UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Roy Den Hollander,

Docket No. 16-cv-9800 (VSB) (ECF)

Plaintiff,

SECOND AMENDED COMPLAINT

-against-

Katherine M. Bolger, and
Matthew L. Schafer,

Jury Trial Requested

Defendants.

----------x

Plaintiff Roy Den Hollander ("Den Hollander"), an attorney admitted to this Court and representing himself, alleges for his Second Amended Complaint ('SAC") herein as follows:

INTRODUCTION

1. This case arises from the actions of attorneys Katherine M. Bolger ("Bolger") and Matthew L. Schafer ("Schafer") that constitute the intentional deprivation of and interference with Den Hollander's rights under the Computer Fraud and Abuse Act of 1986, 18 U.S.C. §§ 1030(a)(2)(C), 1030(e)(11), 1030(g) and the Copyright Act of 1976, 17 U.S.C. §§ 106(1) & (3), 501(a).

2. On or about September 2012, Den Hollander hired a computer consultant to set up a private remote-server with the URL (Internet address) of "MensRightsLaw.net." (Ex. A, Den Hollander Affirmation ¶¶ 2, 5-8, 10, 13). The host was "Enamestation," which has since changed its name to "Domains Priced Right." The host computer was and is located in Scottsdale, Arizona. Since the inception of the Men's Rights Law remote-server, electronic communications were sent to it and received from it over the Internet and mainly at the

computers of The Association of the Bar of the City of New York and Den Hollander's home computer in Stuyvesant Town, New York, N.Y.

3. Den Hollander subsequently used the private Men's Rights Law remote-server as an iCloud to store materials from his law practice, business consulting (Ex. B, Doing Business as Certificate), and personal data, which included attorney work product documents, attorney-client privileged communications, financial information, security codes, writings, ideas, contacts, photos, music, videos, emails, etc.

4. In 2012, professors and academics in America, Australia, Canada, Netherlands, Sweden and the United Kingdom had established a study group, which included a representative of the University of South Australia, to create and lecture in the first ever male studies graduate program to be offered anywhere in the world. It would have been analogous to the first women studies program offered at Cornell University in 1969.

5. The aim of the eight courses in the male studies program was to equip allied health, human service, education and industry professionals with knowledge and skills to work and to engage more effectively with males, and to improve health, psychological, educational and social outcomes for males.

6. Professor Miles Groth of Wagner College in Staten Island approached Den Hollander to create and teach a section in one of the program's courses on "Males and the Law." (Ex. C, Groth email, May 14, 2012). Den Hollander created the section based on an historical analysis of the laws in America and the United Kingdom from the Industrial Revolution to the present on how those laws discriminated against men and women. Den Hollander would have been paid for teaching the course.

7. After a year and a half of work and on the eve of registration for the courses, a

reporter for the Rupert Murdoch owned Internet and print Australian newspaper The Advertiser-Sunday Mail Messenger published a series of articles disparaging the creators and lecturers as "misogynists," "anti-women," hateful and "prejudice against women," "anti-feminists," "pseudoscientific fraudsters," "Hannibal Lecter" types, linked to "extreme men's rights organisations," and "ring-ins" (which means gangsters). The Advertiser[1] articles reached over seven million readers around the world. The University immediately canceled six of the courses including the one in which Den Hollander was to teach a section.

8. On March 24, 2014, Den Hollander filed suit in the New York County Supreme Court, *Hollander v. Shepherd, The Advertiser, et al.*, 152656/2014 (hereafter the "Murdoch Case"), against the Murdoch owned newspaper, its reporter and another newspaper and its reporter, which also accused the lecturers of being hardline anti-feminist extremists. The case alleged all four defendants liable for injurious falsehoods and tortious interference with a prospective economic advantage of Den Hollander's law practice and business consultancy. The Murdoch reporter was also alleged to have committed libel against Den Hollander. Bolger and Schafer represented all the defendants.

9. The initial issue in the Murdoch Case was whether the New York Supreme Court had personal jurisdiction over the defendants. Den Hollander made a standing motion for a trial on personal jurisdiction. Bolger's opposition to that motion included as an exhibit a document Bolger affirmed to be a "Media Release" (Def. First Mem. Ex. K, Bolger Affirmation ¶ 2) that had been duplicated from Den Hollander's remote-server, MensRightsLaw.net ("iCloud") nine months after the case had started. According to Bolger's attorney, Joseph Francoeur, she "used the defined term 'Media Release' in subsequent citations to the document[]." (Def. First Mem.

[1] Murdoch's News Corp, headquartered in New York City, is the sole owner of News Corp Australia that owns the company which operates The Advertiser.

at 6). So Bolger's short hand references to "Release," according to her own attorney, meant "Media Release."

10. "A press release, news release, media release, press statement or video release is a written or recorded communication directed at members of the news media for the purpose of announcing something ostensibly newsworthy. . . . [P]ress releases can be anywhere from 300 to 800 words." *Wikipedia*. Not the 6,000 words of the "Responses to Media" document.

11. On January 23, 2015, Den Hollander filed a Notice of Motion for Withdrawal of the "Media Release" document, which had been inappropriately obtained because the iCloud had been set up with access codes to prevent the public from viewing it (Ex. D, Computer Consultant Aff.). The Notice of Motion demanded "that attorney Bolger and Defendants turn over to Plaintiff all paper and digital copies of Exhibit 1 ["Responses to Media," which was the title of the document,] and any other material obtained in the same manner that they are in possession or control of . . . ." (Def. First Mem. Ex. P at 1). Neither Bolger nor the defendants in the Murdoch case agreed or refused to do so. The New York Supreme Court denied the motion. (Def. First Mem. Ex. V).

12. Since the iCloud had access codes, on information and belief, Bolger and Schafer or one of their agents broke into the iCloud and stripped the access codes in order to obtain the "Responses to Media" document and to make a screenshot. Proof of such, however, requires discovery since the information is peculiarly within Bolger and Schafer's knowledge, was recorded by their Internet Service Provider ("ISP"), and would be indicated in other materials they duplicated in digital, print or handwritten form from the iCloud.[2]

[2] The First Amended Complaint also alleged illegally hacking into Den Hollander's home computer, but the papers submitted thus far and the two hour oral argument have narrowed the issue to hacking into his iCloud. Therefore, the allegation of breaking into his home computer is withdrawn.

13. Bolger and Schafer's ISP tracks everything they do online because every click creates a browsing history that in the regular course of ISP business is sold to marketers. Their ISP logs will show when Bolger and Schafer first became aware of Den Hollander's iCloud and attempted to access it. The logs will show how many times they contacted it, when and for how long. If their initial contact was before they stated in their affidavits, that infers they were unable to access it; otherwise, they would have duplicate materials then. If their initial contact was on the date they swore to, the records pertaining to that contact will indicate whether they were able to access the iCloud by the time they spent viewing it. If they were unable to access the iCloud when they first learned about, that means they or one of their agents subsequently broke into it; otherwise, how would they have gained access?

14. The plausibility standard "does not prevent a plaintiff from pleading facts alleged upon information and belief where the facts are peculiarly within the possession and control of the defendant . . . or where the belief is based on factual information that makes the inference of culpability plausible," *Arista Records LLC v. Doe*, 604 F.3d 110, 120 (2d Cir. 2010) (internal citations omitted), especially before any discovery has taken place, *see DiVittorio v. Equidyne Extractive Indus., Inc*., 822 F.2d 1242, 1247-1248 (2d Cir. 1987).

15. Bolger and Schafer admit to accessing Den Hollander's iCloud over a period of two weeks, December 30, 2014, to January 12, 2015. When that is coupled with the sheer volume of exhibits taken from the Internet that Bolger filed in the Murdoch Case to disparage Den Hollander as "politically incorrect" and "anti-feminist," it reveals a strategy to litigate by personal destruction in an era when careers are destroyed based on such accusations. As such, once inside the iCloud, it inferentially follows that Bolger and Schafer did what any investigating

attorney who litigates by *ad hominem* attacks would do—they duplicated more materials, including copyrighted-registered works.

16. The only available sources for specific information on what was duplicated from the iCloud before the complaint in this action was filed on December 20, 2016, are the ISP used to access the iCloud, the files of the law firm where the defendants were working at the time (Levine Sullivan Koch & Schulz, LLP ("LSKS")), Bolger, Schafer and another associate at the LSKS.

17. Prior to bringing the current action, on or about September 29, 2016, (Ex. E, Sullivan email), Den Hollander had a telephone conversation concerning a different case with Thomas Byrne Sullivan, an associate at LSKS who at the time was working for Bolger, a partner in the firm. After discussing matters of the other case, Den Hollander raised the Murdoch case and Bolger accessing his iCloud. Den Hollander, in sum and substance, said he wanted to work out the return of all the materials duplicated from his iCloud. Mr. Sullivan, in sum and substance, said he was familiar with that aspect of the case but declined to say what had been duplicated.

18. The New York Court of Appeals denied Den Hollander leave to appeal the Murdoch Case on November 22, 2016. (Ex. F). Den Hollander filed this action on December 20, 2016.

19. Bolger and Schafer not only duplicated the "Responses to Media," which is not registered with the copyright office, but a section of Den Hollander's iCloud that contains identical or substantially similar copyrighted-registered expressions that they call a screenshot (Def. Mem. Ex. T, Schafer Aff. Ex. 1), which was duplicated without Den Hollander's authorization.

20. Accordingly, Den Hollander brings this action against Bolger and Schafer for (a) violating the Computer Fraud and Abuse Act of 1986 ("CFAA"), 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing without his authorization a computer connected to the Internet and used in his law practice and consulting business, obtaining information there from, and causing loss to his law and consulting business; and (b) infringing Den Hollander's copyrighted-registered work embodied in the screenshot under the Copyright Act of 1976, 17 U.S.C. § 501(a).

21. Den Hollander requests the following relief: (a) Bolger and Schafer to turn over to Den Hollander all paper, digital and handwritten duplicates of the "Responses to Media," screenshot and any other material duplicated from Den Hollander's iCloud that they are in possession or control of; (b) Bolger and Schafer identify all the persons, including legal entities, involved in duplicating materials from Den Hollander's iCloud; (c) Bolger and Schafer be prohibited from publicizing any materials they duplicated from Den Hollander's iCloud; (d) Bolger and Schafer inform Den Hollander of all other persons whom to their knowledge have duplicates of any data from Den Hollander's iCloud; (e) Bolger and Schafer provide information on all materials duplicated from Den Hollander's iCloud that were distributed as that term is used in 17 U.S.C. § 106(3) and to whom; (f) an order awarding statutory fees under 17 U.S.C. § 504(c)(1) and fees for willful infringement under 17 U.S.C. § 504(c)(2); (g) $9,325 under the CFAA, 18 U.S. Code § 1030(g); and (g) for such other relief as this Court deems just.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction because this action rests on federal questions under the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030 *et seq*. and the Copyright Act of 1976, 17 U.S.C. § 101 *et seq*.

23. This Court has personal jurisdiction over each defendant under Fed. R. Civ. P. 4(k)(1)(A) because each defendant is subject to personal jurisdiction in the New York State courts and has minimum contacts with the State; or under Fed. R. Civ. P. 4(k)(2), because each defendant has minimum contacts with the United States;

24. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because all of the defendants are located or reside in this district and because a substantial part of the events that gave rise to the claims against each defendant occurred and are occurring in this forum.

THE PARTIES

25. Roy Den Hollander is a former associate at Cravath, Swaine & Moore, a graduate with honors from Columbia University's Graduate School of Business and a member of the honor societies Order of the Coif and Beta Gamma Sigma.

26. Previously, Den Hollander was

a. a volunteer on the Robert F. Kennedy Presidential Campaign at Colorado University;

b. a card-carrying member and active in Students for a Democratic Society in Boston;

c. a volunteer in the Black Panthers' used clothing drive in Boston;

d. Chairman of the Riverside Democratic Club's McGovern and Bella Abzug Campaigns on the Upper Westside—McGovern won the area 4 to 1;

e. New Democratic Coalition delegate for the Riverside Democratic Club;

f. Union Delegate for Local 1199 at Columbia University where he led a successful strike against Columbia for better wages;

g. Co-founder of the Impeach Nixon Campaign at Columbia University;

h. a legislative aide to Harlem State Senator Sidney von Luther;

i. a volunteer assistant to former Congressman Allard K. Lowenstein on re-opening the Robert F. Kennedy assassination case;

j. a researcher at Channel 5 Metromedia TV News on a Medicaid fraud story, the Nassau County Republican Party's leader demanding one percent salary kickbacks from County employees, and other investigative stories reported by Gabe Pressman and Steve Bauman;

k. an undercover researcher for Joe Conason when he wrote the Running Scare Column in the Village Voice. Den Hollander provide information on the corrupt campaign and subsequent election of a New York County Surrogate Judge who was backed by Roy Cohn, the Gambino and Mangano crime families;

l. writer and political producer for Channel 7 Eyewitness News; and

m. an intern for Chief Judge Jack B. Weinstein for a semester while in law school.

27. Currently Den Hollander is a semi-retired attorney and business consultant residing in Manhattan who generally brings cases advocating for the equal treatment of men.

28. At the time of the actions alleged in this SAC, Bolger was a partner in the firm of LSKS and Schafer was an associate in the same law firm working with Bolger on the Murdoch Case.

29. At the time of the alleged actions, Bolger was not a fresh-minted law school graduate. As her attorney wrote "Ms. Bolger is an accomplished litigator and a partner at LSKS, in addition to an adjunct faculty member at Fordham Law. She has been recognized by Chambers & Partners as a leading media lawyer nationwide and by Best Lawyers as one of the preeminent media lawyers in New York." (Def. First Mem. at 4). "LSKS is widely recognized

as one of the best First Amendment law firms in the country, and primarily represents journalists and news organizations in defending lawsuits brought based on their news reporting." (Def. First Mem. at 4).

FACTUAL ALLEGATIONS

30. In the law of evidence, the process of reasoning by which facts sought to be established are deduced as a logical consequence from other facts are called inferences. *Black's Law Dictionary*. Such are deductions or conclusions with which reason and common sense lead the trier of fact to draw. *Id.*

I. The Murdoch Case in the New York Supreme Court, No. 152656/2014

31. Den Hollander filed the complaint on March 24, 2014. Den Hollander consented to two extensions of time for Bolger to respond.

32. On August 29, 2014, Bolger submitted a motion to dismiss for lack of personal jurisdiction, failure to state a claim and a defense based on documentary evidence. Bolger's motion contained 424 pages of exhibits of which some were not searchable as required by the N.Y. Supreme Court. Her exhibits included 63 pages of social media with viewer comments and commercial advertisements plus 290 pages from unrelated cases, including those of Den Hollander's men's rights advocacy.

33. Den Hollander filed an amended complaint on October 7, 2014. On October 27, 2014, Bolger submitted a second motion to dismiss on the same grounds with exhibits now totaling 496 pages of which 98 pages were non-searchable. These exhibits included 86 pages of social media with viewer comments and commercial advertisements plus 277 pages from unrelated cases, including those of Den Hollander's men's rights advocacy.

34. Throughout her second motion to dismiss, Bolger employed the modern-day mud-slinging tactic of repeatedly—at least 15 times—calling Den Hollander "anti-feminist" and depicting him as such without even bothering to define the term. (*Hollander v. Shepherd*, 152656/2014, Bolger Second Mem. Law at 1, 2, 3, 20, 21, 25, Dkt. 44). Bolger actually said that "quibbling over what 'feminist' means is . . . irrelevant." (*Id.* at 21 n.11). Den Hollander, however, has always relied, as evinced in media interviews, on the following definition, or a similar one, for "feminist": according to Women Against Feminism, the term has come to mean "vilification of men, support for female privilege, and a demeaning view of women as victims rather than free agents."

35. So why did Bolger use an undefined term? Because in this day and age it carries the imputation that the man labeled as "anti-feminist" is "anti-female," evil, out to enslave women and should have his reputation and thereby his career destroyed. If he commits suicide—so much the better, and there are plenty of those stories that have never been reported. The term

"anti-feminist" is used to condemn in order to distract from the merits and to intimidate any man it is leveled against into surrendering his rights.

36. Simply put, Bolger's litigation strategy followed the admonition of Vladimir Ilyich Lenin, "We must vilify and incite hatred against those with which we disagree."

37. Even if Den Hollander is a miscreant as Bolger essentially alleged in the Murdoch Case, the 1927 U.S. Supreme Court decision in *Buck v. Bell*, 274 U.S. 200, has been thoroughly discredited in the courts. That decision was consistent with the belief system of "negative eugenics," which was a movement to improve the human race by eliminating "defectives." So if in the eyes of Bolger's philosophy, Den Hollander is a defective, due process still entitles him and his rights to protection under the law.

38. In addition to disparaging Den Hollander as a defective, Bolger relied on a doctored article for an exhibit in the Murdoch case that eliminated a material section of the original article which was in issue.

39. Bolger affirmed under penalty of perjury—three times—that the article by the second reporter defendant was a "true and correct copy" when in fact it was doctored; that is, a forgery that had deleted a crucial part of the original article. The part deleted was material to two of the causes of action on the issue of common-law malice. (Ex. G, the original article, Ex. H, the doctored article submitted by Bolger three times). (*Hollander v. Shepherd*, 152656/2014, Bolger's August 29, 2014, Affirmation Ex. 5A, Dkt. 9; Bolger's October 27, 2014, Affirmation Ex. 5A, Dkt. 46; Bolger's January 12, 2015, Affirmation in Opposition to Plaintiff's Motion for an Immediate Trial Ex. 5A, Dkt. 71).

40. The doctored exhibits submitted by Bolger deleted a chart prominently displayed as part of the original article that was published online. The chart was evidence of common-law

malice by McNeilage when she wrote her article. Common-law malice was a material element of injurious falsehoods and tortious interference in the Murdoch case. By deleting the chart, Bolger eliminated evidence of common-law malice, which assisted her in arguing that the only cause of action was libel. The forgeries apparently aided the lower court into ignoring personal jurisdiction under CPLR 302(a)(3)(i) & (ii) for the injurious falsehoods and tortious interference causes of action.

41. On November 14, 2014, oral argument took place before Justice Milton A. Tingling, Jr. on Bolger's second motion to dismiss. Bolger, argued that her Murdoch and other clients did not have sufficient contacts with New York State for the Court to have personal jurisdiction. Justice Tingling responded that is a "fact question." Den Hollander requested that he be allowed to make a standing motion for a trial on personal jurisdiction, which Justice Tingling allowed and instructed both sides to submit papers.

42. On January 12, 2015, Bolger submitted her papers in opposition to a trial on personal jurisdiction that included the "Responses to Media" document, which she swore was a "Media Release," and Schafer's screenshot, both of which, according to Bolger and Schafer, were taken from Den Hollander's iCloud at the URL "MensRightsLaw.net." (Def. First Mem. Ex. S, Bolger Aff. ¶ 5, and Ex. T, Schafer Aff. ¶ 3).

43. While Bolger and Schafer did not physically grab both documents and run away with them, their duplication is still considered theft. Under N.Y. Penal Code § 156.30, the "theft of data through unauthorized duplication is a crime peculiar to the electronic medium. Unlike a traditional larceny—the wrongful taking and withholding of property—valued and valuable data can be taken quickly by electronic duplication without depriving the rightful owner of the data." William C. Donnino, McKinney Practice Commentary under § 156.00.

44. Den Hollander submitted a reply on January 20, 2015, to the personal jurisdiction issue. It included documents showing that Bloomberg L.P. listed the Chairman for The Advertiser as having a corporate address of 1211 Avenue of the Americas, New York, N.Y.; the sole owner of The Advertiser was identified as part of News Corp, which was headquartered in New York City; The Advertiser had a partnership with Digital First Media of New York City to provide advertising and marketing solutions for its websites; The Advertiser solicited New York subscribers via their websites, sold their online newspapers and other products and services to New Yorkers; many of 20,000 members of the Australian Community of New York subscribed to The Advertiser; and research for The Advertiser articles included a number of contacts with two New Yorkers who were among the creators and lecturers for the males studies program.

45. Den Hollander also requested an Order to Show Cause in the State Court, which was denied by Justice Peter H. Moulton, but the Justice granted permission for Den Hollander to make a motion by notice, which he did. (Def. First Mem. Ex. O). Justice Moulton had succeeded Justice Tingling on the case.

46. On January 23, 2015, Den Hollander made a motion by notice to withdraw the "Responses to Media" document alleging that Bolger or her clients broke into his iCloud, which was kept private by access codes, or his home computer, which was connected to the Internet but had a firewall, and duplicated the document and other materials without Den Hollander's authorization. Bolger admits that she and Schafer "browsed" the "website [iCloud] exactly as they would have browsed any website." (Def. First Mem. Ex. S, Bolger Aff. ¶ 3; Ex. T, Schafer Aff. ¶ 3). The obvious questions are what were they browsing for, did they find it and did they duplicate it other than the "Responses to Media" and the screenshot—only they know, but they refuse to say.

47. In effect, their refusal to admit or deny that they duplicated other materials denies Den Hollander knowledge of what property of his was taken by duplication without his consent and is being kept secret by Bolger and Schafer in order to win the dismissal of certain issues in this case as not meeting the plausibility standard on a Rule 12(b)(6) motion.

48. In the Murdoch Case, on February 3, 2015, Bolger submitted her opposition to the motion to withdraw the "Responses to Media" document. She relied almost exclusively in her Preliminary Statement on sections from the purloined "Responses to Media" to continue her litigation tactic of personal disparagement. (Def. First Mem. Ex. R at 1). She also relied almost exclusively on the document in oral argument before the acting Justice Jennifer G. Schecter on May 27, 2015, to whom the case had been again transferred. Bolger used the document to disparage Den Hollander for privately exercising his freedom of speech in a manner unacceptable to Bolger's belief system of "political correctness/feminism."

49. Others would disagree with such a tactic to win a case. "Recognizing the occasional tyrannies of governing majorities, [the Founding Fathers] amended the Constitution so that free speech . . . should be guaranteed." *Whitney v. Cal*., 274 U.S. 357, 376 (1927) (Brandies, J. concurring), *overruled in part by Brandenburg v. Ohio*, 395 U.S. 444 (1969).

50. Justice Schecter, the third justice to be assigned the case, denied Den Hollander's motion in a two sentence Order: "Denied. There is no basis for granting the relief sought. This constitutes the Decision and Order of the Court." (Def. First Mem. Ex. V).

51. Justice Schecter then dismissed the entire action for lack of personal jurisdiction stating the following in her Decision, Order and Judgment (Def. First Mem. Ex. W, January 11, 2015):

"Defendants move to dismiss for lack of personal jurisdiction." (Order at 2).

> "There is no jurisdiction over Defendants in New York. The contacts here are not as significant as the few cases finding long-arm jurisdiction when defamation was asserted." (Order at 6).
>
> "Courts moreover, have repeatedly held that placement of defamatory content on the internet and making it generally accessible to members of the public does not constitute transaction of business in New York even when it is likely the material will be read by New Yorkers . . . ." (Order at 8).

52. Den Hollander appealed the Order to the Appellate Division First Department, but the Appellate Division on a motion from Bolger required Den Hollander to print not only the 496 pages of exhibits submitted by Bolger in the Supreme Court for the appendix, but an additional 131 pages for a total of 627 pages—all of which he could not afford.

53. Bolger filed her own appendix of 627 pages, but her brief in the Appellate Division only cited to 226 pages of her appendix. Of those 226 pages, 117 were already included in Den Hollander's appendix. Further, if Bolger's citations to a website in which she included 53 pages of mainly viewer comments are reduced to the five pages of the website proper that supported her assertion, then she only cited to 178 pages of which 117 were already included in Den Hollander's appendix. In effect, Bolger only needed to file an appendix of 61 pages.

54. So despite *E. P. Reynolds, Inc., v. Nager Electric Company, Inc.,* 17 N.Y.2d 51, 55 (1966) (appendix system was adopted in New York after extended study indicated the need to reduce the cost of printing records on appeal), the First Department dismissed Den Hollander's appeal and the Court of Appeals denied his leave to appeal.

II. Den Hollander's iCloud was private prior to Bolger, Schafer or their agents breaking into it.

35. As inferred from the social media and Internet documents that Bolger submitted

as exhibits in her two motions to dismiss in the Murdoch Case, she, Schafer or one of their agents were surfing the Internet for any data that could be used to disparage Den Hollander in that case.

55. Exhibits 9, 10, 13 of Bolger's first affirmation for her first motion to dismiss has print or download dates of July 14, 2014, which infers she, Schafer or one of their agents began searching the Internet for information on Den Hollander on or before that date. (*Hollander v. Shepherd*, 152656/2014, Bolger's Affirmation and Exhibits, August 29, 2014, Dkt. 9). When exactly they began their searches is unknown to Den Hollander.

56. Exhibits 20-24 cited in Bolger's second affirmation for her second motion to dismiss in the Murdoch case (Bolger's Exhibits, October 27, 2014, Dkt. 46) have print or download dates of October 24, 2014.

57. Bolger asserts she found the "Responses to Media" document by accessing Den Hollander's iCloud on December 30, 2014, and on the same date Schafer says he "first located the website http://www.mensrightslaw.net on December 30, 2014 when [he] conducted several Google searches related to [the Murdoch Case]" where he found the "Responses to Media" document. (Def. First Mem. Ex. S, Bolger Aff. ¶¶ 2, 3, 5; Def. First Mem. Ex. T, Schafer Aff. ¶¶ 2, 3).

58. Since Bolger, Schafer or one of their agents was searching the Internet from at least July 14, 2014, for information on Den Hollander, why did it take them over five months to find the "Responses to Media" document if the iCloud was open to the public all that time?

59. The logical inference is that <u>if</u> Den Hollander's iCloud was "open to the public" during that period of time, Bolger would have included the "Responses to Media" and screenshot in her first set of exhibits on August 29, 2014, or her second set of exhibits on October 27, 2014,

or in her reply on November 13, 2014, or in oral argument before Justice Tingling on November 24, 2014—but she did not.

60. On information and belief, Bolger, Schafer or one of their agents came across Den Hollander's iCloud early on but saw that it was protected by access codes—they could not gain access. For example, a simple search at that time of "Roy Den Hollander Columbia Business School" brought up the Columbia Business School Alumni Club of New York that mentions Den Hollander's connection with his iCloud's URL (mensrightslaw.net) that stored the "Responses to Media" and the content of the screenshot. But that connection did not make Den Hollander's iCloud public because when the link was clicked, a notice came up: "page not found." What it did, however, was tell Bolger and Schafer that there was a URL, which they most assuredly clicked on and Googled but found the iCloud was code protected.

61. Bolger even cites to the Columbia Business School Alumni Club of New York website at http://www.cbsacny.org/links.html as having a link to Den Hollander's iCloud. (Def. First Mem. Ex. R, Bolger Mem. Opp. To Motion to Withdraw "Responses to Media" at 5). Bolger admits finding that link, but does not say what happened when she, Schafer or one of their agents clicked on the link, and, most assuredly, they did click on it.

62. Nor does Bolger or Schafer say whether they printed or downloaded any documents from the Columbia Alumni Club site. If they had, such documents would show that by clicking on the Alumni Club link that Bolger cites would have brought up the notice "page not found" because the iCloud was not available to the public. Bolger and Schafer may have even printed or downloaded the "page not found" notice for future reference in their research, but only they know that. Such print or download would indicate the date and source.

63. If their attempts to access the iCloud through the Columbia Alumni Club site were before the date of December 30, 2014, stated in their sworn affidavits, and they have no documents from the iCloud at that earlier date, then it logically infers they were unsuccessful because the iCloud was private when they tried to access it through the Columbia Alumni Club link.

64. At that earlier date, before December 30, 2014, they knew however of an iCloud that Den Hollander intentionally kept private, so logically, it must contain confidential and privileged information that may be useful in employing their litigation tactic of demonizing him to Justice Schecter in the Murdoch case.

65. Even if Bolger or Schafer did not initially find the iCloud URL via Columbia, given their level of legal acuity as stated by their attorney Joseph Francoeur (Def. First Mem. at 4) and the resources of one of their clients, a Murdoch company, the inference is they would have found it through some other search.

66. Additionally, if Den Hollander's iCloud was public, and he knew, which he did, that Bolger or others from her firm or clients were looking for anything to support Bolger's strategy of disparaging Den Hollander in the Murdoch Case, why would Den Hollander keep it public? He won't.

67. On information and belief, leading up to the argument before Justice Tingling on November 24, 2014, Bolger probably figured she would win on personal jurisdiction. But that changed at oral argument when Justice Tingling did two things:

a. In response to Bolger's lead-off argument that the State Court did not have personal jurisdiction, the Justice said that Bolger was arguing a "fact issue." That indicated there would at least be discovery on personal jurisdiction.

b. Then Justice Tingling permitted Den Hollander to make a standing motion requesting an "immediate trial" under N.Y. CPLR 3211(c) and 2218 on the issue of personal jurisdiction after Den Hollander argued that Bolger and the defendants would continue their misrepresentations on contacts with New York through any discovery methods, so a trial in which the Justice could observe the defendants' demeanor and responses to cross examination was necessary.

68. Allowing a standing motion to be made is within the discretion of a New York Justice, *see Matter of Shanty Hollow Corp. v. Poladian*, 23 A.D.2d 132 (3rd Dept. 1965), *affd.* 17 N.Y.2d 536 (1966). Justice Tingling could just as well have denied Den Hollander's request but did not—the tide in the battle began to turn in Den Hollander's favor at that oral argument.

69. On information and belief, Bolger and Schafer concluded that Den Hollander likely kept private personal, legal and business data on his iCloud; otherwise, why protect it with access codes. So she herself, or she arranged for Schafer or one of their agents to break into Den Hollander's iCloud to see what they could find that would support Bolger's allegations and campaign of obloquy against Den Hollander to prevent a trial on personal jurisdiction.

70. Since the "Responses to Media" and screenshot only existed on Den Hollander's home computer and iCloud and Bolger and Schafer admit accessing the iCloud, on information and belief, they targeted the URL and broke into the iCloud by using "brute force cracking." "Brute force cracking" is a trial and error method used by application programs to decode encrypted data such as passwords or Data Encryption Standard keys through an exhaustive repetitive effort. Basically, a computer runs innumerable possible passwords at a website until the right one is found.

71. The European Union has a law that requires recording the Internet addresses ("IP addresses") of every computer that accesses or tries to access a website, which is what the iCloud is. These are called access logs—the United States did not have such a law in 2014 and 2015, and Den Hollander's host also did not have such logs.

72. Since Bolger and Schafer knew the URL for Den Hollander's iCloud, they could easily find which company was the host.

73. Den Hollander's host, Enamestation, could not detect the use of "brute force cracking," so that method was perfect for breaking in without leaving a computer trace. The only trace was Bolger filing the "Responses to Media" document in the Murdoch case and Schafer's screenshot.

74. Once inside, Bolger, Schafer or one of their agents, on information and belief, stripped the access codes, thereby making the iCloud public. That would allow Bolger and her colleagues to print or download any of the data and claim it "was open to the public" without, of course, saying that they were responsible for making the iCloud public.

75. Stripping the access codes on December 30, 2014, or earlier would have allowed Google's "bots"—a software program that crawls over the Internet—to take a picture and store it in a "cache," which Schafer includes in his affidavit as Exhibit 2. (Def. First Mem. Ex. T, Schafer Aff. Ex. 2). The Google-cache has a creation date of January 3, 2015.

76. Tellingly, Bolger and Schafer did <u>not</u> obtain a Google-cache from before December 30, 2014, when they assert the iCloud was public. If the iCloud was public on that date, then there would have been Google-caches from before that date.

77. Even if there are Google-caches before that date, it does not resolve the issue as to when they first discovered the iCloud's URL and what happened then when they tried to access

it. Bolger and Schafer have been very adept in not admitting under oath when they first learned about the existence of Den Hollander's iCloud.

78. They have also avoided admitting when they started searching Google-caches to find information on Den Hollander, which they certainly were doing. For example, Bolger obtained a cache of the work "roydenhollander.com," which by her sworn statement of October 27, 2014, was "no longer operable." (*Hollander v. Shepherd*, 152656/2014, Bolger Affirmation Supporting Second Motion to Dismiss in the Murdoch Case ¶ 17 citing to Ex. 16, Dkt. 45 & 46)). The logical inference is that they were also searching for Google-cache's concerning the iCloud in issue in this case.

79. The only Google-cache, however, they present is one made on January 3, 2015—five days after they claim to have first accessed Den Hollander's iCloud. At the very top of the first page of the Google-cache it states, "It is a snapshot of the page as it appeared on Jan 3, 2015 17:30:43 GMT." (Def. First Mem. Ex. T, Schafer Aff. Ex. 2). So on January 3, 2015, the iCloud was public because Google-caches only take snapshots of sites viewable by the public, but Bolger and Schafer admit accessing the iCloud on December 30, 2014 (Def. First Mem. at 14, Ex. S, Bolger Aff. ¶¶ 2, 3, Ex. T, Schafer Aff. ¶ 2).

80. Bolger and Schafer accessed the iCloud before any Google-cache was recorded, which logically infers it was private, so the only way in was by hacking.

81. Bolger submitted the "Responses to Media" by wire to the electronic filing system of the N.Y. Supreme Court as Exhibit 1 in Bolger's affirmation of January 12, 2015. (Def. First Mem. Ex. K., Bolger Affirmation ¶ 2, Ex. 1).

82. Den Hollander first realized his iCloud had been invaded when he saw on January 12, 2015, Bolger's filing that had been sent to him electronically by the N.Y. Supreme Court.

83. Bolger made the "Responses to Media" public by communicating it over the Internet on three separate occasions to the N.Y. Supreme Court website. (*Hollander v. Shepherd*, 152656/2014, Bolger Exhibits: January 12, 2015, Dkt. 71, February 3, 2015, Dkt. 106 and May 27, 2015, Dkt. 114).

84. New York Rules of Professional Conduct 1.4(a)(1)(iii) requires attorneys to inform their clients of "material developments in the matter . . . ." and Rule 1.4(a)(3) requires an attorney to "keep the client reasonably informed about the status of the matter."

85. Bolger's reliance on the "Responses to Media" in her Memorandum of Law in Opposition to an Immediate Trial on Personal Jurisdiction (*Hollander v. Shepherd*, 152656/2014, Dkt. 69), where she cited to the document nine times in her 19 pages of arguments, logically infers that she communicated to her clients how she obtained the document along with the screenshot and provided her clients with duplicates of both. Such an unauthorized communication of the copyrighted-registered material embodied in the screenshot distinguishes this case from the case of *Hollander v. Steinberg*, 419 Fed. App'x 44 (2d Cir. 2011) that only dealt with the submission of copyrighted-registered works to a court. Additionally, the *Steinberg* case was decided by Summary Order, which in the Second circuit does not have precedential value. Local Rule 32.1.1, *Disposition by Summary Order*. They are limited to that case and that case alone.

86. Of course, the overriding problem in all of this is that only Bolger, Schafer or their agents know what registered-copyrighted works they reproduced and distributed. If they reproduced and distributed registered materials that were not used in the Murdoch Case, then there is not even the glimmer of fair use that was found in the Summary Order *Steinberg* case.

87. The attached affidavit of the computer consultant who Den Hollander hired to set up the Men's Rights Law site with the URL "Mensrighteslaw.net," which is referred to as Den Hollander's iCloud, shows that access codes were put on the site from its initiation that keep the iCloud private and prevented the public from viewing it. (Ex. D, and no Mr. Francoeur he is not Russian but French, James-Michel Marqua, whose business takes him around the world). To the computer consultant's knowledge nobody but Den Hollander and he had those access codes.

88. The attached affirmation of attorney Den Hollander states that he hired the computer consultant to set up the Men's Rights Law site, iCloud, and instructed the consultant to keep the site private with access codes that prevented the public from viewing it, which the consultant did. (Ex. A ¶¶ 2, 3, 5-10). From the inception of the iCloud until January 12, 2015, whenever Den Hollander accessed it, a username and password was required. On January 12, 2015, Bolger's filings in the Murdoch case showed she had accessed the site. New codes were immediately instituted that same day. The site continues to be private and not viewable to the public.

89. On a Rule 12(b)(6) motion to dismiss, inferences are drawn in favor of the complaint not the defendants' motion to dismiss. *Littlejohn v. City of N.Y.*, 795 F.3d 297, 306, 306 (2d Cir. 2015). So in the situation as here, the inference based on Den Hollander and his computer consultant's sworn statements is that the iCloud was private when Bolger, Schafer or one of their agents first accessed it.

90. Bolger and Schafer's attorney Francoeur, however, assert that because the Bolger and Schafer affidavits were included as exhibits in the First Amended Complaint that means every assertion in them are presumed true. If allegations in a complaint are assumed false whenever they contradict a statement by defendants that is included in a complaint for the

purpose of providing the necessary notice under Rule 8(a)(2) and meeting the plausibility standard, then such would result in the dismissal of all complaints for fraud under Rule 9(b), defamation and injurious falsehood. Those causes of action require complaints to include the specific false statements that were made. If including them in a complaint makes them true under Rule 12(b)(6) or effectively contradict the complaint's allegations of wrongdoing, then it will be impossible to ever satisfy the plausibility standard in those actions.

91. Both Bolger and Schafer claim they lack skills for breaking into the iCloud (Def. First Mem. Ex. S, Bolger Aff. ¶ 7; Ex. T, Schafer Aff. ¶ 5), but the clients they represented not only have sufficient resources to engage those who do have the skills, the owner of The Advertiser, Murdock's News Corp, had one of its British papers caught for repeatedly hacking computers.

92. Both Bolger and Schafer claim they did not direct anyone to break into the iCloud, *id.*, but they omit making the same claim about their clients at the time or the investigative resources of Murdock's News Corp.

93. Additionally, after Your Honor read the "Media Release," which Den Hollander asserts is an attorney work product, the logical question is what man, not to mention lawyer, in this day and age of political correctness would ever post such a document on the Internet for public viewing—no man.

94. Lastly, exactly when Bolger, Schafer or their agents first learned of the iCloud and began trying to access it would likely be revealed by their production of all the printed documents or downloads made in their attempts and success at gaining access. Both would reveal the date, time and Internet source that can be compared to their sworn affidavits on the issue of whether the iCloud was actually public when they first came across it in their searches.

III. Den Hollander's response to the CFAA offense in order to assure the continuing existence and integrity of his iCloud and home computer data that was necessary for his law practice, business consultancy and personal life.

95. When Den Hollander saw on January 12, 2015, that the "Responses to Media" document had been made public by Bolger on the New York *WebCivil Supreme* website, he immediately set out to determine whether the confidentiality of all the computer data that he as an attorney under the N.Y. Rules of Professional Conduct 1.6(a) and 1.9(c)(2) is required to maintain had been compromised and whether the data still existed or had been corrupted.

96. Not only Den Hollander's practice of law but his business consultancy and personal life depended on the data stored in the iCloud. It was crucial to determine whether any had been deleted, corrupted or altered before continuing with his law practice, business consultancy and the relatively smooth functioning of his personal life. All three depended on the availability of accurate information on the iCloud.

97. Den Hollander's investigation in January 2015 was not undertaken so as to bring the current action, which was filed in December 2016, but to secure the data necessary for his law practice, business consultancy and personal life.

98. Den Hollander's investigation involved:

a. searching the existing filings in the Murdoch case and other cases he was involved in to determine if the "Responses to Media" document had come from the public filings in those cases, and

b. determining whether the documents publicly existed somewhere on the Internet.

c. Den Hollander was unable to find that the "Responses to Media" document was publicly available; therefore, he concluded it had come from either his iCloud or home computer.

99. Den Hollander then went through all the files and data in his iCloud and home computer to determine whether any had been deleted, modified or corrupted by comparing them to his backup disks. These actions were forensic investigations because that means to determine what information may have been deleted, corrupted or changed from a computer. *Lasco Foods, Inc. v. Hall*, 600 F.Supp.2d 1045 (E.D. Mo. 2009).

100. Since Bolger was the person who submitted the non-public "Responses to Media" document in the Murdoch Case, Den Hollander then researched the possible means by which Bolger, Schafer or one of their agents could have broken into the iCloud or his home computer, and he contacted the host of his iCloud twice (Ex. A, Den Hollander Affirmation ¶ 15).

101. After concluding that Bolger, Schafer or one of their agents likely used "brute force cracking" on his iCloud, he researched methods to prevent such in the future.

102. All this work by Den Hollander was necessary in order to resume the functioning of his law practice, business consultancy and his personal life.

IV. The "Responses to Media" document was an attorney work product.

103. Den Hollander alleges that the "Responses to Media" document was an attorney work product. The 17 pages, over 6,000 words, provided the legal and factual basis for the Murdoch Case at pp. 4-8, 11, 17 (Def. First Mem. Ex. K, Bolger Affirmation Ex. 1):

a. it included the defamatory statements made by a Murdoch reporter that were part of the libel section, *id*. at 4-7;

b. it summarized the Murdoch Case arguments on why the tenor of the articles was false, *id.* at 7;

c. it recounted the Murdoch Case argument on malice, *id.* at 8;

d. it provided a legal argument on why freedom of speech is so important in education because the lack of such resulted in the Murdoch Case—"[t]eachers 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.), *id.* at 11; and

e. it cited the elements for both the injurious falsehood and tortious interference actions brought in the Murdoch Case, *id.* at 17.

104. The "Responses to Media" document also summarized the legal and fact issues in three other men's rights cases brought by Den Hollander, including one in which he represented three other men besides himself, *id.* at pp. 12-13; provided examples of discrimination by the law based on sex from 1800 to the present, which would have been taught in the "Males and the Law" course, *id.* at pp. 14-17; and listed thoughts in the other pages for effecting a strategy by which to neutralize the influence of "political correctness" in the Murdoch Case by exposing the discrimination that men face in modern-day institutions.

105. The "Responses to Media" document was prepared during the litigation of the Murdoch Case.

106. The work product of an attorney includes material created by an attorney in his professional capacity with the use of his professional skills involving legal reasoning, legal research, analysis, conclusions, legal theory, and strategy for a case that may be reflected in memoranda expressing "mental impressions, personal beliefs, and countless other tangible and intangible ways," *Hickman v. Taylor*, 329 U.S. 495, 511 (1947).

107. New York has accepted the definition of work product set forth in *Hickman* in

determining the scope of subsection CPLR 3101(c). *Babcock v. Jackson*, 40 Misc.2d 757, 7609 (N.Y. Sup. 1963). Documents within CPLR 3101(c) include mental impressions and personal beliefs held by an attorney relating to litigation. *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159 (N.Y. Sup. Ct. 2002). Without the attorney work product protection, "[a]n attorney's thoughts, heretofore inviolate, would not be his own. *Hickman* at 393-394.

108. The content of the "Responses to Media" document was not provided to the media by Den Hollander in the Murdoch Case, but was provided to the public, and thereby the media, by Bolger.

109. Bolger used the "Responses to Media" document in what was "simply an attempt, without purported necessity or justification, to [exploit] written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties. . . . Not even the most liberal of . . . theories can justify unwarranted inquiries into the files and the mental impressions of an attorney." *Hickman v. Taylor*, 329 U.S. 495, 510.

110. New York practice codes "absolutely prohibit the utilization of an attorney's work product by his adversary . . . ." *Gugliano v. Levi*, 24 A.D.2d 591 (1965). Yet Bolger used it anyway to win the day in court.

111. Since Den Hollander asserts the "Responses to Media" document was an attorney work product, it made no sense to register it with the Copyright Office. The purpose of N.Y. CPLR 3101(c) is to keep attorney work products confidential because of the sanctity of a lawyer's mental impressions and strategic analyses. Registering such would destroy that confidentiality.

V. Den Hollander's copyrighted expressions registered with the U.S. Copyright Office prior to Bolger and Schafer reproducing and distributing such.

112. On January 9, 2013, well before the Murdoch case started in March 2014, Den Hollander obtain a certificate of registration from the U.S. Copyright Office for a revised version of the work "roydenhollander.com"—TXu001856032. (Ex. I, Certificate of Registration).

113. Bolger obtained what she called a cache of that website, which by her sworn statement of October 27, 2014, was "no longer operable," but she does not say when or from where she acquired it. (*Hollander v. Shepherd*, 152656/2014, N.Y. Sup. Ct., Bolger Affirmation Supporting Second Motion to Dismiss ¶ 17 citing to Ex. 16, Dkt. 45 and 46)).

114. Bolger could have easily determined whether the work duplicated in that cache was copyrighted and registered by going online to the U.S. Copyright Office and searching Den Hollander's name. By doing so would have revealed that the work was copyrighted and registered. A comparison to Schafer's screenshot would have revealed that expressions contained in the screenshot were identical or substantially similar to the copyrighted-registered expressions in the cache. Such would have alerted Bolger that the screenshot expressions were also copyrighted and registered.

115. On December 30, 2014, Schafer swears that he made the screenshot of Den Hollander's iCloud. (Def. First Mem. Ex. T, Schafer Aff. ¶ 2, Ex. 1). Schafer's screenshot duplicated without Den Hollander's permission identical or substantially similar expressions from the homepage of www.roydenhollander.com that Den Hollander had previously copyrighted and registered with the Copyright Office as TXu001856032. (Ex. I, Certificate of Registration). The expressions from the copyrighted-registered work had been included as part of Den Hollander's iCloud.

116. In order to show that Schafer's screenshot reproduced expressions from TXu001856032, requires Den Hollander to obtain from the Copyright Office certified copies of the pertinent parts of the deposit made with the Office for that work. Den Hollander is presently waiting for a date from the Office on which his paralegal will be allowed to obtain the certified copies. The problem is that may not come for over a month, so Den Hollander requests that he be allowed to supplement this SAC with that evidence when his paralegal is permitted to obtain it.

117. Den Hollander also alleges, on information and belief, that in addition to Bolger and Schafer's unauthorized duplicating of parts of TXu001856032, they also reproduced or had their agent reproduced without authorization other copyrighted-registered materials on Den Hollander's iCloud.

118. Neither TXu001856032 nor the iCloud explicitly give permission to Bolger or Schafer to reproduce or distribute the screenshot to the public or their clients or to do so with other copyrighted and registered materials on the iCloud.

119. Bolger and Schafer are using their refusal to admit or deny all that they reproduced in order to help win a dismissal of the Copyright action under 17 U.S.C. § 411(a). Basically, Bolger and Schafer are arguing that the Court has to dismiss the Copyright Action because they will not tell the Court all of which they reproduced or distributed—they will not even deny that they reproduced or distributed other copyrighted-registered materials. Further, their keeping silent on the issue enables their attorney Francoeur to argue, "Defendants should be awarded attorney's fees and costs pursuant to 17 U.S.C. § 505 for being forced to bring the instant motion." (Def. First Mem. at 17, 28).

VI. Penal codes violations and criminal complaints

120. By breaking into the iCloud and duplicating the "Responses to Media" document along with making the screenshot, Bolger, Schafer or one of their agents violated the following New York State criminal statutes:

a. Unauthorized use of a computer, N.Y. Penal Code § 156.05, knowingly accessing a computer without authorization, class A misdemeanor; and

b. Computer trespass, N.Y. Penal Code § 156.10, knowingly accessing a computer without authorization and knowingly gaining access to computer material, class E felony.

121. The premier treatise on Internet law recommends that when computer information is duplicated without authorization, law enforcement should be involved. Ian C. Ballon, *E-Commerce and Internet Law* at § 44.11 (2d ed. 2016).

122. On December 12, 2016, and again on January 13, 2018, Den Hollander filed complaints with U.S. Attorney's Civilian Crime Reports Unit. (Ex. J). The office does not provided status reports, and Den Hollander has not heard back from the Unit.

123. On January 13, 2018, Den Hollander sent a letter to the Chief of the Investigations Division for Manhattan District Attorney (Ex. K) who had an ADA telephone him. The two discussed the matter, and decided to wait for this Court's final decision.

FIRST CLAIM FOR RELIEF

(Computer Fraud and Abuse Act of 1986, 18 U.S.C. §§ 1030(a)(2)(C), 1030(e)(11), 1030(g)

124. Den Hollander repeats and realleges each and every allegation of paragraphs 1 through 123 as if fully set forth herein.

125. This claim is brought under 18 U.S.C. § 1030(a)(2)(C), which provides that a violation occurs when someone "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information from any protected computer . . . ."

126. Information will be obtained from a computer whenever a person using another computer contacts or communicates with a computer, such as a website. Ian C. Ballon, *E-Commerce and Internet Law*, 44.08(1). "Obtain[ing] information from a computer" has been described as "includ[ing] mere observation of the data. Actual aspiration . . . need not be proved in order to establish a violation. . . ." S.Rep. No. 99-432. at 6-7 (1986), *reprinted at* 1986 U.S.C.C.A.N. 2479, 2484.

127. Den Hollander requests "losses" he incurred as defined under 18 U.S.C. § 1030(e)(11) pursuant to the private right of action section 18 U.S.C. § 1030(g) that allows any person to maintain a civil action where there was a "loss to 1 or more persons during any 1-year period" in the amount of "at least $5,000 in value" as a result of the violation of § 1030(a)(2)(C).

128. "Loss" is a term of art under CFAA 18 U.S.C. § 1030(e)(11) that "means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment . . . ."

129. "Damages" is a term of art under CFAA 18 U.S.C. § 1030(e)(8) that "means any impairment to the integrity or availability of data, a program, a system, or information." "Damages" focus on the actual harm caused to a machine, software or content, and includes deletion, destruction or corruption of electronic files. *E-Commerce & Internet Law* § 44.08(1).

130. Den Hollander's claim under CFAA is <u>not</u> brought for "damages" as defined under 18 U.S.C. § 1030(e)(8), nor is it brought under §§ 1030(a)(5)(A), 1030(a)(5)(B),

1030(a)(5)(C), 030(a)(7)(A), 1030(a)(7)(C), 1030(c)(4)(A)(i)(V), 1030(c)(4)(A)(i)(VI) all of which require "damages."

131. Bolger and Schafer assert that Den Hollander must prove "damage" by exploiting an in artfully drafted part of CFAA. (Def. First Mem. at 19). "Every court of appeals to address the point has concluded that when section 1030(g) refers to the factors set forth in the clauses under section 1030(a)(5)(B), it does not also require a plaintiff to establish a violation of section 1030(a)(5)(A), even though the lead-in language in section 1030(a)(5)(B) refers to that subparagraph. . . . [T]o state a claim under section 1030(g) for violation of section 1030(a)(2) . . . a plaintiff is required to allege loss or damage, not both." *Motorola, Inc. v. Lemko Corp.*, 609 F. Supp. 2d 760, 766–67 (N.D. Ill. 2009) (citing *Fiber Sys. Int'l, Inc. v. Roehrs*, 470 F.3d 1150, 1157 & n.4 (5th Cir.2006); *P.C. Yonkers, Inc. v. Celebrations The Party & Seasonal Superstore, LLC*, 428 F.3d 504, 511–12 (3d Cir.2005); *Theofel v. Farey–Jones*, 359 F.3d 1066, 1078 n. 3 (9th Cir.2004)).

132. Bolger, Schafer or one of their agents intentionally accessed Den Hollander's iCloud, which was a protected computer under CFAA because as alleged above at ¶ 2, communications with and from it crossed state lines via the Internet.

133. The requirement of 18 U.S.C. 1030(a)(2)(C) that a protected computer be used in or affecting interstate or foreign commerce will be met by contacting an Internet website because "the Internet is an instrumentality and channel of interstate commerce." *United States v. Trotter*, 478 F.3d 918, 921 (8th Cir.2007) (per curiam) (quoting *United States v. MacEwan*, 445 F.3d 237, 245 (3d Cir.2006)). Additionally, the Supreme Court in *Reno v. American Civil Liberties Union*, 521 U.S. 844, 849 (1997), observed that "[t]he Internet is an international network of interconnected computers." Since access to Den Hollander's iCloud, providing one had the

access codes, was through the Internet, it was a protected computer under the CFAA, 18 U.S.C. § 1030(e)(2)(B).

134. The actions by Bolger, Schafer or one of their agents in accessing Den Hollander's iCloud were conducted without Den Hollander's authorization and were motivated by an intent to obtain information on Den Hollander to be used to disparage him in the Murdoch case and thereby increase their chances of victory.

135. In order to access Den Hollander's iCloud required them to use an illegal hacking technique.

136. On gaining access to the iCloud, Bolger, Schafer or one of their agents duplicated the "Responses to Media" document and Schafer made a screenshot of the home page.

137. Den Hollander responded to the unauthorized access of his iCloud to assure the security of the data necessary for his law practice, business consultancy and personal life by conducting an investigation as alleged above at ¶¶ 96-99 that resulted in losses under 18 U.S.C. § 1030(e)(11).

138. Even though the alleged CFAA offense was ultimately found not to have caused damage to the iCloud computer, data, data bases or interruption of storage service, Den Hollander's costs amounted to 37.3 hours at $250 an hour for $9,325.

139. Recoverable costs under CFAA 18 U.S.C. § 1030(e)(11) apply to the hours spent analyzing, investigating, and responding to defendant's actions, *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058, 1066 (9th Cir. 2016); costs of investigation undertaken to determine how party gained access to its site, *A.V. v. iParadigms, LLC*, 562 F.3d 630, 645-646 (4th Cir. 2009); the "loss" suffered by plaintiffs, which is not lessened simply because no damage occurred, *E.F. Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577, 585 (1st Cir. 2001);

"recovery for losses sustained even if data or computers were not damaged," *1st Rate Mortg. Corp. v. Vision Mortg. Servs. Corp.*, 2011 WL 666088, at *2 (E.D.Wis. Feb.15, 2011); costs reasonably incurred in responding to an alleged CFAA offense, even if the alleged offense ultimately is found to have caused no damage to the computer, data, data bases or interruption of service, *Navistar, Inc. v. New Baltimore Garage, Inc.*, 2012 WL 4338816, at *8 (N.D. Ill. Sept. 20, 2012); allegation of loss related to security assessments, *Motorola, Inc. v. Lemko Corp.*, 609 F.Supp.2d 760, 768 (N.D.Ill. Feb.11, 2009); "the costs of responding to the offense" including "costs to investigate and take remedial steps," *Modis, Inc. v. Bardelli*, 531 F.Supp.2d 314, 320 (D.Conn.2008); the cost of investigating and identifying the CFAA offense, including many hours of valuable time away from day-to-day responsibilities, *SuccessFactors, Inc. v. Softscape, Inc.*, 544 F.Supp.2d 975, 980–81 (N.D.Cal.2008); the time and resources spent to research and assess the unauthorized transmission of confidential and proprietary information, *Dudick, ex rel. Susquehanna Precision, Inc. v. Vaccaro*, 2007 WL 1847435, *5 (M.D. Pa.2007); loss sustained by plaintiffs "in investigating the potential harm to their computer system and Website is not lessened merely because fortuitously no physical harm was allegedly caused to the computer system or software," *Kaufman v. Nest Seekers, LLC*, 2006 WL 2807177, *8 (S.D.N.Y.2006).

SECOND CLAIM FOR RELIEF

(The Copyright Act of 1976, 17 U.S.C. §§ 106 (1) & (3), 501(a))

140. Den Hollander repeats and realleges each and every allegation of paragraphs 1 through 139 as if fully set forth herein.

141. This claim arises under the copyright laws of the United States, more particularly 17 U.S.C. §§ 106(1) & (3), 501(a). This Court has jurisdiction under 28 U.S.C. § 1338.

142. On January 9, 2013, a copyright registration pertaining to a revised version of the work "roydenhollander.com" was duly and legally issued to Den Hollander. Den Hollander is the sole owner of this work, TXu001856032.

143. A copy of the certificate of registration is attached to this SAC as Exhibit I. Den Hollander requests the Court take judicial notice of it pursuant to Federal Rules of Evidence, Rule 201 and Rule 1005.

144. Schafer, in his capacity as an associate to Bolger in the Murdoch Case, infringed under 17 U.S.C. § 501(a) on the copyright of the above work on December 30, 2014, by reproducing without Den Hollander's authorization in violation of his right under 17 U.S.C. § 106(1) a screenshot from Den Hollander's iCloud (Def. First Mem. Ex. T, Schafer Aff. ¶ 2, Ex. 1). The screenshot reproduced expressions that were identical or substantially similar to those contained in the homepage of the copyrighted-registered work TXu001856032.

145. In accordance with New York Rules of Professional Conduct 1.4(a)(1)(iii), 1.4(a)(3) and on information and belief, Bolger had the screenshot with the identical copyrighted expressions or substantially similar expressions distributed to her clients without Den Hollander's authorization in violation of his right under 17 U.S.C. § 106(3), which amounted to infringement under 17 U.S.C. § 501(a).

146. During oral argument on defendants' motion to dismiss under Rule 12(b)(6) on February 16, 2018, the issue arose as to allowing early discovery to determine whether a party had possession or control of certain copyrighted-registered materials. (Tr. p. 35 ln. 1-9). In *Twentieth Century Fox Film Corp. v. Mow Trading Corp.*, 749 F. Supp. 473, 475 (S.D.N.Y. 1990), on the issue of copyright infringement of the characters on the Simpson show by a T-shirt manufacturer, Fox received expedited discovery for the production of documents for among

other reasons to determine the quantity of such infringing materials that were in the defendant's possession, custody or control. The Court stated that such expedited discovery may also lead to "the discovery of additional infringing merchandise." *Id.*

147. Also raised at oral argument was whether infringement occurred by just reproducing copyrighted-registered works or that it had to be coupled with some use of the work. (Tr. p. 5 ln. 24 through p. 6 ln. 4; p. 34 ln. 7-25). At Your Honor's instructions, Den Hollander provided a memorandum of law concluding that reproduction alone without authorization of a copyrighted-registered work amounted to infringement. (Ex. L, Memorandum on Infringement). One cited authority consisted of the Notes of the Committee on the Judiciary, House Report No. 94–1476, *Rights of Reproduction, Adaptation, and Publication*, cited in 17 U.S.C.A. § 106 under the Historical and Statutory Notes section. The Committee stated that "[i]nfringement takes place when any one of the rights is violated [§ 106 (1)-(3)]: where, for example, a printer reproduces copies without selling them . . . ."

148. Den Hollander requests that statutory damages be awarded under 17 U.S.C. 504(c)(1) for Bolger and Schafer's infringement of the screenshot in an amount of not less than $750 or more than $30,000 as the court considers just.

149. In the Murdoch case, Bolger obtained what she called a cache of TXu001856032, which by her sworn statement of October 27, 2014, was "no longer operable." (*Hollander v. Shepherd*, 152656/2014, N.Y. Sup. Ct., Bolger Affirmation Supporting Second Motion to Dismiss ¶ 17 citing to Ex. 16, Dkt. 45 and 46)). Bolger could have easily determined whether the work duplicated in that cache was copyrighted and registered by going online to the U.S. Copyright Office and searching Den Hollander's name. Doing so would have revealed that the work was copyrighted and registered. A comparison of the cache to Schafer's screenshot would

have revealed that expressions contained in the screenshot were identical or substantially similar to the copyrighted-registered expressions in the cache. Such would have alerted Bolger that the screenshot expressions were covered by the TXu001856032 copyright and registration.

150. Since Bolger is an experienced and highly acclaimed media attorney, it is logical that she did just that, which means the reproduction and distribution of the screenshot was willful infringement that allows this Court to award damages up to a sum of not more than $150,000. 17 U.S.C. § 504(c)(2). Den Hollander also requests such damages.

151. Further, Den Hollander also requests reasonable attorney's fees for the time he has spent on this action and the costs he has incurred.

CONCLUSION

152. Attorney Francoeur asserts this case is "harassing" litigation, but Den Hollander has a fundamental right to go to court against those who violate his rights that the law protects. The First Amendment guarantees access to the courts so as "to protect unpopular individuals . . . and their ideas from suppression—at the hand of an intolerant society" *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995).

Dated: March 8, 2018
New York, N.Y.

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