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March 18, 2018

By ECF

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

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

Dear Judge Broderick:

I am the plaintiff and an attorney admitted to this Court, and am representing myself in the above captioned action.

On March 13, 2018, Your Honor issued a stay on the above proceedings: "It is hereby ORDERED that this action is temporarily stayed, including Defendants' time to respond to Plaintiff's Second Amended Complaint, while I make a determination with respect to parties' joint letter and Defendants' letter motion." (Ex. A, Order at 1).

This letter is to provide Your Honor with new evidence that has just come to light and to inform Your Honor of new forthcoming evidence pertinent to a decision on the joint letter.

The evidence shows that the Men's Rights Law website (URL: mensrightslaw.net), which has been referred to as my "iCloud" in these proceedings, was NOT public when the defendants accessed it on December 30, 2014, as they said (Def. Affirmation Dkt. 34, Ex S, Bolger Aff. ¶¶ 2, 3; Ex. T, Schafer Aff. ¶¶ 2, 3).

The Internet Archive, which is a nonprofit digital library, has a program called the "Wayback Machine." (Ex. B, Jerri Collins, *The Use and Purpose of the Internet's Wayback Machine*, December 8, 2017, Lifewire). The Wayback Machine stores over 300 billion web pages from 1996 to the present. The Internet Archive's Wayback Machine only collects web pages of publicly available websites: "the Archive collects web pages that are publicly available. We do not archive pages that require a password to access . . . ." (Ex. C, Internet Archive Frequently Asked Questions at 1).

When the Wayback Machine is used to search the history of the URL "mensrightslaw.net," NOTHING comes up for 2014 and before—meaning the site was private.

(Ex. D, Wayback search for "mensrightslaw.net" at https://web.archive.org/web/20180501000000*/http://mensrightslaw.net). As for 2015 and after, six hits come up, but when they are clicked, a notice comes up stating "Access is denied." (Ex. E). The Internet evidence is clear. When Bolger and Schafer accessed the site—it was private.

Further, my French computer consultant will be providing a supplement to his affidavit attached to the joint letter. In the supplement, he swears that since he uploaded the Men's Rights Law site, whenever he needed to access the site on my instructions to upload a video or audio recording or make a change, the site was private. It takes some time to go through the procedures in Europe for an affidavit and apostille, so the supplement will be submitted later if Your Honor permits.

Thank you for your consideration.

Respectfully,
s/ Roy Den Hollander
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March 19, 2018

Joseph L. Francoeur
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Via ECF

Hon. Vernon Broderick
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

RE: *Roy Den Hollander v. Katherine M. Bolger, et al.*
Index No. : 1:16-cv-09800-VSB
Our File No. : 16664.00002

Dear Judge Broderick:

We write in response to Plaintiff's March 18, 2018 letter, filed in response to Your Honor's Order staying the above proceedings. Plaintiff's letter violates the stay and should not be considered. As plaintiff is continuing to seek to offer evidence more than 10 days after the deadline set by this Court, we are constrained to respond as follows.

Plaintiff's letter mischaracterizes the "evidence" procured from the "Wayback Machine," as it also fails to show that Plaintiff's website was private at the time Defendants accessed it.

As an initial matter, the Wayback Machine is not evidence that "has just come to light" as Plaintiff claims in his letter. As stated in the FAQs attached as Exhibit B to Plaintiff's letter, the Wayback Machine has existed since 1996. Plaintiff offers no explanation as to why he has waited weeks after the deadline set by Your Honor and until after the case was stayed to offer it for consideration.

The Wayback Machine does not archive every public website ever posted. In fact, the exhibits attached to Plaintiff's letter, including an article about the Wayback Machine (Exhibit A to Plaintiff's Letter) and the Frequently Asked Questions portion of the Wayback Machine website (Exhibit B to Plaintiff's Letter), concede that the site does not archive everything. The article annexed to Plaintiff's letter states only that "there is a good chance" an older version of the website one is looking for will be in the Wayback Machine's archives. That same article states, "[t]he pages are shown on Wayback Machine only reflect the ones that were archived by the service, not the page's update frequency." That article, and the Frequently Asked Questions page, provide directions to users as to how to have their websites archived, as "[s]ome sites may

not be included because the automated crawlers were unaware of their existence at the time of the crawl." *See* FAQs, p. 1. This demonstrates that there are publicly accessible websites not being archived. Therefore, it is clear that the fact that the Wayback Machine does not have a version of Plaintiff's website prior to 2014 does not mean that it was private at any time.

Additionally, the screenshots of Plaintiff's searches on the Wayback Machine (Exhibits E to Plaintiff's letter) simply show that the website was private beginning in 2016. Plaintiff has admitted throughout this case that he placed privacy restrictions on the website after he became aware that Defendants accessed it in December 2014 and January 2015. Therefore, this screenshot does not offer *any* proof of Plaintiff's claims – despite his contentions otherwise.

It must also be noted that Plaintiff *still* has not procured the evidence that Court clearly stated at oral argument was necessary in order for Plaintiff to replead his claims. Your Honor clearly stated that Plaintiff was required to obtain an affidavit from his website service provider stating that the website was private *on the date* that Defendants accessed it. Neither the Wayback Machine, nor the second affidavit mentioned in the final paragraph of Plaintiff's letter, provide what the Court asked. Plaintiff's letter concedes that the second affidavit would once again only provide evidence that the website was private at the time it was created, a fact which is utterly irrelevant to the Court's inquiry. As such, the reasoning from our previous letters regarding Plaintiff's Second Amended Complaint still stands and the Court should deny Plaintiff's leave to replead.

Finally, Defendants are wary of any continued filings while the case is stayed, and reluctantly submit this response. In honor of the stay, going forward Defendants will not submit any further submissions in response to any future filings by the Plaintiff unless asked to do so by the Court. Defendants only ask that Court does not consider a failure to respond a "waiver" of the right to respond, and we respectfully reserve the right to respond when and if the Court lifts the stay or otherwise invites a response from the Defendants.

Regards,

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

Joseph L. Francoeur

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March 20, 2018

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

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

Dear Judge Broderick:

I am the plaintiff and an attorney admitted to this Court, and am representing myself in the above captioned action.

It is clear from the continuing misrepresentations of attorney Joseph Francoeur in his March 19, 2018, letter that he desires to keep the truth hidden. But that's understandable for someone against whom the State of New York has issued tax warrants.

In 2013 and again in 2017, the State of New York issued two tax warrants against Mr. Francoeur: Warrant Id E-038499833-W001-5 and E-038499833-W002-9. (Ex. A, Tax Warrants). A tax warrant is issued when a taxpayer refuses to pay a deficiency assessed against him. These two tax warrants were equivalent to legal judgments against Mr. Francoeur that created liens against his real and personal property, which gave Mr. Francoeur the impetus to pay what he owed. Mr. Francoeur's tax skirting is especially egregious, since he is a lawyer. This may just be the tip of the iceberg, since the tax warrant records from before 2004 are on paper at the Department of State Office and the two above were found on the Internet.

In his March 19, 2018, letter, Mr. Francoeur would have this Court believe that new evidence which comes to light does not mean when a party discovers the evidence but when the evidence first comes into existence. That of course is absurd. I learned about the capabilities of the Wayback Machine just this past Sunday.

Mr. Francoeur, not an Internet expert, claims the Wayback Machine somehow missed the Men's Rights Law site prior to his clients accessing it on December 30, 2014, even though Mr. Francoeur asserts the site was public. But after his clients accessed the site, the Wayback Machine miraculously found the site. That is illogical. If the site was public before they accessed it, the Wayback Machine most likely would have found it—just as a Google-cache would have. But there are no Google-caches from before December 30, 2014, and there are no

Wayback Machine scans from before December 30, 2014. All of which infers the site was private.

Mr. Francoeur is desperately prevaricating and dissembling to fit his allegations in this case. For example, he quotes "[s]ome sites may not be included because the automated crawlers were unaware of their existence at the time of the crawl. *See* FAQs, p. 1." But he leaves out the very next sentence, "[i]t's also possible that some sites were not archived because they were password protected . . . ." FAQs, p. 1. He also tries to spin that because the Wayback Machine does not keep track of the frequency of a site's update, it means the Wayback Machine missed the site entirely. Not at all, the Wayback Machine periodically scans a site's Index page. If the page is changed, it will show up on the next scan, but the scan will not tell how often the page was changed in between the scans—which has nothing to do with the Wayback Machine scanning the index page in the first place.

It is important to note that the Wayback Machine does NOT show that the Men's Rights Law site was public when Mr. Francoeur's clients accessed it, but logically infers that it was private. The Wayback Machine along with my computer consultant's affidavit and his forthcoming supplement affidavit along with my affirmation all confirm the site was private.

The true nature of Mr. Francoeur's litigation by misrepresentation is seen at page 2 of his March 19, 2018, letter where he writes, "Your Honor clearly stated that Plaintiff was required to obtain an affidavit from his website service provider stating that the website was private on the date that Defendants accessed it." That is a blatant misrepresentation. Your Honor said:

> Either documentation from the company that shows that you basically had this storage and that it was something that was not accessible to the public. It may be that if you're correct that they are unable to tell you that, well, then see if you can get some documentation that reflects that.

Feb. 16, 2018, Tr. 60:3-8.

> [T]here should be documentation concerning when you created the website. I don't myself have an iCloud. I would imagine that when you initially opened something where you would be storing your documents that there is some indication that only you would have access to it and no one else.

Feb. 16, 2018, Tr. 63:10-15.

There was nothing at the February 16, 2018, hearing about me obtaining an affidavit from the host of the Men's Rights Law site (iCloud), and the hearing made clear that I would provide whatever documentation my host had—which I did.

In another blatant misrepresentation, Mr. Francoeur writes, "Plaintiff's letter [March 18, 2018] concedes that the second affidavit would once again only provide evidence that the website was private at the time it was created, a fact which is utterly irrelevant to the Court's inquiry." What I actually wrote follows:

> [M]y French computer consultant will be providing a supplement to his affidavit attached to the joint letter. In the supplement, he swears that since he uploaded the Men's Rights Law site, whenever he needed to access the site on my instructions to upload a video or audio recording or make a change, the site was private.

On numerous occasions since September 2012, my computer consultant uploaded videos, audios and made changes at my direction. The last time he uploaded a video was the beginning of last year.

Finally, since I am the attorney who is facing Rule 11 sanctions, I would be remiss not to submit new evidence that I have recently discovered, point out Mr. Francoeur's misrepresentations, and, as distasteful as I find it, raise parts of Mr. Francoeur's past as he and his clients so willing did to me over two different cases in two different courts.

Thank you for your time

Respectfully,
s/ Roy Den Hollander
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March 26, 2018

Hon. Vernon S. Broderick
Courtroom 518
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***Hollander v. Bolger et al.* 1:16-cv-09800**

Dear Judge Broderick:

I am the plaintiff and an attorney admitted to this Court and am representing myself in the above captioned action.

Your Honor on March 13, 2018, issued a stay on the above proceedings: "It is hereby ORDERED that this action is temporarily stayed, including Defendants' time to respond to Plaintiff's Second Amended Complaint, while I make a determination with respect to parties' joint letter and Defendants' letter motion." (Dkt. 53).

As indicated in my letter on March 18, 2018, my French computer consultant would and has now provided me with a supplemental affidavit as evidence pertaining to Your Honor's determination with respect to the "joint letter." That supplemental affidavit is attached if Your Honor decides to consider it. (Ex. A, Marqua Supplemental Affidavit).

Thank you for your consideration.

Respectfully,
s/ Roy Den Hollander
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

- against -

KATHERINE M. BOLGER, MATTHEW L. SCHAFER, and JANE DOES,

Defendants.

16-CV-9800 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

On the record during oral argument, as well as in a subsequent order, I granted Defendants' motion to dismiss in its entirety and granted Plaintiff leave to amend his First Amended Complaint ("FAC") solely with respect to his claims filed pursuant to the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a)(2)(C), and the Copyright Act, 17 U.S.C. § 501(a). (*See* Doc. 43.) I am in receipt of parties' joint letter filed March 8, 2018, (Doc. 47), as well as Plaintiff's Second Amended Complaint ("SAC") filed March 9, 2018, (Doc. 48), which Plaintiff filed before I made a determination with respect to the parties' joint letter. On March 12, 2018, Defendants filed a letter-motion for leave to file a motion to strike or, in the alternative, conduct a telephone conference. (Doc. 50.) After reviewing the parties' submissions, I will consider the SAC filed March 9, 2018, (Doc. 48), as the operative complaint in the instant action. Further, Defendants' letter-motion for leave to file a motion to strike the SAC is GRANTED. The parties are directed to submit a joint letter setting forth a briefing schedule for the motion to strike on or before June 26, 2018.

SO ORDERED.

Dated: June 19, 2018
New York, New York

Vernon S. Broderick
United States District Judge