UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

v.

PRESSREADER, INC.,

Defendant.

CIVIL ACTION NO. 19-cv-02130
DOCUMENT FILED ELECTRONICALLY

DEFENDANT PRESSREADER, INC.'S MOTION FOR RULE 11 SANCTIONS

Defendant Pressreader Inc. hereby moves for sanctions against Plaintiff Roy Den Hollander, pursuant to Fed. R. Civ. P. 11 and this Court's inherent authority. In support of this Motion, Defendant submits herewith a Memorandum of Law.

WHEREFORE, for the reasons in the accompanying Memorandum, Defendant respectfully requests that the Court enter an Order granting its Motion and awarding Defendant its attorney's fees and costs incurred in preparing this Motion and responding to the claims asserted in the Complaint and Amended Complaint, and enjoining Hollander from filing any further actions against Pressreader relating to the allegations contained in the Amended Complaint.

Dated: New York, New York
March 12, 2019

DENTONS US LLP

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UNITED STATES DISTRICT COURT
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Plaintiff,

v.

PRESSREADER, INC.,

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CIVIL ACTION NO. 19-cv-02130
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DEFENDANT PRESSREADER, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS

Defendant Pressreader Inc. ("Pressreader") respectfully submits this memorandum of law in support of its motion for sanctions against Plaintiff Roy Den Hollander ("Hollander"), pursuant to Fed. R. Civ. P. 11. Pressreader does not take this step lightly. Hollander, an attorney and self-described "men's rights" advocate, is a serial abuser of the judicial system in the New York state and federal courts. The instant action, asserting New York "right of publicity" and federal RICO claims against Pressreader, all based on the publication of newspaper articles about Hollander that he disagrees with, is patently frivolous. It was brought in bad faith and calculated not only to cause Pressreader to incur unnecessary expense, but to chill the exercise of core First Amendment freedoms. After careful consideration, Pressreader brings this motion to prevent the expenditure of more unreasonable fees to respond to this lawsuit, and to deter Hollander from bringing similar frivolous and constitutionally suspect actions in the future.

Because Hollander's actions are more than sufficient to demonstrate a violation of Rule 11, this Court should not only dismiss the Amended Complaint, as urged in Pressreader's Motion to Dismiss, but also sanction Hollander for filing a frivolous action for improper purposes. Specifically, the Court should order Hollander to compensate Pressreader for its reasonable attorneys' fees and expenses incurred in defending this action, including the instant Motion for

Sanctions and Motion to Dismiss. In addition, pursuant to Rule 11 and this Court's inherent powers, the Court should enjoin Hollander from filing any further actions against Pressreader relating to the allegations contained in the Amended Complaint.

FACTUAL BACKGROUND

On or about October 15, 2018, Hollander, as both plaintiff and the attorney representing himself, filed a civil action against Pressreader in the Civil Court of the City of New York, County of New York, captioned *Roy Den Hollander v. Pressreader, Inc.*, and assigned Index No. CV-24897 NY/2018 (the "Civil Court Action").

The Complaint pleaded a single cause of action for violation of Hollander's right of publicity under New York Civil Rights Law §§ 50 & 51 the ("Right of Publicity claim") based on the use of his name in an April 4, 2018 article from an Australian newspaper, the *West Australian*, entitled "Misplaced fear of gay revenge." (Compl. ¶ 15 and Ex. A) (the "Article"). The Article appeared on Pressreader's Internet-based "platform that allows people to read, share, and talk about stories from over 7,000 top-quality publications" with whom Pressreader has contracted, including the *West Australian*. (*See id.* ¶¶ 10-12.)

The Article discusses how religious groups that oppose gay marriage cast themselves as "oppressed"; to illustrate that point, the author, Tory Shepherd, quotes Plaintiff: "Self-described 'anti-feminist lawyer' Roy Den Hollander once likened the position of men in society to black people in 1950s America 'sitting in the back of the bus.'" (*Id.* ¶ 17 and Ex. A.) Plaintiff claims that by attributing the quotation to him, the newspaper Article "exploit[ed] the public figure notoriety of Plaintiff's name" in violation of his "right of publicity". (*Id.* ¶¶ 23-38.)

Pressreader moved to dismiss the Right of Publicity claim, explaining in detail why it was wholly unsupported in law.

Instead of responding to the Motion to Dismiss, on February 8, 2018, Hollander served an Amended Complaint that repleaded the meritless Right of Publicity claim and added a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq*. (the "RICO claim") that was also based on complaints about the Article and other Australian newspaper articles that mentioned Hollander; he alleges that Pressreader and Tory Shepard are a RICO "Enterprise" that violated the federal wire fraud statute by "creating and publishing over the wires two articles that falsely depict Plaintiff's businesses in an effort to financially harm them." (*See* Am. Compl. ¶¶ 47-48, 58.)[1]

The RICO claim is also wholly without merit, and like the Right of Publicity claim, violative of the First Amendment.

Pressreader timely removed the action to this Court on March 7, 2019. 28 U.S.C. §§ 1331, 1446(b).

On March ___, 2019, Pressreader filed its Motion to Dismiss the Amended Complaint.

This frivolous action is part of a pattern. Hollander has a history of instituting meritless lawsuits in the state and federal courts for improper reasons -- in many instances pressing those suits all the way to (unsuccessful) petitions for certiorari to the U.S. Supreme Court. For example,

- He unsuccessfully sued the *same author* of the Article here, along with other Australian newspapers, asserting defamation and other torts. *Hollander v. Shepherd*, No. 152656/14, 2016 N.Y. Slip Op. 30042(U), 2016 WL 108273 (Sup. Ct., N.Y. Cty., Jan. 8, 2016) (dismissing complaint).

- He unsuccessfully sued multiple news organizations and journalists under RICO for "making allegedly false and misleading reporting and commentary on the 2016 presidential election." *See Hollander v. CBS News Inc.*, No. 16 Civ. 6624, 2017 WL

[1] In the Amended Complaint, Hollander claims only $6,000 in damages for the Right of Publicity claim and "an amount of $5,000 under the RICO claim, which when tripled is $15,000, plus expenses and costs" (Am. Compl. ¶ 2) -- clearly seeking to stay within the $25,000 jurisdictional limit of the New York Civil Court, in which there is no sanction power analogous to Federal Rule 11.

1957485, at *1 (S.D.N.Y. May 10, 2017) ("dismissal is mandatory because the news reporting that Hollander assails as wire fraud is speech protected by the First Amendment"), *vacated on other grounds sub nom. Hollander v. Garrett*, 710 F. App'x 35 (2d Cir. 2018) (dismissing for lack of Art. III standing), *cert. denied*, 138 S.Ct. 2658 (2018) (the "*CBS News"* case).

- In what appears to be his maiden voyage of RICO litigation, he sued his ex-wife, her mother, divorce lawyers, various exotic dancing clubs, and others, in a complaint spanning 90 pages and over 900 paragraphs, "spin[ning] a tale of a dark netherworld of international intrigue and deception"; the suit was dismissed with prejudice. *Hollander v. Flash Dancers Topless Club et al.*, 340 F. Supp. 2d 453, 455, 463 (S.D.N.Y. 2004) ("Even the most liberal reading of the Complaint and Supplemental Complaint fails to indicate that, however restated, any valid claim would survive"), *aff'd*, 173 F. App'x 15 (2d Cir. 2006), *cert. denied*, 127 S.Ct. 49 (2006).

- He brought a Section 1983 lawsuit against several New York City night clubs alleging that "Ladies' Nights" constitute invidious discrimination in violation of the Fourteenth Amendment.[2] The Second Circuit affirmed dismissal, noting Hollander had utterly failed to plead the necessary state action. *Hollander v. Copacabana Nightclub*, 624 F.3d 30 (2d Cir. 2010), *cert. denied*, 131 S.Ct. 914 (2011).

- He followed that misadventure by filing suit in state court accusing a Chelsea nightclub ("Amnesia") of age and gender discrimination because a bouncer made him buy a $350 bottle of vodka to get in while admitting a young woman for free at the same time.[3] The New York State Division of Human Rights dismissed his complaints. *See Matter of Hollander v. City of N.Y. Comm'n on Human Rights*, 118 A.D.3d 418 (1st Dept. 2014).

- He unsuccessfully sued Columbia University and certain government agencies alleging, among other things, that defendants violated the Establishment Clause "by aiding the establishment of the religion Feminism" by funding the University's Women's Studies Program. *Hollander v. Inst. for Research on Women & Gender at Columbia Univ.*, No. 08 Civ. 7286, ECF No. 36 (S.D.N.Y. Apr. 24, 2009) (dismissing complaint), *aff'd*, 372 F. App'x 140 (2d Cir. 2010). *See also Hollander v. Bd. of Regents of Univ. of* State of N.Y., No. 10 Civ. 9277, ECF No. 29 (S.D.N.Y. Oct. 31, 2011) (dismissing similar claim).

ARGUMENT

Rule 11 of the Federal Rules of Civil Procedure provides that an attorney shall not make any representation to the court for any improper purpose, such as to harass or cause unnecessary

[2] *See* Lauren Collins, "Hey, La-a-a-dies! Ladies' Nights lawsuit," *The New Yorker* (Aug. 6, 2007).

[3] *See* Barbara Ross and Stephen Rex Brown, "'Mens' rights' activist loses court case that called nightclub's $350 vodka a human rights violation," *New York Daily News* (Aug. 1, 2013); Staci Zaretsky, "Old Fart Anti-Feminist Lawyer, Formerly of Cravath, Loses Dubious Bottle Service Discrimination Suit," *Above the Law* (Aug. 5, 2013), https://abovethelaw.com/2013/08/old-fart-anti-feminist-lawyer-formerly-of-cravath-loses-ridiculous-bottle-service-discrimination-suit/.

delay or needless increase in the cost of litigation, Fed. R. Civ. P. 11(b)(1); and shall not assert claims, defenses, or other legal contentions unless warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, Fed. R. Civ. P. 11(b)(2).

Rule 11 violations "require[] only a showing of objective unreasonableness on the part of the attorney or client signing the papers." *ATSI Commc'ns, Inc., v. Shaar Fund, Ltd*., 579 F.3d 143, 150 (2d Cir. 2009) (internal quotations omitted). With respect to legal contentions, "[t]he operative question is whether the argument is frivolous, *i.e.*, the legal position has 'no chance of success,' and there is 'no reasonable argument to extend, modify or reverse the law as it stands."' *Fishoff v. Coty In*c., 634 F.3d 647, 654 (2d Cir. 2011) (quoting *Morley v. Ciba-Geigy Corp*., 66 F.3d 21, 25 (2d Cir. 1995)); *see also Eastway Constr. Corp. v. City of N.Y.*, 762 F.2d 243, 254 (2d Cir. 1985), *superseded on other grounds by rule.*

As thoroughly discussed in Pressreader's Motion to Dismiss, Hollander's claims have absolutely no chance of success. For example,

- The Right of Publicity claim is based on the use of Hollander's name in a newspaper article. The Right of Publicity statute, New York Civil Rights Law §§ 50 & 51, is strictly limited to prohibiting the purely *commercial* misappropriation of a person's name or likeness for purposes of "advertising" or "trade," and under black-letter law, does not extend to newsworthy publications such as the Article here. *See, e.g., Finger v. Omni Publ'ns Int'l, Ltd.,* 77 N.Y.2d 138, 141 (1990). If it did, it would, of course, violate the First Amendment. *Id.*; *Foster v. Svenson*, 128 A.D.3d 150, 156 (1st Dep't 2015).

- Plaintiff's attempt to plead around the exemption by arguing that his name was used for a commercially exploitative purpose (rather than to inform the public), and other arguments that seek to second-guess editorial decisionmaking, have been expressly rejected by the New York Court of Appeals. *See, e.g., Howell v New York Post Co.*, 81 N.Y.2d 115, 124 (1993) (affirming dismissal); *Finger*, 77 N.Y.2d at 143 ("questions of 'newsworthiness' are better left to reasonable editorial judgment and discretion"; affirming dismissal).

- Plaintiff's RICO claim is frivolous because, among other things, there is no plausible allegation of a RICO "Enterprise" composed of Pressreader and one of the authors of one of the thousands of articles that appears on Pressreader's news platform every day; or of "wire fraud" based on publication of the newspaper articles. While Hollander "labels

these acts of journalism as acts of 'wire fraud,'" he pleads no "'scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises. . . .'" *CBS News*, 2017 WL 1957485, at *4 (quoting 18 U.S.C. § 1343).

- Application of the RICO statute here is in patent violation of the free speech and press guarantees of the First Amendment. *Id.* at *1 ("dismissal is mandatory because the news reporting that Hollander assails as wire fraud is speech protected by the First Amendment").

"[E]ven a cursory examination of the requirements for bringing suit under RICO would have revealed the impossibility of the claim's success, Plaintiffs' filing was objectively unreasonable and therefore constitutes a Rule 11 violation." *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 660-61 (S.D.N.Y. 1996), *aff'd,* 113 F.3d 1229 (2d Cir. 1997) (citations omitted).

In short, Plaintiff's claims are frivolous; they lack any legal foundation. "[W]hether the violation is deliberate or merely the result of 'extraordinarily shoddy' research, the filing warrants the imposition of sanctions" under Rule 11(b)(2). *Id.* at 661. Here, the violation was deliberate: Hollander was on notice, after receiving Pressreader's Motion to Dismiss the original Complaint, that the Right of Publicity claim was baseless, but doubled down and repleaded the exact same frivolous claim. And he was on notice, from his prior experience in the *CBS News* case that RICO claims based on news coverage were in violation of the First Amendment, but brought such a claim again in the Amended Complaint.

Sanctions are also warranted under Rule 11(b)(1), because this action was brought for the improper purpose of harassing Pressreader and causing needless increase in the cost of litigation, in retaliation for First Amendment-protected publications about him that appear on Pressreader's platform.

"The 1993 Advisory Committee Note to Rule 11 sets forth certain factors that may be considered by the court when deciding whether to impose sanctions or what sanctions are

appropriate in the given circumstances. Those factors include: (1) whether the improper conduct was willful, or negligent; (2) whether it was part of a pattern or activity, or an isolated event; (3) whether it infected the entire pleading, or only one particular count or defense; (4) whether the person has engaged in similar conduct in other litigation; (5) what effect it had on the litigation process in time or expense; (6) whether the responsible person is trained in the law; (7) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case." *Colliton v. Cravath, Swaine & Moore, LLP*, No. 08 Civ. 0400 (NRB), 2008 WL 4386764, at *36 (S.D.N.Y. Sept. 24, 2008), *aff'd*, 356 F. App'x 535 (2d Cir. 2009); *see also* Fed. R. Civ. P. 11 advisory committee note to 1993 amendments. *All* of these factors support sanctions against Hollander. Trained in the law (at Columbia University, after which he was an associate at a prestigious law firm), Hollander willfully filed a frivolous complaint similar to others he has filed, designed to make Pressreader needlessly spend money (or think twice about engaging in First Amendment-protected activity).

Additionally, Rule 11 is "particularly important in the RICO context, as the commencement of a civil RICO action has 'an almost inevitable stigmatizing effect'" on defendants. *Katzman*, 167 F.R.D. at 660-61 (citing *Figueroa Ruiz v. Alegria*, 896 F.2d 645, 650 (1st Cir. 1990)); *Carousel Foods of Am., Inc. v. Abrams & Co.*, 423 F. Supp. 2d 119, 124-25 (S.D.N.Y. 2006) (finding monetary sanctions appropriate for Rule 11 violation in RICO context). When viewed in totality, Hollander's conduct without question warrants sanctions in the form of reasonable attorneys' fees.

The Court may impose an appropriate sanction on any "attorney. . . or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). Pursuant to Rule 11(c)(4), the sanctions may include "nonmonetary directives; an order to pay a penalty into court; or, if imposed

on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Furthermore, it is "beyond peradventure" that the Court has the inherent authority to enjoin Hollander "from further vexatious litigation" against Pressreader. *Safir v. U.S. Lines Inc.*, 792 F.2d 19, 23 (2d Cir. 1986); *In re Martin-Trigona*, 795 F.2d 9 (2d Cir. 1986); *O'Callaghan v. N.Y. Stock Exch.*, No. 12 Civ. 7247(AJN), 2013 WL 3984887 (S.D.N.Y. Aug. 2, 2013) (Nathan, J.), *aff'd*, 563 F. App'x 11 (2d Cir. 2014).

CONCLUSION

Pressreader respectfully requests that this Court enter an Order (1) granting its Motion for Sanctions, and awarding Pressreader's attorney's fees and costs incurred in preparing this Motion and responding to the Complaint and Amended Complaint; (2) enjoining Hollander from filing any further actions against Pressreader relating to the allegations contained in the Amended Complaint; and (3) any other or further sanction as this Court may deem appropriate.

Dated: New York, New York
March 12, 2019

DENTONS US LLP

By: /s/ *Gary Meyerhoff*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ROY DEN HOLLANDER,

Plaintiff,

CIVIL NO. 19-cv-02130

-against-

PRESSREADER, Inc.
(formerly NEWSPAPERDIRECT, INC.,
NY DOS ID 2390795)

Defendant.

----------X

MEMORANDUM OF LAW FOR RULE 11 SANCTIONS AGAINST DENTONS US LLP, ATTORNEYS GARY MEYERHOFF AND JULIE SINGER

ARGUMENT

When attorneys represent to a court by motion or other paper that (1) harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) present claims of a frivolous nature; (3) present irrelevant data intended to bias the Court; and (4) present factual contentions aimed at a party's character traits rather than the merits, then sanctions may be imposed. *See* Fed. R. Civ. P. 11(b).

Delay and Cost

On February 15, 2019, the New York City Civil Court gave Defense Attorneys until April 19, 2019, to file and serve an amended answer with a pretrial conference set for May 6, 2019. (Ex. A, Civ. Ct. Decision/Order). The case,

therefore, was on its way to a speedy trial, but Defense Attorneys in an effort to maximize their billings slammed on the brakes. First by filing removal papers, for which they most definitely billed their client, and second, by making a motion for sanctions, for which they most definitely billed their client. An initial pre-trial conference is now set for July 12, 2019—a delay of at least two months.

In all the State and Federal proceedings thus far and all the numerous communications between the lawyers for both sides, not once did Defense Attorneys broach a possible settlement. Clearly, they understand there is more money in this case for them the longer they delay with more unnecessary proceedings and the accompanying time invested in preparing papers. Not only are Defense Attorneys intentionally increasing the cost of this dispute to their client, but are also ratcheting up the cost to Plaintiff, a 71 year-old semi-retired attorney.

As made clear by the Defense Attorneys' motion for sanctions before a pretrial conference is even held and the nature of their character assassination arguments, they will stop at nothing to make the Plaintiff submit to a powerful global media company whose attorneys believe it is entitled to publish worldwide any scurrilous statement it wishes about Plaintiff, so it can make a buck.

Character Assassination

As is so common these days among attorneys, Defense Attorneys in this case rely on information that is irrelevant to the issues in this case. They run through a

litany of cases in which Plaintiff resorted to the courts, as he is supposed to do in a civilized society, in order to depict Plaintiff as a dissenter who should be punished just because he fights in the courts for his rights and the rights of other.

The facts in the cases Defense Attorneys spin to demonize Plaintiff are not relevant to the alleged facts in the case before this Court. Defense Attorneys simply want Plaintiff punished for daring to defend his rights. Think about it. Defendant PressReader publishes an article to millions of people across the globe that fraudulently depicts Plaintiff, and thereby his businesses, as a "traditional oppressor[]" and "despot" concerning an issue in Australia. (Ex. B, PressReader Article). An issue that he has never been involved in anywhere in the world: gay rights versus religious freedom.

If Plaintiff has no legal recourse in this situation and Defense Attorneys are allowed to use Rule 11 to intimidate Plaintiff into giving up his rights, then what good is the law?

Intimidation and Procedural Violation

The very reason for Defense Attorneys' Rule 11 motion is simply to intimidate Plaintiff into relinquishing his rights under the law.

Another sneaky reason for the Rule 11 motion is that Defense Attorneys argue their motion to dismiss that has not even been submitted to the Court. That way Defense Attorneys circumvent Plaintiff's opportunity to oppose their motion

to dismiss as is provided for under Local Civil Rule 6.1.(a). So by submitting their Rule 11 motion with their motion to dismiss arguments, Defense Attorneys are asking this Court to essentially execute Plaintiff before he has a hearing on the issues in the case.

Another trick employed by Defense Attorneys was making a letter motion to the Court on March 12, 2019, in which they notified the Court that they had served Plaintiff on that same day with a motion for sanctions under Fed. R. Civ. P. 11 "based on the frivolous nature of [Plaintiff's] claims, citing as well Plaintiff's pattern of bringing meritless cases for improper reasons." Under Rule 11(c)(3), such a motion "must not be filed or be presented to the court" until after 21 days. Defense Attorneys clearly decided not to wait before filing with the Court the substance of their sanction's motion.

Wrong on the facts and law

The sleight-of-hand tactics by Defense Attorneys wrongly depicted the law; otherwise, such trickery would not be effective.

They argue that "RICO [wire fraud] claims based on news coverage [are] [not] in violation of the First Amendment." (Def. Mtn. Sanc. at 6).

> "[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Giboney*, 336 U.S. at 502 (citing *see e.g., Fox v. Washington*, 236 U.S. 273, 277 (1915) (Holmes, J.); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942)). This

> Court in *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 62 (2006), cited the same quote from *Giboney*.

Wire fraud, 18 U.S.C. 1343, is just such an illegal conduct.

> Defense Attorneys also argue that
>
> Rule 11 is 'particularly important in the RICO context, as the commencement of a civil RICO action has 'an almost inevitable stigmatizing effect' on defendants. *Katzman* [*v. Victoria's Secret Catalogue*], 167 F.R.D. at 660-61 (citing *Figueroa Ruiz v. Alegria*, 896 F.2d 645, 650(1st Cir. 1990)); *Carousel Foods of Am., Inc. v. Abrams & Co.*, 423 F. Supp. 2d 119, 124-25 (S.D.N.Y. 2006).

(Def. Mtn. Sanc. at 7). Defense Attorneys proclivity to prevaricate is demonstrated by that statement because the seminal U.S. Supreme Court on RICO has stated that "As for stigma, a civil RICO proceeding leaves no greater stain than do a number of other proceedings." *Sedima, SPRL v. Imrex Co. Inc.*, 473 U.S. 479, 492 (1985).

On the Right of Publicity claim, Defense Attorneys fail to mention that Courts give these statutes a liberal construction consistent with the beneficial and remedial purposes of N.Y. Civil Rights Law §§ 50 & 51. 14 *N.Y.Prac., New York Law of Torts* § 1:60. Further, the PressReader published article does not fall within the public interest exception to Civil Rights Law § 51 because Plaintiff has no relationship whatsoever to the substance of the article concerning the conflict in Australia between religious freedom and gay rights. 14 *N.Y.Prac., New York Law of Torts* § 1:63.

Defense Attorneys prevaricating continues with "Hollander willfully filed a frivolous complaint similar to others he has filed . . . ." Plaintiff has practice law for over 30 years and not once, not once, has a court sanctioned him for filing a frivolous complaint.

Defense Attorneys don't bother to prevaricate over which law school Plaintiff attended—they just lie. It was not Columbia.

CONCLUSION

It is not Plaintiff who wants to muzzle Defendant PressReader. He just wants compensation. It is Defense Attorneys who want to bound and gag Plaintiff in the courts with their Rule 11 motion by "enjoining Hollander from filing any further actions against Pressreader relating to the allegations contained in the Amended Complaint." (Def. Mtn. Sanc. at 8). Reminds the Plaintiff of what happened to Bobby Seal in the Chicago Eight trial in Chicago in 1969.

Dated: New York, New York
March 12, 2019

Respectfully submitted,
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Exhibit A

Civil Court of the City of New York
County of New York
Part

Index Number CV-24897 NY/2018

Roy Den Hollander

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Pressreader, Inc.

Defendant(s)/Respondent(s)

Civil Court City of New York FEB 15 2019 NEW YORK COUNTY ENTERED

DECISION/ORDER

After a conference with the parties on February 15, 2019, the parties are hereby directed to:

Plaintiff to file an amended Seemons and complaint on or before March 15, 2019

Defendant to file and serve an amended answer on or before Apr. 19, 2019

The case is adjourned to May 6, 2019 for a pre-trial conference at 111 Centre Street, New York, NY 10013, Room 325 at 9:30 am All parties to appear on that date.

All motions filed before today are now moot with leave to refile after the amended Seemons and complaint is served and filed.

2/15/19

Date

Judge, Civil Court

HON. DENISE DOMINGUEZ

CIV-GP-41 (January, 1998)

Exhibit B

Misplaced fear of gay revenge

The West Australian 4 Apr 2018 +1 more Tory Shepherd

Illustration: Don Lindsay

Self-described "anti-feminist lawyer" Roy Den Hollander once likened the position of men in society to black people in 1950s America "sitting in the back of the bus".

It's become common; men thinking they're oppressed by women, whites thinking they're oppressed by ethnic minorities.

The traditional oppressors believing they have become oppressed.

Reading through the batches of submissions to the Federal Government's review of religious freedom, it's clear many within the churches believe that they are in danger of becoming the oppressed.

George Orwell's Animal Farm was mandatory reading in schools in the 1980s, and hopefully still is.

Those writing to the review — sparked by the same-sex marriage debate — have read their Orwell.

And it scared them.

That the oppressed rise up to become the oppressors is a critical lesson in the book.

On the farm, the badly treated animals rise up, cast off their human overlord, and form a new society. One farm under two pigs (Snowball and Napoleon) where "all animals are equal".

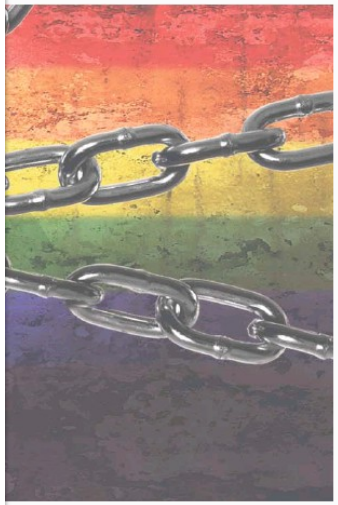
But power-hungry Napoleon chases Snowball off the farm, and starts to become a human-like despot, ruling the roost. He changes the "all animals are equal" mantra, adding "but some are more equal than others". And thus the downtrodden start treading on others.

The religious freedom review, headed by former Liberal immigration minister Philip Ruddock, is examining whether Australian law adequately protects the human right to freedom of religion.

It has been swamped with thousands of submissions. Fortunately many of them are written from similar templates, so it's possible to get across the main points without wading through too much bile.

And there are some bilious points. One batch of submissions is from churchgoers upset that they can no longer host "pray away the gay" camps. Or, in their words, "offer help to those struggling with unwanted temptation to commit homosexual sin".

The same submissions seem to argue that doctors opposed to abor-



can no longer host "pray away the gay" camps. Or, in their words, "offer help to those struggling with unwanted temptation to commit homosexual sin".

The same submissions seem to argue that doctors opposed to abortion should refuse to refer women to doctors who aren't.

They'd be "complicit in facilitating the murder of a defenceless baby against their religious convictions under the threat of being struck off and losing their livelihood if they don't comply", according to this submission.

So the Christian thing to do is to turn women away without help — or somehow coerce them to go through with the unwanted pregnancy.

Such arguments are right off the rails, and nothing to do with same-sex marriage.

But many of the submissions seem to grapple with the same issue. That Christians want to be able to continue to discriminate against gay people with no repercussions.

People are worried their freedom to express their "Christian understanding of marriage" publicly is threatened now that gay people are allowed to get married.

That they'll be at risk of getting fired, or of their church losing government funding if they express opposition to "immoral" behaviour.

One group says that the same-sex marriage lobby has had success forcing "acceptance of this sin on the rest of the population".

They are fearful that schools will have to hire gay teachers, that the religious will have to voice support of gay people even when they don't believe it.

And of course, they dragged out the tired notion that Christian bakers will be traumatised by being forced to bake big old gay cakes.

These submissions — and I'm not tarring the entire religious community with the same brush here — all have the same subtext.

That now that we've given the gay community an inch, they'll take a mile. They will rise up and punish their oppressors.

It's a genuine shame that the fearmongering has apparently got to so many people.

The fact is that, despite most Western nations now having gay marriage, there are hardly any examples of Christian bakers being forced to bake gay cakes.

Gay couples did not, en masse, start forcing anti-gay celebrants to oversee their weddings.

When same-sex marriage laws passed, life went on. With more weddings.

But fear spreads where there is uncertainty, and it is unclear where the right to religious freedom ends, when it butts up against the right to equality and someone has to work out who wins.

George Williams, one of the nation's top constitutional lawyers, is a man who knows how the laws work, and has an eminently sensible approach.

We do need more protection for religion, he says.

"Australia is exceptional. Indeed, we stand alone in being the only democracy without some form of national Human Rights Act or Bill Of Rights incorporating protection of freedom of religion," he writes in his submission.

There's a critical "but" here. Freedom of religion should not be privileged over other rights. All rights must be protected, he says. Including the right to equality.

What do you think the chances are that we could have a civilised debate about a Bill of Rights, instead of this persistent notion that the once-oppressed are now out to "get" the oppressors?

I'd say there's a Snowball's chance in hell.

Being forced to bake big old gay cakes.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

v.

PRESSREADER, INC.,

Defendant.

CIVIL ACTION NO. 19-cv-02130
DOCUMENT FILED ELECTRONICALLY

DEFENDANT PRESSREADER, INC.'S MOTION FOR RULE 11 SANCTIONS

Defendant PressReader Inc. hereby moves for sanctions against Plaintiff Roy Den Hollander, pursuant to Fed. R. Civ. P. 11 and this Court's inherent authority. In support of this Motion, Defendant submits herewith a Memorandum of Law.

WHEREFORE, for the reasons in the accompanying Memorandum, Defendant respectfully requests that the Court enter an Order granting its Motion and awarding Defendant its attorney's fees and costs incurred in preparing this Motion and responding to the claims asserted in the Complaint, Amended Complaint, and proposed Second Amended Complaint, and enjoining Hollander from filing any further actions against PressReader relating to the allegations contained in the Second Amended Complaint.

Dated: New York, New York
April ___, 2019

DENTONS US LLP

By: /s/ *Gary Meyerhoff*
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

v.

PRESSREADER, INC.,

Defendant.

CIVIL ACTION NO. 19-cv-02130
DOCUMENT FILED ELECTRONICALLY

DEFENDANT PRESSREADER, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS

Defendant PressReader Inc. ("PressReader") respectfully submits this memorandum of law in support of its motion for sanctions against Plaintiff Roy Den Hollander ("Hollander"), pursuant to Fed. R. Civ. P. 11. PressReader does not take this step lightly. Hollander, an attorney and self-described "men's rights" advocate, is a serial abuser of the judicial system in the New York state and federal courts. In the instant action, Hollander has asserted New York "right of publicity," defamation, injurious falsehood and negligence claims, and federal RICO claims, against PressReader. All claims are based on the publication of newspaper articles about Hollander that he disagrees with, and all are patently frivolous. The case was brought in bad faith and calculated not only to cause PressReader to incur unnecessary expense, but to chill the exercise of core First Amendment freedoms. After careful consideration, PressReader brings this motion to prevent the expenditure of more unreasonable fees to respond to this lawsuit, and to deter Hollander from bringing similar frivolous and constitutionally suspect actions in the future.

Because Hollander's actions are more than sufficient to demonstrate a violation of Rule 11, this Court should not only dismiss the First Amended Complaint ("FAC") and deny leave to file the Second Amended Complaint ("SAC"), as urged in PressReader's Motion to Dismiss and Opposition to Hollander's Motion for Leave, but also sanction Hollander for filing a frivolous

action for improper purposes. Specifically, the Court should order Hollander to compensate PressReader for its reasonable attorneys' fees and expenses incurred in defending this action, including the instant Motion for Sanctions and Motions to Dismiss the FAC and Opposition to Leave to File the SAC. In addition, pursuant to Rule 11 and this Court's inherent powers, the Court should enjoin Hollander from filing any further actions against PressReader relating to the allegations contained in the SAC.

FACTUAL BACKGROUND

On or about October 15, 2018, Hollander, as both plaintiff and the attorney representing himself, filed a civil action against PressReader in the Civil Court of the City of New York, County of New York, captioned *Roy Den Hollander v. Pressreader, Inc.*, and assigned Index No. CV-24897 NY/2018 (the "Civil Court Action").

The Complaint pleaded a single cause of action for violation of Hollander's right of publicity under New York Civil Rights Law §§ 50 & 51 the ("Right of Publicity claim") based on the use of his name in an April 4, 2018 article from an Australian newspaper, the *West Australian*, entitled "Misplaced fear of gay revenge." (Compl. ¶ 15 and Ex. A) (the "Article"). The Article appeared on PressReader's Internet-based "platform that allows people to read, share, and talk about stories from over 7,000 top-quality publications" with whom PressReader has contracted, including the *West Australian*. (*See id.* ¶¶ 10-12.)

The Article discusses how religious groups that oppose gay marriage cast themselves as "oppressed"; to illustrate that point, the author, Tory Shepherd, quotes Plaintiff: "Self-described 'anti-feminist lawyer' Roy Den Hollander once likened the position of men in society to black people in 1950s America 'sitting in the back of the bus.'" (*Id.* ¶ 17 and Ex. A.) Plaintiff claims that by attributing the quotation to him, the newspaper Article "exploit[ed] the public figure

notoriety of Plaintiff's name" in violation of his "right of publicity". (*Id.* ¶¶ 23-38.)

PressReader moved to dismiss the Right of Publicity claim, explaining in detail why it was wholly unsupported in law. Instead of responding to the Motion to Dismiss, on February 8, 2018, Hollander served the FAC, which repleaded the meritless Right of Publicity claim and added a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq*. (the "RICO claim") that was also based on complaints about the Article and other Australian newspaper articles that mentioned Hollander; he alleges that PressReader and Tory Shepard are a RICO "Enterprise" that violated the federal wire fraud statute by "creating and publishing over the wires two articles that falsely depict Plaintiff's businesses in an effort to financially harm them." (*See* Am. Compl. ¶¶ 47-48, 58.)[1] The RICO claim is also wholly without merit, and like the Right of Publicity claim, violative of the First Amendment.

PressReader timely removed the action to this Court on March 7, 2019. 28 U.S.C. §§ 1331, 1446(b). On March 12, 2019, PressReader served a draft Motion for Sanctions on Hollander pursuant to Rule 11's safe harbor provision. (*See* Singer Decl., Ex. 1.) The 21 day safe-harbor period subsequently lapsed without any action by Hollander to withdraw the FAC.[2]

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[1] In the FAC, Hollander reduced the damages sought under the right of publicity claim (FAC ¶ 2), to ensure that even with the addition of RICO claim damages, Hollander's case would be heard in the Civil Court and not the New York Supreme Court. The design behind this jurisdictional and procedural game-playing was clearly to have his case heard in a court that he hoped would be ill-equipped to consider the legal merits of his claims and/or unwilling to shut down his transparent efforts to use the courts to advance his political, attention-seeking goals. Thus, instead of responding to PressReader's motion to dismiss the initial complaint, which would likely end his efforts, Hollander added a more legally complex federal RICO cause of action to his case.

[2] Apparently angry at having been served with a first draft sanctions motion on March 12, 2019, Hollander responded by sending PressReader's counsel a rambling, six-page document purporting to be a "Motion For Rule Sanctions [*sic*]" against defense counsel. Hollander's "motion" failed to identify any paper PressReader had filed that he was claiming to be a violation of Rule 11. Instead, he complains generally about "character assassination," "intimidation and procedural violations." Even in the conclusion of the "motion," Hollander does not ask for any particular relief, instead remarking that "it is Defense Attorneys who want to bound and gag Plaintiff" and referencing "Bobby Seal [*sic*] in the Chicago Eight trial in Chicago in 1969." If filed, Hollander's frivolous motion would require a response and itself be sanctionable as well.

Instead, on March 29, 2019, Hollander improperly purported to amend the complaint again. (ECF No. 13.) In an April 3, 2019 Order, the Court noted Hollander's improper conduct in attempting to dispute the Clerk's notice rejecting his filing by filing a letter addressed to the "ECF Desk" as an "exhibit to a pleading." The Court further informed Hollander he could not amend his complaint a second time without seeking leave, and gave him until April 12 to do so. (ECF No. 15.) On April 11, Hollander filed a Motion for Leave to amend the complaint pursuant to Fed. R. Civ. P. 15(a)(2), attaching the proposed SAC, which retains the Right of Publicity and RICO claims and adds claims for defamation, injurious falsehood and negligence. (ECF Nos. 17, 17-2.)[3]

On April 11, 2019, Hollander filed a Motion for Reconsideration of the Court's April 3 Order requiring him to seek leave of Court before filing his SAC, even though he had already sought leave to file the SAC in accordance with the Court's April 3, 2019 Order.

In the interest of efficiency, PressReader, through counsel, sought Hollander's agreement to a combined briefing schedule on PressReader's Motion to Dismiss the FAC and Hollander's Motion for Leave to file the SAC (ECF No. 19); Hollander refused, failing to provide a reason. (ECF No. 20.) In an April 16, 2019 Order, the Court adopted PressReader's proposal for simultaneous briefing noting that it offered "obvious efficiencies". (ECF No. 22.)

On April 26, 2019, PressReader served a copy of this Motion on Hollander pursuant to Rule 11's safe harbor provision. (*See* Singer Decl., Ex. 2.)

[On April 30, 2019, pursuant to the Court's April 16, 2019 Order, PressReader filed its Joint Brief in Support of its Motion to Dismiss the FAC and in Opposition to Hollander's Motion for Leave to file the SAC ("Joint Brief").]

[3] With the case now removed, mooting Hollander's manipulation of his damage claim to keep the case within the jurisdictional limits of New York Civil Court (*see supra*, fn. 1), Hollander's proposed SAC seeks to raise his damages claims to $100,000 for Count 1, $300,000 for Count 2, and $1 million in punitive damages. (ECF No. 17-2, SAC, ¶¶ 3-4.)

The filing and prosecution of this frivolous action is part of a pattern. Hollander has a history of instituting meritless lawsuits in the state and federal courts for improper reasons -- in many instances pressing those suits all the way to (unsuccessful) petitions for certiorari to the U.S. Supreme Court. For example,

- He unsuccessfully sued the *same author* of the Article here, along with other Australian newspapers, asserting defamation and other torts. *Hollander v. Shepherd*, No. 152656/14, 2016 N.Y. Slip Op. 30042(U), 2016 WL 108273 (Sup. Ct., N.Y. Cty., Jan. 8, 2016) (dismissing complaint).

- He unsuccessfully sued multiple news organizations and journalists under RICO for "making allegedly false and misleading reporting and commentary on the 2016 presidential election." *See Hollander v. CBS News Inc.*, No. 16 Civ. 6624, 2017 WL 1957485, at *1 (S.D.N.Y. May 10, 2017) ("dismissal is mandatory because the news reporting that Hollander assails as wire fraud is speech protected by the First Amendment"), *vacated on other grounds sub nom. Hollander v. Garrett*, 710 F. App'x 35 (2d Cir. 2018) (dismissing for lack of Art. III standing), *cert. denied*, 138 S.Ct. 2658 (2018) (the "*CBS News"* case).

- In what appears to be his maiden voyage of RICO litigation, he sued his ex-wife, her mother, divorce lawyers, various exotic dancing clubs, and others, in a complaint spanning 90 pages and over 900 paragraphs, "spin[ning] a tale of a dark netherworld of international intrigue and deception"; the suit was dismissed with prejudice. *Hollander v. Flash Dancers Topless Club et al.*, 340 F. Supp. 2d 453, 455, 463 (S.D.N.Y. 2004) ("Even the most liberal reading of the Complaint and Supplemental Complaint fails to indicate that, however restated, any valid claim would survive"), *aff'd*, 173 F. App'x 15 (2d Cir. 2006), *cert. denied*, 127 S.Ct. 49 (2006).

- He brought a Section 1983 lawsuit against several New York City night clubs alleging that "Ladies' Nights" constitute invidious discrimination in violation of the Fourteenth Amendment.[4] The Second Circuit affirmed dismissal, noting Hollander had utterly failed to plead the necessary state action. *Hollander v. Copacabana Nightclub*, 624 F.3d 30 (2d Cir. 2010), *cert. denied*, 131 S.Ct. 914 (2011).

- He followed that misadventure by filing suit in state court accusing a Chelsea nightclub ("Amnesia") of age and gender discrimination because a bouncer made him buy a $350 bottle of vodka to get in while admitting a young woman for free at the same time.[5] The

[4] *See* Lauren Collins, "Hey, La-a-a-dies! Ladies' Nights lawsuit," *The New Yorker* (Aug. 6, 2007).
[5] *See* Barbara Ross and Stephen Rex Brown, "'Mens' rights' activist loses court case that called nightclub's $350 vodka a human rights violation," *New York Daily News* (Aug. 1, 2013); Staci Zaretsky, "Old Fart Anti-Feminist Lawyer, Formerly of Cravath, Loses Dubious Bottle Service Discrimination Suit," *Above the Law* (Aug. 5, 2013), https://abovethelaw.com/2013/08/old-fart-anti-feminist-lawyer-formerly-of-cravath-loses-ridiculous-bottle-service-discrimination-suit/.

New York State Division of Human Rights dismissed his complaints. *See Matter of Hollander v. City of N.Y. Comm'n on Human Rights*, 118 A.D.3d 418 (1st Dept. 2014).

- He unsuccessfully sued Columbia University and certain government agencies alleging, among other things, that defendants violated the Establishment Clause "by aiding the establishment of the religion Feminism" by funding the University's Women's Studies Program. *Hollander v. Inst. for Research on Women & Gender at Columbia Univ.*, No. 08-cv-7286, ECF No. 36 (S.D.N.Y. Apr. 24, 2009) (dismissing complaint), *aff'd*, 372 F. App'x 140 (2d Cir. 2010). *See also Hollander v. Members of the Bd. of Regents of the University of the State of New York*, 2011 WL 5222912 (S.D.N.Y. Oct. 31, 2011), *aff'd*, 524 F. App'x 727 (2d Cir. 2013), *cert denied*, 571 U.S. 829 (2013) (dismissing similar claim).

Hollander protested, in response to an earlier draft of this Motion, that he has never been sanctioned for filing a frivolous complaint. But PressReader did not and does not represent that he had been. Whether or not Hollander has not actually been sanctioned for filing meritless lawsuits does not make those filings non-frivolous. And the Court need not rely on PressReader's interpretation to assess these prior filings or to know that Mr. Hollander has been warned about frivolous conduct. The district court in the *Institute for Research on Women & Gender* case went out of its way to describe Hollander's complaint, premised on the "central claim that feminism is a religion," as plainly "frivolous," "absurd," and "utterly without merit." *Inst. for Research*, ECF No. 36, at 2. In a subsequent case asserting essentially the same claim, the Second Circuit warned that "Hollander is an attorney" subject to the certification requirement of Fed. R. Civ. P. 11(b), and "[b]efore again invoking his feminism-as-religion thesis . . . we expect him to consider carefully whether his conduct passes muster under Rule 11." *Bd. of Regents*, 524 F. App'x at 730. Ignoring that admonition, Hollander filed an (unsuccessful) petition for certiorari to the U.S. Supreme Court.[6] And now he has filed this action.

[6] It has also been reported that, in order to avoid sanctions, Hollander stipulated to dismissal of a defamation suit against the hosts of the "Opie & Anthony" radio show. *See* Dareh Gregorian, 'Opie and Anthony' comedian settles lawsuit with lawyer, *N.Y. Post* (Aug. 27, 2009).

ARGUMENT

Rule 11 of the Federal Rules of Civil Procedure provides that an attorney shall not make any representation to the court for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation, Fed. R. Civ. P. 11(b)(1); and shall not assert claims, defenses, or other legal contentions unless warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, Fed. R. Civ. P. 11(b)(2).

Rule 11 violations "require[] only a showing of objective unreasonableness on the part of the attorney or client signing the papers." *ATSI Commc'ns, Inc., v. Shaar Fund, Ltd*., 579 F.3d 143, 150 (2d Cir. 2009) (internal quotations omitted). With respect to legal contentions, "[t]he operative question is whether the argument is frivolous, *i.e.*, the legal position has 'no chance of success,' and there is 'no reasonable argument to extend, modify or reverse the law as it stands."' *Fishoff v. Coty In*c., 634 F.3d 647, 654 (2d Cir. 2011) (quoting *Morley v. Ciba-Geigy Corp*., 66 F.3d 21, 25 (2d Cir. 1995)); *see also Eastway Constr. Corp. v. City of N.Y.*, 762 F.2d 243, 254 (2d Cir. 1985), *superseded on other grounds by rule.*

As thoroughly discussed in PressReader's Joint Brief, the claims asserted in Hollander's FAC have absolutely no chance of success. For example,

- The Right of Publicity claim is based on the use of Hollander's name in a newspaper article. The Right of Publicity statute, New York Civil Rights Law §§ 50 & 51, is strictly limited to prohibiting the purely *commercial* misappropriation of a person's name or likeness for purposes of "advertising" or "trade," and under black-letter law, does not extend to newsworthy publications such as the Article here. *See, e.g., Finger v. Omni Publ'ns Int'l, Ltd.*, 77 N.Y.2d 138, 141 (1990). If it did, it would, of course, violate the First Amendment. *Id.*; *Foster v. Svenson*, 128 A.D.3d 150, 156 (1st Dep't 2015).

- Hollander's attempt to plead around the exemption by arguing that his name was used for a commercially exploitative purpose (rather than to inform the public), and other arguments that seek to second-guess editorial decisionmaking, have been expressly rejected by the New York Court of Appeals. *See, e.g., Howell v New York Post Co.*, 81

N.Y.2d 115, 124 (1993) (affirming dismissal); *Finger*, 77 N.Y.2d at 143 ("questions of 'newsworthiness' are better left to reasonable editorial judgment and discretion"; affirming dismissal).

- Hollander's RICO claim is frivolous because, among other things, there is no plausible allegation of a RICO "Enterprise" composed of PressReader and one of the authors of one of the thousands of articles that appears on PressReader's news platform every day; or of "wire fraud" based on publication of the newspaper articles. While Hollander "labels these acts of journalism as acts of 'wire fraud,'" he pleads no "'scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises. . . .'" *CBS News*, 2017 WL 1957485, at *4 (quoting 18 U.S.C. § 1343).

- Application of the RICO statute here is in patent violation of the free speech and press guarantees of the First Amendment. *Id.* at *1 ("dismissal is mandatory because the news reporting that Hollander assails as wire fraud is speech protected by the First Amendment").

- Hollander's claim, seeking to hold a Canadian company liable for making an Australian article available on its website is an improper extraterritorial application of RICO. *See, e.g., City of Almaty, Kazakhstan v. Ablyazov*, 226 F.Supp.3d 272, 278 (S.D.N.Y. 2016) (Nathan, J.). Hollander does not plead that PressReader engaged in wire fraud within the United States, and making the Australian newspaper articles available on the internet is not enough. *Petroleos Mexicanos v. SK Eng'g & Constr. Co.*, 572 F. App'x 60, 61 (2d. Cir. 2014) ("simply alleging that some domestic conduct occurred" is insufficient).

"[E]ven a cursory examination of the requirements for bringing suit under RICO would have revealed the impossibility of the claim's success, Plaintiffs' filing was objectively unreasonable and therefore constitutes a Rule 11 violation." *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 660-61 (S.D.N.Y. 1996), *aff'd*, 113 F.3d 1229 (2d Cir. 1997) (citations omitted).

The claims asserted in Hollander's proposed SAC -- defamation, injurious falsehood, and negligence -- are equally devoid of merit. Yet after already having been served with a Rule 11 motion aimed at the entire FAC, and having allowed the "safe harbor" period to expire, he put PressReader to the further expense of defending against those claims. As further detailed in the Joint Brief:

- "It is essential in making out a prima facie case in libel to prove that the matter is published of and concerning the plaintiff." *Kirch v. Liberty Media Corp.*, 449 F.3d 388, 398 (2d Cir. 2006). Here, Hollander is only mentioned in the first line of the Article, which analogizes a quotation from him to events that are taking place in Australia. Indeed, Hollander *admits* that he "*has no relationship whatsoever to the substance of the article*" that follows (SAC ¶ 44; emphasis added). As Hollander admits, and any fair reading reveals, the Article is, on its face, not about Hollander.

- Even if the statements were about Hollander, they are not actionable. It is not defamatory to say that one opposes abortion or same-sex marriage or gay rights. Moreover, those statements are not defamation per se, which is limited to defamation of a kind "incompatible with the proper conduct of [plaintiff's] business, trade, profession or office itself, . . . rather than a more general reflection upon the plaintiff's character or qualities." *Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp, LLC*, 813 F.Supp.2d 489, 551 (S.D.N.Y. 2011). As such, Hollander must plead and prove special damages with particularity, which he has not remotely done.

- Even if the statements were about Hollander, they are protected opinion under New York law. *See, e.g., Immuno AG v. Moor-Jankowski*, 77 N.Y.2d 235, 249 (1991). Here, as in *Immuno AG*, "it would be plain to the reasonable reader" that in the Article Ms. Shepherd "was voicing no more than a highly partisan point of view," not making factual assertions. *Id.* at 255. *See also Carto v. Buckley*, 649 F. Supp. 502 (S.D.N.Y. 1986).

- The tag-along claims for injurious falsehood and negligence are based on the same publication and cannot end-run the privileges and limitations of defamation law. *See, e.g., Vitro S.A.B. de C.V. v. Aurelius Capital Mgmt., L.P.*, 99 A.D.3d 564, 565 (1st Dep't 2012) ("expression of opinion is constitutionally protected and cannot serve as the basis for plaintiff's injurious falsehood claim"); *Butler v. Del. Otsego Corp.*, 203 A.D.2d 783, 785 (3d Dep't 1994) (claim for negligent failure to prevent dissemination of defamatory materials inseparable from the tort of defamation, and plaintiff could only recover on that basis) (citing *Virelli v. Goodson-Todman Enters. Ltd.*, 142 A.D.2d 479 (3d Dep't 1989)).

- There are additional, separate reasons why those claims fail as a matter of law -- injurious falsehood requires special damages, which Hollander has not pleaded, and a cause of action grounded in mere negligence is constitutionally insufficient because of First Amendment considerations. *See, e.g., Virelli*, 142 A.D.2d 479; *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

- Finally, all five of Hollander's counts are barred by the immunity provided by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, because PressReader is the operator of a website, not the author of the content at issue. *See, e.g., Shiamili v. The Real Estate Grp. of N.Y.*, 17 N.Y.3d 281, 286 (2011). Section 230's scope has been "construed broadly to effectuate the statute's speech-protective purpose". *Ricci v. Teamsters Union Local 456*, 781 F. 3d 25, 28 (2d Cir. 2015).

In short, the claims Hollander has asserted in this action are frivolous; they lack any legal foundation. "[W]hether the violation is deliberate or merely the result of 'extraordinarily shoddy' research, the filing warrants the imposition of sanctions" under Rule 11(b)(2). *Id.* at 661. Here, the violation was deliberate: Hollander was on notice, after receiving PressReader's Motion to Dismiss the original Complaint, that the Right of Publicity claim was baseless, but doubled down and re-pleaded the exact same frivolous claim. And he was on notice, from his prior experience in the *CBS News* case that RICO claims based on news coverage were in violation of the First Amendment, but brought such a claim again here. Pursuing the SAC, Hollander "tripled down" -- not only re-pleading the meritless Right of Publicity and RICO claims without remedying any of their fatal infirmities, but adding three more frivolous causes of action.

Sanctions are also warranted under Rule 11(b)(1), because this action was brought for the improper purpose of harassing PressReader and causing needless increase in the cost of litigation, in retaliation for First Amendment-protected publications about him that appear on PressReader's platform.

"The 1993 Advisory Committee Note to Rule 11 sets forth certain factors that may be considered by the court when deciding whether to impose sanctions or what sanctions are appropriate in the given circumstances. Those factors include: (1) whether the improper conduct was willful, or negligent; (2) whether it was part of a pattern or activity, or an isolated event; (3) whether it infected the entire pleading, or only one particular count or defense; (4) whether the person has engaged in similar conduct in other litigation; (5) what effect it had on the litigation process in time or expense; (6) whether the responsible person is trained in the law; (7) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case." *Colliton v. Cravath, Swaine & Moore, LLP*, No. 08 Civ. 0400

(NRB), 2008 WL 4386764, at *36 (S.D.N.Y. Sept. 24, 2008), *aff'd*, 356 F. App'x 535 (2d Cir. 2009); *see also* Fed. R. Civ. P. 11 advisory committee note to 1993 amendments. *All* of these factors support sanctions against Hollander. Trained in the law[7] (after which he was an associate at a prestigious law firm), Hollander willfully filed a frivolous complaint similar to others he has filed, designed to make PressReader needlessly spend money (or think twice about engaging in First Amendment-protected activity).

Additionally, Rule 11 is "particularly important in the RICO context, as the commencement of a civil RICO action has 'an almost inevitable stigmatizing effect'" on defendants. *Katzman*, 167 F.R.D. at 660-61 (citing *Figueroa Ruiz v. Alegria*, 896 F.2d 645, 650 (1st Cir. 1990)); *Carousel Foods of Am., Inc. v. Abrams & Co.*, 423 F. Supp. 2d 119, 124-25 (S.D.N.Y. 2006) (finding monetary sanctions appropriate for Rule 11 violation in RICO context). When viewed in totality, Hollander's conduct without question warrants sanctions in the form of reasonable attorneys' fees.

The Court may impose an appropriate sanction on any "attorney. . . or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). Pursuant to Rule 11(c)(4), the sanctions may include "nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Furthermore, it is "beyond peradventure" that the Court has the inherent authority to enjoin

[7] In his document responding to the prior draft sanctions motion that PressReader served upon removal of this action (*see supra* fn. 2) Hollander noted that the draft incorrectly stated that his law degree was from Columbia University. Hollander apparently does hold his J.D. from George Washington University, but he also holds an M.B.A. from Columbia. PressReader previously assumed Mr. Hollander had received his J.D. from Columbia because he has invoked his status as "a Columbia alumnus whose 'direct contact with the offensive religion' of feminism . . . makes him 'very uncomfortable' and interferes with his 'use and enjoyment of Columbia as [a] member[ ] of the Columbia community. . . .'" *Bd. of Regents*, 524 F. App'x at 728.

Hollander "from further vexatious litigation" against PressReader. *Safir v. U.S. Lines Inc.*, 792 F.2d 19, 23 (2d Cir. 1986); *In re Martin-Trigona*, 795 F.2d 9 (2d Cir. 1986); *O'Callaghan v. N.Y. Stock Exch.*, No. 12 Civ. 7247(AJN), 2013 WL 3984887 (S.D.N.Y. Aug. 2, 2013) (Nathan, J.), *aff'd*, 563 F. App'x 11 (2d Cir. 2014).

CONCLUSION

PressReader respectfully requests that this Court enter an Order (1) granting its Motion for Sanctions, and awarding PressReader's attorney's fees and costs incurred in preparing this Motion and the prior motion for Rule 11 sanctions PressReader prepared and served, and in responding to this action in its entirety, including but not limited to the motions related to the FAC and SAC; (2) enjoining Hollander from filing any further actions against PressReader relating to the allegations contained in the SAC; and (3) any other or further sanction as this Court may deem appropriate.

Dated: New York, New York
_____, 2019

DENTONS US LLP

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ROY DEN HOLLANDER,

Plaintiff,

CIVIL ACTION NO. 19-cv-02130

-against-

PRESSREADER, Inc.
(formerly NEWSPAPERDIRECT, INC.,
NY DOS ID 2390795)

Defendant.

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ATTORNEY ROY DEN HOLLANDER'S NOTICE OF MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927 AGAINST ATTORNEYS GARY MEYERHOFF AND JULIE SINGER

Plaintiff Roy Den Hollander hereby moves for sanctions pursuant to 28 U.S.C. § 1927 and this Court's inherent authority against Defendant's attorneys Gary Meyerhoff and his associate Julie Singer. In support of this Motion, Plaintiff submits a Memorandum of Law and a Declaration.

WHEREFORE, for the reasons in the accompanying Memorandum, Plaintiff respectfully requests that this Court enter an Order granting his Motion and awarding Plaintiff attorney's fees and costs incurred in preparing this Motion and instruct the Defendant's attorneys to refrain from their ongoing efforts of coercion and intimidation.

Dated: New York, New York
May 2, 2019

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

----------X

ROY DEN HOLLANDER,

Plaintiff,

CIVIL ACTION NO. 19-cv-02130

-against-

PRESSREADER, Inc.
(formerly NEWSPAPERDIRECT, INC.,
NY DOS ID 2390795)

Defendant.

----------X

ATTORNEY ROY DEN HOLLANDER'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927 AGAINST ATTORNEYS GARY MEYERHOFF AND JULIE SINGER

INTRODUCTION

The conduct complained about herein does not involve papers previously presented to the Court by Defendant's attorneys Gary Meyerhoff ("Meyerhoff") and Julie Singer ("Singer"). It concerns two attempts at coercion and intimidation by Meyerhoff and Singer made by email against me, attorney Roy Den Hollander.

ARGUMENT

Whether under 28 U.S.C. § 1927 or the Court's inherent power, Meyerhoff and Singer should be sanctioned for their attempts to coerce and intimidate me into withdrawing this case, and be enjoined from repeating such conduct.

Meyerhoff and Singer's obvious reason for removing this case to federal court was not because the New York Civil Court was unable to render a fair decision involving RICO, but purely to unlawfully coerce me into withdrawing the case or face a battle over Rule 11 Sanctions.

Meyerhoff and Singer are trying to hide their coercion behind the Rule 11 "safe harbor" provision by twice—not once—but twice telling me that they "will not file the [Rule 11] motion" if your papers "are withdrawn within 21 days after service . . . ." (Exs. A and B).

Meyerhoff and Singer's threats of sanctions motions were clearly meant to coerce me as an attorney into dropping this case. Under New York Law, they engaged in Coercion in the Second Degree, Penal Law § 135.60, a class A misdemeanor:

> A person is guilty of coercion in the second degree when he or she compels or induces a person . . . to abstain from engaging in conduct in which he or she has a legal right to engage . . . by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:
>
> > [P]ublicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.
> >
> > Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
> >
> > Perform any other act which would not in itself materially benefit the actor [if I withdraw the case, Meyerhoff and Singer will be out future attorney fees] but which is calculated to harm another person materially with respect to his or her . . . business, calling, career, financial condition, reputation or personal relationships. [Meyerhoff and Singer have already made clear to the Court that they intend to litigate via personal destruction rather than on the merits. *See* Meyerhoff Letter at 2, dated Mar. 12, 2019, Dkt. No, 6 ("Plaintiff's pattern of bringing meritless cases for improper reasons"), and Letter at 2, dated Apr. 15, 2019, Dkt. No. 19 (Plaintiff's purposes to "gain attention" and "harass" Defendant).

Meyerhoff and Singer's coercive efforts are an abuse of the judicial process, *see Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766-767 (1980), and conducted for an oppressive purpose, *see Alyeska Pipeline Serv. Co. v. Wilderness Sco'y*, 421 U.S. 240, 258-259 (1975).

Using Rule 11 as a hammer against an opposing attorney to drop a case is clearly an improper purpose, especially when it violates a State's criminal law.

Meyerhoff and Singer first threatened me with a time consuming, costly and reputationally harmful sanctions motion on March 12, 2019. (Ex. A). They demanded that I withdraw "your First Amended Complaint." (Ex. A). The First Amended Complaint, however, was "[t]he operative complaint in this action," Order at 1, dated Apr. 16, 2019, Dkt. No. 22. For me to have withdrawn the First Amended Complaint meant the case was over. If it had been withdrawn without prejudice, then the statute of limitations would bar subsequent actions on the state causes of action. If it had been withdrawn with prejudice, then any subsequent actions regardless of the claim would be barred.

I decided not to kowtow to Meyerhoff and Singer's coercion, but rather enlist the Federal Rules of Civil Procedure, which is my right, and more importantly—follow this Court's Order at 2, dated April 3, 2019, Dkt. No. 15, "Any motion for leave to amend pursuant to Rule 15(a)(2) shall be filed no later than April 12, 2019." On April 11th a day before the deadline, I filed such a motion. (Dkt. No. 17). Because I adhered to the opportunity provided by this Court, Meyerhoff and Singer—for a second time—engaged in coercion and intimidation with the threat that

> Attached please find Defendant PressReader's revised Motion for Rule 11 Sanctions, revised to include filings you have made subsequent to the service of the prior Rule 11 Motion. . . . [We] will not file the motion to the extent the newly challenged paper(s) -- your motion for leave and the Second Amended Complaint -- are withdrawn within 21 days after service.

(Ex. B) (emphasis added).

So, according to Meyerhoff and Singer, whenever an opposing attorney files papers permitted by a federal court and according to the Federal Rules of Civil Procedure, he is liable for Rule 11 Sanctions. When I file my opposition to Meyerhoff and Singer's motion to dismiss and assuming they disagree with it, am I to expect another threat of Rule 11 sanctions?

I, therefore, request that this Court enter a default judgment against the Defendant, *Shepherd v. ABC*, 62 F.3d 1469, 1475 (D.C. Cir. 1995) (citations omitted), or disqualify Meyerhoff and Singer from serving on this case, *Shepherd* at 1475, because of their patently bad faith in removing this case to federal court so as to engage in coercion and intimidation to prevent me from prosecuting this case under the Federal Rules of Civil Procedure.

Even if this Court concludes that Meyerhoff and Singer did not act in bad faith by engaging in coercion, Rule 11 motions should not "be prepared . . . to intimidate an adversary into withdrawing contentions that are fairly debatable . . . ." Fed. R. Civ. P. 11, Advisory Committee's notes, 1993 Amendment, Subdivisions (b) and (c).

CONCLUSION

As attorneys, Meyerhoff and Singer are officers of the Court who are unilaterally trying to bar my access to the Court. Not unlike an officer of a public service organization unilaterally barring the public from accessing that organization's services by eliminating its telephone number from 411 information.

Further, if Meyerhoff and Singer had not removed this case from civil court for the purpose of exploiting Rule 11 for coercive purposes, this case might very well be over.

Dated: New York, New York
May 2, 2019

Respectfully submitted,
s/Roy Den Hollander
Roy Den Hollander, Esq.
Plaintiff and Attorney
545 East 14th Street, 10D
New York, N.Y. 10009
(917) 687-0652
roy17den@gmail.com

Exhibit A

Gmail **Roy Den Hollander <roy17den@gmail.com>**

Roy Den Hollander v. Pressreader, Inc., SDNY

1 message

Meyerhoff, Gary <gary.meyerhoff@dentons.com> Tue, Mar 12, 2019 at 9:31 AM
To: Roy Den Hollander <roy17den@gmail.com>
Cc: "Singer, Julie R." <julie.singer@dentons.com>, "Spears, Natalie J." <natalie.spears@dentons.com>

Mr. Hollander:

Attached please find the following documents, which we are serving you by email:

-- Defendant Pressreader, Inc.'s Motion For Rule 11 Sanctions

-- Defendant Pressreader, Inc.'s Memorandum In Support Of Its Motion For Rule 11 Sanctions

-- Notice of Initial Pretrial Conference

I am sending you the Notice as a courtesy, given that you do not yet appear listed as a recipient of the Court's ECF service.

Pursuant to Fed. R. Civ. P. 11 (b)(2), we are serving the Rule 11 motion only and will not file the motion if the challenged paper -- your First Amended Complaint -- is withdrawn within 21 days after service.

In addition, Pressreader will be seeking an adjournment of it time to answer, move, or otherwise respond to First Amended Complaint until April 15, 2019. This adjournment will allow for the 21 day period to elapse and then provide Pressreader with 12 days to prepare a response to your pleading if it has not been withdrawn.

Please advise promptly if you consent to the requested adjournment until April 15, 2019, and if you will not, please indicate why not (as this information is required by Judge Nathan's rules).

Sincerely,

Gary Meyerhoff

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Bio | Website

Dentons US LLP
1221 Avenue of the Americas, New York, NY 10020-1089

Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成

2 attachments

110476883_1.pdf
347K

show_temp.pdf
113K

Exhibit B

Gmail **Roy Den Hollander <roy17den@gmail.com>**

Hollander v. Pressreader - Motion for Sanctions

1 message

Meyerhoff, Gary <gary.meyerhoff@dentons.com> Fri, Apr 26, 2019 at 3:45 PM
To: Roy Den Hollander <roy17den@gmail.com>
Cc: "Singer, Julie R." <julie.singer@dentons.com>

Mr. Hollander:

Attached please find Defendant PressReader's revised Motion for Rule 11 Sanctions, revised to include filings you have made subsequent to the service of the prior Rule 11 Motion.

Pursuant to Fed. R. Civ. P. 11 (b)(2), we are serving the Rule 11 motion only and will not file the motion to the extent the newly challenged paper(s) -- your motion for leave and the Second Amended Complaint -- are withdrawn within 21 days after service. We note that the 21 day "safe harbor" period has already expired on the first Rule 11 motion we served in connection with the First Amended Complaint.

Sincerely,

Gary Meyerhoff

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Pressreader - Motion for Sanctions (FAC and SAC)(110773410_3).DOCX
34K

Exhibit C

Expenses incurred in responding to Gary Meyerhoff and Julie Singer's coercion.

The attorney-plaintiff normally bills $250 per hour.

In response to Meyerhoff and Singer's March 12, 2019, email threatening me with a Rule 11 sanctions motion to be filed in 21 days, I spent on March 12th 6.3 hours researching and composing a Rule 11 motion against Meyerhoff and Singer and notifying them that it would be filed after the 21 day period.

In response to Meyerhoff and Singer's April 26, 2019, second email threatening me with a revised Rule 11 sanctions motion to be filed in 21 days, I spent on April 27, 2019, 4.5 hours and on April 28, 2019, 3.6 hours researching and composing my motion for sanctions against Meyerhoff and Singer pursuant to 28 U.S.C. § 1927 and this Court's inherent authority.

The total time spent responding to Meyerhoff and Singer's coercion was 14.4 hours at $250 per hour equals $3,600.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY DEN HOLLANDER,

Plaintiff,

-against-

PRESSREADER, INC.,

Defendant.

19-CV-2130 (AJN) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

Plaintiff Roy Den Hollander, who is member of the bar of this Court acting as his own attorney, has filed two sanctions motions in the past week against the attorneys for defendant Pressreader, Inc.

The first motion (Dkt. No. 25) is made pursuant to Fed. R. Civ. P. 11 and is premised on defendant's conduct in (i) removing this action to federal court in accordance with 28 U.S.C. § 1446 after plaintiff amended his complaint in state court to add a federal RICO claim; (ii) "making a motion for sanctions" (Dkt. No. 26, at 2) in accordance with Rule 11(c)(2) – that is, serving (but not filing) a motion asserting that the claims set forth in the First Amended Complaint are frivolous; and (iii) mentioning that sanctions motion in defendant's March 12, 2019 letter to the Court, which sought an extension of time to respond to the First Amended Complaint "to allow Rule 11's 21-day 'safe harbor' period to expire." (Dkt. No. 6, at 2.) As a sanction, plaintiff seeks his "attorney's fees and costs incurred in preparing this Motion and responding to the removal claims, which Plaintiff opposes," to be paid by defendant's attorneys. (Dkt. No. 25, at 1.)[1]

[1] It is not clear how or in what manner plaintiff "opposes" the removal. He did not file any remand motion.

The second motion (Dkt. No. 30) is made pursuant to 28 U.S.C. § 1927 and the Court's inherent power and is premised on defendant's conduct in serving (but not filing) a revised sanctions motion on April 26, 2019, apparently addressed to plaintiff's proposed Second Amended Complaint (Dkt. No. 17-2), under cover of an email stating that the motion will not be filed if within 21 days plaintiff withdraws his motion (Dkt. No. 17) for leave to file that Second Amended Complaint. (Dkt. No. 31, at 1-4; Dkt. No. 31-2, at ECF page 2.) Plaintiff characterizes defendant's compliance with Rule 11(c)(2) as "Coercion in the Second Degree" in violation of N.Y. Penal Law § 135.60. (Dkt. No. 31, at 2.) As a sanction, plaintiff seeks "a default judgment against the Defendant" or an order disqualifying defendant's counsel. (*Id.* at 4.)

In the interest of efficiency, it is hereby ORDERED that further briefing on both of plaintiff's sanction motions is STAYED pending the outcome of defendant's motion to dismiss the First Amended Complaint (Dkt. No. 27) and plaintiff's motion for leave to file a Second Amended Complaint (Dkt. No. 17.) The Clerk of Court is respectfully directed to close Dkt. No. 16, which appears to be a preliminary version of plaintiff's amendment motion, missing the proposed amended pleading. In light of the stay of briefing, defendant's letter-application for a pre-motion conference (Dkt. No. 29) is DENIED.

Plaintiff's motion for reconsideration (Dkt. No. 23) is DENIED.

Dated: New York, New York
May 3, 2019

SO ORDERED.

BARBARA MOSES
United States Magistrate Judge