Roxon became chief reporter and section editor under Donald Horne. Soon afterward she returned to the United States, where she was employed at the New York bureau of the Sydney *Daily Mirror*. A short stint in London saw her writing for the *Sydney Morning Herald*'s Fleet Street bureau, but Roxon returned once again to New York as a freelance journalist. Her weekly column appeared in the women's pages of the Sydney *Sun* from 1962. She also wrote for the *Sun-Herald* and the *TV Times*, and became the first female full-time employee at the New York office of the *Sydney Morning Herald*. Roxon wrote for the *Herald* until the end of her life. On occasion, feature articles for *Woman's Day* brought her into contact with the big names of the era. One assignment saw her on the set of *Night of the Iguana* in Mexico with director John Huston and actors Richard Burton, Ava Gardner and Deborah Kerr. Elizabeth Taylor was also on set, and Roxon mixed with them all.

Evidently, Lillian Roxon was not phased by big names. By the 1960s, she was indulging a deep fascination with the new, fast and loud world of rock music and becoming well acquainted with the major rock musicians of the period. Her strong friendship with rock photographer Linda Eastman ended only with Linda's marriage to Paul McCartney. Roxon was renowned for her journalism, but perhaps found greater fame with her commentary on rock music, though the two often combined. In 1969 she published her now famous *Rock Encyclopedia*. It was, boasted its cover, 'the most ambitious book ever written on rock and its roots, an innovative treatment of the generation's heroes - the poets and minstrels of our time'. The encyclopedia listed rock groups, their members and their instruments, and contained biographical information, discographies and statistical analysis. It covered everyone from Chuck Berry to James Brown, Jimi Hendrix, Janis Joplin, Bo

Diddley and the Beatles, and was written with Roxon's trademark wit. The book was republished in 1971, and again by Eddie Naha in 1980. In her author's note, Roxon explained that 'trying to get the rock world to keep still long enough for me to take its picture was one of the most difficult tasks in putting this book together. Groups split even as I wrote of their inner harmony, and got themselves together just as I had acknowledged their tragic demise. Baritones turned sopranos overnight; bands expanded and contracted their personnel like concertinas... but then, isn't this restlessness exactly what rock is all about?' In the end, said Roxon, 'the music itself has to tell the story. This book is the companion to that story'.

By the early 1970s she had a regular column, 'The Top of Pop', with New York's *Sunday News*, and another, 'The Intelligent Woman's Guide to Sex' in *Mademoiselle* magazine. Roxon had well and truly carved her own niche. Toward the end of her life, says biographer Robert Milliken, she 'had an influential platform in New York as a popular feminist as well as a rock expert'. Roxon never married. Troubled by asthma throughout her life, she was finally overcome by the illness and died in her New York home on 10 August 1973, aged 41.

BARBARA LEMON

Image

Image reproduced courtesy of the Sydney Morning Herald

EXHIBIT 6

Interview: Caroline Overington, Journalist and Writer

Posted by **Sarah Tabitha** | Posted on 4:10 AM

Category: interview

Caroline Overington is one of Australia's best female journalists. She has had en extraordinary career tbat includes working for *The Age* and as New York correspondent for *The Sydney Morning Herald*. Currently she works as a reporter for *The Australian*. To describe her as an award winning journalist is also no understatement - in November 2006 Caroline won the prestigious Sir Keith Murdoch Award for Journalism and then the 2007 Walkley Award for investigative journalism for her coverage of the AWB scandal.

The incredibly talented woman has also written three books including *Kickback* (2007) is based on her coverage of the AWB scandal and a novel, *Ghost Child* was released last year with rave reviews. Her novel *I came to say goodbye* was released two months that touches upon the subject of child protection.

There is an incredible video interview on her friend Mia Freedman's website Mama Mia about the issue of parents killing their children after the death of a little boy called Imran Zilic and the legal issues of reporting that surround it - both the video and Caroline's article on it are pieces of

Popular Posts

Interview: Florencia Cavallo, ABC Journalist

Florencia Cavallo is an inspiring young journalist. After securing a job as an ABC reporter in Coffs Harbour earlier this year, Florencia ...

Interview: Susan Maushart, Writer

I have a Saturday morning ritual. I wake up, make myself a cup of tea (T2's French Earl Grey is a current favourite) and ravenously dev...

Sarah's column: Is the position of editor of a daily newspaper in Australia only for men?

THERE was recently a marvelous video on mUmBRELLA (my favourite website - the best source of information on the Australian media out there)...

Interview: Kiel Egging, Journalist and Entertainment Reporter

At 23, Kiel Egging considers himself a very lucky guy. He

extremely high quality journalism that will bring you to tears. If you are after something amazing to watch, I suggest you view it here.

She is also a mother of twins but I was reluctant to ask her how she manages juggling her children while being a writer. Why? Because I felt that I was asking a sexist question. Do men who are successful journalists or just successful in their own right often get asked, 'How they manage juggling their kids with their work,' - No.

She is a fantastic writer and we were absolutely thrilled that she agreed to an interview for *Doorways*. Take particular note of her answer to how she get's into her 'writing mode' - very well answered.

How did you get into journalism?

I did work experience at the Melton Mail Express, in my home town of Melton, at the age of 13. I took a cadetship on suburban newspapers after I finished my HSC at 17, hoping to one day get on at The Age (The Age owned the local papers in those days.)

What was it like working in New York to become a foreign correspondent for The Sydney Morning Herald and The Age?

The Age and the SMH sent me to New York in 2002. My husband and I had twins. They were 18 months old. It was amusing to us, trying to get their big stroller onto the subway (nobody has a car); and through the snow in winter. But ohviously it was magical. We had toboggan rides, and rode the carousel at Toys R Us in Times Square, and played in Central Park, and went ice-skating. I even did some work!

In your opinion, what are some of the differences between working for News Ltd and Fairfax?

The most fun I've ever had in my life is working for newspapapers. I don't really mind which ones.

How do you bounce between writing fiction and non-fiction?

It is often difficult, as a reporter, to tell the whole story: the police won't talk to you, except through spokespeople who often weren't even at the scene of the crime; the hospital won't talk to you; the surgeon operating on the victim won't; very often, even witnesses are told to keep quiet. That is very difficult from when I started 18 years ago, and you could just bowl up to a crime scene and see things for yourself. We've become very strange and secretive, usually to protect the reputations of politicians.

In fiction, I have found a freedom to write what really goes on in society: I can say what I've seen when I've walked into houses where children have been neglected; I can discuss what it might be like to be a child whose brother was murdered by the parents, having to grow up with a mother in jail, and so forth.

My readers are clever: they know it's all true.

What are some of the habits you always do to get yourself into 'writing-mode'?

I have had many giggles about this with my friend Mia Freedman. We both have young children. We are always saying how marvellous it would be to `catch the Muse' and go into a light and beautiful room and write away, with a tea cup and saucer, as the inspiration strikes. The reality is quite different: the children might need a volcano for a school project. Lunches have to be made. So I write when I can.

What is your advice to other aspiring journalists?

It is much easier to get started these days, but you have to be prepared to write for nothing for a while. Write for blogs. Write your own blog! Write for the local paper. Write for the university magazine. Keep all your clippings. And then apply, apply, apply, for every job you can find.

Comments (0)

Post a Comment

has rubbed shoulders with many of the celebrities he has looked up to, includin...

Interview: Gabby McMillan, Writer

Gabby McMillan is a force to be reckoned with . Successfully marrying her creative spirit with a lucrative writing and editing career, Gabb...

Oh, the Irony (or, Writers Block as a Greek Tragedy)

(via Amanda Thomas) I am always a little scared to use the word irony in a sentence. People who know the true meaning of irony seem t...

Interview: Jason Whittaker, Crikey Deputy Editor

Jason Whittaker is a big deal. He is deputy editor of Crikey - the online news website published by Eric Beecher, Chairman of Private Medi...

Interview: Benjamin Law, Writer

Photo courtesy of Tammy Law (All Rights Reserved)

Benjamin Law's byline first caught my eye when I came across "Bogan or Gay?&q...

Interview: Laura Greaves, Freelance Writer

EXHIBIT 7

Fairfax Media

Subscriber Support Centre

- Home
- Frequently Asked Questions
- Submit a request
-
- Live chat

Frequently Asked Questions Digital Subscriptions International & Travelling customers

Will I be charged GST as an international subscriber?

No. Our digital subscription packages are GST-free for subscribers living and using our products overseas. You must ensure that you provide an overseas billing address and confirm that you live outside Australia in the registration process. Packages that include our print or home delivery options are not available to overseas customers.

EXHIBIT 8

The Sydney Morning Herald

Hands on with iPad news aggregators

Date

June 18, 2010

Gadgets on the go

Adam Turner is an award-winning Australian freelance technology journalist with a passion for gadgets and the "digital lounge room".

View more entries from Gadgets on the go

The Early Edition on the iPad.

Newspapers are rushing to embrace the iPad, but impressive news aggregator apps are beating the media giants at their own game.

Old school media giants are hoping the iPad will offer a platform on which they can charge for content, which is obviously a challenge when they continue to give away that content for free on their websites and RSS feeds. The issue came to a head last week when theNew York Times demanded Apple pull the Pulse iPad RSS reader from the iTunes store, with the NYT claiming the app was infringing copyright by using the paper's RSS feeds without permission. The whole situation would be laughable if it wasn't such an important issue that demonstrates the challenges facing old-world media dinosaurs in the new online age. Thankfully Apple didn't side with the New York Times, despite their close relationship, and Pulse was quickly returned to the iTunes store.

On Monday I took a look at some of the iPad apps offered by newspapers, but today I want to look at four impressive news aggregators; Pulse ($4.99), The Early Edition ($4.99), Sources($2.49) and PressReader (free).

Sources is really just an elegant skin for the Australian Google News website, copying the top headline in each news cluster. Compare Source's Science & Technology listing with Google News Australia Sci/Tech listings and you'll see they're identical. Sources just leaves out the images and only shows the top headline in each group of stories. Click on a headline and it opens a browser window within the app, with a Related button offering links to other stories in that Google News cluster.

Sources offers a nice looking interface, with the ability to change the font size and add your own RSS feeds. You can also add custom topic searches, such as "Kevin Rudd", but again this is sourcing its stories from Google's "Personalized Edition" feature. You'll get all the same information by viewing the Google News page in Mobile Safari, with the added benefits of seeing the pictures and extra story links that Sources strips away on its main pages.

Unlike Sources, Pulse is a dedicated RSS reader. You can load up to 20 RSS feeds, which are displayed in strips across the page. You can scroll across a strip to view entries in that feed, looking at the headline and either a pic or the intro. Tap on an item and it opens up a view of the RSS feed, with a web button that gives you a browser view (still within the app) so you can see the entire story.

One of Pulse's strengths is that while you're reading a story in portrait mode, the scrolling list of stories in the feed is displayed across the bottom of the screen - making it really easy to flick between stories. You can also stay in browser view, rather than flicking back to RSS view each time you flick to a new story, which offers a very smooth reading experience.

Pulse lets you search for RSS feeds, choose from a list of Features Sources or import feeds from Google Reader, which is

probably the easiest way to manage your feeds. The 20 feed limit is frustrating, but you could get around this by using services such as Yahoo! Pipes to combine feeds. Pulse doesn't seem to like Yahoo! Pipes feeds, but you can work around this by filtering them through other RSS services such as FeedRinse (although keep in mind the more step in the process the less up to date your RSS feeds will be).

The Early Edition (pictured above) doesn't look as slick as Pulse, but it's a lot more flexible. It's a "river of news" style reader which draws on multiple RSS feeds and lays out the results like a newspaper page. I've seen desktop RSS readers offer something similar, but this is the first time I've seen it on the iPad. The result is more impressive than some of the iPad apps offered by the newspapers. The front page displays around 10 stories, with the headline, the first few paragraphs and sometimes a pic (depending on what's included in the RSS feeds). If the full story is provided by RSS you can scroll through the text in the box or tap on it to open the story. Sometimes you'll only get a snippet but you can click on a link to view the original website while remaining within the app.

One of the things I love about The Early Edition is that I can keep flicking to see page after page of headlines, intros and pics laid out just like a newspaper. You even get an iBooks-esque curling page turn. The Early Edition's real strength is the ability to edit and group the news feeds. It contains 350 news feeds by default, split into categories such as Business, Design, Food & Wine, Politics, Technology and World News. You can click on All Feeds to see them all mixed together, or a single category to see just those feeds mixed together. You can even just click one feed to see all its articles laid out on the page. So it's possible to design your own custom newspapers and easily switch between them. There's also a Today button to ensure you're only reading the latest news.

The icing on the cake is that you can add new feeds and new categories, plus you can import feeds from Google Reader or an OPML file. If you know your way around Yahoo! Pipes you can dig into the newspaper websites and RSS feeds to build custom newspapers that would make the New York Times' lawyers turn purple.

The fact The Early Edition relies on RSS feeds is both its strength and its weakness. Sometimes you get the whole story, while sometimes you need to tap again to view the original (similar to Pulse). The story layout is very basic, you can't adjust the font size and you can't flick left and right directly to the next story. It would be great if The Early Edition could add a few features from Pulse, such as the ability to flick between stories and stay in broswer mode.

The newspaper feeds are more user-friendly in Pulse because you can remain in browser mode, although it can be slow to load the bloated newspaper pages. The Early Edition makes it easier to skim through stories as you do with a physical newspaper, while Pulse is perhaps better suited to picking through blogs.

iPad apps such as The Early Edition and Pulse are putting the pressure on newspapers to deliver iPad apps that offer a superior reading experience to Mobile Safari. We've seen how the New York Times responds to such pressure, lets hope other publishers can take a more sensible approach.

Then you have PressReader, an iPad/iPhone newspaper app which is in a league of its own. PressReader is linked to the PressDisplay service, which lets you download digital copies of newspapers from anywhere in the world. You pay 99 US cents for each section of the newspaper under the Pay As You Go Plan, but the $US9.95 per month plan buys you 31 credits and the $US29.95 plan buys you unlimited credits. Depending on how many sections you read, it's pretty good value compared to the cost of buying the paper each day. The iPad app comes with 7 free credits, although I think you can get a better free credit deal if you create an account via the website. PressReader also features subscription options for automatically downloading sections each day.

PressReader downloads each newspaper section as a hi-res PDF, so you can flick through the pages as you would a normal newspaper. You can zoom in on an article to read it, but they've also been converted to text so you can tap on a story to bring it up in a text box. From here you can scroll through the story (changing the font size if you wish) and even tap on a button to have the story read aloud in a surprisingly natural female digital voice. Once you've opened a text box, you can jump to the next story with a tap rather than closing and opening the box again.

The user experience is very slick and probably the closest I've seen to replicating the traditional newspaper experience. The Age and SMH sections I downloaded were each around 50MB, so you might want to download the paper at home each morning rather than doing it on the train via a mobile broadband network. Tehnically you might be able to replicate something similar using The Early Edition and Yahoo! Pipes, but once you've seen PressReader in action you'll happily

hand over 99 cents per section. If the newspapers want people to cough up money for their dedicated iPad apps, they need to match the slick user experience of PressReader.

On top of this, PressReader offers an Online option which creates a "river of news stream" from papers around the world - you can tap on any story to read it and then see a list of related stories from other newspapers. You can even search for terms, such as Socceroos, and get a list of stories from various newspapers (which can be filtered according to country or language). As far as I can tell the online options are free, although the pricing model isn't very well explained.

From what I've seen, PressReader blows everything else out of the water. It almost seems too good to be true, but it is legit. This hasn't stopped the publishers trying to nobble it. It seems Fairfax is attempting to block NSW readers from downloading the Sydney Morning Herald and the Sun Herald, there's a long thread about it over at **Whirlpool**. It's worth reading through that thread if you're thinking about signing up for a PressReader subscription.

Regular readers will know that I've been slow to warm to my iPad, even though I've had it since a few days after the US release. My argument has always been that the iPad is really just a luxury toy unless you can find a good use for it. If you're a news junkie, apps such as The Early Edition, Pulse and especially PressReader could be the excuse you've been looking for to buy an iPad. Soon I'll take a look at what the iPad has to offer in terms of magazines.

EXHIBIT 9

The Newspaper Works partners with PressReader for app

The Newspaper Works / 19 August, 2014
1

The Newspaper Works will launch an app for iOS and Android devices this week, as part of a partnership with global digital distribution and publishing company PressReader.

PressReader, a major sponsor of this year's Future Forum industry conference, will host the app, which has been built to publish digital editions for mobile and tablet of print publications *TheBulletin*, *The Works* and special industry magazines like the *Infographic Annual*.

CEO of The Newspaper Works, Mark Hollands, said that "publishing and communication is at the heartbeat of this organisation."

"We are delighted to work with PressReader to offer our content in apps on both the iOS and Android platforms."

PressReader has developed major partnerships in Australia and New Zealand with newspaper and magazine publishers like Fairfax Media, News Corp, APN, Nextmedia and McPherson Media Group. In addition to its publisher partnerships, PressReader has also struck deals with local libraries, hotels, government agencies, city councils and device manufacturers (OEMs), as well as transportation companies like Virgin Australia – allowing customers or employees to access PressReader published content via a Wi-Fi connection.

Executive vice-president for PressReader, Nikolay Malyarov, who is in Sydney for the Future Forum, said the company's distribution network gave publishers the ability to target audiences that are not necessarily tied to individual titles, but accessed content through search.

"We're able to reach audiences that are incredibly difficult to reach as a single publisher – audiences when they're at hotels, libraries or on cruise ships," Mr Malyarov said.

"We allow publishers to use our technology and adapt it to their market, then retain their revenue to re-invest in the production of quality editorial content."

The Newspaper Works app will be launched this week and can be found by typing 'The Newspaper Works' into the iTunes Store, Google Play store or Windows Store from Friday. Thedesktop site linked to the app is currently live and features an archive of The Newspaper Works' publications from the past year. Readers can also subscribe to The Newspaper Works' PressReader site or app to have publications auto-sent when they are published.

Internationally, PressReader distributes content for more than 4000 publishing partners from over 100 countries.

For more news from The Newspaper Works, click here.

Welcome to PressReader

Company Overview.

Founded in 1999, PressReader (http://www.PressReader.com/) is the global leader in multi-channel, cross-platform content distribution and monetization, and the chosen partner of more than 3,500 publishers from 100 countries.

PressReader provides consumers and businesses access to thousands of local, national and international full-content newspapers and magazines online, in print, and on tablets, smartphones and eReaders running iOS, Android, Android for Amazon, Windows 8 and Blackberry 10 operating systems.

It offers the world's most engaging reading experience to millions of readers in 60 languages and can be found in leading libraries, hotels, airlines, corporate and government buildings, cruise lines, airport lounges, schools and restaurants around the globe.

As a fully-customizable digital publishing platform, PressReader helps publishers of all sizes and media types expand their platform support, grow global circulation and revenues, and increase brand awareness and exposure of their publications in new international markets.

PressReader by the Numbers:

- Over 30 million users worldwide
- Over 2,000 local, regional and international newspapers and magazines
- Over 3,500 publishers
- Services available in over100 countries
- Publications from over 100 countries
- Titles in 60 languages
- More than 400 agents worldwide
- PressReader is in more than 15,000 organizations, institutions and businesses such as libraries, hotels, airport lounges and corporate offices around the world

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EXHIBIT 10

Outline for course Males and the Law

By Roy Den Hollander, Esq.

As Sir William Blackstone said in 1765, "So great a favorite is the female sex of the laws."

Theme: Since the industrial revolution (1760-1830), common law countries such as the U.S., England and Australia have established legal systems that discriminate against men largely to their detriment while discriminating against females mainly to their benefit.

Week 1

Lecture

1. Similarities of U.S. and Australian common law legal systems
2. *Stare decisis* and the power it gives judges to rule in accordance with their personal beliefs rather than the law.
3. Three men's rights cases in which the judges ruled in accordance with their Feminist and political correctionalist ideologies.

Assignment 1:

Familiarize yourself with Australia's Sex Discrimination Act of 1984 and how to file a complaint under the Act.

Then come up with an example where you or someone you know was treated differently than their opposite sex and draft up a sample complaint of around 250 words or more.

Week 2

Lecture

1. Some of the history of British and U.S. laws that gave females preferential treatment and how some of those laws compare to today's.

    a. Employment
    b. Crime
    c. Private relations
    d. Financial support for females
    e. Property
    f. Divorce
    g. Illegitimate children
    h. Seduction

Assignment 2:

Read the *Commentaries on the Laws of England*, by William Blackstone, Book 1, Chapter 15, Of Husband And Wife, 1765. It's on the Internet

Research and list the 25 most dangerous occupations in Australia, the percentage of men in each, the death rates for each and why you think those occupations have so many male employees—250 words.

Or

Find a story or stories of an Australian man who spent time in prison for rape but was later exonerated, summarize the story or stories—250 words.

Or

Find a story or stories about a divorce father who deserved custody of his children, but a court awarded custody to the mother who then harmed the children. Summarize in 250 words.

Week 3

Lecture

1. Criminal sentencing of females compared to males
2. Female specific defenses that allow them to murder males with little or no punishment.
3. The last remaining course of action for men to fight for their rights—civil disobedience.

Assignment 3:

Read Howard Zinn's *Disobedience and Democracy—Nine Fallacies on Law and Order.*

In 725 words, do one of the following:

Find an example of one of the female defenses used in Australia, summarize it and comment on how it could be prevented,

Or

Find a new female only defense and do the same

Or

Write up a civil disobedience action that will bring the attention of the public and government to discrimination against men, include why you think such an action would have the required effect.

EXHIBIT 11

Gmail
by Google

Male Studies course

Shepherd, Tory <tory.shepherd@news.com.au> Thu, Jan 9, 2014 at 7:38 PM
To: "rdhhh@yahoo.com" <rdhhh@yahoo.com>

Hi there – I'm trying to get in touch for a story I'm doing on the UniSA course you're involved with, but can't find a phone number for you – could you please get in touch? By email or phone – 0061 8 8206 2270

Thank you!

Tory

Tory Shepherd
Political Editor

D: +61 8 8206 2270 **E:** tory.shepherd@news.com.au
Twitter: @ToryShepherd

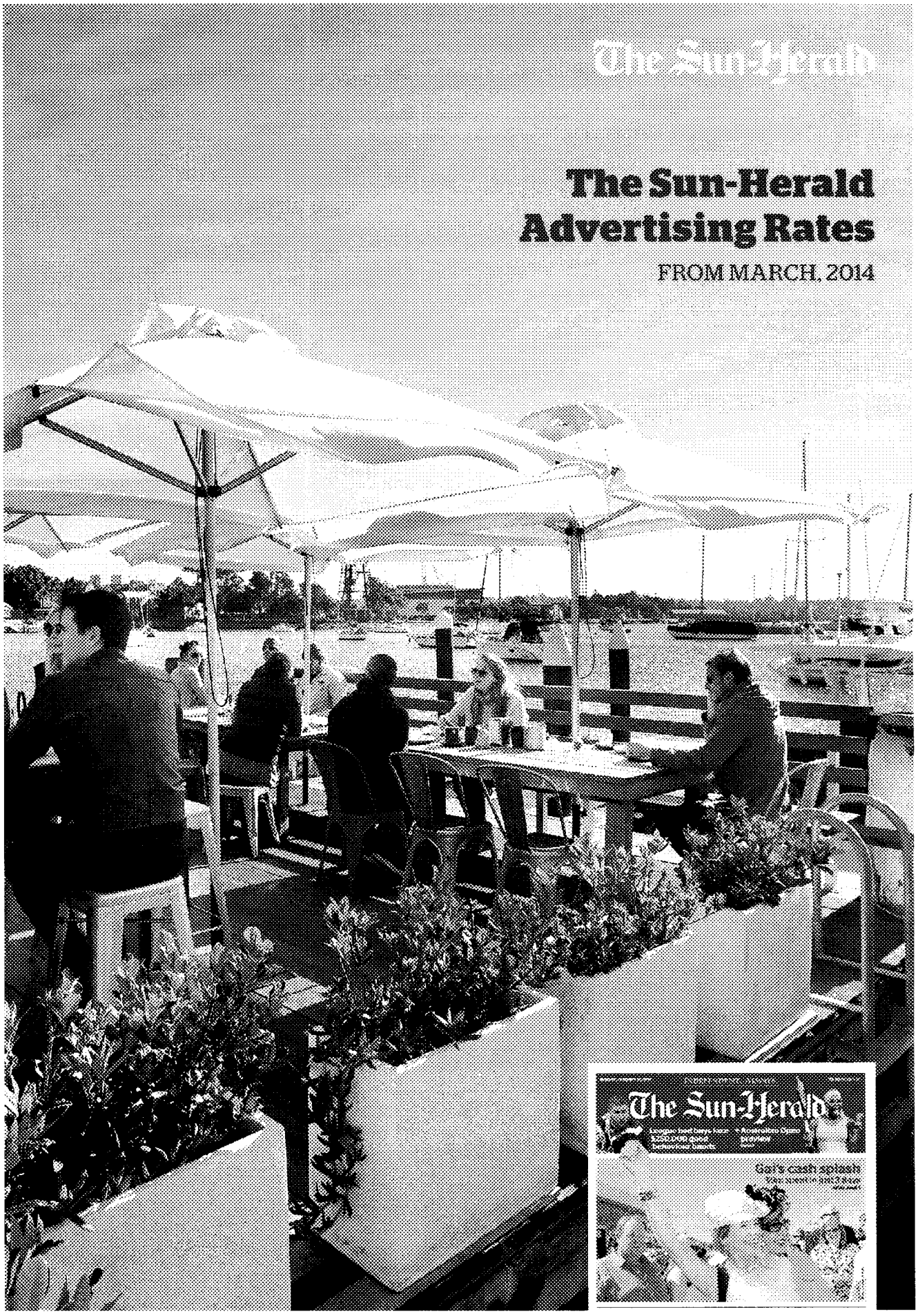
adelaidenow.com.au

EXHIBIT 12

The Sun-Herald

The Sun-Herald Advertising Rates

FROM MARCH, 2014



The Sun-Herald Display Advertising

Valid from March, 2014

Advertising shapes

The Sun Herald

All dimensions shown in mm's (Height x Width)

Shape	Compact
FULL PAGE	374x260
JUNIOR PAGE	280x194
1/2 PAGE V	374x129
1/2 PAGE H	186x260
LARGE STRIP	139x260
1/4 PAGE V	186x129
1/4 PAGE STRIP	92x260
CORNER BLOCK	139x129
POSTCARD	92x129
MINI STRIP	45x260
TRIPLE MINI	139x63
STACKED MINI	92x63
MOVIE TICKET	45x129
MINI	45x63

Digital Solutions

Our digital platforms offer a variety of digital solutions across online, mobile and tablet to cater to your requirements

Strategic Features

Strategic Features are unique publications created around topics of interest driven by audience, editorial and consumer needs. We offer our clients the opportunity to connect with the Fairfax audience across print, online and tablet.

Direct Marketing

Our Direct Marketing service specialises in the delivery of direct response driven media solutions comprising of newspaper inserts/catalogues, bespoke printing, adhesive note advertising as well as a vast array of creative executions and paper stocks.

Contact your Fairfax Media Sales Representative for further details.

Please Note: Position Loading may apply. Setting fee may apply.
[illegible]

Fairfax Media

The Sun-Herald Display Rates

Valid from March, 2014

Annual Spend Level Discounts

Annual Spend Levels (Excl Gst)	Casual	$151,620	$344,590	$675,385	$978,625	$1,268,075	$1,543,740
Discount		-3%	-6%	-8%	-11%	-15%	-18%

Advertising Rates

The Sun-Herald

SHAPE	EGN	Sections
Full page	$46,336.00	$46,336.00
Incl GST	$50,969.60	$50,969.60
Junior page	$26,064.00	$26,064.00
Incl GST	$28,670.40	$28,670.40
1/2 page V	$23,168.00	$23,168.00
Incl GST	$25,484.80	$25,484.80
1/2 page H	$23,168.00	$23,168.00
Incl GST	$25,484.80	$25,484.80
Large strip	$17,376.00	$17,376.00
Incl GST	$19,113.60	$19,113.60
1/4 page V	$11,584.00	$11,584.00
Incl GST	$12,742.40	$12,742.40
1/4 page strip	$11,584.00	$11,584.00
Incl GST	$12,742.40	$12,742.40
Cnr block	$8,688.00	$8,688.00
Incl GST	$9,556.80	$9,556.80
Postcard	$5,792.00	$5,792.00
Incl GST	$6,371.20	$6,371.20
Mini strip	$5,792.00	$5,792.00
Incl GST	$6,371.20	$6,371.20
Triple mini	$4,344.00	$4,344.00
Incl GST	$4,778.40	$4,778.40
Stacked mini	$2,896.00	$2,896.00
Incl GST	$3,185.60	$3,185.60
Movie ticket	$2,896.00	$2,896.00
Incl GST	$3,185.60	$3,185.60
Mini	$1,448.00	$1,448.00
Incl GST	$1,592.80	$1,592.80

Loadings

Preferred Position Loadings – EGN^

Front page	100%
Page 2	50%
Page 3	50%
First full page colour	50%
Prior page 13	40%
Prior page 15	N/A
Prior page 19	30%
Prior page 25	20%
Outside back cover	50%
GTD Position includes RHP, solus on spread, consecutive placements (in addition to above loads)	30%

Sections^

Front page*	50%
Page 2 & 3	40%
Outside back cover	30%
GTD Position includes RHP solus on spread, consecutive placements (in addition to above loads)	30%

Includes Traveller, Sport, Unwind (incl. S), Money, Extra

*When Sport commences from the back front page load applies

^Subject to availability

Information correct at time of publishing.

For current information, please refer to: adcentre.com.au/ad_spec_categories/newspaper

Note: These rates are applicable to the following sections: News Display (incl. Money, Extra), Traveller, Sport, Unwind (incl. S), TV Guide.

EGN includes World and Extra.

Rates are inclusive of colour. No discounts will apply for mono.

[illegible]

[illegible]

Fairfax Media

The Sun-Herald Bookings

Valid from March, 2014

Deadlines

Section	Bookings Deadline	Material Deadline
Sunday		
News	2pm Wednesday	Noon Friday
World	2pm Wednesday	Noon Friday
Sport	2pm Wednesday	Noon Friday
Extra	2pm Wednesday	Noon Friday
Sections		
TV	Noon Monday	Noon Wednesday
Traveller	Noon Monday	Noon Wednesday
S	Noon Monday	Noon Wednesday
S (Classifieds)	Noon Wednesday	5pm Wednesday
Entertainment (Classifieds)	Noon Wednesday	5pm Wednesday
Money	10am Wednesday	Noon Friday

Cancellation deadlines are 2 working days prior to bookings deadlines for all publications.

Information correct at time of publishing.

For current information, please refer to:
adcentre.com.au/ad_spec_categories/newspaper

Booking and Material Procedure

Booking Procedure

Verbal bookings must be confirmed in writing. If appearance dates or material instructions need to be altered, changes must be advised by phone. Please take the contact name of the Fairfax Media representative and follow through with amended confirmation. Confirmations and verbal bookings must tally. Where there is discrepancy between verbal bookings and confirmation, the Company will not be liable unless confirmation is received two working days prior to appearance date.

Cancellation Procedure

Cancellations must be made verbally and confirmed in writing prior to the cancellation deadline. Please note the cancellation number quoted by the Fairfax Media representative and their name. All bookings taken inside cancellation deadline are taken on a non-cancellation basis. No liability will be accepted unless the above procedures are followed.

Material on Hand

Please note Fairfax Media will retain advertisements for a period of 3 months. Repeats outside this time span cannot be guaranteed.

Terms and Conditions

All advertising services are governed by Fairfax Media Terms and Conditions of Advertising. Fairfax Media reserves the right to modify this ratecard or its Terms and Conditions at any time without prior notice.

100% space charge will apply when material fails to arrive in time for publication. No responsibility will be accepted for material arriving outside designated deadlines.

Advertising Material and Specifications

Please note that Fairfax Media will only accept material via electronic transmission. Fairfax Media operates new advertising quality assurance measures for *The Sun-Herald*. All digital ads need to undergo Quality Assurance testing prior to being accepted for publication. To facilitate this, Fairfax Media has certified a number of methods for Quality Assurance testing and ad delivery (fees and charges apply):

Adstream • (+61) 02 9467 7500
www.adstream.com.au
Adsend Australia • (+61) 02 8689 9000
www.adsend.com.au
Digital Ads International SENDlite •
(+61) 02 9818 1965
www.sendlite.com.au
Fairfax Ad Designs • (+61) 02 8777 6956
addesigns@fairfaxmedia.com.au

For further information please refer to our website **www.adcentre.com.au** or contact the Advertising Production Unit: 1300 666 326.

Note: All rates are in Australian Dollars.

Please note: Colour and additional bookings apply. Subject to availability.
For the full set of terms and conditions, please visit www.adcentre.com.au or phone 1300 666 326.

Fairfax Media

Contacts

www.adcentre.com.au

Australia

NSW
Fairfax Media Publications Pty Limited
Level 3, 1 Darling Island Road
Pyrmont, New South Wales 2009
Phone: (02) 9282 1734
Fax: (02) 9282 1748

VICTORIA
Fairfax Media Publications Pty Limited
Media House, 655 Collins St
Melbourne, Victoria 3000
Phone: (03) 8667 2000
Fax: (03) 9601 2929

QUEENSLAND
Fairfax Media Publications Pty Limited
Level 6, 340 Adelaide Street
Brisbane, Queensland 4000
Phone: (07) 3835 7500
Fax: (07) 3835 7529
Email: thehub@fairfaxmedia.com.au

SOUTH AUSTRALIA
Fairfax Media Publications Pty Limited
124 Franklin Street
Adelaide, South Australia 5000
Phone: (08) 8212 1212
Fax: (08) 8212 1210

WESTERN AUSTRALIA
Fairfax Media Publications Pty Limited
A15 Level 2
435 Roberts Road
Subiaco Western Australia 6008
Phone: (08) 9423 8903
Fax: (08) 9423 8922

Fairfax International Representatives

LONDON
Mr Brett Warren
Warren International Media Ltd
Suite 12, Rossknoll House, Orion Park
Northfield Ave
London W13 9SJ
Phone: +44 (0) 20 7099 7992
Fax: +44 (0) 870 4953 440
Email: bwarren@warrenmedia.com

JAPAN
Shinano International, Inc.
Akasaka Kyowa Bldg. 2F
1-6-14 Akasaka, Minato-ku
Tokyo 107-0052 Japan
Phone: 0011 81 3 3584 6420
Fax: 0015 81 3 3505 5628
Email: yibe@bunkoh.com

SINGAPORE
Publicitas Singapore (S) Pte Ltd
72, Bendemeer Road
#02-20, The Luzerne
Singapore 339941
Phone: +65 6836 2272
Fax: +65 6297 7302
Email: peggy.thay@publicitas.com

USA
World Media Inc.
19 West 36th Street, 7th Floor
New York 10018
Phone: 0011 1 212 244 5610
Fax: 0015 1 212 244 5321
Email: sales@worldmediaonline.com

CHINA
Wendy Lin
Publicitas Beijing
Rm 808, 8/F, Tower A, Fulllink Plaza
No.18 Chaoyangmenwai Avenue
Beijing 100020, China
Phone: +86 10 6588 8155 ext. 626,
Fax: +86 10 6588 3110
Email: wendy.lin@publicitas.com.cn

NEW ZEALAND
McKay & Bowman
International Media Representatives Ltd
PO Box 36-490, Northcote, Auckland
60 McBreen Ave
Northcote, Auckland
Phone: 0011 64 9 419 0561
Fax: 0015 64 9 419 2243
Email: neil@mckaybowman.co.nz

THAILAND
Publicitas Thailand
5th Floor, Lumpini I Building, 239/2 Soi Sarasin,
Rajdamri Road, Lumpini, Pathumwan
Bangkok 10330 Thailand
Phone: 0011 66 2 651 9273 to 7
Fax: 0015 66 2 651 9278
Email: janya.limmanee@publicitas.com

MALAYSIA
Publicitas International Malaysia
S105, 2nd Floor, Centrepoint,
Lebuh Bandar Utama, Bandar Utama,
47800 Petaling Jaya, Selangor
Phone: 0011 60 3 772 9 6923
Fax: 0015 60 3 772 9 7115
Email: esther.chia@publicitas.com

HONG KONG
Publicitas Hong Kong
26/F Two Chinachem Exchange Square
338 King's Road, North Point
Hong Kong
Phone: 0011 852 2516 1519
Fax: 0015 852 2528 3260
Email: catherine.ha@publicitas.com

INDIA
The Times of India
International Media Representation
Response Department
Dr Dadabhoy Naoroji Road
Bombay 400 001
Phone: 0011 91 22 22731 338
Fax: 0015 91 22 22731 145
Email: santosh.pandey@timesgroup.com

DUBAI
Vivienne Davidson
Intermedia,
Commercial Centre - Safa Park,
Sheikh Zayed Road,
PO Box 22857, Dubai
Phone: +971 346 6006
Fax: +971 346 6016
Email: vdavidson@intermedia-gulf.com

EUROPE
Robert Logan
Robert Logan & Associates
Suite 12, Rossknoll House, Orion Park
Northfield Avenue London W13 9SJ
Phone: +44 (0) 208 579 4836
Fax: +44 (0) 208 579 5057
Email: rlogan@robertlogan.co.uk

SOUTH AFRICA
Publicity Project Management
Rivonia Village, 3 Mutual Road, Rivonia
PO Box 78811, Sandton, 2146
Phone: +27 11 803 8211
Fax: +27 86 503 3237
Email: mike@worldmediaonline.co.za

Terms and Conditions

FAIRFAX MEDIA ABN 15 008 663 161

These terms apply to all advertising provided to any person ('Customer') by Fairfax Media Limited ABN 15 008 663 161 or a subsidiary ('Fairfax'). Customer includes an advertiser on whose behalf Advertising is placed and any media company or agency that arranges the Advertising for its clients.

1. Publication of Advertising

1.1 Subject to these Terms, Fairfax will use its reasonable endeavours to publish advertising ('Advertising') in the format and in the position agreed with the Customer. 'Advertising' includes images submitted for publication and content or information relating to published Advertisements.

1.2 Customer grants Fairfax a worldwide, royalty-free, non-exclusive, irrevocable licence to publish, and to sub-licence the publication of, the Advertising in any form or medium, including print, online or other. Customer warrants that it is authorised to grant Fairfax the licence in this clause 1.

2. Right to Refuse Advertising

2.1 Neither these Terms nor any written or verbal quotation by Fairfax represents an agreement to publish Advertising. An agreement will only be formed between Fairfax and Customer when Fairfax accepts the Advertising in writing or generates a tax invoice for that Advertising.

2.2 Fairfax reserves the right to refuse or withdraw from publication any Advertising at any time without giving reasons (even if the Advertising has previously been published by Fairfax).

3. Right to vary Format, Placement or Distribution

3.1 Fairfax will use reasonable efforts to publish Advertising in the format and in the position requested by the Customer. However, Fairfax reserves the right to vary the placement of Advertising within a title or website or to change the format of Advertising (including changing colour to black and white).

3.2 Fairfax may distribute interstate or regional editions of a title without all inserts or classified sections.

3.3 Except in accordance with clause 12, Fairfax will not be liable for any loss or damage incurred by a Customer arising from Fairfax's failure to publish Advertising in accordance with a Customer's request.

3.4 If Fairfax changes the press configuration for a publication, Fairfax reserves the right to shrink or enlarge the Advertising by up to 10% without notice to Customer or any change to rates.

4. Submission of Advertising

4.1 Customer warrants to Fairfax that the publication of the Advertising does not breach or infringe:

(a) the Competition and Consumer Act (Cth) or equivalent State legislation;

(b) any copyright, trade mark, obligation of confidentiality or other personal or proprietary right;

(c) any law of defamation, obscenity or contempt of any court, tribunal or royal commission;

(d) State or Commonwealth privacy legislation or anti-discrimination legislation;

(e) any financial services law as defined in the Corporations Act 2001 (Cth); or

(f) any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

4.2 Customer warrants that if Advertising contains the name or photographic or pictorial representation of any living person and/or any copy by which any living person can be identified, the Customer has obtained the authority of that person to make use of his/her name or representation or the copy.

4.3 Advertising containing contact details for the Customer must contain the full name and street address of the Customer. Post office box and email addresses alone are insufficient.

4.4 If a Customer submits Advertising that looks, in Fairfax's opinion, like editorial material, Fairfax may publish the Advertising under the heading 'Advertising' with a border distinguishing it from editorial.

4.5 Fairfax will not be responsible for any loss or damage to any Advertising material left in its control.

4.6 Advertising submitted electronically must comply with Fairfax's specifications. Fairfax may reject the Advertising material if it is not submitted in accordance with such specifications.

4.7 Advertising material delivered digitally must include the Fairfax booking or material identification number.

4.8 If Customer is a corporation and the Advertising contains the price for consumer goods or services, Customer warrants that the Advertising complies with the component pricing provisions of the Competition and Consumer Act (Cth) and contains, as a single price, the minimum total price to the extent quantifiable at time of the Advertising.

4.9 Customer must not resell Advertising space to any third party without Fairfax's consent.

4.10 If Advertising promotes a competition or trade promotion, Customer warrants it has obtained all relevant permits and indemnifies Fairfax against any loss in connection with the Advertising.

5. Classified Advertising

5.1 Fairfax will publish classified Advertising under the classification heading it determines is most appropriate. These headings are for the convenience of readers. Fairfax will publish classified display Advertising sorted by alphabetical caption and, where space permits, with related line Advertising.

6. Online Advertising

6.1 For online banner and display Advertising, Customer must submit creative materials and a click-through URL to Fairfax at least 3 working days (5 working days for non-gif material) or within such other deadline advised by Fairfax at its discretion before publication date. Fairfax may charge Customer for online Advertising cancelled on less than 30 days notice or if creative materials are not submitted in accordance with this clause 6.1.

6.2 All online Advertising (including rich media) must comply with Fairfax's advertising specifications.

6.3 Fairfax will measure online display and banner Advertising (including impressions delivered and clicks achieved) through its ad-serving systems. Results from Customer or third party ad-servers will not be accepted for the purposes of Fairfax's billing and assessment of Advertising.

6.4 Fairfax is not liable for loss or damage from an internet or telecommunications failure.

6.5 Customer acknowledges that Fairfax may at its discretion include additional features or inclusions such as third party advertisements within online classified Advertising.

7. Errors

7.1 Customer must promptly check proofs of Advertising (if provided to the Customer by Fairfax) and notify Fairfax of any errors in the proofs or in published Advertising.

7.2 Fairfax does not accept responsibility for any errors submitted by the Customer or its agent, including errors in Advertising placed over the telephone.

7.3 Customer must send any claim for credit or republication in writing to Fairfax no later than 7 days after the date of publication of the Advertising.

8. Advertising Rates and GST

8.1 The Customer must pay for Advertising, unless otherwise agreed, at the casual ratecard rate. Ratecard rates may be varied at any time by Fairfax without notice. Customer must pay GST at the time it pays for Advertising. Fairfax will provide a tax invoice or adjustment note (as applicable).

8.2 Eligibility for discounts or rebates will be based on the Customer's GST-exclusive advertising spend.

9. Credit and Customer Accounts

9.1 Fairfax may grant, deny or withdraw credit to a Customer at any time in its discretion. Customer must ensure that its Customer account number is available only to those employees authorised to use it. Customer acknowledges it will be liable for all Advertising placed under Customer's account number.

10. Payment

10.1 The Customer must pre-pay for Advertising if required by Fairfax. If Advertising is on account, payment must be within 7 days of date of the invoice or, for certain Rural Press publications, within 21 days of the end of the month in which the invoice is issued. If a commercial account has been established with Fairfax, payment must be within 30 days of invoice date.

10.2 If Customer fails to provide the copy for a booking by publication deadline, Customer will be charged unless a cancellation is approved by Fairfax. If Fairfax accepts Advertising after the deadline, it will be deemed out of specification. Customer has no claim against Fairfax for credit, republication or other remedy for out of specification Advertising.

10.3 Customer must pay the full price for Advertising even if Fairfax varied the format or placement of the Advertising or if there is an error in the Advertising, unless the error was Fairfax's fault. Customer must pay its electronic transmission costs.

11. Failure to Pay and Other Breach

11.1 If Customer breaches these terms, fails to pay for Advertising or suffers an Insolvency Event (defined in clause 11.2), Fairfax may (in its discretion and without limitation):

(a) cancel any provision of credit to Customer;

(b) require cash pre-payment for further Advertising;

(c) charge interest on all overdue amounts at the rate 2% above the NAB Overdraft Base Rate;

(d) take proceedings against the Customer for any outstanding amounts;

(e) recover Fairfax's costs including mercantile agency and legal costs on a full indemnity basis;

(f) cease publication of further Advertising or terminate an agreement for Advertising not published;

(g) exercise any other rights at law.

11.2 A Customer suffers an 'Insolvency Event' if:

(a) Customer is a natural person and commits an act of bankruptcy; or

(b) Customer is a body corporate and cannot pay its debts as and when they fall due or enters an arrangement with its creditors other than in the ordinary course of business or passes a resolution for administration, winding up or liquidation (other than for the purposes of re-organisation or reconstruction); or has a receiver, manager, liquidator or administrator appointed to any of its property or assets or has a petition presented for its winding up.

11.3 Fairfax may withhold any discounts or rebates if Customer fails to comply with its payment obligations.

11.4 A written statement of debt signed by an authorised employee of Fairfax is evidence of the amount owed by the Customer to Fairfax.

12. Liability

12.1 The Customer acknowledges that it has not relied on any advice given or representation made by or on behalf of Fairfax in connection with the Advertising.

12.2 Fairfax excludes all implied conditions and warranties from these terms, except any condition or warranty (such as conditions and warranties implied by the Competition and Consumer Act and equivalent State acts) which cannot by law be excluded ('Non-excludable Condition').

12.3 Fairfax limits its liability for breach of any Non-Excludable Condition (to the extent such liability can be limited) and for any other error in published Advertising caused by Fairfax to the re-supply of the Advertising or payment of the cost of re-supply (at Fairfax's option).

12.4 Subject to clauses 12.2 and 12.3, Fairfax excludes all other liability to the Customer for any costs, expenses, losses and damages incurred in relation to Advertising published by Fairfax, whether that liability arises in contract, tort (including by Fairfax's negligence) or under statute. Without limitation, Fairfax will in no circumstances be liable for any indirect or consequential losses, loss of profits, loss of revenue or loss of business opportunity.

12.5 The Customer indemnifies Fairfax and its officers, employees, contractors and agents (the 'Indemnified') against any costs, expenses, losses, damages and liability suffered or incurred by the Indemnified arising from the Customer's breach of these Terms and any negligent or unlawful act or omission of the Customer in connection with the Advertising.

13. Privacy

13.1 Fairfax collects a Customer's personal information to provide the Advertising to the Customer and for invoicing purposes. Fairfax may disclose this personal information to its related bodies corporate, to credit reporting agencies and other third parties as part of provision of the Advertising and for overdue accounts, to debt collection agencies to recover amounts owing.

13.2 Fairfax provides some published Advertising to third party service providers. Where such Advertising contains personal information, Customer consents to the disclosure of their personal information in the advertising to third parties and to the personal information being republished by a third party.

13.3 Customers may gain access to their personal information by writing to the Privacy Officer, GPO Box 506, Sydney NSW 2001. Fairfax's privacy policy is at www.fxj.com.au.

14. Confidentiality

14.1 Each party will treat as confidential, and will procure that its advertising agents, other agents, and contractors ('Agents') treat as confidential and will not disclose, unless disclosure is required by law:

(a) the terms of this Agreement (including terms relating to volumes and pricing);

(b) information generated for the performance of this Agreement, including all data relating to advertising schedules, budgets, forecasts, booked advertising, prices or volumes;

(c) any other information that ought in good faith to be treated as confidential given the circumstances of disclosure or the nature of the information;

(d) any information derived wholly or partly for any information referred to in (a) to (c) above;

Each party agrees to take all reasonable precautions to prevent any unauthorised use, disclosure, publication or dissemination of the confidential information by or on behalf of itself or any third party.

15. General

15.1 These Terms, with any other written agreement, represent the entire agreement of the Customer and Fairfax for Advertising. They can only be varied in writing by an authorised officer of Fairfax. No purchase order or other document issued by the Customer will vary these Terms.

15.2 Fairfax will not be liable for any delay or failure to publish Advertising caused by a factor outside Fairfax's reasonable control (including but not limited to any act of God, war, breakdown of plant, industrial dispute, electricity failure, governmental or legal restraint).

15.3 Fairfax may serve notice on Customer by post or fax to the last known address of the Customer.

15.4 These Terms are governed by the laws of the State in which the billing company for the Advertising is located and each party submits to the non-exclusive jurisdiction of that State.