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April 5, 2017

By ECF

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

1:16-cv-09800-VSB, *Hollander v. Bolger et al.*
Response to defense attorney Joseph L. Francoeur's second pre-motion letter

Dear Hon. Judge Broderick:

I am an attorney admitted to this Court and representing myself in this action against the defendants. This letter is in response to defense attorney Joseph L. Francoeur's second pre-motion conference letter of April 5, 2017.

Francoeur cannot help but continue his litigation by prevarications and dissemblings.

First, Francoeur whines over Plaintiff's timing in submitting the First Amended Complaint—but Fed. R. Civ. P. 15 (a)(1)(B) does not. Plaintiff's paralegal could have handed the First Amended Complaint to him at the scheduled conference. While that would have been fair given Francoeur's conduct thus far, it would not have been fair to the Court.

Plaintiff initially made the mistake of granting Francoeur's request for additional time in responding to the original complaint. That gave Francoeur a month to research his first letter for a pre-motion conference. Plaintiff had three days in which to respond. As for his second letter, Francoeur took a week and a half before serving it, which gave Plaintiff two days to respond.

Second, Francoeur's objection to the copyright cause of action in the First Amended Complaint is based on a Second Circuit "Summary Order." Francoeur fails to mention that Summary Orders do not have precedential value. They are limited to that case and that case alone. Further, the facts here are different.

Francoeur even tries to intimidate the 70 year-old plaintiff who lives from paycheck to paycheck when there is work; otherwise, on the pittance of social security—who's he kidding. Besides, the recovery of full costs provision 17 U.S.C. § 505 works both ways. More

importantly, Francoeur's huffing and puffing over the copyright issue indicates that his clients not only absconded with the attorney work product but other documents of Plaintiff's—both registered and not registered with the U.S. Copyright Office.

Third, the replevin action requests this Court exercise its pendent jurisdiction to use a traditional New York State procedure for requiring all the materials copied by Francoeur's clients be turned over to Plaintiff, since they had no right to copy them in the first place.

Copyright law 17 U.S.C. § 503, *Remedies for infringement: Impounding and disposition of infringing articles*, requires a copyright violation, but replevin is broader. So, if the Court finds no copyright violation, Plaintiff might still recover the materials to which he has a superior right under New York replevin.

Fourth, the guilty always claim the allegations against them are "baseless." Francoeur goes one better. He prevaricates over what exactly is alleged in the First Amended Complaint. It alleges his clients violated New York Rule of Professional Misconduct 4.1 and New York Judiciary Law § 90(4)—neither were raised in the New York Supreme Court case.

Francoeur's opposition to the First Amended Complaint simply prevaricates and dissembles its way to requesting that he be allowed to make a motion to dismiss. Plaintiff agrees, he should be allowed to make his motion to dismiss.

Thank you for your time.

Dated: April 5, 2017
New York, New York

Respectfully,
s/ Roy Den Hollander
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Plaintiff and Attorney
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