ROY DEN HOLLANDER
Attorney at Law

545 East 14th Street, 10D
New York, N.Y. 10009

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

February 3, 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 letter for a pre-motion conference

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 January 31, 2017, letter requesting a pre-motion conference for a motion to dismiss.

First, can't these defense attorneys get over their addiction to *ad hominem* attacks and invented accusatory dissemblings? I previously worked as an associate for a defense firm, Cravath, Swaine & Moore, and they never engaged in such prevaricating and dissembling garbage as Francoeur. For example, Francoeur writes or infers:

> [Plaintiff is] "a serial litigant," [well so is the ACLU];
> "Rule 11" [sanctions were threatened against Plaintiff by the Second Circuit, what does that have to do with this case?];
> [Plaintiff's] "attempts to establish a 'men's rights' course," [actually a program of eight courses created by various professors that was approved by a university until the Pravda Correct press demonized every one involved];
> "Judge Peter Moulton refused to sign [Plaintiff's] order to show cause," [but Judge Moulton did rule that the motion could be brought by noticed, and it was];
> [Plaintiff] "violat[ed] a court order," [Plaintiff, semi-retired, could not afford the printing costs for 400 pages of irrelevant documents filed by Francoeur's clients];
> [Plaintiff is] "seeking to relitigate . . . rejected fraud allegations," [the fraud allegations in this case are different, as is the fraud that Francoeur is trying to perpetrate with his pre-motion letter];
> [Plaintiff] "purposely omitted the two exhibits," [see below for exposure of this Francoeur fraud];

[Plaintiff is engaged in] "harassing litigation," [Plaintiff has a First Amendment right to go to court against those who violate his rights]; and
[He is a] "vexatious plaintiff," [typical modern-day name calling].

Oh well, I'm not going to open a Twitter account to expose Francoeur's falsehoods, prevarications and dissemblings. I'll just ignore his calumny until my opposition to his motion to dismiss.

Second, can't these defense attorneys refrain from cheating by violating the spirit of a court's rules? Here Francoeur refers to two exhibits: "the screenshot of Plaintiff's publicly accessible website as visited by Mr. Schafer on December 30, 2014 (Ex. 1) and the screenshot of the Google-cache version of how the website appeared on January 3, 2015." Exhibits are not permitted in a pre-motion conference letter, but Francoeur is trying to create a fraudulent image in the Court's mind based solely on his dissembling description of the two documents. It's the perfect dissemblance because the Court cannot view the documents itself to realize Francoeur's trick.

Here's the deceit in this trick by Francoeur. The Complaint at ¶ 8 alleges that once the defendants broke into the iCloud "they stripped the access codes thereby making it viewable to them and the public at any time." Without the access codes, the website became public, so of course the defendants were then able to obtain a screenshot and a Google-cache version. In that sense, Francoeur actually got a fact right, since it admits his clients' hacking—they hacked in and then stripped the codes to make the iCloud public. Without the two documents, however, the Court is not able to see through Francoeur's subterfuge.

As far as the facts go, Francoeur is clearly trying to create an alternate reality to support his disingenuous arguments. He never refers to all the materials that the defendants stole from the iCloud—actually, they probably downloaded the entire site, but their law firm refuses to say. He only refers to one, calling it a "document about" the N.Y. Supreme Court case. The prevarication here is that the document was an attorney work product—big difference.

Finally to the merits.

Collateral estoppel requires that "'(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits.'" *Ball v. A.O. Smith Corp.*, 451 F.3d 66, 69 (2d Cir. 2006)(quoting *Purdy v. Zeldes*, 337 F.3d 253, 258 & n.5 (2d Cir. 2003)); *accord Uzdavines v. Weeks Marine, Inc.*, 418 F.3d 138, 146 (2d Cir. 2005); *Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 288-89 (2d Cir. 2002).

The Supreme Court has held that for collateral estoppel to apply the "question expressly and definitely presented in this suit is the same as that definitely and actually litigated and adjudged" previously. *Montana v. United States*, 440 U.S. 147, 157 (1979)(quoting *United States v. Moser*, 266 U.S. 236, 242 (1924)). Similarity of issues is not enough—the issue in the current case must be the precise and identical issue that was decided in the prior action. *Fund*

for Animals v. Lujan, 962 F.2d 1391, 1399 (9th Cir. 1992). Collateral estoppel applies only to issues directly litigated—"not what might have been thus litigated and determined." *United States v. International Bldg. Co.*, 345 U.S. 502, 505 (1953)(quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876)).

The Racketeer Influenced and Corrupt Organizations Act, trespass to chattel, injurious falsehood, and violation of attorney work product were never even raised in the N.Y. Supreme Court in regards to the defendants' hacking of plaintiff's iCloud. As for the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030(a)(2)(C), it was mentioned once in the papers and never argued during the short back and forth in front of the Justice over the plaintiff's motion.

Thank you for your time.

Dated: February 3, 2017
New York, New York

Respectfully,
s/ Roy Den Hollander

Roy Den Hollander, Esq.
Plaintiff and Attorney
545 East 14th Street, 10D
New York, N.Y. 10009
(917) 687-0652
rdenhollander97@gsb.columbia.edu